

MEMORANDUM OF UNDERSTANDING

Bilateral Agreement between the Brussels/Belgian Bars and the UK Law Societies and Bar Councils/Faculty of Advocates

1. Recitals

- A. In recognition of their mutual regard, their shared goals of protecting and developing the rule of law in their respective jurisdictions and internationally, and in recognition of the growing cooperation and links between their members and importance of international legal services, the UK Bars and Law Societies and the Belgian Legal Professional Bodies the Bar Associations have decided to formulate a Memorandum of Understanding.
- B. The Bar Associations and Law Societies re-affirm their commitment to the rule of law, human rights and access to justice and their shared goal of ensuring that the legal profession, through the highest standards of professionalism and client care, continues to advance these principles.
- C. The legal situation currently in force in Belgium can be described as follows:
- a. There is no monopoly on the provision of legal advice in Belgium. Not even a (Belgian or foreign) law degree is required to give legal advice.
 - b. In contrast, the right of audience in court is reserved to lawyers who are admitted to one of the Bars (*advocaten/avocats*), subject however to a limited number of exceptions (e.g. in the *labour courts* or in the *justice of the peace*).
 - c. Fully qualified Belgian lawyers are admitted to the “Tableau” (or A-list). In principle, only Belgian nationals and EU-nationals can be admitted to the Tableau (articles 428 and 428*bis* of the Belgian Judicial Code).
 - d. A Royal Decree of 24 August 1970 extends the possibility to be admitted to the Tableau to third country nationals who (i) have been domiciled in Belgium for at least six years; (ii) at the time of the application for admission, have neither a permanent or temporary address abroad nor a registration with a foreign Bar or Law Society; and (iii) undertake not to have any such address or registration. This extension will only be applicable subject to reciprocity.
 - e. Lawyers who are EU nationals and members of another EU Bar or Law Society are entitled to practice on a permanent basis in Belgium as lawyers under their home title. These lawyers should be admitted to the EU-list of the local (host) Bar (art. 477*quinquies* of the Judicial Code). They have the same rights and privileges as fully qualified Belgian lawyers, including right of audience, except that, for representation of a client in court, they should work in conjunction with a fully qualified Belgian lawyer.

- f. After three years of practice of Belgian and/or EU law in Belgium, lawyers admitted to the EU-list may apply to the local Bar in order to become “*advocaat*”/”*avocat*” (art. 477*nonies* of the Judicial Code). They are entitled to retain their membership of their home Bar or Law Society.
 - g. Foreign lawyers who are not eligible for being admitted to the Tableau or the EU-list (because of their nationality or because their professional title is not recognised by the European Directives), may apply for admission the B-list. Admission to the B-list entitles them to work as (foreign) lawyers in a Belgian law firm or in the Belgian office of a foreign law firm. They do not, however, have legal privilege and have no right of audience in court, but they are entitled to become associates or partners in a law firm in Belgium.
 - h. In case of a no-deal Brexit, UK solicitors, barristers and advocates will no longer be entitled to remain registered on the EU-list, either because of their non-EU-nationality or because their professional title will no longer be recognised, subject however to the grandfathering legislation described in Recital D below.
 - i. UK lawyers who have been admitted to the Tableau based upon their three year practice in Belgium will no longer be entitled to remain on the Tableau if they do not have the Belgian nationality or the nationality of another EU Member State, subject again to the grandfathering legislation described in Recital D below. UK lawyers admitted to the Tableau who (also) have another EU-nationality will not be affected.
- D. Article 34 of the new Belgian Law of 28 March 2018 regarding the Withdrawal of the United Kingdom from the European Union (published in the Belgian Official Gazette of 22 April 2019, hereafter the “*Brexit Law*”) provides that, in the event of a no-deal Brexit, “*the rights of lawyers acquired on the basis of establishment on or before the date of entry into force of the present Law, remain in place, subject to reciprocity, after the entry into force of the present Law*” (free translation). Based on this provision non-EU national UK lawyers who have been admitted to the EU list or the Tableau prior to Brexit will be entitled to hold on to their position on the EU list or the Tableau after Brexit, subject to reciprocity, for a transition period starting on the date of entry into force of the Brexit Law as will be determined by Royal Decree. Article 35 of the Brexit Law provides that this transition period will expire on a date determined by Royal Decree, but no later than on 31 December 2020. Such regime is applicable according to the conditions laid down in Article 35 of the above-mentioned legislation (ex. until 31 December 2020 or any shorter time limit as may be determined by Royal Decree).
- E. In the UK, foreign qualified lawyers from recognised jurisdictions, which include Belgium, may requalify at any time via the relevant Transfer Schemes overseen by the six UK legal professional bodies. EEA or Swiss nationals qualified in the EEA or Switzerland may apply for exemptions from part of the aptitude test.

In the event of a no-deal Brexit, in all UK jurisdictions the preferential treatment of EU, EEA and Swiss lawyers is ended and their position is aligned with third country lawyers.

However, the regulations revoking the preferential treatment of EU, EEA and Swiss lawyers under the Establishment Directive make provision for a transitional period (until

31 December 2020), to allow EU and EEA lawyers already registered with the Law Society of England and Wales, the Law Society of Northern Ireland, the Law Society of Scotland, the Bar Council of England and Wales, the Bar Council of Northern Ireland or the Faculty of Advocates the time to make the necessary changes to their practice to comply with the new regulatory framework, such as changing practice or transferring qualifications. Enhanced provision is made for Swiss lawyers to reflect an agreement made between the UK and Swiss governments in December 2018.

During that transitional period, it will still be possible for EU and EEA lawyers registered with the appropriate UK Law Society or Bar on Exit Day (who do not have the requisite 3 years' experience at that time but who acquire it before 31 December 2020) to requalify in that jurisdiction by the three years practice route.

EU and EEA and Swiss lawyers who have transferred to the UK legal profession through the three years' practice route under the 2000 Regulations or who have taken any transfer examination will be able to retain their UK professional title in the relevant jurisdiction.

These rules are set out for England and Wales and Northern Ireland in The Services of Lawyers and Lawyers' Practice (Revocation etc) (EU Exit) Regulations of 2019.

In Scotland, the relevant rules are set out by the Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc.) Regulations 2019.

The rules on professional qualifications are set out in The Recognition of Professional Qualifications (Amendment etc) (EU Exit) Regulations 2019. This is a UK-wide statutory instrument.

These Statutory Instruments will enter into force on Exit Day.

- F. Currently, EU qualified lawyers are able to establish in the UK under the Establishment of Lawyers Directive (98/5/EC) by registering as a Registered European Lawyer (REL) with one of the six regulatory bodies for the UK legal professions listed in Art. 1 of that Directive, namely the Bar Council of England and Wales (BCEW), the Law Society of England and Wales (LSEW), the Faculty of Advocates (FoA, Scotland), the Law Society of Scotland (LSS), the Bar Council of Northern Ireland (BCNI) and the Law Society of Northern Ireland (LSNI). RELs are able to requalify and obtain one of the six host state titles after three years of effective and regular practice of local law including EU law.

RELs who have fulfilled these requirements set out above may apply to the relevant regulatory body with whom they have registered to obtain their professional title without fulfilling any further requirements. REL status can be obtained with only one regulator in each UK jurisdiction and it will be necessary for RELs to choose one branch of the profession (either the Law Society or the Bar).

After UK's EU exit, this category ceases to exist for those EU, EEA or Swiss lawyers who would like to register with a UK Law Society or Bar but have not already done so. Depending on their role and the work they intend to carry out, they may need to register with the relevant Law Society or Bar as Registered Foreign Lawyers (RFL) instead.

RFLs do not have rights of audience in the courts, nor do they have the right to conduct litigation, nor the right to draw up court documents. In England and Wales, RFLs may however apply to the Bar Standards Board for permission to appear in the English courts on an ad hoc basis (“temporary call”).

Alternatively, RFLs from recognised jurisdictions may requalify at any time via the relevant Transfer Schemes overseen by the six UK legal professional bodies. Once the regulations amending the EU Mutual Recognition of Professional Qualifications (MRPQ) Directive come into force, EU, EEA or Swiss nationals qualified in the EU, EEA or Switzerland will no longer be entitled to seek exemptions from part of the relevant Transfer Scheme unless the relevant Scheme permits this (although this may not necessarily prevent the candidate from being granted individual exemptions based on qualifications and experience). However, as with the regulations revoking the preferential treatment of EU, EEA and Swiss lawyers under the Establishment Directive, they include a transitional provision, to allow EU and EEA lawyers who applied to one of the six UK professional bodies for exemptions or to sit their Transfer Scheme prior to Exit Day to complete the process with the same level of recognition granted under the Directive.

- G. The UK Legal Profession Bodies and the Belgian Legal Profession Bodies express their common intent to cooperate with each other in order to resist the introduction of any new or reinforced entry barriers to the UK or Belgium, as the case may be, in relation to the exercise of the legal profession by UK non-EU national lawyers in Belgium or by Belgian lawyers in the UK. Where appropriate the UK Legal Profession Bodies and the Belgian Legal Profession Bodies will lobby their government(s) to avoid any such new or reinforced barriers.
- H. This Memorandum of Understanding addresses the particular issues that may arise in the event of a no-deal Brexit, but also covers future bilateral cooperation generally, even if the UK and the EU reach an agreement in connection with Brexit.

2. **Newcomers from the UK to Belgium**

- a. Promotion of B-list: All Parties will promote the B-list for UK lawyers who want to start practising in Belgium post-Brexit (i.e., in the event of a no-deal Brexit) otherwise than on a fly-in fly-out basis; the Brussels/Belgian Bars (the *Ordre français des avocats du barreau de Bruxelles*, the *Nederlandse Orde van advocaten bij de balie te Brussel*, the *Orde van Vlaamse Balies* and the *Ordre des barreaux francophones et germanophone*, hereafter together the “*Belgian Legal Profession Bodies*”) will provide all useful information on the characteristics of the B-list and keep the UK signatories (Law Societies and Bar Councils, Faculty of Advocates or equivalent bodies, hereafter the “*UK Legal Profession Bodies*”) informed on any relevant development or amendment.
- b. Post-Brexit admission to B-list: admission to B-list for UK lawyers will be treated on terms not less favourable to the applicants than those applicable to lawyers from other non-EU Member States.

3. Current members of Tableau or EU-list

- a. In the event of a no-deal Brexit the position of non-EU national UK lawyers in Belgium will be governed by Articles 34 and 35 of the Brexit Law, as set forth in recital D.
- b. In the event of the UK leaving the EU with a withdrawal agreement in place concluded with the European Union, the rights of non-EU national UK lawyers currently on the Tableau or EU list will be determined according to the provisions of the said withdrawal agreement, subject to Article 428 of the Judicial Code on the EU Member State nationality requirement.
- c. If the withdrawal agreement UK-EU should be interpreted as not granting a grandfathering clause exempting the non-EU national UK lawyers from the EU Member State citizenship requirement provided in article 428 of the Judicial Code, the Belgian Legal Profession Bodies express their common intent to lobby the Belgian Government with a view to enabling the non-EU national UK lawyers admitted to the Tableau to remain on, or return to, the Tableau as soon as possible, and in this context to endeavour to obtain any of the following:
 - i. The abolition of the EU Member State citizenship requirement in article 428 Judicial Code;
 - ii. The passing of any other special legislation to this effect by the Belgian Parliament; or
 - iii. An appropriate amendment of the Royal Decree of 24 August 1970.
- d. Each of the Brussels Bars will ensure that, upon the occurrence of any event as a result of which non-EU national UK lawyers or EU national UK lawyers whose home title is no longer recognised under Belgian law are prevented from remaining on the Tableau or the EU-list, as the case may be, such non-EU national UK lawyers or EU national UK lawyers whose home title is no longer recognised under Belgian law will automatically move to the B list without further formalities, except that each UK lawyer concerned will have an individual opt-out opportunity. The Brussels Bars will exercise their best efforts to ensure that non-EU national UK lawyers registered on the Tableau who (have to) transfer to the B-List because they do not comply with (i) the citizenship requirement of Article 428 Judicial Code or (ii) the conditions for exemption provided by the 1970 Decree, will return to the Tableau upon modification of the said requirement or conditions for exemption, under terms depending on the outcome of the Brussels Bars' endeavours mentioned in clause (b) above.

4. Offices - Partnerships and cost sharing combinations

Non-EU national UK lawyers admitted to the B-list will be entitled to open an office in Brussels and/or to enter into cost sharing combinations or partnerships with other lawyers admitted to the Tableau, the EU-list or the B-list, subject to prior approval of the partnership by the relevant Belgian Bars.

5. Reciprocity

- a. The provisions of this Memorandum of Understanding are subject to the respect of the reciprocity principle.
- b. In particular, but without prejudice to the generality of the foregoing, reciprocity will apply to matters relating to permanent education and regulation of third party (trust) accounts, except to the extent that mandatory provisions of host state law should provide differently.
 - i. Permanent education: No additional permanent education requirements will be imposed by the host state, except where the rules of the home state should become materially more lenient than the host state rules, in which case the host state authorities may impose such additional obligations as may reasonably be required to compensate for the discrepancy.
 - ii. Third party (trust) accounts: if a lawyer (or his or her firm) maintains a third party (trust) account in his/her home state, the host state authorities will refrain from requiring that another third party (trust) account be opened in the host state. If the lawyer maintains a third party (trust) account in the host state, such third party (trust) account will be subject to the rules and controls which apply in the host state.

6. Information obligations

The UK Legal Profession Bodies and the Belgian Legal Profession Bodies reciprocally undertake to keep the relevant other professional body or bodies informed as appropriate on:

- a. any disciplinary proceedings opened in the host state against lawyers of the home state and any disciplinary sanctions imposed (directing the information to the relevant regulatory body where regulatory functions are discharged independently);
- b. notable developments in the professional ethics rules, including but not limited to matters concerning permanent education or third party (trust) accounts; and
- c. notable developments in, or studies on, the legal profession in the two countries, including but not limited to IT/LegalTech.

7. Follow-up

The Belgian Bars and the UK Law Societies and Bars will set up a common advisory board, which will hold meetings when necessary and at least annually to assess progress and discuss

subjects of common interest. The members of this board will be appointed by the Bars and Law Societies.

8. No binding effect

This Memorandum of Understanding is a statement of common intent; it is not intended to give rise to legally binding obligations.

Signatories:

Date:.....

Belgian Federal and Brussels Bars:

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Edward Janssens, President of the Dutch Speaking Federal Bar

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Pierre Sculier, President, of the French and German speaking Federal Bar by special proxy

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Peter Callens, President of the Dutch Order of Lawyers in Brussels

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Pierre-Philippe Hendrickx, Treasurer of the French Speaking Brussels Bar

***UK Law Societies, Bar Councils and Faculty of Advocates for England and Wales,
Scotland and Northern Ireland:***

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Simon Davis, Law Society of England and Wales Law Society of England and Wales

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Richard Atkins QC, Chair of the Bar, the Bar Council of England and Wales

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John Mulholland, President, The Law Society of Scotland

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Angela Grahame QC, Vice-Dean, The Scottish Faculty of Advocates

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Suzanne Rice, President, the Law Society of Northern Ireland

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Bernard Brady, Vice Chair of the Bar of Northern Ireland