



**The Law Societies**  
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# Brussels Agenda

March 2016

*The Law Societies' monthly publication with the latest EU news*

## VIEWPOINT



**Richard Frimston**  
A Matter of Trust, but what's the Use?

## IN FOCUS

### CROSS-BORDER PRIVATE CLIENT

Freedom come? Brussels IV and Succession Planning

Foreign affair: the Right to Grant and the Validity of the Will

Cross-border tax and the private client

Clarification of the procedure for the division of assets in cross border formal relationships... but not for the UK

## LAW REFORM

EU and US agreed on the new framework for transatlantic data flows, the Privacy Shield

Commission presents Action Plan to strengthen the fight against terrorist financing

The Commission presents a sustainable energy security package

Taxation Update: the Presidency Roadmap on future work on taxation and the new Tax Transparency Agreement with Monaco

Trade update

On the 12th round of trade talks, my TTIP gave to me...  
... a proposal yet to be agreed.

The new EU ODR Platform goes live!

Proposal for two Directives on certain aspects concerning contracts for the online and other distance sales of goods and for the supply of digital content

Brexit Update

## PROFESSIONAL PRACTICE

Dalton MEP Report on non-tariff barriers in the Single Market

## LAW SOCIETIES' NEWS

24 February 2016 - Law Society of England and Wales publishes guidance for work experience providers in legal sector

Joint seminar with the French National Bar Council, 5 April

Business Council for Africa's Annual Debate and Gala Dinner, 20 April

Scottish Trainee solicitors to benefit from new Living Wage requirement

## JUST PUBLISHED

COMING INTO FORCE

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## Editorial

### Cross-border Private Client

Cross-border private client work is a largely underreported area of law, and yet it is one that is well worth knowing about. It affects millions of people around the world on a daily basis and can be the difference between someone's last wishes being fulfilled, or lengthy and intractable legal proceedings engulfing all concerned.

In order to provide some insight, we have called upon the views of a number of experts in the field. Richard Frimston, Partner and Head of the Private Client Group at Russell Cooke, provides the Viewpoint on international trusts, with Alberto Pérez Cedillo and David King providing In Focus articles on succession. Finally, Dr Timothy Lyons QC provides a practical overview of international private client tax law. As always, the Brussels Agenda is packed with the latest updates on EU law and policy. In this edition, the Council's new tax proposals, the Energy Union, Brexit and the Action Plan on Terrorism are all covered, alongside much more.

So whether you are a non-domiciled, non-habitually resident expat, or not, then read on and enjoy!

Alongside this theme we include the usual updates on EU law and policy, plus a continuation of our new sub-section, Case Law Corner.

So enjoy the clear sky of understanding, before the looming cloud of confusion wrecks it ('wrexit').



Richard Frimston

## A Matter of Trust, but what's the Use?

In the EU legal space time continuum, it is perhaps the question of trusts that brings differences rather than similarities most to the fore. The journey of English trusts from the 1535 Statute of Uses through strict settlements to reach full discretionary trusts is a long one. However, it is perhaps wisest to understand that the common law lawyer's view of trusts and equitable principles is completely different to that of politicians, the media and civil lawyers, for whom, trusts are solely dodgy structures used by shady people in sunny places.

Having been brought up on the swathe of 1925 legislation, I am still astonished at the lack of understanding of the Land Registration Act 1925. The ordinary oyster card holder on a Clapham omnibus, believes that the Land Registry records the ownership of land. Explain that the registered proprietors are entitled to deal with the land, but are not necessarily the owners, and puzzlement is shown and the question asked, "Surely this is a recipe for fraud?".

For us, trusts are what make the law of England & Wales work. Pensions, insolvency, administration of estates, ownership of land and so many other areas of law need trusts to operate. How do civil systems operate without them?

EU citizens broadly have the same issues to contend with, but different legal systems produce different solutions. Matrimonial property regimes, *usufructs*, *fidel commisum* and assurance vie are some of the answers. France introduced the *Fiducie*, after it was found necessary for some French commercial arrangements to be structured in London through English trusts.

Broadly, however, a trust under the law of England & Wales is usually not accepted or recognised in most other EU Member States for civil law as opposed to tax purposes. The 1985 Hague Trusts Convention, Hague 30, has only been ratified by five EU Member States: Italy, Luxembourg, Malta, Netherlands and UK.

There are broadly two ways to tax trusts; tax the trust as a separate entity on creation or tax the trust as if the trust assets remained those of the settlor during their lifetime and then tax the beneficiaries on his or her death. The UK uses the former, whilst the USA and many EU Member States use the latter. One of the issues created by the EU Succession Regulation No. 650/2012 is that it is now possible for UK citizens most closely connected to England & Wales to choose that law to apply to their estates. Although the UK is not bound by the Succession Regulation, other Member States that are must apply English law in these circumstances. Although the Succession Regulation cannot impose trusts as rights *in rem*, the nearest most similar structure will need to be found by way of adaptation.

As the effects of the Succession Regulation become more widespread, there will be obvious tensions between the fact that trusts may be taxed as strange foreign structures and yet adapted into local structures for succession purposes.

If the UK remains in the EU, the question of recognition, acceptance, adaptation and enforcement of structures between Member States will become more pressing.

It is high time that the UK government recognised the value and merit of trusts and fought tooth and nail for the ratification of Hague 30 by the EU as a whole. Use it or lose it.

## Biography



**Richard Frimston** is a Partner and head of the private client group at Russell Cooke LLP. His areas of expertise include cross-border estates and international private law issues. Richard is a member of various professional bodies (including the International Academy of Estate and Trust Law). He has received a number of prestigious accolades (including The Society of Trust and Estate Practitioners (STEP) Geoffrey Shindler Award for Outstanding Contribution to the Profession 2014/15) and has authored many publications. He is currently Chair of the EU STEP Committee and co-Chair of the STEP Public Policy Committee as well as being a member of the The Law Society of England and Wales EU Committee.