# Philip Moser QC

MA (Cantab), ADR Accredited Mediator
Call date: 1992 Silk: 2012
Telephone: 020 7405 7211
Fax: 020 7405 2084
Email: pmoser@monckton.com

## Summary

Philip is regularly instructed in EU law cases, often involving novel or untested points of law. Specialist practices in public procurement, commercial agents' cases, EU sanctions cases and MTIC fraud have each developed out of his involvement with EU law. He also has particular expertise in Conflict of Laws. Commercial work, often with cross-border elements, complements his specialist areas.
Clients include: companies, NGOs and individuals in the UK and abroad (particularly the US, Germany and Austria), as well as HM Revenue & Customs.
Called to the Bar in 1992 (Inner Temple), Philip has extensive forensic experience, having appeared as both junior and lead counsel in the High Court; the Court of Appeal; the House of Lords and the ECJ, as well as acting in national and international arbitrations. A former supervisor in EC Law at Robinson College, Cambridge, Philip occasionally lectures on EU Law and is the editor of The European Advocate. He is bilingual English/German and an accredited mediator.
Philip has been elected a Bencher of the Inner Temple following the Trinity Elections in July 2012. Philip is also a Fellow of the European Law Institute, 2012. Before taking Silk, Philip was a member of the Attorney General's Panel of Junior Counsel to the Crown.

## CASES INCLUDE

- **Finanzamt Düsseldorf-Mitte v Ibero Tours GmbH (Case C-300/12)** European Court of Justice, judgment 16 January 2014; *Travel agents - VAT - discounts - intermediaries - effect of ECJ* Elida Gibbs *decision*
- **Gestmin SGPS SA v Credit Suisse (UK) Ltd**[2013] EWHC 3560 (Comm); *Banks - investment advice - duty of care - evaluating witness recollection*
- **Recall Support Services Ltd v Secretary of State for Culture Media and Sport**[2013] EWHC 3091 (Ch); *Telecommunications - Mobile telephone networks - GSM Gateway - Francovich damages - breach of EU law* (appeal case pending in Court of Appeal).
- **Ayadi v European Commission (C-183/12 P)** European Court of Justice, judgment 6 June 2013; *CFSP - Al-Qaida and Taliban sanctions list -Removal of the interested party - Continuing interest in bringing proceedings*
- **Abdulrahim v Council of the European Union (C-239/12 P)**European Court of Justice (Grand Chamber), judgment 28 May 2013;[2013] 3 C.M.L.R. 41; *CFSP - Al-Qaida and Taliban sanctions list -Removal of the interested party - Continuing interest in bringing proceedings*
- **Norbrook Laboratories Ltd v Carr**[2013] EWHC 476 (QB); *Unincorporated association - misconduct - damages - delivery up of documents - costs*
- **Forvards V SIA v Valsts ieņēmumu dienests (C-563/11)** European Court of Justice (Grand Chamber), order 28 February 2013; *VAT - Input tax -refusal to deduction on basis issuer of invoice relating to those services, or one of his suppliers, acted improperly - EC Council Directive 2006/112, art 273*
- **Honda Motors (Europe) Limited v Revenue and Customs Commissioners**, First-tier Tax Tribunal, Decision 29 January 2013; *Customs - CCC - customs duty classification - Combined Nomenclature - agricultural tractors - ATVs - effect of ECJ* Kawasaki *decision*
- **Bonik EOOD v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' - Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite (C-285/11)**, European Court of Justice, judgment 6 December 2012; *VAT - Input tax -refusal to deduction on basis issuer of invoice relating to those services, or one*

*of his suppliers, acted improperly - EC Council Directive 2006/112, art 273*

- **NG International Ltd v Revenue and Customs Commissioners**[2012] UKUT 259 (TCC); [2013] S.T.C. 1; [2012] B.V.C. 1792; [2012] S.T.I. 2459; *VAT - Input tax - MTIC fraud - meaning of 'should have known' limb of* Kittel *test*
- **Zuckerfabrik Jülich AG v Hauptzollamt Aachen; British Sugar plc v Rural Payments Agency & ors (Joined cases C-113/10, C-147/10 and C-234/10)**, European Court of Justice, judgment 27 September 2012; *Common agricultural policy - sugar and isoglucose - calculation of production levies - retroactive effect of legislation - exchange rate - interest*
- **Mahagében kft & Dávid v Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága (Joined Cases C-80/11 and C-142/11)**, European Court of Justice, judgment 21 June 2012; [2012] S.T.C. 1934; [2013] C.E.C. 306; [2012] S.T.I. 2733; *VAT - Input tax -refusal to deduction on basis issuer of invoice relating to those services, or one of his suppliers, acted improperly - EC Council Directive 2006/112, art 273*
- **Emblaze Mobility Solutions Ltd v Revenue and Customs Commissioners** [2012] B.V.C. 174; [2012] S.T.I. 1600; [2012] S.T.I. 3011, (Ch Div); *Corporation tax - Equitable set-off - Input tax - Interest - PAYE - VAT*
- **Case T-306/10 Yusef -v- European Commission,** GCEU, pending; UN sanctions; whether post-*Kadi* EU regime lawful; whether applicant can bring action for failure to act
- **Case C-183/12 P Ayadi v Commission**, ECJ, pending; terrorist sanctions; challenge; listing revoked; continuing interest; appeal
- **Joined cases C-113/10, C-147/10 and C-234/10 British Sugar & ors**, ECJ, judgment, 27 September 2012; Sugar levy; annulled regulation; legality of new regulation; repayment of sums wrongly levied
- **Case T-145/09 Bredenkamp and Others v Commission** (GCEU, Order, 6 September 2012); Zimbabwe sanctions; lack of reasons; challenge; listing revoked; no continuing interest
- **HMRC v Cozens** [2012] STC 420 (ChD) Civil procedure - Customs - Freezing injunctions - Dissipation of assets - Duty of disclosure - Fraudulent evasion of duty
- **Gateshead Talmudical College v HMRC** [2011] STC 1593 (Upper Tribunal) Capital Goods Scheme - Input/output tax - Leases - Taxable supplies by religious college
- **Indigo Service v Colchester Institute** [2011] EuLR 384 (QB): First Regulation 47G application - lifting suspension of award of public contract - *American Cyanamid* principles
- **Norbrook Laboratories Ltd & aor v Carr & aor** [2011] CP Rep 7: Court of Appeal - civil procedure - costs - unincorporated associations
- **Mobilx & ors v HMRC** [2010] STC 1436: Court of Appeal - MTIC fraud - test cases on ECJ "*Kittel* test" - knowledge of connection with VAT fraud
- **Accentuate Ltd v Asigra** [2010] 2 All ER (Comm) 738 (QBD); Commercial agency; arbitration; UK jurisdiction where foreign proceedings contrary to EU mandatory rights
- **PKK v Council** [2008] ECR II-45: CFI - EU terrorism list - freezing of funds - annulment of Council decision for lack of reasons
- **Calltel & Opto v HMRC** [2008]: ChD - VAT appeal - test case on security for costs
- **Lonsdale v Howard & Hallam** [2007] UKHL 32: House of Lords - commercial agents - test case re assessment of Reg. 17 compensation
- **PKK and KNK v European Council** [2007] ECR I-439: ECJ - appeal from CFI - EU terrorist list - challenge to decision to proscribe organisation - standing
- **City of Sunderland v Thoburn** [2003] QB 151 (Div Crt): 'Metric Martyr' litigation - metrication - European Community Act 1972 a 'constitutional statute'

## PUBLICATIONS

- Editor of 'Making Community Law - The Legacy of Advocate General Jacobs at the ECJ' (with Katrine Sawyer), Edward Elgar Publishing (2008) - for further details, please click here.

- Author of 'Damages for Breach of the EC Public Procurement Rules in the United Kingdom' (with Michael Bowsher) (2006) 15 PPLR Issue 4, p.195
- Author of 'Finished Business: calculating termination payments to commercial agents' (2002) 146 SJ 1062, and (with J. Munro) of the follow-up: 'Uncertain rewards' (2005) 149 SJ 256
- Assistant Editor of 'Professional Negligence and liability' (1st ed.) (LLP, 2000; gen. ed.: Mark Simpson)
- Contributor of Chapter on 'EC Law and Crime' in 'Practitioners' Handbook of EC Law', Trenton Publishing/Bar Council/BEG, 1998 (with Alan Newman QC)
- Author of 'The Impact of the Applicable Law of Contract on the Law of Jurisdiction under the European Conventions' (1996) 45 ICLQ 190 (with Christopher Forsyth; "real meat" test approved by Court of Appeal in Print Concept v GEW [2001] EuLR 577)
- Sole contributor of 'Precedents' chapter to: 'European Courts Practice and Precedents', Sweet & Maxwell, 1st ed., 1996 (gen. ed.: Richard Plender QC)

## Specialist Areas

### COMMERCIAL AGENCY

Having appeared in the leading cases of Lonsdale and Ingmar, Philip is regularly instructed by agents and principals. Cases include:

- **Accentuate Limited v Asigra Inc** [2009] EWHC 2655 (QB): foreign arbitration and law clause in agency contract - award contrary to mandatory EU law rights unenforceable by analogy with Ingmar
- **Lonsdale v Howard & Hallam** [2007] UKHL 32; [2007] 1 WLR 2055, House of Lords - commercial agents - test case re assessment of Reg. 17 compensation (sole counsel for the agent in House of Lords)
- **Smith & ors v Howard & Hallam** [2006] EuLR 578, QBD: agents re-engaged by purchaser of business after termination - Reg. 17 compensation (counsel for the agents)
- **Ingmar v Eaton Leonard** [2001] EuLR 755, QBD: Commercial Agents Regulations - assessment of Reg. 17 compensation for termination (counsel for the principal)
- **Hackett v Advanced Medical Computer Systems Ltd** [1999] CLC 160, Merc. Crt.: Commercial Agents Regulations - notice of agents' claim need not be in particular form (counsel for the principal)

### COMMERCIAL/ARBITRATION

Philip frequently acts in commercial matters, usually with an international element, either in national courts (cases for or against multinational companies) or international arbitration. Cases include, e.g.: acting for largest UK telecom company in telecoms arbitration; acting for Austrian media company in arbitration against Lloyd's insurers; copyright/design right dispute over corset designs (Vollers Corset Company Ltd v Cook & ors [2004] ECDR 28 (interim relief in IP cases)).

### COMPETITION LAW

Philip has done regular advisory work in competition law ranging from advising a global paints company to advising a Cypriot fast food franchise and Article 81/82 EC complaints. He has appeared before the Commission in Brussels and national courts and reported cases include: Sockel GmbH v The Body Shop International [2000] EuLR 276, ChDiv (injunction abuse of a dominant position).

### EUROPEAN LAW

Philip has appeared before the ECJ in Luxembourg and the Commission in Brussels and in EU law cases at all

levels of the English courts, as well as in appeals before the VAT and Duties Tribunal. He has also given evidence to the House of Lords EU select committee. Philip has particular expertise in EU sanctions, having dealt with respectively: terrorist; Zimbabwe; Burma, and Iran sanctions cases. Cases include:

- **Joined cases C-113/10, C-147/10 and C-234/10 British Sugar & ors**, ECJ, judgment, 27 September 2012; Sugar levy; annulled regulation; legality of new regulation; repayment of sums wrongly levied
- **Case C-113/10 Zuckerfabrik Jülich AG v Hauptzollamt Aachen** (No.2): ECJ - validity of Sugar Regulation - calculation of levy after Jülich (for UK, intervening); pending
- **Case T-145/09 Bredenkamp & ors v Commission**: General Court - Zimbabwe sanctions - rights of defence - annulment (for applicant); pending
- **Case T-229/02 PKK v Council** [2008] ECR II-45: CFI - EU terrorist sanctions - annulment of Council decision for lack of reasons (lead counsel for applicant)
- **Case C-409/04 R(Teleos) v Customs & Excise** [2007] ECR I-7797: ECJ - VAT input tax - MTIC trading - liability of trader without knowledge (as junior counsel for traders in ECJ)
- **Case C-229/05P PKK and KNK v Council** [2007] ECR I-439, ECJ: appeal on admissibility from CFI - EU terrorist sanctions - challenge to decision to proscribe organisation - representative's authority to initiate direct action (as lead counsel in ECJ)
- **Case T-02/04 Korkmaz & Ors v Commission** [2006] (Order, 30 March 2006), CFI: EU Courts - access to justice in environmental/Human Rights matters (as lead counsel for applicants)
- **R v Joy and Bossom** [2005] EuLR 765; [2006] EuLR 1131, CA: under-10 metre fishing vessels - criminal prosecution - proportionality of DEFRA licensing scheme under CFP (as counsel for Bossom)
- **City of Sunderland v Thoburn** [2001] EuLR 587; [2003] QB 151, DivCrt: 'Metric Martyr' litigation - metrication - European Community Act 1972 a 'constitutional statute' (as junior counsel for Sunderland)

## INTERNATIONAL LAW

Philip has dealt with numerous private international law (Conflict of Law) cases in courts in England and Germany as well as the ECJ. Since acting as junior counsel in Webb v Webb [1994] ECR I-1717, ECJ (Brussels Convention - jurisdiction over English Trust property in France lies in England) Philip has handled cases both under the Brussels and Lugano Conventions, now the Jurisdiction Regulations, as well as English choice of law rules. Cases include:

- **Accentuate Limited v Asigra Inc** [2009] EWHC 2655 (QB): successfully argued for UK jurisdiction where foreign arbitration award contrary to mandatory EU law rights
- **Cronos v Palatin & ors** [2003] 2 Lloyd's Law Reports 489: an Austrian/English conflict over trust property
- **Cadle Co v Hearley** [2002] 1 Lloyd's Rep 143: English/US garnishee orders and limitation

## PROCUREMENT LAW

Philip is regularly instructed by private contractors, the Government and public bodies in this specialist area. Advisory and litigation work includes: the first Regulation 47G application to lift a suspension on contract-making; limitation (pre- and post- Uniplex); NHS procurement issues; damages claims (including the issue of loss of a chance) and disclosure. Philip frequently lectures on procurement law and was co-author of 'Damages for Breach of the EC Public Procurement Rules in the United Kingdom' (2006) 15 PPLR Issue 4, p.195.

### Recent or ongoing cases include:

- **Indigo Service v Colchester Institute** [2010] EWHC 3237 (QB): New Regulation 47G - lifting suspension of award of public contract - *American Cyanamid* principles
- **R on the Application of Redwood Health Limited v NHS PASA** [2009] EWHC 2511 (Admin): Successfully resisting judicial review proceedings - Case C-454/06 pressetext - "essential term" and "new award"

- **Amaryllis Ltd v HM Treasury (No.2)** [2009] EWHC 1666 (TCC); [2010] EuLR 152: Confidentiality - disclosure - public interest immunity
- **Amaryllis Ltd v HM Treasury** [2009] EWHC 962 (TCC), [2010] EuLR 85: Regulation 47 - limitation - proper notice and "prompt"

## PROFESSIONAL NEGLIGENCE

Philip has wide forensic and advisory experience of professional negligence cases, principally those involving solicitors, especially where there are EU law or cross-border elements. Reported cases include Feakins v Burstow [2006] PNLR 6, QBD: solicitors' negligence case arising out of ECJ litigation - export of sheep - pre-paid export refunds - loss of a chance (lead counsel for solicitors).

## VAT

Philip is frequently instructed in indirect tax matters, mainly by HMRC. This includes a particular expertise in MTIC fraud, in which he did the first full post-Kittel trial (Calltel) and the subsequent test cases on the Kittel test (Mobilx; Blue Sphere Global; Calltel).

### Cases include:

- **Gateshead Talmudical College v HMRC** [2010] UKFTT 244 (TC): Capital goods - Colleges - leaseback
- **Mobilx; Blue Sphere Global; Calltel & aor v HMRC** [2010] EWCA Civ 517; [2010] S.T.C. 1436; [2010] Lloyd's Rep. F.C. 445: Court of Appeal - MTIC fraud - test cases on meaning of "connection" and "knowledge" and application of ECJ's Kittel test
- **Olympia Technology v HMRC** [2010] UKFTT 45 (TC): MTIC fraud - constructive knowledge from surrounding circumstances in some transactions but not all
- **Livewire Telecom v HMRC; Olympia v HMRC** [2009] EWHC 15 (Ch); [2009] STC 643: MTIC fraud - "Knew or should have known" - dishonesty - "naïve" trader and objective knowledge
- **Calltel v HMRC** [2008] EWHC 2107 (Ch); [2008] STC 3246: Security for costs in VAT appeals to High Court

## Additional Information

## ADDITIONAL INFORMATION

Education: Robinson College, Cambridge; Vienna University; MA(Cantab); Inns of Court School of Law; Duke of Edinburgh Scholarship.
Languages: German (bilingual); French (working knowledge).
Professional Background: Research Associate, Centre for European Legal Studies (CELS), University of Cambridge 1996-1998; Supervisor in EC Law, Robinson College, Cambridge 1995-97; Editorial Board, European Law Reports 1999-; Editor, The European Advocate 2000-; Bar Council Representative to the Federation of European Bars 2001-2007; accredited as Mediator (College of Law); elected UK Council Member for the International Criminal Bar 2003-2007; Chairman, ICB Election & Constitution Committees, 2003-2007.
Committees: Bar European Group Committee 1998-; International Relations Committee of the Bar Council 2000-; Bar Liaison Committee, Inner Temple, 2003-; UKAEL Committee, 2005-.
Memberships: European Law Institute, 2012; Bar European Group; Europäische Anwaltsvereinigung (DACH); Association of German-Speaking Lawyers; UKAEL; European Circuit; South-Eastern Circuit; PNBA.

## What the directories say

*"Unhesitatingly recommended"* by sources as a top counsel for European matters. He is singled out for his work

in ground-breaking EU sanctions cases, but has also been instructed by the UK government on a number of long-running issues such as those concerning sugar levies. *"Very quick at working out what is needed, he offers advice that is always accurate." "He's a skilled advocate with an astute legal mind."* Under European Law. **Chambers UK, 2014**

Under Public Procurement Law: *"He is very approachable and has a very sharp analytical mind. You can instruct him at relatively short notice and he'll know the issue inside out."* **Chambers UK, 2014**

Under Tax: Indirect Tax: *"He's very bright, very thorough and good with the client."* **Chambers UK, 2014**

Philip Moser QC is ranked in band 5 for Commercial Dispute Resolution Law. *"He has a fantastic bedside manner with clients, and is formidable and authoritative as an advocate."* **Chambers UK, 2014**

"Philip Moser QC, who exhibits *'excellent understanding of public sector requirements'* and is *'an absolute joy to work with'."* Is recommended as a leading Silk. **Legal 500, 2013**

Under EU & Competition Law, Philip Moser QC is listed as a leading Silk. **Legal 500, 2013**

Tax: Indirect Tax: He is "Brilliant at analysing a case, he proves to be "*formidable and very authoritative*" once in court." **Chambers UK, 2013**

Competition / European Law: "Philip Moser QC is "*a very accomplished advocate who is able to put across extremely sophisticated arguments with clarity and precision*." He is an experienced EU law practitioner, and offers noted expertise in legal issues surrounding sanctions. He recently acted in a matter concerning the European Investment Bank and the EU Community Guarantee which required a redrafting of the EU Guarantee Decision." **Chambers UK, 2013**

Commercial Dispute Resolution: "Instructing solicitors also rave about Philip Moser QC of Monckton Chambers, whose "*technical and forensic analysis of the issues in a case is always spot-on*." Solicitors also characterise him as "*formidable and highly authoritative as an advocate*."" **Chambers UK, 2013**

Phillip Moser QC is recommended as a new silk in EU and Competition Law. **Legal 500, 2012**

Under Comp/EU: European Law "Philip Moser is another highly regarded junior at the set. His recent work includes acting for Defra/UK government in a case concerning the calculation of the sugar levy. Moser is well respected alongside" **- Chambers UK, 2012**

Procurement - "Philip Moser has been involved in a large number of procurement cases in the past year, acting for contracting authorities and private contractors on a range of both litigation and advisory matters. He is trusted by clients as a result of his "*pragmatic, user-friendly and solution-oriented approach to procurement issues.*"" **- Chambers UK, 2012**

Tax - ""*Very effective advocate"* Philip Moser has been involved in various missing trader intra-community (MTIC) cases, including Goldex International v HMRC; in all of these he has represented the Revenue. He has an extensive practice in the niche area of VAT fraud." **- Chambers UK, 2012**

"Philip Moser has built an enviable EU law practice and has handled a lot of work for HMRC. Highlights for him include acting in Calltel, Mobilx & Bluesphere v HMRC, a Court of Appeal dispute concerning missing trader intra-community fraud in the UK." Competition/European Law - **Chambers UK, 2011**

Recommended in Tax: Indirect Tax by **Chambers UK, 2011. "**Philip Moser is a "very good, experienced advocate," say sources. He advises on EU law cases and has niche expertise in VAT carousel fraud. Both individuals and public and private companies count amongst his clients."

Under EU and competition the **Legal 500, 2010** states that Philip Moser is an 'outstanding advocate and skilled strategist'.

"Philip Moser's work, on the other hand, has included acting against the government in Teleos Plc v The Commissioners for Customs & Excise. This "terrifically fast thinker and great problem solver" is always in demand." - **Chambers UK, 2010**

**Chambers UK, 2009** under Competition and EU: "'Intellectually brilliant,' Philip Moser has 'outstanding EU law and commercial knowledge.' Peers commend him for his 'charming manner, tremendous knowledge and professional style as an advocate.'"

Philip Moser is recommended in the top tier of Leading Juniors in European Law in the **2008** edition of **Chambers**

**UK**:

"Focusing exclusively on commercial/European law issues, Philip Moser joined the set from Hailsham Chambers in 2006. His areas of expertise include Article 81 and 82 competition issues, and in this regard he has recently advised a government agency entering the commercial market." - **Chambers UK, 2008**

On Commercial Litigation: "Philip Moser in keeping with Monckton Chambers' reputation is a major asset to those seeking advice on and insight into the peccadillos of jurisdictional disputes and the impact of EU competition law on business regulations."

On EU/Competition: "Previously of Hailsham Chambers, Philip Moser brings his considerable EU experience to Monckton. His practice stretches from VAT and commercial agency matters to cases with criminal aspects, such as R v Joy and Bossum. This case addresses the powers of member states to prosecute vessels for overfishing." - **Chambers UK, 2007**

"Philip Moser is famed for his 'quality know-how on EU Law matters'" - **Chambers UK 2006** and "...on top of his game." - **Chambers UK 2005**

Philip Moser was also recommended in the top tier of Leading Juniors in European Law in the **2007** and **2006** editions of **Chambers UK** and as a leading junior in Competition/European Law in the **2003**, **2004** and **2005** editions.