



---

**The Chair  
Andrew Langdon QC**

---

21 December 2017

Mr Michel Barnier  
Chief Negotiator  
European Commission

**VIA EMAIL:** [michel.barnier@ec.europa.eu](mailto:michel.barnier@ec.europa.eu)

Dear Mr Barnier,

The rule of law and legal services underpin the economy of the EU and UK, and are the mainstay of our civil and democratic societies.

Rule of law and access to justice issues surmount economic considerations and should not be, or be seen to be, bargaining chips that can be traded against other, purely economic, matters in the UK's negotiations to leave the European Union. The Bar is concerned that the European Commission's recent notice to stakeholders on the "Withdrawal of The United Kingdom and EU Rules in the Field of Civil Justice and Private International Law"<sup>1</sup> illustrates that this fundamental principle risks being lost as the negotiations move forward. We welcome the commitment, expressed in the Joint Report from the negotiators on phase 1 of the Article 50 negotiations, that there is a need to provide legal certainty and clarity, particularly in relation to cooperation in civil and commercial matters. We also note reports this week of the "pluses" that you would add to a Canada-style Free Trade Agreement – judicial cooperation, defence and security and aviation. We endorse that approach and ask both sides to go further, in the interests of justice.

---

<sup>1</sup> [http://ec.europa.eu/newsroom/just/item-detail.cfm?item\\_id=607671](http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607671)

**The Bar Council**

[www.barcouncil.org.uk](http://www.barcouncil.org.uk)

---

289-293 High Holborn, London WC1V 7HZ    DX: 240 LDE    Tel: 020 7242 0082    Fax: 020 7831 9217

---

## **Proposal**

By this letter the Bar of England and Wales urges those negotiating the terms of the UK's withdrawal and future relationship with the EU, to deal with justice matters on a separate track from other areas. We suggest this could best be achieved through a separate Treaty between the EU and the UK covering justice issues, akin to that currently in place between the EU and Denmark in civil matters. That treaty would contain a mutual due account clause for CJEU/UK court decisions as in the Protocol to the Lugano Convention. We have made the same proposal to the UK Government.

## **Background**

In this aim, we draw comfort from the way justice matters came to be dealt with at EC, now EU, level. As you know, prior to the Treaty of Maastricht, judicial cooperation in both civil and criminal matters between the Member States of the European Community, was purely intergovernmental. Community (now Union) competence, first in the civil justice field, and then through the Lisbon Treaty, in the criminal field, was agreed by the Member States as a reflection of the importance of these measures in underpinning the European Area of Security and Justice. To this day, however, the Treaty speaks of judicial cooperation, based on mutual recognition, of judicial decisions taken in the Member States. Unlike in many other EU policy areas, the underlying national laws have, for the most part, remained untouched. The Bar Council therefore believes that there is clear precedent, and indeed a recognisable legal framework, for continuing close cooperation in this area, regardless of the terms of the future EU-UK relationship. Continuing mutual trust will of course, be a fundamental requirement of any such arrangements. The Bar, and we are confident, other key UK actors in the field of judicial cooperation, will strive to ensure that the trust and respect that has built up between the judicial authorities in the EU27 and the UK over many years, continues to thrive.

Most of the EU civil justice measures to date settle questions of private international law and jurisdiction, be they in fields of family law, contract, tort or succession. They enable parties and their lawyers embroiled in a cross-border dispute to identify which courts have jurisdiction, which law applies, and they provide assurance that the eventual judicial decision will automatically be recognised in the other Member States of the Union. These instruments are further supported by EU civil judicial cooperation measures, that, for example, facilitate the cross-border service of documents in court proceedings or ensure that evidence that is necessary to support a citizen's claim before the courts of one Member State, can be obtained and transmitted from another.

## **Examples**

A British citizen who wants to have a UK judgment in his favour enforced against a debtor in the EU, or an EU company its judgment enforced in the UK, is seeking access

to justice. Similarly, the ability of two parties to a contract to choose which court or tribunal should govern disputes between them, and to have that agreement enforced, engages more rule of law questions than economic ones.

A common framework for dealing with family law matters ensures that children and couples are dealt with fairly and consistently across jurisdictions, something which is increasingly important as families become ever more internationalised.

A common insolvency regime ensures that all creditors are treated fairly, regardless of what country they come from.

The important special rules for consumers, employees and victims of accidents, in relation to insurance, benefit both EU 27 and UK citizens and businesses - permitting investors in financial products in London to sue in their home jurisdiction. Here again we see the mutually beneficial result of the application of such rules. Moreover, the Motor Insurance Directive regime allows victims of road traffic accidents overseas to claim compensation at home, even against an uninsured driver. This is another prime example of the EU simplifying or eradicating legal obstacles for the man on the street.

Indeed, the Bar underlines that each of these measures individually, and the package together, facilitate access to justice for the citizen, something the Bar sees as of paramount importance.

### Scope

It is for these reasons that we propose that justice matters should have their own separate track in the negotiations. We anticipate that this track would cover all or most of the following areas<sup>2</sup>:

- Civil Jurisdiction and enforcement of Judgments.
- Civil judicial cooperation - including service of process, taking of evidence etc
- Family Law.
- Dispute resolution.
- Insolvency and Restructuring.
- Road Traffic Accidents.

It would be possible to envisage police and criminal judicial cooperation being dealt with on the same track, though we appreciate that this subject raises specific issues regarding participation in EU institutions and arrangements (e.g. Europol, European Arrest Warrant).

All the above matters engage important rule of law issues that raise fundamentally different considerations to other points which will arise as the negotiations proceed. We believe that this, and the importance of the rule of law, justify them being dealt with on a separate track.

---

<sup>2</sup> Each of these has been treated in the Bar Council's "*Brexit Papers*" which are designed to act as an easily accessible introduction to the legal issues raised in each particular area. These can be accessed at: <http://www.barcouncil.org.uk/media-centre/publications/2017/2017/june/the-brexit-papers-third-edition/>

**Next Steps**

The Bar would be delighted to meet you at your earliest convenience to discuss this further.

Yours sincerely,

A handwritten signature in blue ink that reads "Andrew Langdon". The signature is written in a cursive style and is underlined with a blue horizontal line.

Andrew Langdon QC  
**Chair of the Bar of England and Wales**