

Government future position paper – cross-border civil and judicial cooperation framework

This Government Position paper, like some others which have been published, is annoyingly vague on detail and repeats the silly phrase “deep and special” which has featured in some of the earlier papers. It is a rather soppy and meaningless phrase which seeks to gloss over the fact that 15 months ago, we voted to leave because we wanted a looser relationship with the EU – it was far too “deep”.

It is self-evident that some form of cooperation with the EU on legal matters will be essential. Civil law (as opposed to criminal) includes, among other things, trade disputes, family issues and cases of insolvency and in today’s world, differing parties may well reside in different countries.

The document reiterates the point which the government has made on a number of previous occasions – we will be leaving the jurisdiction of the European Court of Justice as it derives its authority from the EU treaties which will no longer apply after Brexit. Fair enough, but what follows is basically a wish list, which points out that as the UK has signed up to a number of international agreements on civil judicial cooperation but nonetheless reverts to the oft-repeated hope that as we are starting from “an unprecedented position of close integration”, coming up with a deal shouldn’t be too hard. All the same, the authors of the document are sufficiently aware of the complexities of securing a new arrangement to suggest that the UK “would benefit from an interim period that allowed for a smooth and orderly move from our current relationship to our future

partnership.”

One detail worthy of note is the statement in Paragraph 22 that “we will seek to continue to participate in the Lugano Convention that, by virtue of our membership of the EU, forms the basis for the UK’s civil judicial cooperation with Norway, Iceland and Switzerland.” The Lugano Convention, however, states that courts from contracting parties to the Convention should take into consideration judgements made by the European Court of Justice. Taking something into consideration isn’t the same as being bound by it, but even so, there does seem to be some ambiguity here given how keen the Government has been to emphasise that Brexit will bring the ECJ’s authority to an end in the country.

What is more, the paper is keen to talk of similarity when it is the differences between UK and continental legal systems which are more of greater significance. The differences are more noteworthy when it comes to criminal justice but even so, the foundations of **all** UK law are different from most of those on the Continent. Even as an EU member state, the UK is a popular choice for international civil disputes because of the clarity of its legal system. London is as important a centre for legal services as for financial, as this article makes clear. The Government’s Position Paper cites the Queen Mary Study which states that:-

- *30% of international contracts are governed by English Law – second place Swiss with 9%*
- *40% of international arbitrations are in London – 7% in New York.*

The rest of the world believes that English Law is superior to Civil (European, Code Napoleon jurisdictions) Law, but the British Government is not prepared to back English Law (the Common Law: the law of India, the USA, Canada, Australia, New

Zealand, South Africa, Hong Kong, etc.) which is preferred internationally because English Law provides certainty.

Even some French and German multinationals prefer to make their contracts subject to English law (even when contacting with parties in their own country) because English Law provides certainty.

If the the British Government allows European Law to override English law, then London will cease to be the number one destination for international arbitrations, which will also result in ancillary job losses (e.g. , insurance (Lloyds and, P and I Clubs), finance, legal, scientific and expert services).

The British Government needs to realise that it is English Law which is largely responsible for the primacy of the City of London, because the world believes that contracts made in the U.K. will be fairly enforced, and should not allow European Law to subvert English Law.

We can but hope that the significant role played by our capital city will continue after Brexit. Unfortunately, the Govenrment paper has offered us much reassurance on this subject nor offered many clues on how we will cooperate with the EU on cross-border civil issues.