The Law Societies
JOINT BRUSSELS OFFICE

Brussels Agenda

November-December 2017

The Law Societies' monthly publication with the latest EU news

Editorial

To say that recent months have been awash with developments on gender and equality issues would be an understatement. The break of the Weinstein scandal in October triggered something of a domino effect of sexual harassment claims and allegations, not just in Hollywood but in Westminster as well as here in Brussels.

The revelations sparked an international campaign of solidarity of women sharing their stories of sexual

harassment with hashtag #MeToo. It became rare for a day to pass without a new allegation of sexual harassment being made against a celebrity figure or high-level politician, including Hollywood actor Kevin Spacey, UK Secretary of State for Defence Michael Fallon, Labour MP Kelvin Hopkins and UK First Secretary of the State and Minister for the Cabinet Office, Damian Green, to name a few.

In early December Time magazine named the celebrities speaking out about sexual abuse and harassment under #MeToo as the 'Silence Breakers'. The magazine awarded them the annual accolade of 'Person of the Year' which is an award given to recognise a person or idea as having the biggest impact on the world "for better or for worse". Clearly #MeToo has left a lasting impression and we hope it will continue to positively influence societies across the globe.

Whilst the door is now somewhat open for discussions and debates on sexual harassment to take place there are still many member states where this is not the case and which frankly, remain in denial about the issue. We have been watching closely to see how governments across the EU react and respond to the revelations. The UK, France and Brussels have come out as particularly supportive for the cause and have been notably open about the prevalence of sexual harassment and assault in their societies.

To move onto more positive developments in this area, the UK saw two prominent examples of inspirational women in the form of Baroness Hale of Richmond and Sarah Clarke.

Baroness Hale became sworn in as the first female president of the Supreme Court on 2 October. The Baroness has been providing women with inspiration for many years, especially since she was appointed as the first ever female judge to sit in the Supreme Court back in 2004. Only a matter of weeks later Sarah Clarke became the first female in 650 years to be appointed to the parliamentary post of Black Rod.

Staying on the theme of inspirational women, here in Brussels the '20 women who shape Brussels power list' was published which included Commissioner for Justice, Consumers and Gender Equality Vera Jourová. We are constantly monitoring the outcomes from Jourová's cabinet and you can read more about the challenges she has faced during her career in the article written by Julen Fernández Conte on behalf of the Consejo General de la Abogacía Española who recently had lunch with the Commissioner.

The EU 'celebrated' its Equal Pay Day on 3 November. The date marks the day from which women work 'for free' until the end of the year in consideration of the average gender pay gap of 16.3%. In the UK, the Equal Pay Day fell slightly later on 10 November to reflect a lower gender pay gap. Our colleagues at The Law Society of England and Wales organised a quiz and a bake sale which charged men 14.5 % more for cake. You can read in more detail about this topic in the article published by our office 'Are we doing enough to shrink the gender pay gap?'.

The subject of gender and equality simply covers far too many issues for us to write in detail about each one, so in this edition of the Brussels Agenda we have highlighted several specific challenges still facing women from discrimination in wages, to gender based violence and the general underrepresentation of women in certain professions and senior roles. We are also pleased to highlight the initiatives being taken by the Junior Lawyers Division of England and Wales, member states, such as Spain, EU institutions and corporate organisations to combat these challenges and promote fair and equal treatment in society.

The Brits in the office were also extremely pleased to hear the news of the royal engagement between Prince Harry and Meghan Markel. Miss Markel is actually a great example of a modern feminist fighting for what she believes in and who we can learn a lot from. We recently watched a video of a speech she gave in March this year where she recalled an experience she had at school when she was 11 years old. In class they watched an advert for dishwasher liquid which said '*women* all over America are fighting greasy pots and pans' and some boys in her class said that women belonged in the kitchen. Miss Markel went home and asked her father what she could do about this as it made her feel angry. Acting on his advice, she wrote letters to the most powerful people she could think of, including the manufacturer of the dishwasher liquid, Proctor & Gamble and the first lady at the time Hillary Clinton. One month later, Proctor & Gamble changed their advert to '*people* all over the world are fighting greasy pots and pans'. It is remarkable to see an 11 year old stand up so strongly for this issue and inspirational that she affected such a positive change at such a young age.

What we hope to achieve from this issue is to raise awareness of issues and show our support for all initiatives aimed at redressing the gender and equality imbalance.

We hope you can enjoy reading these thought provoking articles over a mince pie or two at this cold time of year.

We wish you all a Merry Christmas and a Happy New Year!

UK Law Societies Joint Brussels Office

Christina Blacklaws
My vision for equality in the legal profession and the priorities for my upcoming presidency

As the end of 2017 approaches, I have been reflecting on the number of significant initiatives the Law Society of England and Wales has launched this year to promote the role of women in the law and support them throughout their career.

In 2017 the Law Society offered mentoring, networking events and a returners course supporting many women and men in their journey to achieve their full potential. This year we have also launched our *Sisters in Law* project to specifically support and represent BAME women in the profession (as women of colour are the most under-represented group in the corporate pipeline—behind white men, men of colour and white women). This year we have also supported the launch of the First 100 Years project to highlight the achievements of women in law, and to open the discussion as to why there are so few women at the top of the legal profession.

Women in leadership in the law will indeed be a central theme of my presidential year when I become president of the Law Society of England and Wales in July 2018.

2017 has been a very significant year for women lawyers as we have now become the majority (50.2%) of practising solicitors in England and Wales. Yet, of the 30,000 partners in private practice only 28% of partners are women and this is clearly an issue that needs to be tackled. I hope and believe that my women in leadership programme will significantly contribute to this.

Women's skills and abilities continue to be underused in the profession. Women aged between 36-40 and older, are leaving the profession, often at the point when they have the skills and experience to become partners in private practice. Firms are losing a significant part of their talent pool. This is a serious business issue.

At the core of all of this is a significant cultural shift that needs to happen within the legal sector to achieve real equality. Our research shows that work-life balance is a problem and still too many women fear asking their employers for flexible working arrangements as this request could be viewed as a lack of commitment to their careers. This puts women under pressure and many vote with their feet by leaving the sector, taking with them their knowledge, experience and expertise.

Interestingly, a greater percentage of women decide to work in-house (56% compared to 48% in private practice), where perhaps more employers have recognised the benefit of agile working policies as a way of attracting and retaining the best employees. In-house solicitors account for 22% of the profession, which we predict will rise to 35% by 2020.

This problem is exacerbated by two additional issues that are often identified as key causes of women leaving the profession: 1) difficulty to balance work and specific caring responsibilities; and 2) difficulty returning into the legal profession after a career break.

Unfortunately, we know that we are still far from equal and fair treatment, as the gender pay gap data clearly shows.

While we welcome the introduction of new government requirements around gender pay gap reporting, which will bring more transparency, we know that meaningful change will not happen without that significant cultural shift I referred to above, which must be rooted in a shared understanding that gender equality and parity of treatment of women and men will be beneficial for everyone. For example, evidence shows that companies with a good gender balance consistently outperform those that do not have equal representation, especially at the top. In addition, figures from the Women's Business Council estimate that fairer treatment for women in the workplace could contribute over £150billion to GDP by 2030.

Some firms have now started to adapt in response to this problem. Many are recognising the merit of flexible working policies and using innovation to help drive equality in the legal profession. We are seeing a rise in the adoption of agile working, work allocation policies, and an outputs and outcomes focussed approach rather than the more traditional billable hours model.

These are policies that can help to improve the working environment and career prospects for everyone including women and working fathers with caring responsibilities. Equality is good for business and tackling these issues will positively affect society as a whole.

To contribute to this shift, for the first time this year the Law Society marked Equal Pay Day in the UK (10th November) by launching an **online consultation** to generate insights and collect personal experiences of the gender pay gap.

This piece of work has been supported by several stakeholders including the **Law Society's Women Lawyers Division**, LexisNexis and the Women's Interest Group of the International Bar Association, and I am confident the insights we will gain will play a key part in accelerating the pace of change.

We have already received more than 2,500 responses but we need more women and men, particularly from other jurisdictions to use this as an opportunity to make their voices heard and to help us inform the changes we need to see.

I would therefore invite you all to complete this survey and share it broadly with all your networks: **www.surveymonkey.co.uk/r/women-in-the-law**

Christina Blacklaws, vice-president of the Law Society of England and Wales

Katharina Miller
Gender & Equality: A view from the EWLA and review of their 16th Congress

In November the European Women Lawyers Association (EWLA) celebrated its 16th congress. This year's theme was "The Key Role of Diversity to Strengthen the EU". The event took place at the premises of KPMG in Luxembourg.

Monika Ladmanova, who advises EU Commissioner for Justice, Consumer and Gender Equality Vera Jourová on gender equality and non-discrimination matters gave the keynote speech. Her speech dealt with the "Strategic engagement on gender equality 2016-2019: Where are we?" She talked about the proposal for a work-life balance directive for a broader approach to address the underrepresentation of women in the labour market. According to the European Commission "this new initiative takes into account the developments in society over the past decade in order to enable parents and other people with caring responsibilities to better balance their work and family lives and to encourage a better sharing of caring responsibilities between women and men." EWLA is preparing an advisory opinion on the proposal. Ms Ladmanova also mentioned the opportunities for women that are related to the digital transformation. EWLA, under the leadership of one of its presidium members, Antonia Verna, is conducting a legal project for more women in technology.

Ms Ladmanova's keynote was followed by three panels. The first panel was dedicated to "Women's sustainable impact on economic growth from the point of view of the private sector" with testimonials from the female CEOs of banks, fund organisations and audit and consulting firms based in Luxembourg and Switzerland. All panellists agreed on the need for more diverse boards. Interestingly, there was no consensus between the panellists on the importance of quota laws. Panellist Simone Stebler from Egon Zehnder demonstrated with statistics that only quota laws that are put into effect provoke change within corporations. EWLA was a cooperation partner of the shareholder activist project European Women Shareholders Demand Gender Equality (EWSDGE). The aim of EWSDGE was to achieve gender balanced leadership in companies. The project, mostly funded by the European Commission as well as the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), the Ministry for Justice and Equality of Saxony-Anhalt, the Finnish Chamber of Commerce and the German Women Lawyers Association (djb), ran from 16th of May 2014 until 15th May 2016. The idea is a simple, yet effective one: the EWSDGE project visited Annual General Meetings of the EURO STOXX 50 index companies as well as a selection of the BUX, SOFIX and FTSE 100 companies during the first half of 2015, submitting a questionnaire to supervisory boards for detailed information about the representation of women in leadership positions of their companies (executive and/or supervisory board, but also other management positions) as well as about the companies' overall activities and achievements in relation to promoting women's careers (for example, accelerated women's management programmes). One of the **recommendations of EWSDGE** is the need for more ambitious legislation and policies at a European and national level such as binding gender quota legislation that is combined with sanctions.

The second panel focussed on the "Promotion of diversity in public and corporate entities" with lessons shared from start-up hubs to multinationals through experience of their corporate social responsibility policies and their commitment to promoting diversity and gender equality, notably with awards and mentoring to build best practices with their employees, clients and stakeholders. All congress participants could witness the very challenging goal of Vodafone which is to be the world's best employer for women by 2025. Director General Personnel at the European Investment Bank, Cheryl Fisher, encouraged the audience not to focus on other women or other people's lives, in order to allow different life models, such as fathers who stay at home and mothers that are having their professional careers, to develop. Expert in inequalities issues including gender policies of the University of Luxembourg, Dr. Anne Hartung, insisted that bias starts at a very early age and the whole society has to make the effort to overcome its own stereotyped thinking. In 2016, several EWLA board members had issued **proposals for the transposition of the CSR Directive** into national legislations. Many of the recommendations that were presented by the speakers of the second panel coincided with the different national proposals for the transposition of the CSR Directive by EWLA. One of these proposed recommendations was to create mentoring programs, as they are an effective tool to promote and further the careers of women. Mentoring programs can help women, who are in leadership positions or who have the potential to take over leadership duties, by facilitating the exchange of experiences and knowledge, to establish contacts in more senior managerial levels and to expand their network. These programs also provide the opportunity to enhance an individual's leadership and methodical skills.

The last panel dealt with the topic "Innovation and women empowerment". This panel showcased talent innovation in entities such as chambers of commerce and law firms that encourages diversity and women initiatives to advocate the exchange of know-how and best practices, notably through awareness raising on behalf of stakeholders. Paul Schonenberg, Chairman and CEO of the American Chamber of Commerce in Luxembourg and strong supporter of diversity explained to the audience his 10% rule. In his opinion all employees need to have 10% of free time once a week in order to dedicate the free time to whatever she or he wants to do. Applying this rule for a 40 working hours week would mean that an employee would have 4 working hours free and at his or her own disposal. In Mr. Schonenberg's opinion this 10 %-rule could help to create flexible working time models.

Jean Schaffner, partner and head of the Luxembourg tax practice, Allen & Overy, (also founder of the Ladies In Law Luxembourg Association (LILA)), Véronique Hoffeld, managing partner at Loyens & Loeff, Luxembourg, and president of the board of directors of the National Research Fund (FNR) of Luxembourg and Mathilde Ostertag, local tax partner with GSK Stockmann, shared best practices from their law firms. EWLA would like to be a supporter within this challenge and find solutions to bring more gender diversity to the boards of law firms.

Gabriela Tennhard, senior manager at KPMG and founding member of KPMG Diversity Luxembourg on Women Tax Club, shared insights on how the consultancy was tackling the challenges of gender diversity within its own corporation. One solution was the founding of a women tax club which is also open to men.

After this very inspiring day, EWLA closed its 16th congress with many new ideas and new partners and looks forward to developing its gender and equality work in 2018.

EWLA is registered in Belgium as an international non-governmental, non-profit, association (Association Internationale Sans But Lucratif). It is a federation of national women lawyers' associations from amongst the European Union countries and those of EFTA countries. Members of EWLA are also individual women lawyers and academics from these countries. EWLA pursues the co-operation of European women lawyers, in order to combine their specific expertise in monitoring law and politics seen from the angle of fundamental rights, and in particular gender equality.

Katharina Miller, president of the European Women Lawyers Association

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Joanna Maycock & Mary Collins
The Europe we want: One step forward one step back – is equality between women and men progressing in Europe?

It is important to appreciate how far we have come in strengthening women's rights in the past century. As the largest alliance of women's organisations in Europe, the European Women's Lobby recognises the importance of efforts by the European Union (EU), as equality between women and men is one of the EU's "founding values". The women's movement has been a pivotal player, collaborating with governments, trade unions, businesses and EU institutions to drive real and lasting change in the lives of women and men

throughout Europe.

Even so, **gender equality in Europe has stagnated and even gone backwards in some areas**. Recently, data of the **European Institute for Gender Equality 2017 Index (GEI)** showed that women are still very much treated as second-class citizens in Europe. Entrenched gender stereotypes result in occupational segregation on the labour market as the sectors where women work continue to be undervalued and underpaid. Women's life-long earnings are lower than men's by almost 40% which, in the long term, impacts on their economic independence with heightened exposure to poverty, testified by a staggering gender pension gap of 40%.

The burden of unpaid and low paid care work continues to rest on women's shoulders – especially on migrant women, and, as the GEI clearly shows, women simply have no time to be able to invest in paid work, and political participation. Men continue to dominate leadership roles at powerful central banks, finance ministries and in the top positions of the largest companies.

We know that one in three women in the EU, or 62 million women, have experienced physical and/or sexual violence since the age of 15. Male violence against women knows no geographical boundaries, no age limit, no class, race or cultural distinctions and is manifested in multiple forms and involves a wide variety of perpetrators from intimate partners and family members to work colleagues as the recent outpour of #MeToo campaign bears witness.

Women are mobilising, loud and united

Populism is on the rise in Europe, flowing from fear, poverty, inequality, and growing global complexity. Fueled by manipulation of media and information, it a poisonous blend of patriotism and patriarchy; tradition and nostalgia. It is about power and control by traditional forces and always negative for women.

At the same time, we are experiencing unprecedented engagement in women's rights with women mobilising on the streets, on social media, across sectors and borders and political divides. Women from Poland to Britain; and from Turkey to Hungary are at the forefront of mobilising against populists and fascists for a more equal, more sustainable and peaceful Europe. We are deeply encouraged and inspired by the depth and breadth of advocacy and mobilisation of young women in Europe.

It's about time

It is time for a reinvigorated political impetus to put women's rights and gender equality at the centre of the EU project. It is time for urgent action: at a European and member state level. The outcomes of the recent Colloquium **on Fundamental Rights "Women's Rights in Turbulent Times", under the auspices of the European Commission vice-president, Frans Timmermans** provides the perfect opportunity to start this process to bring women's voices into the heart of the political discussion about the **future of Europe.**

The European Union can and must lead the way

A political strategy for gender equality and women's rights is urgent. A strategy which enables policies and legislation at EU and national level to be implemented and monitored, through annual reporting to the European Parliament and oversight through an annual ministerial meeting on gender equality is needed. The strategy should also set our EU national and EU level accountability to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), and the Beijing Platform for Action and the Sustainable Development Goals (SDGs).

We need a gendered budget and multi annual financial framework (MFF) fit for purpose. Specific resources need to be available for women's rights and for women's organisations in the EU neighbourhood and developing countries, and a gender lens throughout the whole of the EU budget.

With a European comprehensive policy and legal framework, to put an end to all forms of male violence against women, at all levels, including the ratification and implementation by the EU and all member states of Council of Europe Convention on preventing and combating violence against women and domestic violence: the **Istanbul Convention**, and the appointment of an EU Coordinator on violence against women and girls, within the umbrella of the European Commission's work on equality between women and men.

We know what works, we know what to do to change the situation and we know what is possible: this is simply a matter of political will! We need a massive programme of investment in women's rights. We know it is not just possible to achieve gender equality but it is also necessary. Necessary for happier, healthier, more equal and more sustainable societies.

It's time to move forward!

Joanna Maycock, Secretary General

Mary Collins, Senior Policy and Advocacy Coordinator, European Women's Lobby

GENDER & EQUALITY

Marga Cerro & Julen Fernández Conte

Our priority of advocacy in Europe: Working with Commissioner Jourova on gender equality – a view from Spain

The fight in favour of gender equality has become one of the main priorities of the Consejo General de la Abogacía Española (CGAE) (which translates as the 'General Council of the Spanish Bars'), in particular since last year's election of Victoria Ortega as its first ever female President. Ortega, together with the Deans of the Bars of Madrid, Sonia Gumpert, and Barcelona, Maria Eugenia Gay work to serve the Spanish legal profession along with ten other female Deans and Presidents of Regional Councils. Last month, we had the privilege of co-hosting a working lunch with EU Commissioner for Justice, Consumers and Gender Equality, Vera Jourová, in Brussels.

During that meeting, Commissioner Jourová explained that the proposed "Women on Boards Directive" – which asks for at least 40% of women on corporate boards of the European Union's member states until 2020 is evidenced in numerous surveys and studies, which prove that diversity works in management structures. Commissioner Jourová stated that "a good mix of good professionals first, and then good men and good women" is more beneficial for businesses because of the interrelation between diversity and better decision-making. It helped that our co-host of the event was the Spanish Chamber of Commerce.

Commissioner Jourová shared with us her personal experience when President Juncker set out his aim to have at least nine women on the EU28 Commission and promised important portfolios to those members states who would commit to nominate women. Amongst them, the Commissioner was the first nominee and despite her extensive political experience, two bachelor's degrees and a master's degree, her own national press commented that her only merit for this post was "having been born 50 years ago as a woman". Whilst the triple grievance in that sentence is shocking, justice was made some days later when, in addition to the Justice and Consumer protection portfolios, she was to be entrusted with Gender Equality.

Commissioner Jourová also announced a new European Action Plan on gender equality, which was launched as part of the **2017 Annual Colloquium on Fundamental Rights**. The Colloquium this year is dedicated specifically to "Women's Rights in Turbulent Times". The Action Plan presents ongoing and upcoming measures taken by the Commission to combat the gender pay gap in 2018-2019.

We also discussed the Commission's Multiyear Action Plan on Equality, which is indicative of the fact that the Spanish Council also has this issue as a priority in its own strategic plan. The Commissioner indicated that she prioritises the measures which have the most economic impact such as the initiatives for equality in pensions and equality of salaries. The Commission is also considering updating anti-discrimination legislation to request more transparency on remunerations and increase sanctions for companies failing to provide equal pay. Additionally, she pointed out two other problems; firstly, young women tend not to choose to study subjects with better professional opportunities and secondly women are less likely to ask for salary increases from their employers.

Back to our work at the Consejo in Spain, it is also worth noting that one of the main aims of the CGAE was the creation of an 'Equality Committee' to foster practices of conciliation and sharing of responsibilities as well as to promote access to justice under conditions of equality by detecting and eliminating barriers that discriminate against people based on their sex. The Committee holds an educational role through increasing lawyer's training initiatives and also acts as an advisory function so that our institutional bodies of the legal profession correct their own internal inequalities. Our Council is also actively promoting the presence of

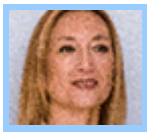
women as participants in workshops and meetings to enhance the gender perspective and make women visible as experts. This issue is also our concern in Brussels, where EU events are often polarized by male candidates.

In May earlier this year, our Council held an 'Advocacy in Equality' Conference, to analyse the factors of inequality in society, in justice and in the legal profession, including the unbalanced level of responsibilities taken on by women in the care of the minors and the elderly population. The participants addressed aspects related to the organisation of society, the language of equality, equality in justice, the effects of the law of equality and the measures that can be adopted by the professional institutions to redress the balance.

The Council has also carried out another series of initiatives to make visible the need to fight for objective equality between men and women, such as a special edition of our **XIX Human Rights Awards** on gender equality and the **Congress of the Spanish Lawyer's Foundation**. Spanish local Bars are also increasingly committed to equality, as demonstrated by the 7th Meeting of Government Boards of the Bars, where several best practices in favour of conciliation and gender balance were presented. A notable example comes from the Bar of Alicante which offers its members the possibility of obtaining discounts and other advantages in the schooling of their children from 0 to 6 years old, thanks to the agreements that the Bar has signed with several nursery centres and schools. These agreements seek to facilitate and improve the affordability of the reconciliation of family and work life. Other bars such as Oviedo also provide nursery facilities in their premises or in cooperation with nursery centres.

Finally, through our EU Office, in addition to our tasks of representing the profession, monitoring EU developments and as part of our project-driven working culture, we are partnering with six other national advocacy bodies and the Council of European Bars & Law Societies (also known as the CCBE) in the European Lawyer's Observatory. Recently, a European wide survey on work-life balance received more than 4000 responses and its results will be published shortly by each respective Bar.

If reading this article you remain unconvinced by the cause or the priority, you may still be assured of two things: firstly, that gender equality is one of the most deplorable discriminations of our times as it affects the majority of the population and secondly, that as lawyers, we will actively fight against it!



Marga Cerro is President of the Regional Bar of Castilla la Mancha and member of the Committee on Equality of the *Consejo General de la Abogacía Española.*

Julen Fernández Conte is the EU Director of the *Consejo General de la Abogacía Española* and member of its CCBE Delegation.

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Charlotte Parkinson
Will extended court hours reduce diversity in the profession?

Currently, most courts in the UK sit between 10am and 4:30pm with opening hours typically between 9am and 5pm. In 2016, the UK Government set about reviewing the options to extend court opening hours with a view to making the courts more accessible in the interest of access to justice. In May 2017 HMCTS (Her Majesty's Courts and Tribunals Service) announced that it would launch a six-month pilot scheme to test the proposals for flexible operating hours.

In light of the controversial feedback from the profession and uncertainty behind the rational for change, the pilot has since been delayed to enable HMCTS to take "*more time to engage and discuss the pilots, picking up on comments made on how they could be improved*." The pilots are now expected to run from February 2018 and will be followed by an evaluation. We could potentially see these changes implemented from as early as 2019.

The proposals are as follows:

Civil courts

- Work involving litigants in person, applications and bulk work will be done between 8am-10:30am and after 4pm.
- Courts will remain open until 7pm.

Criminal Courts

- Magistrate bail work will be heard from 2pm-6pm.

- Magistrate court hours will be extended to 9:30am until 8:30pm.
- Crown courts will remain open until 6pm.

Pilots will test different hours in different locations so the proposed times above may change again before implementation.

HMCTS have said that the proposals in the Crown Court would pilot two four-hour sittings from 9:30am-1:30pm and 2pm-6pm. It has been suggested that the two sittings would involve different cases, judges and parties. HMCTS have also said it does not expect any individual to work more hours each day than at present.

Likely affect

The response from the profession has been largely negative. It is envisaged these changes will affect the diversity of the profession, having a significant impact on those with caring responsibilities (which is still primarily women). Those with children will be adversely affected as changes would mean increased childcare arrangements, potentially resulting in those with caring responsibilities opting out of a career as advocates altogether.

Notwithstanding caring responsibilities, these proposals jeopardise work-life balance. Wellbeing in the profession is a recognised issue and lawyers are increasingly citing work-life balance as an important consideration for their future careers. The Junior Lawyers Division of England and Wales (JLD) conducted a survey in relation to stress and wellbeing with the results being published in April this year. These revealed that over 93% of respondents had suffered stress in the month prior and key stress factors were high workload, lack of support and ineffective management.

It is likely that the work taking place outside of usual court hours will be bulk work and applications, which tend to fall to the junior lawyers. Junior lawyers are therefore likely to work early and/or late hours at court, in addition to their hours in the office, without time in lieu or overtime pay. This does not promote a healthy attitude towards mental health and wellbeing to those just starting out in their legal careers.

Lawyers require time to prepare cases and a day's work rarely starts and finishes in line with hearing times. There is work to be done pre and post hearing, not to mention travelling to and from the court. These changes seem to be a regressive step away from a better work-life balance and lawyers having the ability to spend time at home with loved ones. At a time where the retention of women in the profession and a lack of female judges are key issues, the proposals seem only to add additional obstacles.

HMCTS are to undertake a roadshow in an attempt to engage with the profession about these reforms. A full evaluation of the pilot is then expected to be published with recommendations for further developments.

It is hoped HMCTS will reflect on their findings from the pilot and develop better possibilities to improve access to justice and the efficiency of court services as, in their current form, the proposals do not encourage diversity in the profession. As Chairman of the Bar Andrew Langdon QC has stated, "*We need measures that will help women stay in the profession*" at a time when many choose not to return after having children. It is difficult to see how court hearings held at 8am or until 8pm will encourage this retention.

Charlotte Parkinson is a trainee solicitor at LCF Law Solicitors and Junior Lawyers Division Executive Committee Member 2014-2017.

Are we doing enough to shrink the Gender Pay Gap?

The gender pay gap (GPG) has gained significant momentum over recent months and with the introduction of the Equality Act 2010 (Gender Pay Gap Information) Regulations this year which requires organisations of more than 250 employees to publish a GPG report, it is a topic businesses can no longer shy away from. We have seen organisations start to publish their GPG figures and it is clear a problem exists. Notable examples include the BBC reporting a 9.3% GPG and most recently the Bank of England reporting that male employees are paid almost a quarter more than female employees. While many organisations will submit contextual justifications for the figures, many of those justifications themselves highlight the challenges and problems still facing women in the world of employment.

There remains a trend in the UK and across the EU for management and supervisory positions to be held by men which will naturally have a negative impact on figures. This can be attributable to the fact that women still generally spend more time off the labour market than men and often take career breaks to raise a family. Linked to this, is the statistic that women on average spend 22 hours a week doing unpaid tasks such as household work and/or childcare, compared to the average 9 hours spent by men on these tasks. There

are also many occupations where women are overrepresented which offer lower wages, (such as teaching) than those offered by the occupations predominantly carried out by men, despite requiring the same level of education and experience.

Across the EU, we can see a high average GPG of 16.3%, which varies significantly across member states (i.e in Estonia it is 29.9% and in Italy it is 5.5%). Whilst this variation exists, the main causes are similar across the EU.

The European Pillar of Social Rights was proclaimed by the European Parliament, the Council and the European Commission on 17 November. This is a commitment to a set of 20 rights and principles, including principle 2 - the right to gender quality. Under this principle *"Equality of treatment and opportunities between women and men must be ensured and fostered in all areas, including regarding participation in the labour market, terms and conditions of employment and career progression"* and *"Women and men have the right to equal pay for work of equal value."* It is pleasing to see a top-level institution make these commitments and set the right tone for others to follow.

The European Commission has now launched a second round of discussions with trade unions and employers' organisations at the EU level on how to support access to social protection for all people in employment and in self-employment. This seeks to give people the right protections whatever type of job they are in. These types of social protection systems are vital in achieving a sustainable, adequate and fair environment for individuals to live and work.

Only a few days after the #SocialRights Proclamation, the 2017 Annual Colloquium on Fundamental Rights took place in Brussels focussing on "Women's Rights in Turbulent Times". A session of the Colloquium was dedicated to discussing the root causes of the GPG, examining emerging trends on the labour market and finding solutions to tackle the GPG. Both developments are clearly the result of Jean-Claude Juncker's commitment in his State of the Union to build a fairer and more social Europe.

In the UK, GPG is at its lowest, of 9.1% and whilst this is itself a positive, it has been slow progress – demonstrated by the fact in 2012 it was 9.5%. The Fawcett Society suggests it will take 62 years to close the GPG based on the current rate of progress. 10 November marked Equal Pay Day which signifies the point women start working for nothing until the end of the year due to the GPG. On this day the Fawcett Society asked policymakers, employers and individuals to make a #PayGapPledge – where a person makes a pledge to take a certain action to help close the gender pay gap.

In the corporate world we are pleased to see many positive changes, in particular Vodafone set a target of hiring 1000 women within three years who have been out of the workplace for several years, with up to 500 of those women hired into management positions. Research by KPMG stated that bringing these women back into the workplace could generate £151billion a year of economic activity. Initiatives like this are crucial in raising awareness of the GPG and pave the way for other organisations to follow.

There is no doubt that significant progress has been made in both the UK and the EU in recognising equality and diversity and as we have seen recently, both are having the right discussions and taking positive steps. However, further work and effective action is required by both employers and governments to get to the heart of the GPG if we are to see a real and tangible improvement to the figures.

It is no surprise that the GPG is partly the result of an underrepresentation of women in senior roles, demonstrated by the BBC, with 59% of the lowest four grades made up of women, and 59% of the top two grades made up of men. We need to be questioning why this is and tackling the real root causes of the phenomenon.

What is positive about where we are now is that the topic has been brought into the public arena where it can be openly discussed and addressed and where organisations will, and in many cases already, be named and shamed for large GPGs. It also means that women can feel more empowered to raise the topic with both male and female colleagues as well as ask their employers what their GPG is.

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2017: The Year to End Violence Against Women

In recent years there have been multiple initiatives and events at an EU level which aim to combat the issue of violence against women. 2017 marked the year of focused European action to combat violence against women. The initiative was headed by Vera Jourová, European Commissioner for Justice, Consumers and Gender Equality, who was praised by the European Women's Lobby for her strong commitment to ending women's human rights violations in the EU.

In order to achieve this aim, the Commission has provided financial support to allow NGOs to train doctors,

lawyers, police and teachers in identification and prevention techniques to combat gender based violence. Professor Sara Chandler, President of the European Bars Federation (FBE), described this as an "important initiative" and stated that the FBE "supports all initiatives to combat violence against women, including facilitating a culture of appropriate and timely response to reporting violence, supporting safe refuges for survivors of violence, exposing trafficking of people, and preventing female genital mutilation (FGM) though greater awareness of lawyers."

Key Initiatives and Events

The Commission highlighted its efforts on the annual 'International Day for the Elimination of Violence against Women,' which took place on 25 November.

The institution reiterated the importance of ratifying the Istanbul Convention, a set of comprehensive standards introduced by the Council of Europe which aim to prevent violence against women and provide protection for victims through integrated policies and effective monitoring. The Commission called upon all remaining member states to ratify the Convention.

With regards to action outside Europe, the EU launched the 'Spotlight Initiative' in partnership with the UN, which aims to identify and tackle the root causes of violence against women and girls around the world. The programme will run between 2017 and 2030 and has an initial investment of €500 million, with the EU as the main contributor.

Despite a productive year of ongoing measures, the Commission has faced criticism for its failure to reduce gender based violence in certain areas.

The institution's efforts were discussed at the annual Colloquium on Women's Rights which took place in Brussels on 20 & 21 November. The event brought together stakeholders from across Europe with a view to improving mutual cooperation and encouraging political engagement for the promotion and protection of key fundamental rights across Europe.

Contributors discussed the lack of financial investment in appropriate resources for victims of domestic and sexual violence, with many vulnerable women being turned away from support centres. They discussed the ongoing prevalence of FGM, which is exacerbated in countries such as Bosnia and Serbia due to a lack of public trust in police and discrimination against certain cultural and religious groups. EU intervention is essential to ensure equal rights and protection for women in these countries. Contributors called upon the Commission to provide more funding, as well as legal intervention to ensure accountability for perpetrators and education to end the cycle of victim blaming in sexual abuse cases.

Gender Equality Index

The Gender Equality Index (GEI), published by the European Institute for Gender Equality, is a composite indicator which has been used to monitor the progress of gender equality throughout EU member states since 2005. The initiative aims to eradicate gender-based violence by providing a set of indicators to assist member states in assessing the extent and nature of violence against women, thus enabling them to monitor and evaluate institutional responses.

Sara Chandler describes the index as "an important tool for legal professionals, as its publication is informative and helpful in contributing to the consolidation of strategies for change in Europe. One of the most serious forms of gender inequality is violence against women, rooted in the unequal power relations between women and men."

Statistics from the GEI show that on average across the 28 member states, 33% of women have experienced physical or sexual violence and 69% of these women have suffered health consequences as a result. Additionally, 55% of women have experienced sexual harassment and 18% have been stalked.

The figures demonstrate a clear need for more effective policy measures to be introduced and enforced in order to fully eradicate gender-based violence in Europe. Sara Chandler commented that "It is disappointing to read that progress on gender equality on the whole has been slow, and in some cases there has been a reversal."

The 2017 Commission initiative has demonstrated clear progress in several areas and has been met with praise by campaigners for women's rights. However there remains an imbalance in efforts, with slow progress in areas such as FGM and sexual harassment.

The dedicated year to target gender based violence has brought together a myriad of stakeholders and campaigners, facilitating productive dialogue and raising awareness of the wide range of issues women and girls face within the EU and worldwide. The Commission has stated that eliminating violence is at the heart of its 2030 Agenda for Sustainable Development and will therefore remain a strong focus over the next decade.

In the field of lawyers, the Law Society of England & Wales is calling on all individuals in the law, women and

men, qualified or not qualified, to complete the 5 minute survey on this link **www.surveymonkey.co.uk/r/women-in-the-law** *in order to produce a snapshot of the situation of women in the law by 31 December 2017.*

Gender balance across the legal profession

August of this year saw the publication of a **study** commissioned by the JURI committee regarding the gender proportions of the European legal sector.

The outcome of the European Parliament's study reinforces that gender bias and gender stereotypes persist in the legal profession – a concern in a sector that is implicitly aware of the rules that have been created regarding equality.

The progress that women have made in the legal sector to date

Whilst women were late in entering the legal sector, recent figures show that 60% of European law students and graduates are now female. However, 2015 figures also showed that in Europe only 43% of lawyers were female which suggests a significant disconnect between female law graduates and those progressing to the profession as lawyers.

In the UK, women have overcome numerous barriers to enter the legal profession – the Parliament's study highlights that the first female to be able to graduate in law was only 100 years ago in 1917, yet the first female lawyer wasn't admitted in Scotland until 1919 or in Ireland, England and Wales until the early 1920s. Moreover the first female judge wasn't appointed in England and Wales until 1945 as a metropolitan stipendiary magistrate, as a recorder until 1956, as a county court judge until 1962 and as a high court judge until 1965. Comparatively Northern Ireland did not appoint a female county court judge until 1998 or female high court judge until 2015. In this context, it is even more shocking to consider that Baroness Hale was the first female appeal court judge appointed in 2004 and that Lady Black and Baroness Hale are the only two women to have ever been appointed to the Supreme Court judiciary in England and Wales (Lady Black was appointed in 2010).

What are the key findings of the study in regards to women in the legal sector?

The study reports a trend in judicial professions that shows that the proportion of females decreases as the seniority of the role increases. In European supreme courts the average split is two thirds male to one third female. In private practice the study found that more men than women could gain a training place of their choosing and their first choice as a newly qualified lawyer.

Findings also show that female European lawyers are working in areas of law that have lower strata clients, are less prestigious and lower paid than those of their male counterparts, with indications that often female lawyers choose not to specialise into a particular area of law. There are also increasing numbers of female legal graduates choosing not to work in private practice, instead preferring to work in industry, non-profit sectors and the public services.

One reasoning given to these findings is that women are still prejudiced by the outdated perception that as a gender they are more emotional, easily influenced and biased, and unable to see the bigger picture.

Another reasoning the study gave is that women do not have the connections and networks available to them that male lawyers have. Coupled with assertions that promotion and appointment procedures lack transparency and that there is a dearth in commitment to diversity in firms and in the culture of the profession as a whole, women can find themselves at a considerable disadvantage.

An overarching theme appears in the study that women are finding it hard to be accommodated in playing the dual role of mother and professional, with frustration in hitting what is being nicknamed as 'the maternal wall'. It is reported that women are still facing difficulties reconciling professional and family life due to a lack of flexibility and support in work practices.

Are there any salient solutions?

The concept of using quotas has been raised as a potential solution to the imbalance of gender in the legal profession and there are examples of where the usage of quotas has been successful. For instance, there are quota systems in place for selection to the International Criminal Court (ICC) (50% women in 2016) and the European Court of Human Rights (ECHR) (36% women in 2016). Both courts have strict procedural requirements, with the ICC numbers being set out in Article 36(8)(a) of the Rome Statute and Resolution ICC-A8P/3/Res.6. As a result of the ICC regulations, the proportion of women at the ICC has never fallen below 39%, and it is reported that 47% of all judicial slots have gone to women since the court was set up.

At a national level, the Belgian Constitutional Court and High Council of Justice appointment systems were amended to be on a quota basis, and the French and Dutch systems have implemented similar measures.

The CJEU looks to allow the use of quotas, albeit only on a narrowly-justifiable basis, for example, where women are underrepresented in a particular field or are otherwise disadvantaged, and the measure is proportionate. It would not be possible for there to be a system of automatic appointment; consideration would have to be given to the respective merits of all candidates before taking a positive action to appoint a member of the underrepresented group.

This begs the question whether a quota basis really is the fairest system or whether it is a patronising means of addressing a more deeply-ingrained issue? Would it not be fairer to enforce a strictly merit-based system that is irrespective of gender?

Indeed, the House of Lords Constitution Committee dismissed the idea of using a quota system, describing it as a 'nuclear option' and instead setting non-mandatory targets to be achieved within 5 years. Given that this discussion took place in 2012 it will be interesting to see whether this notion is on the table to be revisited in the near future.

Turning to private practice, the study states that there appear to be primarily two measures put in place to encourage women to progress in their careers: the 'lean in' approach i.e. suggesting that women change their behaviour to assimilate into the working culture; and the alternative measure that workplaces should change to accommodate women i.e. changing working practices to enable more flexibility. Unfortunately the study indicates the former perspective tends to prevail, with reports of special training being laid on for women to help them adapt to a male-dominated culture.

What steps can be taken going forward?

The European Union has introduced legislation to promote equality in the workplace and this has been ratified by all member states, with many member states putting in place additional measures to ensure that women and other underrepresented members of society are elevated from a disadvantaged position. For instance equal opportunities programmes have been put in place in England, parity policies in France and quota systems in the civil service in Germany.

However the report recommends that further measures be taken to ensure the gender balance is addressed in the legal profession going forwards. The measures take the following form:

- impartial and transparent recruitment processes, including the establishment of independent nominating bodies with clear mandates and sufficient powers;
- enhancement of analysis and development action plans;
- establishment, enhancement and promotion of female legal professional networking and mentoring, including enhancing the capacity and infrastructure of networks;
- judicial education on gender equality and engagement, particularly engaging with academic facilities; and
- the introduction of more flexible working conditions.

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Women's access to justice in Italy

Women and justice: if has it changed, how it has changed, the relationship between a constant (access to justice) and many variables (the rights which underpin it).

Modern legislation incorporates values. Applied to women - in the exercise of rights as seen from a woman's point of view - these must get rid of all discriminatory legislation which prevents the promotion of effective parity.

Women have legitimate political aspirations. By and large, today, they participate in setting legislation as MPs, in practising the law as lawyers, in the application and interpretation of the law as magistrates; and certainly women have recourse to criminal, civil and administrative justice to affirm their freedom and the freedom of their bodies, and to exercise fully their rights.

Starting with the grim matter of male violence against women, we need to ask ourselves if the mechanisms and institutions which are supposed to prevent, protect and punish are adequate, and furthermore, designed to deal with a culture which threatens the efficacy of the rules and makes a mockery of women's efforts to promote new legislation.

This new legislation, to be just, must be easily accessible to women; otherwise, we will see guarantees evaporate and real gender equality will be compromised.

The obstacles are many and varied: social, cultural, economic and structural. We must first try to reduce and, where possible, eliminate, those of an economic nature, through means to support the recourse to justice.

In this vein, recent legislation against gender violence, which extends the access to legal aid, independently of income, for victims of stalking, domestic violence and genital mutilation is welcome.

Also of considerable importance is the right to paid leave for women victims of gender violence, which is recognised in one of the government circulars on recent employment legislation, and the private and public money spent on projects to prevent and fight the phenomenon.

Women also seek access more often to the justice system to fight discrimination in the workplace, to ensure that protection of gender equality is recognised and effectively applied in training, access to jobs, work pay and conditions, career and social security.

This access should now be made easier by the work of the "Equality Councillors", at the regional and/or provincial level, who are nominated by the Ministry of Employment and have the status of public officials, but who still encounter many difficulties. These councillors, who should act in the judicial process as defenders of women, receive economic resources which are distributed on the basis of complex and perverse mechanisms, often late and totally inadequate to their needs; notwithstanding the European legislation of the **Directive 2006/54, transposed** by decree, which has made these councillors protagonists in the fight against gender violence.

A very useful instrument to increase women's access to justice, in particular for those with less education, independence and freedom, has been the building of a virtuous network of institutions, associations, economic and social actors involved in an intense activity of direct consultation through "listening counters". The high number of requests for help are answered with the knowledge that they are only the tip of the iceberg of a much larger hidden reality.

An attempt to bring to light as many violations of fundamental rights as possible and to protect the rights at the work place (maternity, sexual harassment) is being made through a project promoted by the Prime Minister's Office in collaboration **with UNAR (Ufficio Nazionale Antidiscriminazioni Razziali),** which has the purpose of providing legal counsel to women of insufficient means who do not have the right to legal aid, in cases where judicial intervention is necessary to ascertain discriminatory behaviour against them.

The project is carried out in conjunction with the Consiglio Nazionale Forense, which is increasingly active in sustaining and promoting initiatives which allow women to speak out and be protagonists in the courts of law, in the workplace, in their families and in society as a whole.

Maria Masi is an academic, teaching at the University Parthenope of Naples, and a practising lawyer. She has been a very active Councillor and then President of the Ordine degli Avvocati of Nola, Campania, and she is the Councillor in charge of gender equality on the Council of the Consiglio Nazionale Forense.

EU Reforms the Postal Workers Directive

October and November saw a number of important developments take place with regard to the on-going reform of the Posted Workers Directive, which originally came into force in 1999. In late October, the European Council agreed on a final approach to the reform. Negotiations with the European Parliament on the final shape of the text then began.

The agreement at European Council level was strongly backed by the new French administration and was supported by Belgium, Germany, Luxembourg, the Netherlands and Austria. Crucially, the agreement was also supported by a number of Eastern European member states including Slovakia, the Czech Republic, Bulgaria and Romania, following substantial diplomatic efforts made by Emmanuel Macron on the subject during the summer.

In its present form the Posted Workers Directive is designed to reduce barriers to the internal cross-border trade in services while also ensuring that "social dumping" does not occur by ensuring that working conditions

and pay in a member state applies to all workers, including those posted from other EU countries.

Since the EU's enlargement in 2004, the number of posted workers within the EU has greatly increased. The current reforms aim to limit "social dumping" by reducing the length of posting time permitted under EU law. The duration limit will be 12 months, which can be extended by another 6 months. The Council also agreed to provide for equal treatment of temporary agency workers and local workers. This will encompass the application of universally applicable collective agreements to posted workers across all sectors, including bonuses and allowances. At present, posted workers are only entitled to the national minimum wage and minimum holiday entitlements of the host country.

The agreement reached by the member states is interesting, as many critics have pointed to the fact that its provisions may prove to be an obstacle to achieving a Single Market for Services. For its part, the UK abstained from the final vote on the package. Given the fact that the UK has no industry-wide wage agreements that could be undercut and has relatively low levels of social security contributions, the incentive to post workers to the UK is lower than it is to other member states like Germany, France and Belgium.

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Proposal for a Directive on the provision of digital content and digital services: The Current State of Play

The joint committee (legal affairs and internal market & consumer protection) in the European Parliament has approved the report on 21 November, and the file has now been passed on for examination by representatives of all three institutions (Parliament, Commission, Council).

The main differences with the text proposed by the Commission are:

- The inclusion of Internet of Things devices in the application of the Directive;
- The inclusion of smart goods with embedded content, but only in the part relating to the supply of the embedded digital content or digital service;
- The introduction of "dual purpose contracts" where the contract is concluded for a purpose partly within the person's trade, but this purpose is marginal;
- The introduction of the notion that personal data in exchange for digital content or service creates a contract, but with the proviso that personal data cannot be compared to a price, and therefore cannot be considered a commodity;
- The introduction of maximum harmonisation, with two exceptions: duration of the legal guarantee and short-term right to reject;
- The introduction of subjective and objective criteria of conformity as cumulative rather than as a hierarchy;
- The introduction of updates within the conformity criteria;
- The right of the consumer to keep the old version of a product; and
- Remedy described as "brought into conformity" rather than repair or replacement

The question of the interaction between this proposal, the GDPR and the e-privacy proposal remains open. For example, the GDPR says that the provision of data cannot be a condition for accessing a service, but this proposal says that you can have a contract in which you have access to a service in exchange for data.

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Conference on the results of the evaluation of the Council Directive 83/374/EEC of 25 July 1985 concerning liability for defective product

The study, based on a public consultation to which 657 stakeholders from 28 EU countries answered, aims to evaluate the Directive's:

1. Effectiveness;
2. Efficiency;
3. Coherence;
4. Relevance; and
5. Added value

Effectiveness

The Directive was overall viewed as being generally effective in the achievement of its objectives by public

authorities, civil society, as well as businesses and insurers, though consumer organisations take a more critical view especially regarding various obstacles to obtaining compensation; it is particularly difficult to prove either the defect itself or the link between the defect and the damage. Consumer organisations have been particularly critical in case of damage caused by medicines.

The question of how the Directive will continue to operate effectively vis-à-vis new technological developments is not easily answered, since there are no official data available (only one case with the CJEU). Theoretical examples have been carried out to highlight any problems in applying the articles of the Directive to five different new technological products (i.e. smartphones, 3D printers, cloud technologies, robots and self-driving cars). This analysis shows that, in terms of effectiveness of the Directive, the burden of proof upon the injured person (article 4) and the joint liability of different parties (article 5) could create problems when applied to the new technological developments.

Efficiency

The efficiency of the Directive is recognised by most stakeholder categories, but consumers think the Directive is more market than consumer oriented.

The Product Liability Directive (PLD) is a private law instrument, thus leaving to the parties (i.e. the consumer) the burden to enforce its rules. Therefore, the main costs related to the PLD are enforcement costs (e.g. court fees, lawyers' and experts' fees), and they fall on either consumers or producers, according to the outcome of the decision. Their extent varies considerably according to whether the claim is settled in or out of court. For the consumer, there are substantive compliance costs which are related to the burden of proof, such as proving the damage, the defect, and the link between the defect and the damage: this provision is deemed as the heaviest requirement of the PLD.

Coherence

The Directive seems to have stood well the test of time, being deemed coherent with:

- The EU rules on consumer protection around contractual liability;
- The "Digital contracts proposals";
- The EU rules on applicable law, litigation and ADR; and
- The EU product safety policies

Relevance

The preliminary results of the evaluation suggest that the Directive is still relevant as the initial needs still correspond to current needs. The trend in the number of claims related to defective products as well as the average EU litigation rate has not been decreasing over the last year, which demonstrates that consumer protection, producers' strict liability, and ensuring a level playing field is still relevant.

The relevance of the Directive is reduced when considering new technological developments. New technological developments challenge the relevance of the distinction between service and products, private and professional use of products and some definitions provided for in the Directive.

EU added value

The preliminary results of the evaluation acknowledge the EU added value of the Directive. Stakeholders consider as a strong advantage the uniform consumer protection all over the EU, protection which could have not be reached by means of single member state action, and are aware of protection stemming from the Directive; the EU added value of the PLD is also due to the harmonisation of product liability rules and to the right balance between consumer protection and innovation in Europe, not only with regard to the protection that consumers may find in court, but also to the prevention measures taken by producers.

In the opinion of most stakeholders, reducing the scope of (or repealing) the Directive may change the consumer protection, leading to negative consequences also for producers, like uncertainty and subsequent difficulty to predict (potentially higher) costs, decrease of harmonisation, and internal market fragmentation.

Should the Directive be repealed, it is a common opinion of the country correspondents involved in the study that either tort law or contract law or both would apply with a negative impact on consumer protection, on the free movement of goods, on competition and on the uniformity of EU legislation - because of the heterogeneous rules in terms of protection and liability and of the uncertainties due to the different interpretation of national courts.

EC launches State Aid probe into UK tax scheme

The European Commission has launched an in-depth investigation into a UK tax scheme which it alleges protects multinationals from tax avoidance measures.

The rule in question was introduced under the Finance Act 2012 which reformed the UK's Controlled Foreign Company (CFC) rules. As part of the reforms, a Group Financing Exemption (GFE) was introduced. The GFE exempts from UK taxation finance income received by an offshore subsidiary from another foreign group company. The Commission believes that the rule may allow companies to avoid paying British tax on interest paid by their subsidiaries on inter-company loans if that interest is paid into an offshore intermediary. Without the GFE, that interest income would be taxed in the UK because the CFC rules would ignore the offshore shell and allocate the interest income to the UK parent company.

The Commission doubts whether the GFE complies with EU State Aid rules which are designed to ensure member states do not give specific companies an unfair advantage, thus impacting on competition in the market place. EU case law is also clear that an exemption from anti-avoidance can amount to a selective advantage. The CFC rules were implemented to prevent companies artificially shifting profits between jurisdictions to avoid paying tax. Whether the GFE is consistent with this objective will be part of the EC's investigations.

Over recent years the EU has taken a hard line on aggressive tax avoidance as a form of State Aid with rulings made against Fiat and Starbucks in the Netherlands and Luxembourg and Apple in Ireland, requiring the companies concerned to repay billions in tax. From January 2019 the Anti-Tax-Avoidance Directive will require all member states to introduce CFC rules into national law. However, the Directive does not provide for a GFE. There is no deadline for the Commission's investigation.

Progressing the Work-Life Balance Directive

On 26 April 2017, the Commission submitted its proposal for a Directive on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. The proposal is based on Article 153 of the Treaty on the Functioning of the European Union (TFEU).

The proposal for a Directive on Work-Life Balance for Parents and Carers includes:

- The introduction of paternity leave. Fathers/second parents will be able to take at least 10 working days of paternity leave around the time of birth of the child, compensated at least at the level of sick pay.
- The strengthening of parental leave by making the 4 months period compensated at least at sick pay level and non-transferable from a parent to another. Parents will also have the right to request to take leave in a flexible way (part-time or in a piecemeal way) and the age of the child up to which parents can take leave will be increased from 8 to 12 years old.
- The introduction of carers' leave for workers caring for seriously ill or dependent relatives. Working carers will be able to take 5 days per year, compensated at least at sick pay level.
- The extension of the right to request flexible working arrangements (reduced working hours, flexible working hours and flexibility in place of work) to all working parents of children up to 12 and carers with dependent relatives.

The Council published a **progress report** in November ahead of December's EPSCO meeting, summarising the work done so far in the Working Party.

The proposed legal basis requires that the European Parliament and the Council act in accordance with the ordinary legislative procedure.

The European Parliament has not yet delivered its position.

In line with the envisaged preamble to the Directive, on 10 May 2017, the Committee of Permanent Representatives approved an optional consultation of the European Economic and Social Committee (EESC) and of the Committee of the Regions (CoR). The EESC is expected to adopt its opinion on 6 December and the CoR on 30 November.

In the Parliament, the Employment and Social Affairs Committee (EMPL) is responsible for the Directive and have yet to publish their report. Both the Women's Rights and Gender Equality (FEMM) and the Legal Affairs Committee (JURI) will be providing opinions and JURI were expected to give theirs on 4 December. Many national parliaments have also provided valuable contributions and recommendations including Spain, the

Netherlands, Poland, Italy, Portugal, Romania, Denmark and Czech Republic.

At this stage the proposal is still very much in review and our office will monitor its progression closely.

Latest on Brexit

On the morning of Friday 8th of December, both Commission President Jean-Claude Juncker and European Council President Donald Tusk announced that 'sufficient progress' had been made in Brexit negotiations, such that the second phase of talks could begin.

After a difficult week in Brussels, in which the DUP prevented an earlier EU-UK agreement from being formally adopted by the UK Government, news of progress was roundly welcomed in Brussels by the member states, Commission, and MEPs. The European Council subsequently met on the 14th and 15th of December where it was decided that Brexit negotiations could move to the second phase.

The final stretch of the first phase of negotiations centred on the question of Northern Ireland, with the Irish government and the Commission pushing the UK to agree on language that would ensure that there would be no 'hard border' on the island of Ireland. This remains a priority for both sides during negotiations in the context of the protection of the Good Friday Agreement. Additionally, in response to concerns raised by the DUP, the text of the agreement also makes clear that the whole of the UK, including Northern Ireland, will be leaving the EU (including the single market and customs union). How this will be achieved is left open to the second phase of talks.

Other commitments made by the UK and EU revolved around the UK's outstanding financial liabilities and the questions of citizens' rights as they apply both to EU27 citizens living in the UK and UK citizens living in the EU. On the issue of citizens' rights, the UK conceded that UK courts can make preliminary rulings to the CJEU for the following eight years after the agreement enters into force and beyond that the UK courts would have "due regard to relevant decisions of the CJEU" after withdrawal.

Next steps

During his press conference following the meeting of the European Council, Donald Tusk said that "it is now time for internal EU27 preparations and exploratory contacts with the UK, to get more clarity on their vision. On that basis we should adopt guidelines and start negotiations next year." Talks will resume in March 2018 and will cover both transition and the framework for the future relationship. Whilst this is a positive outcome for Ms May, Tusk has warned that "the most difficult challenge" still lies ahead.

Regarding a transition period, the European Council notes the proposal put forward by the UK for a transitional period of around two years covering the whole of the EU acquis, while the UK, as a third country, will no longer be able to participate in or nominate or elect members of the EU institutions, nor participate in the EU's decision-making. This means that the UK will no longer be represented in the European Council or the European Parliament. The UK will have to respect all EU laws, including newly-adopted measures, and stick to its budgetary commitments. In addition, the European Court of Justice (CJEU) will retain judicial oversight.

As regards the timetable for agreeing the transition, the Commission is to put forward recommendations as to how to structure the transitional period and the Council will adopt additional negotiating directives on transition in January 2018.

Although talks on the future relationship of the EU-UK will begin next year, the type of Brexit deal that the UK Government will seek remains unclear. In his speech announcing the finding of sufficient progress, Michel Barnier clearly outlined the Commission's thinking on the subject. He noted that the UK Government's red lines (i.e. that the UK should leave the single market and the customs union, and that it should no longer be subject to the direct jurisdiction of the ECJ) meant that the EU was left with no option but to examine its free-trade agreements with other third countries as models for the future EU-UK relationship. To that end he noted that the EU-Canada trade agreement (CETA) is the most comprehensive agreement in place at present.

However, CETA is a limited agreement in the EU-UK context. A CETA-type agreement would allow only sectoral access to services and thus would not fully protect the UK's services sector. Furthermore, that would increase the risk of a hard border on the island of Ireland as customs checks would be required.

Therefore the UK Government is aiming to achieve a bespoke agreement that goes further than any other EU trade agreement. Achieving this, along with a transition period that goes far enough to allay the concerns of businesses in the UK and EU27, will no doubt be the most complicated part of the UK's exit from the EU. With the easy part now over, Donald Tusk was right in saying that "the most difficult challenge lies ahead".

Ten Building Blocks for the Dispute Resolution System Post-Brexit

The EU and the UK are currently discussing the modalities of the UK's exit from the EU and its obligations for the future with regard to the position of EU citizens, border between Ireland and Northern Ireland and financial contribution to the EU budget.

One of the red lines of the UK Government, set out in its position paper on enforcement and dispute resolution, is the ending of the jurisdiction of the Court of Justice of the EU (**CJEU**) in the UK.

The UK's withdrawal from the EU is one of the greatest challenges to the legal system. There are likely to be disagreements between the two parties as to the application of the withdrawal agreement and the new agreement. How these disagreements will be resolved is of paramount importance for citizens and businesses.

In November, the UK Law Societies Joint Brussels Office co-hosted a seminar in the European Parliament with Richard Corbett, MEP to discuss this topic. Speakers included Cath Howdle, Deputy Director, EFTA Surveillance Authority, Professor Christa Tobler, Universities of Basel (Switzerland) and Leiden, Vanessa Naish, Professional Support Consultant, Herbert Smith Freehills LLP and member of The Law Society's Trade in Legal Services Working Party and David Greene, Senior Partner, Head of Litigation & Dispute Resolution, Edwin Coe LLP and Chair of Legal Affairs and Policy Board.

Helena Raulus, head of the Brussels Office chaired the panel discussion to review the options.

Essentially there are several options open to the UK for consideration: i) EFTA based model, ii) CETA based model, iii) Switzerland model iv) Norway model or v) an entirely new relationship.

If the UK will choose its own model, the key questions that were identified were:

- What is the impact of having simply a state to state dispute settlement system for the scope of the agreement? The speakers were generally in agreement that if the UK is seeking a deep trading relationship with the EU, the dispute settlement system will need to include access for individuals.
- Will the mechanism agreed with the withdrawal agreement be used also for the transition and new agreement? If the UK moves away from the CJEU jurisdiction as it is no longer a member state of the EU and it will not have its own judges at the court, what would be the appropriate mechanism to follow?
- Could there be different dispute settlement systems with respect to different aspects of the agreement, e.g. trade would have a state to state mechanism, whereas security and criminal justice would include access for individuals? Could this be achievable or desirable?
- Could the EFTA Court provide a solution, whereby the UK will be docked into the court, or a separate UK panel is created?

Conclusion

The panel agreed there should be one supranational court or a multinational arbitrational solution with the possibility of association with the EFTA court and the EFTA Surveillance Authority to police the application of the withdrawal agreement.

They also felt that a Norway plus agreement could work as the UK could take on the Dublin II and Schengen agreement.

The closer the relationship is to the EU, the more the EU is likely to insist on a dispute resolution system resembling its own, which involves state to state mechanism, as well as access for individuals to the court.

Revision of the AML Directive and PANA Committee update

The latest trilogue meeting between the European Parliament, Commission and Council on the revision of the Fourth Anti-Money Laundering Directive for the PANA Committee took place on 13 October 2017. Although significant progress was made on the more technical aspects of the proposal, the compromise text retains the Commission's provisions that attempt to limit or restrict the current reporting exemption, to impose more

proactive reporting duties on self-regulatory bodies (such as the legal profession) and to grant financial intelligence units more extensive powers to request information, regardless of whether there is a suspicious action report.

Additionally, the Council and Parliament agreed to give public access to beneficial ownership registers for companies and trusts. It was agreed that such access would be on the basis set out in the current AML Directive and would only be granted under the premise of legitimate interest. Despite the progress made, more technical work needs to be carried out to establish how these rules would apply in practice.

The continuing concern that the revised Directive may be used as a means of exposing the ownership and location of trust instruments and companies has not yet been addressed in discussions between institutional representatives.

The European Parliament's Panama Papers Committee of Inquiry Report and Recommendations

With the Panama Papers Committee of Inquiry (PANA) coming to the end of its mandate, MEPs adopted a final version of its draft report and recommendations in October. Over 700 amendments were tabled for both the draft report and recommendations. A number of the amendments tabled by the political groups were potentially problematic for legal service providers, including proposed provisions related to trusts and the mandatory disclosure of information on beneficial ownership, as well as provisions calling for the end of the self-regulation of the legal profession in the EU.

On 18 October the Committee met to vote on the final draft of its report and recommendations. Worryingly, the majority of amendments tabled in favour of the legal profession were not voted through during the Committee vote, resulting in a number of the revised recommendations tabled in the final recommendations to Parliament having a negative effect on the legal profession.

It has since emerged that the main reason for this is that the EPP did not have enough members attend the Committee vote to carry through its own proposed amendments.

The **report** and **recommendations** will now be submitted to the European Parliament for debate and to be voted upon in December's plenary session. It is likely that amendments supporting the legal profession will be passed at this final stage. In light of the recent Paradise Papers leaks, it is also likely that a number of further amendments will be tabled before the final plenary vote.

Paradise Papers and next steps

On the same day as the final PANA Committee hearing the PANA Committee held a discussion with representatives of the International Consortium for Investigative Journalism (ICIJ) on the subject of the Paradise Papers revelations and possible follow-up actions.

In the wake of the most recent leaks there have been renewed calls to explicitly identify jurisdictions which are not considered to abide by EU 'tax transparency'. The Greens/EFA group have called on the European Parliament to set up a permanent inquiry committee to ensure that it can react quickly to future reports of tax avoidance, evasion and money laundering in the EU. Similarly, the S&D group called for the creation of another Special Committee of Inquiry to examine the Paradise Papers leaks.

Council Adopts Negotiating Mandate on the Transparency Register

On 6 December 2017, the Permanent Representatives Committee (Coreper) agreed on the Council's position on the Commission proposal for a mandatory Transparency Register.

This means that the Council Presidency will now be able to begin negotiations with the Parliament and Commission on the Council's participation in the Transparency Register.

The Council is supportive of the overall approach proposed by the Commission notably on the principle of conditionality - that certain interactions with EU decision-makers are only open to interest representatives that sign up to the Transparency Register.

Interest representatives would be required to register in order to be able to meet with the Secretary-General and Directors General of the General Secretariat of the Council and to attend thematic briefings, public events

and access to the Council premises.

However, the Council considers that interaction between interest representatives and national officials, such as diplomats working in the Permanent Representations to the EU, remains the sole responsibility of the member state concerned, including when serving as Presidency of the Council.

The Council's mandate encourages member states to require registration in the Transparency Register for certain interactions with the Permanent Representations at a senior level when serving as Council Presidency. This would not affect their right to address the issue through any other national measures.

The Council's mandate also proposes the creation of two legal instruments: 1) a tripartite interinstitutional agreement and 2) individual 'Decisions' to be adopted by each of the institutions. The Decisions would set out the types of interactions which each institution would make conditional upon prior registration of interest representatives in the Transparency Register. Together the two instruments constitute a single political package.

The Council published a **Draft Council Decision** on the regulation of interactions between officials of the General Secretariat of the Council and interest representatives, which accompanied the adoption of the mandate. It includes a separate Code of Conduct, similar to the existing one but with several changes.

Next Steps

In advance of the interinstitutional negotiations between the Council Presidency and representatives of the Parliament and the Commission, a political-level meeting will be organised shortly, to prepare ground for the forthcoming negotiations.

Inter-institutional negotiations between the Council, Commission and Parliament are expected to start during the first half of 2018 under the Bulgarian Presidency.

If negotiations are successful and an agreement is reached by the institutions, the text of the proposal will then be published in the Official Journal of the EU.

The further proposals for separate decisions governing conditionality for each institution will be included in this negotiation but will constitute separate instruments.

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CCBE to file amicus brief in support of Microsoft case at US Supreme Court

The Council of Bars and Law Societies of Europe (CCBE) agreed to submit an amicus brief in support of Microsoft in *United States v Microsoft*. Amicus briefs are the only form of intervention before the courts by a third party which is interested in a given case. They are especially helpful when they expose arguments which may be beyond the knowledge or experience of the court.

United States v Microsoft started in 2013 when federal agents in the US investigating drug traffickers sought access to emails held in Microsoft's computer servers in Ireland. They obtained a warrant from the federal court under the Stored Communications Act (SCA) which is a U.S statute governing the privacy of information stored with technology providers. Microsoft provided the U.S government with the customers content information which was an address book stored in the U.S. However, to be fully compliant with the warrant, Microsoft would have also had to provide content it stores and maintains in Ireland. Microsoft refused on the basis that the warrant under the SCA was not intended to apply extraterritorially. It made an initial appeal against the warrant but the court sided with the U.S government, holding Microsoft in civil contempt for failing to comply with the warrant.

Three years later, on a further appeal to the U.S Court of Appeals for the Second Circuit, a three-judge panel unanimously sided with Microsoft and said the legislation was not intended to be extraterritorial. In January 2017 the U.S Government sought a rehearing and review before the Second Circuit Court which was denied '*en banc*' (by a 4-4 split). What split the panel is the issue of *where* the access to data in question would take place: in Dublin where the content is physically stored or in the U.S where the access is a click of a button away. Following the U.S Government's request to review the case the U.S Supreme Court agreed to do so in October 2017.

Over the coming months the U.S Supreme Court will consider whether the U.S Government has statutory authority to use a U.S warrant to access private communications and electronic information stored abroad.

The case raises significant concerns for lawyers and privacy professionals across Europe. If the U.S Supreme Court rules in favour of the U.S Government, the federal agencies will be able to access data stored abroad,

thus significantly expanding the extra-territorial application of the U.S laws. This would have far reaching implications for the individual rights and liberties of EU citizens (and beyond) and would likely carry consequences for such core professional values as the protection of confidentiality of lawyer-client communications. Moreover, it would put many businesses in a situation when compliance with all applicable laws may prove impossible due to the conflict of these laws.

The gravity of the case is shown by the fact that so far 28 technology and media companies, including Apple and Amazon, have submitted amicus briefs in support of the tech giant.

We will be watching closely to see how the case progresses next year. The latest date for the decision to be given is 30 June 2018. This is not a judgment that anyone is able to predict especially given the available judgments in similar cases. It was only a week or so after the Second Circuit's decision that a federal judge in Pennsylvania took a polar opposite view and compelled Google to comply with search warrants seeking electronic data. Whatever the outcome will be, it will not be the last we will hear on the topic given the controversy the case sparked and the increasing reliance on electronic data and communications around the world.

Brexit and Family Law – Position Paper

The Family Law Bar Association published its paper on the impact of Brexit in October. The LSEW was the facilitator in drafting the paper and the Family Law Committee was consulted.

The paper sets out the 3 main possibilities for when EU family law provisions cease to apply in the UK:

1. Retain full reciprocity: replicate current EU instruments in our domestic law and maintain the reciprocal arrangement between the UK and member states;

2. Domestication without full reciprocity: replicate current EU instruments in our domestic law but without retaining full reciprocity with other EU member states; or

3. Bespoke arrangements: make our own arrangements with the EU which set out a new framework for family law cooperation between the UK and EU.

With regards to the role of the CJEU, the group considers that it would be most effective and sensible to leave in place the existing structure for resolving disputes regarding interpretation of the mutually beneficial EU family law provisions which the government is proposing to write into UK law. The alternative options set out in the government's paper would require the agreement of the other EU member states and the group anticipates that the EU is not likely to agree to such alternatives when there is already an overarching authority which works in the circumstances.

The group also considered what might happen if 'no deal' were reached by the date the UK exits the EU and if the government does not write the EU provisions into our domestic law. There are other international instruments which are already in place and deal with similar topics to those covered by the EU instruments, such as the Hague and Lugano Conventions. However, they are on the whole not comparable or as desirable as alternatives to the more comprehensive EU instruments.

The group advises the government to preserve the status quo whilst considering the longer-term options. It must take seriously the effect of writing the EU provisions into UK family law without an agreement with the EU that the provisions would continue to operate on a reciprocal basis.

Accordingly, the group recommends that the government takes all possible steps to achieve an outcome as per 'option 1' above i.e. retaining the EU provisions and arranging for full reciprocity.

However, if the government ultimately wishes to work towards a new arrangement for cross-border family law between the UK and EU, 'option 3,' the group would wish to engage fully and will assist as and when necessary to advise as to the possibilities and implications. A copy of the paper can be found **here**.

Round up of 2017

The world has seen a myriad of change during 2017. We re-cap on some of the most prominent events of the year:

Key elections and voting in the EU

2017 has seen significant political movements with mixed results: electoral winners have not derived from the usual political parties, and the rise of populist parties has been off-set by a strong show of support for open and inclusive societies. This has resulted in the emergence of a more polarized and jumbled political landscape.

Besides from the French elections, this year's Austrian elections are the prime example of this. First, in presidential elections Alexander Van der Bellen, a Green party candidate won, while in the December elections Austria got a far-right vice-Chancellor in Heinz-Christian Strache. In the Netherlands Geert Wilders' PVV did not manage to get the win it was looking for, and the very liberal D66 and socially inclusive GroenLinks managed to gain the most.

UK: Following the formal triggering of Article 50 in March, snap elections were called in the UK in June with the Conservative Party's intention to increase its lead over the Labour Party, but which actually resulted in the party shrinking its hold on Parliament by losing 6 seats. As a consequence, the Conservatives struck an unusual coalition with the DUP in Northern Ireland, a deal which saw an extra £1 billion of funding allocated to Northern Ireland.

France: The emergence and rise of Emmanuel Macron – this year's French elections saw a breakaway from the traditional leadership choice for the country. In June the charismatic Emmanuel Macron was elected as the 25th president of France and a fresh European political force began.

Germany: Following German elections in September, Europe was surprised by the reduction in support for one of its leading politicians, Angela Merkel, and the gain of the right-wing AfD. Germany is still awaiting the announcement on the CDU's choice of coalition, although another 'Große Koalition' (with federalist Schultz at the helm of the SPD) looks to be increasingly likely.

Catalonia: At the end of October, the Catalan government held an unofficial vote for independence, which passed by a landslide, but on a turn-out of only 43%. Given that the vote was not carried out using the standard electoral infrastructure and procedures, it was not subject to the strict scrutiny of a sanctioned vote and as a result the Spanish government, supported by the Constitutional Court, declared the vote illegal. In the aftermath of the vote, senior figures in the Catalan government fled to Belgium to avoid arrest warrants issued against them in Spain, and which were subsequently withdrawn. The Catalan leader Puigdemont remains in Brussels from where he continues to campaign for Catalan independence, and December saw a protest march of approximately 45000 people in the Belgian capital. The Catalan Parliament has been dissolved and elections are due to be held on 21 December 2017.

EU Institutions

In January 2017 Martin Schulz resigned as **President of the European Parliament** in order that he could stand as leader of the SPD party in the German elections. He was replaced by the Christian Democrat and close associate of Silvio Berlusconi, Antonio Tajani. Tajani expressed his intention to "demilitarize" the position of EP president, promising to be a 'spokesman' for the chamber rather than an institutional activist in the mould of Schulz.

December 2017 – with the Socialist party taking a hammering in the Dutch elections in 2017, **Eurogroup President** Jeroen Dijsselbloem was forced to step down (the role can only be held by ministers currently in office in a Eurozone member state). In December, EU finance ministers voted for the Portuguese minister Mario Centeno to replace him. Centeno has been held in high regard due to having led Portugal to a miraculous economic recovery over the past two years – this has been despite his opposition to austerity.

The Future of Europe Debate – with the EU finally showing steady signs of economic recovery, particularly in member states that were devastated by the financial crisis, the Commission turned its attention to the future reform of the EU. In March a white paper on the future of Europe was published, setting out five

directions of travel for the EU. The publication was timely in the wake of the Brexit vote and the rise of extremism in continental Europe, not least in France where Marine Le Pen was polling strongly. The debate will continue in member states in 2018, although 2017 already saw major moves towards further integration in particular in the areas of defence and security as well as with regard to the refinement of the Economic and Monetary Union. It is notable that the number one priority of the Bulgarian Presidency, which takes over in January 2018, is the future of Europe and young people, with a focus on economic growth and social cohesion. The election of Macron in France and the potential rise in power of German federalist Schulz (who is in favour of a 'United States of Europe) means that the future of Europe will remain a prominent feature on the Brussels agenda in the coming year.

Brexit

On 29 March, the UK formally **triggered Article 50** of the Treaty on the European Union (TEU) and notified the European Council of the UK's intention to **withdraw from the EU**. Delivered just days before the 70th anniversary of the Treaty of Rome, the letter marked the start of the two-year period over which the UK must negotiate its withdrawal from the EU. After months of phase I negotiations, on 8 December the UK and EU reached agreement over the three core issues of citizens' rights, the Irish border and the divorce bill, with the Taskforce formally announcing that "sufficient progress" had been made. Further to this, on 13 December the Parliament voted to agree that negotiations could move on to phase II with the Council formalising the agreement on 15 December (more information on this in our Brexit update).

The digital world

In May, organisations, institutions and individuals around the world were hit by one of the biggest ransomware cryptoworms to date, **WannaCry**. Amongst the victims was **DLA Piper**.

November brought news that hackers stole data of 57 million **Uber** customers and drivers and that the company concealed the breach since 2016. The company was believed to have paid $100,000 to the hackers to delete the data.

Russia has been dogged this year by rumours that it meddled in the US presidential elections in 2016, targeting the election systems of 21 states and, in addition to Democrat inboxes, that it had attempted to hack into accounts belonging to diplomatic and security service personnel. There have been similar allegations made about the **hacking** of Emmanuel Macron's emails and attempted influencing of the French presidential elections. It has also been alleged that Russia sought to influence the UK referendum (Brexit) vote through manipulation of social media including Twitter.

Transatlantic moments

It has certainly been an eventful year for the **US administration**. Since January, the administration has struggled with allegations of secret contacts with senior Russian diplomats during the presidential campaign (a struggle that was marked by several high-level resignations, including the President's national security adviser Michael Flynn, and the firing of the FBI Director James Comey). The year has also seen increasing **tensions between the US and North Korea** starting in June, when President Trump commented on the end of the era of strategic patience with the North Korean regime. In August, he warned North Korea that the US would unleash 'fire, fury and frankly power, the likes of which this world has never seen before' and that the US remains 'locked and loaded' in case 'North Korea acts unwisely.' In November, the US declared North Korea a 'state sponsor of terrorism.' In August, 'Unite the Right' rally in **Charlottesville** ended with the death of a young lawyer, Heather D. Heyer, when a van drove into the crowd of counter-protesters. Figures showed in November that Donald Trump was the most unpopular President of the United States of America of the last 65 years. The world watches with interest to see the outcome of the midterm elections which will take place in November 2018 and the ongoing criminal investigations into Trump's former advisers Michael Flynn and Paul Manafort.

Environmental impacts

In the year that Donald Trump announced that the USA would no longer be a party to the 2015 **Paris Agreement** on climate change mitigation (June), the world has been ravaged by environmental disasters. Hurricanes Maria, Irma and Harvey caused widespread damage in the Dominican Republic and Puerto Rico, north-eastern Caribbean and the Florida Keys, and Texas respectively. Elsewhere Mexico, Bangladesh, Colombia and Sierra Leone saw earthquakes, flooding and mud/landslides. Most recently wildfires the size of New York have been raging through California.

Paradise Papers

2017 brought us yet another high-profile leak of documents related to tax evasion and avoidance. **Paradise Papers** produced further revelations as to how offshore structures have helped individuals and corporations avoid paying tax. The Parliament published its black list of **tax havens** in December and there have been calls for a permanent committee to be set up to deal with this recurring issue.

Attacks and unrest

2017 was also a year fraught with several **large terror attacks** in Europe. Manchester, Barcelona, London, Paris and Stockholm all experienced attacks using simple weapons and methods to inflict as great a damage

as possible. The greatest terror attacks, however, happened outside Europe, in Somalia, Afghanistan, Mali, and Egypt where the numbers of those killed and injured were counted in hundreds.

Updates from the Law Society of Northern Ireland

The Law Society of Northern Ireland makes representations to Ministers and MPs

The President, Ian Huddleston, Junior Vice President, Eileen Ewing and Chief Executive, Alan Hunter of the Law Society of Northern Ireland were in London at the Houses of Parliament in November to meet with Ministers and MPs to discuss issues surrounding Brexit. The Law Society reported that the series of meetings were productive and practical.

Law Society Marks European Lawyers Day

On 25 October, over 50 solicitors were in attendance at a special conference held at Law Society House in Belfast to mark **European Lawyers Day 2017.**

Now in its third year the conference, which was hosted by the Law Society of Northern Ireland, provides an opportunity to mark European Lawyers Day by highlighting the legal profession's significant contribution to the rule of law and justice system throughout Europe.

The Law Society of Northern Ireland has been working in conjunction with other members of Council of Bars and Law Societies of Europe (CCBE) to actively promote the overarching theme of European lawyers Day of ***'E-volving Lawyers; How digital transformation can enrich the relationship between the citizen and the lawyer'.***

Those attending the conference had an opportunity to hear from a number of keynote speakers including the President of the Law Society of Northern Ireland, Ian Huddleston and Stephen Beattie and Andrew Bennett from Allen & Overy LLP.

Speaking after the conference the President of the Law Society of Northern Ireland, Ian Huddleston said;

"We are delighted to have welcomed so many colleagues to this important conference marking European Lawyers Day and to have provided a platform to examine issues of importance affecting lawyers and their clients throughout Europe and further afield".

Update from the Law Society of Scotland on the Gender Representation on Public Boards (Scotland) Bill

Equality between women and men is one of the EU's founding values. Seeking to eliminate inequalities, and promoting equality between men and women in all its activities is at the very core of its objectives.

Across the EU today, five countries have mandatory quotas on female board membership (Belgium, France, Germany, Italy and Norway) and 10 have either an optional quota or a comply-or-explain best practice recommendation concerning board gender diversity (Gender Diversity on European Boards Realizing Europe's Potential: Progress and Challenges). Denmark, Greece, Austria, Slovenia and Finland have gender diversity requirements in legislation for what might be seen as equivalent to public boards in Scotland, namely boards of state-owned companies.

At the time of the last census, in 2011, the Scottish population was recorded to be 51.5% women. In spite of this, women continue to be underrepresented in public, private, and political decision-making bodies across the country.

Although we have seen some progress being made through voluntary schemes and other initiatives, there remains a disparity – public boards in Scotland do not represent our society.

The Scottish Government has recently introduced the **Gender Representation on Public Boards (Scotland) Bill**, which is currently being considered by the Scottish Parliament.

The Bill sets a target for all public boards to have 50% of non-executive members who are women. Where this balance has not been achieved, an appointment process is set out, which effectively introduces a 'tie-break' mechanism giving preference to a female candidate where there is more than one equally best qualified applicant, at least one of whom is a woman.

In addition, there are provisions intended to encourage women to apply for non-executive board positions, and to ensure that affected boards are taking steps to achieve the target and report on their progress.

There is an encouraging evidence base for taking a legislative approach to change and as such **we welcome this Bill** and its intention to improve board diversity in Scotland. However, the Bill does lack clarity in some areas and there is a notable absence of any form of sanction for non-compliance. We believe that the voluntary nature of the quotas is the key weakness of the underpinning policy of this Bill and we are consistent in our view that voluntary targets are unlikely to be an effective method of achieving gender balance on public boards in Scotland.

50% of Scottish solicitors are female, representing a body of highly skilled and qualified women many of whom may be suited to board membership.

Other than at the upper most level of experience, women currently outnumber men at every stage of the profession. We recognise that there are still inequalities in our profession, and we continue to take a proactive approach to addressing issues including progression and the pay gap, including publishing **practical guides on equality and diversity for the profession**.

We offer a broad range of support for our members which includes events run specifically for women, focusing on career planning for progression and achieving career milestones (including board membership), and getting board room ready.

We will continue to show our commitment to the issues around equality and diversity by contributing to the debate, influencing policy and law, investing in education and supporting and encouraging our members to rise to the opportunities made available by increasingly equal representation in our profession, on boards and in decision making bodies across Scottish society.

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The Hague Judgments Project reaching the finishing line

On 21 November, the Joint Brussels Office of the UK Law Societies with the Law Society of England and Wales co-hosted a panel discussion on the Hague Conference Judgments Project. The timing of this event was particularly poignant as the Special Commission held their third meeting between 13 – 17 November which resulted in an updated draft Convention.

Cara North, external consultant to The Hague Conference on Judgments Project joined our panel to provide an update on the Convention following the meeting of the Special Commission.

Ms North began by explaining the background to the Judgments Project which started in 1992 and refers to the work carried out by the Hague Conference on two key aspects of international law:

a. International jurisdiction of the courts (work which later resulted in the Choice of Court Convention 2005); and

b. The recognition and enforcement of judgments abroad – work which resumed in 2011 with the creation of an Experts Group and eventually a Special Commission to draft the Convention.

Importance of the Convention

Christina Blacklaws, Vice President of the Law Society of England and Wales chaired the panel and emphasised the advantages of the Convention. She noted that given the increase in transnational activity and foreign investment, it is extremely beneficial to have a uniform system in place for the recognition and enforcement in one country of judgments issued in another country. Ms Blacklaws stated how this would offer greater certainty, a more reliable judicial infrastructure and importantly for clients, reduced costs.

Sarah Garvey, a litigator at Allen & Overy and chair of the Law Society's EU Committee echoed the importance of the Convention for commercial parties. She stated that there is great potential for transnational civil and commercial disputes and a uniform system will provide certainty and simplicity to all countries and their citizens rather than having to rely on each country's own national rules.

Scope of the Convention

We were also joined by Professor Paul Beaumont from the University of Aberdeen who represented the UK in the Hague Conference Judgments Project in 1996, and he is now the EU expert in the Special Commission. Professor Beaumont explained the thinking behind key articles in the draft Convention, in particular the bases for recognition and enforcement, stated in Articles 5 and 6. Professor Beaumont commented that these seem perfectly rational overall but that some had been drafted deliberately narrow. It is not yet confirmed whether intellectual property and privacy judgments will be in scope and both have been the subject of significant debate between delegations. While overall it is a much more limited Convention than Brussels I and certainly not a perfect fit, it will relieve some pressure on the UK post-Brexit for cross-border recognition and enforcement, and if the UK signed up would demonstrate to other countries that it is willing to continue on the path of common trust and cooperation.

Limitations of the Convention

There are some areas which are expressly excluded by the Convention. As noted by our panellist Dr Peter Werner, Senior Counsel at ISDA, judgments relating to insolvency, family, wills and defamation are among those out of scope. While Dr Werner acknowledged the positives the Convention brings due to the wide range of disputes it does cover he stressed the need to look at the areas excluded and find suitable solutions which cover those, specifically the area of insolvency which he believes many businesses and practitioners will also be concerned about.

Next steps

There remains a question over whether intellectual property and privacy matters will be included in the final text of the Convention.

The Special Commission will recommend to the Council at its March 2018 meeting that it have a further meeting in mid-2018, and that a Diplomatic Session be convened in mid-2019. It is likely that if the Convention is concluded in 2019 it would be adopted by 2022 at the earliest.

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ONGOING CONSULTATIONS

Digital economy and society

Public consultation on fake news and online disinformation
13 November 2017 - 23 February 2018

Internal Market, Industry, Entrepreneurship and SMEs

Targeted consultation on the draft Guidance on Public Procurement of Innovation
3 October 2017 – 2 January 2018

Taxation

Fair taxation of the digital economy
26 October 2017 - 3 January 2018

Single market, Business and industry, Research and innovation, Public health

Public consultation on supplementary protection certificates (SPCs) and patent research exemptions
12 October 2017 - 4 January 2018

EU Social Security Coordination, Labour Mobility, Employment

Public consultation on a European Labour Authority and a European Social Security Number 27 November 2017 - 7 January 2018

Employment and Social Protection

Possible EU action addressing the challenges of access to social protection for people in all forms of employment in the framework of the European Pillar of Social Rights
20 November 2017 – 15 January 2018

Banking and Financial Services

Public consultation on institutional investors and asset managers' duties regarding sustainability
13 November 2017 - 22 January 2018

Public consultation on fitness check on supervisory reporting
1 December 2017 - 28 February 2018

Migration and Asylum, Borders and Security, Justice and Fundamental Rights

Broadening law enforcement access to centralised bank account registries
17 October 2017 – 9 January 2018

Consultation on extending the scope of the Visa Information System (VIS) to include data on long stay visas and residence documents
17 November 2017 – 9 February 2018

Modernising the EU's common visa policy
24 November 2017 - 2 February 2018
Trade Policy

Questionnaire on the Modernisation of the Trade Pillar of the Modernisation of the EU-Chile Association Agreement
8 December 2017 - 19 February 2018

CASE LAW CORNER

Decided cases

Right of Residence

Case C-165/16 Toufik Lounes v Secretary of State for the Home Department

Judgment date 14 November 2017

The facts of the case concerned the right of residence of a third country national who was a family member of a Union citizen who had acquired the nationality of her host member state whilst retaining her nationality of origin.

The court ruled that a non-EU national may benefit from a right of residence in the member state in which his EU citizen family member resided before acquiring the nationality of that member state in addition to her nationality of origin. The conditions for the grant of that right of residence must not be stricter than those laid down by the free movement directive.

Motor Vehicles

Case C-514/16 Isabel Rodrigues de Andrade v Fausto da Silva Rodrigues de Andrade

Judgment date 28 November 2017

The facts of the case concerned a farm accident involving an agricultural tractor that was stationary but with the engine running in order to drive a spray pump for applying herbicide. The court considered whether insurance was compulsory against civil liability in respect of the use of motor vehicles under Directive 72/166/EEC Article 3(1).

The court ruled that Article 3(1) of the First Directive must be interpreted as meaning the concept of 'use of vehicles,' referred to in that provision, does not cover a situation in which an agricultural tractor has been involved in an accident when its principal function, at the time of that accident, was not to serve as a means of transport but to generate the motive power necessary to drive the pump of a herbicide sprayer.

Copyright

Case C-265/16 VCAST Limited v RTI Spa

Judgment date 29 November 2017

The facts of the case related to the provision of a cloud computing service for remote video recording of copies of work protected by copyright, without the consent of the author concerned. The service provider was actively involved in the recording. The court considered the compatibility of Italian national laws with regards to private works protected by copyright.

The court ruled that Directive 2001/29/EC Article 5(2)(b) precludes national legislation which permits a commercial undertaking to provide private individuals with a cloud service for the remote recording of private copies of works protected by copyright, by means of a computer system, by actively involving itself in the recording, without the rightholder's consent.

Competition

Case C-230/16 Coty Germany GmbH v Parfümerie Akzente GmbH

Judgment date 6 December 2017

The facts of the case related to a luxury cosmetic brand who attempted to prohibit distributors from making use of non-authorised third parties in the context of internet sales. Luxury brands have 'selective distribution' rights which provides a special exemption to competition rules, allowing them to limit sales of their products to physical stores which maintain their luxury image.

The court ruled that Article 101(1) TFEU does not preclude a contractual clause prohibiting authorised distributors from selling goods on third party internet platforms. Selective distribution is permitted so long as resellers are chosen on the basis of objective criteria of a qualitative nature that are laid down uniformly and applied in a non-discriminatory fashion.

Ones to watch and Advocate General Opinions

Consumer

Case C-498/16 Maximilian Schrems v Facebook Ireland Limited

Opinion of Advocate General Bobek 14 November 2017

Mr Maximilian Schrems started legal proceedings against Facebook Ireland Limited before a court in Austria. He alleged that the company infringed his privacy and data protection rights. Seven other Facebook users assigned their claims for allegations of the same infringements to him in response to Mr Schrems' online invitation to do so. They are domiciled in Austria, other EU member states, and non-member states.

Elements of robust legal protection for consumers have been built up by the EU in recent years. Articles 15 and 16 of Regulation (EC) No 44/2001 provide a *forum actoris* for consumers, allowing them to sue the other party to the contract in their place of domicile. Mr Schrems submits that the courts of Vienna have jurisdiction to hear both his own claims and the assigned claims, as he is a consumer in the sense of Articles 15 and 16 of Regulation No 44/2001.

According to Advocate General Bobek, Maximilian Schrems may be able to rely on his consumer status in order to sue Facebook Ireland before the Austrian Courts with respect to the private use of his own Facebook account. He states that: "Article 15(1)… is to be interpreted in the sense that the carrying out of activities such as publishing, lecturing, operating websites, or fundraising for the enforcement of claims does not entail the loss of consumer status for claims concerning one's own Facebook account used for private purposes."

Competition

Case T-423/17 R Nexans France v European Commission

Order of the General Court 23 November 2017

Nexans France made an application for interim reliefbased on Articles 278 TFEU and 279 TFEU, seeking suspension of operation of Commission Decision, 2 May 2017. This related to a request for confidential treatment of the material seized from the applicants and another economic operators. They also applied for an order requiring the Commission to refrain from publishing a version of its Decision C(2014) 2139 final of 2 April 2014 (Case COMP/AT.39610 — Power Cables), which contains that material.

The court rejected the application for interim measures and set aside an earlier order from 12 July 2017

(Nexans France and Nexans v Commission T-423/17 R), in which the President of the General Court had ordered the Commission to suspend operation of the contested decision. In its ruling, the court stated that "the application for interim measures must be rejected for lack of urgency, without it being necessary to consider the condition relating to a prima facie case or the need to weigh up the interests involved."

Equal Treatment of Men and Women in Social Security

Case C-451/16 MB v Secretary of State for Work and Pensions

Opinion of Advocate General Bobek 5 December 2017

The applicant is a maletofemale transgender person who underwent gender reassignment surgery in 1995. She did not apply for gender recognition at the time of her surgery due to the fact she was married to a woman and under national law, registering as female would have rendered her marriage invalid. Upon turning 60, the applicant applied for a state pension and was refused due to her legal gender status. Under the Benefits Act 1995, women born before 6 April 1950 are eligible for a state retirement pension at the age of 60, whereas men born before 6 December 1953 become eligible at the age of 65.

The main issue considered by the UK Supreme Court was whether the condition to be unmarried was contrary to the prohibition of discrimination on grounds of sex in matters of social security, as enshrined in Directive 79/7/EEC. The Supreme Court was divided on the correct answer to the question and, in the absence of direct CJEU authority on the issue, it referred the question for their guidance.

According to Advocate General Bobek, the court have grounds to rule in the applicant's favour. In his opinion he states that: "Article 4(1) of Council Directive 79/7/EEC… must be interpreted as precluding the application of a requirement that… a person who has changed gender (must) be unmarried in order to qualify for a state retirement pension."

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