



House of Commons  
Justice Committee

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# Implications of Brexit for the justice system

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**Ninth Report of Session 2016–17**

*Report, together with formal minutes  
relating to the report*

*Ordered by the House of Commons to be printed  
15 March 2017*

## Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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Evidence relating to this report is published on the [inquiry publications page](#) of the Committee's website.

### Publication

Committee reports are published on the Committee's website at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee) and in print by Order of the House.

### Committee staff

The current staff of the Committee are Nick Walker (Clerk), Gavin O'Leary (Second Clerk), Gemma Buckland (Senior Committee Specialist), Nony Ardill (Legal Specialist), Elise Uberoi (Committee Research Clerk), Christine Randall (Senior Committee Assistant), Anna Browning (Committee Assistant), and Liz Parratt (Committee Media Officer).

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## Summary

Brexit can be realised in innumerable many ways, each with divergent consequences in different sectors of policy importance: we investigated its implications for the justice system to inform the Government—and Parliamentary and public debates—on key priorities for criminal justice, civil law, and the legal services sector.

Crime is ever more international. EU mechanisms to combat illegal activities across borders include:

- the European Arrest Warrant, accelerating the extradition of those suspected or convicted of offences elsewhere;
- investigative resources in Europol and Eurojust, supporting police, prosecutors and judges; and
- information-sharing tools, giving rapid access to suspects' criminal records and biometric information.

We welcome the Government's signals that it intends to continue to cooperate with the EU on criminal justice. The seriousness of the matter and the degree of mutual interest give weight to the suggestion that this aspect of negotiations be separated firmly from others—it is too precious to be left vulnerable to tactical bargaining.

In civil justice, EU regulations establish procedures on choice of jurisdiction, and mutual recognition and enforcement of judgments, for transnational disputes. Protecting the UK as a top-class commercial law centre should be a major priority for the Government given the clear impacts on the economy of failure to do so: we recommend that the Government look to replicate existing provisions as closely as possible. Similar provisions in family law provide greater speed in child abduction cases, for example, and represent improvements over their default alternatives. We believe that a role for the Court of Justice of the European Union in respect of these essentially procedural regulations is a price worth paying to maintain effective cross-border tools of justice.

The UK's legal services sector makes a £25.7 billion annual economic contribution. It relies on openness, and its lawyers' current rights to practice across EU Member States help small businesses and ordinary people as well as large firms and wealthy individuals. We recommend that the Government protect these powers. It should also outline steps it will take to provide opportunities for the sector more broadly—with concerted efforts by EU law firms to use Brexit to win clients from UK competitors—though we have faith in UK legal services' fundamental strengths.

We therefore recommend that the four principal aims of the Government's approach to justice matters in Brexit negotiations be:

- (1) Continuing cooperation on criminal justice as closely as possible
- (2) Maintaining access to the EU's valuable regulations on inter-state commercial law
- (3) Enabling cross-border legal practice rights and opportunities
- (4) Retaining efficient mechanisms to resolve family law cases involving EU Member States and the UK

# 1 Introduction

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1. On 23 June 2016, the question, “Should the United Kingdom remain a member of the European Union or leave the European Union” was put to the UK electorate in a referendum; a majority voted to leave. The inevitable consequence has been a political and legislative agenda aimed at ending the UK’s membership of the EU. We do not believe it proper or useful for the Justice Committee to take a view in general support of, or opposition to, this overall direction of travel. However, it is clear that Brexit can be realised in innumerable many ways, each with divergent consequences in different sectors of policy importance. We took the view that we could and should investigate these ramifications for the justice system in England and Wales (the justice systems in Scotland and Northern Ireland are devolved matters) and present our findings to the House and the public, so that they might inform the Government’s negotiations, and Parliamentary and public debates, over the coming months and years.

2. We launched this inquiry on 12 October 2016, seeking views on the implications of Brexit for:

- the criminal justice system in England and Wales and future cooperation in policing and judicial matters with EU member states and agencies, including Europol and Eurojust;
- the civil justice system in England and Wales, including the Family Court and commercial courts; and
- the legal services sector in England and Wales and the wider UK economy.

3. We have published 42 written submissions and taken oral evidence from 13 witnesses across four panels:

- Dr Eva Lein, Herbert Smith Freehills Senior Research Fellow in Private International Law, British Institute of International and Comparative Law, Patrick Robinson, Partner, Linklaters LLP, and Gary Campkin, Director of Policy and Strategy, TheCityUK, regarding commercial law, on 20 December 2016;
- Philip Marshall QC, Chair, Family Law Bar Association, Dr Ruth Lamont, Senior Lecturer in Family and Child Law, University of Manchester, and Daniel Eames, Chair, International Committee, Resolution, regarding family law, also on 20 December 2016;
- Francis FitzGibbon QC, Chair, Criminal Bar Association, Professor Tim Wilson, Professor of Criminal Justice Policy, Northumbria University, and Michael Gray, Founding Partner, Gray & Co Solicitors (on behalf of the Criminal Law Solicitors’ Association), regarding criminal justice, on 10 January 2017; and
- Andrew Langdon QC, Chairman of the Bar, Simon Gleeson, Partner, Clifford Chance, Alison Hook, Co-founder, Hook Tangaza, and Robert Bourns, President of the Law Society, regarding legal services, on 1 February 2017.

We are grateful to all who contributed evidence to this inquiry.

4. The implications of Brexit for the justice system may be categorised under three headings of criminal justice, civil justice, and the legal services sector. The UK's close involvement with the EU to fight crime, including through extradition arrangements, investigative resources and information sharing, is important to security. EU commercial and family law measures, such as those for the mutual recognition and enforcement of judgments, matter to British businesses and vulnerable individuals alike. We also consider the role of the Court of Justice of the European Union (CJEU) in these mechanisms. Lastly, the UK's legal services sector is a success story and a significant component of the national economy: its needs in a competitive world market, particularly in terms of cross-border practising rights for its professionals, merit attention.

5. Our inquiry took place alongside—and has been informed by—extensive Parliamentary and public scrutiny of Brexit. We note, in particular, the House of Lords' European Union Committee's report, *Brexit: future EU-UK security and police cooperation*<sup>1</sup>, its Justice Sub-Committee's ongoing inquiry, *Brexit: civil justice cooperation and the CJEU*,<sup>2</sup> as well as this House's Home Affairs Committee's work on *EU policing and security issues*.<sup>3</sup> The Committee on Exiting the European Union has also taken evidence regarding criminal justice under its overarching inquiry into *The UK's negotiating objectives for its withdrawal from the EU*.<sup>4</sup> We hope to complement rather than duplicate these and other reviews.

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1 House of Lords European Union Committee, Seventh Report of Session 2016–17, *Brexit: future EU-UK security and police cooperation*, [HL Paper 77](#)

2 House of Lords EU Justice Sub-Committee, [Brexit: civil justice cooperation and the CJEU](#)

3 Home Affairs Committee, [EU policing and security issues](#)

4 [Oral evidence taken before the Committee on Exiting the European Union on 28 February 2017](#), HC 1072

## 2 Criminal justice

6. The UK is party to many but not all of the EU’s collaborations in criminal justice. We took evidence on an illustrative, but not exhaustive, list of these mechanisms, which can be grouped roughly into three categories: extradition arrangements, joint investigative resources, and information exchanges.

### Extradition arrangements

7. The European Arrest Warrant (EAW) is an EU mechanism enabling rapid extradition from one Member State to another, to serve a sentence or in connection with a criminal investigation. It is based on the 2002 Framework Decision on the European Arrest Warrant and the surrender procedures between Member States and was brought into force in the UK by the Extradition Act 2003. It is a device to secure the return of those suspected or convicted of crimes in the UK: since 2009, the UK has issued, on average, 237 EAWs every year, of which 64% led to arrests and 56% to successful extradition. Drug trafficking is the crime most cited, accounting for 16% of UK-issued EAWs, followed by child sex offences, fraud, and rape. Most targets of the UK’s EAWs are British citizens.<sup>5</sup> The system also enables hundreds of individuals annually to be returned to face charges or serve sentences in other EU jurisdictions. In the 2015–16 UK fiscal year alone, the UK made 2,102 such arrests, of which 1,271 resulted in surrenders: 15% of the latter were for theft, 12% for fraud and 11% for robbery.<sup>6</sup> The numbers on both sides represent substantial gains for justice, and at greater speed than the likely alternative—relying on the 1957 European Convention on Extradition, described by Francis FitzGibbon QC, Chair of the Criminal Bar Association, as “cumbersome, awkward and slow”.<sup>7</sup> The Police Foundation posited that “the extradition of Hussain Osman, the failed London bomber who was arrested and extradited in eight weeks via the EAW, highlights this increased efficiency”.<sup>8</sup>

8. We note two concerns with EAWs: that other Member States issue them excessively, and that they can send British citizens to jurisdictions with fewer protections for suspects than in the UK. The former concern was articulated in the Home Affairs Committee’s 2013 report, *Pre-Lisbon Treaty EU police and criminal justice measures: the UK’s opt-in decision*, which noted:

Whereas in the UK prosecutors can exercise discretion in determining whether to apply for an EAW, the authorities in Poland, for example, have no such prosecutorial discretion. Furthermore, in Poland sentencing guidelines are such that it is relatively easy to receive a custodial sentence of four months—the minimum threshold at which an EAW may be requested. This means that a large number of warrants are issued for relatively minor offences.<sup>9</sup>

5 NCA, [European Arrest Warrant Statistics](#), Wanted by the UK: European Arrest Warrant statistics 2009–May 2016 (Calendar Year), retrieved 09 March 2017

6 NCA, [European Arrest Warrant Statistics](#), Wanted from the UK: European Arrest Warrant statistics 2009–May 2016 (Fiscal Year), retrieved 09 March 2017

7 [Q85](#)

8 The Police Foundation ([IBJ0015](#)) para 26

9 Home Affairs Committee, [Ninth Report of Session 2013–14](#), *Pre-Lisbon Treaty EU police and criminal justice measures: the UK’s opt-in decision*, para 16

9. British citizens subject to poor treatment under an EAW include Andrew Symeou, who was held in pre-trial detention for 11 months in Greece on evidence obtained through police violence (before acquittal).<sup>10</sup> Our evidence reassured us somewhat this this could not happen again. Mr FitzGibbon told us that “the Poles have instituted a filter on their cases”<sup>11</sup> and argued that the 2014 reforms<sup>12</sup> of the EAW “would probably have assisted Mr Symeou or people in his situation”.<sup>13</sup> The Police Foundation remained concerned at inappropriately frequent use of EAWs, particularly by Poland.<sup>14</sup> However, given the ways to prevent trivial requests from progressing, we must weigh this concern against the wider benefits of the system: the National Crime Agency (NCA) stated that “leaving the EAW would ... pose a huge public protection risk to the UK”.<sup>15</sup> The Home Secretary has said:

It is a priority for us to ensure that we remain part of the [European Arrest Warrant], and I can reassure Members in all parts of the House that our European partners want to achieve that as well.<sup>16</sup>

10. The EU Prisoner Transfer Framework Decision (PTFD)<sup>17</sup> allows Member States to deport prisoners to serve their sentence in their country of nationality or residence. The UK has transferred 154 prisoners in this way.<sup>18</sup> Before opting back into the PTFD in 2014, the Ministry of Justice argued that returning foreign national offenders would “free up prison spaces and contribute to savings” and that in general “prisoners reintegrate better into society upon their eventual release from prison if they serve their sentence in their country”. The Ministry also noted the PTFD’s synergy with the EAW: British citizens who would serve sentences abroad under an EAW can instead serve them in the UK through the PTFD.<sup>19</sup>

## Investigative resources

11. EU membership has provided the UK with additional investigative resources. Europol (the European Police Office) provides analytical and operational support to national law enforcement authorities, enhancing their capacity to tackle cross-border security threats. Its databases—including the Europol Intelligence System (EIS)—“not only provide data on convicted offenders, but also insights into criminal structures, suspects and those deemed to be at risk of committing offences in the future”, according to the Police Foundation.<sup>20</sup> The National Crime Agency ranks it top of priorities to include in Brexit negotiations.<sup>21</sup> Professor Tim Wilson, Professor of Criminal Justice Policy at Northumbria Law School, told us:

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10 House of Lords European Union Committee, 30th Report of Session 2010–20, *The European Union’s Policy on Criminal Procedure*, [HL Paper 288](#), Box 5

11 [Q97](#)

12 The Extradition Act 2003 was amended by the Anti-social Behaviour, Crime and Policing Act 2014: this required judges to refuse disproportionate extradition requests (or those incompatible with the Human Rights Act 1998).

13 [Q86](#)

14 The Police Foundation ([IBJ0015](#)) para 32

15 NCA ([IBJ0044](#))

16 HC Deb, 06 March 2017, [Col 550](#) [Rt Hon Amber Rudd MP]

17 [EU Council Framework Decision 2008/909/JHA](#)

18 HC Deb, 03 February 2017, [col 55984W](#)

19 Ministry of Justice measures in the JHA block opt-out, HC (2013–14) 605, written evidence from the Ministry of Justice ([JHA0007](#))

20 Police Foundation ([IBJ0015](#)) para 2

21 National Crime Agency ([IBJ0044](#))

Europol provides the system. In other cases, it co-ordinates operations, particularly against organised crime in areas such as narcotics. I remember an example where there was a series of very well-organised raids on jewellers' shops. One of the UK cities affected was Leeds. People would arrive on motorbikes, smash the window, terrorise the staff and disappear. Europol put together an operation that resulted in a spate of arrests in either Estonia or Latvia. Its analysts looked at all sorts of information, such as airline bookings, because the foot soldiers were coming in on cheap flights.<sup>22</sup>

The UK has opted into last year's revised Europol framework;<sup>23</sup> the Minister for Policing observed that this "signals our intention to continue practical law-enforcement co-operation with EU partners after we leave".<sup>24</sup>

12. Eurojust (the European Union's Judicial Cooperation Unit) establishes a framework for Member States' police, prosecutors and judiciary to coordinate in the investigation and prosecution of serious crime affecting two or more countries. Joint Investigation Teams are one means for it to do so. The Police Foundation explained some of the benefits of Eurojust:

In particular, the increased coordination it provides supports more efficient judicial processes. Prior to the introduction of Eurojust, research suggests that attempting to negotiate each separate legal system that operates across Europe was extremely difficult. This was particularly the case for law enforcement officers trying to secure warrants, initiate arrest procedures or work with foreign prosecutors.<sup>25</sup>

Professor Wilson observed synergies between Eurojust and other EU mechanisms, citing the fact that DNA profiles are held by the judiciary in Belgium and the Netherlands, and by the police in many other places, as evidence for the necessity of the cross-cutting collaboration Eurojust facilitates.<sup>26</sup>

## Information sharing

13. The EU offers various information-sharing tools. ECRIS (the European Criminal Records Information System) provides access to accurate records of EU citizens' offending histories. The NCA stated:

Through ECRIS, the UK is able to exchange tens of thousands of pieces of information about criminal convictions each year that help police and other law enforcement agencies to investigate crime, protect the public and manage violent and sexual offenders.<sup>27</sup>

SIS II (the Second Generation Schengen Information System) gives the UK real-time access to all EAWs and other alerts (e.g. on missing persons), containing over 66 million such data: the NCA contended that "loss of access to SIS II would seriously inhibit the UK's ability to identify and arrest people who pose a threat to public safety and security and

22 [Q143](#)

23 [EU Regulation 2016/794](#)

24 European Committee B, Europol, 12 December 2016, [Col 7](#) [Rt Hon Brandon Lewis MP]

25 The Police Foundation ([IBJ0015](#)) para 16

26 [Qq145-7](#)

27 NCA ([IBJ0044](#))

make sure that they are brought to justice”.<sup>28</sup> Prüm, a regime for exchanging biometric information and vehicle registration data, will reduce the time taken to find matches from “tens of days currently” to “15 minutes”, at the NCA’s estimation.<sup>29</sup> Mr FitzGibbon told us that under Prüm, “if someone lets off a bomb in Berlin and makes his way to London, the police will be able to get hold of the fingerprints of the chap they arrest for double parking, or whatever it is, instantaneously”.<sup>30</sup> It is not yet implemented in the UK.

## Negotiating UK-EU cooperation

14. Professor Wilson characterised the measures above—extradition arrangements, investigative resources and information sharing—as a system that “you cannot disaggregate because, in my view, if you take out elements of the system, you have a less effective system for protecting British citizens on the streets”.<sup>31</sup> The Northumbria Centre for Evidence and Criminal Justice Studies (NCECJS) raises the context of widespread migration and travel, and “the exponential growth of transnational cybercrime”,<sup>32</sup> and claimed “EU arrangements are part of a holistic response to some of the worst negative spillovers from globalisation”.<sup>33</sup> The Bar Council stated:

Crime, especially more serious and organised crime, increasingly does not recognise national borders. Even less serious crimes are increasingly likely to have a cross-border element as citizens of the EU have for the last 43 years exercised their Treaty rights of freedom of movement and establishment, and availed themselves of goods and services sent from, or supplied in, EU and other states. Foreign nationals who commit crime in the UK often flee abroad. Some crimes can be committed easily across national boundaries, such as child exploitation, fraud and identity theft. In particular the UK has seen a massive increase in people trafficking offences. Police and the judicial authorities need to cooperate internationally in order to combat crime and bring perpetrators to justice.<sup>34</sup>

15. Mr Fitzgibbon suggested that the UK Government separate criminal justice from other matters in Brexit negotiations:

I would like to think that there is a way of detaching the whole of that sphere from the bargaining chip negotiations that are plainly going to take place with regard to economic and other matters, because it seems to me that our public safety and protection from terrorism and other serious crime are just too important to put into the mix of poker chips that are likely to be on the table for other things. There seems to me to be so much common interest between the European Union and us on these matters that there should be a way of detaching them from the rest of the negotiation.<sup>35</sup>

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28 NCA ([IBJ0044](#))

29 NCA ([IBJ0044](#))

30 [Qq131–2](#)

31 [Q145](#)

32 NCECJS ([IBJ0036](#)), para 8

33 NCECJS ([IBJ0036](#)), para 13

34 Bar Council ([IBJ0022](#)) para 12

35 [Q106](#)

Professor Wilson argued that “there is a tremendous amount of mutual interest” between the UK and the EU in criminal justice, noting:

We will be outside the EU, but they are our near neighbours and we share a lot of criminal activity. Crypto-crime is very much based in Europe, in terms of the UK, the Netherlands, Germany, France and Spain, so criminals are bringing us together. British justice and policing are highly regarded.<sup>36</sup>

The Bar Council notes that replacing overarching cooperation by “case by case contacts, or even bi-lateral agreements to cooperate, especially where several states are involved, is likely to be slow and cumbersome”.<sup>37</sup>

16. Agreeing to continue the UK’s criminal justice cooperation with the EU would be complicated, even if both sides’ interests coincide. Norway and Iceland have been trying to secure an extradition treaty largely based on the EAW, with no operational result so far.<sup>38</sup> Those countries are facing analogous lags in joining Prüm.<sup>39</sup> The Police Foundation claimed “Brexit means that [the UK] cannot legally remain a full member of Europol”, though there are other options for continued engagement,<sup>40</sup> and noted that “there are no previous examples of a non-EU member having access to ECRIS”.<sup>41</sup> Information sharing will be contingent on the UK’s data protection standards being compliant with the EU’s: Mr FitzGibbon continued:

I understand that at the moment we are just about compliant, and the European Union is willing to forgive any potential lapses in our data protection regime; but if we drift away from compliance when outside the European Union, it will not share data. That would be a very serious blow to co-operation across the piece in law and order and justice. Not just criminal records but the whole picture would be radically altered.<sup>42</sup>

17. The Ministry of Justice told us:

The importance of judicial and law enforcement co-operation with our EU and global allies has not changed. We are exploring options for cooperation arrangements once the UK has left the EU. We will do what is necessary to keep people safe, but it would be wrong to set out unilateral positions on specific measures in advance of negotiations.<sup>43</sup>

The Secretary of State for Exiting the European Union has said that the Government aims to “keep our justice and security arrangements at least as strong as they are”<sup>44</sup> and wants “as far as possible, to replicate what we already have”.<sup>45</sup> The Government’s February 2017

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36 [Q109](#)

37 Bar Council ([IBJ0022](#)) para 13

38 National Crime Agency ([IBJ0044](#))

39 [Q127](#) [Professor Tim Wilson]

40 Police Foundation ([IBJ0016](#)) para 4

41 Police Foundation ([IBJ0016](#)) para 15

42 [Q123](#)

43 Ministry of Justice ([IBJ0029](#)) para 6

44 HC Deb, 10 October 2015, [col 55](#) [Rt Hon David Davis MP]

45 HC Deb, 1 December 2016, [col 1650](#) [Rt Hon David Davis MP]

White Paper, *The United Kingdom's exit from and new partnership with the European Union* (henceforth 'the Brexit White Paper') states:

Key European partners have made clear that they intend to continue, and indeed deepen, security cooperation, recognising UK expertise in the fight against terrorism, particularly in light of recent attacks and the threat posed by foreign terrorist fighters.

[ ... ]

As we exit, we will therefore look to negotiate the best deal we can with the EU to cooperate in the fight against crime and terrorism.<sup>46</sup>

**18. We welcome the Government's signals of intent in relation to future UK-EU cooperation on criminal justice, which will be of critical importance in the context of modern crime. We recommend that the Government prioritise it accordingly in exit negotiations. The seriousness of the matter and the degree of mutual interest give weight to the suggestion that this aspect of negotiations be separated firmly from others. The security and safety of the UK's citizens and residents is too precious to be left vulnerable to tactical bargaining.**

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46 HM Government, [Cm 9417](#), *The United Kingdom's exit from and new partnership with the European Union*, paras 11.3–11.7

## 3 Civil justice

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### Family law

19. EU Regulation 2201/2003, commonly known as ‘Brussels IIa’ (or simply ‘Brussels II’), forms the heart of cross-border family law in the EU. The issues within its scope include:

- divorce, legal separation and marriage annulment;
- arrangements for children’s residence and contact with others;
- a system for the return of abducted children, enhancing the 1980 Hague Convention on the Civil Aspects of International Child Abduction;
- guardianship and curatorship;
- foster care; and
- administration and protection of children’s property.

It is complemented by EU Regulation 4/2009 (‘the Maintenance Regulation’), which sets similar rules of jurisdiction for inter-country disputes over family maintenance payments. Both are procedural rather than substantive: that is, they do not set grounds for divorce, for example, across the EU; instead, they help to resolve cases by determining where cross-border cases should be heard and adjudicated upon (known as jurisdiction), and ensuring that the decisions of the court with jurisdiction are recognised and enforced throughout the EU.

20. Child abduction is among the issues to which Brussels IIa applies. Here, it has a complex relationship with the Hague Conventions of 1980 and 1996,<sup>47</sup> but takes precedence over these in cases wholly within the EU.<sup>48</sup> All EU Member States have signed the 1996 Convention,<sup>49</sup> though Daniel Eames, Chair of Resolution’s International Committee, observed that “Brussels II provides greater speed” than the alternatives.<sup>50</sup> Philip Marshall QC, Chair of the Family Law Bar Association (FLBA), suggested that the convenience of Brussels IIa has discouraged updates to the 1980 Convention.<sup>51</sup> Chapter IV of Brussels IIa requires each Member State to designate one or more ‘Central Authorities’ to coordinate communications between countries in relation to the Regulation. Resolution told us that the information so exchanged “can be vital evidence in proceedings, including in child abduction proceedings or cases involving a child at risk of harm requiring protective measures”.<sup>52</sup> These are included in the European Judicial Network in civil and commercial matters: Mr Eames argued “the fact that the judiciary is able to liaise easily when it has tricky issues would be a major loss if we were to come out”.<sup>53</sup>

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47 [1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children](#)

48 Family Law Bar Association (FLBA) ([IBJ0025](#)) paras 32–4

49 [Q67](#) [Dr Ruth Lamont]

50 [Q64](#)

51 [Q68](#)

52 Resolution ([IBJ0009](#)) para 17

53 [Q68](#)

21. Brussels IIa also covers divorce, with a significance articulated by Resolution:

As more relationships are formed where one or both parties are from other EU states, the potential for lawyers to be required to advise, and the family courts across the UK to rule, on family law cases with an EU dimension has inevitably increased. Because of the extent to which EU law has permeated family law and practice across the EU, every divorce petition is founded on the jurisdictional requirements of the Brussels IIa Regulation.<sup>54</sup>

22. Brussels IIa attracts more controversy in relation to divorce than in child-related matters. Under the Regulation, both parties can begin proceedings in the jurisdiction of their choosing. If two different jurisdictions are chosen, proceedings in the later court to begin proceedings are paused until the first court determines whether it has jurisdiction. Multiple witnesses criticised what they saw as a frequent ‘race to issue’, with FLBA observing “the more legally astute spouse (who is often also the financially stronger spouse) can often arrange to win the race to court in his favoured jurisdiction”.<sup>55</sup> Mr Eames posited that “Brussels II prevents the opportunities for families to mediate and to reconcile, because you have to issue first”;<sup>56</sup> Mr Marshall agreed “in absolute terms” with the International Family Law Group’s claim that the Regulation discourages mediation and can accelerate the breakdown of saveable marriages.<sup>57</sup>

23. The Maintenance Regulation is similarly contentious. Kingsley Napley LLP stated that it “provides clear and consistent rules on where parties can start proceedings” and “contains detailed rules to assist enforcement and recovery of maintenance across borders”.<sup>58</sup> They considered that “the driving purpose of the regulation is to be creditor/recipient friendly”, giving greater choice over jurisdiction to the maintenance receiver than its payer.<sup>59</sup> The Family Law Bar Association (FLBA) noted that a “significant” number of prenuptial agreements made in the UK since 2011 (when the regulation came into force) contain choice-of-court provisions under Article 4 of the Maintenance Regulation, and that if it no longer applied in the UK, “the status of such agreements would be thrown into doubt”.<sup>60</sup> However, some discontent was expressed. FLBA observed a conflict between Article 7 of Brussels IIa and Article 3(c) of the Maintenance Regulation, which could, for example, deny an English court jurisdiction over maintenance claims relating to a divorce case it was hearing.<sup>61</sup> The International Family Law Group LLP argued that it enforces inappropriate prenuptial agreements.<sup>62</sup> However, the Regulation lacks a natural replacement. The 2007 Hague Convention<sup>63</sup> is a powered-down version, with orders only enforceable in certain circumstances. Mr Marshall claimed “most people did not know that the 2007 Hague Convention existed” and it was “little used”; he also recognised greater complementarity between Brussels IIa and the Maintenance Regulation.<sup>64</sup> This would support remaining party to the Maintenance Regulation, if possible, at least in the short-to-medium term.

54 Resolution ([IBJ0009](#)) para 11

55 Family Law Bar Association (FLBA) ([IBJ0025](#)) para 29

56 [Q58](#)

57 [Q59](#), The International Family Law Group LLP ([IBJ0019](#))

58 Kingsley Napley LLP ([IBJ0030](#)) para 25

59 Kingsley Napley LLP ([IBJ0030](#)) para 26

60 Family Law Bar Association (FLBA) ([IBJ0025](#)) paras 20–23

61 Family Law Bar Association (FLBA) ([IBJ0025](#)) para 18

62 The International Family Law Group LLP ([IBJ0019](#))

63 [2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance](#)

64 [Qq74–75](#)

24. **Brussels IIa and the Maintenance Regulation are improvements over their default alternatives. They are not without fault: races to issue resulting from Brussels IIa’s divorce provisions are particularly undesirable. Nonetheless, mutual recognition and enforcement of judgments in family cases is of demonstrable value in resolving cross-border instances of child abduction and non-payment of maintenance.**

25. *We recommend that the Government should seek to maintain the closest possible cooperation with the EU on family justice matters, and in particular to retain a system for mutual recognition and enforcement of judgments.*

## Commercial law

26. The UK’s commercial law sector has very significant economic influence, nationally and internationally. Gary Campkin, Policy and Strategy Director at TheCityUK, characterised the role of the legal sector in the business ecosystem:

It is one of the jewels in the crown. Indeed it is part of the reason why London, and the UK, is the leading global financial centre. It is also a reason why people come to London and the UK. They come here to access the law. They come here to deal with a situation where the courts provide certainty and fairness, and where the judiciary have a very strong reputation for impartiality. We believe very strongly that this is not just about the legal services industry itself but about the underpinning that English law gives the wider economy and business relations. It is a very important part of the UK offering.<sup>65</sup>

Internationally, many firms with little or no other connection to the UK choose the law and courts of England and Wales to govern their contracts.<sup>66</sup> Allen & Overy LLP estimated that English courts are the world’s most popular jurisdiction in this regard.<sup>67</sup>

27. Witnesses representing the commercial law sector in this inquiry expressed similar priorities to those in family law, stressing the value of arrangements for mutual recognition and enforcement of judgments, and for choice of jurisdiction; both are provided by EU Regulation 1215/2012, called ‘Brussels I recast’ (or just ‘Brussels I’). First established as an international treaty (the 1968 Brussels Convention), it was superseded by EU law as the Brussels I Regulation in 2001, itself then updated or ‘recast’ in 2012. It ensures that clauses in contracts specifying jurisdiction, including that in England and Wales, are respected and that judgments in the UK apply across the EU (and Lugano States);<sup>68</sup> it also protects UK residents from being sued in unconnected EU courts (so-called ‘exorbitant jurisdiction’). Patrick Robinson of Linklaters LLP observed:

The portability of English judgments and having them automatically recognised within the European Union is a considerable advantage. There is a risk—it is not clear how high the risk is—that they are no longer going to be recognised and enforced in the same way, at least in some places. It may be a theoretical risk, but commercial parties do not like risks.<sup>69</sup>

65 [Q4](#)

66 [Q5](#) [Patrick Robinson]

67 Allen & Overy LLP ([IBJ0047](#)) para 6

68 Iceland, Norway and Switzerland

69 [Q2](#)

28. The Government cannot incorporate Brussels I into domestic law unilaterally: the Regulation requires reciprocity, and a freestanding UK commitment to respect other countries' jurisdictions and judgments would neither required them to return the favour nor provide a mechanism for the resolution of any disputes arising on these matters. The UK will cease to be a party to Brussels I when it leave the EU. The original 1968 convention might still apply, but is "outdated and contains a cumbersome enforcement regime", according to the British Institute of International and Comparative Law (BIICL).<sup>70</sup> It does not include all Member States (as recent entrants had no reason to join with Brussels I in place). The Lugano Convention 2007 ('Lugano II') brings EFTA<sup>71</sup> nations into the Brussels Regime. Modelled on Brussels I before it was recast, it lacks features of the revised Regulation, such as streamlined enforcement and greater protection for exclusive choice of court agreements. Resolution claimed it could not be entered from outside the Single Market.<sup>72</sup> There is also a 2005 Hague Convention on Choice of Court Agreements, though this is considerably weaker than Brussels I: it merely enforces jurisdiction choices already extant in contracts and cannot resolve cases where they are absent; it also excludes consumer and tort matters, intellectual property infringement and antitrust cases. Both Lugano II and the 2005 Convention are preferable to a void; however, maintaining the advanced links of Brussels I recast must be the priority. Denmark agreed a bespoke version of Brussels I with the EU in 2005: this may be instructive for the UK, but the agreement—which gives the CJEU jurisdiction on interpretation—<sup>73</sup>could be seen as in tension with the Government's aim to end the jurisdiction of the CJEU in the UK.<sup>74</sup>

29. There are other matters to explore in commercial law. The Rome Regime deals with 'applicable law' issues, that is to say, which law governs disputes (as opposed to questions of jurisdiction, about which court hears them). EU Regulation 593/2003 ('Rome I') addresses contractual civil and commercial disputes and Regulation 864/2007 ('Rome II') covers non-contractual cases (e.g. anti-competitive practices, intellectual property and product liability). Unlike the Brussels Regulations, these do not require reciprocity and so can simply be incorporated into UK law. For Linklaters, this is "a straightforward option to promote continuity and certainty".<sup>75</sup> Regulation 1206/2001 ('the Evidence Regulation') and the Regulation 1393/2007 ('the Service Regulation') are useful background devices that facilitate cross-border evidence taking and provision of legal documents, respectively. Dr Eva Lein of BIICL thought agreeing similar post-Brexit provisions would be uncontroversial.<sup>76</sup>

30. There are special concerns in the law of banking and finance, which is a significant field given the importance of that sector to the UK economy. TheCityUK explained:

Disputes inevitably arise in the financial services sector because of the sheer volume, complexity and value of the transactions. This was underscored by the Judge in Charge of the Commercial Court, Lord Justice Blair, in January

70 BIICL ([IBJ0045](#)) para 11

71 The European Free Trade Association (EFTA) comprises Iceland, Liechtenstein, Norway and Switzerland. All but Switzerland are part of the European Economic Area (EEA) with the EU, but none is a Member State of the EU. Liechtenstein is not a party to Lugano II.

72 Resolution ([IBJ0009](#)) para 31

73 [Council of the EU Decision 2005/790](#), art 6

74 HM Government, *The United Kingdom's exit from and new relationship with the European Union*, [Cm 9417](#), February 2017, para 2.3

75 Linklaters LLP ([IBJ0020](#)) para 2.5

76 [Qq30-2](#)

2016 when he noted that “... as far as the London Commercial Court is concerned, of the cases commenced during 2015 ... 69.26% were claims particularly in the fields of banking, finance, commodities, shipping, maritime disputes and insurance and reinsurance.

[ ... ]

Data from the Law Society of England and Wales shows that between 2009 and the first half of 2015, the financial services industry accounted for 43% of the total value of deals on which the top 50 UK ‘City’ law firms advised.<sup>77</sup>

Saliently, any damage to the UK’s financial services will similarly affect the legal professions. Clifford Chance LLP observed that UK banks, insurers and other such organisations have contractual duties to perform functions based on EU membership and requiring authorisation from EU institution. If this lapses at the moment of the UK’s departure, those duties are rendered impossible to perform—but this is unlikely to be a defence to a claim for breach of contract, making those firms liable in damages. Areas of such uncertainty include derivatives, insurance and revolving credit agreements.<sup>78</sup> Clifford Chance noted this uncertainty “could operate as a disincentive for EU customers to enter into contracts of this kind with UK firms”, and called for clarity—particularly on transitional arrangements.<sup>79</sup>

31. The Government has said “we recognise that an effective system of civil judicial cooperation will provide certainty and protection for citizens and businesses of a stronger global UK”.<sup>80</sup>

**32. *We recommend that protecting the UK as a top-class commercial law centre should be a major priority for the Government in Brexit negotiations given the clear impacts on the UK economy of failure to do so. Protecting court choices and maintaining mutual recognition and enforcement of judgments are central to this objective: the Government should aim to replicate the provisions of Brussels I Recast as closely as possible, perhaps using the EU-Denmark agreement as a blueprint. As a minimum, it must endeavour to secure membership of Lugano II and the 2005 Hague Convention in its own right. Rome I and II should be brought into domestic law. The Government must also address the potential liabilities for non-performance of contractual duties that financial institutions may face as a consequence of Brexit.***

## The Court of Justice of the European Union

33. Witnesses throughout this inquiry drew attention the current and future roles of the CJEU, but these discussions were deepest in connection with commercial law. The CJEU is the ultimate interpreter of EU law, and Member States are required to give its judgments primacy. The Government has, in recent months, repeatedly stated an intention to end the jurisdiction of the CJEU in the UK, most recently in its Brexit White Paper.<sup>81</sup> However,

77 TheCityUK (IBJ0037) paras 19, 28

78 Clifford Chance LLP (IBJ0051) paras 32–40

79 Clifford Chance LLP (IBJ0051) paras 26–27

80 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, Cm 9417, February 2017, para 8.19

81 HM Government, *The United Kingdom’s exit from and new partnership with the European Union*, Cm 9417, February 2017, para 2.3

there are procedural matters—such as jurisdiction, determining the applicable law, and recognition and enforcement of judgments—for which conceding a small role for the CJEU could be necessary for continued and mutually beneficial cooperation. The Brussels I and II Regulations are, in essence, means to clarify the balance of powers between competing courts, none of which is independently well-situated to resolve disputes arising on the mechanism itself. A strong arbitral authority is required to ensure a consistent and fair application of transnational rules, and those regulations or similar arrangements would be unappealing without it. Our evidence strongly suggests close continuing cooperation in these areas of commercial and family law would, at the least, necessitate UK courts giving due regard to CJEU decisions: Simon Gleeson of Clifford Chance observed that “the ECJ<sup>82</sup> will have strong persuasive authority in this country, even when it ceases to have actual authority”.<sup>83</sup> This would not bind the courts: the risk here is that UK and EU case law on the same provisions begins to diverge in a way that undermines consistency and, potentially, reciprocity. The precise meaning of ‘due regard’ in this context also requires clarification. The London Solicitors Litigation Association notes that “it remains unclear ... whether the EU will accept a system in which there is no final arbiter on the meaning of [a replacement for Brussels I]”.<sup>84</sup>

34. We make no argument against the end of the CJEU’s jurisdiction in the UK on substantive matters of law: in the context of this report that question is not one for us to address. Nor do we address the question of whether the CJEU should play any part in state-state or investor-state dispute resolution in the new UK-EU relationship, which could be modelled on the arbitration mechanisms for previous UK trade deals or the new agreement between the EU and Canada. Indeed, it may be possible to maintain the beneficial relationships in family and civil law wholly without it. Our focus is on the purely arbitral and limited role which the CJEU or another court will need to play in respect of Brussels I and II. Mr Robinson observed that “here we are looking at the CJEU in its capacity as the body that can tell you how to interpret a European regulation, or three European regulations, rather than any broader power that it has”.<sup>85</sup> Dr Lein expanded:

If that system is uniform and applies here and in other countries, it makes sense to keep it as a uniform system so that everyone more or less knows how to apply the rules and applies them in the same way. What the Court is doing is ensuring that. It is not that the Court is ultimately interfering in the decision-making process, but it interferes to explain to the courts what the concepts in those regulations mean.<sup>86</sup>

Mr Eames added, in similar vein:

I suppose a distinction that can be made is that this is procedural and not substantive law. We are not having foreign laws applied in England; we are just deciding which is the most appropriate court, and having reciprocity. That is where the CJEU comes in. It assists with those issues and avoids UK families having competing jurisdictions in two different countries.<sup>87</sup>

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82 European Court of Justice, a court of the CJEU

83 [Q180](#)

84 London Solicitors Litigation Association ([IBJ0046](#))

85 [Q39](#)

86 [Q37](#)

87 [Q77](#)

**35. The end of the substantive part of the CJEU’s jurisdiction in the UK is an inevitable consequence of Brexit. If the UK and the EU could continue their mutually-beneficial cooperation in the ways we outline earlier without placing any binding authority at all on that Court’s rulings, that could be ideal. However, a role for the CJEU in respect of essentially procedural legislation concerning jurisdiction, applicable law, and the recognition and enforcement of judgments, is a price worth paying to maintain the effective cross-border tools of justice discussed throughout our earlier recommendations.**

## 4 Legal services

36. The UK’s legal services sector contributes £25.7 billion to the UK economy, or 1.6% of gross value added. It generates £3.3 billion in annual export revenue and employs some 370,000 people (of whom roughly two-thirds work outside London).<sup>88</sup> We have encountered concern from lawyers that potential implications of Brexit include some that would harm their business. Beyond the changes to the law on which they advise and litigate, as discussed in previous chapters, these encompass rules on lawyers’ own international mobility (and that of the services they provide). We also investigated how leaving the EU may affect wider international opportunities.

37. Cross-border practising rights within the EU were a key concern for witnesses. Three EU laws combine to create an effective ‘single market in legal services’:

- the Lawyers’ Services Directive 1977 allows lawyers qualified in any Member State the right to provide services on a temporary basis in all other Member States;
- the Lawyers’ Establishment Directive 1998 (or simply ‘the Establishment Directive’) requires Member States to allow lawyers from elsewhere in the EU to practise there permanently, and to provide a route to qualification in the legal professions within that jurisdiction; and
- the Mutual Recognition of Professional Qualifications Directive 2005 (known as ‘PQD’) supports the above with provisions regarding the cross-border recognition of qualifications (including in the legal professions).

Andrew Langdon QC, Chair of the Bar Council, claimed that “without the free movement of lawyers nothing else of much importance will be salvaged”, arguing that lawyers’ ability to represent local clients in cases with EU connections is important for the individuals and businesses they represent.<sup>89</sup> He emphasised that this was not only of benefit to large firms and wealthy individuals, who “can afford to shop internationally for lawyers”, but also for small businesses and ordinary people, who cannot.<sup>90</sup> Robert Bourns, President of the Law Society, warned of “traditional—some would say old-fashioned—fiefdoms of professional practice” re-emerging in Europe without the directives.<sup>91</sup> We note that although these instruments are Directives, thus already incorporated into domestic statute, they rely on reciprocity (as with Brussels I and II in Chapter 3). WTO<sup>92</sup> rules, on which the UK might fall back, are significantly weaker: they don’t guarantee legal professional privilege, without which “the right to practise is effectively useless”.<sup>93</sup>

38. There are already concerted efforts by EU law firms to win clients from UK competitors by reference to Brexit. Nevertheless, witnesses expounded on the mutual benefits of preserving cross-border practising rights. Mr Bourns suggested that some Germans value the opportunity—not available in their home country—“to work through

88 TheCityUK, [UK Legal Services 2016](#), July 2016

89 [Q177](#)

90 [Qq177–8](#)

91 [Q179](#)

92 The [World Trade Organisation](#) (WTO) regulates multilateral trade; its rules bind members in the absence of stronger or distinctive trade agreements between them.

93 [Q202](#) [Simon Gleeson]

the City of London as limited liability partnerships”.<sup>94</sup> He also noted, more widely, the internationalism of the English and Welsh legal professions, citing some 200 foreign law firms (of which 60 are from the EU) and 3,000 EU national lawyers based in England and Wales. This goes both ways: he estimated that UK and US firms train and employ 30% of the Paris Bar. Mr Bourns finally argued that the EU has an incentive not to self-destruct in the face of overseas competition: “the danger, of course, for the whole of Europe is that you diminish the whole and that the jurisdiction that really wins out is outside Europe altogether”.<sup>95</sup> Mr Langdon and Alison Hook, of Hook Tangaza, warned that the threat of protectionism against the EU was not a credible bargaining ploy: the UK relies on a policy of openness in legal markets.<sup>96</sup> The preceding also makes clear that the legal professions would be adversely affected by restrictions to their ability to hire EU national lawyers.

39. Registering as a lawyer in another EU jurisdiction is one attempted workaround. Ms Hook reported that the Law Society of Ireland had seen 806 English and Welsh solicitors requalifying since the referendum, against a normal rate of 400–700 annually. This is not a secure long-term solution: she pointed out that Ireland’s reciprocal duty to provide this route to qualification may expire upon Brexit.<sup>97</sup>

**40. *The legal services sector underpins many areas of UK economic activity. Its ability to continue to facilitate these in the EU will diminish without protection of existing practising rights there for UK lawyers. There is also clear evidence of reciprocal benefit. We recommend the Government include achieving this protection in its Brexit negotiating strategy.***

41. Looking beyond the EU, Hook Tangaza suggested that “the loss of the EU’s trade negotiating weight might be offset to some extent by more freedom for the UK to engage in and conclude deals”;<sup>98</sup> Mr Gleeson was dismissive of any strong connection between free trade agreements and the growth of English law firms.<sup>99</sup> The Solicitors Regulation Authority contended that “rights of legal practice painstakingly acquired through EU free trade deals will be jeopardised” by Brexit, highlighting that with South Korea.<sup>100</sup> East Asia is a key (and competitive) growth market for the sector: Mr Gleeson described this as his firm’s “primary strategic objective ... over the next five years” and stated “our hope in this regard is that nothing happens in the context of Brexit to damage that, but I think the two are unconnected”.<sup>101</sup> Clifford Chance will need to restructure its business in Korea and called for “a fuller evaluation of all the trade agreements to which the EU is party to ensure that the exit of the UK from the EU does not result in the loss of other rights or privileges that derive from those agreements”.<sup>102</sup>

**42. *The implications of Brexit for the legal services sector give cause for concern, but not hyperbole. Most of the sector’s strengths are unabated, and sensible discussions between the UK and EU ought to protect many of the advantages of their existing cooperation. However, we recommend that the Government should consider and promote***

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94 [Q199](#)

95 [Q199](#)

96 [Q208](#)

97 [Q213](#)

98 Hook Tangaza ([IBJ0033](#)) para 13

99 [Qq241–3](#)

100 Solicitors Regulation Authority ([IBJ0008](#)) para 13

101 [Q241](#)

102 Clifford Chance LLP ([IBJ0051](#)) paras 16–17

*the legal services sector in the context of its expected post-Brexit trade recalibration and the pursuit of new deals; it should outline steps it will take to protect and provide opportunities for the sector.*

## 5 Conclusion

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43. Continued criminal justice cooperation is a critical justice priority for Brexit negotiations: it impacts upon the safety of citizens, of both the UK and the rest of the EU. Cross-border solutions are required to combat the growth of transnational crimes. Other priorities must include the need to protect vital mechanisms in international commercial law, such as mutual recognition and enforcement of judgments. Failing to do so would lead to unwanted consequences for the national business ecosystem, and the UK economy in turn. The essential health of the legal services sector and attractiveness of UK courts and law will provide considerable resilience. Key also to this, and to access to justice for ordinary people and small firms, is retention—to the highest degree possible—of cross-border practising rights. Finally, mutual recognition and enforcement in family law can be crucial in, for example, resolving child abduction cases with appropriate haste; we recognise that support for some of these provisions is weaker than their parallels in other areas, but they are preferable to the available alternatives.

44. *We recommend that the four principal aims of the Government’s approach to justice matters in Brexit negotiations be:*

- (1) *Continuing cooperation on criminal justice as closely as possible;*
- (2) *Maintaining access to the EU’s valuable regulations on inter-state commercial law;*
- (3) *Enabling cross-border legal practice rights and opportunities; and*
- (4) *Retaining efficient mechanisms to resolve family law cases involving EU Member States and the UK.*

45. These are objectives for the end of the process, but negotiations on these matters may not have concluded before the UK has formally left the EU. Transitional provisions will be essential in all areas discussed. Daniel Eames argued “the real concern is obviously the transitional arrangements and the hiatus we face in the meantime, which will cause families real difficulties”.<sup>103</sup> In criminal justice, Professor Tim Wilson suggested that the UK and EU agree to freeze some arrangements beyond that date “so that we do not move down to inferior types of arrangements for a transitional period”.<sup>104</sup> Simon Gleeson observed that the average duration of most financial contracts is around two years: as the moment of Brexit draws closer, the risk of legal complications (as discussed in chapter 3) grows.<sup>105</sup> This demonstrates the urgency of transitional arrangements.

46. *It is not merely the actuality but also the possibility of adverse outcomes from Brexit negotiations that can damage the UK legal sector, with the uncertainty in the sector remarked upon by many witnesses—especially within the commercial field. The Government did not wish to disclose its negotiating position before triggering Article 50, and we did not press it to. Nevertheless, we urge the Government to recognise that providing more information from that point would reduce—and therefore mitigate the risks of—this uncertainty.*

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103 [Q78](#)

104 [Q122](#)

105 [Q197](#)

***47. Transitional arrangements are needed in each sector we discuss, and their absence creates uncertainty. We ask the Government to ensure, as a matter of priority, that it seek to agree transitional arrangements for criminal, civil and family law cooperation with the EU, to come into effect upon Brexit.***

## Conclusions and recommendations

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### Criminal justice

1. We welcome the Government's signals of intent in relation to future UK-EU cooperation on criminal justice, which will be of critical importance in the context of modern crime. *We recommend that the Government prioritise it accordingly in exit negotiations. The seriousness of the matter and the degree of mutual interest give weight to the suggestion that this aspect of negotiations be separated firmly from others. The security and safety of the UK's citizens and residents is too precious to be left vulnerable to tactical bargaining.* (Paragraph 18)

### Family law

2. Brussels IIa and the Maintenance Regulation are improvements over their default alternatives. They are not without fault: races to issue resulting from Brussels IIa's divorce provisions are particularly undesirable. Nonetheless, mutual recognition and enforcement of judgments in family cases is of demonstrable value in resolving cross-border instances of child abduction and non-payment of maintenance. (Paragraph 24)
3. *We recommend that the Government should seek to maintain the closest possible cooperation with the EU on family justice matters, and in particular to retain a system for mutual recognition and enforcement of judgments.* (Paragraph 25)

### Commercial law

4. *We recommend that protecting the UK as a top-class commercial law centre should be a major priority for the Government in Brexit negotiations given the clear impacts on the UK economy of failure to do so. Protecting court choices and maintaining mutual recognition and enforcement of judgments are central to this objective: the Government should aim to replicate the provisions of Brussels I Recast as closely as possible, perhaps using the EU-Denmark agreement as a blueprint. As a minimum, it must endeavour to secure membership of Lugano II and the 2005 Hague Convention in its own right. Rome I and II should be brought into domestic law. The Government must also address the potential liabilities for non-performance of contractual duties that financial institutions may face as a consequence of Brexit.* (Paragraph 32)

### The Court of Justice of the European Union

5. The end of the substantive part of the CJEU's jurisdiction in the UK is an inevitable consequence of Brexit. If the UK and the EU could continue their mutually-beneficial cooperation in the ways we outline earlier without placing any binding authority at all on that Court's rulings, that could be ideal. However, a role for the CJEU in respect of essentially procedural legislation concerning jurisdiction, applicable law, and the recognition and enforcement of judgments, is a price worth paying to maintain the effective cross-border tools of justice discussed throughout our earlier recommendations. (Paragraph 35)

## Legal services

6. *The legal services sector underpins many areas of UK economic activity. Its ability to continue to facilitate these in the EU will diminish without protection of existing practising rights there for UK lawyers. There is also clear evidence of reciprocal benefit. We recommend the Government include achieving this protection in its Brexit negotiating strategy. (Paragraph 40)*
7. *The implications of Brexit for the legal services sector give cause for concern, but not hyperbole. Most of the sector's strengths are unabated, and sensible discussions between the UK and EU ought to protect many of the advantages of their existing cooperation. However, we recommend that the Government should consider and promote the legal services sector in the context of its expected post-Brexit trade recalibration and the pursuit of new deals; it should outline steps it will take to protect and provide opportunities for the sector. (Paragraph 42)*

## Conclusion

8. *Continued criminal justice cooperation is a critical justice priority for Brexit negotiations: it impacts upon the safety of citizens, of both the UK and the rest of the EU. Cross-border solutions are required to combat the growth of transnational crimes. Other priorities must include the need to protect vital mechanisms in international commercial law, such as mutual recognition and enforcement of judgments. Failing to do so would lead to unwanted consequences for the national business ecosystem, and the UK economy in turn. The essential health of the legal services sector and attractiveness of UK courts and law will provide considerable resilience. Key also to this, and to access to justice for ordinary people and small firms, is retention—to the highest degree possible—of cross-border practising rights. Finally, mutual recognition and enforcement in family law can be crucial in, for example, resolving child abduction cases with appropriate haste; we recognise that support for some of these provisions is weaker than their parallels in other areas, but they are preferable to the available alternatives. (Paragraph 43)*
9. *We recommend that the four principal aims of the Government's approach to justice matters in Brexit negotiations be:*
  - (1) *Continuing cooperation on criminal justice as closely as possible;*
  - (2) *Maintaining access to the EU's valuable regulations on inter-state commercial law;*
  - (3) *Enabling cross-border legal practice rights and opportunities; and*
  - (4) *Retaining efficient mechanisms to resolve family law cases involving EU Member States and the UK. (Paragraph 44)*
10. *It is not merely the actuality but also the possibility of adverse outcomes from Brexit negotiations that can damage the UK legal sector, with the uncertainty in the sector remarked upon by many witnesses—especially within the commercial field. The Government did not wish to disclose its negotiating position before triggering Article*

*50, and we did not press it to. Nevertheless, we urge the Government to recognise that providing more information from that point would reduce—and therefore mitigate the risks of—this uncertainty. (Paragraph 46)*

11. *Transitional arrangements are needed in each sector we discuss, and their absence creates uncertainty. We ask the Government to ensure, as a matter of priority, that it seek to agree transitional arrangements for criminal, civil and family law cooperation with the EU, to come into effect upon Brexit. (Paragraph 47)*

# Formal Minutes

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**Wednesday 15 March 2017**

Members present:

Robert Neill, in the Chair

Richard Arkless	David Hanson
Alex Chalk	John Howell
Alberto Costa	Victoria Prentis
Kate Green	

Draft Report (*Implications of Brexit for the justice system*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 47 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Ninth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 21 March at 9.15am]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

### Tuesday 20 December 2016

*Question number*

**Dr Eva Lein**, Herbert Smith Freehills, Senior Research Fellow in Private International Law, British Institute of International and Comparative Law, **Patrick Robinson**, Partner, Linklaters LLP, and **Gary Campkin**, Director, Policy and Strategy, TheCityUK

[Q1–44](#)

**Philip Marshall QC**, Chair, Family Law Bar Association, **Dr Ruth Lamont**, Senior Lecturer in Family and Child Law, University of Manchester, and **Daniel Eames**, Chair, International Committee, Resolution

[Q45–81](#)

### Tuesday 10 January 2017

**Francis FitzGibbon QC**, Chair, Criminal Bar Association, **Professor Tim Wilson**, Professor of Criminal Justice Policy, Northumbria Law School, Northumbria University, and **Michael Gray**, Founding Partner, Gray and Co Solicitors, on behalf of the Criminal Law Solicitors' Association

[Q82–167](#)

### Wednesday 1 February 2017

**Andrew Langdon QC**, Chair, Bar Council, **Simon Gleeson**, Partner, Clifford Chance, **Alison Hook**, Co-founder, Hook Tangaza, and **Robert Bourns**, President, Law Society.

[Q168–249](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

IBJ numbers are generated by the evidence processing system and so may not be complete.

- 1 4PB International Family Law team ([IBJ0039](#))
- 2 Allen & Overy LLP ([IBJ0047](#))
- 3 Bar Council ([IBJ0022](#))
- 4 British Institute of International and Comparative Law ([IBJ0045](#))
- 5 British Institute of International and Comparative Law ([IBJ0055](#))
- 6 Clifford Chance LLP ([IBJ0051](#))
- 7 Dr Ruth Lamont ([IBJ0024](#))
- 8 Family Law Bar Association ([IBJ0025](#))
- 9 Herbert Smith Freehills LLP ([IBJ0023](#))
- 10 Hook Tangaza ([IBJ0033](#))
- 11 Immigration Law Practitioners' Association ([IBJ0041](#))
- 12 Information Commissioner's Office ([IBJ0010](#))
- 13 Kingsley Napley LLP ([IBJ0030](#))
- 14 Legal Services Board ([IBJ0007](#))
- 15 Linklaters LLP ([IBJ0020](#))
- 16 Linklaters LLP ([IBJ0053](#))
- 17 London Solicitors Litigation Association ([IBJ0046](#))
- 18 Ministry of Justice ([IBJ0029](#))
- 19 National Crime Agency ([IBJ0044](#))
- 20 Northumbria Centre for Evidence and Criminal Justice Studies ([IBJ0036](#))
- 21 Professor Elizabeth Crawford ([IBJ0017](#))
- 22 Professor Nigel Lowe ([IBJ0004](#))
- 23 Professor Tim Wilson et al ([IBJ0054](#))
- 24 R3 ([IBJ0006](#))
- 25 Resolution ([IBJ0009](#))
- 26 Reunite International Child Abduction Centre ([IBJ0042](#))
- 27 RoadPeace ([IBJ0032](#))
- 28 Simmons & Simmons LLP ([IBJ0005](#))
- 29 Society of Scrivener Notaries ([IBJ0012](#))
- 30 Solicitors Regulation Authority ([IBJ0008](#))
- 31 The International Family Law Group LLP ([IBJ0019](#))
- 32 The International Family Law Group LLP ([IBJ0048](#))
- 33 The Law Society ([IBJ0021](#))

- 34 The Law Society of Scotland ([IBJ0043](#))
- 35 The Police Foundation ([IBJ0015](#))
- 36 TheCityUK ([IBJ0037](#))
- 37 TheCityUK ([IBJ0049](#))
- 38 TheCityUK ([IBJ0052](#))
- 39 Thompsons Solicitors ([IBJ0040](#))
- 40 Which? ([IBJ0035](#))
- 41 Wildlife and Countryside Link ([IBJ0018](#))
- 42 Youth Justice Board for England and Wales ([IBJ0013](#))

## List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the [publications page](#) of the Committee's website.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2015–16

First Report	Draft Allocation Guideline	HC 404
Second Report	Criminal courts charge	HC 586 (HC 667)
Third Report	Appointment of HM Chief Inspector of Prisons and HM Chief Inspector of Probation	HC 624
Fourth Report	Criminal Justice inspectorates	HC 724 (HC 1000)
Fifth Report	Draft sentencing guideline on community and custodial sentences	HC 876
Sixth Report	Prison Safety	HC 625 (HC 647)
First Special Report	Women offenders: follow-up: Government response to the Committee's Thirteenth Report of Session 2014–15	HC 374

### Session 2016–17

First Report	Reduction in sentence for a guilty plea guideline	HC 168
Second Report	Courts and tribunals fees	HC 167 (Cm 9300)
Third Report	Pre-appointment scrutiny of the Chair of the Judicial Appointments Commission	HC 416
Fourth Report	Restorative Justice	HC 164 (Cm 9343)
Fifth Report	Sentencing Council draft guidelines on sentencing of youths and magistrates' court sentencing	HC 646
Sixth Report	The role of the magistracy	HC 165 (Cm 9368)
Seventh Report	The treatment of young adults in the criminal justice	HC 169 (Cm 9388)
Eighth Report	Draft Sentencing Guidelines on bladed articles and offensive weapons	HC 1028
First Special Report	Prison safety: Government Response to the Committee's Sixth Report of Session 2015–16	HC 647