

Competition Section Brexit Priorities

The Law Society of England and Wales, and their Competition Section advisory committee, believe that Brexit has the potential to significantly change the UK competition law landscape for competition practitioners and the general public.

To support Competition Section members, the Section has and continues to run relevant seminars/webinars and conference plenaries regarding Brexit to keep its members informed - see Competition Section/Events page (link)

To support the Government and key stakeholders in reaching a good Brexit deal, the Competition Section advisory committee, working with the Law Society, has identified five priorities for the UK Government as they withdraw from the EU. This page lists these priorities and the activities undertaken by the Law Society to provide a good deal being struck.

The Law Society is also working across the multiple areas of law which Brexit impacts - for the latest information across areas of law go to the Law Society's main Brexit web page: <http://www.lawsociety.org.uk/support-services/brexit-and-the-legal-sector/>

Priority	Why is this a problem and a priority?	Law Society activities
1) <i>Resolve the resource implications for UK competition authorities</i>	<ul style="list-style-type: none"> A significant number of competition cases affecting the UK are currently dealt with by the European Commission. Post Brexit these cases will likely be dealt with by the Competition and Markets Authority (CMA) and UK sectorial regulators. For example, the CMA estimates this will add 60-80 extra merger cases per year to their workload which will require extra resource to ensure there is not an overall reduction in the level and effectiveness of competition enforcement. Any reduction in enforcement would ultimately have a negative impact on the interests of businesses operating in the UK. It will not be straightforward for the UK authorities to recruit suitably skilled staff bearing in mind the competition that they face for these individuals both domestically and internationally. 	<p>The Law Society has highlighted the need for the UK Government to consider the resource implications of activities moving from EU regulators to UK regulators, including for the Competition and Market Authority. This was highlighted to Government and can be seen in publication Brexit in the Law add hyperlink https://www.lawsociety.org.uk/support-services/research-trends/documents/brexit-and-the-law check link)</p>
2) <i>Provide reciprocal rights to ensure fair competition for legal services</i>	<ul style="list-style-type: none"> At present English and Welsh solicitors have the ability to practise law in EU member states with few restrictions, including EU law. Specifically they enjoy: <ul style="list-style-type: none"> The right and/or freedom to provide legal services within 	<p>Since June 2016, maintaining mutual access to practise law and establish law firms between the UK and EU has been a key priority. We have also called for the continued rights of audience in EU courts and legal</p>



	<p>their home jurisdiction and to clients in the EEA</p> <ul style="list-style-type: none"> ○ Right of establishment. At present many firms setup branches in different countries as many cases cross multiple borders ○ Rights of audience in the Court of Justice European Union, the General Court and specialist courts ○ Clients have legal professional privilege in EU cases. <p>All of these rights could change due to Brexit.</p>	<p>professional privilege for UK lawyers' clients at the EU commission.</p> <p>This has been included in our submissions to Government and parliamentary committee and raised in ministerial and parliamentary meetings. The Law Society has spoken with ministers and officials from the Ministry of Justice, Department for Exiting the EU, HM Treasury, and the Department for Business, Energy and Industrial Strategy. The Law Society is also working with the Professional and Business Services Council to highlight issues of market access to Government. .</p> <p>It is also included the Law Society's vision for law and justice for the new Government ahead of the 2017 General Election. You can find our vision here. The Law Society will be engaging with the new Government to make them aware of our priorities for Brexit.</p> <p>The Law Society has been examining the rights third-country lawyers and law firms operating in the EU. This is available to solicitors here and also has been shared with Government.</p> <p>Our Brussels and International teams have been engaging in conversations with the Law Societies and Bars across Europe to make the case for why mutual market access and continued co-operation matters to other EU member states as well as the UK. We know that it is in the interest of both the UK and EU to continue as an international community of</p>
--	--	---



		lawyers.
<p>3) <i>Retain the UK as a major centre for competition litigation</i></p>	<p>A key aspect of competition law policy, both for the UK and the EU, relates to encouraging the private enforcement of competition law through actions for damages in the national courts. Where such claims are brought in relation to competition infringements in multiple jurisdictions, claimants can face a choice of which jurisdiction to bring such actions. The UK courts and legal system therefore faces competition from other jurisdictions – notably Germany and the Netherlands – to attract this type of litigation.</p>	<p>The Law Society is promoting the benefits of the law of England and Wales, highlighting that it makes good business sense to:</p> <ul style="list-style-type: none"> • choose the law of England and Wales as the international law for contracts • choose English and Welsh courts as the forum for settling disputes • choose London as the preferred location to resolve disputes through arbitration. <p>We have produced a Global Legal Centre brochure to get across this message (Download http://www.lawsociety.org.uk/policy-campaigns/documents/global-legal-centre-leaflet/)</p>
<p>4) <i>Take measures to ensure legal certainty</i></p>	<p>The UK withdrawal affects the drafting of a vast range of legislation in the UK, including competition legislation. It is important that the UK Government takes a position at the earliest opportunity to avoid legal uncertainty which is ultimately damaging to business certainty and therefore confidence.</p> <p>For example, the UK Government should decide in good time whether to retain section 60 of the Competition Act 1998, which requires the principles applied, and decisions reached, by UK courts regarding provisions in the Competition Act 1998 to be consistent with EU Treaty principles and principles applied and decisions reached by the CJEU regarding corresponding EU competition provisions. The Act further provides that decisions of the CJEU are binding and decisions of the EU Commission have persuasive authority.</p> <p>It important from the perspective of legal</p>	<p>Another of the Law Society's key asks is to maintain legal certainty throughout the UK's withdrawal including the need for transitional arrangements.</p> <p>You can read more about our priorities for maintaining legal certainty in our Brexit and the Law report and submissions to parliamentary committees.</p> <p>The Brexit and the Law report specifically highlight some the key questions needed to be addressed for competition law to ensure legal certainty (page 32).</p> <p>Specifically, the Law Society has submitted evidence to the Treasury Select Committee on transitional arrangements.</p>

	and business certainty, to clarify ASAP the transitional arrangements that will apply to competition cases that are “in flight” at the point of exit i.e. to confirm that the European Commission will continue to have jurisdiction to determine these cases	
5) <i>Maintain EU law at the heart of UK legal training</i>	<p>The ability to train and recruit talented and enthusiastic competition lawyers is of vital importance both to law firms and to regulators in the UK. An appreciation of EU law is a necessary part of being a great competition lawyer and it is therefore important to competition lawyers that UK universities continue to train, and promote EU law and are able to recruit and retain top class academics specialising in EU law.</p> <p>Maintenance of EU law as a core part of the UK law degree is also likely to be important in UK lawyers continuing to be able to re-qualify within other EU jurisdictions.</p>	<p>The Law Society worked with Richard Whish QC (hon), emeritus professor of law, King’s College London and president of the Law Society’s competition law section to highlight the continued need for EU law training for UK lawyers in this article:http://communities.lawsociety.org.uk/competition/news/students-heading-for-the-brexite/5058962.article</p>

Competition Section Membership enquiries

If you have a query relating to joining the Law Society’s Competition Section, renewing your membership or getting access to your Section benefits, contact:

The Competition Section
 The Law Society
 113 Chancery Lane
 London WC2A 1PL
 DX: 56 London/Chancery Lane

Tel: 020 7320 5799

Email: competitionsection@lawsociety.org.uk