



## Paris vies for London's litigation crown

Angela Bilbow - 08 February, 2018

**As part of a wider drive to entice business from London post-Brexit, France's ministry of justice has revealed that Paris will extend its legal jurisdiction to take on international cases that will consider common law issues with English-speaking hearings and bilingual judgments.**

With ambitious plans by the Macron administration to attract international investment into France, which include the creation of additional English-speaking schools and temporary exemption from old-age pension insurance for qualified expatriates, France's Minister of Justice, **Nicole Belloubet**, has announced the creation of an international chamber to sit within Paris' Court of Appeal and Commercial Court.

As of 1 March, 2018, the new chamber will consider international law cases, including those involving English common law, such as disputes over contracts underpinned by English law, allowing cases to be heard in English, and with judgments delivered in French and English.

According to the French government, companies including **Google, Toyota, Facebook, SAP** and **Novartis** have all committed to large-scale projects across France, worth in the region of EUR 3.5 billion over the next five years.

"These announcements are the result of the competitiveness of our businesses and also of the policy undertaken by the government to promote France's attractiveness," the government said.

With France now going against its Constitution, in allowing cases to be heard in English, questions now arise around how the new chamber will impact on the use of the English and Welsh Business and Property Courts, as well as London's overall attractiveness as a disputes hub.

### MARKET REACTION

**Gordon Nardell QC**, a member of **20 Essex Street**, who is also vice-chair of the Bar Council's Brexit Working Group, tells *CDR* that the Paris project is one of a proliferation of proposals for English language, English law courts in EU27 civil law jurisdictions, with Brussels, Amsterdam and Frankfurt all having similar projects at various stages of gestation.

"Ironically these developments reinforce the status of English law as, effectively, the international commercial law of the EU – Brexit won't change that."

Nardell emphasises the Bar Council's conciliatory approach to its sister professions in the EU27, adding that "it's not a zero-sum game", because if international disputes work leaves London as a result of fear of new obstacles resulting from

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Brexit, it is more likely to end up in New York and Singapore than Paris or Brussels.

Highlighting the crowded marketplace for disputes, **Ben Pilbrow**, a senior associate at **Shepherd & Wedderburn** in London, also points to Singapore as a competing jurisdiction, alongside Dubai and other English law courts planned in Europe.

With London a dominant player in international commercial litigation, Pilbrow suggests that Paris will face difficulties in challenging it, "Brexit or not".

"In the short-term, the creation of the court will not magically amend existing dispute resolution clauses. In the medium to long-term, the popularity of the court depends upon the quality of its lawyers and procedures," he says.

Nardell was keen to stipulate the need for the UK's legal profession to work alongside its EU27 counterparts "to maintain the attractiveness of Europe – including the UK – as a place to handle commercial disputes".

He wished the newly planned English language courts on the continent well: "I hope they succeed. But the evidence at the moment, from Germany, for example, is that the ultimate users of litigation – the clients – are showing little enthusiasm."

This situation, says Nardell, is hardly likely to change if cross-border practice rights currently guaranteed by the Lawyers Services and Lawyers Establishment Directives come to an abrupt end in the wake of Brexit.

To him: "If English law courts are going to work, their users will want the option of instructing English lawyers. That means keeping borders open for legal services. So there's a mutual advantage in replicating the benefits of the Lawyers Directives following Brexit, and I'm sure that's something EU27 justice ministries and legal professions recognise."

Given the sophistication of the English legal system and the quality of those advocating before its courts, the UK has been an attractive market for third-party funders, who continue to make innovative investments with UK law firms, as well as UK plc itself.

France on the other hand has not typically courted the same interest, but that may be set to change, says Paris-based **Yasmin Mohammad**, a managing director **Vannin Capital**.

"French jurisdictions have not been very attractive to funders to date as French judges have a tendency of awarding damages representing a small fraction of the claimants' actual losses."

However, she adds: "With the creation of the new international jurisdiction, there is a real hope that a more commercially realistic approach will be taken by the specialised judges tasked with adjudicating international commercial matters."

The new chamber was welcomed by **Marie Danis**, a partner at French law firm **August Debouzy**, who said "it is very good news for the legal community established in Paris", which is a "long-standing and major seat for international arbitration proceedings".

She points to the maturity of Paris' legal market, with its full-service international firms and the large number of 'up-and-coming' litigation boutiques, adding that the goal is to attract international litigation proceedings, particularly relating to the banking and finance sectors, that were previously heard by the English courts "which will become much less attractive after the Brexit".

"Specific procedural rules will be applicable and will include oral evidence of fact and expert witnesses, which is not standard practice before the French civil and commercial courts. The future judges and their clerks will be selected in consideration of their proficiency in English and of their knowledge of the common law system," says Danis.

Competition litigator **Lesley Hannah**, who was recently elevated to partner at claimant firm **Hausfeld**, which recently confirmed it has opened a Paris office, says it can be no surprise, given the contribution that commercial legal business makes to the UK economy, around GBP 14 billion, that other European countries are looking to attract that business following Brexit.



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Notwithstanding, Hannah points to developments in the UK, such as the recently announced proposals on changes to the English disclosure regime, that are to be piloted in the business and property courts, which “show that the English judiciary is cognisant of the challenges of modern litigation and is prepared to adapt its procedural rules in order to maintain its leading position”.

As uncertainty still looms over Britain's divorce from the EU, amid wide-ranging calls for legal clarity, Hannah believes the core reasons why businesses choose to litigate in London – its experienced and impartial judiciary and the wealth of established legal precedent – will not change.

“It seems unlikely that England and English law will cease to be the forum of choice for commercial disputes any time soon,” she asserts.

**Robert Wheal**, a partner at **White & Case** in London agrees, concurring that “London rightly enjoys an international reputation for resolving complex disputes”, and it has “little to fear from a new, untested tribunal”.