House of Lords European Affairs Committee
Inquiry into the UK-EU reset
Bar Council written evidence

About Us

The Bar Council represents approximately 18,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Scope of Response

1. The Bar Council has maintained an office in Brussels since 1999, choosing to remain at the heart of the EU despite the withdrawal of comparable UK stakeholders following Brexit. We continue to engage with policymakers and fellow legal professionals on the EU side.
2. In addition, the Bar Council has a European Committee, a Trade and Cooperation Agreement (Implementation & Review) Working Group and a working group on International Trade - all of whom have contributed to this response.
3. The Bar Council is an active member of the Council of the Bars and Law Societies of Europe (CCBE) as well as of the European Law Institute (ELI) and the European Services Forum (ESF). It is also an active, founding member of the UK Domestic Advisory Group to the TCA (UK DAG) and several of its sub-groups.
4. This submission addresses the questions on which the Committee has sought evidence.

Executive Summary

5. The Bar Council welcomes the Government's plan to reset UK-EU relations. It encourages the Government to proceed with some urgency to define its policy priorities, whilst ensuring full transparency and stakeholder engagement at all stages and levels. Many of our expert practitioners have been engaged on EU-related matters over many years, thus amassing insight into the full history of Brexit and its aftermath, on the EU side as well as the UK.
6. The Bar Council is calling for the following objectives to be included in the Government's list of policy priorities, details of which are examined further in our responses below:
    i. Enable members of the UK legal profession who have more than three years post-qualification experience to give advice to clients in the EU for remuneration, ideally on a fly in-fly out basis (FIFO), covering EU and Private International Law, as well as UK and Public International Law. Such advice should attract litigation or legal advice privilege, and such privilege should be recognised within the EU.
    ii. Secure representation rights for UK qualified lawyers with rights of audience, including members of the Bar of England & Wales, before the Court of Justice of the EU (CJEU and the General Court) in cases arising from EU-UK arrangements which

designate those courts as the ultimate arbiter on interpretation of EU law. This would be akin to the representation rights reserved by Article 91 of the Withdrawal Agreement 2019 and follow the same justification.

iii. Secure the long-term seamless free flow of data between the EU and UK, which is clearly in the interests of citizens and businesses on both sides. Ideally, the UK and EU should aim to agree a stable, permanent arrangement for EU-UK data flows. More immediately, however, the Government should strive to secure renewal of the June 2021 EU 'adequacy' decisions, including through ensuring that the Data (Use and Access) Bill is enacted quickly and maintains levels of data protection in the UK at least equivalent to that of the EU General Data Protection Regulation (GDPR) regime going forward.

iv. Secure and advocate for the UK's long-term commitment to the rule of law, including through membership of the Council of Europe and adherence to the European Convention on Human Rights.

v. Expand EU-UK judicial cooperation, in both the criminal and civil justice fields (including insolvency) and family law.

vi. Facilitate the practice of young and future legal practitioners, in whose hands the continuing pre-eminence of the UK's legal system rests. This class should include members of the Bar, for whom knowledge of EU law, and potentially rights of audience before the EU Courts, will be valuable, especially where UK and EU policy and regulation align.

7. The Bar Council, including through its engagement as outlined in paragraphs 1 – 3 above, is pursuing these priorities, and is delighted to provide any assistance to the Committee and/or Government that may be needed in advancing these and other priorities which may come to be further defined in the coming weeks.

Question 1: What should the reset seek to achieve in order to serve the British national interest? What would a successful reset of UK-EU relations look like?

8. It is desirable to have clarity and predictability as to the rules governing citizens and businesses alike (whether, in the latter case, they are active in the production of goods or the provision of services), and that applicable rights and obligations (whether on employment, food standards, environmental and consumer protections, data protection or other) should continue to be subject to high standards. Given the geographical proximity and high levels of trade and travel between the UK and the EU, despite Brexit, the Bar Council considers that seeking dynamic alignment (with flexibility when needed) across multiple areas of UK-EU cooperation should be a guiding principle for the reset.

Question 1a: What is your assessment of the Government's aims and approach to the reset? Is the Government being too ambitious, or not ambitious enough?

9. Whilst the general tenor of the reset is positive and to be encouraged, the Government's aims and approach remain relatively lacking in detail to date. Rather than give further response here, we focus on matters raised in the specific questions below, based on our areas of competence.

Question 1b: Should the Government have any 'red lines' for the UK-EU reset?

10. Red lines limit the scope of negotiations. If well thought through, they can set the outer perimeters of the discussion whilst leaving enough scope for both sides to achieve some of what they seek. However, if too narrow and rigid, they set a negative tone from the outset and leave very little scope for compromise.

11. Importantly, red lines can also take on a life of their own, being misapplied or misinterpreted even by those who cite them. They can thus end up as an excuse for not engaging in a discussion which, when analysed, would not in fact cause the feared problem.

12. **UK red line: No freedom of movement**.

    i. Whilst the EU treaties create four freedoms: of goods, services, people and capital, the main public and political discourse in the UK, and thus the UK government's red line, focuses on the free movement of people. This red line is cited as the reason for the UK's refusal to consider / grant:

        - The EU's requests for a youth mobility scheme[1]. However, the scheme is essentially focussed on cultural exchange, seeking to allow students and young people from both sides to study and/or work in the other's territory for a time-limited period. This would benefit both sides. It would provide a welcome boost to a struggling University sector in the UK. Rather than adopt a "red line" to this issue, the Bar would urge the Government to explore ways to define and agree the terms of such a scheme so as to avoid opening the door to uncontrolled, long-term migration, or the appearance of the same. The Government could adopt a series of gateways through which any application for immigration clearance from EU-based young persons could be considered. Junior members of the Bar would benefit from reciprocity in this regard. The Bar already runs a successful "Pegasus Scholarship" programme[2], where young advocates spend time in other countries, including the UK.
        - Similarly, requests for relaxation of the mobility rules governing the provision of, in our case, legal, services into EU territory by UK nationals with UK qualifications, and vice versa, do not impinge on freedom of movement, and should not therefore be dismissed for that reason. Rather, they concern the two sides' (and as relevant the Member States') respective rules governing legal migration and the temporary entry of third country nationals for the specific purpose of providing a designated service. This should be facilitated.

13. **UK red line: No jurisdiction for the CJEU**

    i. It has become clear that the EU will insist on a role for the CJEU as final arbiter on the interpretation of EU law when it is applied in the context of its agreements with third countries, whether on governance of the agreement itself or e.g. alignment of laws. See for example the new draft Package of Agreements between the EU and

[1] https://commission.europa.eu/strategy-and-policy/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement/youth-mobility_en

[2] https://www.innertemple.org.uk/your-professional-community/pegasus-trust/

Switzerland.[3] Informed expectation is that any future UK-EU agreement on Sanitary and Phytosanitary measures (SPS) or similar will contain such provisions.

ii. As things stand, such an EU condition would appear to breach the UK's red line on oversight by the CJEU. But what are the concerns behind that red line? Would the role of the CJEU in such agreements actually trigger those concerns? And if so, are there any work-arounds short of the stated red line?

iii. The main objection seems to be political, borne of years of negative messaging in the UK: We do not want to be subject to the decisions of a "foreign" court. But:

- The CJEU is tasked under the EU Treaties with *interpreting* the *EU* law that is being applied by the national court, or in the case of governance of an EU-third country trade agreement, the body charged with oversight of that agreement. Its role as sole final interpreter of EU law ensures consistency, predictability and legal certainty across all such agreements. The Luxembourg Courts do not decide on the merits of the case, which decision is taken by the court / arbitration panel that referred the question of interpretation to it. So, the CJEU does not in fact "decide" the case.
- As regards the "foreign" element, the Bar considers that this would be mitigated by the Bar's call for an equivalent to Article 91 of the Withdrawal Agreement 2019 (WA) to be included in any EU-UK agreements invoking the jurisdiction of the CJEU, allowing UK-qualified lawyers with rights of audience to represent UK parties in cases specifically arising under such agreements before the Luxembourg Courts. There are clear rule of law arguments to back this suggestion, since it would ensure that UK clients would not have to switch to, or add, an EU-qualified lawyer mid-case, purely for the purposes of representation before the EU Courts on a question of interpretation which is binding on, or affects, that client or UK law. This suggestion would also likely require the EU to recognise the competence of UK lawyers to argue points of EU law before the CJEU, based on recognition of the ongoing requirement to have completed a component of legal education teaching EU law.

14. These are just a couple of, likely many, examples of how the UK's red lines could be nuanced and potentially lead to more constructive and open dialogue.

Question 1c: To what extent are the EU's existing arrangements for cooperating with non-Member States an obstacle to the reset? Should the Government seek to negotiate new forms of cooperation in some areas?

15. Broadly speaking, the EU (like all World Trade Organization (WTO) members) is bound by WTO rules to offer to all trading partners the most favourable trading terms it offers to one (the most favoured nation principle or MFN). Whilst this principle does not preclude the development of bilaterally negotiated free trade agreements, the EU looks to its existing Free Trade Agreements (FTAs) when negotiating new ones and will seek to avoid giving to the new trading partner anything that it does not want to offer any other. Indeed, the EU

[3] The text of the agreed package is currently being finalised. An overview can be found through the following link: https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_6564

frequently incorporates MFN clauses into its FTAs. The EU's agreements with Canada, South Korea, Japan, CARIFORUM, Vietnam and the updated EU-Mexico agreement all contain MFN clauses. These would oblige the EU to grant these states comparable treatment to any treatment given to the UK under a revised EU-UK FTA, in particular in matters such as access to services and investment. In simple terms, the EU would be obliged to offer these other countries a comparable concession to any granted to the UK, without having the benefit of getting anything in return. That is inevitably seen as a "cost."

16. The UK seems not always to have understood this, believing that its status as a former EU Member State should give it special status. In trade law terms, this simply isn't correct. What this does mean however, is that each new EU FTA potentially raises the bar of what the EU will agree going forward, including with the UK. It therefore behoves the Government to examine EU trade negotiations and resulting third country trade agreements closely – especially recent ones, or ones concluded with trading partners with which the UK has relevant features in common – geographical proximity to the EU, volume of trade, etc.
17. From a UK perspective, the newly agreed EU-Swiss Package of Agreements is of particular interest as it shows what the EU is currently willing to agree with close neighbours and key trading partners. Important differences, as things stand however, lie in the UK's red lines on Single Market membership, dispute resolution and related oversight of the CJEU etc, on all of which the Swiss have acceded to EU requirements, with some carve outs. However, were the UK to take a more nuanced approach to its red lines (see e.g. our response to question 1b) above, there may be more scope to seek to follow suit where of benefit to the UK.

Question 2: What impact are the priorities and domestic politics of individual EU Member States likely to have on the UK-EU reset?

18. Significant.
19. The Heads of State of the Member States as the European Council provide the Commission with the political mandate on which it enters into treaty negotiations. If relations are good and dialogue is already open, such mandates can be adapted to cover provisional agreements already reached between the parties, as reportedly happened recently between the EU and Switzerland (see footnote 3 above). That is not a given, however. In any event, the European Council, and thus the Member State capitals, sets the tone and limits of the EU positions in such negotiations. Further, the European Council is crucial to the ratification of any binding agreement reached.
20. At an individual state level, it is also clear, including in the context of EU-UK relations, that certain Member States have significant influence in specific areas. Thus, by way of just a few examples:
    i. Whilst the EU is increasingly keen to enter into a security agreement with the UK, France has reportedly made it clear, and it seems to be understood in Brussels, that an agreement on fisheries that avoids the need to renegotiate quotas annually, would be a *sine qua non* for its endorsement. Recent geopolitical events[4] may have altered the balance here, but that is certainly what we were hearing last month.

[4] The United States of America's apparent switch of allegiance in the context of Ukraine is currently unfolding. The need to work together to deal with the potential crisis may override all other concerns, as the summit held in London on 2 March 2025 demonstrates.

ii. Equally, the EU will not countenance any changes that undermine the Withdrawal Agreement and its Ireland and Northern Ireland Protocol, as supplemented by the Windsor Framework Agreement. Thus, Ireland has a strong card to play there.

iii. Indeed, any EU Member State that has a significant number of citizens residing in the UK long-term can be expected to examine the treatment said citizens are receiving under the Withdrawal Agreement and make demands accordingly. EU institutions have made it plain that they will not tolerate non-implementation of the agreements on Citizens' Rights (see further in response to question 10 below).

21. Of course, the shift to the right in many Member States, as also reflected in the composition of the European Parliament 2024 – 29, may take us into unknown territory, including as regards EU-UK relations going forward. That could, for example, hasten a shift towards the model of a Europe of concentric circles, as most recently posited in the Group of Twelve report of September 2023[5], where it explores the concept of "Differentiated Integration". Such a shift could open the door to UK engagement with the EU in a way that was not seen, until now (see response to question 3 below), as feasible.

Question 3: How are the policies of the new US Administration likely to affect the UK-EU reset?

22. Drafting a response to this question in the aftermath of the US Vice-Presidential address to the Munich Security Conference on 13 February 2025, the follow-up European Leaders meeting on 17 February 2025 and the London summit on 2 March 2025, the clear implication is that both the UK and EU will rapidly need to adapt to what appears to be a seismic change in US foreign policy. The UK and EU will need each other for support in numerous vital areas if this proves to be the case: security in all senses (including of energy supply); Ukraine; sanctions against Russia; trade related issues such as US tariffs. The differences occasioned by Brexit may yet be dwarfed and rapidly consigned to the history books.

23. There is also the risk of course, that geopolitical events could shift EU attention away from the relatively granular need to reopen aspects of its relationship with the UK. That said, there does seem to be a widespread view that the momentum favours a closer UK-EU relationship now. That would further support calls for the UK to clearly identify and pursue its priorities here sooner rather than later.

Question 4: What should be the scope and priorities for the UK-EU security pact that the Government is seeking?

24. This is outside the scope of the Bar Council of England & Wales.

Question 5: In the area of trade and mobility of people, the Government has identified three priorities for negotiation with the EU: a veterinary/SPS agreement; mutual recognition of professional qualifications (MRPQs); and easier access for UK touring artists in the EU. Are these the right priorities? Are they achievable? Are there other

[5] https://www.diplomatie.gouv.fr/IMG/pdf/20230919_group_of_twelve_report_updated14.12.2023_cle88fb88.pdf

sectors which the Government should be including in the reset—for example, in the field of financial services?

25. The Bar is keen to facilitate the practice of young and future members of the Bar, in order to ensure that the UK can continue to fly the flag of excellence in this sphere long into the future. The majority of our practitioners are self-employed, UK based and UK qualified. When providing legal services in other jurisdictions, they are most likely to do so on a temporary, fly-in fly out basis.

26. To facilitate such practice, among the detailed changes we would like to see to the text of the EU-UK Trade and Cooperation Agreement (TCA) are revisions to Article 143 to reduce the minimum number of years of professional experience required to be able to provide services as an Independent Professional from 6 years to 3 years. We also would like to see extensions to the definitions of "designated legal services" and "legal services" under Article 193:

    i. "designated legal services" to include EU and private international law;

    ii. "legal services" to include advocacy and representation.

27. Beyond that, the Bar would like to secure for young and future members of the Bar a route to securing rights of audience before the Court of Justice of the EU, including its General Court, based on mutual recognition of their UK qualification. We support UK efforts in that regard, though note that, if the EU is unwilling to explore arrangements other than sectoral ones set out in Article 158 and Annex 24 of the TCA, we do not anticipate securing agreement with the legal profession across the Member States to a sector-specific Mutual Recognition Agreement at EU level in the foreseeable future – see further in response to question 9 below.

Question 6: In trade, what is—or could be—the relationship between the UK-EU reset and the UK's current or potential relationships beyond Europe?

28. The EU remains the UK's closest and largest trading partner across both goods and services. As an EU Member State, the UK was seen by some third countries, especially those using English as the language of commerce, as an entry point into the EU market. A closer, more seamless EU-UK trading relationship might well be welcomed by other trading partners for the same reasons.

Question 7: As part of its reset plans, how should the Government deal with the expiry in 2026 of TCA provisions on fisheries and energy?

29. These are two very different issues and need different assessments.

30. Fisheries is a complex political question, on which we defer to others.

31. As regards energy, it is our understanding that effective and secure energy supply remains a key concern for both the UK and the EU and note that there are many important UK-EU interconnectors which flow electricity and gas across coordinated electricity and gas markets.[6] Whilst again we defer to the views of industry, we also understand that the Specialised TCA Committee on Energy has been working actively.[7] Given the investments

[6] See https://www.ofgem.gov.uk/energy-policy-and-regulation/policy-and-regulatory-programmes/interconnectors

[7] https://www.gov.uk/government/groups/specialised-committee-on-energy#:~:text=The%20Specialised%20Committee%20on%20Energy,the%20Trade%20and%20Cooperation%20Agreement

involved and the need for security, we suggest that the UK propose that the TCA provisions on energy be extended in 2026 for at least five years, rather than annually (subject to any views that industry may have that a longer duration would be better and as to whether the current arrangement can be improved in the interests of both sides).

Question 8: In the context of the overall reset, how should the Government approach the scheduled review of the TCA?

32. EU institutions have repeatedly stated, both in public and in the context of bilateral meetings with individual stakeholders, that the forthcoming review is for them a chance to review the implementation of the existing EU-UK agreements and not add to them.
33. Ensuring therefore that the UK is indeed honouring its commitments under the TCA and the Withdrawal Agreement should thus be the UK's starting point in approaching the review, as a sign of good faith and in order to avoid giving away "easy wins" in any negotiations. Whilst the timing was driven by legal constraints, it is unfortunate therefore, that in December 2024 the Commission felt obliged to refer to the Court of Justice infringement proceedings against the UK (INFR(2020)2202 and INFR(2011)2054) for failing fully to implement the terms of the WA so as to grant EU citizens who were living in the UK at the end of 2020 the full rights promised therein. These issues should be resolved as a matter of priority.
34. Beyond that, the UK should take a realistic, pragmatic approach to the review, and focus on areas where the TCA itself anticipated review and where there is a clear mutual interest in improving the terms of the existing agreements. If the negotiations advance well and there is scope to seek further concessions in the UK's interest, UK negotiators should be prepared with concrete concessions to offer the EU in return.
35. However, entering the room with a list of unrealistic asks, when the opposite side of the table could still be populated by Commission officials steeped in negative stories of the Brexit negotiations (though this risk is reducing with time) could be counter-productive.
36. There are, of course, many areas where mutual interest lies in achieving the same result, some of them outside the scope of the TCA. Thus, for example, ensuring the renewal of the EU's Data Adequacy Decisions ahead of their June 2025 sunsetting is clearly of mutual interest. Likewise, a push to agree a more permanent, legally binding arrangement for data flows would provide legal certainty for businesses on both[8] sides and should be approached as such. See also our comments on security of energy supply under question 7 above. The UK should be willing to press hard – on the basis of mutual interest rather than concessions – for common sense measures, including participation in Union programmes where that is or becomes an option, which have mutual benefits at a practical level and cannot truly be said to trespass into any areas which are fundamental to the functioning of the EU (such as freeing up the flows of people through border controls). The UK should also be willing to

[8] See BusinessEurope's call for same as part of its wider list of recommendations for the EU-UK relationship in: https://www.businesseurope.eu/sites/buseur/files/media/position_papers/rex/2024-10-30_eu-uk_relations_paper_.pdf. EU and the UK stakeholder members of the EU-UK DAG also called for agreement to ensure long-term data flows in their joint statement of September 2024 https://www.eesc.europa.eu/sites/default/files/2024-09/eu-uk_dags_joint_statement_2024-updated.pdf

reconsider areas which were regarded as having some symbolic value as part of Brexit, but which may now be seen in a different light.

Question 9: As it pursues its reset objectives, how can the Government influence the EU most effectively - including through the role of bilateral relations with European countries and the UK's position in other European multilateral organisations?

37. The UK's engagement on Ukraine and in security matters generally has been welcomed on the EU side. It provided a sound basis from which to launch renewed support for closer ties with the EU following the UK elections last year. The shifting nature of global politics, with attendant increasing tensions, only serve to reinforce the importance of the UK taking a strong and fully engaged position on all things security, NATO, and Ukraine. That has been confirmed by the leading role played by the UK in the London summit on 2 March 2025.
38. The current UK Government's oft-stated commitment to the rule of law and to the European Convention on Human Rights has further improved the mood and must continue.
39. Indeed, positive engagement in and support for, bodies like the Council of Europe, the International Criminal Court and Court of Justice, the WTO and others – reinforcing support for the rule of law and international law – are all essential.
40. Against that background, and despite the Government's announcement of the desired reset last summer, the ongoing lack of clarity regarding what the UK actually wants from its relationship with the EU has caused frustration on the EU side. Moreover, officials and politicians on the EU side read the British press. They understand the political pressures the Government is under but may not always appreciate the caution this seems to engender. Therefore, clarity in messaging would be a first requirement for effective influence.
41. As to individual Member States, the UK can and should explore bilateral agreements where the Member State remains competent to do so. For example, it could, in the legal services field, seek to negotiate with certain individual Member States to reduce or remove their reservations and commitments as regards the legal services that may be provided on their territory, and under what conditions. That negotiation could be pursued in parallel with negotiations to change the terms of the TCA itself, with a view to increasing the minimal levels which it lays down for market access and mobility for service providers, if there were felt to be any scope for flexibility on the part of the EU institutions.
42. The line between EU and national competence can be blurred however, so some caution is needed. Before embarking on negotiations on behalf of a particular sector, the government would do well to engage with representatives from across that sector in order to ascertain what it seeks and considers to be achievable. For example, as already noted, we do not consider that a Mutual Recognition Agreement (MRA) for the legal services sector, as provided for under Articles 158 and Annex 24 of the TCA, is a realistic possibility for the foreseeable future, despite it being a natural corollary of one of our key objectives set out above. This reflects what might be or become possible. Our pessimism was reinforced by the Commission's recent refusal to endorse the draft Architects' MRA, presented to it as approved by both the EU and UK professional bodies, pursuant to those provisions. To our knowledge, the draft remains in limbo. We would not, therefore, be advocating for the Government to seek an MRA under the existing TCA arrangements for legal services. A more general agreement on MRPQ might be a better starting point, but the EU institutions have

repeatedly stressed their contentment with the current TCA arrangements here, so we are not optimistic.

43. For the legal services sector at least, bilateral mutual recognition agreements between Bars may be more fruitful than agreements between the Government and individual Member States, which could trigger WTO issues. A degree of sensitivity to these nuances is thus to be encouraged and would be welcome.

Question 10: As it pursues the reset, are there lessons that the Government could usefully learn from other non-EU countries—such as Switzerland, Norway or Canada?

44. Yes. See, for example, our answers to questions 1 and 2 above.

Question 11: Will the UK's new machinery-of-government arrangements enable the Government to be as effective as possible in its engagement with the EU? If not, what further modifications would you advise?

45. Centralising the Government's EU-focused machinery, ensuring that it is adequately resourced and given sufficient profile, weight and authority are all necessary and positive.

46. Beyond that, it is important, regardless of which government department actually takes the lead in this way, to ensure:

    i. Officials dealing with the reset have a thorough understanding of the EU and its nature (and, to a degree, its frailties) as a legal construct, which inevitably ties its hands in how, and how quickly, it can act. The EU is very different from a sovereign state, and the Commission is likely to maintain firm red lines over what it regards as the EU's fundamental structural elements.

    ii. They should also be familiar with the conduct of the Brexit negotiations, including from the EU side. European Council decisions, including negotiation mandates, and European Parliamentary resolutions, adopted both before and since Brexit, provide valuable insights into the EU's approach and the potential mindset of longstanding EU officials who may be sitting on the other side of the negotiating table.

    iii. We hope too that ministers and officials alike might avail of the wealth of helpful background data and analysis, much of its still insightful as regards the UK-EU relationship, contained in the then-Government's Balance of Competences Review[9] conducted during 2012 – 2014, and to which the Bar Council contributed written and oral evidence under several categories.

    iv. A clear strategy is also essential from the outset, based on a clear understanding of the UK's economic and other interests and realistic assessments of what is achievable.

    v. Increased transparency – It should be possible to identify who is responsible for what issues in the relevant government department without having an inside track. In addition, officials who attend stakeholder engagement meetings, e.g. with the UK DAG, should be authorised to do more than merely confirm that negotiations are ongoing.

[9] https://www.gov.uk/guidance/review-of-the-balance-of-competences

vi. On a related point, there should be increased availability for, and openness to, substantive stakeholder engagement, including at ministerial level.

vii. That engagement should take place at a sectoral level, and even below. For example, for the legal profession, it is not sufficient to speak to one side of the profession in England and Wales. All sides of the profession, in all three UK legal jurisdictions, should be engaged with on an ongoing basis as needed; and the implications of the different structures of each profession should be understood and taken into account (e.g. the differing needs and priorities of large law firms, small niche firms and self-employed practitioners (including, in particular, barristers and advocates)).

Question 12: How can the Government most effectively engage with and inform the devolved Administrations and legislatures, the public, parliamentarians and business and other domestic stakeholders with respect to the reset process? Are there lessons that the Government could learn from the UK's negotiation of post-Brexit trade agreements with partners other than the EU?

47. See our answers to question 11.

Question 13: Is it necessary or desirable for the results of any UK-EU reset to take legally binding form? If so, what legal form should be taken by any new UK-EU agreements, and what would be the implications for parliamentary scrutiny?

48. Yes.

49. Legal commitments bind both parties for the future, regardless of possible future changes of government and policy at UK or EU level.

50. Legal commitments can, by their nature, be enforced and that enforcement can be cross-cutting. For example, under the existing TCA, both sides committed to upholding their environmental, social, labour and tax transparency standards as part of the Level Playing Field. In the event that either diverges significantly, there is a rebalancing mechanism allowing the other to retaliate with "necessary and proportionate" measures, not necessarily in the same sector. This type of enforcement measure can act as a significant deterrent.

51. Legal commitments provide legal and regulatory certainty, which is essential for businesses to plan and thrive – see e.g. stakeholder calls for long-term agreements to ensure data flows as referred to in response to question 8 above.

The Bar Council
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