The Law Societies JOINT BRUSSELS OFFICE

Brussels Agenda

June 2016

The Law Societies' monthly publication with the latest EU news

Editorial

Have you ever thought of a career In-house and didn't know where to look, or perhaps you are general counsel for a company or organisation already, or maybe you are just interested in what this legal path entails. If any of the above apply to you, then this month's Brussels Agenda will be of particular interest as it focuses on the good, the bad and the not so ugly aspects of working as an in-house solicitor.

The number of In-house solicitors in all three UK jurisdictions has increased substantially over the past few

years and the various roles and contexts in which these solicitors work has been through an evolution process. Changing attitudes towards In-house solicitors and a greater understanding of the work they become involved in has seen more opting to pick this particular path.

In this Brussels Agenda, we feature articles from a number of In-house lawyers who share with us their experiences of working In-house including the highlights, the challenges and what it takes to work In-house and why they think more are viewing it as an attractive alternative to private practice. Our contributors provide a useful insight into their profession and cite a number of tips for those that are interested in this route.

Fear not, in addition to the above we have updates on the Privacy Shield which continues to be a subject of much negotiation, the report on pre-trial detention and the recent IP law proposals in addition to a number of other articles.

With the referendum fast approaching we feature the Law Society of Scotland's EU Referendum paper in our news section along with other exciting updates from the Law Societies. Finally don't forget to keep up-to-date with current consultations and case law in our case law corner.

Read on now to discover what this full edition of the Brussels Agenda has to offer.

Back to Contents **Next Item**

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

Janice More, Executive Director and General Counsel, The Law Society of England and Wales

In-house Lawyers in Business

A global increase in regulation has led to the transformation of the in-house general counsel role in the business world. What was originally perceived as a role for those who could not make it in private practice has now evolved into a role attracting some of the sharpest and brightest minds in the profession.

Some in-house general counsel roles are among the most challenging, powerful and influential roles in law today. The demands on the in-house lawyer are increasing as they adapt to support businesses in meeting objectives in an ever changing regulatory and compliance landscape. The key skills and competencies for success are changing and becoming more reflective of a successful business executive. Communication, business knowledge, management and the ability to think strategically are vital.

There are many types of in-house roles in business today, from technical specialists who spend much of their career focusing on specialist areas such as intellectual property or environmental law, to sole in-house lawyers in start-ups, to general counsel who lead large law departments comparable in size and scope to some of the largest law firms. The types of skills that are needed and utilised by the in-house lawyer varies from role to role, although I would suggest that the ability to problem solve is central to all in-house roles.

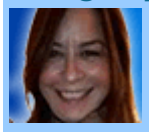
The focus and key competencies needed for the in-house lawyer also varies depending on which part of the business is being advised. The business unit adviser will need to have somewhat different skills to the general counsel advising the Board. However I believe that there are some fundamental skills that all successful in-house lawyers have.

It is usually assumed, for instance, that in-house lawyers have the legal skills necessary for their role. However, a key skill is how the in-house lawyer relates that legal knowledge to the issue in question, exercising judgement and acting as a problem solver rather than a blocker. It is easy to say "no" to the business that you are advising, (and in some rare cases the answer will be no). Those instances, however, will be few and, more often than not there is a way through the issue, perhaps not as originally envisaged. A good in-house lawyer will be able to help identify the potential solutions and influence the outcome so that the business achieves its objectives in a legally robust way. Therefore influencing skills are important but business acumen, pragmatism and the ability to understand the business strategy and build the legal advice around that to achieve the business objectives is vital.

Many in-house lawyers believe that being seen as independent and neutral, without an agenda, is also vital, particularly as the roles become more senior. This can be tricky particularly for in-house lawyers who are embedded within the business units or are sole in-house counsel. There is a particular need for those lawyers to be skilful in persuasion and communication and have a good understanding of the business.

Above all the successful in-house lawyer will exercise integrity and judgement, as well as the ability to advise the business wisely in order to achieve the right results. This means applying technical legal knowledge but balancing this with a large dose of "nous". This does not mean never making a mistake. Everyone makes mistakes, but those who rise to become leaders in the in-house world are able to learn from mistakes and have the resilience to achieve their and the business objectives after having done so.

Biography



Janice More is the General Counsel of the Law Society, joining in February 2016. She is responsible for legal regulatory and policy, governance and legal affairs at the Law Society. She is also a Board member and Secretary of the Association of Corporate Counsel, one of the largest organisations of in-house lawyers with 45,000 members globally. Janice has spent most of her career in-house, having originally qualified in Scotland in private practice there. She has been In-house with ConocoPhillips in Aberdeen, DuPont in the UK and USA and was latterly VP and European General Counsel with Heinz with responsibility for all legal and compliance matters for the group across Europe, CIS and Russia. She was awarded European General Counsel of the Year in 2013 by International Law office and was noted as one of The Lawyer's Hot 100 in 2011. Janice is qualified in Scotland, England and Wales and a member of the New York State Bar.

Lynda Towers, Convener of the In-house Lawyers Committee of the Law Society of Scotland

The evolution of the In-house lawyer

The in-house lawyer is alive and well and living in Scotland! Numbers have grown steadily over the past few years and in-house lawyers now make up almost one third of the legal profession in Scotland. What is different is the context within which in-house lawyers are working. Twenty years ago, in-house lawyers were mainly found in central and local government with a few based in banks and commercial enterprises. It was not perceived as a dynamic or desirable environment by many young lawyers.

Today the picture is very different. There are still many of us working in the traditional in-house world advising central and local government from Shetland to the Borders and advising the Scottish Government and Parliament in Edinburgh and Glasgow. What is different is the increasing importance of the in-house lawyer as an integral part of any innovative and enterprising business seeking to grow in Scotland whether in the government or commercial sector.

What this has meant is that the earlier division between government and commercial In-house lawyers is blurring. Local authorities are having to develop clever ways to deliver local services with less resources and their lawyers are at the forefront of seeking ways to make this work. We are all working in businesses, whether of the elected or money making kind and we bring an understanding of the needs of that business.

Our skills are transferrable and our approach in Scotland is certainly flexible whether being part of a team who have grown a business from a fledging new start to a major world player to a council delivering city deals and international events through all sorts of new legal entities. In-house lawyers know what is important to a business, its people and its clients.

This means that in-house lawyers dealings with the private sector are also changing. Today it is much more of a respectful partnership between the different sectors complementing our different strengths rather than a perceived one way traffic of expertise with the in-house lawyer the grateful recipient.

The in-house lawyer is increasingly sitting at the board table in Scotland or is a member of the Local Council's senior management, bringing their analytical skills and judgement to the discussion in so many different areas; in banking, in oil and gas, in educational establishments, in retail, in the third sector, in the arts as well as the more traditional sectors.

We are seeing increasing movement between private practice and in-house as young lawyers tend not to expect to be with a firm for life. The skills of the in-house lawyer and the experience gained are rightly seen as a valued addition to a young lawyers CV.

In Scotland, in-house lawyers are now represented by a newly constituted committee of the Law Society of Scotland who have recognised that this growing sector of the profession needs support to continue its growth and to ensure it can respond to its new developing needs to take us through the next twenty years.

Biography

Lynda Towers worked in-house for over 30 years advising the Scottish Government, before spending 8 years as Solicitor to the Scottish Parliament. She has extensive experience in legislation, litigation and public law more generally.

She is the outgoing Convener of the Law Society of Scotland's In-house Lawyers Committee, a member of the Law Reform Committee and a member of Council. She has also been involved over many years with courses for the Writers to the Signet Society and has taken part in tutoring on central government in the Public Administration courses for a number of Scottish Universities.

JP Irvine, General Counsel & Company Secretary with Translink
The Rise of In-house Lawyers in Northern Ireland

I have been very lucky in my career to date. My first five years as a lawyer were in private practice - working in Brussels and London for the Global law firm Clifford Chance, then working on cutting edge energy deals in Ireland for Arthur Cox. After that I have spent the last 10 years in two very different and exciting In-house roles in Northern Ireland, both with a judicious degree of international and cross border legal work. From 2006-2010 I founded the legal team within a national competition regulator from Belfast – the Utility Regulator, and since then have enjoyed a really wide span of legal, cyber, internal audit and board level responsibility in my current post as GC and Co Sec for Translink.

In-house Legal Market Segments in Northern Ireland

In the ten years I have been an In-house lawyer, I have seen the market here become more sophisticated and diverse in terms of In-house opportunities and market developments. For me, the market here breaks down into four clear segments

1. Classic Commercial and Industrial "C&I". This is rapidly becoming the biggest In-house segment in Northern Ireland from lowly beginnings. Nowadays not only do large indigenous companies have legal departments such as Translink and Moy Park (the latter a sponsor of the last football World Cup Final), but also there are major global corporates with impressive local presence such as Diageo/Guinness, Coca Cola, and even the Financial Times Newspaper.
2. Banks – All the local and national banks with a Belfast presence have legal teams established here. As an adjunct to banking we are also seeing the rise of FinTech in Belfast, with some foreign direct investment (supported by the NI government and the organization Invest NI) supporting legal and other professional In-house jobs.
3. Alternative legal businesses / near shoring of global legal models – Over the past decade a form of in –house legal role has surfaced within law firms themselves. These tend to be more local support to global fee-earning propositions whereby Belfast lawyers work "In-house" supporting teams for Allen & Overy, Herbert Smith Freehills, and the global legal services giant Baker & McKenzie (to name but a few). Well over 200 "legal professional" jobs have been created thus far and many more look set to follow with the British Government's stated policy aim to devolve and facilitate a lower corporation tax arrangement for Northern Ireland as a legislatively distinct region of the UK.
4. By far the largest provider of In-house legal roles, if one does not only look at the commercial sphere, is the Public Sector in Northern Ireland. Between the employed lawyers working for the Office of the Attorney General, the Northern Ireland Court Service, the Government Legal Service (known as DSO), the Public Prosecution Service, and the Northern Ireland Assembly Commission (not to mention the countless arms length bodies and NDPBs) there are well over 300 In-house lawyers in the employment of the State in one capacity or another.

Key Benefits for In-house lawyers in Northern Ireland

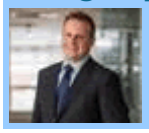
Generally speaking I would point to the following general benefits which all In-house lawyers I know come to enjoy. These are:

1. **Developing the Strategic You**
   Business acumen, finance skill, setting corporate objectives and vision – all of these come from life as an in-house lawyer in modern times. Frequently one is asked not just to advise on the legalities of a matter but provide strategic advice.
2. **Seeing the Journey from inside the Lead Car – rather than stuck behind and unsighted on many aspects as external lawyers often are**
   Being the Total Adviser from Start to Finish is very satisfying. It's incredibly rewarding to see the

evolution of a matter from project inception, or contract design, through to deal closure or being there for the cutting of the ribbon on a major infrastructure project start to finish. In private practice you are often very focused on particular aspects of a transaction/case. As an inhouse lawyer you're often involved every step of the way and you get to see the product of your legal and strategic advices practically played out.

3. **The Community of In-house lawyers and the Law Society's Supportive Role**
   There is an tremendous camaraderie of spirit between fellow In-house lawyers who operate in a different business context from the directly competitive pressures between lawyers in competing private practices. The work of the Law Society for Northern Ireland in spotting the In-house network in this country, giving it space to meet, meeting rooms, seminars of mutual interest, has been something of a catalyst for getting the community of In-house lawyers gelling together very well.
4. **The Transferability of In-house legal skills**
   Because of Northern Ireland's unique geographical and geopolitical positions, (chiefly its UK status, its land border with Ireland, its talented graduate pool, its attractive cost base, and its relative physical proximity to the US on one side and mainland Europe on the other) there are huge opportunities to transfer skills, gain cross border legal experience, tap into newer legal disciplines such as energy law, the rise of regulatory law, Fin Tech, and corporate governance tool kits. There is nothing parochial or inward-looking about the vast majority of In-house legal posts I come across in Northern Ireland. Horizons, skill sets and opportunities for Northern Ireland lawyers to test their legal skills and mettle on a wider EU stage are expanding all the time. Take myself for example – having worked on the EU's largest cartel cases in Brussels, having held the UK microphone when negotiating new EU energy directives at the European Council (on behalf of government) and now dealing with international suppliers and manufacturers on ground-breaking infrastructure projects on a weekly basis, my working week has a breadth and depth to it that I could not have imagined sitting at my desk in Queens University Law School in the year 2000.

Biography



JP Irvine has been General Counsel & Company Secretary with Translink, one of Northern Ireland's largest companies for the last 6 years.

IN-HOUSE LAWYERS

Key Challenges to Note for Aspiring In-house lawyers

1. **Stigma**
   As unfair as it may seem, there remains a stigma amongst some within the legal community that In-house lawyers are not as battle-ready, capable or cutting edge as some of their private practice counterparts. Speaking from personal experience, I do not recall a single negotiation, transaction or contract where it hasn't been a level playing field and I have never felt that my counterparty came away with the better end of the deal. I am sure this is true of many other In-house lawyers who know their brief, know their facts, know their industry and know the client's push points exceptionally well. Still, the stigma remains and new entrants need to be ready for it.
2. **Becoming a GP's surgery for the whole business**
   Avoid the temptation to get drawn into all manner of personal advice and employee grumbling. Having an In-house lawyer can be too tempting for many non- lawyer employees, so make sure you work for an organization which has, or which allows you to introduce, clear protocols and user rules around how to instruct and engage the In-house legal team.
3. **Be your own champion & enhance your career mobility**
   It is up to you to shape your career from within an In-house role. Push the boundaries, seek out the more interesting more challenging work, and prevent it from being outsourced to external lawyers. It is by doing this that you will enrich your career, keep your skill sets modern and relevant, and more than likely increase the chances of your own mobility and free movement to pursue your legal career across legal disciplines and geographical borders.
4. **Don't become 'Jack'**
   Finally, the biggest challenge is to avoid being seen as a 'jack of all trades' and master of none. This

will happen if you let it. It is up to every individual lawyer to be disciplined enough to undertake plenty of continuing professional development (CPD), pick three areas you like or know the most, and accentuate your profile and reputation in these. Become known as having specialisms in a number of areas – as well as being a good general lawyer who knows a range of other legal facets. I personally cannot speak highly enough of the practice of setting aside an hour every Friday to use social media legal tools, or online updates to learn two new legal developments every week.

JP Irvine, General Counsel & Company Secretary with Translink

Meet the Team- Q&A with other In-house Lawyers at Translink

Aside from the views of JP as GC, we take the opportunity to listen in on a Q&A with two members of JP's legal department at Translink. Clare McLaughlin is the senior company lawyer in the team and Clare Downey is the Company's property and prosecutions lawyer. They have the following soundbytes for us:

JP: What do you like most about being an In-house lawyer?
Clare Mclaughlin: "Being "the fixer". The rather unique role of being the confidant of those who have made an error or expect the world to come crashing down. Your clients expect you to be able to correct/rectify any problem whether legal or otherwise. The variety of work is fantastic. One minute you're advising on whether dogs are or should be allowed on trains and the next negotiating a contract for the Commonwealth Games."

JP: What is your least favourite thing about being an In-house lawyer?
Clare McLaughlin – "Flying solo at least once a week. You need a lot of resolve and guts to make decisions, be sure of your own research and run forward with the rugby ball without dropping it, as my boss is often telling me. The feeling of solo working on projects or matters where your legal colleagues are not also involved can be daunting, especially if you've moved from a sizeable private practice team. It's vital that you build links with a network of other inhouse lawyers."

JP: What is the most important determinant of being a successful In-house lawyer?
Clare Downey – "Being multilingual! Until I started with Translink's legal team I had only experienced the familiar language and concepts of a law firm and had taken it for granted that my peers and I spoke in the same terms. But being part of Northern Ireland's biggest utility which amongst its 4000 staff employs engineers, accountants, safety experts, transport managers, HR gurus, schedulers, train drivers, and IT/cyber specialists, calls for immediate dexterity across a whole new range of business disciplines. I had to adjust immediately to engender trust and have intelligent conversations about legal risks impacting on a whole host of business functions."

JP: How has your move in-house affected your career – positively or negatively?
Clare Downey- "Without hesitation my experience has been positive. I am confident in tackling complicated pieces of work which I would previously have found to be very daunting and consequently, I have developed into a more resourceful lawyer. I add value to the business in that I can identify potential legal pit-falls earlier and offer wrap-around services which go way beyond providing one-off abstracts of legal advice - such as drafting, negotiating, deal-closing, and risk management advice."

The Law Society of Northern Ireland

In-house Lawyer Profile - Claudia Bennett

Where are you from and what has been your career path?
Having grown up in socialist Germany, I went over to the West when the wall came down to study law at Goettingen University. In my mid-twenties I decided that it was time to learn English and went to London, where I promptly fell for the city (and a Welsh man living there). When I was offered a job in a law firm, I settled in London and re-qualified to practice law in England and Wales. After a short spell in private practice, I became legal adviser to the International Transport Worker's Federation. That was a very international and diverse job, which I loved and held for 7 years until I moved to Scotland in 2009. After re-qualifying yet again, I joined the Equality and Human Rights Commission (EHRC). There, I managed EHRC Scotland's enforcement team and was involved in project work, litigation, enforcement and legal policy activity. The highlight of my time at the EHRC was to lead an Inquiry into Human Trafficking in Scotland. It was a team effort and a deeply satisfying experience to see a project through from its inception; from convincing the Investigating Commissioner, Baroness Kennedy, that human trafficking was a serious issue even in Scotland;

the publication of the report; then working on successfully implementing all of the report's ten recommendations at Scottish and UK level. A key recommendation was for Scotland to have dedicated anti-trafficking legislation and it was a resounding success to see this come in only a few years later.

In June of last year, I joined the Office of the Advocate General (OAG); the UK government's Scottish legal team. My division deals with all core UK government litigation in Scotland (with the exception of the Ministry of Defence and HMRC cases). Working in its immigration litigation branch, otherwise knows as Scotland's busiest judicial review practice, affords a completely different and fascinating insight into how human rights play out in a rapidly changing and developing legal landscape.

What do you really enjoy about working in-house?
I enjoy a workload that is varied and diverse and in-house work has always given me this. There is a certain degree of specialisation, but far more opportunities to cross legal boundaries and to devote more time to soft skills (such as transfer of expertise work- and the ability to work on the overall policy of the organisation).

What are the current hot legal topics in your sector and how heavily is your organisation affected by European laws and regulations?
Working in Government and particularly in immigration, European laws and regulations permeate everything. The current hottest topic in my area of work is how the Dublin Regulations, that determine in which Member State asylum seekers must make their asylum application, play out in practice. This brings up multifaceted legal issues from whether the Dublin Regulations confer rights on individuals to the interplay with human rights. It certainly makes for busy and undeniably interesting working days!

How does working in Scotland differ from your previous experience?
My experience of working in Scotland is probably unusual, having exclusively worked in "Scotland branches" of UK bodies. Also, although I have worked in three very different jurisdictions throughout my career, my focus was always on public law, human rights and European / International law. This has made for a lot of commonalities.

The biggest difference from previous working experience has undoubtedly to do with Scotland's size. I have found that the easier access to, and therefore closer links with, stakeholders in a smaller country generally leads to much more effective working than in big legal and political environments.

Biography

Claudia Bennett works for the Office of the Advocate General Scotland. She is a triple-qualified lawyer (Germany, England and Wales, and Scotland) and specialises in public law, human rights, EU and international law.

In-house Lawyer Profile - Maria Elena Sanz Arcas

Where are you from and what has been your career path?
I was born in Madrid, Spain and lived there until I moved to Scotland. After studying a double Degree in Law and Business Administration in Universidad Carlos III de Madrid, I joined the international law firm Garrigues where I spent almost five years advising corporate clients in the Corporate Crime Department. During these years I also did a Master's Executive in Business Law in Centro de Estudios Garrigues in collaboration with Harvard Law School.

I came to Scotland in 2011 as a participant of the European Lawyers Association (ELA) Programme organised by the ELA, the University of Edinburgh and the Faculty of Advocates. I am a member of the ELA now. During this experience I had the opportunity of working with Burness (now Burness Paull) in the Dispute Resolution Department. This placement, along with the time I spent in Parliament House, The Court of Session, the High Court of Justiciary and the Crown Office allowed me to gain experience of the court system in Scotland.

Following the ELA programme I was offered a position as Corporate Governance solicitor in the Corporate Legal Department of Scottish Power and decided to re-qualify. I am now fully qualified as a Scottish solicitor and a member of the Law Society of Scotland and of the In-house Lawyers Committee. I am also the Secretary of the Scottish Power Foundation.

What do you really enjoy about working in-house?
It is stimulating being part of a legal team with an international agenda in a multicultural company. This means that you are constantly learning and "challenging your own legal solutions". When working in-house it is important to understand your organisation's expectations and sometimes challenge your initial ideas and embrace change. Companies evolve, experiment with new ways of doing what they do and old projects become almost unrecognisable new ones. You need to make sure that things are done in compliance with

legal and regulatory requirements and, in order to do so, your preconceptions of the business and your advice will need to adapt. You may need to "unlearn" the legal solutions that do not fit those projects or businesses anymore and bring to the table new ones that are satisfactory for both your stakeholders in the company and your legal team.

What are the current hot legal topics in your sector and how heavily is your organisation affected by European laws and regulations?
European Legislation is at the core of what I do since I work in an environment which includes Scottish, English and Spanish law. Therefore, European legislation is very often directly present by way of Regulations or via Directives that have been transposed into national legislation. It is particularly interesting comparing directives between countries and seeing how each country's culture has an impact on how these are transposed. The Data Protection Act in the UK and *Ley de Protection de Datos* in Spain is a good example of this and has now evolved into the EU General Data Protection Regulation. It is also very interesting dealing with national legislation such as the Modern Slavery Act 2015 and trying to implement it in a way that works not only for Scottish Power but also for Iberdrola, the parent company abroad.

How does working in Scotland differ from your previous experience?
From a personal/organisational point of view I've learnt the importance of planning ahead in Scotland. Every detail of a project is considered before the project starts, so it is expected that things run more smoothly in Scotland, whereas working in Spain you need to be skilled at improvisation as the project will start immediately after the idea of the new project has been discussed and you therefore need to work out the details and the challenges as they come. I like to think that I have developed a super power now being able to combine both planning and improvisation!

I challenged myself by going out of my comfort zone both from private practice to in-house and also changing jurisdictions and even countries. It was definitely a challenge both professionally and personally (I did not know then how much I had taken the sun for granted!). However, the more time I spend abroad the more I learn about myself and my profession. I firmly encourage any lawyer and in-house lawyers in particular to try this international and multicultural legal challenge that an international country such as Scotland offers.

Biography

Maria Elena Sanz Arcas works for Scottish Power. She is a dual-qualified lawyer (Spain and Scotland) and specialises in corporate governance.

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

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

Growing influence of GCs revealed by Law Society of England and Wales (LSEW) report

More than two thirds of general counsel (GC) now sit on their organisation's board, with more than half reporting to the CEO, the LSEW's 2015 GC350 study reveals today.

The study, sponsored by Lexis Nexis, shows the tremendous pressures in-house legal departments are under, which are resulting in changes to the way in-house legal teams work. In addition to increased volumes, the work of in-house legal teams is becoming ever more complex, as general counsel navigate changing market conditions which present business opportunities as well as challenges.

LSEW chief executive Catherine Dixon commented on the findings:

'This is the first part of our General Counsel 350 benchmarking study. It identifies that in-house legal teams are growing their influence and credibility. Organisations are recognising the importance of the role that general counsel plays. Two thirds of GC now have a seat on the board.

'Demands on in-house legal functions are increasing due to the need to address higher volumes of work with reduced resources and increasingly complex legal and business regulation. In this climate, innovative approaches are being adopted by GC and in-house teams to measure and report the value they bring to their organisation in terms of commercial advantage and mitigation of risks.

Fifty per cent of GCs set legal budgets, and two thirds determine how legal budgets are spent. On average, 58 per cent of a GC's budget is spent obtaining external legal advice, with almost half of specialist advice, and a quarter of high-level strategic work outsourced. The need to reduce costs is driving GCs to grow their in-house capacity.

Catherine Dixon concluded:

'A GC is not just a legal adviser, she or he is also a business adviser who drives innovation and shapes organisational risk culture. The LSEW recognises in-house as an increasingly important group within our membership and we have developed a tailored programme of support for those who are, or aspire to be general counsel.'

You can download the full report **here**.

This report was sponsored by Lexus Nexus and the article appeared first on the Law Society of England and Wales's website.

How to: progress in-house

When lawyers move in-house they must be prepared to take control of their own careers, writes Eduardo Reyes.

Junior lawyers at a recent Gazette roundtable expressed a degree of ambivalence about the traditional career milestone of 'making partner'. Whether at a high street firm or a global giant, partnership is not the glittering prize it once was – at least for some. Rising to a senior in-house position, by contrast, is becoming more attractive to a growing number of ambitious solicitors.

But in aiming for a stellar career in-house, lawyers enter a different world. Law firms carry the certainty of being told if you are on track for partnership. In larger firms, the natural attrition rate allows you to move up the firm's 'pyramid'; and in a well-run practice the process will also be eased by sensible succession-planning.

Once they cross the divide, however, lawyers find that the routes to career progression in-house are more difficult to discern. Hence, one assumes, the gratifyingly high turnout for a recent panel discussion on in-house careers hosted by the In-house Division of the Law Society. This brought together four leading in-house lawyers who shared their career experiences and took questions. About 150 lawyers were there, keen to learn the rules of the game. As Law Society vice-president Robert Bourns, who chaired the event, observed, going from a large law firm to a much smaller in-house legal team can be an isolating experience.

Typecast and trapped?

Panellists are not identified – a precondition of their frankness – but here is the rough career path of each. One started professional life as a neuro-chemist, before retraining as a lawyer and practising at a global law firm. From there she went to a major retailer, where she 'had fun with the biggest budget imaginable'. Later head of legal at a consumer organisation, she now leads the legal team at a national charity.

A second studied English at university and did a postgraduate degree in forensic science. There followed articles of clerkship in-house at British Coal – once home to a formidable legal team – before being TUPE-ed across to a national law firm's Yorkshire office. Thence into a hi-tech environment working for a major mobile phone company and a move into the gas sector. She now heads the legal department of a major building materials business.

The third is not yet a general counsel, but is 'working to a plan' that he anticipates will take him to the position of GC at a FTSE 100 company. He is currently in-house at a major pharmaceutical corporate, but has also spent time in two consultancy businesses.

The final panel member is a civil service 'mandarin' – director of legal at a major department, but with wider responsibilities as well. She started life as a corporate lawyer before moving in-house to the Government Legal Service. At the GLS, she needed to become expert in a wide range of areas such as tax, European law, pharmaceuticals and medical devices. Time spent at the heart of government, in the Cabinet Office, was especially useful in gaining contacts and an overview of how different departments work and relate to one another.

All four have, unsurprisingly, moved around. Key attractions of working in-house – smaller teams where hierarchy is worn lightly and closeness to the client – can militate against the possibility of promotion. However supportive of your development, the boss is not necessarily going to create a vacancy by moving on.

Taking the initiative

The charity head of legal strikes a chord with fellow panel members by observing that time spent on corporate law was instructive. 'There is very little law in corporate law,' she says. 'It's about how to do deals.' Thereafter, an easy facility with 'commerciality' is what carried her between roles with confidence.

Others note that it is possible to separate the technical from the more general skills needed to secure a role.

Jumping sector requires thought – and self-knowledge – but it can be done. As one panellist puts it: 'You have six months' leeway when you start a new role.' That time should be used to learn about the business, its needs and its priorities.

In that time and beyond ambitious in-house lawyers should (while being careful not to breach competition law), think of 'phoning a friend', as 'there are no brownie points for working it out yourself'. 'In an entrepreneurial atmosphere you may find you are allowed to make mistakes – just not the same one twice,' one notes.

'Being conscious of how your advice will land' is crucial for gaining trust and making a good impression. An early imperative is to work out the organisation's 'risk appetite'. A route that lacks a certain outcome might be the right route, if the organisation has a high appetite for risk.

Building a 'network' within a new organisation is also important. That is an exercise that can be calculated. 'Draw a relationship matrix,' one panellist suggests. 'Which five people in the organisation are you going to get to know?'

To this end, another adds: 'Time that's spent drinking coffee in the cafeteria can be more useful than time spent at your desk.'

It is easy enough to draw up a list, but how should a lawyer new to an organisation get noticed by their chosen quintet or their legal boss? Panel members had broadly similar advice on this. People destined to 'progress' bring the 'right attitude' to the job. 'They shine'; 'they have enthusiasm'; 'they lean in'; 'they grab every opportunity' – and as a result 'they are given huge exposure'. That may include realising that 'a crisis is a great opportunity'. And, of course, 'being liked goes a long way', as does having an obvious 'passion for the business'.

They might also have recognised what stood out about their record. Were they, for example, a litigator, which is a less conventional route into an in-house role? One panellist urged the audience to do anything they could to make a CV or covering letter stand out, confessing: 'These days I don't normally read CVs, because I have never read a bad one.'

Party for one

Of course, one can achieve the post of 'head of legal' without having any other lawyers to be 'head' of. This was the case for a significant minority of the audience at the In-house Division event. Law Society figures show that while some in-housers might work in a bank's legal department of 1,000-plus lawyers, many work in much smaller teams. It is a telling statistic that 25,000 in-house solicitors are split between 6,000-plus offices.

In this context, the titular achievement of becoming a 'head' has probably come early on in an in-house career, and from the perspective of the sole in-house lawyer their career development is far from done.

For lawyers in this category, it is critically important to spend time building a network through associations like the In-house Division and industry bodies. In addition, as one panellist says: 'In a legal team of one, you absolutely need a mentor.'

The pharmaceutical lawyer, who has worked in bigger departments, remarks: 'So many people at the top of organisations have had help from coaches and mentors that they don't acknowledge. It leaves the impression that they just got where they are through some inner strength.'

That is unfortunate, he adds, as younger people with ambition understandably try to work out how to emulate success.

A personal plan

A lawyer will probably have moved in-house in search of something unavailable to them in private practice. Factors related to work-life balance, the risks of equity partnership or a desire to be more commercial or closer to clients can all be factors here.

But simply going in-house does not amount to a career plan in itself. What then?

'Decide what success looks like for you,' more than one panellist advises. This is one area where a mentor or career coach can help.

One question from an attendee put the panellists on the spot. How hard had they worked to get to and maintain their relatively elevated positions? Two panellists benefit from flexible working, while the other two noted the need for personal time they could ringfence if there wasn't a crisis happening (that is, time spent not checking emails as they come in). But experiences varied. For one, evening work was the norm, while emails relating to Monday morning would be checked and answered on Sunday evening. In each case, however, the panellists stressed that this was how they were 'happy' to work.

The shine has come off much of private practice in recent years – that much is known. But for ambitious lawyers who have turned their back on it, making progress in-house involves negotiating a complex terrain. There is luck involved in identifying the right vacancies and the right opportunity coming up at the right time.

But in-house lawyers can and should position themselves to take those chances by deciding they are not limited to practising in one sector, and spotting and putting themselves forward for development opportunities. And they must not neglect the need to build personal networks in ways that help them to advise – and rise.

This article written by Eduardo Reyes first appeared in the Law Society Gazette on 29 February 2016.

Robert Bourns, Law Society of England and Wales, Vice President
How to successfully progress your in-house career

Robert Bourns considers different career paths taken by four in-house lawyers, and looks at what lessons can be learned from their experiences.

In-house lawyers' career development was the subject of a packed post-work event held by our In-house Division recently, where a panel of four in-house lawyers called on their impressive experience to answer questions.

We've all been to speaker-meetings that filled in from the back, and where the chair asks the only questions. This certainly wasn't one of them - this generation of rising lawyers has been taught that enthusiasm counts and hands were up from the start.

We started with some striking accounts from the panelists - a civil service mandarin, head of legal at a national charity, a general counsel from the construction industry, and a senior lawyer from a pharmaceutical major - of their own career paths.

The first striking thing was that all had pursued and taken a staggering variety of roles. Two had started far from the legal profession - one in forensic pathology, the other in neuro-science.

They had found ways to move sector and legal discipline by using core skills that could do a good job in each. The civil servant, now a departmental director, had started in a magic circle firm, and done stints in departments far outside her comfort zone.

The charity head of legal had worked for a blue chip retailer, then turned gamekeeper by going to a consumer organisation. The construction GC had also worked for high-tech businesses, and the pharma lawyer had also worked for a big-four accountant. 'Wisdom' it was observed was different to legal knowledge, and grew in importance the further into their careers people went.

And so to the questions. All were very frank about their experiences. You need a good mentor or a coach, it was noted - with one opining that people at the top of organisations rarely admitted the help they had had in this regard.

Changing your path

When you change role or sector, don't be afraid to ask questions, and make an effort to really understand what the organisation does. If you've made a wrong move, one panelist noted, find a way to make the role interesting.

Other insights included, 'I never read CVs because I've never read a bad one', that people who made progress are ones that seem to 'shine - they grab every opportunity and therefore gain huge exposure', and the advice to 'make a list of five people you are going to get to know in the organisation'.

There were 150 people in the audience, and the ways they will need to work and behave to build a career in-house will become more common.

A third of the profession

As the recent Law Society report 'The Future of Legal Services' concludes, by 2020 we expect in-house lawyers to make up 35 per cent of the solicitor profession.

That 35 per cent will also depend heavily on their network of peers to succeed, not least because the flip side of being - rather excitingly - immersed in a company, public sector body or a charity, is that many lack the backup and infrastructure of a law firm. A large bank may have 1500-plus in-house lawyers, but they are the

exception.

This is shown by other striking figures from our report - the 25,602 in-house lawyers who currently hold practicing certificates are spread across 6,345 offices. In that context, their peers are a very necessary source of support, advice and information.

It is this last point especially that is driving the Law Society's commitment to the activities of its in-house division - as the event showed, there is clearly the demand for it.

This article appeared first on the Law Society's website.

Biography

Robert Bourns is the vice president of the Law Society. He is a senior partner at TLT Solicitors, where he specialises in employment law. Robert is one of five representatives for the City of London constituency, a member of the Law Society's Equality and Diversity Committee, and a member of the Regulatory Affairs Board Regulatory Processes Committee.

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

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

In-house Lawyer Survey on EU Membership

In April/ May this year, the Law Society of Scotland carried out a survey of their In-house members in relation to their views and thoughts on the EU Referendum.

A selection of those responses include:

Positive

- "Freedom of movement of trade and people within the EU is a great bonus for in-house lawyers."
- "The EU has been a source of a huge amount of positive labour legislation, consumer protection and sector specific rules in my sector (financial services). Being part of a wider group provides opportunities, influence and relative stability."
- "My employer only exists because of the barrier-free EU."
- "The EU has been the driving force for equality legislation."

Negative

- "The laws which emanate from the EU have a stifling effect (through overly prescriptive regulation) on my organisation which is an SME."
- "My perception is that the EU creates lots of 'red tape'."
- "Employment, data protection and procurement are highly lucrative areas for some lawyers, but as an in-house lawyer, for my client, these areas of European law are very complex and expensive to negotiate."
- "We are over regulated and over represented."

For the results of the survey of in-house members on how the EU impacts them and the organisations they work for please click **here.**

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

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

Legal professional privilege (LPP) for in-house lawyers – the European context

The extent and criteria for the EU LPP, set out by the Court of Justice of the EU (CJEU), have been subject to considerable attention in the past four decades, following the 1982 AM&S judgment and, more recently the 2010 judgment in *Akzo Nobel*. This is because the scope of the EU LPP is much narrower than in some jurisdictions and does not apply to communications between in-house lawyers and their client (company) in the EU competition investigations.

The first case that addressed the issue of the LPP for in-house lawyers in the EU and set out the principles for determining the EU LPP was *AM&S v Commission (**C-155/79**)*. The Court ruled that the LPP applied to communications between lawyers and their clients as long as '*such communications are made for the purposes and in the interests of the client's rights of defence*' and '*they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment*' (paragraph 21).

These criteria were further expanded in *Hilti v Commission* (**T-30/89**) where the Court stated that the LPP also applies '*to internal notes which are confined to reporting the text or the content of those communications for the purpose of distributing them within the undertaking and submitting them for consideration by managerial staff.*'

The most recent case concerning the extent of the EU LPP is *Akzo Nobel* (**C-550/07**) where the Court upheld the principles set out in AM&S and follows the Advocate General in her **opinion** by stating that '*[a]n in-house lawyer, despite his enrolment with a Bar or Law Society and the professional ethical obligations to which he is, as a result, subject, does not enjoy the same degree of independence from his employer as a lawyer working in an external law firm does in relation to his client. Consequently, an in-house lawyer is less able to deal effectively with any conflicts between his professional obligations and the aims of his client.*' (paragraph 41)

This situation differs substantially from that in the UK in general and particularly in England and Wales where in-house lawyers enjoy the same privileges as their counterparts in private practice. In ***Alfred Crompton Amusement Machines***, Lord Denning said that salaried legal advisers are '*regarded by law as in every aspect in the same position as those who practice on their own account. The only difference is that they act for one client only, and not for several clients...*' He went on to state that he has '*always proceeded on the basis that the communications between the legal advisers and their employer (who is their client) are the subject of legal professional privilege.*' He further specified that the LPP only applies to communications made in a capacity of a lawyer.

Akzo Nobel has attracted considerable attention of the legal community. The Council of Bars and Law Societies of Europe (CCBE), the Netherlands Bar, the European Company Lawyers Association, Association of Corporate Counsel and International Bar Association (IBA) were granted leave to intervene in the case in support of a wider scope of the LPP.

It must be said, however, that not all national courts followed the CJEU judgment, especially in purely national situations. In 2013, the Belgian Court of Cassation ruled that the documents drafted by in-house counsel were privileged and as such could not be seized and examined by the Belgian Competition Authority (**case against Belgacom**). In the same year, the Supreme Court of the Netherlands in Anwar v. Fairfield Greenwich Ltd distanced itself from the CJEU reasoning and ruled that *Akzo* would not apply in purely national competition investigations (see **overview**).

Also, there are other arguments that are brought against the strict criteria set out in *Akzo* by the CJEU. Recently, Julia Holtz, Director of Competition at Google **argued** that the judgment did not take the judicial landscape into account, notably following the adoption of Regulation 1/2003 and an increased significance of human rights in the Community law after the adoption of the Lisbon Treaty. In the first case, the companies were put in charge of self-assessing their compliance with Article 101(3) TFEU which meant devoting larger resources to in-house legal departments. Their efforts and their effectiveness, however, risk being undermined by the current scope of application of the LPP. In the second case, the new Charter of Fundamental Rights (CFR) and the EU's planned accession to the European Convention on Human Rights (ECHR) resulted in a debate on the nature of antitrust sanctions imposed by the Commission. The Commission acknowledged that the fines would be of criminal nature under the ECHR but they remain of administrative one under the Treaties and the procedure leading to their imposition fulfils the criteria set out by the ECHR. It is not clear, however, whether the current restrictive scope of LPP could be maintained in light of rules on due process.

Finally, Justine Stefanelli **pointed out** at another element of the *Akzo Nobel* judgment, i.e. the exclusion of the application of privilege to communications by lawyers qualified outside the European Economic Area (EEA). In her view, this exclusion is problematic given the rise in international business transactions and cross-border investigations and the differences between the laws governing privilege and disclosure.

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

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

Uphill struggle for the EU-US Privacy Shield

The transfer of data "across the pond" is an issue which has been subject to much comment and interest in recent months. Until October last year, organisations could transfer personal data to the US under the EU-US Safe Harbor scheme which allowed for self-certification as a proof of compliance with European data protection standards. However, in October 2015 the CJEU found the scheme invalid as it failed to protect EU

citizens' data from mass surveillance by the US government and therefore violated the right to privacy (C-362/14 Schrems v Data Protection Commissioner).

The ruling that Safe Harbour was invalid presented a host of issues for organisations that rely on data transfers for their business. The Commission has therefore been working on and negotiating with the US on a new framework for data transfers to the US known as the Privacy Shield. This should not be confused with the EU-US Umbrella Agreement which governs data transfers concerning law enforcement.

The negotiation process has not been smooth and the constant moving deadline for an agreement, is leaving companies in limbo and unsure on what they need to do to comply with data transfer rules. Unfortunately for them, it is apparent that uncertainty over the conditions in which it is lawful to transfer personal data from the EU to the US will continue for some time into the summer months. It is hoped that the Commission together with the case law will provide the clarity that is needed.

The Schrems judgment came at the time when the Commission had already been involved in renegotiating the Safe Harbor scheme with its US counterparts, following its recommendations from 2013. In its **opinion** following the judgment, Article 29 Working Party stated that if by the end of January 2016 no new solution is found, the national data protection authorities would consider taking appropriate and coordinated enforcement action.

In February 2016, the Commission and the US reached a political agreement on the Privacy Shield. The Privacy Shield places US companies under stronger obligations to protect personal data of Europeans and provides that the US government operates more transparently and puts in place clear safeguards and limitations on the access of personal data by public authorities. The key changes here are that it will give EU citizens tiered rights of redress which include the right to make a direct complaint to the company processing the data, the facility to make a complaint to the individual national data protection authority and a final right of redress to a Privacy Shield Panel which will have the capacity to issue a binding decision.

On 29 February 2016, the Commission published its draft adequacy decision on the Privacy Shield which concluded that the safeguards in the agreement reflect the requirements of EU data protection standards. 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. Whilst the WP29 acknowledged the substantial progress made, especially with regard to more precise definitions, its opinion was mostly negative.

The main concerns and reservations of the WP29 are:

- the provisions are set out in several documents, which makes the relevant information difficult to find;
- there is insufficient reflection of the 'purpose limitation principle' and data retention is not expressly mentioned in any of the documents;
- the redress mechanism for EU citizens may be too complicated in practice to be effective;
- the US authorities have not provided adequate details to exclude mass and indiscriminate surveillance.

The European Parliament added to the uncertainty on 26 May when it passed a resolution demanding that the draft framework agreement be renegotiated. Further the European Data Protection Supervisor recently echoed the concerns of the WP29 and claimed that significant improvements needed to be made as the Privacy Shield would not be strong enough to withstand legal scrutiny. Whilst the Commission is not bound by these opinions, it is likely to take the concerns into account as to overlook the opinion could give rise to grounds for a challenge of the new framework.

Of these concerns the most prevalent is the right of access to data by US public authorities. In line with current case law and a democratic society, mass surveillance cannot be considered as proportionate and strictly necessary. It therefore 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.

While the Commission is not bound by the opinion of WP29, it will need the approval of the Article 31 Committee to adopt an adequacy decision on the Privacy Shield. Currently it is expected that the Article 31 committee will hold at least 2 further meetings before it takes a vote on the Privacy Shield and the work on the revised agreement is underway, as reported extensively by **Ars Technica UK**.

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

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

Digital Single Market: Commission's new e-commerce package

On 25 May 2016, the European Commission published a major new package on e-commerce. The package comes as the first step in the attempt by the Commission to tackle so called 'geo-blocking' on the sale of goods and digital services, which has been 'the talk of the town' during last year or so. The proposal for a

regulation addressing geo-blocking is supported by further proposals on increasing transparency of cross-border **parcel delivery** , strengthening the consumer **protection co-operation framework** and a **Communication** on a comprehensive approach to stimulating cross-border e-commerce.

The Commission has put forward its case for the introduction of a new digital e-commerce regime **stating** that although, the value of e-commerce in the EU is growing, its full potential has not yet been reached. Statistics show that only 15% of consumers within the EU purchase online from another Member State and a mere 8% of companies sell cross-border, while only 37% of websites allow customers shopping from another EU country to access their shops and services. Cross-border purchasing is often too complicated and expensive, but yet it is continuing to grow by 22% a year.

The Commission is taking a fairly subtle approach in drafting the Regulation on geo-blocking, acknowledging that although consumer's should be afforded the right to access, this does not simultaneously translate to the imposition on traders the obligation to trade across the European Union.

The Commission does not state that geo-blocking is unjustified per se, rather it considers that there are situations where there can be no justified reason for geo-blocking or other forms of discrimination based on nationality, residence or location. For example, a trader of goods or online services is not allowed to use geo-blocking in the following scenarios:

- where a where consumer is able to organise a delivery him or herself; or
- where the customer buys a service which is supplied in the premises of the trader or in a physical location where the trader operates.

The proposal bans the blocking of access to websites and the use of automatic re-routing without the customer's prior consent, which means that the customers will have more price transparency. This provision also applies to non-audiovisual electronically supplied services, such as e-book, music, games and software.

While the proposal applies to cloud services, data warehousing and website hosting, audio-visual services that are copyrighted are generally excluded from the scope of the Regulation.

Finally, the proposal provides for a principle of non-discrimination in payments. This covers situations where differing treatment is a direct consequence of: the location of the payment account; the place of establishment of the payment services provider; or the place of issuance of the payment instrument.

As stated above, the proposal is supported by two further proposals on parcel delivery and consumer protection co-operation. The parcel delivery proposal increases regulatory oversight of all parcel delivery services providers, improved price transparency through the publication of the domestic and cross-border prices and the requirement that universal service providers offer transparent and non-discriminatory third-party access to multilateral cross-border agreements. Further, the revised Consumer Protection Co-operation Regulation provides for stronger enforcement mechanisms, whereby national authorities can work faster and more efficiently to address unlawful online practices.

Together with the recent proposals on online consumer contracts and the copyright proposals which are due to be published in September 2016, the Commission's Digital Single Market package is starting to take shape. While the Commission is employing a strong consumer protection rhetoric, it is also acknowledging that a freedom to trade must remain, whereby traders cannot be forced to operate in the EU. It is recognised that there are still legitimate considerations, such as varying consumer law frameworks, as to why they may choose not to do so. Yet, the Commission is very clearly encouraging traders to engage more cross border, and getting the consumers to be aware of the price levels in other Member States.

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

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

Update: The European Arrest Warrant and Pre-Trial Detention

On 5 April 2016, in its decision in the Aranyosi and Caldararu Cases (**C-404/15 and C-659/15 PPU**), the Court of Justice of the European Union ruled that judges must defer executing a European Arrest Warrant (EAW) if a genuine risk of inhuman or degrading treatment arising from detention conditions in the Member State seeking extradition exits.

It is interesting to see that the Court is now doing what the European Parliament failed to achieve in 2001 for a number of reasons. The EAW was a measure that was adopted together with anti-terrorist legislation in the wake of the 9/11 attack; and it was, in short, a compromise between Commission, Council and Parliament. In the words of the then Rapporteur, Graham Watson MEP (ALDE, UK 1994-2014): *" I appeal to the Council and Commission, in the spirit of the new relationship that we have between our institutions, to move rapidly to consolidate the necessary move forward in security with measures to promote freedom and justice on which the European Union will be judged."*

In the 2009/2014 legislature, an attempt was made to introduce modifications to the EAW, which was spearheaded by British MEP Sarah Ludford (ALDE, UK 1999-2014) now Baroness Ludford. However, the modifications were left to fall under the remit of the present legislature. She said, in 2014 " *The EAW needs to be used not only effectively but also proportionally and with guarantees that safeguards are respected and human rights are not abused in the process."*

The Court's decision recognises that Member States have the right to refuse to extradite a person where the risk of degrading or inhuman treatment is real and well founded.

The problem of the conditions of pre-trial detention in many Members States is highlighted in a **recent report** by Fair Trial International, which examines how it is used in practice in ten EU countries. The results of the Report are damning: pre-trial detention was found lacking in matters of procedure and substance, and reviews and alternatives were also of poor quality and quantity.

It could be said that the EU Institutions have found, on this matter, a balanced and a sensible way forward.

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

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

Review of EU Consumer Law

On 12 May 2016, the European Commission published its **public consultation** on the Fitness-Check of the EU Consumer and Marketing legislation. A Fitness-Check is a comprehensive policy evaluation aimed at assessing whether the current regulatory framework for a particular policy sector is fit for purpose.

The Commission is aiming to modernise EU consumer law as well as making it simpler and more predictable. The findings of the consultation will also contribute to the ongoing legislative process on the Commission's Proposal for Directives on contracts for the supply of digital content, and contracts for online and other distance sales of goods.

The Consultation is internet-based and it covers the following directives:

- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Sales and Guarantees Directive);
- Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive);
- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (Price Indication Directive);
- Directive 2006/114/EC concerning misleading and comparative advertising (Misleading and Comparative Advertising Directive);
- Directive 2009/22/EC on injunctions for the protection of consumers' interests (Injunctions Directive).

The criteria used for the consultation questions are:

- Effectiveness: Have the objectives been met?
- Efficiency: What were the costs and benefits involved?
- Coherence: Is the EU consumer legislation complementing or contradicting other policy and legislation?
- Relevance: Does EU legislation address the main problems that consumers are facing today?
- EU added value: Did EU action provide clear added-value?

The consultation will remain open until 2 September 2016.

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

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

Commission roadmaps on Intellectual Property Rights Enforcement

Following this spring's consultation, the Commission has now published two roadmaps on the review of the IP rights enforcement. The 'inception impact assessment' **roadmap** provides different options for EU action which include: guidance in the form of Interpretative Communication or a similar instrument, the promotion and facilitation of self-regulatory initiatives, for instance concerning the involvement of intermediaries in the prevention of IPR infringements, and assessment and possible amendment of the current legal framework to support SMEs.

The second **roadmap** on Evaluation of the IPR Enforcement Directive 2004/48/EC sets out the next steps for the Commission evaluation work and the procedures that will be used to determine the course of action.

Accordingly, the Commission will set up a stakeholder conference later in 2016 to present the results of the consultation and to generate stakeholder feedback on the findings. Furthermore, the Commission will look into setting up thematic workshops with the judiciary and intermediary service providers.

Law Societies' of England and Wales and Scotland submit a consultation response on lobbying transparency in the EU

We have recently submitted a **joint response** to the Commission **consultation** on the future mandatory lobbying register. The consultation was launched to gather stakeholders' views on the key features for a lobbying register to be effective in regulating access to EU policy makers.

In our response, we support more transparency in lobbying and setting up a mandatory register. We do, however, underline the need for striking the right balance between regulating lobbying and allowing free access to elected policy makers which is a foundation of any democracy. We also stress that a mandatory register should have a proper legal basis in order to meet its objectives.

We are also in favour of lawyers being covered by the scope of the register. In fact, we point out that anyone who is engaged in lobbying activities should be required to register. However, we stress that the definition of lobbying must be clearer and more precise to allow the registrants to determine whether they should register or not. In this context, we advocate for excluding legal work from the scope of the register and ask for clarifications on when confidentiality of communications applies. We also recalled that the principle of confidentiality is a core value of the profession.

Since the existing procedure for alerts and the procedure for complaints will become even more important once the register is mandatory, we call for its major overhaul to guarantee basic procedural safeguards to the registrants. We also point out the need to set out clear rules governing the operations of the Secretariat.

The consultation response has been drafted by the Brussels Office, the working group of the Law Society of England and Wales' EU Committee and the working group of the Law Society of Scotland.

The Commission is expected to publish the summary of the consultation responses after the summer. It is unclear when it will present its proposal for a mandatory register.

Commission publishes its communication on online platforms

On 25 May, the Commission published its **communication** on online platforms in the Digital Single Market. The document discusses the Commission's views on the regulatory approach to platforms, key challenges ahead and steps to be taken in the near future. The communication also uses the results from the public **consultation** held late last year.

Over the past decade or two, online platforms have profoundly changed the way some services are delivered. They offer clear benefits in terms of innovation, offering new services and products, opening up markets to smaller operators and enabling forms of flexible employment. Examples of online platforms include search engines such as Google, online marketplaces such as eBay or Amazon and intermediaries such as AirBnB or Uber. They all use digital technologies to facilitate interactions between different operators, such as buyers and sellers.

Despite their omnipresence there is a range of basic issues that are yet to be resolved. The most important one is the lack of clarity on the definition of what online platforms actually are. Largely this is because of their sheer diversity and functions. Platforms can be service providers or intermediaries, they may own assets or not, they may connect private citizens or businesses, etc.

One of the key concerns regarding the platforms' operations is the risk of weak consumer protection associated with the services they provide (liability, insurance, dispute resolution, quality of service, etc.). Another concern is the risk of unfair competition with the current incumbents, especially with the regulated ones which is best illustrated by the legal challenges against Uber or localised bans on renting rooms via

AirBnB.

In the communication, the Commission stressed it would seek to strike the right balance between promoting innovation and protecting consumers and competition. It also pointed out it would use a range of existing policy initiatives to ensure the appropriate level of regulation of the platforms, especially with regard to data protection, consumer protection, copyright, unfair trading practices and competition.

In their **report** from the inquiry into online platforms, the House of Lords explore the topics of competition, privacy and consumer protection as key issues to be addressed. Regarding competition, the report indicates that while platforms can become a dominant market player, the market segment in which they operate can carry a higher potential for disruptive innovation. Therefore, the assessment of whether the abuse of a dominant position has taken place must be carried out on a case-by-case basis. The report also acknowledged consumer concerns with regard to data protection and privacy and suggested that actions be taken to improve the platforms' privacy standards and transparency around these standards.

The legal profession has observed the developments around online platforms for a while as many of them begin to offer legal services, such as **Rocket Lawyer** or Legal Zoom (still to be launched in the UK but fully operational in the US). The profession's main concern has been the fact that these platforms would escape regulation and put consumers at risk, for example by unclear rules on negligence claims or lack of transparency on who provides the actual service. This is all the more possible given the online nature of these services and the possibility of them being accessed from almost anywhere in the world and, possibly, from an unregulated individual or entity.

However, as noted by the Law Society's **report** on the future of legal services, the growth in online legal services has already begun and is forecast to continue to expand. Furthermore, some platforms, such as the ones providing online dispute resolution, have the capacity to improve access to justice among wider groups at reduced costs and faster.

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

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

Combating the Financing of Terrorism

On 21 May 2016, the G7 Finance Ministers and Central Bank Governors met in Japan with the FATF (Financial Action Task Force) President and Executive Secretary to discuss money laundering, criminal and terrorist financing and transparency of beneficial ownership. Following the meeting, the G7 published an **action plan** on combating terrorist financing.

The FATF was originally created to combat money laundering and to prevent abuses to the financial system. However, given the developing threat of terrorism FATF has evolved to researching and proposing standards that countries should abide by to help combat terrorist financing.

While the FATF has developed a comprehensive set of measures against terrorist financing to be adopted by its member states, the nature of terrorist threats has evolved and requires the existing measures to be reviewed.

The key actions announced in the plan include:

- enhancing the exchange of information between G7 countries, in particular through mapping cooperation practices between the G7 Financial Intelligence Units (FIUs), with other FIUs and assessing current cooperation between the G7 FIUs and the private sector;
- carrying out a review of preventative measures in FATF's standards and potentially to strengthen the thresholds to better address current risks and vulnerabilities. This includes reviewing the financial thresholds for declaration of cross-border cash transactions or measures concerning virtual currencies and prepaid cards;
- increasing collaboration in the implementation of financial sanctions such as asset freezing so that G7 members are better able to respond to each other's requests and are able to put forward new proposals for designations to the Security Council;
- reinforcing the role of FATF as the most appropriate body to combat terrorist financing.

Law Societies' News

New president for the Law Society of Scotland

Eilidh Wiseman took office as President of the Law Society of Scotland on Friday 27 May.

Eilidh was formerly Partner and Head of Employment at Dundas & Wilson. She was first elected to the Law Society Council in August 2009 and was re-elected in 2011 and 2014 as one of the representatives for its Edinburgh constituency. She is currently convener of the Education & Training Committee and sits on the editorial board of the Journal magazine. She has previously served on the Employment Law Sub-Committee and on two re-accreditation sub-committees of the Education & Training Committee.

Graham Matthews, Council member and convener of the Society's Professional Practice Committee, became vice president the same day. Graham is a partner at law firm Peterkins and has served as the Council member representing Aberdeenshire solicitors since 2005. He has sat on and convened a number of committees including the Society's Professional Practice and Regulatory Committees.

Christine McLintock, past president, paid tribute to the new office bearers, outgoing past president Alistair Morris who has retired from Council after 24 years, and the Law Society staff at the Society's AGM on 26 May.

Further details **here**.

Previous Item | Back to Contents | Next Item

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

Referendum on EU Membership 2016

As a firmly non-partisan organisation, the Law Society of Scotland is not advocating one view or another ahead of the referendum on EU membership. The Society recognises that there are differing views among its membership, just as across society as a whole, but a vote to leave the EU raises a number of legal issues and questions that are important to for everyone to consider – whether as a solicitor or as a client in Scotland, the UK and across the EU.

To help inform the debate and having sought our members' views, the Society has issued a discussion paper on the issues raised by the referendum on EU membership. The paper aims to help inform solicitors and their clients by exploring the process for leaving the EU, the implications for Scotland if the UK votes to leave and the legal changes which may be required in event of the UK exit from the EU. The Society consulted widely with its membership on the implications of the referendum, and found a "recurring theme" of uncertainty among solicitors. Members cited access to the single market, free movement of people, and the UK's standing in the international community as benefits of EU membership, while a perceived lack of democratic accountability, bureaucracy and regulatory requirements (and their associated costs) were among the downsides.

As well as surveying solicitors working in private practice and in-house, both in the UK and in other EU jurisdictions on the impact of EU membership and the referendum on them and their business, the Society has consulted its specialist committees to understand how particular areas of legal practice could be affected. It held a panel debate earlier this year for its London-based members with speakers from both leave and remain campaigns and will hold a further event in Edinburgh on 16 June with Ian Forrester QC, a former practising Advocate and now the UK Judge at the General Court of the European Court of Justice in Luxembourg. Judge Forrester will deliver a lecture reviewing the origins and successes of the European Union as well as its problems and challenges in the current context. He will then review practical questions arising in the event of a vote to exit and will also discuss the work of international courts.

Further details **here**.

Plans to introduce a British Bill of Rights should enhance existing protections

The Law Society of Scotland has commented on the proposals contained in the Queen's Speech delivered on Wednesday 18 May to introduce a British Bill of Rights.

The Society is of the view that this should be an opportunity for the government to improve on the current Human Rights Act and enhance protections available to people. The Human Rights Act 1998 is a key component of our society and has been extremely effective in protecting rights through the domestic courts in the UK. It provides a way for individuals to challenge the actions of the state and seek redress in a more accessible, timely and affordable way than was possible before incorporation of the European Convention on Human Rights (ECHR) into UK law.

However the Society believes that there is room for improvement of the Act, and the proposed British Bill of Rights should build on and enhance the protections that currently exist. For example it could include a provision of a better way to amend legislation which has been declared incompatible with ECHR by the courts. It could also offer more clarity than the Human Rights Act on how such rights would apply to private bodies exercising public functions or providing public services as well as individuals.

The Society has also stated that a British Bill of Rights which would cover the whole of the UK would have to be compatible with each of its distinct legal jurisdictions. It has also said that a stronger judicial role may be needed if a Bill of Rights is introduced. The current arrangements under the Scotland Act 1998 provide a much stronger way of dealing with non-compliance with ECHR by Scottish Ministers than the HRA provides for the UK Parliament and UK Ministers.

As long as the UK remains a party to the ECHR, the ECHR rights will be binding on the UK and can, through the Human Rights Act, be actionable in UK domestic courts. If however, the ECHR is no longer directly incorporated into the UK's domestic law, individuals would have to go to the ECtHR in Strasbourg to enforce their rights under the convention. This was the situation prior to the enactment of the Human Rights Act in 1998 and in the Society's view, a return to this would be a backwards step.

Nicola Sturgeon names candidates for new Lord Advocate

James Wolffe QC, former Dean of Faculty of Advocates and Head of Delegation of the CCBE (The Council of Bars and Law Societies of Europe) has been appointed in the position of Lord Advocate of Scotland as of 1 June 2016. This is very well deserved!

He will replace Frank Mulholland QC who stepped down following the Scottish parliamentary election. The Lord Advocate is the chief legal officer of the Scottish Government and the Crown in Scotland for both civil and criminal matters that fall within the devolved powers of the Scottish Parliament.

Ms Sturgeon said: **"James has an outstanding legal background and extensive experience at all levels, including the House of Lords, the Judicial Committee of the Privy Council, the Supreme Court of the United Kingdom, the European Court of Human Rights and the Court of Justice of the European Union."**

James Wolffe QC is a well regarded Counsel who specilaises in public and administrative law; constitutional law; human rights; commercial dispute resolution; construction law.

For more information please click **here**.

21 October 2016 - Innovation and Future of the Legal Profession Conference

On 21 October 2016, the CCBE (Council of Bars and Law Societies in Europe) will be holding a conference in

Paris on the innovation and future of the legal profession.

Recently, there have been important questions raised regarding the future of the legal profession. How are European lawyers responding to these questions? Who are the key players innovating and positioning the legal profession in an ever-changing environment? Can the profession's core values be upheld whilst adapting to these challenges? Will lawyers even survive in the face of these challenges?

The Council of Bars and Law Societies of Europe, which, through its members, represents more than 1 million European lawyers, is bringing together experts from Europe and beyond to debate, discuss and determine the future of the legal profession.

The conference "Innovation and Future of the Legal Profession" will cover four main themes: The Future of Justice, The Future of Legal Services, The Future of Law Firms, The Future of Bars and Law Societies.

For more information please click **here**.

Previous Item	Back to Contents	Next Item

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

European Lawyers in Lesvos- Call for volunteer lawyers

As mentioned in our April edition of the Brussels Agenda, *European Lawyers in Lesvos* is a project organised jointly by the Council of Bars and Law Societies of Europe (CCBE) and the German Bar Association (DAV). Its main aim is to send European lawyers to the island of Lesvos to support Greek lawyers in the provision of legal assistance to migrants requiring international protection.

Given the current situation with more than 4000 migrants on the island, there is a great need to provide these people with access to legal advice, information and justice in order to give the arriving migrants more certainty over their legal entitlements and their options for the future.

The team in Lesvos will consist of a small number of lawyers from European countries based on a roster for short term missions (minimum two weeks). These lawyers will work on a pro bono basis, though their expenses would be covered. Their role is to distribute documentation, give legal advice to migrants requiring international protection and send weekly reports on their activities.

This project will operate alongside those of NGOs and humanitarian volunteers who have already begun providing more general legal information to the migrants.

Lawyers who would like to participate in the project should meet the following criteria:

- Able to spend a minimum of two weeks in the hotspot of Lesvos
- Training and/or experience in Asylum Law and the law of international protection
- Good command of English
- Knowledge of Arabic would be an asset

For more information please contact **info@europeanlawyersinlesvos.eu**

Previous Item	Back to Contents	Next Item

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

7 July 2016 - Data protection seminar: preparing for the new regime, Leeds

On 7 July 2016 the Law Society will be holding a seminar on the new General Data Protection Regulation (GDPR) in Leeds.

The GDPR was formally adopted on 14 April 2016 and published in the Official Journal on 5 May. It will come into force on 25 May 2018. The GDPR will provide for a greater harmonisation of the data protection legislation in the EU and introduces very important changes to the data protection regime.

The GDPR extends the scope of the EU data protection law to all companies and organisations processing data of EU residents outside of the EU. It introduces much higher penalties for data breaches, new requirements for record keeping and data storage and security, strengthens data subjects' rights and introduces new obligations for processors and controllers.

For more information on the programme of this event and for details of how to register please click **here**.

COMING INTO FORCE THIS MONTH

Tax

- **Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation**
- **Council Directive (EU) 2016/856 of 25 May 2016 amending Directive 2006/112/EC on the common system of value added tax, as regards the duration of the obligation to respect a minimum standard rate**

Justice

- **Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings**
- **Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA**

CASE LAW CORNER

Decided Case of Particular Note:

Case C-308/14 *European Commission v United Kingdom* Judgement of 14 June 2016

- The Court ruled that the UK can require recipients of child benefit and child tax credit to have a right to reside in the UK . Although that condition is considered to amount to indirect indiscrimination, it is justified by the need to protect the finances of the host Member States
- The European Commission had argued that the UK policy of granting certain social benefits only to those persons who had a legal right to remain in the UK was discriminatory and contrary to Regulation EC 883/2004 as the condition to obtain legal residence went beyond habitual residence.
- The Court ruled that Regulation EC 883/2004 does not impose conditions creating rights to benefits as this is a matter of national legislation of each Member State and therefore there is nothing preventing the creation of a requirement that recipients of some social benefits must have a legal right to reside.
- The Court also ruled that whilst this requirement gives rise to unequal treatment, this can be justified and is proportionate. It does not go beyond what is necessary to attain the legitimate objective pursued by the UK, the need to protect its finances.It is **reported** how the Commission sees this as an "important and welcome clarification", and how this ruling paves the way for the EU to implement the rules in the UK renegotiation package.

Other Decided Cases:

Case C-157/15 *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV,* Advocate General Kokott's Opinion of 31 May 2016:

- A ban on wearing headscarves in companies may be admissible. If the ban is based on a general company rule which prohibits political, philosophical and religious symbols

from being worn visibly in the workplace, such a ban may be justified if it enables the employer to pursue the legitimate policy of ensuring religious and ideological neutrality.

Cases T-479/11 and T-157/12 *France and IFP Énergies nouvelles v Commission,* Judgment of 26 May 2016

- The General Court annuls the Commission's decision classifying the unlimited implied guarantee granted by the French State to the Institut français du pétrole (French Petroleum Institute) as State aid. The Commission did not sufficiently explain or prove that that guarantee has the effect of conferring an actual economic advantage on the Institut français du pétrole.

Case C-47/15 *Sélina Affum v Préfet du Pas de Calais and Procureur général de la Courd'appel de Douai,* Judgment of 7 June 2016

- The Return Directive prevents a national of a non-EU country who has not yet been subject to the return procedure being imprisoned solely because he or she has entered the territory of a Member State illegally across an internal border of the Schengen area

Case C-470/14 *Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)and Others v Administración del Estado and Others,* Judgment of 9 June 2016

- The copyright directive precludes fair compensation due to authors for private copying of their works from being financed by a budgetary scheme such as that established in Spain. Such a scheme does not guarantee that the cost of that fair compensation is ultimately borne solely by the users of private copies

Upcoming decisions and Advocate General Opinions in June:

Social Policy

Case C-159/15 *Lesar,* Judgement expected on 16 June 2016

- The Austrian Court referred the following question: Are Articles 2(1), Article 2(2)(a) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation to be interpreted as meaning that they are not compatible with a national provision — such as that in issue in the main proceedings — under which periods of apprenticeship and periods of employment as a contract agent with the Federal Government for which contributions to the compulsory pension insurance scheme were to be paid for the purposes of obtaining a civil servants' pension are:
- (a) to be credited as pensionable periods prior to entry into service if they are completed after the 18th birthday, whereby the Federal Government in this case receives an agreed transferred contribution in accordance with the provisions of social security law for crediting these periods from the social security agency; or, alternatively
- (b) not to be credited as pensionable periods prior to entry into service, if they are completed before the 18th birthday, whereby there is no agreed transfer to the Federal Government for such periods if they are not credited, and the insured party is reimbursed for any contributions made to the pension insurance scheme, especially considering that, in the event that these periods are subsequently required to be credited under EU law, there would be a possible claim for the refund of the sums reimbursed by the social security organisation from the civil servant as well as the subsequent creation of an obligation on the part of the social security organisation to pay an agreed contribution to the Federal Government.

Case C-443/15 *Parris,* Opinion of Advocate General Kokott expected on 30 June 2016

- The Irish Court referred the following questions: Does it constitute discrimination on grounds of sexual orientation, contrary to Article 2 of Directive 2000/78/EC, to apply a rule in an occupational benefit scheme limiting the payment of a survivor's benefit to the surviving civil partner of a member of the scheme on their death, by a requirement that the member and his surviving civil partner entered their civil partnership prior to the member's 60th birthday in circumstances where they were not permitted by national law to enter a civil partnership until after the member's 60th birthday and where the member and his civil partner had formed a committed life partnership before that date.
- If the answer to Question 1 is in the negative,
- 2. Does it constitute discrimination on grounds of age, contrary to Article 2, in

conjunction with Article 6(2) of Directive 2000/78/EC, for a provider of benefits under an occupational benefit scheme to limit an entitlement to a survivor's pension to the surviving civil partner of a member of the scheme on the member's death, by a requirement that the member and his civil partner entered their civil partnership before the member's 60th birthday where
    - (a) The stipulation as to the age at which a member must have entered into a civil partnership is not a criterion used in actuarial calculations, and
    - (b) The member and his civil partner were not permitted by national law to enter a civil partnership until after the member's 60th birthday and where the member and his civil partner had formed a committed life partnership before that date
- If the answer to questions 2 is in the negative:
- 3. Would it constitute discrimination contrary to Article 2 in conjunction with Article 6(2) of Directive 2000/78/EC if the limitations on entitlements under an occupational benefit scheme described in either question 1 or question 2 arose from the combined effect of the age and sexual orientation of a member of the scheme?

Area of Freedom, Justice and Security

Case C-511/14, *Pebros Servizi,* Judgment expected on 16 June 2016

- The Italian Court referred the following question: In the case of a judgment in default (of appearance), given against the defendant in default of appearance/failing to appear without, moreover, there being any express acknowledgement of the law by the defendant in default/failing to appear;
- Is it for national law to decide whether such procedural conduct amounts to non-contestation, for the purposes of Regulation No 805/2004/EC of 21 April 2004 (1), published in the Official Journal of the European Union of 30 April 2004, which could possibly, under national law, negate the uncontested nature of the claim, or
- Does a judgment in default of appearance constitute, by reason of its very nature alone, on the basis of EU law, non-contestation, with the result that Regulation No 805/2004 applies, irrespective of the assessment of the national court?

Case C-428/15, *Child and Family Agency,* Opinion of Advocate General Wathelet expected on 16 June 2016

- The Irish Court referred the following questions:
- 1. Does Article 15 of Regulation 2201/2003 apply to public law care applications by a local authority in a member state, when if the Court of another member state assumes jurisdiction, it will necessitate the commencement of separate proceedings by a different body pursuant to a different legal code and possibly, if not probably, relating to different factual circumstances?
- 2. If so, to what extent, if any, should a court consider the likely impact of any request under Article 15 if accepted, upon the right of freedom of movement of the individuals affected?
- 3. If the 'best interests of the child' in Article 15.1 of Regulation 2201/2003 refers only to the decision as to forum, what factors may a court consider under this heading, which have not already been considered in determining whether another court is 'better placed'?
- 4. May a court for the purposes of Article 15 of Regulation 2201/2003 have regard to the substantive law, procedural provisions, or practice of the courts of the relevant member state?
- 5. To what extent should a national court, in considering Article 15 of Regulation 2201/2003, have regard to the specific circumstances of the case, including the desire of a mother to move beyond the reach of the social services of her home state, and thereafter give birth to her child in another jurisdiction with a social services system she considers more favourable?
- 6. Precisely what matters are to be considered by a national court in determining which court is best placed to determine the matter?

Case C-486/14, *Kossowski,* Judgment expected on 28 June 2016

- The German Court referred the following questions to the Court: Do the reservations entered at the time of ratification by the contracting parties to the Schengen Convention pursuant to Article 55(1)(a) thereof — specifically, the reservation entered by the Federal Republic of Germany in relation to (a) when depositing its instrument of ratification, that it is not bound by Article 54 of the Schengen Convention, 'if the crime in respect of which the foreign judgment has been made was committed wholly or

partly on its sovereign territory' — continue in force following the integration of the Schengen acquis into the legal framework of the European Union; and are these exceptions proportionate limitations on Article 50 of the Charter of Fundamental Rights, within the meaning of Article 52(1) of the Charter of Fundamental Right?
- If these questions are answered in the negative: Are the prohibitions on double punishment and double prosecution laid down by Article 54 of the Schengen Convention and Article 50 of the Charter of Fundamental Rights to be interpreted as prohibiting prosecution of an accused person in one Member State where his prosecution in another Member State by the Public Prosecutor has been discontinued, without any obligations imposed by way of penalty having been performed and without any detailed investigations, for factual reasons in the absence of adequate grounds for suspecting the accused of the crime, and can be re-opened only if significant circumstances previously unknown come to light, where such new circumstances have not in fact emerged?

Citizenship of the Union

Case C-115/15 *NA,* Judgment expected on 30 June 2016

The UK Court of Appeal requested a ruling on the following questions:

- 1. Must a third country national ex-spouse of a Union citizen be able to show that their former spouse was exercising Treaty rights in the host Member state at the time of their divorce in order to retain a right of residence under Article 13(2) of Directive 2004/38/EC?
- 2. Does an EU citizen have an EU law right to reside in a host member state under Articles 20 and 21 of the TFEU in circumstances where the only state within the EU in which the citizen is entitled to reside is his state of nationality, but there is a finding of fact by a competent tribunal that the removal of the citizen from the host member state to his state of nationality would breach his rights under Article 8 of the ECHR or Article 7 of the Charter of Fundamental Rights of the EU?
- 3. If the EU citizen in (2) (above) is a child, does the parent having sole care of that child have a derived right of residence in the host member state if the child would have to accompany the parent on removal of the parent from the host member state?
- 4. Does a child have a right to reside in the host Member State pursuant to Article 12 of Regulation (EEC) No 1612/68/EEC (now Article 10 of Regulation 492/2011/EU) if the child's Union citizen parent, who has been employed in the host Member State, has ceased to reside in the host Member State before the child enters education in that state?

Environment

Case C-304/15 *Commission v United Kingdom,* opinion of Advocate General Bobek expected on 28 June 2016

- The Commission argues that by failing to correctly apply the Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants with regard to the Aberthaw Power Station in Wales, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 4(3), read in conjunction with Annex VI, Part A, of Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants.

Free movement for persons

Case C-15/15, *New Valmar,* Judgment expected on 21 June 2016

- Must Article 45 TFEU be interpreted as precluding legislation of a federal unit of a Member State, such as, in the present case, the Flemish Community in the Federal State of Belgium, which requires every undertaking which has its place of establishment within the territory of that unit to draw up invoices which are of a cross-border character exclusively in the official language of that federal unit, on pain of nullity of those invoices, which nullity is to be determined by the courts of their own motion?

Consumers

Case C-127/15 *Verein für Konsumenteninformation,* Opinion of Advocate General Sharpston expected on 30 June 2016

- The Austrian Court asked the following questions:

- Is a debt collection agency that offers instalment agreements in connection with the professional recovery of debts on behalf of its client and that charges fees for this service that are ultimately to be borne by the debtors operating as a 'credit intermediary' within the meaning of Article 3(f) of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC?
- 2. If Question 1 is answered in the affirmative:
- Is an instalment agreement entered into between a debtor and his creditor through the intermediation of a debt collection agency a 'deferred payment, free of charge' within the meaning of Article 2(2)(j) of Directive 2008/48 if the debtor only undertakes therein to pay the outstanding debt and such interest and costs as he would have incurred by law in any case as a result of his default — in other words, even in the absence of such an agreement?

Case C-255/15 *Mennens,* Judgment expected on 22 June 2016

The German Court asked the following questions:

- I. Is Article 10(2), in conjunction with Article 2(f), of Regulation (EC) No 261/2004 to be interpreted as meaning that a 'ticket' is the document by which the passenger is (also) entitled to be transported on the flight on which he was downgraded, irrespective of whether further flights, such as connecting flights or return flights, are also indicated on that document?
- II. a. If Question 1 is answered in the affirmative:
- Is Article 10(2), in conjunction with Article 2(f), of Regulation (EC) No 261/2004 to be further interpreted as meaning that the 'price of the ticket' is the amount which the passenger has paid for all of the flights indicated on the ticket, even if the downgrading occurred on only one of the flights?
- b. If Question 1 is answered in the negative:
- For the purposes of determining the amount which forms the basis for the reimbursement under Article 10(2) of Regulation (EC) No 261/2004, must account be taken of the airline company's published price for transportation, in the class booked, on the section affected by the downgrade, or must the quotient resulting from the distance of the section affected by the downgrade and the total length of the flight be determined and then multiplied by the total flight price?
- III. Is Article 10(2) of Regulation (EC) No 261/2004 to be further interpreted as meaning that the 'price of the ticket' is only the price of the flight alone, to the exclusion of taxes and charges?

ONGOING CONSULTATIONS

Enterprise, Internal Market:
Consultation on the regulation of professions: proportionality and Member States' National Action Plans
27.05.2016 – 19.08.2016

Public consultation under the Start-up Initiative
31.03.2016 – 31.07.2016

Communications Networks - Content & Technology, Information Society:
Public consultation on the evaluation and review of the e-privacy directive
12.04.2016 – 05.07.2016

Justice and Fundamental Rights:
Public consultation for the Fitness Check of EU consumer and marketing law
12.05.2016 – 02.09.2016

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

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;

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**

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
Erica Williams
Trainee Solicitor
erica.williams@lawsociety.org.uk
Harriet Hutchinson
Trainee Solicitor
harriet.hutchinson@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**