

12 July 2017

TF50 (2017) 9/2 - Commission to UK

Subject: Position paper on **Judicial Cooperation in Civil and Commercial matters**

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: To be published on Thursday 13 July on TF50 website as EU position in view of the 2nd negotiation round with the UK

Remarks: The attached position paper on **Judicial Cooperation in Civil and Commercial matters** contains the main principles of the EU position in this regard

Essential Principles on Ongoing Judicial Cooperation in Civil and Commercial matters

The Withdrawal Agreement should ensure that the relevant provisions of Union law on jurisdiction, recognition and enforcement applicable on the withdrawal date continue to govern judicial proceedings and procedures in civil and commercial matters pending on the withdrawal date.

The relevant provisions of Union law applicable on the withdrawal date should continue to apply to choices of forum and choices of law made prior the withdrawal date. Judicial cooperation procedures that are ongoing on the withdrawal date should continue to be governed by the relevant provisions of Union law applicable on the withdrawal date.

I. General principles

The following principles should apply in accordance with Union law, as interpreted by the Court of Justice of the European Union on the date of entry into force of the Withdrawal Agreement:

- (1) The relevant provisions of Union law applicable on the withdrawal date on the applicable law for contractual and non-contractual obligations should continue to apply to contracts concluded before the withdrawal date, and (regarding non-contractual liability) to events which occurred before the withdrawal date.
- (2) The relevant provisions of Union law applicable on the withdrawal date establishing the Member State whose courts are competent should continue to govern all legal proceedings instituted before the withdrawal date.
- (3) Choices of forum made prior to the withdrawal date should continue to be assessed against the provisions of Union law applicable on the withdrawal date.
- (4) The relevant provisions of Union law applicable on the withdrawal date on recognition and enforcement of judicial decisions¹ should continue to govern all judicial decisions given before the withdrawal date.
- (5) Judicial cooperation procedures and requests for information within the European Judicial Network in civil and commercial matters, which are pending on the date of withdrawal should continue to be governed by the applicable provisions of Union law applicable on the withdrawal date. The Withdrawal Agreement should establish the procedural stage that has to have been reached in order for the procedure to continue in accordance with the relevant provisions of Union law applicable on the withdrawal date.

II. Material scope

The Withdrawal Agreement should cover the following Union law instruments:

a) Contractual and non-contractual obligations:

- Law applicable to contractual obligations (Regulation (EC) No 593/2008);
- Law applicable to non-contractual obligations (Regulation (EC) No 864/2007).

b) Jurisdiction, recognition, enforcement:

¹ Judgments and, where applicable, authentic instruments formally drawn up or registered, and court settlements approved or concluded.

- Jurisdiction and enforcement of judgments in civil/commercial matters (Regulation (EU) No 1215/2012, Regulation No 44/2001, and Union instruments referred to in Article 67 of Regulation (EU) No 1215/2012, such as the General Data Protection Regulation (EU) 2016/679);
- Jurisdiction and enforcement of judgments in divorce and legal separation, as well as attribution of parental responsibility (Regulation (EC) No 2201/2003);
- Jurisdiction and applicable law recognition and enforcement relating to maintenance obligations (Regulation (EC) No 4/2009);
- Applicable law, jurisdiction and recognition of insolvency proceedings (Regulation (EU) 2015/848 and Regulation (EU) 1346/2000).

c) Judicial cooperation procedures:

- Recognition and enforcement of judgments in the "European small claims procedure" (Regulation (EC) No 861/2007);
- European payment order (Regulation (EC) No 1896/2006);
- European enforcement order for uncontested claims (Regulation (EC) No 805/2004);
- Mutual recognition of protection measures in civil matters (Regulation (EU) No 606/2013);
- Service of judicial and extrajudicial documents (Regulation 1393/2007);
- Taking of evidence in civil and commercial matters (Regulation (EC) No 1206/2001);
- Compensation to crime victims (Directive 2004/80/EC).

d) Other relevant legislative instruments in EU law:

- Mediation in civil and commercial matters (Directive 2008/52/EC);
- Access to legal aid in cross-border disputes (Directive 2003/8/EC);
- European judicial network in civil and commercial matters (Decision 2001/470/EC).