



Brussels, 18 January 2019  
REV1 – replaces the Notice to  
stakeholders dated 21 November 2017

## NOTICE TO STAKEHOLDERS

### WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CIVIL JUSTICE AND PRIVATE INTERNATIONAL LAW

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that as from 30 March 2019, 00:00h (CET) ('the withdrawal date')<sup>1</sup> the United Kingdom will be a 'third country'.<sup>2</sup>

Preparing for the withdrawal is not just a matter for EU and national authorities but also for private parties.

In view of the uncertainties surrounding the ratification of the Withdrawal Agreement, all interested parties are reminded of legal repercussions which need to be considered when the United Kingdom becomes a third country.

Subject to the transition period provided for in the draft Withdrawal Agreement,<sup>3</sup> as of the withdrawal date, the EU rules in the field of civil justice and private international law no longer apply to the United Kingdom. This has in particular the following consequences:<sup>4</sup>

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<sup>1</sup> In accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>2</sup> A third country is a country not member of the EU.

<sup>3</sup> Cf. Part four of the draft *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, as agreed at negotiator's level on 14 November 2018 ([https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-uk-eu-agreed-negotiators-level-14-november-2018-including-text-article-132\\_en](https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-uk-eu-agreed-negotiators-level-14-november-2018-including-text-article-132_en))

<sup>4</sup> It is recalled that the United Kingdom does not participate in the full *acquis* of judicial cooperation in civil and commercial matters.

## 1. INTERNATIONAL JURISDICTION

EU private international law establishes harmonised rules for international jurisdiction in areas of civil and commercial matters, incl. insolvency, and family law.<sup>5</sup> Broadly speaking these harmonised rules apply only where a defendant is domiciled or resident in an EU Member State.

### 1.1. Proceedings pending on the withdrawal date

For proceedings involving a defendant domiciled in the United Kingdom, and pending with a court of the EU-27 Member States<sup>6</sup> on the withdrawal date, the EU rules for international jurisdiction continue to apply.

### 1.2. Proceedings initiated as of the withdrawal date

For proceedings involving a United Kingdom domiciled defendant initiated on or after the withdrawal date in the EU-27 Member States, the rules on international jurisdiction in EU instruments in the area of civil and commercial law as well as family law no longer apply, unless the EU instruments set the rules of jurisdiction with regard to third countries.<sup>7</sup>

International jurisdiction will thus be governed by the national rules of the Member State in which a court has been seized.

In some instances, international conventions, such as the conventions developed by the Hague Conference on Private International Law apply<sup>8</sup>, provided that both the EU/EU Member States and the United Kingdom are parties to the convention.

## 2. RECOGNITION AND ENFORCEMENT

EU private international law sets rules for the facilitated recognition and enforcement of judicial decisions issued by a Member State.

### 2.1. *Exequatued* judgements

Where the relevant instrument foresees *exequatur*, if a judgment of a UK court has been *exequatued* in the EU-27 before the withdrawal date but not yet enforced before that date, the judgment can still be enforced in the EU-27,

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<sup>5</sup> This notice does not address specifically consumer protection issues. See, for these aspects, the "Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights", published on 27 February 2018.

<sup>6</sup> While the EU Treaties provide for specific arrangements for the (non)participation of Ireland and Denmark in this part of the EU *acquis*, for the sake of simplicity, the notion "EU-27" is used.

<sup>7</sup> This is, for example, the case with regard to litigation involving consumers (see footnote 5).

<sup>8</sup> Usually, these conventions are transposed into national law of each State that is party to the Convention.

and the fact that it was originally a judgment handed down by UK courts is irrelevant.

## **2.2. Proceedings pending on the withdrawal date**

Unless a judgment of a UK court has been exequatuered before the withdrawal date, the EU rules on recognition and enforcement of such judgments of UK will not apply to a judgment of a UK court that has not been enforced before the withdrawal date, even where

- the judgment was handed down before the withdrawal date; or
- the enforcement proceedings were commenced before the withdrawal date.

## **2.3. Proceedings initiated on or after the withdrawal date**

For proceedings to enforce a judgment of a UK court that are commenced as of the withdrawal date in the EU-27, EU rules no longer apply.

Recognition and enforcement will be governed by the national rules of the Member State in which recognition/enforcement is sought.

In some instances, international conventions, such as the conventions developed by the Hague Conference on Private International Law apply<sup>9</sup>, provided that both, the EU/EU Member States and the United Kingdom are parties to the convention.

**All stakeholders are advised to take this into consideration when assessing contractual choices of international jurisdiction**

## **3. SPECIFIC EU PROCEDURES**

EU law on judicial cooperation in civil matters provides for several specific procedures, such as the European Payment Order Procedure<sup>10</sup> or the European Procedure for Small Claims.<sup>11</sup>

The approach to jurisdiction and recognition and enforcement in sections 1 and 2 of this notice also applies for these specific judicial procedures.

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<sup>9</sup> Usually, these conventions are transposed into national law of each State that is party to the Convention.

<sup>10</sup> Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

<sup>11</sup> Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1.

#### 4. JUDICIAL COOPERATION PROCEDURES BETWEEN MEMBER STATES

EU law on judicial cooperation in civil matters provides for facilitated judicial cooperation (e.g. in relation to the service of documents<sup>12</sup>, taking of evidence<sup>13</sup> or within the context of the European Judicial Network in Civil and Commercial Matters<sup>14</sup>). As of the withdrawal date, EU-27 Member States

- do not proceed further such pending judicial cooperation procedures involving the United Kingdom; and
- do not launch new such judicial cooperation procedures involving the United Kingdom

on the basis of EU law.

Such procedures may continue to be processed according to national law on judicial cooperation with third countries. In some instances, international conventions, such as the conventions developed by the Hague Conference on Private International Law apply<sup>15</sup>, provided that both, the EU/EU Member States and the United Kingdom are parties to the convention.<sup>16</sup>

**All national Central Authorities are advised to assess whether judicial cooperation procedures risk being pending on the withdrawal date and whether the procedure can continue under national law or a relevant international convention. Where this continuation under national law or a relevant international convention is possible, the Central Authority should consider submitting an additional request under the relevant national law/international convention which would be conditional upon the United Kingdom withdrawing from the Union without withdrawal agreement.**

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<sup>12</sup> Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 324, 10.12.2007, p. 79.

<sup>13</sup> Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters OJ L 174, 27.6.2001, p. 1.

<sup>14</sup> See Article 8 of Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters OJ L 174, 27.6.2001, p. 25.

<sup>15</sup> Usually, these conventions are transposed into national law of each State that is party to the Convention.

<sup>16</sup> For example, concerning international child abductions, the application from the requesting Central Authority can be examined by the requested Central Authority under the 1980 Hague Convention on the Civil Aspects of International Child Abduction instead.

## 5. OTHER ISSUES

- Regulation (EU) 2016/1191<sup>17</sup> abolishes for certain public documents (for example, a birth certificate) the apostille requirement and simplifies other formalities thereby facilitating the circulation of certain public documents. The application of Regulation (EU) 2016/1191 does not depend on the date of issue of the public document but on the date when it is presented to the authorities of another Member State. Hence, Regulation (EU) 2016/1191 will no longer apply to a public document issued by the UK authorities which is presented to the authorities of a Member State of the EU-27 as from the withdrawal date, regardless of the date of issuance and the period of validity of the public document issued by the UK authorities.
- The Commission provides a series of information tools on national judicial system through the e-Justice portal.<sup>18</sup> As of the withdrawal date, the e-Justice Portal will no longer provide information related to the United Kingdom, including the dynamic forms and the UK factsheets.

The European e-Justice Portal <https://beta.e-justice.europa.eu/?action=home&plang=en> and the website of the Commission on civil justice [http://ec.europa.eu/justice/civil/index\\_en.htm](http://ec.europa.eu/justice/civil/index_en.htm) provide for information concerning the field of civil justice. These pages will be updated with further information, where necessary.

European Commission  
Directorate-General Justice and Consumers

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<sup>17</sup> Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union, OJ L 200, 26.7.2016, p. 1.

<sup>18</sup> <https://e-justice.europa.eu/home.do?action=home&plang=en>