



HM Government

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# Framework for the UK-EU partnership

## Civil judicial cooperation

JUNE 2018

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This presentation is **part of a series produced by the UK negotiating team** for discussion with the EU, in order to inform the development of the future framework.

It **focuses on an element of the vision for our future relationship** set out by the Prime Minister in Munich and at Mansion House.

The **future framework will set out the terms of our future relationship**, to be translated into legally binding agreements after the UK's withdrawal.

The **UK and the EU will conclude the future framework alongside the Withdrawal Agreement** later this year.

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## Our vision for the future partnership

The United Kingdom wants to build a **new, deep and special partnership** with the European Union.

A partnership that **protects our shared interests and values**, ensuring we can act together for our mutual benefit.

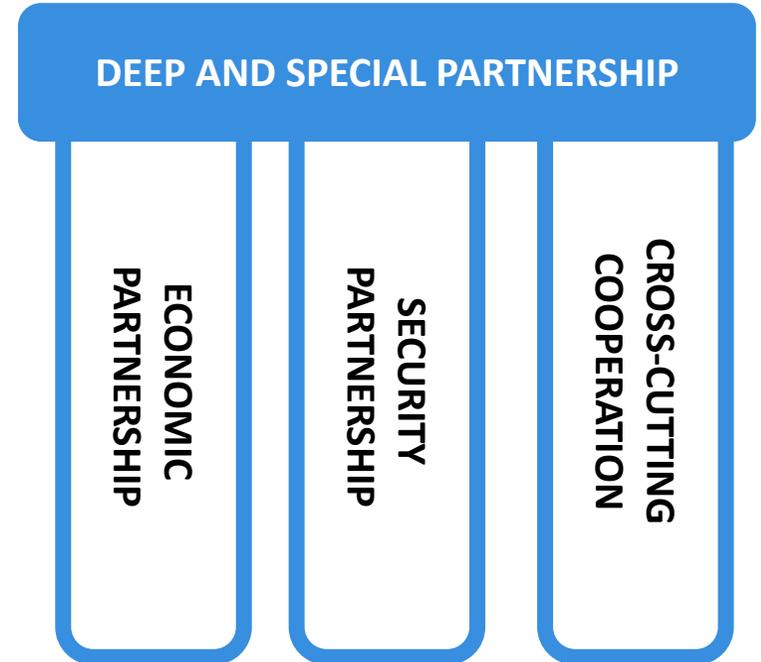
An approach that delivers for **the whole United Kingdom** and its Overseas Territories and Crown Dependencies, as well as for the EU.

We believe this partnership should have **two core parts**.

An **economic partnership**, that goes beyond any existing FTA, covering more sectors and with deeper cooperation.

And a **security partnership**, maintaining and strengthening our ability to meet the ever evolving threats we both face.

These will sit alongside **cross-cutting areas** such as data protection.



## Structure of discussions on the future framework

The UK and EU negotiating teams have jointly published the **structure for discussions on the future framework**, reflecting the breadth of the partnership both sides want to build.

### BASIS FOR COOPERATION

Structure, governance, interpretation and application, dispute settlement, non-compliance and participation and cooperation with EU bodies

### ECONOMIC PARTNERSHIP

Aims of the economic partnership, goods, agricultural, food and fisheries products, customs, services and investment, financial services, digital and broadcasting, transport, energy, horizontal measures and mobility framework

### SECURITY PARTNERSHIP

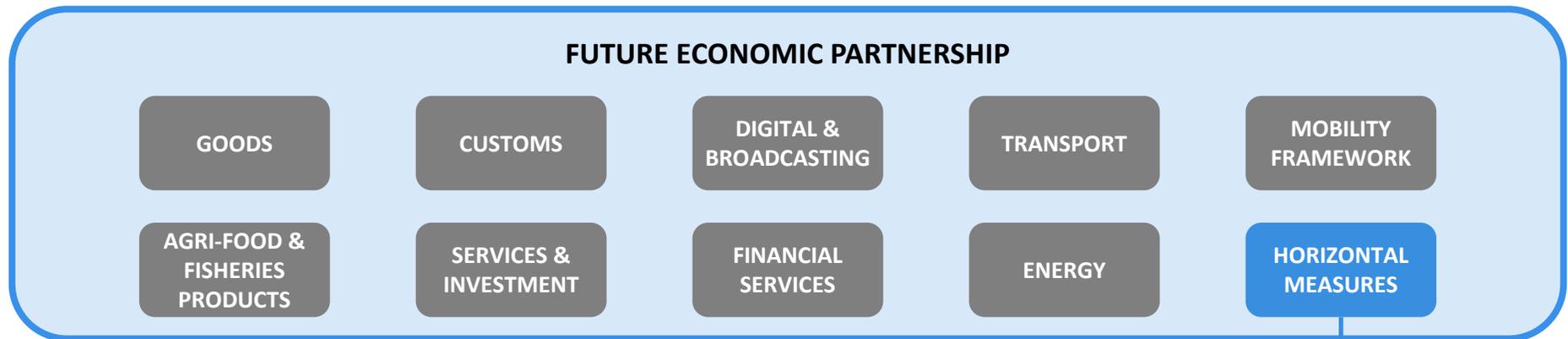
Aims of the security partnership, law enforcement and criminal justice, foreign, security and defence and wider security issues

### CROSS-CUTTING/STANDALONE

Data protection, cooperative accords (science and innovation/culture and education) and fishing opportunities

# The role of civil judicial cooperation in the economic partnership

Civil judicial cooperation is a cross-cutting area that enables many areas of the future economic partnership to operate effectively.



Horizontal measures include

## CIVIL JUDICIAL COOPERATION

Legal certainty is vital to underpin the future partnership between the UK and EU, enabling businesses to trade and invest and consumers to purchase goods and services with confidence; and individuals and families to live, study and work in one another's countries.

Effective civil judicial cooperation arrangements encourage people to abide by their agreements and mean that when things go wrong and disputes arise citizens and business have certainty – about which country's court will hear a case, which law will be used and that judgments can be enforced in the UK and EU.

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## The value of international civil judicial cooperation

The global system of rules has grown up over decades. International civil judicial cooperation has a **purpose wider than trade**, and **predates the single market**.

### GLOBAL AND REGIONAL ARCHITECTURE

Developed through the Hague Conference, regional intergovernmental cooperation and the EU treaties with effects reaching beyond single market considerations

### UNDERPINS TRADE AND MOBILITY

Civil judicial cooperation underpins a wide range of transactions and relationships, supporting people and businesses in their private lives and commercial interactions

### LEGAL CERTAINTY & RULE OF LAW

Families, business, consumers and employees benefit from the confidence to trade, live and work across borders

### PROTECT RIGHTS

The UK and EU have worked globally and regionally over decades to create rules which protect the rights of citizens, consumers, families and businesses

## The value of continued cooperation

Over time member states and the EU have built a framework of civil judicial cooperation **going further than international rules** in a range of areas.

The UK and EU have each said they want an ambitious future partnership incorporating a close economic relationship and recognising the ties between our citizens.

Whatever the precise form of our future partnership the practical reality is that:

- our companies will continue to **trade and invest** across borders
- our **consumers and businesses** will continue to buy goods and services across borders
- our **citizens and families** will continue to live, work and study in each other's countries

The UK and EU future partnership will be broader than free trade, and trade agreements are not a precondition for civil judicial cooperation rules globally.

**So it is in the UK and EU's mutual interest to work towards a new framework for civil judicial cooperation** that underpins our new relationship and works for the different Member States and for the distinct jurisdictions within the UK.

## UK and EU statements

The UK and EU both agree that there would be merit in **exploring options for maintaining civil judicial cooperation** as part of our future partnership.

### PM MANSION HOUSE SPEECH

*March 2018*

“We will want our agreement to cover civil judicial co-operation, where the EU has already shown it can reach agreement with non-member states, such as through the Lugano convention, although we want a broader agreement that reflects our unique starting point”

### COUNCIL GUIDELINES

*March 2018*

“The future partnership should include ambitious provisions on movement of natural persons....and related areas such as coordination of social security and recognition of professional qualifications. In this context, options for judicial cooperation in matrimonial, parental responsibility and other related matters could be explored...”

## Civil judicial cooperation: families

Families benefit from clear rules to resolve disputes in sensitive matters such as divorce, maintenance and child protection quickly and efficiently.

### CASE STUDY

An EU citizen has been living in Wales for 10 years with her Welsh husband and two children. The marriage breaks down and the EU citizen returns to her EU state with the children. After a year there she decides to seek a divorce. She is currently able to start divorce proceedings in either Wales or in the courts of the EU state, where she is now resident.

If she starts proceedings in the EU state, the current rules prevent her husband from running parallel divorce proceedings in Wales. She can be sure that any judgment will be recognised throughout the UK and EU. Without such rules in place, if the husband decides to pursue separate divorce proceedings the family could be exposed to the expense of conflicting court cases in different states.

### EVIDENCE

*There are almost 800,000 British citizens living in EU Member States and 3.5 million EU citizens living in the UK (Source: ONS).*

*There are a significant number of families spread between the UK and the EU – in 2014 there were an estimated 435,800 families in the UK where one member has UK nationality and one has EU nationality (Source: ONS).*

*When things go wrong, those families need to know that they will be able to resolve disputes in a clear, predictable way, without delay.*

## Civil judicial cooperation: consumers

Consumers and employees benefit from protections for weaker parties, meaning that they are not forced to go to the expense of fighting cases in another country.

### CASE STUDY

An EU consumer buys bespoke oak furniture from an English company, which was advertised for sale in her own country.

However, the furniture never arrives and the company refuses to acknowledge her demands for a refund. Under the current rules the consumer will usually be able to bring her case in the country where she lives. She can be confident that any judgment she obtains will be enforced across the EU, and moreover she can benefit from streamlined processes to obtain enforcement of any compensation due to her.

Without an appropriate agreement, it is unlikely to be practical for the consumer to enforce her rights. She could not rely on the English court to enforce a foreign judgment, so she is likely to have to sue in England. As a result it may take longer for the case to be resolved or she may decide not to pursue her rights at all.

### EVIDENCE

*These consumer protections help to underpin important trade between the UK and the EU: for example in 2015, EU consumers spent an estimated 7.41 billion euros for goods and services in UK online retailers, and UK consumers 7.37 billion in the EU27 (Source: European Council Paper - The Consumer Perceptions of (Cross-border) eCommerce in the EU Digital Single Market report).*

## Civil judicial cooperation: business

Civil judicial cooperation streamlines legal proceedings across borders and supports fair competition, avoiding competing proceedings in different countries.

### CASE STUDY

An EU company has ordered machine tools from an English company. When they arrive the tools are defective and the EU company wants to begin legal proceedings. Under the current framework there are clear rules which dictate which court will hear the case and the EU company can sue in the court of its own state, as this was the place where the goods were to be delivered. Both sides know any judgment will be enforced across the UK and EU.

The case can also benefit from established rules on serving documents and taking of evidence. Without an appropriate future agreement, the EU company would have to sue in England, otherwise it would be unlikely to get a judgment enforceable against the English company. The English company might make the tactical decision to open parallel proceedings in a second court - adding time and cost to the proceedings. Any judgment the EU company received in an EU member state's court would not be enforceable in England unless the English company was present in that state or has accepted to go to court there.

### EVIDENCE

*An effective civil judicial relationship underpins business confidence and trade between the UK and EU. Businesses are more confident in entering into cross border contracts as they know there are clear rules to resolve any disputes. This trading relationship is of significant value: the EU27 exported €492 billion of goods and services to the UK in 2017, whilst importing €334 billion of goods and services from the UK that year (Source: Eurostat).*

## Civil judicial cooperation: insolvency

Businesses and creditors value the certainty of predictable and efficient cross-border insolvency rules.

### CASE STUDY

A company has its headquarters in Germany, several factories in France and Poland and sales offices across the UK – it employs several hundred staff across all these countries and has creditors across the UK and EU. If the company gets into financial difficulty, under the current rules insolvency proceedings opened in Germany will take precedence over those opened elsewhere. This will reduce the cost and time taken in legal proceedings – giving the best possible chance of rescuing the company. In the event that the company cannot be rescued, its assets can be handled effectively within the main insolvency proceedings in Germany.

Without these rules creditors could be forced to pursue piecemeal proceedings across different countries, which will be costlier and take longer to resolve. This increases the likelihood of the company going into liquidation rather than being rescued, leading to lost jobs and lower returns to creditors.

### EVIDENCE

*The UK's participation in these rules is beneficial to EU businesses that have interests in the UK. The value of foreign direct investment (FDI) positions held in the UK by EU27 investors totalled €1.8 trillion in 2016. That same year, UK FDI positions held in the EU27 were worth €1.2 trillion (Source: Eurostat).*

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## Civil judicial cooperation between the EU and third countries

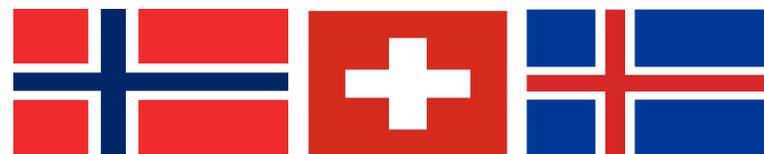
EU Member States and the EU in its own right have been active participants in, and signatories to, global civil judicial cooperation rules.

The **EU's framework of civil judicial cooperation has built on international rules** in the areas of divorce and child abduction and gone further in others including insolvency, measures to simplify recovery of debt, and small claims (particularly to the benefit of SMEs, consumers and individuals).

The EU has also developed a **bespoke arrangement with third countries (the Lugano Convention)**, which extends some of the current EU civil judicial cooperation framework, along with associated guarantees of rights and obligations on both parties. We want a broader agreement that reflects our unique starting point.



The Hague Conference on Private International Law founded in 1893 promotes the use of common rules in individual common and civil law systems to enable mutual confidence and trust in signatory states' legal systems and judgments.



### **LUGANO CONVENTION**

EU-Lugano extends the Brussels 1 regulation to Iceland, Norway, Switzerland

## A UK–EU agreement on civil judicial cooperation

We are seeking a **new bilateral agreement** with the EU to cover a package of measures, underpinned by robust governance arrangements.

A UK-EU agreement should recognise that the UK will be a third country but also recognise the **close and continuing ties** between our citizens and our businesses.

The EU has already signalled it is willing to consider a new form of relationship in respect of family law. The UK wants to see this **extended across the sphere of civil judicial cooperation**.

### FAMILY

Covering where cases are heard and the recognition and enforcement of judgments in cases such as divorce, maintenance and those involving children

### CIVIL AND COMMERCIAL

Covering which law applies, covering where cases are heard, ensuring contractual arrangements on where disputes are heard are respected, and ensuring that there is cross border recognition and enforcement of judgments

### INSOLVENCY

Covering jurisdictional rules and applicable law, and recognition and enforcement of judgments relevant to insolvency proceedings across borders

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## Conclusion

International civil judicial cooperation rules **deliver legal certainty** and protect the rights of citizens and businesses. The EU is party to a range of international agreements in this area, and the EU and its Member States, including the UK, have developed that cooperation further.

The UK and EU have each said they want an **ambitious future partnership** incorporating a close economic relationship and recognising the ties between our citizens. It is in the interests of UK and EU families, consumers and businesses to agree a framework for civil judicial cooperation reflecting the unique nature of that partnership, supporting not only trade but mobility.

The UK wants to **build on existing precedents** between the EU and third countries for close cooperation in civil judicial matters in establishing this framework. The EU has already signalled that it is willing to consider such deeper cooperation with the UK in family law.

A new, **bespoke agreement** across the full range of civil judicial cooperation should form part of wider UK-EU discussions on the framework for our future relationship.