


# Martinez will have to wait

May first instance courts refer cases to the ECJ? May they apply European treaties which are not in force? 

We had already reported that a French first instance court referred a case to the ECJ in *Martinez* seeking interpretation of articles 2 and 5(3) of the Brussels I Regulation (Case C278/09). A careful reader had wondered where a first instance court got its power to make such reference. In fact, it appeared that the French court had applied article 267 of the Lisbon Treaty before it was in force.

On November 20, 2009, the ECJ issued an order declining jurisdiction. It held that the Lisbon Treaty was not in force, and that pursuant to article 68 of the EC Treaty, a first instance court did not have the power to make a reference for a preliminary ruling as an appeal could still be lodged against its decision.