



Brexit Preparedness seminar on professional qualifications, intellectual property, civil justice, company law, consumer protection and personal data

Council Working Party
(Article 50 Format)
27 November 2018

Professional qualifications - Key sectoral issues

Professional Qualifications Directive (PQD) - Directive 2005/36/EC

- 1) UK qualifications of EU27 and UK nationals recognised in EU27 **before** withdrawal date
 - *Decisions on the recognition of UK qualifications in any EU27 Member State taken before the withdrawal date are not affected.*
- 2) UK qualifications of EU and UK nationals whose applications for recognition in EU27 are **still pending** at withdrawal date
 - *EU27 Member States to take into consideration the fact that the application was made while the UK was still a Member State.*
- 3) EU nationals holding UK qualifications obtained **before** the withdrawal date applying for recognition in EU27 **after** withdrawal date
 - *Holders of qualifications obtained in the UK are advised to obtain recognition of these in an EU27 Member States before the withdrawal date.*
 - *EU27 Member States to take into consideration the fact that the qualification was acquired while the UK was still a Member State.*

Professional qualifications - Key sectoral issues

Professional Qualifications Directive (PQD) - Directive 2005/36/EC

4) EU nationals holding UK qualifications obtained after withdrawal date

- *Applications for recognition in EU27 Member States to be assessed under Member State law and policy.*
- *Minimum training conditions for the sectoral professions to be respected by any national recognition decision.*

5) UK nationals seeking first recognition of their UK qualifications (whenever acquired) in the EU27 after withdrawal date

- *Applications for recognition to be assessed under Member State law and policy.*
- *Minimum training conditions for the sectoral professions to be respected by any national recognition decision.*

Professional qualifications - Key sectoral issues

Professional Qualifications Directive (PQD) - Directive 2005/36/EC

6) UK nationals providing temporary or occasional services in the EU after the withdrawal date

- *UK nationals legally established in the UK will not be able to provide temporary or occasional professional services in any EU27 Member State under EU law rules, as of the withdrawal date.*
- *UK nationals legally established in an EU27 Member State will not be able to provide temporary or occasional professional services in any EU27 Member State under EU law rules, as of the withdrawal date.*
- *National competence: Host Member States' law and policy will determine this issue.*

7) EU nationals legally established in the UK providing temporary or occasional services in EU27 after the withdrawal date

- *EU nationals legally established in the UK will have no rights under EU law to provide temporary or occasional professional services in any EU27 Member State under EU law rules, as of the withdrawal date.*
- *National competence: Host Member States' law and policy will determine this issue.*

Professional qualifications - Key sectoral issues

Professional Qualifications Directive (PQD) – Supportive instruments

The European Professional Card (EPC) and the Alerts mechanism

- *UK's access to the Internal Market Information (IMI) System will stop as of the withdrawal date. UK users will no longer be able to access the IMI system itself. All competent authorities registered in the UK will be suspended and then deactivated.*
- *Specific technical steps are being considered in relation to the effect that this cut-off will have on all modules relevant to recognition issues, such as the EPC and the Alerts modules.*

Professional qualifications - Key sectoral issues

Lawyers Directives - Directive 77/249/EEC and Directive 98/5/EC

The specific case of Lawyers

- *UK lawyers (of whatever nationality) will no longer be able to rely on the Lawyers' Directives to continue exercising their profession in any EU27 Member State under their home country title.*
- *UK lawyers who are entitled to bear the host country title (through recognition of qualifications) will continue to be able to provide their services in the host Member State, but they will no longer be able to benefit from the two Lawyers' Directives in respect of other EU Member States.*

Professional qualifications - What is being done to address these issues

The Commission:

- *Commission preparedness notice of 21 June 2018*
- *Held several bilateral meetings with relevant stakeholders and Member States' representatives.*

Professional qualifications - What additional action / communication is required

The Commission will:

- *Complete the technical preparations regarding the effects of Brexit on relevant IMI modules.*
- *Discuss all these aspects in a EU27 technical expert seminar.*
- *Will consider providing guidance.*

Professional qualifications - Background and reference information

Commission preparedness notice on professional qualifications:

https://ec.europa.eu/info/sites/info/files/file_import/professional_qualifications_en.pdf

Intellectual Property - Key sectoral issues

1) Reduced territorial scope of trade mark and design rights

- *Unitary EU trade marks and Community designs will have no longer effect in the United Kingdom as from withdrawal date.*
- *Pending applications will no longer cover the United Kingdom as from withdrawal date.*
- *International registrations designating the EU will no longer have effect in the United Kingdom as from withdrawal date.*

2) No exhaustion of rights

- *Intellectual property (IP) rights will not be deemed exhausted in the EEA if the relevant goods are placed on the United Kingdom market only.*

3) Need for representation

- *Persons based in the United Kingdom will need EU-based representation before the European Union Intellectual Property Office (EUIPO) in all proceedings (except for the filing of an EU trade mark or Community design application).*

Intellectual Property - What is being done to address these issues

- *Commission published preparedness notices both in the area of trademarks/designs and of supplementary protection certificates to inform about legal situation.*
- *EUIPO published a comprehensive Q&A document on trademarks/designs to complement the preparedness notice.*
- *Commission and EUIPO have been communicating on these documents vis-à-vis stakeholders (right-holder organisations in particular, which themselves have spread much information).*

Intellectual Property - What additional action / communication is required

- *Only stakeholder action is required.*

Intellectual Property - Background and reference information

- *Commission preparedness notice on EU trademarks and Community designs*
https://ec.europa.eu/info/files/trademarks-and-designs_en
- *Questions & Answers on EU trademarks and Community designs*
https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/news/QandA_brexit_en.pdf
- *Commission preparedness notice on supplementary protection certificates*
https://ec.europa.eu/info/sites/info/files/file_import/supplementary_protection_certificates_en.pdf

Civil justice – Key sectoral issues (1)

- International jurisdiction, recognition and enforcement
 - Applicable law
 - Judicial cooperation procedures
 - Specific case: pending procedures on the withdrawal date
- Reminders
 - UK has opted into many but not all civil justice instruments
 - Old, bilateral agreements with the UK do not revive

Civil justice – Key sectoral issues (2)

- **Jurisdiction:** EU rules on jurisdiction will no longer apply where the defendant is domiciled in the UK (with few exceptions, e.g. consumer protection - Brussels Ia Regulation)
- **Recognition and enforcement:** EU rules on recognition and enforcement will no longer apply

Fall-back:

- National laws of conflict of international jurisdiction and recognition and enforcement of foreign judgements
- Extensive corpus of international conventions (in particular in family law matters)
- UK has announced its intention to accede to the 2005 Choice of Court Convention, and the 2007 Maintenance Convention

Civil justice – Key sectoral issues (3)

- **Applicable law:** EU Member States continue to apply EU rules on applicable law in
 - Contractual matters
 - Non-contractual obligations

(Universal application)

Civil justice – Key sectoral issues (4)

- Judicial cooperation instruments (in particular service of documents, taking of evidence)

Fall-back:

- National law governing service of foreign documents apply
- International conventions of 1965 (service of documents) and 1970 (taking evidence)

Civil justice – Key sectoral issues (5)

- The specific case of pending procedures involving the UK
- Jurisdiction
- Recognition and enforcement of judicial decisions rendered in the UK pre-Brexit
- Pending cooperation procedures

Civil justice – What is being done to address these issues?

- Stakeholders: (Re-)assess contractual choices of jurisdiction (and possibly contract law)
- Member States:
 - Assess impact on pending cooperation procedures (central authorities)
 - Assess need for ratification of existing international conventions
- EU: Commission preparedness notice on civil justice of 21 November 2017 will be updated

Civil Justice - Background and reference information

- Commission preparedness notice on civil justice

https://ec.europa.eu/info/sites/info/files/file_import/civil_justice_en.pdf

Company law - Key sectoral issues (1)

- UK incorporated companies will be third country companies and will not automatically be recognised under Article 54 of the TFEU
- Branches in EU27 Member States of UK incorporated companies will be branches of third country companies
- Subsidiaries of UK companies in the EU27 are EU companies and will of course continue to be covered by all relevant EU (and national) legislation
- The EU acquis in the area of company law and corporate governance will cease to apply to the United Kingdom

Company law - Key sectoral issues (2)

- Areas of EU company law in which EU rules cease to apply:
 - disclosure by companies and their branches, incorporation, capital maintenance and its alteration
 - cross-border mergers
 - interconnection of Member States' business registers (BRIS system)
 - shareholders' rights and take-over bids
 - European legal forms: European Company, European Economic Interest Grouping

Company law - What is being done to address these issues

- Commission preparedness notice on company law of November 2017
- National laws to address any issues
- Stakeholders to consider impact and act if necessary

Company law - Background and reference information

- Commission preparedness notice on company law:

https://ec.europa.eu/info/sites/info/files/file_import/company_law_en.pdf

Consumer protection - Key sectoral issues (1)

- EU consumer law will no longer apply to and in the UK
 - e.g.: Consumer Rights Directive, Unfair Commercial Practices Directive, Unfair Contract Terms Directive, Sales and Guarantees Directive, Package Travel Directive...
- Purchases from UK traders on the territory of the Union (i.e. online, by post or via commercial agents):
 - If the UK trader pursues commercial activities in or targets a MS:
 - Generally, the contract law of the country of residence of the consumer applies
 - If UK law is chosen, this cannot deprive the consumer of mandatory EU consumer law
 - EU jurisdictional rules allow a consumer to sue the trader in the court of his/her domicile, irrespective of the place of establishment of the trader

Consumer protection - Key sectoral issues (2)

- **Disputes between EU consumers and UK traders:**
 - The EU Online Dispute Resolution (ODR) platform will no longer be available to resolve such disputes
 - UK-based Alternative Dispute Resolution entities will no longer be required to act in such disputes
 - No cooperation of UK and EU on consumer protection on the basis of EU law beyond the withdrawal date

Consumer protection - What is being done to address these issues?

- Commission preparedness notice on Consumer Protection (February 2018) and Travelling (November 2018)
- Advice and help for consumers in cross-border disputes by the European Consumer Centres
- Ongoing discussions with stakeholders if additional actions are needed to raise awareness of EU consumers (e.g. to protect themselves, in certain cases, against a possible insolvency of the organiser of package travel established in the UK)

Consumer protection - Background and reference information

- Commission preparedness notice on consumer protection:

https://ec.europa.eu/info/sites/info/files/file_import/consumer_protection_and_passenger_rights_en.pdf

- Commission preparedness notice on travelling:

https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/travelling.pdf

Data protection - Key issue

Transfers of personal data from the EU to the UK will be subject to rules in Chapter V of GDPR on international transfers

Data protection – What can be done?

- GDPR provides a broad toolbox for data transfers to third countries for both private entities and public authorities, such as:
 - Standard Contractual Clauses
 - Binding Corporate Rules
 - Legally binding instruments between public authorities
 - Administrative arrangements
- GDPR has facilitated international transfers by introducing additional tools and simplifying the use of existing ones
- GDPR also allows transfers on the basis of specific derogations, e.g. on the following grounds:
 - consent
 - performance of a contract
 - exercise of legal claims
 - important reasons of public interest

Data protection - What is being done to address these issues?

- Commission preparedness notice on personal data protection of January 2018
- Relevant for private parties, but also public bodies at national and European level

Data protection - Background and reference information

- Commission preparedness notice on data protection

https://ec.europa.eu/info/sites/info/files/file_import/data_protection_en.pdf

- Communication of 13 November 2018 "Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan"

https://ec.europa.eu/info/publications/communication-preparing-withdrawal-united-kingdom-european-union-30-march-2019-contingency-action-plan-13-11-2018_en