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Reportage

European Contract Law: Which option to choose?

It may not be long before lawyers are advising clients on an entirely new form of European contract law. On 1 July the European Commission unveiled its Green Paper on policy options for progress towards a European contract law for consumers and businesses. This was launched by Viviane Reding, Vice-President of the Commission and Commissioner for Justice, Fundamental Rights and Citizenship, who outlined her vision for a European contract law and other similar initiatives in the Viewpoint article for the July 2010 Brussels Agenda.

When presenting the Green Paper, Vice President Reding announced that "contract law is as important to business as referees are to football". She explained that the Commission was kicking off a consultation with a range of options in order to find out how provision for contract law could be improved within the EU. The difficulties encountered by European consumers in making cross-border purchases together with the need for small and medium-sized businesses to gain access to new markets were, she said, "an issue vital to our economy".

The Green Paper sets out a list of possible options based largely on a draft body of contract law rules known as the "common frame of reference" (CFR). This was developed by a group of experts from across the Member States working with the Commission. The options range from: on-line publication of the CFR so that national legal systems are able to use it as "a source of inspiration"; a "toolbox" of provisions for consistent reference in the drafting and negotiation of legislative proposals; an optional instrument of contract law, which contracting parties would be at liberty to use; or legislation for a European contract law or a European civil code.

With the Green Paper the Commission is conducting a consultation that will come to an end on 31 January 2011. In parallel, the Commission has charged its group of experts to come up with a draft text by May 2011. This draft should "follow the life cycle of a contract – from pre-contractual duties and the formation of a contract to remedies for the breach of a contract and the consequences of termination". The Commission then plans to prepare concrete proposals before 2012.

The European contract law is just one of the initiatives which Vice-President Reding hopes will remove legal obstacles and cut transaction costs to cross-border commerce. She notes that divergent rules on contracts make life difficult for small and medium-sized enterprises trying to enter new markets within the EU and

frustrate the efforts of consumers attempting to buy cross-border in the internal market. Other similar initiatives which the European institutions are currently considering include a proposal for a Directive on consumer rights, changes to provision for e-commerce and a review of the implementation of the Services Directive.

After a long build-up from an initial Commission consultation paper in 2001, debate has now started in earnest about how contract law should operate within the EU and the respective benefits of the different legal regimes currently in operation. Only time will tell if businesses, consumers, lawyers and Member State Governments agree with the Commission's initiative in this complex area.



WEBLINKS

- **Green Paper on policy options for progress towards a European Contract Law for consumers and businesses**

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Professional Practice

SERVICES DIRECTIVE

Consultation seeks feedback on national rules

On 30 June, the European Commission launched a consultation exercise seeking feedback on the operation of cross-border supply of services since the implementation of the Services Directive at the end of December 2009. Directive 2006/123 on services in the internal market requires Member States to remove unjustifiable or discriminatory requirements affecting the setting up or carrying on of a service activity and aims to improve access to services throughout the EU. The implementation into national law is under constant review and in addition to a system of "peer review" between governments, the Commission is seeking feedback from consumers and businesses as to their views of how the measures in the Services Directive have been put in place nationally. A report will be submitted to the European Parliament and the Council of Ministers at the end of the year.



WEBLINKS

- **Directive 2006/123 on services in the internal market**
- **Mutual evaluation foreseen by the Services Directive - Stakeholders' consultation**

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E-JUSTICE

European E-Justice Portal launched

The European E-justice portal - described as an electronic one-stop shop for access to justice throughout the EU - was launched on 16 July. This is the first phase of a multi-annual action programme in this area aimed at improving provision of information to bolster access to justice in the EU. The portal provides practical information on judicial systems and procedures in the EU including how to institute proceedings, legal aid, mediation, and victims' rights. It provides links to directories of lawyers, notaries and legal translators and interpreters. There are also links to business, insolvency and land registers. The website is available in 22 languages.



WEBLINKS

- **European E-Justice Portal**

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FREE MOVEMENT

Advocate General gives opinion on maximum fees for lawyers

On 6 July Advocate General Mazák gave his opinion in a case taken against Italy by the European Commission

regarding provisions which set a ceiling for lawyers' fees in relation to court-based and out-of-court services. The Commission argued that this constitutes a restriction on the freedom of establishment and also a restriction on the freedom to provide services. Such a fee-capping system, argued the Commission, may make the Italian market in legal services unattractive for foreign professionals. The complex nature of the fee structure and the prohibition on charging the same level of fees as in their country of origin may deter lawyers from other Member States from providing their services on a temporary or permanent basis. The Advocate General is of the view that the Commission failed to prove that such a system is mandatory and that there is no express prohibition against derogating from this regime. Therefore, in his opinion, the Commission case is unfounded.



WEBLINKS

- [Opinion in Commission v Italy \(C-565/08\)](#)

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European Day of Civil Justice Conference 18 October

The Law Society of Scotland will host with the Scottish Government an event to mark the European Day of Civil Justice in Edinburgh on 18 October. This event will provide practitioners with information on the current tools available for cross-border litigation and debt recovery and give advance warning of what developments are coming down the line in relation to contract law as well as private client matters. For more information and to register your interest please contact: brussels@lawsociety.org.uk

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The American Bar Association annual meeting 5-10 August, San Francisco

Representatives from UK law firms are invited to attend the American Bar Association's annual meeting. Prior to the event the Law Society of England and Wales will hold a business development meeting in Los Angeles (LA) to promote links between UK and LA law firms. This will focus on family law, intellectual property and dispute resolution.

Further details of the annual meeting and business development meeting can be found [here](#).

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Brazil, India and China corporate counsel event 22 September, London

UK corporate counsel and corporate members of the International Division of the Law Society of England and Wales are invited to take part in this one-day conference with corporate counsel from Brazil, India and China. The aim is to encourage dialogue amongst corporate counsel and promote an exchange of ideas around best practice and business innovation. In addition a networking event open only to International Division members will be held in the evening. Further details of the conference and how to take part can be found [here](#).



Law Reform

CRIMINAL LAW

Improving rights of victims: the Commission consults

The European Commission is seeking views on the protection of victims of crime and violence across the EU. This will feed into a package of rules and practical measures expected in 2011. The consultation is open until 30 September and focuses on the protection and support of victims of crime and violence and ensuring access to justice. This is in parallel to an initiative of 12 Member States presented in January to create a European Protection Order (EPO). The EPO aims to ensure the protection a victim receives in one Member State is respected in another Member State without the need for translation and other administrative burdens. The UK opted in to this initiative in March. The Commission however disputed the legal basis of the initiative, stating that Member State initiatives can only be made in criminal law whereas the EPO covers both criminal and civil laws of Member States. While a solution is yet to be found, the Commission is progressing with its own proposals in the area.



WEBLINKS

- [Consultation on taking action on rights, support and protection of victims of crime and violence](#)
- [Initiative of Belgium, Bulgaria, Estonia, Spain, France, Italy, Hungary, Poland, Portugal, Romania, Finland and Sweden with a view to the adoption of a Directive on the European Protection Order](#)

CRIMINAL LAW

Letter of rights in criminal proceedings introduced

On 20 July the European Commission proposed a Directive on the right to information in criminal proceedings. The Commission proposal is the second step in a series of measures to set common EU standards in criminal cases, the first step being the adoption of the Directive on rights to interpretation and translation in criminal proceedings. The Commission proposal, if adopted by the Council of Ministers and the European Parliament, is set to help to avoid miscarriages of justice and reduce the number of appeals. Prosecutors will be required to make sure suspects are given information on their rights in the form of a "letter of rights". This letter, given to a suspect when they are arrested, will be written in plain, simple terms and translated if necessary into a language they understand. Police authorities will be expected to keep copies in all languages commonly spoken in the locality. In the instance of a suitable copy not being available, the letter of rights will be delivered orally to the suspect until a written copy is available. It will be provided to the suspect upon arrest in all cases, whether or not requested.



WEBLINKS

- [Proposal for a Directive on the right to information in criminal proceedings](#)
- [Proposal for a council framework Decision on certain procedural rights in criminal proceedings throughout the European Union](#)

CONSUMER RIGHTS

Progress made on Consumer Rights Directive

The second part of the European Parliament's Internal Market and Consumer Protection Committee (IMCO) draft report on the proposed Consumer Rights Directive was published on 25 June. It concerns new rules for distance-selling and off-premises contracts and promotes a short but comprehensive list of information requirements for these types of transaction. The initial European Commission proposal asked for full

harmonisation but there was concern that this could lead to a lowering of standards in some Member States. Therefore Andreas Schwab (Germany, EPP) as rapporteur on this issue has proposed more targeted harmonisation. This has met with concern amongst businesses and consumers, who see this as taking away from the Commission's objectives of simplifying the current system and making it easier to sell consumer products and services across borders. Notably, the draft proposes a harmonised withdrawal period of 14 days for distance-selling or off-premises contracts. The full draft report was considered in IMCO on 12 July. Committee Members noted concern about various aspects of the draft report, including the need to find a proper balance between minimum and maximum harmonisation; finding a balance between what can be improved upon and what actually requires changing and how to deal with a "patchwork of harmonisation". The vote on the draft report in IMCO is planned for 10 December.



WEBLINKS

- [Proposal for a Directive on consumer rights](#)
- [European Parliament draft report on the proposal for a Directive on consumer rights](#)

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TAXATION

VAT: Making life simpler

The EU institutions continue to attempt to make the operation of the VAT system simpler. On 13 July Member States agreed new, simplified rules on VAT invoicing. The main objective of this new measure is to ensure that electronic invoices are accepted by tax authorities as equivalent to paper ones. It also removes legal barriers to their transmission and storage. The new rules should be applied from 1 January 2013. On 12 July a new consultation was also launched on VAT collection procedures in relation to centralised customs clearance. This considers bringing VAT procedures into line with the Modernised Customs Code, which now allows authorised importers to declare and pay customs duties to the customs administration in the country where they are authorised. However, life could also become a bit less simple, depending on the success of an infringement brought by the European Commission on 24 June against a number of countries, including the UK. In the case of the UK, the Commission is set to argue before the Court of Justice of the EU that non-taxable persons cannot be treated as part of a VAT grouping.



WEBLINKS

- [Consultation on VAT collection procedures in relation to centralised customs clearance \(closing 31 October 2010\)](#)
- [Directive 2010/45 amending Directive 2006/112 on the common system of value added tax as regards the rules on invoicing](#)
- [Commission press release on infringement actions concerning VAT grouping rules](#)

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FINANCIAL SERVICES

More protection for bank deposits

The protection offered to bank customers when their bank fails could be enhanced further under proposals made by the European Commission on 12 July. Last year Directive 2009/14 amending Directive 94/19 on deposit guarantee schemes increased the minimum amount guaranteed to €50,000. The Directive then requires the level of protection to be fixed at €100,000 from 1 January 2011. However, due to the haste of the Directive's adoption, the Commission was charged with reviewing elements of it before the rules entered into force. This process complete, the most recent text also proposes to allow Member States to offer fuller coverage to temporary high balances. Such protection could cover, for instance, funds deposited in relation to the sale of a house, inheritance from a will or a payment received as a result of a divorce settlement or personal injury compensation. Such amounts often exceed €100,000 and constitute a significant part of an individual's assets. The proposal will now be considered for adoption by the European Parliament and Council of Ministers. Similar proposals were made the same day in relation to investor compensation, alongside a White Paper on insurance guarantee schemes.



WEBLINKS

- [Proposal for a Directive on deposit guarantee schemes \[recast\] \(yet to be published officially\)](#)

- [Proposal for a Directive amending Directive 97/9 on investor-compensation schemes](#)
- [White Paper on insurance guarantee schemes \(yet to be published officially\)](#)
- [Law Society of England and Wales response to the Review of Directive 94/19 on deposit guarantee schemes](#)

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INTELLECTUAL PROPERTY

New EU patents to be in one of three languages

In negotiations towards the creation of an EU patent, the translation arrangements have been a constant sticking point. A solution to this final part of the negotiations has now been proposed by the Commission. Under the proposal, patents could be filed in any EU official language and then granted in one of English, French or German. This would then be valid across the EU. Details of the scope of the protection of the invention would be translated in the other two languages. Should the patent be subject to legal challenge or infringement, the patent proprietor could be required to cover the cost of further translation into, for example, the language of court proceedings or the language of an alleged infringer. The new proposal now needs to be agreed unanimously by Member States after consideration by the European Parliament. The EU is also considering creating a new European patent court which would have jurisdiction over existing European patents (from the European Patent Office) and future EU patents. The Opinion of the Court of Justice of the EU on the compatibility of this new court with the EU Treaties is pending. If approved, negotiations will commence between the EU, Member States and other contracting states of the European Patent Convention to reach an agreement on a new unified patent litigation system.



WEBLINKS

- [Proposal for a Regulation on the translation arrangements for the EU patent](#)
- [Presidency text on the European Patents Court March 2009](#)
- [Working paper on the draft Rules of Procedure for a Unified Patent Litigation System](#)

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Claude Moraes MEP

Criminal Justice cooperation under the Lisbon Treaty

The changes brought in by the Lisbon Treaty were far reaching across the whole range of the EU's powers, but perhaps the most ambitious changes came in justice and home affairs (JHA). Half a year after the Treaty of Lisbon came into force, we are now starting to see the real effects of its many innovations in this field, and in particular in the area of criminal justice.

In June the European Parliament and the Council of Ministers came to a landmark agreement on the rights of interpretation and translation for criminal suspects, the first proposal under the Roadmap on procedural rights. Thanks to the efforts of the Spanish Presidency, the deadlock between Member States on this issue is now a thing of the past and we now have a real chance of moving forward under the framework of the Roadmap. On 20 July the second proposal on a letter of rights for criminal suspects was presented.

Although we would have preferred to see a single instrument to cover all procedural rights, it is clear that a step-by-step approach is the only way to get Member States on board. Given the current controversy surrounding the European Arrest Warrant it is vital that we put this and the rest of the procedural rights in place, in order to restore public confidence in EU criminal justice cooperation. Therefore we are pushing for the Commission to come forward with the rest of the proposals covered by the Roadmap as quickly as possible.

Other proposals are currently on the table covering human trafficking, sexual abuse of children, and a European protection order. Under the ordinary legislative procedure (what used to be called co-decision) we

now have a real chance to adopt these essential pieces of legislation, as unanimity is no longer needed in Council, and the Parliament has a reinforced role.

EU action against human trafficking and child sexual abuse are currently covered by two framework decisions, from 2002 and 2004 respectively, but these are widely regarded as being ineffective and weakly implemented. A stronger and better coordinated EU response to these crimes, which have obvious cross-border elements, is absolutely essential. The Commission therefore made two new proposals for Directives in March. Despite different approaches to tackling these crimes between Member States, the Parliament will be resolute in pushing for strengthened rules and tough action to prosecute those responsible, as well as more help for victims.

Under the Lisbon Treaty almost the entire JHA field comes under the Commission's responsibility as the initiator of legislation. However, a quarter of the Member States can also initiate a proposal in certain JHA matters. Member States have already made use of this power in two areas: the proposal on interpretation rights for criminal suspects mentioned previously, and a second proposal which has yet to be adopted, the European protection order.

The European protection order, a flagship project of the Spanish Presidency, aims to tackle the problem of victims of violence, in particular domestic violence, not having protection when moving between Member States. Despite some institutional wrangling between the Commission and Council over the appropriate legal basis for this measure, which cuts across criminal and civil law, in the Parliament we are hopeful that victims will be protected by this new instrument in the near future.

It is hard to over-emphasise the importance of all four of these proposals for citizens. The added value of measures at the EU level in these areas is plain, given the clear cross-border elements, and strengthened EU action can make a real difference to people's lives. Competition between the Commission and Council notwithstanding, the high level of support for these measures across the institutions and wider civil society leaves me hopeful that we can have them in place soon.

Biography



Claude Moraes MEP was re-elected to the European Parliament for London in 2009. He is Deputy Leader of the European Parliamentary Labour Party, and is Socialist & Democrats Group Spokesperson for Civil Liberties, Justice & Home Affairs. He is also Vice-President of the **Intergroup on Anti-Racism and Diversity** and the Intergroup on Ageing, and active on issues of regeneration and social exclusion, human rights; employment rights; international development; and justice and home affairs. With a law background, he has campaigned and written widely on human rights issues.

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- [Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation](#)
- [Communication on reaffirming the free movement of workers: rights and major developments](#)
- [Green Paper towards adequate, sustainable and safe European pension systems](#)
- [Consultation on possible approaches to tackling cross-border inheritance tax obstacles within the EU](#)
- [European Parliament Resolution on atypical contracts, secured professional paths, and new forms of social dialogue](#)
- [European Parliament Report on the implementation and review of Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters \("Brussels I"\)](#)
- [CESR consultation on MiFID review; client categorisation](#)

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