

# Brexit and the legal services sector in the EU

## 1 The UK legal services sector: a key economic driver for the UK and EU-27

The UK legal services sector is valuable to the UK and EU-27:

- makes a significant contribution to the UK and EU-27 economies;
- drives economic growth in the UK and across the EU-27; and
- is a critical enabler for UK trade and investment.

The widespread use of English law in international commerce, highly skilled international workforce, quality and efficiency of its courts and arbitral institution, the cluster effect of financial and related professional services and the mobility and flexibility of UK-based lawyers make the UK a **global legal services hub** in direct competition with New York and Singapore. For much of the global work it could be other global hubs, rather than the EU-27, that benefit from any movement of legal business from London.



## 2 Legal services: the European marketplace today

EU treaties and directives have liberalised the EU legal services market to such an extent that it is easier for a UK lawyer to provide legal advice in Paris than it is for a Californian lawyer to provide legal advice in Illinois. The EU lawyers' framework encourages **cross-border collaboration** between EU legal practitioners and provides a **hugely flexible resource for international businesses operating (or looking to operate) in the EU**.

The lives of UK and EU-27 lawyers are closely intertwined:

- UK law firms have a presence in 26 of the 31 EU-27 and EFTA jurisdictions.
- There are 42 EU-27 firms with offices in England and Wales.
- English and Welsh solicitors are in partnership with almost 3,000 EU-27 lawyers – close to 60 per cent of their total overseas partnerships.

### Example

If a Madrid-based company is hit by a European Commission dawn raid, it can be supported by a team with the requisite skills from its law firm's network of offices in London, Brussels, Paris, Madrid and Barcelona. And if a firm doesn't have a presence in a particular member state, a client can still request its UK lawyers to provide legal advice on a fly in, fly out or temporary basis – a facility that allows the client to use its preferred provider of legal services, regardless of the provider's location within the EU, and one that is vital for smaller firms and barristers' and advocates' chambers that are less likely to have offices overseas.

## 3 A transition period – what the legal services sector and its clients need now.

The legal services sector needs a transition period which enables businesses and clients to transfer across from the current arrangements to the future relationship with the EU. This period should:

- be at least two years, though ideally long enough for the new relationship agreement to be negotiated and ratified;
- be based on a "stand still" arrangement (i.e. one where the UK continues to implement EU rules and regulations and pay into the EU budget);
- help support efficiently functioning markets, protect investors and ensure continuity of service provision by legal services businesses to their clients; and
- be supported by a clear, viable vision for a prosperous partnership between the UK and EU in the future.

In line with the standard approach to trade agreements, we would expect there to be provisions providing for a, potentially phased, adaptation period between the agreement's ratification and it coming into force. A credible timeframe and a stable and simple adaptation framework would allow both the UK and EU to adapt to the new framework in an orderly way, minimising disruption to their economies.

## 4 What happens to the UK legal services sector if no effective agreement is reached with the EU-27?

The UK/EU-27 trading relationship in legal services would be governed by GATS, which falls far short of replicating the existing EU framework. Rather than one legal framework, UK lawyers would be subject to a myriad of rules and regulations in each of the 31 EU/EFTA states.

## Now

UK judgments are automatically recognised and enforced across the EU.



UK judgments

## Post-Brexit

Unless steps are taken (eg the UK unilaterally signs the Hague Convention 2005), UK judgments will **no longer be automatically recognised and enforced** across the EU-27.

Clients can receive UK law advice from UK lawyers however and wherever they want in the EU.



FIFO

In some EU-27 jurisdictions clients may be **limited in how they can receive UK legal advice** from UK lawyers.

UK lawyers have the **automatic right to set up their practices (ie establish) in an EU host state** with minimal bureaucracy. UK lawyers can also be **awarded a host state legal qualification following three years' regular and continuous practice of local law** (including EU law) in the relevant country.



Rights of establishment

UK lawyers' **ability to set up their practices in an EU-27 jurisdiction will depend on local laws and regulations**. If establishment is possible, **permitted activities may be limited**. In some jurisdictions, UK lawyers may need to **retrain from scratch** if they want to gain a host state legal qualification.

UK lawyers have the **automatic right to advise clients based in the EU-27 on EU law** (as well as UK law) (including **appearance rights before EU courts and institutions and EU legal professional privilege**) because their legal professional qualifications are automatically recognised.



EU law advice

Clients **based in EU-27 jurisdictions may no longer be able to receive EU law advice from UK lawyers**, either in person or remotely as UK legal professional qualifications may no longer be automatically recognised. **EU legal professional privilege and appearance rights may be lost**.

Law firms can **set up in one EU member state** and export their services across the EU by **establishing branches of the same structure** in other member states.



Structure

UK legal entities will **lose the automatic right to use their preferred business structures** in certain EU-27 countries and the UK LLP corporate form may no longer be accepted in some jurisdictions.

Assumptions: (i) EU-27 GATS commitments on legal services set out the maximum access available to non-EU-27 lawyers; and (ii) domestic legislation and regulation governing the local legal services sector are strictly applied and enforced.

The UK is likely to remain an open legal market for global lawyers and law firms, including those from the EU-27.

## 5 Principles for the future UK/EU-27 relationship

The UK and EU-27 legal services sectors and their clients need a new framework to determine their future relationship and to:

- **preclude enforcement action** (eg fines and criminal prosecutions for individuals) that could expose clients, lawyers and law firms to unnecessary risks and business disruption;
- give **certainty** for the UK legal sector's future relationship with the EU-27 and vice versa; and
- **encourage investment** both within the UK and EU-27 legal services sectors and in the broader economies of the UK and EU-27.

The legal services sector and its clients need certainty and reassurance that there will be no new barriers for the provision of legal services in the EU-27. This can be achieved by:

- 1 **A system for the mutual recognition and enforcement of UK judgments across the EU-27 and vice versa** — this will allow UK and EU-27 businesses to continue to benefit from certainty that their UK and EU-27 judgments can be enforced, thereby facilitating cross-border trade. The UK should sign the Hague Convention as an independent party and the UK and EU should negotiate a reciprocal regime broadly equivalent to Recast Brussels I Regulation.
- 2 **A reciprocal system which allows clients in the UK and EU-27 to choose how and where they receive legal services from lawyers** — any UK-EU-27 partnership should permit the provision of cross-border legal services in all four GATS modes including fly-in/fly-out and establishment.
- 3 **A mechanism for UK lawyers to practise EU law via the mutual recognition of legal professional qualifications** — preventing UK lawyers from acting for these businesses, particularly in cases where the UK lawyers have many years' experience of their clients' businesses and the facts of a particular case, will prejudice these clients' positions and could result in significant loss. To continue to serve these clients, UK lawyers should also be able to have appearance rights in EU courts and institutions and the protection EU legal professional privilege affords to the EU legal advice EU-27 clients receive.
- 4 **A system which permits UK corporate forms and partnerships to provide legal services in the EU-27 and vice versa.**
- 5 **An immigration system that does not lock out the best talent from around the world and allows lawyers to move freely across Europe** — this will allow UK and EU-27 businesses to continue to be able to access truly international lawyers and legal teams both in the UK and across the EU-27. EU-27 nationals will continue to have access to world class jobs in the UK's legal services sector. If a visa system is put in place, it would allow visas to be secured within a short window (no more than 24-48 hours) to allow UK and EU-27 law firms to service their clients.