



Making sense of Brexit

How will the end of the Implementation Period affect where I commence my litigation and enforce my judgment?

The UK left the EU on 31 January 2020, entering into an eleven month Implementation Period (IP), which will end at 11pm (GMT) on 31 December 2020. During this time, EU law will continue to apply as if the UK were still a member of the EU, even though, factually, it is not.

As the EU and UK seek to negotiate their future relationship, the end of the IP is getting closer. In this briefing we look at the steps that should be taken before the end of the IP by businesses with pending or existing cross border claims involving the UK.

1 I want to bring a claim in the Republic of Ireland (ROI) against a party in the UK (to include Northern Ireland (NI)) or vice versa – what do I need to do?

Cross-border litigation within the EU is made simple by virtue of the Recast Brussels Regulation (Brussels Recast). Under the terms of the Withdrawal Agreement, this regime will continue to apply to all claims issued before 11pm (GMT) on 31 December 2020. To avail of the simplicity and certainty of this existing set of rules on cross-border litigation, you must commence your proceedings before this deadline.

Cross-border litigation with a counterparty in the UK/NI (or vice versa) will still be possible after the IP, but we do not yet know which rules will apply to cases instigated on or after 1 January 2021, and parties should expect that cross-border disputes instigated after this date may be more expensive and time consuming to run.

Practical point: A point to note is that the vast majority of claims in ROI and NI cannot yet be issued electronically and must be filed in hard copy in the Court Office. Parties should be aware of holiday opening times and a possible logjam of claims being issued close to the deadline.

2 I have an existing ROI judgment to enforce against a party in the UK/NI (or vice versa) – what do I need to do?

The UK/NI and EU have agreed that existing judgments can be enforced in the same way under the Brussels Recast Rules even after 31 December 2020.

3 What if my claim is ongoing but I haven't yet secured judgment?

The UK/NI and the EU have agreed that Brussels Recast should apply to enforcement proceedings even after the end of the IP for all claims issued by 11pm (GMT) on 31 December 2020, regardless of how long it takes to secure a judgment.

4 I am in the ROI and have an uncontested money claim against a party in the UK/NI (or vice versa) – what do I need to do?

You could consider applying for a European Order for Payment (EOP) which is a simple way of enforcing an uncontested debt across most of the EU without separate enforcement proceedings in the other country.

The EOP regulation will apply to relevant disputes involving the UK/NI after the end of the IP provided you apply for the EOP before 11pm (GMT) on 31 December 2020.

As an EOP can only be applied for in person or by post, see practical point 1.

5 What if I have ongoing proceedings at the end of the IP which are subject to a court approved settlement?

Court approved settlements will only be enforceable under Brussels Recast if you secure the court's approval before 11pm (GMT) on 31 December 2020. With no set timescale by which the court must approve a settlement, if you wish to rely on this provision, you should take urgent steps to document your settlement and apply for approval.

6 I want to bring a claim in ROI against a party from Norway, Switzerland or Iceland - what do I need to do?

Cross-border litigation involving certain EFTA countries (namely, Norway, Switzerland, Iceland and the EU) is made simple by virtue of the Lugano Convention (Lugano). Lugano is and will remain available for the enforcement of Irish and all EU judgments in EFTA countries.

7 What about the UK/NI?

Lugano, referred to above, will cease to apply to claims involving UK/NI parties at the end of the IP. Under the terms of pending UK legislation, however, UK/NI courts will still apply Lugano to existing claims provided that they are instigated before 11pm (GMT) on 31 December 2020.

The same practical considerations set out in point 1 above therefore apply.

Although as noted above the UK/Ni courts have agreed to continue to apply Lugano to existing claims, there is currently no reciprocal agreement from the courts of Norway, Iceland or Switzerland. The UK has signaled its intention to accede to Lugano in its own right after the end of the IP but it needs the consent of all signatories to do so. The EU has not yet given its consent and the UK has now missed the deadline to accede to Lugano with effect from 1 January 2021. Although accession to Lugano is in theory possible at a later date, businesses should work on the basis that from 1 January 2021, both new and existing claims may be more expensive and time consuming to run.



Can I use Lugano to enforce a judgment in an EFTA state after the end of the IP?

No. Lugano will not apply to UK/Ni judgments after the end of the IP unless the UK/Ni accedes to the Lugano Convention in its own right, even if the underlying claim was started before 31 December.

Practice point: If you have existing litigation in an EFTA state which is currently governed by Lugano, it may be prudent to consider whether it is possible to settle the matter before the end of the IP so that you can take advantage of Lugano for enforcement purposes. If so, the settlement would need to be formally documented or approved by the court, and the formalities under Lugano completed, before the end of the IP.



Can I use Lugano to enforce a judgment in the UK/Ni after the end of the IP?

Yes, providing you instigate proceedings in the underlying claim before the end of the IP.



I am contemplating a claim in the UK/Ni against an individual/entity of Singapore, Mexico or Montenegro (or vice versa). What do I need to do?

Up until the UK/Ni left the EU, the 2005 Hague Convention on Choice of Court Agreements (Hague) simplified cross-border litigation between these three states and the EU (including the UK/Ni) for claims within its scope.

As things stand, it may apply during the IP; although Singapore, Mexico and Montenegro are not party to the Withdrawal Agreement, the EU agreed to put them on notice that the UK/Ni was to be treated as an EU Member State during the IP.

How Hague will apply to ongoing claims within its scope after the IP is unclear. We know the UK will accede to Hague in its own right at the end of the IP but there is no guarantee how the other signatories to the Convention will treat that accession: will they see it as a new membership or simply a continuation of the UK/Ni's previous membership that was via the EU? Given this ambiguity, you may prefer to wait until after the IP to issue a claim within Hague's scope so that it falls under the UK/Ni's new membership.



Can I use Hague to enforce a judgment (including between an EU party and a UK/Ni party) after the end of the IP?

Possibly. As things stand, Hague may not apply to proceedings that are ongoing after 31 December 2020. It will depend on how other signatories to Hague view the UK/Ni's membership after that date and whether they view it as a continuation of the UK's former membership as part of the EU.

If you have already secured a judgment or court approved settlement that could currently be enforced under Hague, it would be prudent to take urgent steps to enforce it before the end of the IP to avoid the ambiguities associated with the UK/Ni's post-IP membership of Hague.

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