



Professional Law Report Confédération Fiscale Européenne (CFE)

5 November - 2008 / Edition 4

NEWS - CFE CONFERENCE

The Brussels Global Conference on Professional Affairs

The Tax Adviser profession: ownership and cooperation - How much regulation is needed?

Wednesday 26 November 2008 - Sofitel Brussels Europe

The intention of this conference is to reflect on how regulations on the tax adviser profession are pervading the profession particularly as regards of ownership and cooperation. The session will be moderated by **Henk Koller**, Chairman of the CFE Professional Affairs Committee, Tax Adviser, Amsterdam. Speakers will be Mr **Russell Wallman** (The Law society), Mrs **Sophie Maletras** (European Commission), Mr **Hans Gilliams** (Partner, Eubelius) and Mr **Philippe Léger** (Former Advocate General at the ECJ).

For more information click on www.cfe-eutax.org

NEWS - INTERNAL MARKET

EUROPEAN COMMISSION

Commission calls on notaries to work towards building “European legal area”

On 11 September, in Warsaw, at the opening of the 2nd Congress of EU Civil Law Notaries (CNUE), the European Commission invited all those in the law sector to play an active part in creating a true European area of justice. “We need the practitioners that you are and the great European judicial tradition” to establish a European area of legal certainty, said European Justice Commissioner Jacques Barrot during the opening session. Nearly 800 legal representatives from 21 EU Member States and

partner countries attended the Congress organised by the Conference of Notaries of the European Union (CNUE). All those taking part (politicians, professionals in the field and researchers) have been called upon to discuss the theme: “A European area of legal certainty: a value for citizens and families, an by the Conference of Notaries of the European Union (CNUE). All those taking part (politicians, professionals in the field and researchers) have been called upon to discuss the theme: “A European area of legal certainty: a value for citizens and families, an opportunity for businesses”.

Although 8 million citizens reside in a Member State other than their own, “law does not move with those people”, Mr Barrot commented, leading in to his speech. “The legal obstacles to citizens’ mobility must be removed”, he said, placing emphasis on the principle of mutual recognition of decisions and legal acts, which in his view are the “cornerstone” for developing the European area of justice. The Commissioner spoke of three workshops underway, which go to illustrate the construction of the European legal area and for which the European notary sector must make its contribution: inheritance, authentic acts and matrimonial regimes.

On the subject of inheritance, Mr Barrot announced his intention to present a legislative proposal during the first half of 2009 for finding solutions on applicable legislation and providing for the recognition of jurisdictional decisions. This should facilitate the 50-100 thousand transnational legacies each year within the EU. The proposal will also include the establishment of a European certificate of inheritance to facilitate proof of the identity of heirs to a legacy. Mr Barrot also stressed the role played by the European Network of Registers of Wills (ENRW), an initiative of the European notaries, which should lead to the interconnection of registers of wills from all Member States. Other work in progress is on authentic acts. According to Mr Barrot, this is “essential to give citizens greater legal security”. He went on to add that “the authenticity of an act established by a public authority may be a very strong base for the European legal order”. The Commissioner has announced his intention to launch a Green Paper in 2009. “The aim is to generalise and to promote the recognition of authentic acts”, he explained. “Hitherto, recognition has been done in a pragmatic way. What we now need is more horizontal reflection”, the Commissioner said. The last work that the Commission intends to tackle is that on matrimonial regimes. Some 2,5 million properties located in the EU are owned by

spouses in Member States other than the Member States of which they are nationals. In this context, “division is a problem” when couples break up, Mr Barrot said, specifying that he will put forward a proposal during 2009. Once again, he pointed out that it was not a matter of harmonising material law but rather of harmonising the rules of a conflict in law. proposal during 2009. In addition to these legislative proposals, the vice-president of the Commission spoke of other ways to increase confidence between professionals in the justice sector, in particular the European Judicial Network (EJN, see below) and e-Justice.

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Press Release CNUE

[EN](#)

Infringement proceedings 1: Germany and Portugal: ownership of pharmacies

In September, the European Commission has taken action to put an end to obstacles to the freedom of establishment in Germany and Portugal, by formally requesting these two Member States to modify their legislation on the ownership of pharmacies. These requests take the form of ‘reasoned opinions’, the second stage of the infringement procedure under Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice.

Germany – prohibition for non-pharmacists on owning pharmacies and prohibition on owning more than four pharmacies

The Commission has decided to formally request Germany to review its rules on ownership of pharmacies. These rules reserve the ownership of pharmacies to pharmacists or partnerships consisting solely of pharmacists. Moreover, the German legislation prohibits ownership of more than one main pharmacy and three branch offices. Finally, the legislation requires proximity between the main pharmacy and the branch offices. The Commission considers that these measures are in conflict with the freedom of establishment, enshrined in Article 43 of the EC Treaty, since they cannot be justified for reasons of health protection.

Portugal – prohibition for medicines wholesaling companies on owning pharmacies and prohibition on owning more than four pharmacies

The Commission has also decided to formally request Portugal to review its rules on ownership of pharmacies. Under these rules, companies active in the wholesaling of medicines are not allowed to own request Portugal to review its rules on ownership of pharmacies. Under these rules, companies active in the wholesaling of medicines are not allowed to own or manage pharmacies. Moreover, the Portuguese legislation prohibits ownership of more than four pharmacies. Again, in the Commission’s view, these requirements are disproportionate to guaranteeing the protection of health and therefore are not compatible with the freedom of establishment, enshrined in Article 43 of the EC Treaty.

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Infringement proceedings 2: Directive on recognition of professional qualifications

In September, the European Commission has decided to pursue infringement procedures against 12 Member States for failure to implement certain Internal Market Directives into national law. The Commission will refer Austria, Belgium, Cyprus, France, Greece, Ireland, Portugal and Spain to the European Court of Justice over non-implementation of a Directive on recognition of professional qualifications. Denmark will also be sent a reasoned opinion on the same grounds. The Directive merges into a single legislative act fifteen individual directives, including twelve sectoral directives covering the professions of doctor, general care nurse, dentist, veterinary surgeon, midwife and architect and three directives establishing a general system for the recognition of professional qualifications covering most other regulated professions. It simplifies the structure of the system for the recognition of qualifications and improves the way it operates. It thus aims to facilitate mobility in the single market for qualified persons who move to another Member State to provide a service or to establish themselves there permanently. The deadline for transposition of Directive 2005/36/EC was 20 October 2007.

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Press Release September 2008

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Infringement procedures will also be launched against 10 Member States for failure to implement the “directive on recognition of professional qualifications (2005/36/EC)” into national law. The Commission will refer Germany, Hungary, Luxembourg, Poland, Sweden and the United Kingdom to the Court over non-implementation of this directive.

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Infringement proceedings 3: anti-money laundering- Commission takes action to ensure that Belgium, Ireland, Spain and Sweden implement EU laws

The European Commission has decided to refer Belgium, Ireland, Spain and Sweden to the European Court of Justice over non-implementation of the 3rd Anti-Money Laundering Directive. The transposition deadline for the Directive was 15 December 2007. The Third Anti-Money Laundering Directive adopted in 2005 builds on existing EU legislation and incorporates into EU law the June 2003 revision of the Forty Recommendations of the Financial Action Task Force (FATF). The Directive tightens the EU anti-money laundering regime currently applicable to the financial sector as well as lawyers, notaries, accountants, real estate agents and casinos. The scope of the Directive is broadened also to encompass trust and company service providers as well as all providers of goods, when payments are made in cash in excess of €15.000. In addition, the Directive requires the application of the anti-money laundering tools (identification and verification of customers’ identity, record keeping, training of personnel, etc.) to the fight against terrorist financing. The Directive introduces additional requirements and safeguards for situations of higher risk (e.g. trading with correspondent banks situated outside the EU).

Infringement proceedings 4: Freedom to provide services- infringements against Austria, Belgium, Germany, Italy and the United Kingdom

The European Commission has taken action to put an end to restrictions on freedom to provide services in five Member States. The Commission will refer Italy to the European Court of Justice over its regulations on compulsory maximum fees for lawyers’ services. The Commission will send reasoned opinions to the United Kingdom concerning its regulations on trademarks and to Austria concerning its regulations on insolvency. The Commission will also send supplementary reasoned opinions to Belgium concerning the rights of European temporary employment agencies. A reasoned opinion is the second stage of the infringement procedure laid down in Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice.

Italy – compliance with maximum fees laid down for lawyers

The Commission has decided to refer the Italian regulations on the schedule of maximum fees for lawyers’ services to the Court of Justice under Article 226 EC. The Commission questions the need for such provisions, the result of which is to restrict the access of service providers from other Member States to the Italian market, while not however guaranteeing access to justice and its proper administration or protecting those receiving the services in a way which is proportionate with the general interest objectives sought. The regulations in question therefore appear to infringe Articles 43 and 49 EC which guarantee, respectively, freedom of establishment and freedom to provide services within the European Union.

United Kingdom – requirement to have an address in the United Kingdom for actions relating to trademarks and patents

The Commission has decided to send a letter of formal notice under Article 226 EC to the United Kingdom over its rules on trademarks and patents. The legislation in question requires parties to have an address in the United Kingdom for actions relating to trademarks and patents. The Commission takes the view that such a requirement is disproportionate and obstructs the freedom of movement of services as guaranteed under Article 49 EC.

Austria – Requirement to have an address in Austria for actions relating to insolvency proceedings

The Commission has decided to send a letter of formal notice under Article 226 EC to Austria over its rules on insolvency proceedings. The legislation concerned requires parties to insolvency proceedings to have an address in Austria to which documents can be sent. The Commission believes this requirement constitutes indirect discrimination on the basis of nationality contrary to Article 12 EC.

Belgium – rights of European temporary employment agencies

The Commission has decided to send a supplementary reasoned opinion to Belgium to ask it to abolish the requirements it places on temporary employment agencies which are established in other Member States and wish to provide their services in Belgium. Article 49 of the EC Treaty is intended to enable any company providing a service in a Member State (in accordance with the national law in force) to provide the same service without restrictions in all other Member States. For temporary employment agencies, failure to comply with this principle has the effect of limiting competition in this field. This situation is also likely to disadvantage Belgian employers and workers who use the services of these agencies. For a temporary employment company to be approved to provide services in Belgium, the Belgian law requires it to designate a natural person who is normally resident or domiciled in Belgium or, if such a representative is no longer required, to have an address in the region concerned. The Commission also criticises the fact that the field in which temporary employment agencies may operate is limited to activities relating to human resources and that these agencies must have a specific legal company form.

The Commission's request takes the form of a reasoned opinion, the second step in infringement proceedings under the EC Treaty. If it does not receive a satisfactory reply from the Belgian government within two months of receipt of the opinion, the Commission may refer the matter to the Court of Justice.

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Infringement proceedings 5: company law and corporate governance

Thus the Commission has moved up a gear on procedures begun against 12 Member States for failure to transpose into national law a number of directives on company law and corporate governance. It will refer Belgium, Greece, Spain, France, Portugal and Sweden to the Court over non-implementation of the Cross-Border Mergers Directive. A reasoned opinion will be sent to Luxembourg for the same reason. The Commission will also send reasoned opinions to Belgium, Spain, Luxembourg, Portugal and Romania regarding the directive simplifying the formation, maintenance and alteration of companies' capital, and to the Czech Republic, Hungary, the Netherlands and Poland regarding a directive on transparency obligations of listed companies.

Member States may be allowed to exempt very small enterprises from European accounting rules

Internal Market Commissioner Charlie McCreevy said on 29 September that he would propose allowing Member States to exempt very small micro-companies from the 4th directive (78/6660/EEC) on the auditing of annual accounts. In so doing, he will be following up on a recommendation from the European Parliament made in May of this year. On 21 May, in a report adopted by the European Parliament on a simplified business environment for companies, German MEP Klaus-Heiner Lehne welcomed an exemption for micro entities from the accounting framework. The "Stoiber" group on reducing the administrative burden, which has little credibility in Brussels, also supported the idea. According to the Commissioner, the time had come to "overhaul the Accounting Directives" and to modernise them - and to consider the rules in the light of their impact on small and medium enterprises (SMEs).

The criteria for determining a micro-enterprise are contained in the Commission's May 2003 recommendation on the definition of SMEs. According to this recommendation, a micro-enterprise is one which has fewer than 10 employees and whose turnover or balance sheet total is under €2 million. In its communication of July 2007, however, the Commission puts forward the following criteria: fewer than 10 employees, balance sheet total of less than €500,000 and turnover of less than €1 million.

The future proposal has met with hostility from professionals. The FEE (Federation of European Accountants) has warned against any proposal

exempting micro-enterprises from European accounting rules. Worried about a return to a situation where 27 national sets of rules prevail, they believe that this is the wrong moment for decisions which run counter to accounting transparency. They wonder how Member States which take up the exemption option would recover taxes from the companies in question if they were not subject to national rules either.

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International Financial Reporting Standards (IFRS). On 14 October 2008, the EU Standards Advisory Group of Member State experts issued favourable technical endorsement advice on the amendments, and the European Parliament, which only has the right to be consulted on the issue under the comitology rules governing such matters, gave a favourable opinion on 14 October (see below). Adopted at record speed, the changes in the EU accounting rules were published in the EU Official Journal L 275 on Thursday 16 October 2008. The Commission is already planning a new stage in the review of “fair value”, announcing in a press release that it will publish new changes to the IAS 39 and IFRS7 rules for financial instruments before the end of the month. The new changes will also apply to structured financial products like derivatives and insurance.

Accountants’ use of “fair value”

The European Council and the European Commission believe that a root and branch review of “fair value” (aka “market value”) in the application of international accountancy rules is necessary to see how best to mitigate the “pro-cyclical” impact of fair value. When there are sharp falls in the stock market, “fair value” accounting of assets tends to make things worse for financial institutions, forcing them to resort to emergency recapitalisation. In addition to the changes made, EU heads of state will instruct the Council to issue recommended amendments to accounting standards. “Fair value” rules should no longer be applied “blindly” and “stupidly” commented acting chair of the European Union, Nicolas Sarkozy. The Commission believes that the right forum for this review is the new specialist “pro-cyclical” issues group of the Economic and Finance Committee, which an ECOFIN Council in Nice, France, decided should be set up.

The adoption on 15 October 2008 of a change to EU accounting rules to allow financial institutions quoted on the stock exchange to make a more balanced interpretation of the real value of their assets in their financial reports for the third quarter of 2008 appears to be the first step in a wider review, decided as a matter of urgency in the current financial turmoil. Technically, quoted financial institutions are now authorities in certain circumstances to reclassify financial assets which will not be sold in the near future without using the “fair value” rule (in “held-for-maturity” rather than “held-for-trading” on their balance sheets).

In so doing, the Commission has taken on board changes made by the International Accounting Standards Board (IASB), which draws up the

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Company law 1: Commission proposes simplification of EU rules on mergers and divisions

The European Commission has put forward a proposal for a directive that aims to further reduce the administrative burdens on European public limited-liability companies in the area of mergers and divisions. Under the proposal, companies would benefit from simplified requirements on reporting and on publication of draft terms. The proposal complements the two packages of “fast track” measures that were put forward by the Commission in March 2007 and April 2008. These measures will contribute to the objective of reducing administrative burdens on EU companies by 25% by the end of 2012. The total savings potential of the measures proposed so far in the area of company law, with the current proposal, is brought to 1 billion €/year. Company law, accounting and auditing have been identified as priority areas for reducing administrative burdens on companies. The Commission set out its action plan in these areas in its Communication on a ‘Simplified business environment for companies in the areas of company law, accounting and auditing’ of 10 July 2007 and invited reactions to its proposals until end October 2007. In the area of company law, the preference was clearly for proposing targeted changes to the existing directives instead of repealing certain ones altogether. The current proposal aims notably at:

1. reducing the reporting requirements of companies in the case of mergers and divisions, in particular where shareholders decide that certain reports are not needed and in the context of so-called "simplified" mergers and divisions between parent companies and their subsidiaries;
2. avoiding double reporting where reporting requirements also result from other EU rules and
3. introducing the possibility for companies to use the Internet and electronic mail in order to publish the draft terms of merger or division and to provide shareholders with the documentation required.

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EU Company law 2: self regulation

According to Internal Market Commissioner Charlie McCreevy self-regulation has its benefits. He said in Paris on 16 October 2008 at the 7th European Law and Corporate Governance Conference that "it is flexible, and it allows companies to make their own choices". The European Commission's current work on pay packages would therefore seem to be moving in the direction of an updating of the special recommendation of 2004. As far as the Commissioner is concerned, "clearer guidance may be needed from policy makers. Only about a third of EU Member States followed the Commission's 2004 recommendation that shareholders should be able to vote on the remuneration criteria applying to board members... Compensation incentives should not focus on short-term gains but overall shareholder interest and long-term, firm-wide, profitability."

New programme to break down e-barriers in internal market for Public Administrations

In September, the Commission presented a proposal to the European Parliament and the Council of Ministers for a new programme for the period 2010-15: "Interoperability Solutions for European Public Administrations" (ISA). In a press release, the Commission explained that "electronic barriers at national borders are the main challenge of the new era". It emphasised that to avoid the

creation of electronic barriers (e-barriers) between European administrations, the Member States and the Commission need to strengthen their efforts to ensure barrier-free communication within the Internal Market. This explains the reasons for the decision to launch the ISA programme and support and promote cooperation between national administrations in Europe. ISA's main focus is on providing cross-border solutions for public administrations by making available common frameworks, common services and generic tools, and promoting re-use as well as exchange of experience and good practices. ISA is the follow-on programme to the IDABC programme (interoperable delivery of pan-European e-government services to administrations, businesses and citizens) which comes to an end in December 2009. The IDABC programme was itself launched in January 2005 as the successor of the IDA programme "interchange of data between administrations".

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EUROPEAN PARLIAMENT

EP Resolution of governance of international organisation in charge of elaborating international accounting standards

On 9 October, the European Parliament adopted its resolution on reform of the International Accounting Standards Committee Foundation (IASCF), an international private organisation in charge of elaborating International Financial Reporting Standards (IFRS) by its specific International Accounting Standards Board (IASB). It takes note of the IASCF proposal to get a surveillance group up and running so that the organisation has reports to make to the public authorities where IFRS will be (or will soon) be in application. It believes that, "this surveillance group should be able to recommend candidate membership" of the IASCF and that it "participates in setting up the IASB agenda". According to MEPs, the surveillance group should be made up of representatives from the following organisations: European Commission, International Organization of Securities Commissions (IOSCO), the Japanese financial services agency and the US

Securities and Exchange Commission (SEC). An amendment adopted by the ADLE adds to this list a representative from the Basle Committee on banking controls but withdraws representatives from the IMF and World Bank. The Committee of European Securities Regulators (CESR) is also expected to be part part of it. MEPs toned down their criticism about the Commission's proposal to create an international advisory group on accounting, which would be in charge of advising the surveillance group. Although they previously disapproved of this initiative, which they believed created confusion and kept organisations such as the ECB on the sidelines, they now only criticise the fact that the EP was not consulted in this affair.

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Resolution

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EP adopted resolution on equivalence of accounting standards

On 23 October, the European Parliament adopted a resolution on equivalence between the International Financial Reporting Standards (IFRS) used in the EU and the accounting standards used in many third countries. It gave its backing to the European Commission's draft decision of June, which authorised non-EU businesses that were quoted on stock exchanges within the EU to continue to submit financial documents drawn up using US GAAP or Japanese accounting standards from 1 January 2009. Non-EU companies may also continue to use Canadian, Chinese or South Korean accounting standards, but only until the end of 2011. The EP adopted an amendment by British Conservative MEP John Purvis on behalf of the EPP-ED Group authorising companies quoted on EU stock exchanges which submit their financial documents using Indian accounting standards to continue to do so until the end of 2011, the Indian authorities having undertaken to move to the IFRS by then. It called on the Commission to continue "to monitor, with the technical assistance of the CESR ("Committee of European Securities Regulators"), the efforts made by third countries to move towards IFRS and pursue an active dialogue with authorities during the convergence period". The Commission will have to submit a report in 2009.

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Resolution Equivalence of accounting standards

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EP Draft report on the creation of a European Professional card for service providers

The IMCO (Committee on the Internal Market and Consumer protection) will discuss on 5 November the Draft report from the rapporteur MEP Charlotte Cederschiöld (EPP, Sweden) on the creation of a European Professional card for service providers. The motion for a European Parliament resolution refers to the Directive on recognition of professional qualifications and the missing transposition in some Member States.

It is of the opinion that the added value of a European professional card, in addition to existing measures which aim to facilitate and stimulate mobility, needs to be established for most professions. The EP notes that in some regulated and harmonised professions, such as lawyers and health professionals, European professional cards are currently in development, but that in other non- or less harmonised professions, the introduction of professional cards seems difficult since regulation varies from Member State to Member State. Data on qualifications has to be validated and mutually recognised first. The EP calls on the Commission to examine the initiatives presented by professionals in order to see whether a European professional card, in addition to other measures lead to administrative simplification and, in the long term, replace paper-based files and dossiers and increase transparency or accelerate procedures of recognition used by national administrations and regulatory authorities or stimulate the provision of temporary services or serve as means of communication of appropriate information to the recipients of services in order to protect consumer health and safety. According to the draft, further public steps should involve a well-defined description of the types of profession and specific needs that the card is supposed to cover.

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Draft Report Cederschiöld 17 October 2008

[EN](#)

NEWS - COMPETITION

Study: Regulation of the legal profession and access to law

The “International Association of Legal Expenses Insurance” (RIAD) commissioned SEO Economic Research Amsterdam to conduct a study into the effect of the regulation of legal services and legal professions on access to law in several European countries (study “regulation of the legal profession and access to law”). The system in 12 Countries has been subject to the examination, AT, Belgium, CZ, England/Wales, FIN, FR, D, Hung, IT, Spain, CH and NL. On page 3, the impact of the UK Clementi report is mentioned. At a congress in September in Munich, RIAD discussed the study with jurists, economists, politicians and stakeholders. A number of members of the CCBE (European lawyers association) have voiced strong reservations about the study in first discussions.

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RIAD Study

[EN](#)

NEWS - JUSTICE

EJN European Judicial Network in civil and commercial matters

In June, the Commission presented a proposal aiming to amend council decision 2001/470 establishing the European Juridical Network in civil and commercial matters. The EJN has three main objectives:

- Improving and facilitating juridical cooperation in civil and commercial matters between the Member States in all fields.
- Improving the effective and practical application of Community instruments and conventions in force between two or more Member States
- Promoting effective access to justice for the general public.

The network consists of representatives of the Member States judicial and administrative authorities and meets several times each year to exchange information and experience and boost cooperation between Member States as regards civil and commercial law. The Commission proposes, among other things, to open the network to the legal profession.

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Proposal EJM

[EN](#)

NEWS - JURISDICTION

C-301/06 Advocate General opinion on data retention directive

In a judgment delivered on 14 October, Advocate General Yves Bot considers that Directive 2006/24/EC is correctly founded on Article 95 of the EC Treaty (case C-301/06). The directive sets out the arrangements for the compulsory retention of data by communication services providers, for the purposes of police and judicial cooperation, including combating terrorism. Ireland, supported by Slovakia, called for the directive to be annulled, arguing that it ought to have been based on Article 4, since its ultimate purpose is judicial and, therefore, falls under the third pillar. The advocate general decided that the arrangements in the directive itself refer only to internal market matters. The directive was the subject of considerable controversy when it was introduced in, 2006. The Court will deliver its final ruling in the next few months.

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ECJ Case C-301/06

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Non-suit to Commission's appeal against German law on pharmacies, C-141/07

On 11 September, the European Court of Justice pronounced a non-suit to the Commission's appeal to cancel the German regulation on providing hospitals with medical supplies (C-141/07). The Commission claimed that the law on pharmacies (Apothekengesetz) of 2005 imposed conditions that made it impossible to make regular supplies to German hospitals by pharmacies established in other member states. According to the Commission, this constituted an obstacle to the free movement of goods under Articles 28 and 30 of the EC Treaty. These conditions focus on the ability of a supplier to provide certain safety guarantees and, if needs be, the provision of related services. To fulfill these conditions, geographical considerations come into play, even if there is no explicit mention of the matter in the law in question. The ECJ concluded after examination, however, that the conditions are appropriate to the objective of ensuring the protection of public health and are therefore justified.

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ECJ Case C-141/07

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Germany may not refuse to recognise the surnames of its nationals as already registered in another Member State, case C-253/06

On 14 October 2008, the European Court of Justice ruled that a German child has the right to be registered in Germany with the surname it received at birth in Denmark. In Case C-253/06, the German authorities refused to register the double-barrelled surname of the child as entered on the child's Danish birth certificate. The Court based its ruling on the right to free circulation, which would have been hindered if the child were forced to have different surnames on different identity documents (passport and birth certificate, for example).

Leonard Matthias was born in Denmark in 1998 to German parents Stefan Grunkin and Dorothee Paul, and lived in Denmark under the name Leonard Matthias Grunkin-Paul, using the common practice of taking both his mother's and his father's surname. Because the child often goes to Neibull in Germany,

his parents wanted him registered in the family register in that town but the German authorities refused to register the surname because under Article 1617 of the German law Bürgerliches Gesetzbuch (BGB), parents have to choose one of their surnames for their children (and continue to use the same surname for all subsequent children). The boy's surname, Grunkin-Paul, is already registered in Denmark - can a Member State force someone to register in a different name from the name already registered in a different Member State? The administrative court of Flensburg in Germany (Amtsgericht Flensburg), to which the parents appealed, sent the question to the European Court of Justice.

The Court of Justice said no. The boy is German and has to apply to Germany for a passport, an essential document if one wishes to circulate freely. But if the passport is not issued in the same name as the birth certificate, the Court argues this could lead to serious professional and personal disadvantages. In the ruling, the Court explains that the arguments put forward by Germany did not justify this restriction on the right of the individual to travel. The ruling follows the line recommended in the advocate general's opinion, which also quoted the United Nations Charter of Fundamental Rights, where the rights of the child come first.

Germany's position was backed by Belgium, Greece, Spain, France, the Netherlands and Poland but as this case was a question for a preliminary ruling, these countries did not actually take part but suggested to the Court of Justice during the hearing that it should rule that the German legislation is not necessarily irreconcilable with EU law. Lithuania argues that a Member State can only refuse to recognise a surname recognised by another country in order to protect higher public interests like the interests and traditions of the national language in question. The European Commission suggested to the Court of Justice that it should rule that the German law was irreconcilable with Articles 17 and 18 of the EC Treaty on citizenship and the freedom of circulation.

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ECJ Case C-253/06

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NEWS - OTHER

NATIONAL DEVELOPMENTS

France: Structure of the legal profession

The president of France, Nicolas Sarkozy, has asked for a review of the structure of the French legal profession, including, among other things, a possible merger of the notaries and the advocates. A Commission has been established to carry out the review, chaired by Maitre Jean Michel Darrois and is due to issue a report with recommendations by the end of this year.

READ MORE (click to open):

Letter of the French President of June 2008 setting out details

FR (only available in FR)

PERSONALIA

European Court of Justice

The judges of the Court of Justice, on 7 October 2008, elected from among their number the presidents of chambers of three judges, as they are required to do under Article 10 of the Court's rules of procedure. Elected for a period of one year are: Mr Marko Ilesic, President of the 15th Chamber, Mr Jean-Claude Bonichot, President of the 6th Chamber, Mr Aindrias Ó Caoimh, President of the 7th Chamber, and Mr Thomas von Danwitz, President of the 8th Chamber. The Court also appointed Ms Eleanor Sharpston First Advocate General for a period of one year.

European Commission

European Trade Commissioner Peter Madelson announced his resignation on 3 October, and said that he was returning to the British government to become the new Business Minister in the government reshuffle carried out by Prime Minister Gordon Brown. Mandelson has already twice been a minister. London has nominated Baroness

Ashton of Upholland, formerly Catherine Margaret Ashton, as his successor. A press release from the European Commission says that President José Manuel Barroso has "decided" to give her the trade portfolio. Baroness Ashton will take up her position once the Council approves her appointment (a qualified majority decision) after her hearing with the European Parliament (procedure provided for under Article 215 of the Treaty).

IMPRESSUM

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