



## **End of the Brexit implementation period**

10 things you need to know about  
managing disputes post Brexit

## 1 EU law no longer applies to the UK but could still have an impact

Now that the UK is outside the EU, EU law no longer applies. At the end of the Implementation Period (IP), however, the Government took a snapshot of the EU law affecting the UK and incorporated large parts of it into the domestic statute book. This legislation is known as "EU retained law".

## 2 Rules for choice of law will remain the same

Rome I and II will remain in force in the UK so there shouldn't be any change to the rules that govern choice of law.

## 3 New legislation is required to deal with recognition and enforcement of judgments

The UK Government acceded in its own right to the Hague Convention 2005 on Choice of Court Agreements (Hague 2005) and is attempting to accede to the Lugano Convention 2007 (Lugano). The combination of the two conventions would give some reassurance that, in certain circumstances, EU Member States will uphold jurisdiction clauses in favour of the UK and recognise and enforce UK judgments.

## 4 Hague 2005 is not a complete solution

Hague 2005 doesn't apply to EFTA countries, and excludes claims and judgments arising from non-exclusive or asymmetric jurisdiction clauses. It has also been suggested that Hague 2005 may not apply to contracts entered into pre-Brexit. If Hague 2005 does not apply, a state's domestic law would instead determine jurisdiction. Whilst the domestic laws in many EU countries will recognise and uphold exclusive jurisdiction clauses in favour of a third country, their ability to stay proceedings in some circumstances may be curtailed under Brussels Recast and proceedings are likely to be more expensive and take longer. The approach of EU Member States' courts to the application of Hague 2005 is yet to be tested.

## 5 Lugano is wider in scope but needs consent of all signatories

Lugano applies to most EFTA countries, the EU and non-exclusive jurisdiction agreements. For the UK to accede to Lugano, however, all signatories need to agree. Norway, Iceland and Switzerland have signalled support for the UK's accession but the EU has not yet done so. Further information on the EU's position on Lugano is still awaited, as civil judicial co-operation did not form part of the post-Brexit deal reached by the EU and the UK on 24 December 2020.

If support is given and the UK accedes, Lugano will provide a framework for jurisdiction and enforcement across EU and most EFTA states similar to the current rules in Brussels Recast, covering both exclusive and non-exclusive jurisdiction agreements. Lugano largely replicates the Brussels I Regulation but does not include the improvements introduced in the Recast Regulation, such as the provisions to counter the issue of the so-called Italian torpedo.

## 6 While we wait for Lugano, there may be a patchwork of agreements with other countries

Before it became an EU member, the UK had a series of agreements on judicial co-operation with individual states, including France, Germany and Norway. The current scope of these agreements is unclear but the UK has already restated the one it had with Norway as a stop-gap to Lugano. It may yet seek to do the same with other states.

## 7 This year will see significant changes to the CPR

Throughout 2021, there will be changes to the CPR, including to Part 6 in relation to service out of the jurisdiction. A new rule is expected that will allow parties to serve claims outside the UK that are subject to exclusive jurisdiction clauses without permission. Practice directions and the rules for the Intellectual Property Court have also been affected.

## 8 Proceedings started during the IP may still be subject to the EU regime

Articles 66-68, 86 and 89 of the Withdrawal Agreement deal with cases that straddle the end of the IP provided that proceedings were started or requests made before it ended.

## 9 There may be other ways to enforce judgments in EU states and vice versa

Commercial court judgments made in any of 33 jurisdictions (including France, Germany, Ireland and the Netherlands) may be enforceable under the processes set out in the Standing Forum of International Commercial Courts' Multilateral Memorandum on Enforcement of Commercial Judgments for Money. Further, a new Hague Convention concluded in 2019 intends to simplify cross-border enforcement of judgments between contracting states. Currently the only signatories are Uruguay and the Ukraine but the European Commission has recommended that the EU should also sign. The Convention will come into force a year after ratification by two parties, so won't be a quick fix. But, if and when the UK accedes, this could be an important piece of legislation.

## 10 Arbitration is not affected

Arbitration is unaffected by Brexit. The key legislation providing the framework for arbitration in the UK and the international convention that governs enforcement of arbitral awards remain in force, making arbitration an attractive option where certainty is needed.

## Further information

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