



## « Live from Bruxelles »

by Anne-Catherine de Bruchard, director of the Foundation's office in Brussels

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### Interview “Continental Law: A driving force for the European Union”:

<http://www.europolitics.info/continental-law-a-driving-force-for-european-union-artr296561-10.html>

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#### Mortgages

In order to create a pan-European mortgage market that is “responsible, efficient, healthy and competitive”, the European Commission has proposed a draft directive that aims to:

- allow borrowers to benefit from more protection, due to strong rules related to advertising, pre-contractual information, advice, solvency assessments and expected repayments;
- require lenders to use a standardized European information sheet to provide personalized information to consumers, which will enable borrowers to compare offers from various lenders;
- introduce equal competitive conditions for all the professionals involved, enabling them to conduct business with greater ease outside of their own country.

The proposed directive:

[http://ec.europa.eu/internal\\_market/finances-retail/docs/credit/mortgage/com\\_2011\\_142\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/credit/mortgage/com_2011_142_en.pdf)

Current national measures and practices intended to avoid foreclosure proceedings related to home mortgages:

[http://ec.europa.eu/internal\\_market/finances-retail/docs/credit/mortgage/sec\\_2011\\_357\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/credit/mortgage/sec_2011_357_en.pdf)

Legal analyses by country of the various political options related to mortgages:

[http://ec.europa.eu/internal\\_market/finances-retail/docs/credit/mortgage/study\\_cost\\_benefit-annex-b\\_en.pdf](http://ec.europa.eu/internal_market/finances-retail/docs/credit/mortgage/study_cost_benefit-annex-b_en.pdf)

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#### Property Rights for International Couples

The European Commission has proposed two regulations, which, if adopted by the European Council and the European Parliament, would enable for determining the competent jurisdiction and the governing law applicable to the property rights of couples who have married or have registered a partnership that is of an international nature, and would enable rules to be established for recognizing and executing legal decisions related to the couple's relevant property within all of the Member States of the EU, thanks to a single proceeding.

It is noteworthy that out of around 122 million marriages registered in the European Union, 16 million (13%) are of a trans-border nature.

The report from the European Commission:

[http://ec.europa.eu/justice/policies/civil/docs/com\\_2011\\_125\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2011_125_en.pdf)

The proposed regulation on marital property systems:

[http://ec.europa.eu/justice/policies/civil/docs/com\\_2011\\_126\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2011_126_en.pdf)

The proposed regulation on registered partnerships:

[http://ec.europa.eu/justice/policies/civil/docs/com\\_2011\\_127\\_en.pdf](http://ec.europa.eu/justice/policies/civil/docs/com_2011_127_en.pdf)

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## Corporate Governance

The European Commission has launched a public consultation that is open until July 22, 2011 on ways to improve the governance of European companies. It deals with:

- the composition and the role of the board of directors;
- the monitoring and application of the corporate governance codes that already exist at the national level
- the implications for shareholders.

Public consultation:

[http://ec.europa.eu/internal\\_market/company/docs/modern/com2011-164\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf)

National regulations on corporate governance:

[http://www.ecgi.org/codes/all\\_codes.php](http://www.ecgi.org/codes/all_codes.php)

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## Commercial Register

The European Commission has published a proposed directive amending Directives 89/666/EEC, 2005/56/EC and 2009/101/EC, as they relate to the inter-connectedness of primary, commercial and company registers.

Upon presenting this document, Commissioner Michel Barnier said, *"At the present moment, more and more companies are offering their services to consumers throughout the EU. With the growth of e-commerce, products and services are crossing borders at an heretofore unknown speed. Consumers, especially those that buy online, must have access to reliable and up-to-date information on the companies in order to verify the legality of this trade. The proposal that was adopted today aims to increase such legal certainty for consumers, as well as for companies."*

The proposed directive:

[http://ec.europa.eu/internal\\_market/company/docs/business\\_registers/20110224\\_proposal\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/business_registers/20110224_proposal_en.pdf)

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## SME

The European Commission has published a report on the "re-examination of the Small Business Act for Europe" in which the Commission focuses on the progress made over the course of the first two years of its implementation and defines a series of new measures to be taken.

Among these measures, it should be noted that the Commission proposes to carry out quality reports in order to verify that the regulatory framework for an area of activity is appropriate to its use, and to set up efficiency controls in order to detect the inherent difficulties of applying several EU laws simultaneously.

In addition, it will recommend an instrument – under European contract law - to respond to the needs of SMEs that would like to penetrate new markets.

At the international level, a study reveals that although European SMEs are more active than their American or Japanese counterparts, there is still enormous, untapped market potential in the BRIC countries (Brazil, Russia, India and China), which are only reached by 7% to 10 % of European exporting SMEs, whereas these markets should represent around 60% of the global GDP by 2030.

The report from the European Commission:

[http://ec.europa.eu/enterprise/policies/sme/small-business-act/files/sba\\_review\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/small-business-act/files/sba_review_en.pdf)

Study on the international commercial prospects of European SMEs:

[http://ec.europa.eu/enterprise/policies/sme/market-access/files/internationalisation\\_of\\_european\\_smes\\_final\\_en.pdf](http://ec.europa.eu/enterprise/policies/sme/market-access/files/internationalisation_of_european_smes_final_en.pdf)

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## International Trade

The European Commission has published a report on the obstacles to trade and investment in the markets of six strategic economic partners; China, India, Russia, Brazil, Argentina and the United States, which represent 45% of the trade in commercial goods and services from the EU.

Karel De Gucht, the European Trade Commissioner stated, "Agreements on paper are not sufficient. We have to be vigilant that the commercial rules and agreement that we've negotiated with our partners are actually applied on the ground."

The report:

[http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\\_147629.pdf](http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147629.pdf)

and its appendix detailing the situation in each country:

[http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc\\_147630.pdf](http://trade.ec.europa.eu/doclib/docs/2011/march/tradoc_147630.pdf)

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## Electronic Signatures and Identification

Based on the assessment that the growth of the online economy in the European Union has slowed down dramatically because of difficulties related to verifying the identity and signature of users, the European Commission is seeking to review the current directive on electronic signatures and to prepare an initiative on mutual acknowledgement of electronic identification and authentication. In order to gather a maximum amount of advice on the topic, it has launched a public consultation that is open until April 15, 2011.

In addition, a "pilot project" has been set up to make it possible to recognize electronic identification systems across national borders and to provide access to public services in 18 of the 27 Member States of the European Union. This system, which has been introduced as "STORK" (*Secure idenTity acrOss boRders linKed*), aims to facilitate citizens' use of their national electronic identity system throughout the entire European Union, and not only in their country of origin.

Public consultation:

<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=eid4&lang=en>

The STORK pilot project:

<https://www.eid-stork.eu>

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## Expert Legal Translators

The Court of Justice of the European Union issued a ruling on March 17, 2011 according to which Article 56 of the Treaty of Rome contradicts the French law that requires being registered on a list and receiving the title of official expert based on specific conditions, without taking into account that these experts be recognized by any other State. It deems that these lists of experts constitute an unjustified restriction to the free offer of services.

Ruling of the Court (Cases C-372/09 and C-373/09):

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=Submit&numaff=C-372/09>

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## Corporate Tax

In order to reduce administrative expenses, the costs related to fiscal compliance and the legal uncertainties that companies in the European Union must bear in order to comply with the 27 national regimes when reporting their taxable revenue, the European Commission is proposing a common regime to calculate the tax base for companies conducting business within the European Union.

The European Commission would like that this "common consolidated corporate tax base" (CCCTB) should enable companies to have recourse to a one-stop shop system for filling out their tax returns and consolidating the profits and losses that they record throughout the entire European Union. The Member States would fully retain their sovereign right to set corporate tax rates.

The Commission estimates that the CCCTB would not only allow European Union companies to save 700 million Euros every year in expenses related to fiscal compliance and 1.3 billion Euros as a result of consolidation, but that this system would also make the European Union a much more attractive market for foreign investors.

The proposed CCCTB directive:

[http://ec.europa.eu/taxation\\_customs/resources/documents/taxation/company\\_tax/common\\_tax\\_base/com\\_2011\\_121\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/taxation/company_tax/common_tax_base/com_2011_121_en.pdf)

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## Services of General Economic Interest (SGEI)

The European Commission is proposing reforms to the rules related to Government assistance applicable to services of general economic interest (also called "post-Altmark package").

In particular, it seeks:

- to provide specifics concerning many key conceptual notions, such as the distinction made by the treaty and the jurisprudence between economic and non-economic activities or the limits imposed on Member States concerning how to qualify a service activity as being of general economic interest;
- to adopt an approach that is more diversified and commensurate with the various types of public services; to this end, it could in particular simplify the application of rules for certain types of public services that are small in size, which are provided at the local level and that have a limited impact on trade between Member States, as well as for certain social services, while giving more weight to the considerations related to efficiency and competition, in the case of large-scale commercial services that clearly have a European dimension.

The report from the European Commission:

[http://ec.europa.eu/competition/state\\_aid/legislation/sgei\\_communication\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/sgei_communication_en.pdf)

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## Security Products

Based on the assessment that the national norms and regulatory framework concerning security products differ significantly and that the market is very diversified in this sector (ranging from simple surveillance cameras to complex scanning systems), the European Commission considers it to be absolutely necessary to set up an accelerated approval system for priority technologies, to stimulate progress in matters of harmonization and standardization, to plan coordinated guidelines for public procurement procedures and to accelerate research and development in the area of security technology,, including for products that have both civilian and military uses.

In order to gather a maximum amount of advice on the topic, it has launched a public consultation that is open until May 13, 2011.

Public consultation:

<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=Security&lang=en>

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## Online Gambling

The European Commission has initiated a discussion on online gaming in Europe through a public consultation on this topic that is open until July 31, 2011.

The Commission indeed considers that since the national legal frameworks within the EU differ widely from country to country due to the imposing of different rules on granting licenses, associated online services, payments, public interest objectives and the fight against fraud, it is thus imperative to evaluate the possibility of the co-existence of different models within the domestic market, out of concern for legal certainty and the effective protection of citizens.

Public consultation (green paper):

[http://ec.europa.eu/internal\\_market/consultations/docs/2011/online\\_gambling/com2011\\_128\\_en.pdf](http://ec.europa.eu/internal_market/consultations/docs/2011/online_gambling/com2011_128_en.pdf)

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## Fundamental Rights

After the Charter of Fundamental Rights of the European Union has been in force for one year and has become legally binding, the Commission has published its first report on the manner in which the Charter is applied and to provide clarifications concerning the cases where it does or does not apply.

The Annual Report:

[http://ec.europa.eu/justice/policies/rights/docs/com\\_2011\\_160\\_en.pdf](http://ec.europa.eu/justice/policies/rights/docs/com_2011_160_en.pdf)

The detailed analysis accompanying the Annual Report:

[http://ec.europa.eu/justice/policies/rights/docs/sec\\_2011\\_396\\_en.pdf](http://ec.europa.eu/justice/policies/rights/docs/sec_2011_396_en.pdf)

The EU's Charter of Fundamental Rights:  
[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

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### **Children's Rights**

A "program of the European Union on the rights of children" has been presented by the European Commission. It identifies general principles on this topic and highlights a series of concrete measures in the areas where it considers that the Union can provide real added value, such as: justice that is adapted to children, the protection of children in situations of vulnerability, the fight against violence directed against children both inside and outside of the European Union.

The report from the European Commission:  
[http://ec.europa.eu/justice/policies/children/docs/com\\_2011\\_60\\_en.pdf](http://ec.europa.eu/justice/policies/children/docs/com_2011_60_en.pdf)

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### **Labor Laws**

The Court of Justice of the European Union issued a ruling on March 15, 2011 that states that when a worker is conducting his activities in more than one Member State, it is the law of the country where the essential part of his professional obligations are carried out that is the law that applies to resolve litigation involving an employment contract (case C-29/10):

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-29/10>

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### **Cyber protection**

According to Neelie Kroes, European Commissioner responsible for a digital strategy, "To respond to the needs and expectations of Europeans, it is imperative to offer them access to online networks and services that are secure, strong and resilient. During the last two years, we have achieved significant progress, but we have to redouble our efforts in the EU as well as on the global scale to fight the constantly changing threats against computer and informational security."

With this goal in mind, the European Commission is proposing in particular the following:

- creating national intervention teams in the event of computer emergencies (CERT) in Member States that don't currently have one and establishing a European emergency plan in the event of IT incidents;
- establishing strategic partnerships in this area with key non-member states (such as the US) and promoting dialogue within the scope of international events like the G8;
- researching the best governance strategies for emerging technologies that have a global impact, like cloud computing.

The report from the European Commission:  
[http://ec.europa.eu/information\\_society/policy/nis/docs/comm\\_2011/comm\\_163\\_en.pdf](http://ec.europa.eu/information_society/policy/nis/docs/comm_2011/comm_163_en.pdf)

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### **Trade in Information and Communication Technology (ICT)**

The European Union and the United States have adopted Trade Principles on Information and Communication Technology and undertaken to promote them throughout the whole world.

Among the 10 principles that were adopted are the following:

- the absence of a requirement to use local infrastructure to provide services based on ICT;
- the public authorities' authorization for foreign enterprises' unrestricted participation in providing these services, by recognizing the right of domicile or by other means;
- the independence of the regulatory authorities responsible for monitoring these services.

The principles adopted by the EU and the US:  
[http://ec.europa.eu/information\\_society/activities/internationalrel/docs/eu-us-tradeprinciples.pdf](http://ec.europa.eu/information_society/activities/internationalrel/docs/eu-us-tradeprinciples.pdf)

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## **SWIFT implementation report** (*Society for Worldwide Interbank Financial Telecommunication*)

The European Parliament Commission on Freedoms has said it is concerned with the way that the United States has made demands concerning EU citizens' bank information. It considers that the manner in which they are justified is too general and succinct for Europol to be able to verify their compliance with the EU's data protection standards and deplors that Europol has apparently been content to approve them. This situation could be a challenge for the European Parliament when approving subsequent agreements on transmitting data between the EU and the US.

The statement from the Parliament:

[http://www.europarl.europa.eu/pdfs/news/expert/infopress/20110314IPR15463/20110314IPR15463\\_en.pdf](http://www.europarl.europa.eu/pdfs/news/expert/infopress/20110314IPR15463/20110314IPR15463_en.pdf)

The Implementation Report:

[http://www.europolitique.info/pdf/gratuit\\_fr/290346-fr.pdf](http://www.europolitique.info/pdf/gratuit_fr/290346-fr.pdf)

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## **Croatia**

Of the 35 chapters that make up the negotiations for Croatia to become a member of the European Union, 28 have been closed at this stage.

Of the remaining chapters, those that relate to the power of the judiciary and to fundamental rights (Chapter 23) involve a number of criteria that have still not been met.

In the Interim Report on the progress made on the matter, published on March 2, 2011, the European Commission focuses on the situation in the following four areas:

- power of the judiciary;
- fight against corruption and organized crime;
- fundamental rights;
- cooperation with the International Criminal Tribunal for the former Yugoslavia (TPIY).

*The Interim Report:*

[http://ec.europa.eu/enlargement/pdf/hp/interim\\_report\\_hr\\_ch23\\_en.pdf](http://ec.europa.eu/enlargement/pdf/hp/interim_report_hr_ch23_en.pdf)