

UPCOMING EVENTS & LIKELY DATES

2017

SEPTEMBER

BT Pension Scheme (FII- Rights of Shareholders)

ECJ Judgment

OCTOBER

Littlewoods (compound interest on repaid VAT)

Supreme Court Judgment

NOVEMBER

CFC & Dividend GLO (portfolio investments)

High Court: further Hearing

Q3

FII (dividends from controlled interests)

Supreme Court Permission to Appeal

2018

FEBRUARY

Prudential (Portfolio Dividends)

Supreme Court Hearing

EU Rights after Brexit – the UK Government's Position

Tom O'Reilly and Cristiana Bulbuc

The UK Government has published six Brexit "position papers" in the last week with further papers expected into September.

The papers can be found at:

- [Future Customs Arrangements](#)
- [Northern Ireland and Ireland](#)
- [Continuity in the availability of goods for the EU and the UK](#)
- [Confidentiality and access to documents](#)
- [Providing a cross-border civil judicial cooperation framework](#)
- [Enforcement and Dispute Resolution: A Future Partnership Paper](#)

The overall message is that the UK Government is now looking for a transitional period, possibly of two to three years, to allow time for businesses to prepare for a future agreement with the EU, and that any interim agreement should be close enough to the status quo that businesses are only required to adjust once. Among the papers 'Enforcement and Dispute Resolution: A Future Partnership Paper' ('the Paper') is said to address the enforcement of EU rights. The Paper has few proposals and no evident commitments. The Paper explicitly states that leaving the EU will bring an end to the jurisdiction of the CJEU. However, the Paper does not rule out the CJEU maintaining its jurisdiction during a transitional period after March 2019 by agreement, saying only that the UK will work with the EU on the design of the interim period – including arrangements for judicial supervision.

The UK proposes that where the Exit-Agreement or future relationship agreements give rise to rights and obligations for individuals and businesses operating within the UK, these will be given effect under UK law and will be enforced by the UK courts; ultimately the UK Supreme Court. Reciprocally, individuals and businesses operating within the EU should be provided with means to enforce their rights and obligations within the EU's legal order and through the national courts of the remaining Member States.

The Government contends that when the 'direct jurisdiction' of the CJEU ends, whether that is on Brexit in March 2019 or after a transitional period, the rights of individuals will not be weakened and that the UK is committed to complying with its obligations under international agreements. However, the UK Government is not willing to give the CJEU authority over UK-EU disputes. 'Direct jurisdiction' is not defined, although it does imply that the European Court will be left with a form of 'indirect jurisdiction', whatever this may be. Which begs the question – how much influence will the CJEU retain under a bilateral agreement with the UK?

The Government, consequently, proposes a new dispute resolution mechanism after the transitional period to address any disagreements between the UK and EU on interpretation or application of future agreements, distinct from how rights and obligations agreed during negotiations will be implemented and enforced. The paper does not advocate any model but gives a number of options:

- establishment of a joint committee;
- arbitration model;
- reference to pre-agreement CJEU decisions whereby any agreement, replicating EU language, will be interpreted and applied in line with relevant interpretations of CJEU prior to the agreement;
- reference to post-agreement CJEU decisions whereby the agreement can specify that account is to be taken of CJEU decisions when interpreting concepts present in that agreement; and
- voluntary references to CJEU whereby concepts of EU law present in an agreement will be referred to the CJEU for a binding determination of their meaning – this approach is, in practice the current procedure whereby national judges can send questions to the CJEU for interpretation of the Treaty.

How the proposals, if anything, will be agreed and implemented will depend on what the UK and EU agree on EU citizen rights after Brexit. While it is impossible to say what may be agreed at this stage, the indication from the Paper is that the UK is more in favour of an EFTA type of court oversight.

JHA BLOG

JHA's blog is updated with major news and developments in the fields of tax litigation, sanctions law, commercial litigation and arbitration. The blog can be accessed [here](#).

- Simon Whitehead
- Paul Farmer
- Michael Anderson
- Ray Mc Cann
- Steve Bousher
- Peter Stewart
- Philippe Freund
- Helen Mc Ghee
- Katy Howard
- Cristiana Bulbuc

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