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Reportage

European Commission unveils streamlined work programme for 2006

It is that time of year again - when the European Commission presents its annual legislative work programme to the European Parliament. The work programme is used as a key tool for setting out the Commission's legislative priorities for the coming year, with an indicative timetable for the adoption of proposals. The aim of the work programme is to translate high-level political strategy into workable policy objectives.

It is clear that the 2006 work programme has been prepared in the spirit of "Better Regulation" and there is a clear commitment to simplification, consolidation, and modernisation. The work programme also places a strong emphasis on ensuring the Commission "gets it right" with pre-legislative impact assessment and post-legislative evaluation. Moreover, in comparison with previous years it is a much slimmer volume. Clearly the Commission is sticking to its pledge of only proposing legislation in areas where there is strong evidence that such proposals will contribute to growth and jobs and hence meet the objectives of the so-called Lisbon Agenda.

So, in a climate where “less-is-more”, which proposals made it into the work programme and where do the EU priorities lie?

One interesting area of work will be in the field of employment law, with a comprehensive review of “labour law”. The Commission will present a Green Paper on the issue, thus launching a debate on the recent trends in labour law both at EU and national level. The Commission states that the issues to be addressed include how to provide a more secure working environment and encourage more efficient transitions in the labour market.

2006 will see further action taken in the field of access to justice and cross-border litigation. Building on current proposals to build a European civil litigation regime, the Commission is working on a mechanism to improve the recovery of monetary claims in the EU. A Green Paper to be presented by spring 2006 will present an overview of the current legal position and propose the creation of a “European system for the attachment of bank accounts” as a means of overcoming current obstacles in cross-border recovery.

Family law continues to be a top priority at EU-level with two new proposals expected next year in relation to the recovery of maintenance claims and the applicable law and jurisdiction in divorce matters. Building on the current EU debate in relation to wills and succession, a Green Paper on the division of matrimonial assets is planned for 2006. Finally, the rights of the child are being brought into the EU policy field with the launch of a public debate on this issue.

Although not featuring in the work programme, in the field of competition law, a Green Paper on the private enforcement of EC competition rules will be of key interest in 2006. Publication is expected in December 2005 or possibly early in 2006. Currently the extent to which individuals (both consumers and competitors) seek to enforce EC (or even national) competition law through court litigation, via claims for remedies or damages, is negligible. Facilitating the extent to which individuals (both consumers and competitors) can litigate on the bases of competition rules is being seen as a natural complement to the recent modernisation of EC competition rules, with its decentralisation of enforcement powers to national competition authorities and courts.

The work programme itself says that 2006 will be a critical year for turning “words into deeds” – and with a self-stated ambition to “unlock Europe’s full potential”, it may be that the Commission has its work cut out!



- **Commission Legislative and Work Programme 2006: Unlocking Europe’s full potential**



Professional Practice

MONEY LAUNDERING **How does it work for you?**

Views are currently being sought by the European Commission on the operation of the second money laundering Directive (as required by Article 2 of the Directive itself). A questionnaire has been sent out soliciting views from Member States and professional bodies on how the Directive works in practice and on any difficulties encountered by those who are bound by it, such as solicitors. The Law Society of England and Wales was disappointed to note that the various concerns it had highlighted to the Commission surrounding the implementation of the Directive, had not been raised in the questionnaire. The Commission will shortly be bringing out a further questionnaire aimed at legal practitioners to ask for views on their experience of the legislation. This will be published on the Commission's website.



WEBLINKS

- [List of consultations by the Internal Market Directorate of the Commission](#)

COMPETITION AND THE PROFESSIONS **UK Government conference on "Better Regulation" of professional services**

Continuing with the theme of "Better Regulation" that has been running throughout its Presidency of the EU, the UK Government held a conference on 21 November on the application of this theme in the context of professional services. The conference, which was aimed principally at regulators from competition authorities and civil servants from the 25 EU Member States, sought to look at how professionals, particularly legal professionals, should best be regulated. Drawing on experience in the UK, the Government's view was that reform is to the benefit of both consumers and professionals alike. There was some dissent from those present who believed that you can have too much reform (the audit and accounting sector was cited as an example), often to the detriment of consumers. The European Commission will continue to highlight examples of good practice in terms of liberalisation and will be reviewing initiatives by Member States in this respect.



WEBLINKS

- [Competition Directorate General website on the liberal professions](#)

SERVICES DIRECTIVE

European Parliament makes progress on the proposals

With over 1,100 amendments to be voted on in relation to the draft services Directive, the Internal Market and Consumer Protection Committee of the European Parliament faced the difficult task of making progress on this issue. There were a number of amendments either directly or indirectly related to the legal profession. Of particular concern was an amendment in relation to Article 14(7) on compensation or guarantee fund schemes. The amendment, supported by the UK delegation to the CCBE (Council of European Bars and Law Societies) makes it possible for professional bodies to permit certain existing compensation or guarantee funds and schemes for professional indemnity insurance – such as the Master Policy and Guarantee funds operated by the Law Society of Scotland. The Parliament also makes it clear that sector specific legislation – such as Directive 77/249 and Directive 98/5 on the temporary provision of services by lawyers and the permanent establishment of lawyers in other Member States respectively – will take precedence over horizontal initiatives such as the services Directive.



- [Developments in the Parliament on the draft services Directive](#)

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Best of Scotland Week

As part of the UK's Presidency of the EU, a series of events to profile Scotland took place at the end of November, coinciding with St Andrew's Day. The Law Society of Scotland played its part by hosting an event in Brussels to highlight and explain the distinctive features of the Scottish justice system to EU policy makers. The seminar was organised with the Scottish Executive and participants included MEPs and officials from the EU institutions and Member State Governments. A leaflet was published to mark the event and is available from the Brussels office.

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Better Law-making breakfast with Commissioner McCreevy

The Law Society of England and Wales published its EU Better Law-making Charter on 14 November. The document, drafted by the Society's EU Committee, sets out a number of recommendations aimed at improving the quality of EU law and the procedures concerned with its adoption, such as consultation and impact assessment. Speaking at a breakfast meeting to launch the publication at the Society's Chancery Lane offices, Commissioner McCreevy congratulated the Society on its work to date and outlined the Commission's

plans for improving future legislation.



- [The EU Better Law-making Charter](#)

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Law Reform

EMPLOYMENT

Portability of pensions the key to new Directive

The European Commission has published a draft Directive which aims to make it easier for workers to take their occupational pensions with them when they change jobs. In order to promote the principle of the free movement of workers, the Commission is seeking to eliminate various obstacles contained in pension schemes, which restrict the mobility of citizens within and between Member States. The draft Directive gives workers 18 months to choose whether to transfer any existing occupational pension rights to their new employer on changing jobs. The proposal further guarantees that workers who choose not to transfer their rights in this situation, are not penalised by a reduction in the value of their existing pension rights. Finally, workers who have changed jobs after only a few years have the option of taking a cash payment rather than transferring a nominal sum to a new pension scheme. The Commission expects these new rules to come into force by July 2008.



- [Proposal for a Directive on improving the portability of supplementary pension rights](#)

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TAXATION

New Code of Conduct should prove less taxing

The European Commission has adopted a proposal for a Code of Conduct relating to transfer pricing and the attempt to rationalise the documents that are required by national tax authorities. Currently, companies operating in multiple Member States face a great divergence between authorities in relation to the submissions they have to make concerning cross-border transactions between companies in the same group. The Code, developed by the EU Joint Transfer Pricing Forum, will be a non-legislative instrument although the Commission hopes that Member States will bring their legislation into line. The Commission proposes that EU Transfer Pricing Documentation (TPD) will contain two parts: a "masterfile" of standardised information for all companies in a group; and "country-specific documentation" which would contain standardised documentation but information relevant only to the Member State in question. It is envisaged that use of this

new TPD will be optional for companies.



- [Proposal for a Code of Conduct on transfer pricing documentation for associated enterprises in the EU](#)

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FINANCIAL SERVICES

Commission evaluates Financial Services Action Plan

In advance of publishing a White Paper on the future of financial services policy, the European Commission continues to evaluate the previous Financial Services Action Plan (FSAP). With the aim of publishing a final evaluation report in April 2006, the Commission has published the first part of its evaluation for public consultation. This looks specifically at issues of process surrounding the adoption of FSAP measures, public consultation, the Lamfalussy process and so on. The second part of the evaluation will be carried out once all the FSAP measures have been implemented. This analysis of the economic and legal effects of the FSAP is due to be completed in 2008, after which an overall assessment report will be published. Responses to this first part of the consultation should be sent to the Commission by 31 January 2006.



- [Evaluation of the Financial Services Action Plan](#)

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SUCCESSION AND WILLS

Green Paper on Succession and Wills debated at public hearing

The European Parliament's Legal Affairs Committee held a public hearing on the European Commission's Green Paper on Succession and Wills on 21 November. Legal experts from various Member States gave evidence to the Committee on the applicable law and jurisdiction in cases where wills and succession have a cross-border element. The experts broadly agreed that the applicable law in these situations should be the law of the Member State in which the deceased was last habitually resident. Representing the UK, solicitor Richard Frimston stated that this rule must not prevent someone choosing to retain their national succession law when they move to another Member State. The experts were generally in favour of the Commission's idea of establishing an EU certificate of succession but felt that the proposal for an EU register of wills was not necessary at present.



- [Green Paper on Succession and Wills](#)
- [Public Hearing on Succession and Wills agenda](#)

CROSS-BORDER SERVICE OF DOCUMENTS

ECJ limits possibility of refusing legal summons from foreign courts

The European Court of Justice has held that a legal summons issued by the civil courts of one Member State, should not be refused by the recipient resident in another Member State simply on the basis that it is written in a foreign language. A 2000 Regulation on the service of documents in civil and commercial matters had required the summons to be in the official language of the addressee's Member State or in a language which he or she understands. However, in a ruling delivered on 8 November, the Court opted for a liberal interpretation of this rule, stating that service can be validly effected via delivery of a summons in a foreign language, provided a translation of the summons is sent within a month and the defendant is given sufficient time to prepare a defence. A proposal to amend this Regulation in order to improve the cross-border service and transmission of documents was published by the European Commission in July and is currently under consideration in the European Parliament's Legal Affairs Committee.



WEBLINKS

- [Council Regulation 1348/2000 on the service in the Member States of judicial or extrajudicial documents in civil or commercial matters](#)
- [Judgment in Case C-443/03, Leffler](#)
- [Proposal for a Regulation amending Regulation 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters](#)

COMPANY LAW

Consultation launched on Company Law Action Plan

The European Commission has announced a wide-ranging consultation on the second phase of its Company Law Action Plan. Initially published in May 2003, the Action Plan's initial phase is nearing completion with the second phase scheduled for 2005-2008. Speaking at the UK Government's "European Corporate Governance Conference" in London on 14 November, Commissioner McCreevy spoke of the importance of enhancing transparency and empowering shareholders. The principle of "Better Regulation" and improved competitiveness will also guide future actions and plans to simplify, modernise and consolidate the existing Company Law Directives reflect these priorities. Commissioner McCreevy again raised the issue of "one share, one vote", noting that the "shareholder is king or queen". Although he has previously made known his desire for Member States to adopt this principle, it would appear less likely that the Commission will propose legislation to bring this about.



WEBLINKS

- [European Corporate Governance Conference](#)



Viewpoint

Scaling new heights as British Advocate General

Asking a newly appointed Advocate General to set out their personal thoughts on how they see their future role is a little like asking someone who is an experienced hill walker and occasional mountaineer in the Brecon Beacons to share their thoughts on how to lead a successful expedition to climb the North Face of the Eiger. They have some reference points. If they have any sense, however, they are also very conscious that there's a lot that they've only thought about in the abstract, from a distance; and even more that they cannot know in advance. (Also, there are more books to read about climbing the Eiger than books that tell you how to be useful as an Advocate General.)

My own reference points come from growing up in France and Austria, and then working in Brussels and Luxembourg before returning to the UK. As a practitioner, I've argued quite a lot of cases before the European Court of Justice on behalf of the UK. As an academic, I've also been known to argue (sometimes, with a degree of vehemence) that part/all of what I have just been asserting so confidently on behalf of Her Majesty's Government is fundamentally misconceived.

So, how do I see the job of Advocate General? In a single line: as being to assist the Court. That implies providing a coherent and compelling analysis of the issues raised, exploring possible outcomes and their implications, and then explaining to the ECJ – and indirectly, indeed, to a wider audience – why one considers that solution X is to be preferred. It seems to me essential to try to think through the likely real-world consequences associated with possible answers to a particular question. Intellectual consistency and integrity are important qualities; but the solution proposed must also be capable of practical application. Being an Advocate General is not about producing stylish literature, or flying a pet academic kite. That said, I think one must retain (or develop) sufficient vision and boldness to explore new solutions, even if they do not necessarily find immediate favour with the ECJ itself.

My recent excursions to the 2004 accession states on behalf of the European Commission's Technical Assistance Information Exchange Unit (TAIEX) programme have taught me a lot about the ever-increasing diversity of the national law frameworks within which we are trying to get EU law to operate in a uniform and effective way. Finding interpretations that are intelligible to national judges in 25 different Member States with 25 different legal traditions (and 25 different sets of implicit jurisprudential assumptions about how legal jigsaws slot together) is a formidable task. The ECJ is entitled to expect its Advocates General at least to be aware of the problem, even if they cannot necessarily solve it.

What of the likely substance? There are obvious areas of sensitivity, such as anything to do with immigration, visas or asylum. The conundrum posed by the absence of horizontal direct effect of directives and the need to give effective protection to rights in cases between private parties still remains. Citizenship of the Union goes on generating controversy. Finding the appropriate balance between the views of the institutions, the cherished positions of Member States and the claims of individual citizens will always pose a challenge.

The same is emphatically true of following Francis Jacobs QC in this job!

Biography



Eleanor Sharpston QC was called to the Bar in 1980 and practised from the chambers of Jeremy Lever QC in Brussels before working as a judicial assistant in the European Court of Justice. On her return to the UK in 1990, she combined academic work at UCL and then Cambridge with practice at the Bar, taking silk in 1999. In October 2005 she was appointed to succeed Francis Jacobs QC as the British Advocate General at the ECJ.

About us

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

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

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