

## The BREXIT Agreement – what it means for enforcing judgments across the European Union

The UK, as an EU Member State, currently benefits from the mutual recognition and enforcement mechanisms that operate across all 28 EU member states under the so-called “[Recast Brussels Regulation](#)”.

The Recast Brussels Regulation provides a simplified EU-wide mechanism for the mutual recognition and enforcement of court judgments in EU Member States. A judgment creditor simply has to provide the competent enforcement authority in another Member State (for example, where the judgment debtor has assets) with a copy of the judgment and a standard-form certificate and it can then begin the enforcement process. No other procedure is required to enforce its judgment, and there is no review of the merits.

There is a very high bar for refusal of recognition and enforcement under the Recast Brussels Regulation. This means that, in general, a party armed with an English judgment has a speedy process to enforce that judgment in any other EU member state such as Germany, Italy, Spain, or France without recourse to local law. Similarly a judgment from any other Member State is currently easily enforced in the UK.

The Draft Agreement on the withdrawal of the United Kingdom from the European Union (the “[Draft Withdrawal Agreement](#)”) was published on 14 November 2018, and has been approved by the other Member States. While its future is far from certain, and it is not impossible that there will be revisions to a number of its clauses including the proposed length of the “Transition Period”, it is very likely that some form of disengagement with the Recast Brussels Regulation will accompany the UK’s departure from the EU.

Nonetheless, under Article 67 of the Draft Withdrawal Agreement, the current regime for mutual recognition of judgments will soon no longer apply in the U.K. The Recast Brussels Regulation will cease to apply to proceedings commenced *after* the end of the Transition Period – currently due to end in December 2020. If there is a “no deal” Brexit, it would cease to apply to any proceedings commenced after 29 March 2019.

Unless there is a further agreement to govern mutual recognition of judgments agreed before that date the UK courts will revert to the application of common law rules of recognition and enforcement, where the grounds for refusing to recognise a foreign judgment include matters such as whether the other party participated in the foreign proceedings, and whether (on an English law analysis) the foreign court had jurisdiction over the defendant at the time the foreign proceedings were commenced.

It is almost inevitable that the recognition process here of judgments from EU Member States will lengthen, become more costly, and see a significant increase in the successful resistance of enforcement. It should be born in mind, however, that the position will be the same as currently applies to judgments from the United States.

Enforcement of English judgments across the European Union will, in turn, become subject to the widely-varying national laws of each EU Member State. The process of enforcing an English judgment in a Member State is likely to prove more costly and onerous (with a lower rate of success) than the current streamlined procedure.

As a result of the Draft Withdrawal Agreement clients and friends completing jurisdiction and dispute resolution clauses in contracts involving parties from E.U. Member States would be advised to consider their options carefully, including the option of arbitration, in light of the future disapplication of the Brussels regime.

On the same timetable as the disapplication of the Recast Brussels Regulation, the Draft Withdrawal Agreement will also disapply two other European instruments which currently set the rules on deciding which law applies in both contractual and non-contractual disputes where there is no written agreement specifying the governing law. These are the so-called Rome I (choice of law in contractual disputes) and Rome II (choice of law in non-contractual disputes) conventions. At the same time as parties pay closer attention to their choice of jurisdiction for their disputes, parties should also pay closer attention to specifying their governing law.

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