The Law Societies
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Brussels Agenda

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The Law Societies' monthly publication with the latest EU news

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Caroline Pidgeon, Liberal Democrat Chair of the London Assembly's Transport Committee and member of the Police and Crime Committee

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Editorial

In this issue, we focus on the European Security policy. This was initially prompted by the appointment of Sir Julian King as the new EU Commissioner for the Security Union. This appointment applies for the remainder of the Commission's current term of office which ends in October 2019. Sir Julian has been UK ambassador to France since January 2016 and replaces Jonathan Hill who resigned on 25 June 2016, following the UK's vote to leave the EU.

There is, however, a broader dimension to our choice of topic for this month's Brussels Agenda. In the past year, Europe faced an unprecedented wave of terror attacks and its capacity to handle large waves of migration has been put to the test. The UK's vote to leave the EU has raised questions about the reasons behind it and the implications on the rest of Europe, in particular the attitudes towards migrations, multiculturalism and European identity in general. Indeed, one of the main reasons behind the UK referendum result has been shown to be fears around immigration and the risk it may pose to security. Following the decision for Britain to leave the EU, concerns have been raised over how security in Europe will be maintained in a collaborative and united way.

We feature a contribution from Caroline Pidgeon, liberal democrat politician, who is a member of the Police and Crime Committee and Chair of the London Assembly Transport Committee. We also have articles on the EU's efforts to stem and regulate the flow of migrants, i.e. the newly formed border guards, the proposals to fight terrorist financing and the most recent tensions between privacy and security, illustrated by the legal hurdles that the EU-Canada agreement on Passenger Name Records (PNR) is likely to face.

In addition, you will see in the Brussels Agenda our usual update on the latest EU policy developments and case law. In particular, we discuss the recent proposals and reforms in tax and migration, the Commission's agenda for 2017, the proposals for overhauling the EU lobbying regulations, the last minute blocking of the CETA agreement by the Belgian region of Wallonia, the judgment on dynamic IP addresses and the Parliament's report on artificial intelligence and robotics.

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Caroline Pidgeon, Liberal Democrat Chair of the London Assembly's Transport Committee and member of the Police and Crime Committee

Much of the debate over Brexit has centred upon economics, the impact of immigration and trade. However, a key issue that is often overlooked is whether or not the EU helps make Britain safer.

My view is that it very much does, which is just one of the many reasons I was such a passionate Remain supporter.

As a London Assembly Member and a member of the London Assembly's Police and Crime Committee, I believe there is convincing evidence the European Union has contributed to the safety of London, and to the wider country.

Over the last few decades the EU has developed a limited common foreign and security policy. It has been far from perfect, but it has led to real action being taken in some areas, such as a common response to Iran's nuclear ambitions and the application of sanctions on Russia after it invaded Ukraine.

Then there is the area of security and intelligence co-operation. Media attention was given to the comments of Sir Richard Dearlove, a former head of MI6, when in March he declared "the truth about Brexit from a national security perspective is that the cost to Britain would be low."

I would turn his statement around. When it comes to our security do we want to be paying any further costs at all, especially in terms of loss of life of UK citizens? A low cost, is of course still very much a real cost.

Moreover, even if Sir Richard believes that the costs of Brexit would be low, his colleagues have very differing views.

Lord Evans, a former boss of MI5, and John Sawers, another former head of MI6, wrote in the Sunday Times on 8 May that the EU "matters to our security" and further added that reducing data sharing "could

undermine our ability to protect ourselves." Eliza Manningham-Buller, another former MI5 boss, **warned** that "if we isolate ourselves we would lose influence…..and put ourselves in greater peril."

European co-operation has perhaps been most powerfully been demonstrated in relation to the European Arrest Warrant (EAW).

Speed of extradition is a huge benefit. Under the EAW it takes an average of three months, compared to 10 months for non-EU countries. Some people still need reminding that one of its greatest successes was that the failed 21st July London bomber **Hussain Osman**, was returned from Italy in just eight weeks.

The EAW has seen a significant number of foreign criminals removed from British soil. Between 2010 and 2014 we handed over 5,365 potential criminals to other EU countries. Among those were 70 wanted on child sex offences, 100 for rape and 115 for murder, plus 497 on drug trafficking charges.

The EAW also allows us to extradite those wanted for trial in the UK. In the same time period other EU countries handed over 675 individuals to Britain, including 189 from Spain alone. The days of "Costa del Crime" are long over thanks to the EAW.

It is not surprising that Sir Hugh Orde, the former head of the Association of Chief Police Officers (Acpo) **warned** that criminals would know that it would take longer to extradite them if Britain were outside the EU.

In addition to quoting these statistics and evidence from informed people, I think consideration should be given to a much broader issue. We should never forget that some of the strongest supporters of Brexit around the world are the West's enemies. There are very good reasons why many former Pentagon and **NATO bosses** called for Britain to stay in the EU.

So in many respects my overall view is that the final departure of Britain from the EU is bad news for the security of London and Britain. The immense challenge is now to try to ensure that, post-Brexit, as many measures of international co-operation and effective security protection for UK citizens are maintained.

In just the last week Lord Harris has published a hugely impressive **report** looking into what could be done to improve London's resources and readiness to respond to a major terrorist incident.

In looking ahead to the consequences of Brexit I think I can do no better than quote directly from him. His words sum up exactly the predicament we now face:

"Currently through our membership of a range of EU Justice and Home Affairs measures, we have access to increasingly sophisticated information sharing arrangements. In addition to these, we are a full member of Europol and undertake significant collaboration with other member states. It is essential, in the EU exit negotiations, that UK policing is able to maintain the required international arrangements that currently work to keep us safe."

Biography

Caroline Pidgeon was elected to the London Assembly in May 2008 and has a strong track record of campaigning on issues such as strong policing and improved public transport. She is currently Chair of the London Assembly's Transport Committee, a member of the Police and Crime Committee and also of the Budget and Performance Committee. Caroline was also a member of the Metropolitan Police Authority between 2008 and 2012 and the London Fire and Emergency Planning Authority between 2008 and 2010

EUROPEAN SECURITY POLICY

EU funding fraud - an end in sight?

After years of debate on the subject, the Council is finalising its position on the **proposal** for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO).

On 17 July 2013, the Commission published a proposal to establish EPPO, which is intended to be an independent EU body investigating and prosecuting EU and VAT fraud and other crimes affecting the block's

financial interests, in reaction to some estimates that around **€500 million** in EU expenditure and revenue is lost per year due to fraud.

EPPO is intended to fill the void between national investigative authorities, whose competences stop at their national borders, and existing Union-bodies, such as OLAF (European Anti-Fraud Office), Eurojust and Europol, who are not able to prosecute criminal activities.

The idea of creating EPPO has been toyed with since the turn of the millennium. The setting up of EPPO is called for by the **Lisbon Treaty**, ratified in 2007, an idea that was suggested by the Commission in **January 2000**.

The idea of establishing EPPO has proved controversial as national governments do not wish to open themselves up to prosecution for misuse of EU funds. Additionally, national governments have been reluctant to give up control of criminal justice; it was originally proposed that EPPO would be a centralised agency largely detached from national criminal justice systems; however, ministers have proposed instead a system of national "**delegated prosecutors**" to work in conjunction with EPPO. There have also been disagreements on whether VAT fraud should be included within EPPO's remit.

On 26 September however, in a **statement** to the Legal Affairs Committee and EU Affairs Committee in the Bundestag in Berlin, Vera Jourová, Commissioner for Justice, Consumers and Gender Equality, confirmed that they are "in the final stretch of [...] negotiations and [that] the Slovak Presidency is keen to come to a political deal on [EPPO] by the end of this year". Additionally, on 5 October, the European Parliament adopted a **resolution** adopting their position, in particular calling on the Council to provide a clear set of competences and proceedings concerning EPPO and for a review clause to be included in the legislation so that the organisation could, at some point, be extended to cross-border organised crime.

Ministers in the Justice and Home Affairs Council have since reached a provisional agreement on the last set of articles and the Council is expected to adopt a general approach in early December.

The Council could therefore be in a position to formally adopt the Regulation in the Council in early 2017. The European Parliament would then need to give its consent to the Regulation before it becomes effective.

The UK, like Ireland and Denmark, has **opted out** of any EU regulation on EPPO.

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Protecting Europe's external borders

The **European Border and Coast Guard** (EBCG) has been launched in reaction to the ongoing refugee crisis. Alongside national border agencies, the new body will monitor and control the Schengen area's external borders.

On 6 October, the EBCG was launched at the Kapitan Andreevo Border Checkpoint on Bulgaria's external border with Turkey in reaction to the ongoing refugee crisis.

The agency has been tasked with monitoring migratory flows and the management of external borders of the EU, carrying out risk analysis, providing operational and technical assistance to Member States and supporting search and rescue operations and national coast guard authorities, as well as playing an enhanced role in the return of migrants.

The establishment of the organisation was **proposed** in December 2015 in reaction to the high levels of **migration** into the EU, largely from Syria and Afghanistan, and the finding that some of those responsible for the 2015 terror attacks in France had **taken advantage** of these migration flows in order to travel between the EU and ISIS-controlled regions of Syria and Iraq.

It is hoped that the EBCG will help bring back the normal functioning of the Schengen area, after temporary internal border controls have been put in place in numerous countries in reaction to the refugee crisis.

The EBCG replaces **Frontex** (the European Agency for the Management of Operational Co-operation at the External Borders of the Member States), which was widely criticised for its limited ability to deal with such high levels of migration.

The EBCG's role and activities are significantly greater than those of Frontex. Its permanent staff will be more than double that of Frontex and such staff will be able to be deployed at short notice. Additionally, a rapid reserve pool of at least 1,500 border guards and a technical equipment pool will be put at the disposal of the agency to ensure that there will no longer be shortages of staff or equipment for its operations.

Importantly, unlike Frontex, which needed permission from a Member State before operating in that country, the EBCG can be deployed to a Member State where border protection is deemed to be inadequate, even

against the will of that country, an idea that Poland and Hungary were **opposed** to.

The proposal to create the EBCG was however approved by both the European Parliament and the Council in record time, obtaining final **approval** on 14 September: a sign of Europe's wish to overcome the refugee crisis and tackle terrorism.

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The financial fight against terrorism: virtual currencies

Virtual currencies ("VCs") have attracted a lot of attention in the past few years and brought about substantial changes to the financial system and offered new ways of transferring value over the internet. They have evolved from an experiment in digital finance to a market which is now valued at more than $10bn. They have also attracted considerable attention from international regulators, not least in relation to the money laundering and terrorist financing.

In 2014, the European Banking Authority (EBA) **defined** virtual currencies as '*a digital representation of value that is neither issued by a central bank or a public authority, nor necessarily attached to a fiat currency, but is accepted by natural or legal persons as a means of payment and can be transferred, stored or traded electronically*.' The Financial Action Task Force (FATF) **defines** virtual currencies as '*a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (i.e., when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency*.'

As with any innovation, virtual currencies pose a series of regulatory challenges. To name but a few, the recent International Monetary Fund (IMF) **discussion paper** points out that '*the U.S. tax authority, the IRS, has classified VCs as "property" for the purpose of federal taxation, whereas the Treasury Department's FinCEN has classified VCs as "value" for the purpose of AML/CFT obligations.*' But the most important challenges are the risks of money laundering and terrorist financing.

In its 2015 **guidance** on VCs, FATF points out that the risks posed are associated with the anonymous, non-face-to-face nature of the relationship between the parties to a transaction. Furthermore, the VC exchange platforms are under no obligation to report suspicious transactions.

It comes as no surprise that the recent wave of terrorist attacks puts a spotlight on the sources of funding of terrorist organisations. The pressure on the political representatives to address terrorism and its root causes is high. The latest Eurobarometer **survey** conducted in all Member States has shown that 42% of the respondents felt that measures to cut off funding to terrorist groups were amongst the most urgent when it came to countering the threat of terrorism. Following the Paris attacks in November 2015, the French Interior Minister Bernard Cazeneuve **called for** stronger monitoring over the so-called 'Darknet' and VCs. However, a **report** released by Europol several weeks later did not confirm the use of VCs by terrorists.

Most recently, the European Commission published a **proposal** to revise the 4th Anti-Money Laundering Directive (4AMLD) in which it recommends bringing VCs into the scope of the said instrument. While the legislative work on that dossier is still in its early stages, it is clear that the tension between the desire to regulate more in the interest of public safety and the feasibility of such regulation will remain at the core of the debate.

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Security versus privacy: will the tension continue?

A lot has changed since the European Commission set out its 5 year **Agenda on Security** on 28 April 2015. The following 12 months were marred by such violent acts of terrorism by the so-called Islamic State or ISIS, the frequency and ferocity of which Europe had not seen in a long time.

As well as their victims, the recent spate of terrorist attacks across Europe have exposed shortcomings in Europe's security and law enforcement policies and left a plethora of lessons to learn from. Indeed, Jean-Louis Bruguière, a former counter-terror judge in France and currently EU high representative to the Terrorist Financing Tracking Programme / SWIFT, **admitted** that '*the flaws in the European system are multiple*' and that the Paris and Brussels attacks '*should never have happened*.'

One of the weaknesses of security systems, claimed by some, is the ability of the law enforcement agencies to retain, access and exchange personal data. This would allow to better track the movement of those

suspected of terrorism or serious crime and could potentially prevent the attacks in the future. The opponents of this view suggest that wide-ranging surveillance powers of the law enforcement agencies breach fundamental rights are not as effective in the fight against terrorism as it is widely believed.

It is not the first time that the clash between the need to increase security by means of higher intrusiveness in people's daily lives and the right to privacy comes to light. Less than two months after the 9/11 attacks, US President George W. Bush signed the Patriot Act that extended the surveillance powers of the US security agencies. It was not until 2013 that the whistleblower Edward Snowden exposed the scale and range of the surveillance powers of the National Security Agency (NSA). These revelations have led, indirectly, to the annulment of the EU-US Safe Harbour agreement following the legal challenge brought by Max Schrems who claimed that the US grants insufficient protection of personal data.

Immediately after the Paris attacks, the French government declared state of emergency (*état d'urgence*) which allows for, among others, fast-tracked procedures related to criminal investigations and surveillance. The attacks have also given a new boost to the new law on surveillance that expanded the powers of the intelligence services but did not seem to have sufficient judicial oversight of them. The new law and the government's response to the attacks have attracted criticism from many. Most recently, however, the French Constitutional Council has censored an article of the 2015 French Surveillance Law on radio wave surveillance in a clear victory for advocates of privacy against disproportionate surveillance.

The wave of terrorist attacks, including those in the EU's heart in Brussels, has reignited the debate on the scope of the EU legislative measures that could help fight terrorism. The debate in the EU is all the more difficult that the fundamental right to privacy is interpreted very strictly by the EU courts, as we have seen in the **Digital Rights Ireland** or **Schrems** judgments. The most important one was the **directive** on the use of Passenger Name Records (PNR) for prevention, detection, investigation and prosecution of terrorist offences and serious crime and similar agreements concluded with third countries. Most recently, the draft EU-Canada PNR agreement was declared potentially illegal under EU law by Advocate General Paolo Mengozzi in his opinion. The AG noted that the agreement did not comply with the right to respect for private and family life and the right to protection of personal data.

Currently, we still await a judgment in joint cases **Watson and ors** / **Tele2 Sverige** in which the CJEU is to rule on the lawfulness of state powers to require the bulk retention of people's communications data for law enforcement purposes.

Some critics state that the security woes of Europe are symptomatic of an approach to security that exists in particularly northern Europe, which emphasises privacy and individual rights that, however well-intentioned, result in constraining law enforcement.

'*There's been a political realisation about the gravity of the terrorist threat that we face,*' said Rob Wainwright director of Europol. European lawmakers '*understood that we need to raise our defences, raise our security game … There is still a way to go, I think, to get the right balance between privacy and security.*'

The battle for privacy is by no means a new one and it permeates all sectors in the EU through to national legislation of key member states. This month a total of 20 civil rights organisations sent a letter to the European leaders highlighting the negative impact of including clauses on the transfer of personal data in trade agreements like the Trade in Services Agreement.

Whether privacy is a sacrifice that needs to be made for greater security remains to be seen. What is clear, however, is that this question will not disappear from the public debate as now the EU now has to redouble efforts on security whilst also being careful not to appear to be infringing the EU fundamental rights which puts privacy at their core.

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Calais - The end of the jungle

As the EU stalls on plans to reform asylum law, French authorities steam ahead with the destruction of the "Jungle".

On 24 October, French authorities started **clearing** the "Jungle" camp in Calais, France, where approximately 6,500 non-EEA migrants were living attempting to cross the Channel into the UK. At the time of writing, approximately 2,800 people had been taken to refugee centres around France, with only 200 expected to

remain in the bulldozed camp.

By one **survey**, the largest group of people living in the camp are from Sudan, at around a third, followed by Afghanistan, Iraq, Iran, Syria, Eritrea and Pakistan, the majority of whom are trying to reach the UK in order to claim asylum.

In order to **claim asylum** in the UK, a migrant has to be in the UK or at a port of entry in the UK. Additionally, carriers can be **fined** if they are found to have transported illegal immigrants to the UK. Accordingly, as the majority of asylum seekers do not hold any form of UK visa, they are not able to travel to the UK by conventional means or pass UK border control at Calais. Instead, they attempt to enter the UK by climbing into lorries and other vehicles travelling across the Channel.

Such attempts are however often unsuccessful meaning that migrants stay in the Jungle, where **conditions** are deplorable, with limited space, unending mud, inadequate water points and sanitation and no electricity or no heating, until they are able to make it into the UK, much to the local population's **dismay**.

The relocated residents will now have their asylum applications processed in France and, under the **Dublin Convention**, will not be able to apply for asylum in the UK.

Provisions have however been made for unaccompanied minors living at the camp who have family in the UK. The Home Secretary, Amber Rudd, **said** that almost 200 children had been brought to Britain in the days leading up to the clearance and there were several hundred more to arrive.

The move to destroy the camp comes amid the continuing refugee crisis, which saw some 1,014,836 people arrive in the EU by sea routes alone in 2015.

The EU's response to the crisis has been largely criticised. Whilst the Commission released **proposals** for the reform of the Common European Asylum System in May, the institutions have been slow to act on these. In particular, European Parliament is waiting for the Civil Liberties, Justice and Home Affairs committee to make a decision on the proposed **changes** to the Dublin convention and the Council only debated them at the beginning of October.

Likewise, the proposal on the Dublin convention has been criticised for making little progress in addressing key issues: asylum-seekers are still obliged to claim asylum in the Member State they first enter (a system that has largely broken down due to the large number of migrants arriving in Greece and Italy) and the Member State where an unaccompanied minor first claims asylum will be responsible to assessing that claim, despite a recent **ruling** to the contrary.

It seems instead that, rather than amending internal EU procedures, the Union is attempting to limit the number of migrants arriving in the EU.

The **agreement** between the EU and Turkey, whereby all new irregular migrants crossing from Turkey to Greece are returned to Turkey and for every returned Syrian, another Syrian will be resettled to the EU, has proved successful in decreasing the number of migrants travelling through this route, with arrivals of Syrian migrants **falling** from 55,000 in February to 3,000 in August.

The crossing from Libya to Italy has now become the main route for migrants, with most of them originating from various countries in Africa. The European Council accordingly **agreed** to strike deals with African countries similar to the one with Turkey, starting with Niger, Nigeria, Mali, Senegal and Ethiopia.

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Parliament takes action against corporate human rights abuses

The European Parliament has adopted an own initiative **report** requesting legislation to prevent and punish human rights abuses by businesses in third countries.

On 25 October, the European Parliament voted to adopt an own initiative report, drafted by the Committee on Foreign Affairs, on corporate human rights abuses in third countries.

The report stresses that increasing globalisation and internationalisation of business activities and supply chains make the role that corporations play in ensuring respect for human rights crucial. This is evidenced by recent reports of international human rights violations by companies, for example in **Malawi**, where the coal and uranium mining operations of Eland Coal Mining Company, Malcoal, and Paladin Africa Limited caused serious problems with water, food, and housing for local residents, and in **Uzbekistan**, where Indorama Kokand Textile was found to have been using forced labour.

MEPs have therefore urged the Commission to propose binding and enforceable rules, sanctions and

monitoring mechanisms for corporate human rights abuses.

In the report, MEPs also call on Member States and third countries to urgently adopt binding instruments devoted to the protection of human rights in business, specifically providing for thorough investigations into such abuses and stating that victims should have access to an effective remedy against corporations, which "pierce the veil of the legal personality" where corporations have complex structures.

The report additionally calls on companies directly to carry out human rights due diligence and create internal policies on such issues.

The report comes in the wake of the publishing on the United Nation's **Guiding Principles on Business and Human Rights** in 2011, which are a set of guidelines for countries and companies to prevent, address and remedy human rights abuses committed in business operations. Unlike the EU legislation requested however, these guidelines are simply advisory.

Before its adoption, the report was debated in plenary, where MEPs generally supported the report and agreed on the importance of the issue at hand. Some MEPs wanted the report to go further in its scope; Caterina Chinnici MEP (Italy, Alliance of the Socialists and Democrats) said that she regretted that the rights of children had not been sufficiently taken into consideration whilst Notis Marias MEP (Greece, European Conservatives and Reformists) that something should be done to deal with human dumping and that companies should be punished for not respecting workers' rights.

Likewise, Commissioner Miguel Arias Cañete was in agreement regarding the importance of the issue and stated that the European External Action Force (EEAS), the EU's diplomatic service, should focus on creating dialogues on human rights and increasing financial support and take these into account during trade negotiations.

The ball is now in the Commission's court to consider putting forward a proposal on the issue. There is however no obligation on it to do so.

Tax in Progression: Common (Consolidated) Corporate Tax Base has been tabled

Over the past month, there have been a number of developments in various areas of tax at EU level. The most important one is the re-launch of the CCCTB, where as a surprise move, the Commission presented both the common corporate tax base and consolidation proposal at the same time.

On 25 October, the European Commission tabled a **new package** of measures on corporate taxation, including proposals that aim to **harmonise corporate tax** by 2021. The Commission propose to do this through establishing a Common Consolidated Corporate Tax Base (**CCCTB**), which replaces a stalled proposal from 2011. This **re-launched CCCTB** will be implemented through a staged two-step process. Firstly, the common base is to be agreed swiftly and then consolidation is to be introduced soon afterwards.

The CCCTB will create a single set of rules for companies to calculate their taxable profits in the EU. This will mean that cross-border companies will only have to comply with one, single EU system for computing their taxable income. It will be mandatory for **large multinational groups** which have the greatest capacity for aggressive tax planning to ensure that companies are taxed where they really make their profits. The proposals aim to eliminate loopholes associated with profit-shifting for tax purposes and encourage companies to use **equity finance** instead of debt. It also seeks to support innovation through tax incentives for research and development activities.

The package also comprises two complementary proposal for an improved system to resolve **double taxation** disputes in the EU and bolster existing anti-abuse rules. These new measures aim to stop companies from exploiting loopholes, known as hybrid mismatches, between Member States' and non-EU countries' tax systems to escape taxation.

These legislative proposals will now be submitted to the European Parliament for consultation and to the Council for adoption. For more information, please see the full CCCTB proposal **here**.

Other tax announcements include conclusions by the Council on tax transparency, a summary report on VAT fraud and progress being made on the Financial Transaction Tax ("FTT"). On 11 October, the Economic and Financial Affairs Council adopted conclusions in response to a Commission communication on tax transparency following the Panama Papers revelations. The **conclusions** focus on the continued need to prevent large-scale funds being concealed as this impedes efforts to clamp down on tax evasion, money laundering and terrorist financing.

The Commission's Communication in July 2016 recommended a coordinated approach to prevent tax abuse, at both EU and international levels. Whilst progress has been made at the EU level, the Council stated that loopholes remain and further action is expected.

The Council also approved a **taxation agreement** with Monaco, giving tax administrations improved cross-border access to information on the financial accounts of each other's residents to improve tax compliance by private savers.

On 12 October, the Council published a **summary** of the results of the discussions on experts level on VAT fraud and its inclusion in the draft Directive on the fight against fraud to the Union's financial interests by means of criminal law (the "PIF Directive") during the Netherlands Presidency, as completed by Slovak Presidency, with a view to reaching a compromise solution with the European Parliament.

An updated draft text of the Directive is annexed to the summary reflecting the state of play with the Presidency following the latest meetings in the High Level Working Party on Tax Questions ("HLWP") and the Coordinating Committee in the area of police and judicial cooperation in criminal matters ("CATS"). However, the Presidency is still receiving technical proposals from delegations and so adjustments to the draft could still be necessary in order to reach a compromise.

On 10 October, Commissioner Pierre Moscovici released a statement on **twitter** to say that *'excellent progress*' had been made on the FTT and that *'a final agreement has never been closer*'. It had been rumoured that the FTT may be replaced by a Financial Activity Tax proposal but these suspicions have been put into doubt by Pierre's statement. A legal text is now being drafted which will seek political agreement in the upcoming weeks. However, given that such statements of progress being 'just around the corner' have been repeated periodically for the past four years, we will have to wait and see if the proposal will finally see the light of day this time around.

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Panama Committee Inquiry Update

The PANA Committee inquiry was set up to investigate the "Panama Papers" revelations on 8 June. The remit of the inquiry is to examine the alleged contraventions and maladministration in the application by the EU Commission or member states of EU laws on money laundering, tax avoidance and tax evasion. The Committee is made of 65 members listed **here**, with Werner Langan MEP (Germany, European People's Party) acting as chair alongside 4 other vice-chair appointments.

On 12 October 2016, the Committee met to discuss who sets the rules in relation to anti-money laundering and tax evasion and how. There seemed to be a common consensus amongst experts that the current rules and standards are robust but what is missing is effective implementation. This was echoed by the European People's Party ("EPP") in their **press release** where their spokesman, Dariusz Rosati MEP (Poland, EPP), stated '*before we call for new measures, the focus must be first on the effective implementation of the existing standards*'. However, this is not an opinion necessarily shared by other groups in the European Parliament. In his **reactions**, Fabio de Masi MEP (Germany, Confederal Group of the European United Left) questioned the existing practices on tax evasion. It was also announced that from early next year the committee is planning to invite the professionals to the hearing which will provide a platform for the various professions, including lawyers, to share their views.

We look forward to the upcoming meetings when professionals will be invited to the table for their opinions. The next PANA Committee meeting will be held on Tuesday 8 November where the agenda includes a discussion of the state of play of implementation of EU legislation.

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Algorithms < > Accountability

On the 31st of May 2016 the EU's committee on Legal Affairs issued its draft report with recommendations to the Commission on the area of Civil Law Rules on Robotics. The report is a comprehensive list of recommendations on what the final civil rules on robotics should contain, from the mundane standards for manufacturing quality, to the more science-fiction, noting Isaac Asimov's famous **Laws of Robotics**. The report has recently been debated throughout various EU committees and one area that has been hotly debated has been that of the algorithm.

For those "not in the know", an algorithm in computer science is a set of detailed instructions which results in

a predictable end-state from a known beginning. Algorithms are increasingly being used to automate what used to be human processes. They are potentially more fair and objective, but they are not automatically so.

On the whole, the successes of these fundamental computing methods, despite their ubiquity, often go unnoticed by the general public. A few more novel examples of algorithmic success may however spring to mind. I am of course referring to the Deep Blue computer programme which, at a cost of just £36.50, defeated the world's best chess player in 2006; the computer Watson which completed the American game show Jeopardy and beat two former champions in 2011; and the AlphaGo programme which, in March 2016 and over a five game series, beat the top Go player in the world 4 games to 1 (the success of this latter case being made all the more impressive when you consider that there are more possible positions in a game of Go than there are atoms in the known universe).

Algorithmic failures are however more readily reported and include such famous examples as; Microsoft's twitter-bot Tay, designed to learn from users but which had to be shut down after it became racist and sexist within 24hours of going live; the Google photo application and Nikon software which mislabelled people as "gorillas" and "blinking" respectively, due to their ethnicity, and; the algorithm behind Facebook's newsfeed which was exposed as not being neutral (as Mark Zuckerberg had contended) but rather bias to "maximize the amount of engagement you have with the site and keep the site ad-friendly".

When one considers then the all-pervasive nature of these algorithms, the scope which they have for such great successes and yet also their ability to make such fundamental failures, one can understand the increasing debate surrounding the need for accountability and transparency of algorithms.

Is it enough, for example, to say that the mislabelling in the above mentioned Google and Nikon case was the result of an algorithmic data problem, or rather should we say that mislabelling occurred as a result of an algorithm which learnt by being fed data chosen by the white male engineers which created it?

The question of accountability is complicated further when we consider just a few of the problems which are typified by this niche area. The problem of the so-called "black-box" algorithms for example, which are algorithms considered so complex that one is unable to ascertain why it has made the decision which it has; the problem of algorithms that learn and adapt by themselves which may make it harder to find a "human in the loop" for accountability; the fact that numerous people are often responsible for algorithms; and the ethical and legal implications for how one holds an algorithm accountable and to what standard.

In the context of accountability, it is also then important to ask the question as to whether regulation is the best way to ensure transparency and if so, then how one is to broach this topic without stifling innovation. Should it be necessary, for example, to regulate research?

These are just some of debates currently being held by the EU throughout several committees in relation to the Parliament's report on Civil Law Rules on Robotics.

The report is 22 pages long, and forms the first step in the EU law-making process. It is an official request for the Commission to submit to the European Parliament a proposal for civil law rules on robotics.

Historically, the EU has always drawn important lines regarding what it means to be a human based on how computational technologies must adhere to certain restrictions on fully automated processing – injecting a human in the loop. In 2013 for example, the former first lady of Germany, Bettina Wulff, successfully sued Google for defamation over unfavourable terms that autofilled in the search box when users typed her name. The EU reached this decision despite Google's insistence that the predictions were made "algorithmically… without any human intervention".

The Commission's report will be voted on in committee at the 29th of November and the vote in plenary will take place in either December or in January next year. Currently, it is still unclear what the final report will look like or whether the Commission will be brave enough to broach some of the difficult questions around algorithmic accountability. One thing that is certain however is that it will be a long time before the code to regulating the algorithm is cracked.

Dynamic IP addresses and the case of Breyer

On 19 October the Court of Justice of the European Union issued its long awaited judgment on dynamic IP addresses (judgment in Case C-582/14: Patrick Breyer v Bundesrepublik Deutschland). The judgment will have a general impact on how to define 'personal data' beyond dynamic IP addresses and how this could affect some providers.

First, the basics... What is an Internet Protocol (or IP) address? Well, an **IP address** is like a postcode which

is assigned to your internet enabled device (computer, phone, ipad etc.). Only instead of a letter, which is delivered to the recipient of a post code, it is internet traffic which is delivered to the recipient of an IP address.

Your IP address is assigned to you by your Internet Service Provider (ISP) and when you signup with your ISP, your ISP either assigns you a *static* IP address or a *dynamic* IP address depending on the contract. If you need to setup a web server or an email service, you'll need a static IP address.

If, however, you are just browsing the internet, you can get by with a dynamic IP address which is cheaper than a static IP address and can afford more privacy, as your ISP can dynamically assign an IP address to your networking device each time your computer or router is rebooted, meaning that only your ISP provider has the additional information necessary to identify you.

Are you still with me? Good.

So, why is this all of this relevant? Recently a privacy activist and German Pirate Party politician named Patrick Breyer brought an action before the German courts seeking an injunction to prevent websites, run by the Federal German institutions that he consults, from registering and storing his internet protocol addresses. Those institutions register and store the IP addresses of visitors to those sites, together with the date and time when a site was accessed, with the aim of preventing cybernetic attacks and to make it possible to bring criminal proceedings.

The German Federal Court of Justice in turn made a referral to the Court of Justice asking whether 'dynamic' IP addresses also constitute personal data in relation to the operator of the website, and whether they would therefore benefit from the protection provided for such data.

By the CJEU's judgment of 19 October 2016, the Court first of all confirms that a dynamic IP address does constitute personal data when it is registered by an 'online media services provider' (that is by the operator of a website) and it does constitute personal data with respect to the operator, if the operator has the legal means enabling it to identify the visitor with the help of additional information which that visitor's internet service provider has.

In reaching its judgment, the Court appears to have placed some reliance on the fact that legal channels exist enabling online media services providers to compel ISPs to disclose identifying information in order to identify and prosecute those responsible for cyberattacks.

In this case, the CJEU said that the federal German institutions running the websites in question "may have a legitimate interest in ensuring the continued functioning of their websites which goes beyond each specific use of their publicly accessible websites," when protecting their sites against online attacks.

The case now goes back to the German Federal Court of Justice, which will make its judgment based on the CJEU's opinion. Given the top court's reasoning, it seems likely that Mr Breyer will not be granted an injunction restraining Germany's federal sites from storing data about his visits.

Website operators however, now face the prospect that information previously considered to be innocuous "log file data" now needs to be classed as personal data. As such it will be subject to applicable protections under European data protection legislation.

The judgment does not necessarily mean that dynamic IP addresses will be personal data in every context as the ruling focuses on "online media services providers" (i.e. website operators and mobile app providers). In the hands of others – who may not be able to compel ISPs to disclose the relevant users' identities in the same way that website operators can – dynamic IP addresses may not constitute personal data.

For the internet, as for people then, it appears that dynamism will continue to be the source of some reverence for some time to come.

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Frans Timmermans presents the European Commission's 2017 Work Programme

The European Commission's 2017 Work Programme was presented by its First Vice-President Frans Timmermans on Tuesday 25 October 2016 and he began his presentation by stating that there were "no surprises" in the Programme. Mr Timmermans did, however, confirm that the Work Programme adequately reflected the Commission's commitment to its 10 policy priorities, agreed upon with the Parliament, and that it was ambitious in meeting the challenges of the European Union today.

Amid a still nascent economic recovery, the migration crisis, and the threat of terror, Mr Timmermans said

that "Europe cannot be the answer to all the problems" at hand. He continued by stating that Europe did need to be part of the solution however, which means defending what mattered most to EU citizens: their security, their quality of life, and their job prospects.

In line then with its modest aims, The European Commission's Work Programme for 2017 was launched with remarkably little fanfare, and even less reaction. Despite the Programme's ability to capture the imagination, the document does set out the legislative agenda for the next 12 months and moves forward the Commission's work in areas such as the Single Market Strategy and a Pillar of Social Rights. Along with the new proposals, the Commission also sets out the legislation that it intends to withdraw or repeal, plus a list of revisions under the REFIT programme.

The agenda has been kept short as the Commission stresses that it is regulating better, and does this by only focusing on the important things. The level of focus the Commission will provide these matters remains to be seen though, as most of the 21 'key initiatives' set out below contain several legislative and non-legislative actions.

Amongst the Commissions 21 new initiatives are everything from a Data Protection Package to an EU Stragegy for Syria and on first glance it is noteworthy that half of the initiatives begin with the word 'implementation', which could provide some insight to the Commission's aim of working further on the basis of existing legislative framework.

The Programme's far-sighted approach therefore allows the Commission to advance the aims set out in the Unions and gives priority to the fledgling Capital Markets Union and Energy Union.

For the Capital Markets Union the Commission is aiming to build a deeper and fairer internal market and making proposals for fairer taxation of companies and the Energy Union's goal is to work on low-emission vehicles and mobility, generally decarbonising the transport of Europe.

The Commission has also confirmed its desire to pursue completion of the Security Union in order to fight terrorism and will align the rules on the protection of personal data and privacy. Meanwhile the Single Market Strategy is set for a boost, with half a dozen different legislative proposals due to be tabled in the next year, on issues from the Single Digital Gateway for business to competition authorities.

A bit part player in previous Work Programmes, the Social Pillar rears its head once more, with several proposals planned for next year. This includes a new Youth Initiative, as the Commission aims to boost the uptake of apprenticeships, and tackle the employment and social crisis afflicting Europe.

In other news, the Circular Economy strategy will see a new proposal for a Regulation on re-used water, and the Commission is planning new initiatives on the space and defence sectors. In forging ahead despite the near-embarrassment we saw with CETA this month, the Programme also foresees the opening of free trade talks with Australia, New Zealand and Chile in 2017.

Finally, bumped down the list to last place, are proposals on reforming the EU's arcane 'comitology' procedures for adopting secondary legislation. There are also several measures planned to ensure that Member States properly enforce EU law.

One could proffer on analysis of the 2017 CWP that the EU is very much in an institutional limbo, as it awaits realignment of its resources post-brexit. It is likely that, in light of the loss of a major Member State, the result will be some kind of institutional changes for the EU, but currently the Commission is steadying the ship, proposing nothing radically new, and focusing on what is already on the table.

Despite the muted reactions to the work Programme however, there has been some criticism of the document. Philippe Lamberts MEP (Belgium, Greens/European Free Alliance) has **stated** that while the Commission is focusing on many of the right things, the measures proposed fall far short of what is needed, and João Pimenta Lopes MEP **contested** the "increasingly neoliberal, federalist and militarist pillars of the EU, seeking the concentration of economic and political power, making it gradually more evident that it is not possible to reform the EU." .

Frans Timmermans has responded to some criticism, stating "The Commission knows that Europe appears to be a source of insecurity, of globalization that takes away citizens' rights and securities, and we need to change that paradigm". Whether the EU will be able to fulfil its modest aims in the turbulent few months ahead will however, remain to be seen.

The Transparency Register - A change is coming...

The Commission has delivered a new proposal, which would make it mandatory for lobbyists to register their details if they wish to interact with the EU institutions, in a bid to ensure that the EU decision-making process is as open as possible.

On 28 September, the European Commission released their proposal for a new **interinstitutional agreement** (IIA) between the European Commission, Parliament and Council creating a mandatory transparency register for lobbyists.

Under the proposal, it will be mandatory for an organisation to be included on the **Transparency Register** where they are interacting with the European Commission, Parliament or Council with the objective of influencing the institutions in the legislative and/or decision-making process and wish to hold meetings with staff of the institutions, receive alerts from them and appoint expert group members, amongst other activities.

It is proposed that such organisations will be required to provide an array of information on the register, which is open to the public, including numbers of staff working on lobbying activities and their lobbying costs or revenue.

The proposal forms part of the Juncker Commission's **commitment** to transparency and reforming the EU policy making process. When releasing the proposal, the Commission's First Vice-President, Frans Timmermans, **alluded** to the need to "win back the trust of our citizens", stating that "citizens have the right to know who tries to influence EU law-making", amid growing Euro-scepticism.

The proposed agreement would extend the **current** IIA, which only covers interactions with the Commission and Parliament, to interactions with the Council as well. Additionally, the register, which is currently voluntary, would be made mandatory. The current register is however *de facto* mandatory as registration is currently a prerequisite to conduct the aforementioned activites in relation to the Commission and Parliament.

The proposal also potentially limits the scope of activities as, unlike the current IIA, the proposed agreement would seemingly not cover activities conducted with the aim of 'indirectly' influencing EU institutions, a phrase which captures many activities.

As with the current IIA, the provision of legal services is excluded from the proposed agreement where is consists of professional advice provided in the context of a contractual client relationship regarding representation in the context of a conciliation or mediation procedure, ensuring that client's activities comply with the law and representing clients and safeguarding their fundamental or procedural rights. The making of submissions made in a legal or administrative procedure established by EU/international law and submissions based on a contractual relationship with an EU institution or based on a grant agreement financed by EU funds would also not be covered by the agreement. The exact scope of these exclusions is however unclear at present and will therefore likely be subject to debate.

Likewise, as the proposal makes its way through the institutions, the exact procedure for which is currently unclear, it is likely that further areas of debate will include the resources, location and budget of the Secretariat, which will be responsible for monitoring the register amongst other issues.

UK urged to transpose rules on recognition of qualifications

As part of its September infringements' package, the Commission has urged the UK to transpose EU rules on recognition of professional qualifications.

As part of its role as "Guardian of the Treaties", the European Commission requested the UK and 13 other Member States to transpose **Directive 2013/55/EU** on the recognition of professional qualifications into national law.

The Directive allows for EU professionals working in other Member States to have their qualifications recognised by that Member State and should have been transposed into national legislation by 18 January 2016.

The Commission has asserted that the UK has not yet communicated to it the complete transposition of the Directive into national law.

The UK now has two months to notify the Commission of the full transposition of the Directive. If the UK fails to do so within this timeframe, the Commission may refer it to the Court of Justice.

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"EEA and Swiss Arrangements" - 1 December

The Joint Law Societies Brussels Office is holding a roundtable event on EEA and Swiss arrangements.

In the light of recent political developments in the UK, there has been an increasing appetite to learn more about alternative European models. This roundtable provides an opportunity to explore the workings of the EEA and the Swiss arrangements with a set of highly distinguished panellists. The aim is to outline the operation of these frameworks and highlight some crucial differences between them and the EU arrangements.

Our panellists include:

- *Sven Norberg, Senior Adviser, KREAB, one of the negotiators of the EEA Treaty*
- *Cath Howdle, Deputy Director, Legal and Executive Affairs, EFTA Surveillance Authority*
- *Georges Baur, Assistant Secretary General, EFTA*

This event will take place between 12.30 and 2pm, including lunch from midday, at Law Societies Office, Avenue des Nerviens 85, 1040 Brussels.

If you would like to attend this event please RSVP by contacting either **antonella.verde@lawsociety.org.uk** or **frances.shipsey@lawsociety.org.uk**

Please note that this event will be free-of-charge.

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Debate on China's Market Economy Status - 12th October 2016

Edelman and the UK Law Societies held a panel debate on China's Market Economy Status (MES) last month at The Centre.

2016 is an important year for EU-China relations. It marks the expiry of the 15-year transitional period following China's accession to the WTO and therefore a number of the provisions of Section 15 of China's WTO Accession Protocol. This could lead to China gaining market economy status, a development which could have considerable ramifications for the EU and its trade defence instruments (TDIs). Within the EU, some countries – including the UK – view the deepening of trade relations with China in a positive light, whereas others fear that the influx of Chinese products will harm local industries and stifle job creation.

The debate, moderated by Ana Gradinaru of Edelman Brussels and with speakers Hannah Deringer, Policy Analyst at European Centre for International Political Economy, Leopoldo Rubinacci, Director of the Trade Defence Services at DG Trade, Claudia Vernotti, Director of China EU and Iain MacVay, Partner in King & Spalding's International Trade Practice, discussed and debated the following key topics:

- Options available to the EU when the 15 year period ends and which is most viable
- The consensus was that China would not gain market economy status but that the rule of law must continue to be upheld throughout the process
- Anti-dumping measures, particularly in the case of the steel industry, and their permissibility

- WTO rules and parameters within which the Commission can work
- The potential consequences on employment for certain industries if China were to be treated like any other country

The attendees were informed that proposals of how the EU and China would move forward would be made available by the end of the year.

The Law Society of England and Wales gives oral evidence to the House of Lords EU Internal Market Sub-Committee

On 27 October, Mickaël Laurans, Head of the UK Law Societies Brussels Office, gave evidence to the Housel of Lords' EU Internal Market Sub-Committee. The Lords sought to better understand the challenges posed by Brexit to the professional services sector and its future trading relationship with the EU. The other participants to the session included Sally Jones of Deloitte and James Kenny of Arup.

All witnesses agreed that the UK leaving the EU would have a substantial impact on their respective services sectors. This impact would differ depending on the sectors; in case of the legal profession, the regulation is different in each Member State and in addition, the legal systems of individual countries differ as well. The Lords were keen to hear about the economic impact of Brexit on professional services as well as the lessons that can be learnt from the current trade policy in forming a new relationship between the EU and the UK.

Mickaël clarified that, in case of the legal profession, the advantages of being part of the Single Market in services are considerable. Within the EU, individual solicitors and their law firms can provide services on a temporary basis and/or establish permanently in another Member State under their home title. They can provide advice on the law of England and Wales, EU law and international law but also on the law of the host state, under conditions of competency and with some very limited restrictions (e.g. in probate and conveyancing work in a number of jurisdictions). They can also appear in court in conjunction with a local lawyer.

Importantly, he noted, the UK's EU membership guarantees the rights of audience in the EU courts for the UK solicitors and the respect for the legal professional privilege of lawyer-client communications. In some segments of the legal profession, these are the crucial practice rights and since the referendum's result the Society has seen a number of English and Welsh solicitors requalify in Ireland or Belgium.

Should the UK leave the EU without securing a new agreement, the rules of the WTO would apply. However, the current WTO framework, based on the General Agreement on Trade in Services (GATS) does not offer such generous market access as the current EU regime. Despite this, he continued to point out, the UK should remain open to third-country businesses and professionals, as it is the case now.

The EU referendum result has also cast some doubt on the future attractiveness of English courts as the jurisdiction of choice. He added that some legislative instruments, such as the Brussels I Regulation, make it possible to have the UK judgments recognised and enforced within the EU and their continuation would help maintain the attractiveness of England and Wales as jurisdiction of choice.

The oral evidence session is part of the Sub-Committee's **inquiry** into future trade between the UK and the EU. Law Society of England and Wales submitted written evidence to the Sub-Committee earlier in October. It is part of the Law Society's ongoing engagement strategy with the Government.

To watch the full evidence session, click **here**.

"Brexit: Protecting Professions" - 18th October 2016

The Joint Law Societies Brussels Office held a roundtable discussion event on Brexit and protecting the professions at the Brussels office.

The seminar was held to provide an opportunity for lawyers and accountants to hear from the Law Societies and ICAEW about their plans regarding the issues arising out of the upcoming Brexit negotiations. It was also a chance for members and stakeholders to voice their concerns.

Brexit will potentially have an impact on the ability of professionals to establish themselves and practice their professions in the European Union. There many questions and dimensions to the right to practice professions, from the acceptance of qualifications to equal treatment rights. This event provided an arena for members, stakeholders and those representing them to discuss the potential problems, key concerns and strategies to consider going forward to proactively protect those working in the professions in the EU.

Many attendees have been in touch since and the dialogue between the UK Law Societies and its members will be ongoing as the process of exiting the EU progresses. Future events and seminars will be held periodically to provide updates and maintain communication with its particularly affected members.

If you have enquiries about any of the above, please do not hesitate to get in touch with the Brussels office.

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Law Society of England and Wales responds to HMRC consultation on 'enablers' of tax avoidance

The Law Society of England and Wales has responded to a consultation by HMRC on strengthening tax avoidance sanctions and deterrents, in which HMRC sought comment on proposals to increase their ability to target those who HMRC considered to be 'enabling' aggressive tax avoidance.

The Law Society of England and Wales expressed concern that punishing solicitors for giving honest advice on complex legal questions only hampers their ability to give any advice in the first place, increasing the risk taxpayers may unwittingly enter into unacceptable tax avoidance schemes. This is the very opposite of what we understand HMRC is trying to achieve.

The Law Society of England and Wales also objected to proposals to reverse the burden of proof in some cases, requiring the taxpayer or adviser to prove they took 'reasonable care' with their tax arrangements if they are challenged, as a lawyer would not be able to defend themselves without the client's consent to waive the protections of legal professional privilege. No client should feel pressured to do so, and no penalty regime should rely on an assumption that clients will waive privilege.

Read the full response **here**

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Law Society of England and Wales statement on human rights lawyers

Lawyers play a vital part in upholding the rule of law, ensuring that everyone's human rights are respected and that government bodies are held to account, the Law Society of England and Wales said today.

'Human rights are universal and many countries look to the UK as an example of a fair society where the rule of law and respect for human rights are integral to the national identity,' Law Society of England and Wales' president Robert Bourns said.

'Moreover, Britain's standing internationally and as a jurisdiction of choice is underpinned by the independence of the judiciary and legal profession. This independence hinges on their not being hindered or intimidated in carrying out their professional duties nor being identified with their clients or clients' causes. This principle is set out in the United Nations Basic Principles on the Role of Lawyers.

'In jurisdictions where lawyers are unable to carry out their legitimate professional duties for fear of intimidation, arrest or detention, they cannot properly uphold the rule of law or effectively represent their clients.

'The right to access to justice for all depends on everyone being represented within our framework of laws, no matter how they or their case may be perceived by the public, media or government.'

Recognition by the government of importance of access to justice welcomed by Law Society of England and Wales

unable to recover compensation for injuries was hailed today as a victory for access to justice by the Law Society of England and Wales.

Law Society of England and Wales Chief Executive Catherine Dixon said: 'We're delighted the government has recognised that its proposed changes to personal injury claims would hamper access to justice, particularly for those on lower incomes. Anyone who suffers injury through no fault of their own should be entitled to claim the compensation they need to help them recover and get on with their lives.

'We are very pleased that the government has recognised the importance of ensuring that everyone, including the most vulnerable in society, has the right to access justice when they are injured by someone else's negligence.

'Many personal injury claims, even at lower value, can be complex and can result in a David and Goliath situation where the person bringing the claim is unrepresented.

'Ordinary citizens who have suffered minor soft tissue injury need expert legal help to navigate the court system and rely on specialist solicitors to help them secure the compensation they are entitled to.

This decision is great news for ordinary citizens and for access to justice.'

The Law Society of Northern Ireland meeting with the Government of Northern Ireland in relation to Brexit concerns

Law Society of Northern Ireland ("**LSNI**") President John Guerin and Chief Executive Alan Hunter recently met with Lord Dunlop, Parliamentary Under Secretary of State to James Brokenshire MP, Secretary of State of State for Northern Ireland, to discuss the implications of Brexit for the legal community in Northern Ireland. The LSNI set out the particular circumstances of Northern Ireland as the only UK region with a land border with another EU Member State and how the provision of cross-border legal services was integral to the offering provided by many law firms in the jurisdiction. Lord Dunlop noted that the unique position of Northern Ireland was recognised and given appropriate priority both in London and amongst the other EU Member States.

Accordingly, the LSNI representatives stated their willingness to engage with the Government by articulating the views of the profession in Northern Ireland and the potential implications of Brexit for the smooth provision of cross-border services to a diverse client base. These concerns are applicable not just to firms situated along the border with the Republic of Ireland, but apply also to firms across NI advising businesses with a presence in both jurisdictions. Additional issues on cross-border services were raised, including the enforcement of judgments in EU Members States and the centrality of mutual recognition in the context of neighbouring jurisdictions.

The LSNI further took the opportunity to highlight the importance of marketing the UK generally and Northern Ireland in particular as a destination of choice in the wake of Brexit. The LSNI set out its view that a minimisation of the risks flowing from Brexit must coincide with the maximisation of opportunities for the NI legal sector in the context of work ongoing at the Department for International Trade. The Society welcomed the opportunity to engage directly with the Government and it was agreed that the concerns and views of the NI legal sector would be taken into account on an ongoing basis as the preparation and negotiation process develops.

Commission's request for lawyers participation in survey

Every year the European Commission publishes a **EU Justice Scoreboard** which gives a comparative overview of the efficiency, quality and independence of justice systems in the EU Member States. The aim of

the Scoreboard is to assist national authorities in their efforts to improve their justice systems, by providing this comparative data.

Following the success of last year, the Commission is requesting lawyers to undertake a survey concerning the use of electronic tools in judicial proceedings which may be included in the 2017 edition of the EU Justice Scoreboard.

Please click on the appropriate links below to participate in the survey and note that the deadline is 28 November 2016.

ENGLAND AND WALES:

- **https://www.surveymonkey.com/r/ccbeukenglandwales**

SCOTLAND:

- **https://www.surveymonkey.com/r/ccbeukscotland**

NORTHERN IRELAND:

- **https://www.surveymonkey.com/r/ccbeuknorthernireland**

Increased civil court fees would be damaging to access to justice in Scotland

The Law Society of Scotland has said that plans to introduce the full recovery of civil court costs in Scotland would be damaging to access to justice, particularly for those bringing forward personal injury cases and more vulnerable people.

In its response to the Scottish Government's consultation on Scottish Court Fees, the Law Society of Scotland has stated that any move towards full cost recovery should be avoided and that the state has a duty to help people in achieve 'equality of arms' in the courtroom.

The Society also states that a proposal to introduce a 24% rise in court fees would be 'unjust and unjustifiable'.

Syd Smith, from the Law Society of Scotland's Remuneration Committee, representing the views of pursuers' solicitors, said: "We believe it is essential that the courts should provide an independent and impartial forum for resolving disputes between people or organisations and that the state has a duty to help those involved have equality of arms when their cases go to court."

The Law Society of Scotland has said that any new system for court fees would have to ensure they were proportionate, taking into account Lord Gill's Review of the Scottish Civil Courts, and the findings of Sheriff Taylor in his Review of Expenses and Funding of Civil Litigation in Scotland.

Mr Smith said: "We think the focus of any review of court fees should be on redressing the balance between claimants and defenders in personal injury cases. However, if the government's aim is to have a system where 100% of the cost of the courts are covered by fees paid by those involved in the actions lodged, it will be vital to have proportionate fee levels.

"The consultation option to introduce a 24% rise in court fees would represent an unjust and unjustifiable increase which would create a very real barrier to access to justice for claimants especially vulnerable people who have suffered life changing personal injuries.

"Any change to the current system also needs to recognise that there is not a level playing field between personal injury claimants and the insurance companies who are the defenders in those claims. Any changes which fail to recognise this problem risk widening the existing gap."

The Law Society of Scotland's full response is available on the website: **Court fees**

Joint statement on the possible reinstatement of the death penalty in Turkey

The three Law Societies of the UK (England and Wales, Scotland and Northern Ireland) have all co-signed a statement from the CCBE, the Council of Bars and Law Societies of Europe, condemning attempts to reinstate the death penalty in Turkey. The statement was co-signed by 36 law societies and Bar associations.

Statement on the possible reinstatement of the death penalty in Turkey:

The right to life is guaranteed by all major international and regional human rights treaties. The European Court of Human Rights has interpreted the right to life as "an inalienable attribute of human beings" and a "supreme value in the international hierarchy of human rights".1

The undersigned organisations believe that the abolition of the death penalty contributes to the fostering and protection of human dignity and the gradual development of a global culture of human rights.

The undersigned therefore condemn, in the strongest terms, any attempt to reinstate the death penalty in Turkey.

The undersigned insist on the fact that Turkey is a member of the Council of Europe and a signatory of the European Convention on Human Rights. Consequently, Turkey is bound by Protocols 6 and 13 of the Convention which abolish the death penalty. In Turkey, the last execution took place in 1984. The death penalty was abolished for ordinary crimes in 2002, and finally abandoned on 7 May 2004. In addition, in 2006, Turkey became the 57th State to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Therefore, the undersigned call upon the Turkish government to respect its international commitments, reminding them that Turkey has supported the recent World Congress Against the Death penalty held on 21-23 June 2016 in Oslo.

Criminal justice system to be accessible and provide inclusive service for all

The Law Society of Scotland has said that that consideration will be needed to ensure that the service provided by Crown Office and Procurator Fiscal Service (COPFS) service and others is accessible and inclusive for all members of society.

In its response to an **Inquiry** on the role and purpose of the COPFS, the Law Society of Scotland also stated that all participants involved in the criminal justice system have responded to a number of reforms during a time of significant financial pressure.

Ian Cruickshank, convener of the Law Society of Scotland Criminal Law Committee, said: "It's important that the criminal justice system evolves and makes use of new technology which can help improve the service particularly when there continues to be financial pressures alongside increasing numbers of serious crime reported to the COPFS and legislative developments.

"However it is important to be aware of the potential impact on core services at a local level and on access to justice. There will need to be careful consideration on how best to ensure the service provided by the COPFS and others within the criminal justice system is accessible and inclusive to all member of society.

"Lack of resources has had an impact on the preparation and the time available for presenting criminal prosecutions in our courts. The number of prosecutions resulting in court disposals has decreased in the past five years, however the complexity of the impact of recent legislation, and the complexity of certain types of cases reported, means more preparation and court time is required."

The Law Society of Scotland also commented on increased joint working between the different organisations involved in the criminal justice system.

Mr Cruickshank said: "There have been improvements as a result of increased coordination and there is potential for this to be extended, for example to allow for Law Society of Scotland representation on the National Justice Board and for wider representation of defence solicitors in the work of local Justice Boards.

This and other initiatives, including use of new technology, could bring improvements and reduce delays within the criminal justice system."

Read the full response on the Law Society of Scotland **website**

Law Society of Scotland staff raise over £9,000 for Cystic Fibrosis Trust

Law Society of Scotland staff have raised a total of £9,040 for the Cystic Fibrosis Trust over the past year.

A huge range of fundraising activity by staff from across the organisation contributed to the grand total including climbing Ben Nevis, running in the Edinburgh marathon relay and the Great Edinburgh run, a table tennis tournament, pub quiz, raffles and lots of baking.

Nicola Holland, Community Fundraiser for Scotland at Cystic Fibrosis Trust, said: "We're delighted the Law Society chose to support the Cystic Fibrosis trust this year. They've raised a fantastic amount which will help us fight for a life unlimited for those affected by Cystic Fibrosis."

Cystic fibrosis is a genetic condition affecting more than 10,800 people in the UK. The Cystic Fibrosis Trust are working towards a brighter future for everyone with cystic fibrosis by funding cutting-edge research, driving up standards of care and supporting people with the condition and their loved ones.

Lorna Jack, Chief Executive of the Law Society of Scotland, said: "I'd like to thank all my colleagues for volunteering their time and skills over the past year. This is an amazing total and one that'll be hard to beat next year for our new charity!"

Law Society staff vote for a new charity each year to focus their fundraising efforts with recent nominees including Fresh Start in 2015/16 and Guide Dogs Scotland in 2014/15.

ONGOING CONSULTATIONS

Internal Market

Public Consultation in relation to the REACH REFIT evaluation

28.10.2016 – 28.01.2017

Public consultation on Internal Market for Goods – Enforcement and Compliance

01.07.2016 – 31.10.2016

Public Consultation on Single Market Information Tool

02.08.2016 – 07.11.2016

Single Digital Gateway

26.07.2016 - 21.11.2016

Competition

Public consultation on the Evaluation of procedural and jurisdictional aspects of EU

merger control
07.10.2016 – 13.01.2017

Home Affairs

Public Consultation on the programme "Prevention of and fight against Crime"
14.07.2016 to 15.11.2016

Public Consultation on the programme "Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks"
14.07.2016 to 15.11.2016

Banking and Finance

Public consultation on a potential EU personal pension framework
27.07.2016 to 31.10.2016

COMING INTO FORCE THIS MONTH

Company law and financial services

Corrigendum to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC

Environment

Council Decision (EU) 2016/1841 of 5 October 2015 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change

CASE LAW CORNER

Decided cases

Data Protection

Case 582/14 *Patrick Breyer v Bundesrepublik Deutschland* decided on 19 October 2016

- The operator of a website may have a legitimate interest in storing certain personal data relating to visitors to that website in order to protect itself against cyber attacks.
- The dynamic internet protocol address of a visitor constitutes personal data, with respect to the operator of the website, if that operator has the legal means allowing it to identify the visitor concerned with additional information about him which is held by the internet access provider.

Case C-166/15 *Aleksandrs Ranks and Jurijs Vasilevics* decided on 12 October 2016

- The initial acquirer of a copy of a computer program, accompanied by an unlimited user licence, may resell that copy and his licence to a new acquirer.
- However, where the original material medium of the copy that was initially delivered has been damaged, destroyed or lost, that acquirer may not provide his back-up copy of that program to that new acquirer without the authorisation of the rightholder.

Criminal Law

Case C-601/14*European Commission v Italian Republic* decided on 11 October 2016

- By failing to guarantee just and appropriate compensation for victims of all violent intentional crimes committed in cross-border situations, Italy has failed to fulfil its obligations under EU law.
- The Member States must guarantee victims not only access to compensation in accordance with the principle of the prohibition of discrimination, but also a minimum level of compensation for all types of violent crime.

Family Law

Case C-294/15 *Edyta Mikolajczyk v Marie Louise Czarnecka and Stefan Czarnecki* decided on 13 October 2016

- EU law applies to an action for annulment of marriage brought by a third party following the death of one of the spouses. However, a person other than one of the spouses who brings such an action may rely on only some of the grounds of jurisdiction provided for under EU law.

Immigration

Case C-429/15 *Evelyn Danqua v Minister for Justice and Equality, Ireland and the Attorney General* decided on 20 October 2016

- A national procedural rule laying down a time limit of 15 working days in which to make an application for subsidiary protection is precluded by EU law, since it is capable of compromising the ability of applicants to avail themselves of the rights under EU law.

Pensions

Case C-211/15 P *Orange v Commission* decided on 26 October 2016

- The Court rejects France Télécom's appeal in the case involving the reform of the arrangements for financing the pensions of civil servants working for that company.
- It follows that the Commission's decision that the reform constitutes State aid compatible with the internal market on certain conditions set by the Commission is valid.

Opinions of the Advocate General

Competition

Case C-13/14P *Intel Corporation Inc v Commission* Advocate General Wahl's opinion on 20 October 2016

- Advocate General Wahl considers that Intel's appeal against the imposition of a €1.06 billion fine for abuse of its dominant position should be upheld .

Upcoming decisions and Advocate General opinions in October

Recognition and Enforcement of Judgments

Case C-618/15 *Concurrence Sàrl v Samsung Electronics France SAS, Amazon Services Europe Sàrl* Advocat General Wathelet Opinion on 9 November 2016

Question referred by the French Court:

- Is Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 1 to be interpreted as meaning that, in the event of an alleged breach of a prohibition on resale outside a selective distribution network and via a marketplace by means of online offers for sale on a number of websites operated in various Member States, an authorised distributor which considers that it has been adversely affected has the right to bring an action seeking an injunction prohibiting the resulting unlawful interference in the courts of the territory in which the online content is or was accessible, or must some other clear connecting factor be present?

Case C-417/15 *Wolfgang Schmidt v Christiane Schmidt* Advocat General Kokott Opinion on 16 November 2016

Question referred to by Austrian Court:

- Does a proceeding concerning the avoidance of a contract of gift on the ground of the donor's incapacity to contract and the registration of the removal of an entry evidencing the donee's right of ownership fall within the scope of Article 24(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, 1 which provides for exclusive jurisdiction over rights in rem in immovable property?

Consumer law

Case C-149/15 *Sabrina Wathelet v Garage Bietheres & Fils SPRL* Advocat General

Saugmandsgaard Øe on 9 November 2016

Question referred by the Belgian Court:

- Must the term 'seller' of consumer goods referred to in Article 1649bis of the Belgian Civil Code, which transposes into Belgian law Directive 1999/44/EC 'on certain aspects of the sale of consumer goods and associated guarantees', be interpreted as covering not only a trader who, as seller, transfers ownership of consumer goods to a consumer, but also a trader who acts as intermediary for a non-trade seller, whether or not he is remunerated for his intervention and whether or not he has informed the prospective buyer that the seller is a private individual?

Case C-568/15 *Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v comtech GmbH* Advocat General Szpunar on 10 November 2016

Question referred by the German Court:

- Is the first paragraph of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights to be interpreted as meaning that, where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer contacting the trader by telephone must not incur higher charges than those that the consumer would incur for calling a standard (geographic) fixed or mobile number?
- Does the first paragraph of Article 21 of Directive 2011/83/EU preclude national legislation according to which, where a trader operates a shared-cost service on an 0180 number for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer must pay that which the telecommunications service provider charges the consumer for the use of that telecommunications service, even where those charges exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number?
- Does the first paragraph of Article 21 of Directive 2011/83/EU not preclude such national legislation where the telecommunications service provider does not pass on to the trader part of the charges that he receives from the consumer for contacting the trader on the 0180 number?

Free movement of services

Case C-316/15 *The Queen on the application of Hemming (trading as "Simply Pleasure Ltd.") and others v Westminster City Council* to be decided on 16 November 2016

Question referred to by the Supreme Court of the United Kingdom:

- Where an applicant for the grant or renewal of a sex establishment licence has to pay a fee made up of two parts, one related to the administration of the application and non-returnable, the other for the management of the licensing regime and refundable if the application is refused:
    - does the requirement to pay a fee including the second refundable part mean, as a matter of European law and without more, that the respondents incurred a charge from their applications which was contrary to article 13(2) of Directive 2006/123/EC on Services in the Internal Market**1** in so far as it exceeded any cost to Westminster City Council of processing the application?
    - does a conclusion that such a requirement should be regarded as involving a charge - or, if it is so to be regarded, a charge exceeding the cost to Westminster City Council of processing the application - depend on the effect of further (and if so what) circumstances, for example:
        - evidence establishing that the payment of the second refundable part involved or would be likely to involve an applicant in some cost or loss,
        - the size of the second refundable part and the length of time for which it is held before being refunded, or
        - any saving in the costs to Westminster City Council of processing applications(and so in their non-refundable cost) that results from requiring an up-front fee consisting of both parts to be paid by all applicants?

Criminal law

Case C-554/14 *Ognyanov* to be decided on 8 November 2016

Question referred by the Bulgarian Court:

- Do the provisions of Framework Decision 2008/909/JHA preclude the executing State from reducing the duration of the sentence of deprivation of liberty imposed by the issuing State, on account of work undertaken while that sentence was being served in the issuing State, as follows:
    - Reduction of the sentence in accordance with Article 17(1) of the Framework Decision: does that provision permit the law of the executing State on the enforcement of the sentence to be applied even at the stage of the transfer procedure in respect of matters (namely work undertaken in prison in the issuing State) which occurred while the sentenced person was under the jurisdiction of the issuing State?
    - Reduction of the sentence as a result of a deduction made in accordance with Article 17(2) of the Framework Decision: does that provision permit the deduction of a period that is longer than the period of deprivation of liberty determined in accordance with the law of the issuing State, where the law of the executing State is applied and, as a result, a fresh legal assessment is made of matters which occurred in the issuing State (namely work undertaken in prison in the issuing State)?
- In the event that these or other provisions of the Framework Decision are applicable to the reduction in sentence at issue, is the issuing State required to be notified if it has made a specific request to that effect, and is the transfer procedure to be discontinued if the issuing State objects? If there is a notification requirement, what should the nature of that notification be: should it be in general and abstract terms as regards the applicable law, or should it relate to the specific reduction in sentence which the court will impose on a particular sentenced person?

Case C-528/15 *Policie CR v Salah Al Chodor and Others* Advocat General Saugmandsgaard Øe on 10 November 2016

Question referred by the Czech Court:

- Does the sole fact that a law has not defined objective criteria for assessment of a significant risk that a foreign national may abscond (Article 2(n) of Regulation No 604/2013) render detention under Article 28(2) of that regulation inapplicable?

Case C-477/16 *Openbaar Ministerie v Ruslanas Kovalkovas* to be decided on 10 November 2016

Question referred by the Dutch Court:

- Are the expressions 'judicial authority', within the meaning of Article 6(1) of Framework Decision 2002/584/JHA, 1 and 'judicial decision', within the meaning of Article 1(1) of Framework Decision 2002/584/JHA, autonomous terms of EU law?
- If yes: what are the criteria for determining whether an authority of the issuing Member State is such a 'judicial authority' and whether the EAW issued by it is consequently such a 'judicial decision'?
- If yes: is the Ministry of Justice of the Republic of Lithuania covered by the term 'judicial authority', within the meaning of Article 6(1) of Framework Decision, and is the EAW issued by that authority consequently a 'judicial decision' within the meaning of Article 1(1) of Framework Decision?
- If no: is the designation of an authority such as the Ministry of Justice of the Republic of Lithuania as the issuing judicial authority in conformity with EU law?

Employment / Anti-discrimination law

Case C-548/15 *J.J. de Lange v Staatssecretaris van Financiën* Advocat General Mengozzi on 10 November 2016

Question referred to by the Dutch Court:

- Must Article 3 of Council Directive 2000/78/EC 2000 be interpreted as meaning that the provision applies to a concession contained in tax legislation on the basis of which study costs may, under certain conditions, be deducted from the taxable income?
- If no: must the principle of non-discrimination on the grounds of age, as a general principle of EU law, be applied to a tax concession on the basis of which training expenditure is only deductible under certain circumstances, even when that concession falls outside the material scope of Directive 2000/78/EC and when that arrangement does not implement EU law?

- If yes:
    - can differences in treatment which are contrary to the principle of non-discrimination on the grounds of age as a general principle of EU law be justified in a way provided for in Article 6 of Directive 2000/78/EC?
    - If not, what criteria apply to the application of that principle or to the justification of a distinction based on age?
    - Should Article 6 of Directive 2000/78/EC and/or the principle of non-discrimination on the grounds of age be interpreted as justifying a difference in treatment on the grounds of age if the ground for that difference in treatment only relates to some of the cases affected by that distinction?
    - Can a distinction based on age be justified by the view of the legislator that beyond a certain age a tax concession need not be available because it is the 'personal responsibility' of the person claiming it to achieve the objective pursued by the concession?

Case C-258/15 *Gorka Salaberria Sorondo v Academia Vasca de Policía y Emergencias* on 15 November 2016

Question referred to by the Spanish Court:

- Is the setting of a maximum age of 35 years as a condition for participation in the selection process for recruitment to the post of officer of the police force of the Autonomous Community of the Basque Country (Policía Autónoma Vasca) compatible with the interpretation of Article 2(2), Article 4(1) and Article 6(1)(c) of Council Directive 2000/78/EC 1 of 27 November 2000?

Case C-216/15 *Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH* on 17 November 2016

Question referred to by the German court:

- Does Article 1(1) and (2) of Directive 2008/104/EC 2008 on temporary agency work 1 apply to the assignment of a member of an association to another undertaking for the performance of work under that undertaking's functional and organisational instructions if, upon joining the association, the member undertook to make his full working capacity available also to third parties, for which he receives a monthly remuneration from the association, the calculation of which is determined by the usual criteria for the particular activity, and the association receives, in return for the assignment, compensation for the personnel costs of the association member and a flat-rate administrative charge?

Case C-443/15 *Dr David L. Parris v Trinity College Dublin, Higher Education Authority, Department of Public Expenditure and Reform, Department of Education and Skills* on 24 November 2016

Question referred to by Irish Labour Court:

- 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 no: 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: -
    - 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
    - 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 no: 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 ?

Family law

Case C-541/15 *Mircea Florian Freitag* Advocat General Szpunar on 24 November 2016

Question referred to by the German Court:

- Are Articles 18 TFEU and 21 TFEU to be interpreted as meaning that the authorities of a Member State are obliged to recognise the change of name of a national of that State if that person is at the same time a national of another Member State and has, in that other Member State, by means of a change of name not associated with a change in family-law status, (re-) acquired his original family name received at the time of birth, even though the acquisition of that name did not take place during the habitual residence of that national in that other Member State and was carried out at his own request?

Third Country Nationals

Case C-544/15 *Sahar Fahimian v Bundesrepublik Deutschland* Advocat General Szpunar on 29 November 2016

Question referred to by German Court:

- 1a. Is Article 6(1)(d) of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service to be interpreted as meaning that the competent authorities of the Member States are able to exercise a degree of discretion in examining whether a third-country national who applies to be admitted for the purposes set out in Articles 7 to 11 of that directive is regarded as a threat to public policy, public security or public health, as a result of which discretion the assessment by the authorities may be subject to only limited judicial review?
- 1b. If the answer to question 1a is yes:
    - What are the legal limits placed on the competent authorities of the Member States when making the assessment that a third-country national who applies to be admitted for the purposes set out in Articles 7 to 11 of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service is to be regarded as a threat to public policy, public security or public health, particularly in view of the facts underlying that assessment and their evaluation?
- Is Article 6(1)(d) of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service to be interpreted as meaning that the Member States are thereby empowered, in a case such as the present, in which a third-country national from Iran, who obtained her university degree from the Sharif University of Technology (Tehran) in Iran, which specialises in technology, engineering and physics, seeks entry for the purpose of taking up doctoral studies in the area of IT-security research within the framework of the 'Trusted Embedded and Mobile Systems' project, in particular the development of effective security mechanisms for smartphones, to deny entry to their territory, stating as grounds for this refusal that it could not be ruled out that the skills acquired in connection with the research project might be misused in Iran, for instance for the acquisition of sensitive information in Western countries, for the purpose of internal repression or more generally in connection with human rights violations?

Public Procurement and Social Security

Case C-199/15 *Ciclat Soc. Coop. v Consip SpA, Autorità per la Vigilanza sui Contratti pubblici di lavori, servizi e forniture* on 10 November 2016

Question referred to by Italian Court:

- Does Article 45 of Directive 18/2004 read in the light of the principle of reasonableness, and Articles 49 and 56 TFEU preclude national legislation which, in relation to a threshold–based procurement procedure, allow a request to be made by the contracting authority on its own initiative for the certificate issued by the social

security institutions ('DURC') and oblige that authority to exclude the tenderer if the certificate discloses an earlier failure to pay contributions, in particular one existing at the time of participation but not known to that operator, which took part on the strength of a positive currently valid DURC, but that infringement in any case no longer exists at the time of the award or of the verification carried out on the contracting authority's own initiative?

About us

The Law Society of England & Wales set up the Brussels office in 1991 in order to represent the interests of the solicitors' profession to EU decision-makers and to provide advice and information to solicitors on EU issues. In 1994 the Law Society of Scotland joined the office and in 2000, the Law Society of Northern Ireland joined. The office follows a wide range of EU issues which affect both how solicitors operate in practice and the advice which they give to their clients. For further details on any aspect of our work or for general enquiries, please contact us: **brussels@lawsociety.org.uk**

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For those wishing to subscribe for free to the Brussels Agenda electronically and/or obtain documents referred to in the articles, please contact **Antonella Verde**. The Brussels Office also produces regular EU updates covering: Civil Justice; Family Law; Criminal Justice; Employment Law; Environmental Law; Company Law and Financial Services; Tax Law; Intellectual Property; and Consumer Law as well as updates on the case-law of the European Court of Justice. To receive any of these, contact **Antonella Verde** stating which update(s) you would like.

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
David Harry
Trainee Solicitor
david.harry@lawsociety.org.uk
Madeleine Lamond
Trainee Solicitor
madeleine.lamond @lawsociety.org.uk
Frances Shipsey
Trainee Solicitor
frances.shipsey@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**