

Database lifts the fog in the Channel

European law is having a growing influence on UK courts. Fortunately, there is now a searchable resource that can find case law from other EU countries.

"IT'S NEVER happened here before, but I bet it's happened in France; I bet it's happened in Germany and – damn it! – I bet we'll find the answer by looking for cases from their courts. You've got 24 hours; go to it!"

Those might not have been the *exact* words of Lord Justice Bingham as he presided over *Fairchild v Glenhaven Funeral Services* ([2003] 1 AC 32) in the House of Lords a few years ago, but that was the essence of his sentiments. Dealing with employment, tort and other areas of law that have incorporated recent legislation affected by numerous European regulations and directives, the case illustrates a worrying trend for lawyers relying solely on domestic and other common law precedent.

Described by *The Times* as "the pre-eminent lawyer of his generation", this judge knew his Zwiebeln. Feeling sure that cases from the French and German national courts would indicate where justice might lie, Lord Bingham instructed counsel to find them – by the next day.

As the extensive *Justis* case report shows – see www.justis.com/fgsample – he was on to something; persuasive and tested arguments from the continent abounded. But how would one easily go about finding such relevant cases, particularly if one's knowledge of any language other than English is, well, sketchy? Could there be a one-stop-shop out there

and, if there is, how are practitioners using it?

Norwegian information specialist Stig Marthinsen, then an external adviser to the European Commission, and Marc de Vries, a Dutch lawyer working for the same organisation, were 'roommates' in Luxembourg. Back in 2000 their minds wandered on to that question.

Their thoughts lay dormant for a while, but in 2003, convinced that they'd spotted a genuine gap in the market, they secured European Commission funding and set about developing what would become Caselex (www.caselex.com), a unique database that allows users to search for precedent from other EU countries' national courts on EU law-related cases. With an intuitive search interface and offering detailed summaries in English, Caselex has grown rapidly in the past year or two to cover 26 national jurisdictions and 10 crucial areas of commercial law.

It now holds nearly 2,500 cases – and counting.

Inspirational

"Caselex has inspirational value, bringing new angles," said de Vries. "It won't replace national case law

sources," he stressed, "but it can create a lot of synergy and provides insight to problems."

Do its new users agree? Certainly, numerous surveys indicate the inexorably increasing significance of Europe on our laws; but has it impacted on practitioners' work?

Having trained and practised as a lawyer in Chicago, Jane Wessel returned to the UK some years ago and now works as a solicitor and sometime litigator for London law firm Crowell & Moring.

Wessel is only too familiar with the problem Marthinsen and de Vries sought to solve. Earlier this year she represented a company who claimed to have been overcharged by a carbon brush manufacturer that was found to have been part of a Europe-wide price-fixing cartel.

Seeking damages for her client through the English courts, Wessel didn't at the time have access to Caselex. She eventually found the European cases she needed to fight her corner but Caselex, to which she has since subscribed, could have made things much simpler, particularly for such areas of law so heavily influenced

by EU-derived statutes and therefore by persuasive precedent from other countries' courts.

Easy to find

"Previously I used the European Commission website to search for cases," she said, "but you can't enter a search and scan through to see whether you need to refine it for future searches."

However, she added, with Caselex "...competition law, appeals, cases on jurisdiction under the Brussels regulation... it's all so easy to find, so you're confident that you've completed your search."

She warmed to her theme: "My prediction is that in another 25 years the differences [between our and other countries' courts] will be far less pronounced. It's inevitable. The influence of European law is bound to seep down into each of the nations' laws and will only get greater. As soon as national court judgments come out the rest of Europe is going to want to study them. As that movement builds, it will be more necessary to find these judgments."

But isn't all the information already out there for free? Yes, conceded Marthinsen, "Feel free to go and find it – if you have the time, resources and language skills."

Most of us don't. Perhaps that explains Caselex's rising subscriber levels and its success at this year's European Information Association Awards, where it won the prize for excellence in European information provision in the electronic sources category.

The pre-eminent lawyer of his generation was unavailable for comment but it's hard to imagine him not approving, too.



Stig Marthinsen accepts the EIA award