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Reportage

Not quite "all change"

The rules of the game "musical chairs" are different in Brussels to elsewhere.

Normally one chair disappears after each round of music. In Brussels the players all agree to take away some chairs and then they change their minds and put them all back. They sometimes have to bring in new players half way through the game and sometimes one player even gets to have two chairs.

You might roll your eyes. The distribution of dossiers among the nominated European Commissioners is, however, a delicate balancing act. It is a balance that has helped the EU to contribute to peace and relative prosperity in Europe for decades.

This month has seen the European Parliament scrutinise the candidates for the next European Commission. Through a series of "hearings", Parliament has been deciding whether the right people are sitting in the right chairs.

At the time of writing only the Bulgarian candidate Rumiana Jeleva failed to get a place when the music stopped and was replaced by the Bulgarian Vice President of the World Bank, Kristalina Georgieva. The Parliament is due to vote to approve the entire Commission on 9 February, allowing it to take office the next day.

Some appointments are of particular note to the legal profession. Viviane Reding stays on as Commissioner from Luxembourg but takes on the justice portfolio. She has already made clear her ambition for the EU's work on contract law, which seems to extend beyond a mere "toolbox" of principles and terminology. In her hearing she also emphasised the importance of fundamental rights and the EU's forthcoming accession to the European Convention on Human Rights. Her dossier also takes in proposals governing wills and succession, marriage and divorce.

Frenchman Michel Barnier has been given the "internal market" chair. This includes stewardship of the EU's reform of the financial services sector as well as a review in the coming years of the Lawyers' Establishment Directive. If that was not enough, designing a suitable framework for copyright and other intellectual property rights, particularly in the online world, is something he will have a hand in.

Another returning Commissioner, Joaquim Almunia, takes over the competition portfolio held until now by Neelie Kroes. While some disappointment had been expressed by parliamentarians after Kroes' hearing, she should also return to shape the Commission's "digital agenda".

Moving from the trade portfolio, Baroness Cathy Ashton is tasked with occupying two chairs: Vice President of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy. This new position is an innovation of the Lisbon Treaty and intends to ensure that responsibility for representing the EU internationally is borne by one person.

More than half of the 27 Commissioners will be new to the role but many are not new to European politics. Cecilia Malmström takes on the home affairs dossier, which has been split from justice. Until now she has been Sweden's EU Minister and was previously a Member of the European Parliament. The new Commissioner for climate change is Denmark's Connie Hedegaard, the Minister responsible for the recent UN Climate Change Conference in Copenhagen.

All being well, José Manuel Barroso and his 26 colleagues will start work officially on planning their five-year term of office within a fortnight. As such the legal landscape that practitioners have to navigate will continue to evolve. We encourage them to lend their expertise to shaping this.



- **The members of the Barroso Commission-designate**



Professional Practice

SERVICES DIRECTIVE

One-stop shop for provision of services in the EU launched

Directive 2006/123 on services in the internal market (the "Services Directive") came into effect on 28 December. The Directive requires Member States to remove unjustifiable or discriminatory requirements affecting the setting up or carrying on of a service activity and aims to improve access to services throughout the EU. One way it seeks to do this is to provide a one-stop shop through "Points of Single Contact" where service providers, including lawyers, can get all the information they need about setting up in another Member State. The European Commission has published a list of the Points of Single Contact in each Member State. The Point of Single Contact for the United Kingdom is the Business Link website.



WEBLINKS

- [UK Business Link](#)
- [EU Points of Single Contact](#)

SERVICES DIRECTIVE

Client care rule obligations explained

The Law Societies have each taken steps to advise their members on their obligations under the new Provision of Services Regulations 2009. These came into force on 28 December and implement Directive 2006/123 on services in the internal market. The new rules oblige solicitors to provide clients with information over and above the requirements set out in the relevant codes of conduct in each jurisdiction. Such information includes that on professional indemnity insurance and non-judicial dispute resolution procedures.



WEBLINKS

- [Directive 2006/123 on services in the internal market](#)
- [Provision of Services Regulations 2009](#)
- [Guidance for Business on the Provision of Services Regulations](#)
- [Law Society of England and Wales Practice Note on Provision of Services Regulations 2009](#)

ESTABLISHMENT DIRECTIVE

Court of Justice to examine professional recognition and use of title

In a case filed last year, the Hungarian courts asked for guidance from the Court of Justice on the application of EU rules dealing with the recognition of qualifications and establishment of lawyers. The applicant (Dr Ebert) is a German citizen licensed to practise as a lawyer in Germany and a member of the German Bar. He has a permit to live and work in Hungary. The Hungarian court asked whether the Lawyers' Establishment Directive (98/5) and the Diplomas Directive (89/48), which was replaced with the recognition of professional qualifications Directive (2005/36), allow Dr Ebert to use the Hungarian titles "ügyvéd" (lawyer) and "európaiközösségi jogász" (Community lawyer), in addition to the German title "Rechtsanwalt" (lawyer), despite not being admitted to the Hungarian bar.



WEBLINKS

- [Reference in Dr Donat Cornelius Ebert v Budapesti Ügyvédi Kamara \(C-359/09\)](#)

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Law Societies' News

Competition Section Events

The Competition Section is holding events in London and Brussels this month. In London on 9 February John Penrose MP, Shadow Minister for Business, will talk about the Conservative Party's approach to competition policy. In Brussels on 25 February Karen Williams and Michael Albers of the European Commission will discuss the increasing role of the Hearing Officer.

For more information and to register click [here](#).

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Conference on mutual trust in justice matters

On 12 February the European Cross-Border Justice Project is hosting a high level conference entitled "mutual trust: a mutual challenge". The Conference will provide a unique forum of exchange between judges, government officials, practitioners, NGOs and academics. The conference considers: the Treaty of Lisbon; the European Arrest Warrant; the cross-border acquis; mutual legal assistance; fundamental rights and white collar crime. Speakers include Sir Nicolas Bratza, Vice-President of the European Court of Human Rights and Judge Lars Bay Larsen, Court of Justice. The conference is co-sponsored by the Law Society of England and Wales' charity and is to be held at the London office of Freshfields Bruckhaus Deringer.

To register, click [here](#).

Anti-money laundering networking

Throughout February, the Law Society of England and Wales is running a series of free Money Laundering Reporting Officer (MLRO) regional networking groups in association with 192business and Accuity. The groups are for MLROs, their deputies and senior compliance staff in legal practices and are designed to facilitate discussions about good practice and the challenges of anti-money laundering compliance.

To find out about your nearest networking group and to register, click [here](#).



CRIMINAL LAW

Criminal justice reform delayed

The entry into force of the Treaty of Lisbon on 1 December brought about significant changes to the area of police and judicial cooperation in criminal matters; not least in terms of removing the national veto and giving equal decision-making power to the European Parliament. Formerly dealt with under the old Treaty on European Union, this area will now be dealt with under the Treaty on the Functioning of the European Union. Such changes have meant that existing proposals, not yet adopted, will have to be withdrawn and reintroduced under the new legal regime. These include the proposed Framework Decisions on: the use of passenger name records for law enforcement purposes; combating the sexual abuse, sexual exploitation of children and child pornography; preventing and combating trafficking in human beings, and protecting victims; and the right to interpretation and to translation in criminal proceedings. It has already been confirmed that the latter will be re-presented as a Member State initiative.



WEBLINKS

- [Communication on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures](#)
- [Communication on the consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures: Annex 2](#)
- [General Secretariat of the Council of the EU Background Note on the Lisbon Treaty's impact on the Justice and Home Affairs \(JHA\) Council: More co-decision and new working structures](#)
- [Court of Justice of the European Communities Press Release of 30 November 2009 on the Treaty of Lisbon and the Court of Justice of the European Union](#)
- [Law Society of England and Wales Guide to the Treaty of Lisbon](#)

- [Initiative for a Directive on the rights to interpretation and to translation in criminal proceedings](#)

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COMPETITION LAW

Commission sets out "best practices"

Only a matter of days into 2010 and the cogs of the European Commission were in motion. Three documents outlining guidance and best practice in the field of antitrust proceedings were published. They concern: the conduct of antitrust proceedings generally; the procedures of Hearing Officers in such proceedings; and the submission of economic evidence and data. Although the documents are being provisionally applied already, the Commission has noted that it is seeking views on them until 3 March 2010. The documents set out some detail on issues such as: "state of play" meetings; "triangular" meetings between DG Competition and all the parties involved; and the practice of offering parties the opportunity to meet with senior officials or the Commissioner where appropriate. The two Hearing Officers will be participating at an event at the Societies' Brussels office in February.



WEBLINKS

- [European Commission public consultation: Best practices in antitrust proceedings and submission of economic evidence; Hearing Officers' guidance paper](#)

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TAXATION

EU tackles information exchange and savings income

On 19 January the Council of Ministers agreed on a Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures. The proposal is an overhaul of Directive 76/308, extending its scope to cover all taxes and duties and obliging national authorities, at the request of another EU country, to provide any information which is foreseeably relevant to the requesting authority in the recovery of its claims. It had been hoped that political agreement would be reached on the proposal to revise the Savings Tax Directive (2003/48). Austria and Luxembourg, however, continue to object to the proposal, which provides for an automatic exchange of information between tax authorities. In the European Parliament on 26 January, however, its Economic and Monetary Affairs Committee voted in favour of a call for automatic information exchange between tax authorities internationally. This has been seen as a victory for those eager to do away with banking secrecy. The proposal on mutual assistance and another on administrative cooperation were also voted through by Members and now need to be adopted formally by Member States.



WEBLINKS

- [European Parliament Committee on Economic and Monetary Affairs – meeting documents 26-27 January 2010](#)
- [Council general approach for a proposed directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures](#)
- [Proposal for a Directive on administrative cooperation in the field of taxation](#)
- [Commission proposal for a Directive amending Directive 2003/48 on taxation of savings income in the form of interest payments](#)

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CRIMINAL LAW

Victim protection at home and abroad

Using their right of initiative under the new Treaty of Lisbon twelve Member States introduced a proposal for a European Protection Order on 5 January. The proposal is primarily aimed at victims of domestic violence who have already obtained a measure, granted by a designated authority in a Member State, safeguarding them from further abuse. A measure falling into this category might include a court order prohibiting the victim's attacker from approaching them. If granted, the European Protection Order is transmitted to the Member State to which the protected person wishes to go. This state is then obliged to recognise the Order and take steps to ensure that the protected person is offered comparable protection to that received in the issuing Member State. This process ensures that the protection afforded to an individual in one Member State is transferable to another without the protected person having to commence new proceedings there. The proposal is subject to the approval of the European Parliament, which has yet to examine it.



WEBLINKS

- [Initiative for a Directive on the European Protection Order](#)
- [Initiative for a Directive on the European Protection Order – Explanatory Memorandum](#)
- [Initiative for a Directive on the European Protection Order – Detailed statement](#)

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BANKING AND INSOLVENCY

Cross-border banking crisis? Call the experts

On 19 January the European Commission issued a call for candidates to join its new Group of Experts on Insolvency Law (GEIL). GEIL will assist the Commission with the next phase of its ongoing work to establish an EU framework for cross-border crisis management in the banking sector, which will include preparing a legislative proposal and impact assessment. Interested experts in the fields of insolvency law in the banking

and financial sectors should submit their application by 15 February. The call for experts follows the Commission's Communication of 20 October 2009 on options for establishing a European framework in which a cross-border bank can fail without causing wider systemic disruption. The Communication highlighted a number of areas for potential action. These included harmonising powers for supervisors to require the preparation of "firm-specific contingency and resolution plans" or "living wills" in appropriate cases and developing common terminology, indicators or thresholds among the many national supervisors. The Commission is expected to organise a hearing early in 2010 with a possible legislative proposal to follow later in the year.



WEBLINKS

- **[Commission call for expressions of interest for the Insolvency Law Group of Experts](#)**
- **[Commission mandate for the Insolvency Law Group of Experts](#)**
- **[Commission Communication on an EU Framework for Cross-Border Crisis Management in the Banking Sector](#)**
- **[Commission consultation on the Communication \(20 October 2009 to 20 January 2010\)](#)**

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DEFAMATION

England and Wales – no holiday for libel tourists

Diana Wallis MEP is again attempting to tackle the question of applicable law in defamation actions. The European Commission previously attempted to address the issue in a proposal for a Regulation on the law applicable to non-contractual obligations (Rome II). However, the provision was so divisive among Member States that it did not find its way into the Regulation that was eventually adopted. With a view to Ms Wallis preparing a proposal on the matter, a hearing on rights relating to personality, in particular in relation to defamation and the alleged gap in Rome II, took place in the European Parliament's Committee on Legal Affairs on 28 January. Speakers included William Bennett, a barrister of England and Wales specialising in defamation law, who sought to dispel the perception that England and Wales is becoming the destination of choice for claimants pursuing actions in defamation and libel.



WEBLINKS

- **[Regulation 864/2007 on the law applicable to non-contractual obligations \(Rome II\)](#)**
- **[Initial Proposal for a Regulation on the law applicable to non-contractual obligations \(Rome II\)](#)**



Viewpoint

Navigating an evidential minefield

When the European Commission published its consultation on making it easier to obtain evidence from abroad, some of us were experiencing a sense of déjà vu. It did not seem that long since the European Evidence Warrant (EEW) was finally adopted (in December 2008) following five years of wrangling over the text. For a quick re-cap an EEW is limited to evidence which is already in existence; it does not include 'live' evidence taken by interviews or hearings, bodily material or biometric data (including DNA samples and fingerprints) or real-time information (such as intercepted communications or bank account monitoring).

Consequently, it was always envisaged that the EEW would be the first of a number of mutual recognition measures to deal with the obtaining of evidence. Therefore now that the EU has finally secured the EEW and the implementation deadline of January 2011 is approaching, a mutual recognition measure dealing with obtaining evidence not covered by the EEW would be the obvious next step. However, with this new initiative, it appears that the EEW is being effectively scrapped before it has even been implemented!

The Green Paper recommends replacing the existing regime on obtaining evidence with a single piece of legislation, covering all types of evidence, including that which does not yet exist (such as witness statements and interception of communications) and existing evidence requiring further investigation (such as DNA samples). It also recommends adopting common standards for gathering evidence in the context of admissibility of evidence.

Indeed, the Green Paper refers to the fact that the EEW is so limited in scope that it is irrelevant as the existing mutual legal assistance instruments can be used to obtain all types of evidence. This is probably true and the Crown Prosecution Service acknowledges anecdotally that prosecutors will probably prefer to issue Letters of Request rather than an EEW. The other criticism made of current mutual legal assistance mechanisms is that they involve delay and inefficiency. Increased resources and better communication systems would undoubtedly improve them but it does not follow that this requires an entirely new system. Moreover mutual recognition relies on mutual trust – the knowledge that the criminal justice system for each Member State provides the same standard of ECHR (European Convention of Human Rights) compliant justice. However, the Commission itself has acknowledged that trust is distinctly lacking in some quarters which hampers the effectiveness of mutual recognition measures. Matters are not helped by the additional failure of the EU to adopt legislation to safeguard the procedural rights of suspects and defendants - discussions on this began in 2003 and it is still not clear what will result.

The Commission also refers to "a risk that the existing rules on obtaining evidence in criminal matters will only function effectively between Member States with similar national standards for gathering evidence". According to the Commission, common standards on admissibility of evidence would seem to be "the best solution to this problem". In order for this to be a real risk, the country receiving the request would have to gather evidence in a way that would make it inadmissible in the requesting country. The Commission has yet to provide examples or evidence of when this has occurred.

You may be left wondering why there is a need to consider scrapping a system which is simply in need of more resources and better communication. Unfortunately I cannot help you with an explanation. Perhaps more light will be shed on this as discussions continue.

Biography



Anand Doobay is a partner at Peters & Peters specialising in extradition/ mutual legal assistance, tax investigations/ prosecutions, money laundering and regulatory investigations. He has successfully represented governments, individuals and corporate clients, dealing with many high profile and politically sensitive investigations in multiple jurisdictions. Anand is a member of the Law Society of England and Wales' Criminal Law Committee and EU Criminal Law Working Group.



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- For further information about Anand Doobay, please click [here](#).

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- [Framework Decision 2009/948 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings](#)
- [Decision 2009/933 on the extension, on behalf of the European Union, of the territorial scope of the Agreement on extradition between the European Union and the United States of America](#)
- [Directive 2009/162 amending various provisions of Directive 2006/112 on the common system of value added tax](#)
- [Consolidated version of Directive 2006/112 on the common system of value added tax](#)
- [Revised Presidency compromise text on the Proposal for a Directive on Alternative Investment Fund Managers](#)
- [Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises](#)
- [Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed in Lugano on 30 October 2007 — Explanatory report by Professor Fausto Pocar \(Holder of the Chair of International Law at the University of Milan\)](#)
- [Issues Note from the Swedish Presidency on the Alternative Investment Fund Managers' Directive](#)

- **Consultation on air passengers' rights**
- **Commission Staff Working Document accompanying the report from the Commission State Aid Scoreboard - Autumn 2009 Update - Facts and figures on State aid in the EU Member States**

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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Editorial Team

Julia Bateman

Head of the Brussels Office

julia.bateman@lawsociety.org.uk

Andrew Laidlaw

Deputy Head of the Brussels Office

andrew.laidlaw@lawsociety.org.uk

Susan Clements

Justice and Home Affairs Policy Executive

susan.clements@lawsociety.org.uk

Emma Ruane

Brussels Office Trainee

emma.ruane@lawsociety.org.uk

Alex Hiendl

Brussels Office Trainee

alex.hiendl@lawsociety.org.uk

Joint Brussels Office

85 Avenue des Nerviens - B-1040 Brussels

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

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