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Brexit means Brexit: but what might Brexit mean? The EU treaties and practical legal options for re-engagement by the UK

Speaker: Professor Sir Alan Dashwood KCMG CBE QC

Panellists: Emily Mackenzie, James Flynn QC and Nicholas Saunders

Date: 26 July 2016

Venue: Watson Farley & Williams LLP

The majority of the discussions about Brexit have focussed upon the UK's obligations on the international plane. However, an equally important issue to consider when attempting to assess the impact international obligations have is how they are implemented on the domestic plane. In the context of EU law, we are accustomed to the European Communities Act 1972, which allows UK courts to give primacy to EU law over Acts of Parliament and permits individual litigants to rely directly upon their EU rights in domestic courts. However, there is no reason to assume that any future set of international obligations, into which the UK enters to "replace" its current status within the EU, would be given effect in domestic law in a similar way. The implementing statute could, for example, look more like the Human Rights Act 1998. This gives the courts strong interpretive powers when it comes to applying the ECHR domestically but permits them only to make declarations of incompatibility where national law conflicts with the ECHR, rather than to dis-apply the conflicting national law; ultimately leaving Parliament in the driving seat.

Nicholas Saunders talked about the implications of Brexit for intellectual property. He identified four specific areas in which IP may be affected. These included that decisions will need to be taken about the implementation of new directives (such as the trade secrets directive and trademarks directive) and the fact that references to the CJEU are unlikely to be effective soon after triggering Article 50 given that cases usually take 18 months to go through the court and it is unlikely that UK references would be prioritised. In relation to the UPC, the position is complicated by the difficulty of reconciling continued UK membership with the rationale of the CJEU when it considered the validity of the UPC's legislative framework. Finally, he noted that there will be consultations issued by the Government in relation to a number of these things and it is more important than ever that all sides of the debate are properly considered.