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Editorial

This month's Brussels Agenda focuses on taxation. Little did we know when we planned this special edition earlier this year that the Panama Papers story would come out roughly a week before our publication. Just when it looked like the Lux leaks had been dealt with by the Commission's state aid decisions and that the Member States are moving towards adopting the Commission's proposals transposing the Organisation for Economic Co-operative Development (OECD) anti-base erosion and profit shifting (BEPS) initiatives, these revelations from the Panama Papers will ensure that taxation matters are still firmly in the EU agenda in the coming year or two. The race is also on as to what will take place at EU level and what Member States will act on alone.

The Commission announced soon after the leaks that its proposal on the public Country-by-Country reporting by multinationals will include an obligation to publish information from **all parts of the entities**, not just from the European subsidiaries as originally planned. It is also considering once again a proposal on a **black list of tax havens** and we are also likely to see **proposals** on the role of tax advisors. This raises a particular concern for the Law Societies, as these proposals may seek to limit legal professional privilege for clients who are being advised on tax matters.

Furthermore, transparency initiatives may give impetus to further revamping of the recently agreed Anti-Money Laundering Directive especially with regard to information on beneficial owners of companies and trusts. The issue of trusts is particularly important for the UK and Ireland where the use of trusts is widespread for arranging both private and business matters. Indeed, the UK Prime Minister David Cameron already intervened to defend the special position of trusts back in 2013 when the fourth Anti-Money Laundering Directive was presented by the Commission. However, following the revelations of Mr Cameron's

father and himself having benefitted from an offshore trust based in Panama, that defence, despite its legitimacy at the time, is now facing mounting opposition.

In light of these developments, the EU is likely to introduce further measures on tax and asset transparency, corporate taxation measures - such as the Common Consolidated Corporate Tax Base and proposals to tackle VAT fraud. It is also expected that Member States will adopt further tax and asset transparency measures concerning high net-worth individuals. Indeed, Mr Cameron has already announced he will speed up the planned introduction of a new UK corporate criminal offence for failing to prevent the facilitation of tax evasion.

The Law Societies will be following these developments very closely in co-ordination with the profession, whether they will be at EU or UK level.

Therefore, there is no better time to talk about taxation than now. In this special edition we have gathered an overview of the present status of the EU tax initiatives.

We have the pleasure of including a Viewpoint article from Anneliese Dodds MEP (S&D,UK) who is one of the key players in the European Parliament on taxation issues. We have an article from Donato Raponi, Head of the Unit on VAT from the European Commission, explaining the background to the VAT Action Plan that was also published in April 2016. Our team has also written articles on the Lux leaks cases, tax transparency, anti-BEPS implementation proposals and the proceedings of the TAXE II Committee as part of the special In Focus section.

In addition to our specialist tax articles we also have updates on law reform, professional practice and upcoming and ongoing consultations. This month, amongst others, we have articles on the consultation on the mandatory EU lobbying register, the CJEU judgement on European arrest warrants and the revision of the Anti-Money Laundering Directive.

We are also happy to welcome two new members to our team: Erica Williams and Harriet Hutchinson, two seconded trainee solicitors from England and Wales. Erica is from Agri Advisor Solicitors in Carmarthenshire, Wales and Harriet is from Boddy Matthews Solicitors in Surrey, England. Erica and Harriet are in the final months of their training contracts at their respective firms. The secondment to the Joint Brussels Office is a great opportunity for them to obtain experience actively monitoring EU legal developments ranging from competition law to criminal justice, attend meetings at the EU institutions and enjoy everything Brussels has to offer. We look forward to having them with us over the coming months.

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Anneliese Dodds MEP
EU Parliament acts as spearhead against aggressive tax avoidance

The joint issues of tax evasion and aggressive tax avoidance have been a priority for the European Union for years. The 'Lux Leaks' scandal of November 2014 thrust the issue into the political spotlight, and forced even the centre-right to pay attention and realise the need for action. In just over a year since the scandal broke, a range of activity has taken place within the three EU institutions to tackle tax issues on a European level.

The European Parliament has been the main source of political pressure and is the most radical institution in terms of the action it is calling for. The Commission has produced a number of new proposals which are to be welcomed, though at times lack ambition. The Council has been the most reluctant institution to take action, regularly blocking or watering down proposals. This is a particular challenge in the area of taxation, as most of the levers are in the hands of the Council.

In response to the 'Lux Leaks' scandal, the European Parliament established a new Special Committee on Tax Rulings (TAXE), to look at the general issue of tax evasion and aggressive tax avoidance, and consider areas in which reform might be necessary. Throughout 2015, the Committee conducted hearings with multinational corporations, including Google and Facebook, tax advisory firms, trade unions, NGOs, national and European politicians including President Jean-Claude Juncker, in addition to visiting Member States.

The Committee's work culminated in a report, voted through overwhelmingly by the whole Parliament in November 2015, which called for a range of progressive measures to tackle tax avoidance. At the same time, the European Parliament's standing Committee on Economic and Monetary Affairs (ECON) produced a legislative report on bringing transparency, coordination and convergence to EU corporate tax. This report

focused specifically on key proposals for new laws that the EU should introduce in order to combat tax evasion and aggressive tax avoidance.

This report was co-written by Ludek Niedermayer MEP (EPP, Czech Republic) and myself, and called for Public Country-by-Country Reporting so that multinationals would need to report where they record their profits; greater protection for whistleblowers to encourage more instances of the Lux Leaks case; a pan-EU Common Consolidated Corporate Tax Base (CCCTB) meaning that companies would only need to report their tax affairs once, with Member States dividing the revenues based on where the profits were generated; and a new EU regime for tax havens with sanctions for the countries identified and the companies who use them.

This report was also voted through overwhelmingly by the Parliament in December 2015 and the European Commission is now required to turn each of the report's recommendations into concrete legislative proposals - or the relevant Commissioner has to appear before Parliament and explain why they will not.

In December 2015 the Parliament also agreed to extend the Committee's mandate by a further six months (to May 2016), largely because the national governments of EU Member States had so far refused to share vital documents with the Committee and so it had been unable to fully carry out its work.

The European Commission has also announced three separate packages aimed at clamping down on tax evasion and aggressive tax avoidance. The first of these was the Tax Transparency Package in March 2015 which called for EU countries to automatically exchange information about any 'sweetheart deals' and started an impact assessment regarding the introduction of Public Country-by-Country Reporting.

In June 2015 the Commission announced its second package: the Action Plan for Fair and Efficient Corporate Taxation. The main emphasis of this package was re-launching a proposal for a Common Consolidated Corporate Tax Base and publishing an EU list of tax havens. It also built on the work of the previous package by initiating a full public consultation of Public Country-by-Country Reporting. An announcement on this consultation is expected from the Commission in the coming weeks that will call for Public Country-by-Country Reporting, although it is expected to have a very restricted reach.

The latest of the packages from the Commission was announced in January of this year. The Anti-Tax Avoidance Package looks to introduce a new Directive at EU level based on recommendations made by the OECD as part of its Base Erosion and Profit Shifting Project. It also included a proposal to introduce Country-by-Country Reporting to tax authorities, but not to the public as a whole.

The Commission will now develop a number of its recommendations into formal legislative proposals and submit them to the Council for approval.

Biography

Anneliese Dodds is a Labour MEP for the South East of England. She sits on the Tax Rulings (TAXE) and the Economic and Monetary Affairs (ECON) Committees in the European Parliament and co-authored the report 'Bringing transparency, coordination and convergence to corporate tax policies' in 2015. Prior to becoming an MEP Anneliese was a Senior Lecturer in Public Policy at Aston University focusing on what Britain can learn from other European countries to improve the safety and quality of health care, to combat social exclusion, and to make regulation more effective.

TAXATION

An EU VAT system tailored to the internal market and today's challenges

The reform of the VAT system has been the subject of contentious discussion for many years. The common EU VAT system which currently applies dates back to the 1970's and since then it has not been significantly modified. The change of the place of supply of electronic services and the implementation of an electronic one-stop-shop constitute a rare exception.

Yet the current system urgently needs to be modernised because it does not take account of technological

developments, globalisation, digitalisation of the economy and the emergence of new business models.

The Commission has for many years stressed the need for a significant reform of the EU VAT system. It has proposed concrete actions to Member States. The Green Paper presented in 2010, followed by a Communication in 2011 to implement a simpler, more efficient and robust system has been an important step in this respect, particularly as regards the decision to abandon the origin principle for the taxation of intra-EU transactions. It is regrettable that it was not fully acknowledged by Member States. While it is true that the EU VAT system has been a model at global level, one can rightfully fear that it becomes an example for its archaism!

The EU VAT system was decided by six member states in 1967 and designed in 1977 by 9 member states. The fact that its reform requires the agreement of twenty-eight member states demonstrates the difficulty of the undertaking!

Priority needs to focus on the simplification of VAT compliance obligations for businesses. It is important to recall that the VAT system is based primarily on the key role played by taxable persons. A taxable person collects the VAT — which is normally paid by the final consumer – on behalf of the State. Furthermore he has to fulfil this task for free — in fact it is worse as he bears a cost estimated between 3 to 7 % of the VAT due- and in addition in doing this he takes a significant risk to the extent where he does not correctly perform his task he can face significant penalties! This is the reason why the taxable person should be treated fairly, as a partner. Reducing compliance costs for the taxable persons should be a priority, in particular for small and medium sized enterprises (SMEs). Moreover treating the "tax collector" fairly would constitute a huge incentive to be more compliant. The fight against fraud should be based primarily on prevention rather than on repression.

In this respect, this is the key role that the VAT Expert Group and the VAT Forum try to play. Their primary goal is to improve the relationship between businesses and tax administrations.

The simplification of the VAT system and the fight against VAT fraud also depends on the implementation of the definitive VAT system for intra-EU supplies. Maintaining the coherence of the VAT system - its main characteristic being the fractioned payment – is a key issue. Based on a recent study, it seems obvious that the taxation of intra-EU supplies is the solution which would guarantee this coherence. It has been estimated that it would reduce cross-border fraud by about 40 billion Euros (80 % of the carousel fraud) a year in the EU.

The question of VAT rates is only the consequence of the choice of a system based on the destination principle. Whereas the approximation of VAT rates was an essential condition for the establishment of a VAT system based on the origin principle, it is clear that such an approach is no longer relevant. Moreover the present VAT rates rules do not reflect the technological progress for certain products such as books and newspapers. Giving greater freedom to Member States would not hamper the functioning of the VAT system in the EU if it is properly framed.

The modernisation of the European VAT system should take into account the explosion of cross-border e-commerce and new patterns of economic activity. The consumer buys more on-line, he purchases outside his country, inside and outside the European Union, he makes use of services provided by new actors, he pays with credit cards, he uses virtual currencies. In order to facilitate trade, these new developments require a deep review of the existing rules, especially the way the VAT is declared and paid.

Continuing to collect VAT as designed fifty years ago makes no sense and would in any case harm the traders but also the national tax administrations. Making greater use of the new technologies is the only way ahead, there are no alternatives.

The Action Plan of the Commission should invite the Member States to reflect and take decisions.

By shilly-shallying, wondering and dilly-dallying, Member States have given the legislative power to the European Court of Justice, which is frequently called to fill the shortcomings of the European legislator – namely the Member States.

**Editor's note: All views expressed in this article are those of the author and are by no means binding upon the European Commission*

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EU hot on the heels exposing tax avoiders; but how striking are these instruments?

In a rapid succession since 2014, the EU has adopted several instruments enhancing tax transparency. Before **Directive 2014/107/EU** entered into force in January 2015, the European Union had already adopted a new **Directive 2015/2376/EU**. This Directive was adopted within seven months of the first proposal. This has now been followed by another proposal from 28 January 2016, **COM(2016)025**, on which Member States were already able to agree a common position in less than two months, on 8 March 2016. This kind of progress is unheard of, especially in the field of taxation where unanimity is still applied and the national sensitivities are high.

Naturally, the Lux Leaks scandal is prompting Member States to increase tax transparency, but the speed in which these instruments have been adopted begs the question: what is going on here?

The EU instruments to date have benefited from the work done in the context of the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project. Increasing transparency over income and tax burden is one of the key actions in the fight against tax avoidance and the hiding of profits. Furthermore, the Commission has adopted a step-by-step approach, whereby it is enticing Member States to make inroads in this topic.

There are two aspects to the transparency, both of which are designed to increase the accountability of companies:

1. exchange of information between tax authorities and;

2. transparency towards the public at large.

The EU instruments adopted to date have concentrated on the first aspect, increasing the scope of the mandatory exchange of information between tax authorities. Directive 2014/107/EU provides for a mandatory automatic exchange of financial information as foreseen in the OECD global standard. Directive 2015/2376/EU will extend the mandatory automatic exchange of information between tax authorities to advance cross-border tax rulings and advance pricing arrangements.

The January 2016 proposal implements BEPS action number 13 and takes transparency further by requiring companies with a total consolidated group revenue above 750 million Euros to forward tax authorities Country-by-Country reports on their income and tax burden. This information will include: revenues, profits, taxes paid, capital, earnings, tangible assets and the number of employees. The aim is to provide useful information for tax administrations to enable better risk assessment and to ensure that national tax authorities are able to assess whether companies give them accurate information as to their taxable income and tax burden.

Despite the above proposals, the **European Parliament is not impressed.** It would like to see more ambitious proposals, including the exchange of all tax rulings, not just cross-border ones, and extending tax transparency into a **larger sphere of companies** including operations out of Europe. The current proposal is only set to apply to 10 – 15% of the companies operating in Europe, even if these groups hold 90% of the group revenues. There have been strong voices in Parliament which would like to make it obligatory for companies to make the information available to the public at large and not just the tax administrations, and that the reporting should also include activities outside Europe.

The Commission has now tabled the first instrument on making the Country-by-Country reports public. According to the **proposal** published on 12 April 2016, the new instrument will apply only to those group entities which fall under the reporting obligation to the national authorities, i.e. those having above 750 million euro turn-over. Originally the Commission had planned that companies be required to publish reports of their European activities only. However, following the Panama Papers, the Commission has said that it will revise this and has now proposed an obligation to publish reports on all activities, Country-by-Country on European activities and aggregate figures for other jurisdictions.

Furthermore, the Commission floated another surprise. The Country-by-Country reporting is not proposed under tax competences, but the Commission is using Article 50 TFEU, free movement of establishment, as a legal basis for the new Directive. This introduces normal legislative procedure, including qualified majority voting and the Parliament as co-decision maker. If successful, this could help the Parliament to strong arm the Member States to accept wider reporting obligations, including a larger number of companies and activities both within and outside the EU.

Without the Panama Papers revelations it would have been doubtful whether Member States had more appetite for another proposal. The BEPS transparency measures had been implemented by previous instruments and requiring companies to publicly report their activities is a politically controversial move. However, the revelations give more wind to the political sails in Brussels and give strong support to the Parliament, NGOs and those Member States in favour of public reporting requirements. Therefore, in the

current atmosphere it is not unlikely at all that we see these and maybe a few more transparency initiatives in Brussels.

TAXE II Committee puts companies' tax policies under scrutiny

As has been reported in the **December** 2015 and **January** 2016 Brussels Agenda editions, the TAXE II Committee started its work in January 2016 with the aim of fighting tax evasion and aggressive tax planning at EU and international level.

The Committee is building on the work of its predecessor (The Special Committee on Tax) and has started with hearing from banks and multinationals to elicit their views on proposed tax legislation. A significant change from the previous Tax committee is that banks and multinationals have been sending their representatives to the meetings. Corporate giants like Google, IKEA, Apple and MacDonalds - all of whose tax treatments have been investigated by the Commission in the Lux leaks cases - have made an appearance. The Committee in its recent meeting of 4 April 2016 heard from RBS and the Deutsche Bank about the "Panama Papers" that are of course causing a lot of excitement in the Committee.

The TAXE II Committee is closely following the work of the Commissioners who are also working on tax policy issues. The Committee heard from the Competition Commissioner, Margrethe Vestager on 4 April 2016 about the state aid probes. Ms Vestager explained that the Commission had tried to open cases where it believed that there were reasons to be concerned that rulings existed which could be used in a way that favoured certain companies, or types of companies. She also explained that around 200 of the rulings the EU had looked at were transfer pricing rulings. She stated however that provided that they matched economic reality they were not problematic. The Commissioner was therefore able to assure the Committee that her team is continuing to make good progress in the tax ruling cases.

In parallel, the Committee on Economic and Monetary Affairs (ECON) is continuing to work on the legislative files, such as the tax transparency directives and the anti-tax avoidance package. It appears that much of the discussion in the TAXE II Committee is feeding into these files, as described by Anneliese Dodds MEP (S&D,UK) in her viewpoint article.

The issues that the TAXE II Commitee is focusing on are: proposals on tax havens and the role of the tax advisors - including legal advisors, publication and transparency of the tax data, examining Member States' compliance with tax legislation and state aid rules and clarifying the concept of permanent establishment. Following the Panama Papers revelations the MEPs work will continue also beyond TAXE II. The Conference of Presidents has already decided on setting up a new Committee of Inquiry to follow. A formal decision on the new Committee will be taken in May 2016.

Commission's Anti-Tax Avoidance Directive to fill the gap before a Common Consolidated Corporate Tax Base is agreed

The Commission's Proposal on **Anti-Tax Avoidance Measures** was published on 28 January 2016, as reported in the February BA. The proposed measures will implement several of the Organisation for Economic Co-operation and Development's (OECD's) anti-Base Erosion and Profit Shifting (BEPS) initiatives and will take the first steps towards the Common Consolidated Corporate Tax Base (CCCTB). The Commission is still promising to come up with a follow-up instrument to introduce first a Common Corporate Tax Base, without consolidation, this summer. This may be followed by instruments proposing for consolidation by the end of this year. The CCCTB will act as a more comprehensive solution to profit shifting and aggressive tax avoidance.

In the meantime, the proposed Anti-Avoidance Directive includes **six key anti-tax avoidance** measures which Member States should apply. Three of these measures are based on the OECD's principles and the Commission has argued that the other three are necessary for the proper operation of the internal market.

The OECD based rules include the Controlled Foreign Company (CFC) rule, switchover rule and exit taxation rules. These aim to deter multinationals from artificially shifting profits abroad and/ or relocating assets to avoid tax.

1. The **CFC rule** allows the Member State where a parent company is located to tax any profits that the company parks in a no or low tax country. Under the proposal, the CFC rule will be triggered if the effective tax rate in the third country where the company has created a subsidiary is less than 40% of

the Member State in question.

2. The **Switchover rule** aims to prevent double non-taxation of certain income. The companies will be required to tell the Member State tax authorities that they have received a dividend and whether they had paid tax on it elsewhere. This way the tax authorities can deny a company tax benefits where income has been taxed at a low rate in another country and tax any profits that have not been taxed elsewhere.
3. The proposal also introduces new rules on **exit taxation**, which aim to prevent non-taxation of assets such as intellectual property or patents. In this scenario, companies develop the intellectual property or patentable rights in one Member State but then transfer the assets out of reach of that Member State's tax jurisdiction when the product starts to make profits. Therefore the proposal will mean that the Member State can apply exit taxation on the value of the product before it is moved out of the jurisdiction.

The other measures that are included in the proposal are: interest limitation, hybrid mismatches and a general anti-abuse rule

4. The **interest limitation rule** aims to tackle inter-company loans between different parts of companies located in different countries. Some companies arrange these inter-company loans so that their debt is based in one of the group's companies in a high tax country where interest payment can be deducted, and interest on the debt is to be paid to the group's lender company which is based in a low tax country where interest is taxed at a low rate or not at all. The proposal sets to limit the amount of net interest that a company can deduct from its taxable income, based on a fixed ratio of its earnings.
5. The **hybrid mismatch rule** aims to prevent companies from exploiting national mismatches to avoid taxation where Member States treat the same income or entities differently for tax purposes. Currently companies are able to take advantage of these mismatches to deduct their income in both countries or to get a tax deduction in one country on income that is exempt in the country of destination. The proposal would mean that any mismatch is eliminated and the tax deduction will only be allowed in one Member State.
6. Finally, the **general anti-abuse rule** provides a catch-all provision which will apply to aggressive tax planning where the other rules do not apply. It provides a safety net in cases where other anti-abuse provisions cannot be applied and allows national authorities to create rules to expose and tackle wholly artificial tax arrangements on the basis of the real economic substance.

The Commission and the Dutch Presidency are expecting that there will be a deal on the Anti-tax avoidance proposals by the next Economic and Financial Affairs Council Configuration (ECOFIN) meeting which will take place on 25 May 2016. There have been reports that some Member States in the Council have made calls to split the proposal into two: one containing the OECD aspects and another containing the EU internal market rules. However, according to the most recent reports this has not taken place yet and the Member States are negotiating on the whole package.

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Unlawful State Aid in taxation - Member States reactions to the Commission's decisions

As described in previous Brussels Agendas the Commission has reached decisions on four state aid cases. Decisions were made on two cases against Luxembourg, one against the Netherlands and one against Belgium. The central question in each case was whether certain fiscal regimes constituted unfair tax advantages and unlawful state aid to large multinational companies. The Commission found that the relevant tax rulings endorsed artificial and complex methods to establish taxable profits for the companies that do not reflect economic reality.

These Member States have now launched appeals in the General Court against the Commission's decisions.

These appeals centre on the question of how to interpret the arms length principle in transfer pricing rules. This principle is based on Section 9 of the Organisation for Economic Co-operation and Development (OECD) Treaty which essentially provides that where the companies involved are part of a group, the transfer price should be the same as if the two companies involved are two independents and not part of the same corporate structure.

In the above cases, the Commission used arguably a new interpretation of the principle, by changing the comparator to establish how the arms length principle is to be applied. Instead of using another multinational company who is in a similar situation, the Commission has opted to compare the multinational to a stand alone company.

According to the Commission: ***"Tax rulings cannot establish methodologies, no matter how complex, to establish transfer prices with no economic justification and which unduly shift profits to reduce***

the taxes paid by the company. It would give that company un unfair competitive advantage over other companies (typically SMEs) that are taxed on their actual profits because they pay market prices for the goods and services they use."

Both **Luxembourg** and the **Netherlands** dispute the Commission's approach. In particular, the Dutch Government has complained that instead of using the Transnational Net Margin Method (profits taxed where value is created), the Commission has used the Comparable Uncontrolled Price (CUP) method. By using the CUP method the Commission has adopted its own interpretation and application of the OECD guidelines about the transfer pricing methods. The Dutch Government does not believe that the CUP method should have been applied in the Starbucks case because of the absence of suitable data. Moreover, the Commission applies its own new criterion for profit calculation, which is incompatible with domestic regulations and the OECD framework. The Dutch Government has argued that the decision has caused confusion and uncertainty for businesses and tax authorities.

The appeals have been allocated the following numbers at the Court: Case T755/15 Luxembourg v Commission and Case T-760/15 The Netherlands v Commission. The Belgian Government has now also filed **an appeal** against the decision and is challenging the Commission's view that its arrangements constituted illegal state aid. It is likely that several companies will also **appeal the decision.**

Meanwhile, the Commission is not waiting to see what will be the result of the appeals. The decision on Irish tax regimes and treatment of Apple is expected any time now. Furthermore, the Commission has decided to open a formal investigation against Luxembourg on whether it has given favourable treatment to MacDonalds.

US Influence

The US Treasury has complained that the Commission is **biased against US** companies which have been disproportionately targeted. Furthermore, Washington has argued that as the companies in question are based in the US, these outstanding taxes are owed to the US Treasury.

However, it would seem that the above appeals and the complaints from the US have not deterred others to take action against alleged instances of state aid. It was reported in **Financial Times** that the Tax Justice Network and the Scottish National Party respectively have asked the Commission to investigate the UK's tax treatment of Google. This all promises that the state aid litigation will continue for years to come.

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Calls to deploy lawyers to migration hotspots

The Council of Bars and Law Societies of Europe (CCBE) is calling upon European Member States to take immediate action to ensure the fundamental rights of persons at migration hotspots across the EU.

The CCBE has raised concerns that people seeking international protection at the migration hotspots currently have no access to lawyers, judicial review of administrative procedures or justice.

The CCBE together with the President of the Deutscher Anwaltverein (DAV) (The German Bar Association) and the assistance of the Greek Bar, have therefore launched a project that will deploy lawyers to the Greek migration hotspot of Lesbos.

The project aims to ensure that all vulnerable persons present at the hotspot are able to obtain access to legal advice, information and justice. Lawyers will be sent to Lesbos for short periods of time, ranging from one to three weeks, over the period of a year.

Several Bar and Law Societies across the European Union have already confirmed their support for the project, with many Members States participating in funding the project. However, the CCBE and DAV are calling upon more Member States to offer their financial support to the project.

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Geo-blocking breaks competition rules

Directorate-General Competition has released its full report on the results of its public consultation into

whether certain so-called "geo-blocking practices" have the potential to infringe EU competition law.

The process of geo-blocking occurs where online purchasers are restricted from purchasing consumer goods or accessing digital content services, due to the purchaser's location or country of residence. The European Commission has noted the practice to be one of the factors affecting cross-border e-commerce and therefore featured it as part of its e-commerce sector inquiry.

The Commission's **e-commerce sector inquiry**, launched on 6 May 2015, gathered market information to analyse whether any barriers erected by companies affect European e-commerce markets and if so to what extent.

The preliminary findings from the inquiry show that the practice of geo-blocking is widespread across the EU. The reasoning offered by the report for the widespread use of such practices is said to be partly due to unilateral decisions by companies not to sell abroad and partly due to contractual barriers set up by companies, preventing consumers from shopping online across EU borders. Concern has also been raised by the Commission that agreements made between suppliers and distributors often have the potential to restrict competition in the single market consequently breaching EU antitrust rules.

However, the Commission has made it clear that if geo-blocking is merely a consequence of unilateral business decisions by a company not to sell abroad, such behaviour - if by a non-dominant company - would not breach competition rules. It is recognised that such cases fall outside the scope of EU competition law. However, if geo-blocking takes place due to agreements between companies and results in anti-competitive behaviour, that may trigger the application of competition law.

The key priority of the Commission in relation to geo-blocking is therefore to address unjustified barriers to cross-border e-commerce, as opposed to restricting the freedom of retailers to choose whether or not to sell cross-border, which will remain. The Commission, in line with its **Digital Single Market Strategy** will aim to create concrete legislative actions alongside the competition law inquiry, to ensure the creation of an area where European citizens and businesses can seamlessly access and exercise online activities, irrespective of their place of residence. The legislative proposals are due to be published by May 2016.

The Commission has stressed that its initial findings on geo-blocking will not prejudge the finding of any anti-competitive concerns or the opening of any antitrust cases.

A more detailed analysis of all findings from the on-going e-commerce sector inquiry will be presented in a Preliminary Report due to be published for public consultation in mid-2016. It will not only cover geo-blocking but also any other potential competition concerns affecting EU e-commerce markets. This is followed by a public consultation. The Final Report is scheduled for the first quarter of 2017.

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New procedural safeguards for children involved in criminal proceedings

In March 2016, the European Parliament and the European Council approved the text of the **Directive on procedural safeguards for children suspected or accused in criminal proceedings.**

The aim of the Directive is to ensure that children who are suspected or accused of a crime receive a fair trial. Essentially the Directive recognises the right of those under eighteen to be assisted by a lawyer and to be accompanied by a parent, or an appropriate adult, through most of the proceedings. The Directive puts in place mechanisms to ensure that children can understand court proceedings and are prevented from re-offending. The child's best interest must always be the primary consideration.

"The text presents a catalogue of rights and guarantees as a common European model of fair trials for minors in which we strike a balance between the need to ascertain responsibility for crime and the need to take due account of minors' vulnerability and specific needs", said Caterina Chinnici MEP (S&D, Italy), who steered the legislation through Parliament.

Of particular note is the provision to ensure that children have access to legal advice. Exceptions to this right may be made only if it deemed disproportionate in the light of the circumstances of the case, or in exceptional cases, at the pre-trial stage, given the child's best interests.

The Directive requires EU Member States to ensure that deprivation of liberty - in particular detention, is imposed on children only as a last resort and for the shortest possible period. Children who are detained should be held separately from adults, unless it is considered to be in the child's best interests not to do so. The Directive also includes the right to both an individual assessment by qualified personnel and to a medical examination if the child is deprived of liberty.

Other safeguards include

1. that children must be informed about their rights and the general aspects of the conduct of the proceedings;
2. that information be provided to the child's parent or appropriate adult as nominated by the child and accepted by the competent authority;
3. the right to be accompanied by that person during court hearings and at other stages of the proceedings, such as police questioning;
4. the protection of privacy during criminal proceedings, including the option of having court hearings involving children held in private; and
5. specific training for justices, prosecutors and other professionals who deal with criminal proceedings involving children.

The UK and the Republic of Ireland have not opted into the Directive. Denmark has a permanent opt-out of Justice and Home Affairs co-operation.

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CJEU judgement on European Arrest Warrant and detention conditions

On 5 April 2016, in its decision in the Aranyosi and Caldararu cases (C-404/15 and C-659/15 PPU), the Court of Justice of the European Union (CJEU) has confirmed that Member States are obliged to respect the fundamental rights of requested people when considering European Arrest Warrants (EAW).

The EU Court rejected the Opinion of Advocate-General Bot, who some weeks ago suggested that judicial authorities should execute a EAW even if there is a risk of inhuman or degrading treatment to the arrested person. The CJEU has made it clear that Article 4 of the EU Charter of Fundamental Rights, which prohibits torture and ill treatment is an absolute and mandatory right, continues to apply in the context of mutual recognition.

In practical terms, the judgment obliges judicial authorities to defer the execution of an EAW until the requesting Member State has provided sufficient information to make it clear that its detention conditions are compatible with and do not infringe fundamental rights. If sufficient information is not forthcoming within a “reasonable period” of time, the judicial authority may decide to end surrender proceedings.

The affirmation that EU courts must block extraditions where a requested person risks being held in unsafe detention conditions is also a wake up call to those countries who make an excessive and/or unjustified use of pre-trial detention.

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Hinkley Point C and PINC

The UK Government gave the green light for the first nuclear power plant station in the UK for twenty years, **back in September 2015**. The power plant station, which is planned to be at Hinkley Point C, in Somerset, promises to produce enough energy to supply seven percent of the country’s energy needs and provide thousands of jobs across the UK.

The case put forward by the UK Government to the European Commission, to allow the use of state aid to finance Hinkley, was approved by the European Commission back in October 2014. Under the deal the UK Government committed to help fund the construction of two reactors at Hinkley and guaranteed an elevated 35-year fixed electricity rate to EDF, the French energy group, who were to be in charge of the building of the plant. The initial deal was set to be worth around £2 billion with further amounts potentially available in the longer-term.

However, the Commission's decision to allow the use of state aid to fund Hinkley has received much criticism from many of the other Member States, who view the decision as an unnecessary show of support for nuclear energy.

On 7 July 2015, ten German and Austrian energy companies filed a **legal challenge** at the European Court of Justice against the use of state aid being used to finance Hinkley. The action was brought on the basis that the use of stated aid in such circumstances would distort the energy market and subsequently breach European law.

Condemning the decision of the European Commission, Austria's Environment Minister, Andrä Rupprechter,

stated that "**[i]nstead of funding unsafe and costly energy forms that are outdated, we have to support Europe's energy turnaround with the expansion of renewable energies.**" However, the European Commission responded to such criticisms by stating that the choice of energy source, no matter how controversial, is strictly up to Member States.

Hinkley is set to be the topic of conversation once again, as just last week on the 4 April 2016, the European Commission published its first report on nuclear energy investments since Fukushima in 2011. The report entitled **The Nuclear Illustrative Programme (PINC)** focuses on the investments related to post-Fukushima safety upgrades and to the safe operation of existing facilities. In addition, PINC highlights the estimated financing needs related to nuclear power plants' decommissioning and to the management of radioactive waste and spent fuel. This clearly gives green light from the Commission for further nuclear energy plans.

The European Commission also made a recommendation concerning the application of Article 103 of the Euratom Treaty, namely that Member States should obtain the Commission's opinion on agreements with non-EU countries on nuclear matters before concluding them.

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Commission launches the public consultation on the mandatory EU lobbying register

On 1 March 2016, the European Commission launched the public consultation on the proposed mandatory EU lobbying register. The consultation, which was postponed from its original launch in the second half of 2015, will inform the Commission on stakeholders' views on the mandatory register and the key features and recommendations for the new regime.

The current regime, dating from 2011, is a voluntary one. However, given the volume and intensity of lobbying in Brussels, there has been mounting pressure from NGOs and the public affairs industry to make access to EU policy makers more conditional upon registration. Indeed, the 2014 review of the system introduced several incentives designed to make registration more attractive or even necessary.

Lobbying regulations have been an important topic for Brussels-based law firms due to their frequent contact with the EU institutions. While most firms based in Brussels carry out purely legal work, there are some firms with dedicated public affairs departments.

The Law Society has been involved in the debate and set up a dedicated working group of Brussels-based solicitors to draft a response to the consultation. The deadline for submitting responses is 1 June 2016.

Explanatory note

The European Commission created a voluntary register for interest representatives (lobbyists) in June 2008. The Joint Transparency Register for interest representatives was created in July 2011. It operates on the basis of an inter-institutional agreement (IIA) between the European Commission and the European Parliament. In its 2016 work programme, the Commission announced it would present the proposal for a mandatory register in the second half of 2016.

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Commission publishes its roadmap for the revision of the 4th Anti-Money Laundering Directive

On 7 April 2016, the European Commission published the **roadmap** for the targeted revision of the 4th Anti-Money Laundering Directive (4AMLD). The revision is part of a list of actions announced in the **Commission's action plan on strengthening the fight against terrorism**, published on 2 February 2016. The plan's objective is to step up the EU's fight against terrorism and to strengthen its efforts to combat terrorist financing.

Although the Directive is still being transposed into domestic legislation of each Member State (with the

deadline of 26 June 2017), the Commission has already decided to amend the Directive in five specific areas:

- enhanced due diligence measures/counter-measures with regard to high-risk third countries;
- virtual currency exchange platforms;
- prepaid instruments;
- the access of Financial Intelligence Units (FIUs) to – and exchange of – information to strengthen FIU powers and cooperation; and
- the access of FIUs to centralised bank and payment account registers or electronic data retrieval systems.

19 May 2016 - Competition Section Annual Conference 2016

The Law Society of England and Wales' Competition Law Conference offers all those with an interest in this area of law an opportunity to network with experienced practitioners, clients, government officials, regulators and representatives from the judiciary in a relaxing atmosphere at the Law Society.

This year's keynote address will be given by advocate general **Juliane Kokott** of the Court of Justice of the European Union. **Richard Whish QC (Hon)**, emeritus professor of law, King's College London will chair a session on anti-trust enforcement/commitments and will be joined by expert speakers including **Daniel Beard QC**, Monckton Chambers, **Birgit Krueger**, Bundeskartellamt, **Anne Riley**, Associate General Counsel Antitrust, Shell International, **James Kavanagh**, partner, Oxera, **Thomas Kramler**, head of Digital Single Market Task Force, e-commerce sector inquiry, European Commission, **Sarah Cardell**, general counsel, CMA and **David Parker**, director, Frontier Economics.

The conference features a mix of engaging panel sessions and more detailed presentations across a wide variety of topics including:

- State aid
- Merger control
- E-commerce and digital markets
- Anti-trust enforcement and commitments
- Competition litigation.

The conference is being held on **19 May 2016** at the Law Society in London and qualifies for 6.5 CPD hours. To book click here. Bookings received before 19 April 2016, will receive a discount of £50.

20 October 2016 - Nominate now: Excellence Awards in International Legal Services

On **20 October 2016** the Law Society of England and Wales will be celebrating ten years of its Excellence Awards. The Awards celebrate those who are shining lights in innovation, and the people and organisations that are developing new ways to help their clients.

Categories for nominations include:-

Awards for team/firms

- Excellence in Business Development
- Excellence in Client Service
- Excellence in Diversity and Inclusion
- Excellence In-house NEW for 2016
- Excellence in International Legal Services
- Excellence in Learning and Development
- Excellence in Marketing and Communications
- Excellence in Private Client Practice

- Excellence in Pro Bono
- Excellence in Technology

Awards for individuals

- Gazette Legal Personality of the Year
- Human Rights Lawyer of the Year
- Junior Lawyer of the Year
- Solicitor Advocate of the Year
- Solicitor of the Year - In-house
- Solicitor of the Year - Private Practice
- Woman Lawyer of Year

If you would like to make a nomination for this year's Excellence Awards, the **deadline for entries is Friday 27 May 2016**. More information about the categories of awards and how to make a nomination can be found **here**.

The winners will be announced on **20 October 2016** at the ceremony.

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27 May 2016 - Speaking opportunity: English Law Day in Almaty, Kazakhstan

The Law Society of England and Wales in partnership with the Kazakhstan Bar Association will host a seminar on English Law to promote the values and principles of the English legal system. If you are interested in joining a panel to showcase English and Welsh legal expertise in this market, more information can be found **here**.

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Get involved: World Bank doing business project 2017

The Law Society of England and Wales is once again working with the World Bank to offer lawyers the opportunity to use their expertise to improve business environments worldwide by participating in the annual survey *'Doing Business'*. The project is open to commercial lawyers, notaries, judges, architects, trade logistics specialists, and accountants. The deadline to respond is 2 May 2016. More information can be found **here**.

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ONGOING CONSULTATIONS

Trade:

- **Public consultation on the future of EU-Australia and EU-New Zealand trade and economic relations**
  11.03.2016 – 03.06.2016

Environment:

- **Consultation on the policy options for market-based measures to reduce climate change impact from international aviation**
  07.03.2016 – 30.05.2016
- **Public consultation on the development of a comprehensive, integrated**

Research, Innovation and Competitiveness strategy for the Energy Union
04.03.2016 – 31.05.2016

Taxation, Financial Regulation:

- **Public consultation on the revision of the Financial Regulation applicable to the general budget of the Union**
  04.03.2016 – 27.05.2016
- **Improving double taxation dispute resolution mechanisms**
  16.02.2016 – 10.05.2016

Employment:

- **Public consultation on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (the so-called "Written Statement Directive")** 26.01.2016 – 20.04.2016
- **Public online consultation on the Your First EURES job (YFEJ) mobility scheme and options for future EU measures on youth intra-EU labour mobility**
  22.01.2016 – 22.04.2016

SUBMITTED CONSULTATIONS

- **The Commission's feasibility study on the development of an EU VAT web portal**

LEGISLATION

- **Commission Implementing Regulation (EU) 2016/540 of 6 April 2016 establishing the standard import values for determining the entry price of certain fruit and vegetables**
- **REGULATION (EU) 2015/2120 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.**
  Apart from a few exceptions this will apply from 30 April 2016.
- **Commission Regulation (EU) 2016/539 of 6 April 2016 amending Regulation (EU) No 1178/2011 as regards pilot training, testing and periodic checking for performance-based navigation (Text with EEA relevance)**
- **Decision (EU, Euratom) 2016/484 of the representatives of the Governments of the Member States of 23 March 2016 appointing Judges to the General Court**
- **Decision (EU, Euratom) 2016/485 of the representatives of the Governments of the Member States of 23 March 2016 appointing Judges to the General Court**
- **Council Decision (CFSP) 2016/478 of 31 March 2016 amending Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya**

CASE LAW CORNER

Decided cases:

Air passenger's rights

Joined Cases C-145 – 146/15 *Ruissenaars and others v Staatssecretaris van Infrastructuur en Milieu*, judgment of 17 March 2016

- National authorities carry out general monitoring activities in order to guarantee air passengers' rights but are not required to act on individual complaints.

Asylum law

Case C-695/15 *PPU Shiraz Baig Mirza v Bevandorlasi es Allampolgarsagi Hivatal,* judgment of 17 March 2016

- Dublin III Regulation allows Member States to send an applicant for international protection to a safe country, irrespective of whether it is the Member State responsible for processing the application or another Member State. That right may also be exercised by a Member State after it has accepted that it is responsible for processing the application pursuant to that regulation and within the context of the take back procedure.

Annulment

Joined Cases C-247-248/14, C-267-268/14 P HeidelbergCement et al v Commission, **judgment** of 10 March 2016

- The Court of Justice found that the General Court erred in law in finding that the Commission decisions were adequately reasoned and sets aside the decisions made by the General Court and annuls the Commission decisions relating to requests for information directed at cement manufacturers. The obligation to state specific reasons is a fundamental requirement, designed not merely to show that the request for information is justified but also to enable the undertakings concerned to assess the scope of their duty to cooperate whilst at the same time safeguarding their rights of defence.
- According to the Court, the Commission's decisions did not disclose, clearly and unequivocally, the suspicions of infringement which justify their adoption and did not make it possible to determine whether the requested information is necessary for the purposes of investigation. The statement of reasons was excessively brief, vague and generic having regard in particular to the considerable length of the questions asked.

Advocate General Opinions:

Copyright

Case C-160/15 *Media BV v Sanoma Media Netherlands BV and Playboy Enterprises*, Advocate General Wathelet, delivered on 7 April 2016

- According to the Advocate General, the posting of a hyperlink to a website which published photos without authorisation does not in itself constitute a copyright infringement.
- The motivation of the person who placed the hyperlink and the fact that this person knew or should have known that the initial communication of the photos on the other sites was not authorised are not relevant.

Case C-484/14 *Tobias McFadden v Sony Music,* Advocate General Spuznar, delivered on 16 March 2016

- According to the Advocate General, the operator of the shop, hotel or bar who offers a Wi-Fi network free of charge to the public is not liable for copyright infringements committed by users of that network
- Even though it is possible to issue an injunction against that operator in order to bring the infringement to an end, it is not possible to require termination or password protection of the internet connection or examination of all communications transmitted through it.

General Court

Case T-100/15 *Dextro Energy GmH v Commission,* judgement of 16 March 2016

- The General Court confirms the Commission decision that a number of health claims relating to glucose may not be authorised, such encouragement being incompatible with generally accepted principles of nutrition and health.

Upcoming decisions and Advocate General Opinions in April:

Annulment decisions

Case T-221/08 *Strack v Commission,* judgment expected on 26 April

- Annulment action of the Commission decision not to grant access to documents.

Case T-44/14 *Constantini and others v Commission*, judgment expected on 19 April

- Applicants request that the General Court annuls the Commission decision to refuse to register Citizens' Initiative "Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!"

Brussels I Regulation

Case C-572/14 *Austro-Mechana v Amazon EU*, judgment expected on 21 April

- Whether a claim for fair compensation under Directive 2001/29/EC on the harmonisation of certain aspects of copyright constitutes a claim arising from "tort, delict or quasi-delict" within the meaning of Article 5(3) of the Brussels I Regulation.

Case C-336/13 *Profit Investment Sim SpA, in liquidation v Stefano Ossi and Commerzbank*, judgment expected on 20 April

- Whether there is a connecting link between different actions referred to in Article 6(1) of the Brussels I Regulation, where the subject matter of the heads of claim put forward in those actions and the basis for pleas in law raised therein are different and there is no relationship between them of subordination or logical and legal incompatibility? Whether the requirement that the agreement conferring jurisdiction is in a written form can be said to be satisfied where such an agreement is inserted into the document (Information Memorandum) that has been created unilaterally by bond issuer? Should the expression "matters relating to a contract" under Article 5(1) be extended to also include disputes in which the applicant disputes the existence of a legally valid and binding contractual relationship and seeks to obtain a refund of the amount paid on the basis of a document which, in its view, is bereft of legal value?

Charter of Fundamental Rights / Equality law

Case C-441/14 *DI,* judgment expected on 19 April

- The Danish court essentially asks the Court of Justice whether the EU law principle prohibiting discrimination on grounds of age include a scheme under which employees are not entitled to severance allowance if they are entitled to an old-age pension financed by their employer under a pension scheme. Furthermore, if the Court were to answer in affirmative, should the application of the principle of non-discrimination be weighed against principles of legal certainty and the protection of legitimate expectation, with the result that under national law the employer is exempt from having to pay the severance allowance. Guidance is sought as to whether the fact that the employee, depending on the circumstances, may claim compensation from the State as a result of the Danish legislation's incompatibility with EU law has an impact on the issue of whether such a weighing up may be considered.

Citizenship

Case C-115/15 *Secretary of State for the Home Department v NA*, opinion of Advocate General Wathelet, expected on 14 April

- The Court of Appeal of England and Wales has submitted the following questions to the Court:
    - Must a third country national ex-spouse of a Union citizen be able to show that their former spouse was exercising Treaty rights in the host Member state at the time of their divorce in order to retain a right of residence under Article 13(2) of Directive 2004/38/EC?
    - Does an EU citizen have an EU law right to reside in a host member state under Articles 20 and 21 of the TFEU in circumstances where the only state within the EU in which the citizen is entitled to reside is his state of nationality, but there is a finding of fact by a competent tribunal that the removal of the citizen from the host member state to his state of nationality would breach his rights under Article 8 of the ECHR or Article 7 of the Charter of Fundamental Rights of the EU?
    - If the EU citizen in (2) (above) is a child, does the parent having sole care of that child have a derived right of residence in the host member state if the child would have to accompany the parent on removal of the parent from the host

member state?
    - Does a child have a right to reside in the host Member State pursuant to Article 12 of Regulation (EEC) No 1612/68/EEC (now Article 10 of Regulation 492/2011/EU) if the child's Union citizen parent, who has been employed in the host Member State, has ceased to reside in the host Member State before the child enters education in that state?

Consumer law

Case C-377/14 *Radlinger and Radlingerova v Finway,* judgment expected on 21 April

- Interpretation of unfair contract terms and consumer credit rules on insolvency and whether the provisions of the consumer directives have direct effect.

Case C-381/14 *Jorge Sales Sinues v Caixabank*, judgment expected on 14 April

- Under Spanish law where a consumer joins collective proceedings, the individual action must be stayed pending final judgment, whether this is an effective mechanism pursuant to Article 7(1) of Directive 93/13?

Economic policy

Case C-8/15 *P Ledra Advertising v Commission and ECB*, and *Joined Cases C- 105 – 109/15 P Mallis and Malli et al v Commission and CBE*, opinion of Advocate General Wahl, expected on 21 April

- Claim for annulment and compensation for decisions made by the Commission and the ECB in the context of the European Stability Mechanism.

Emission allowances

In the following emissions cases decisions are expected on 28 April*:* ***Joined Cases 191/14*** *Borealis Polyofine v Bundesminister fur Land-, Forst-, Umwelt und Wasserwirtschaft,* ***Case C-295/14 DOW*** *Benelux and others v Staatssecretaris van Infrastructuur en Milieu,* ***Case C-389/14*** *Esso Italiana and others v Comitato nazionale per la gestione della Direttiva 2003/87/CE*

General principles of Union law: Obligation to refer to the Court of Justice and Member State liability

Case C-375/15 *Association France Nature Environnement v Premier Ministre, Ministre de l'ecologie, du development durable et de l'energie,* opinion of Advocate General Kokott, expected on 28 April

- Should the national court in all cases request a preliminary ruling from the Court of Justice so that it can determine provisions held by the national court to be contrary to EU law should be maintained temporarily in force? If the answer to this question is affirmative, can the decision by the national court be justified in particular by an overriding consideration linked to the protection of the environment?

Case C-168/15 *Milena Tomasova v Solvenska republika*, opinion of Advocate General Wahl, expected on 14 April

- Member State liability in cases of enforcement of arbitration award, where performance of an unfair term is enforced contrary to the case law of the Court of Justice of the European Union.

Migration

Case C-558/14 *Mimoun Khachab v Delegasion de Gobierno en Alava*, judgment expected on 21 April

- Whether the right to family reunification precludes national legislation which allows an application for family reunification to be refused on the grounds that the sponsor does not have stable and regular resources sufficient to maintain himself and the members of his family.

Case C-561/14 Genc, Court of Justice, Grand Chamber, judgment expected on 12 April

- Turkey Association Agreement and stand still clause

Rome I Regulation on law applicable to contractual relations

Case C-135/15 *Hellenic Republic v Grigorios Nikiforidis*, opinion of Advocate General Spuznar, expected on 20 April

- Application of Rome I Regulation into employment relationships where the legal relationship was formed by a contract of employment entered into after 16 December 2009, whether Article 9(3) of the Rome I Regulation excludes solely the direct application of overriding mandatory provisions of another country in which the obligations arising out of that contract are not to be performed, or whether that provision excludes also indirect regard for those mandatory provisions in the law of the Member State, and whether the sincere cooperation enshrined in Article 4(3) TEU is relevant, for legal purposes, for the decision of national courts on whether overriding mandatory provisions of another Member State are directly or indirectly applicable?

Hearings

Case C-304/15 *Commission v United Kingdom*, where the Commission takes the view that the UK had failed to correctly apply air pollution legislation with regard to Aberthaw Power Station. The Aberthaw Power Station, a coal fired combustion plant exceeds the applicable emission limit value for nitrogen oxides. The hearing will take place on 21 April.

Case C-689/15 (Davis-Watson), and **C-203/15 (Tele2 Sverige)** (12 April 2016) - joint CJEU hearing on the legality of data retention regimes in the UK and Sweden in light of the ruling in Digital Rights Ireland (C-293/12) that struck down the Data Retention Directive and in light of provisions of the e-Privacy directive. The Law Society of England and Wales has first intervened in the Davis-Watson case when it was heard before the High Court and has remained a party ever since. In its submission, the Law Society highlights its concern for the need to protect the legal professional privilege. The preliminary rulings usually take 15 months to **complete.** However, this case is heard as an **expedited** procedure, which means that the final decision is due this year, albeit probably after the EU referendum. The Advocate General Opinion will publish his opinion on 19 July.

About us

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

Subscriptions/Documents/Updates

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

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