



Making sense of Brexit

How will Brexit affect where I commence my litigation and how I enforce my judgment?

The UK has left the EU with a post-Brexit trade deal. The deal does not cover civil judicial co-operation and, given we have reached the end of the Implementation Period (IP) and EU law no longer applies to the UK, this will have a significant impact on cross-border disputes. In this briefing, we look at the changes made by Brexit to this challenging area of litigation.

1 Before the end of the IP, I brought a claim in the UK against a party in the EU (or vice versa). Has anything changed?

Essentially, no. Cross-border litigation within the EU is made simple by virtue of the Recast Brussels Regulation (Brussels Recast) for both jurisdiction and enforcement matters. The Regulation will still apply to claims in its scope that were started before the end of the IP, regardless of how long it takes to secure a judgment (although the position is different for settlement – see below). The key question will be whether the claim was started in time, bearing in mind that states have different requirements for starting a claim.

2 What happens if I settle the claim that I started before the end of the IP – has anything changed?

Yes. Before the end of the IP, you could use Brussels Recast to enforce a court approved settlement. You will not, however, be able to rely on Brussels Recast to enforce settlements after the end of the IP. This applies regardless of when the underlying claim was started.

3 Before the end of the IP, I secured a UK judgment to enforce in an EU country (or vice versa). Has anything changed?

No. If your judgment predates the end of the IP, Brussels Recast will apply providing the claim was within its scope.

4 What about future claims in the UK against a party in the EU (or vice versa) - has anything changed?

Yes. If you have not yet started your claim at court, Brussels Recast will not apply.

If your claim is subject to an exclusive jurisdiction clause, you may instead be able to rely on the Hague Convention 2005 on Choice of Court Agreements (Hague 2005). This requires the courts of signatory states (which includes the EU) to uphold exclusive jurisdiction clauses and to enforce the resulting judgments. Hague 2005 applied to the UK before Brexit via the UK's membership of the EU. The UK, however, acceded to the Convention in its own right at the end of the IP (although there is doubt over Hague 2005's application to UK jurisdiction clauses that pre-date this new membership).

If your claim is outside the scope of Hague 2005, you will have to rely on the local law of the countries involved.

5 Before the end of the IP, I brought a claim in the UK against a party from Norway, Switzerland or Iceland. Has anything changed?

On questions of jurisdiction, no. Cross-border litigation involving these EFTA countries is made simple by virtue of the Lugano Convention (Lugano). This ceased to apply at the end of the IP but, under domestic legislation, the UK courts will still apply Lugano to relevant claims provided that they are issued before 11pm (GMT) on 31 December 2020.

On questions of enforcement, however, the answer is yes, depending on which country is involved. If you need to enforce the judgment from your claim in Switzerland or Iceland, Lugano will not apply. If you need to enforce it in Norway, the Norwegian courts have agreed to apply Lugano to certain UK money judgments where the claim was issued before the end of the IP.

6 **Before the end of the IP, I brought a claim in Norway, Switzerland or Iceland against a UK party. Has anything changed?**

On questions of jurisdiction, yes. Lugano no longer applies to claims involving UK parties (although this is not likely to impact your claim if jurisdiction has already been established).

On questions of enforcement, however, the answer is no. The UK courts will still apply Lugano to judgments arising from relevant claims that were issued before the end of the IP.

7 **What about future claims involving EFTA states – has anything changed?**

Yes. Lugano no longer applies to situations involving the UK. Instead, local law will determine jurisdiction for future claims. The same is true for enforcing judgments, except for situations involving Norway, which has a separate reciprocal agreement with the UK for enforcing certain money judgments.

8 **What about claims in the UK against an individual/entity of Singapore, Mexico or Montenegro (or vice versa) – has anything changed?**

The answer is unclear. Up until the UK left the EU, Hague 2005 simplified cross-border litigation between these three states and the EU (including the UK) for jurisdiction and enforcement of claims within its scope. The UK has now acceded to Hague 2005 in its own right but there is no guarantee how the other signatories to the Convention will treat that accession. Time will tell whether they treat it as a new membership or simply a continuation of the UK's previous membership that was via the EU.

9 **What changes are likely to happen in the future?**

The UK currently intends to accede to Lugano in its own right but it needs the consent of all signatories to do so. The EU has not yet given its consent. In addition, the Private International Law (Implementation of Agreements) Act (2020) gives scope for the UK to agree and implement new private international law deals and the government is due to publish a ten year strategy in this regard.

In the meantime, however, businesses should work on the basis that cross-border litigation may be more expensive and time consuming to run than before Brexit.

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