



Brussels, 11 April 2019

**QUESTIONS AND ANSWERS RELATED TO THE UNITED KINGDOM'S WITHDRAWAL FROM
THE EUROPEAN UNION IN THE FIELD OF CIVIL JUSTICE AND PRIVATE INTERNATIONAL
LAW**

On 18 January 2019, the European Commission services published an updated "*Notice to stakeholders – withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law*" (hereafter "the Brexit preparedness notice").^{1, 2}

This list of Questions and Answers (Q&A) gives further guidance on the basis of the Brexit preparedness notice in a situation where the United Kingdom (UK) becomes a third country on the 'withdrawal date' without a ratified withdrawal agreement and without the transition period provided for in the Withdrawal Agreement.

The withdrawal date is 1 November 2019.³

This Q&A may be further updated and complemented where necessary.

1. JURISDICTION

1.1. Can an UK insurer be sued in the EU-27⁴ as from the withdrawal date?

Proceedings initiated as from the withdrawal date in the EU-27 Member States

¹ <https://ec.europa.eu/info/files/civil-justice>.

² It is recalled that the United Kingdom does not participate in the full *acquis* of judicial cooperation in civil and commercial matters.

³ 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. After a first extension decided on 22 March 2019, the European Council (Article 50) decided on 11 April 2019, in agreement with the United Kingdom, to further extend the 2-year period provided for in Article 50(3) of the Treaty on European Union until 31 October 2019.

However, in the event that the United Kingdom does not hold elections to the European Parliament and has not ratified the Withdrawal Agreement by 22 May 2019, the withdrawal date is 1 June 2019.

⁴ 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.

Article 11 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁵ sets out the rules for international jurisdiction in matters relating to insurance. These rules establish jurisdiction of EU courts where the insurer is domiciled in a Member State.⁶

This means that as of the withdrawal date, the possibility to sue the UK insurer in the court of an EU Member State depends on national law of that EU Member State.

Proceedings pending on the withdrawal date in the EU-27 Member States

For issues of international jurisdiction in proceedings pending on the withdrawal date, please refer to the Brexit preparedness notice.

1.2. Will Regulation (EU) No 1215/2012 continue to apply to consumer contracts as from the withdrawal date?

Proceedings initiated as from the withdrawal date in the EU-27 Member States

This matter is addressed in the “*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights.*”⁷

Proceedings pending on the withdrawal date in the EU-27 Member States

For issues of international jurisdiction in proceedings pending on the withdrawal date, please refer to the Brexit preparedness notice.

1.3. How will the lis pendens rule apply?

As of the withdrawal date, the obligation for a court in an EU-27 Member State set out in Article 29(1) of Regulation (EU) No 1215/2012 no longer applies with regard to courts seized in the United Kingdom.

However, Article 33 of Regulation (EU) No 1215/2012 becomes applicable with regard to courts first seized in the United Kingdom.

⁵ OJ L 351, 20.12.2012, p. 1.

⁶ According to Article 11(2) of Regulation (EU) No 1215/2012, an insurer who is not domiciled in a Member State but has a branch, agency or other establishment in a Member State shall be deemed to be domiciled in that Member State in disputes arising out of that branch.

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https://ec.europa.eu/info/sites/info/files/file_import/consumer_protection_and_passenger_rights_en.pdf.

2. APPLICABLE LAW

2.1. What will be the law applicable to consumer contracts as from the withdrawal date?

Article 6 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)⁸ ensures that, irrespective of the law chosen by the parties or which applies by default, consumers with a habitual place of residence in an EU Member State enjoy the mandatory protection of that law if they are targeted there by third country traders. As of the withdrawal date, this will apply also in relation to UK traders.⁹

3. RECOGNITION AND ENFORCEMENT

3.1. Can a UK judgment still be recognised and enforced under EU rules as of the withdrawal date?

This matter is addressed in the Brexit preparedness notice: The EU rules on recognition and enforcement will not apply to a judgment of a UK court, even where the judgment was handed down before the withdrawal date or the enforcement proceedings were commenced before the withdrawal date.

The only exception to this rule is if a judgment of a UK court has been exequatored before the withdrawal date. The reason for this is that such a judgment has already been declared enforceable in a specific EU Member State by the courts of that Member State before the withdrawal date. Thus, the fact that the judgment was originally handed down by a UK court has become irrelevant. This exception applies also to authentic instruments and agreements, which have been declared enforceable in an EU-27 Member State before the withdrawal date.

3.2. What if a certificate has been issued under Regulation (EU) No 1215/2012 before the withdrawal date?

The rule set out in section 3.1. of this Q&A document, i.e. that enforcement under EU law stops, also applies to the issuance of a certificate in the Member State of origin in accordance with Article 53 of Regulation (EU) No 1215/2012. The issuance of such a certificate in the Member State of origin cannot be compared to a declaration of enforceability ('exequatur') in the Member State of enforcement prior to the withdrawal date.

The Member State can decide under national law to continue to apply essentially the same rules as the current ones to a UK judgment for which a

⁸ OJ L 177, 4.7.2008, p. 6.

⁹ See also the "*Notice to stakeholders - Withdrawal of the United Kingdom and EU rules on consumer protection and passenger rights.*" https://ec.europa.eu/info/sites/info/files/file_import/consumer_protection_and_passenger_rights_en.pdf.

certificate under Regulation (EU) No 1215/2012 has been issued before the withdrawal date.

3.3. What about recognition and enforcement of a UK judgment given by a court designated in a choice of court agreement?

Proceedings initiated as from the withdrawal date in the EU Member States

On 28 December 2018 the United Kingdom signed and ratified the 2005 Hague Convention on Choice of Court Agreements.¹⁰ It will apply to the United Kingdom when the United Kingdom withdraws from the EU without a withdrawal agreement.

However, according to Article 16(1) of the Convention, **it will only apply to exclusive choice of court agreements concluded after its entry into force for the United Kingdom**, i.e. after the United Kingdom has become party to the Convention.¹¹

Proceedings pending on the withdrawal date in the EU Member States

For issues of proceedings pending on the withdrawal date, please refer to the Brexit preparedness notice.

3.4. What about recognition of a UK divorce judgment?

UK divorce judgment handed down before the withdrawal date, but not subject to a recognition proceeding under Article 21(3) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.¹²

A divorce judgment, which has already taken effect before the withdrawal date, will not lose its validity as from the withdrawal date. Such a judgment changes the status of the spouses from married to divorced, which is presumed to be the same in all EU-27 Member States. If the change of status occurred before the withdrawal date, it remains valid in all EU-27 Member States unless and until there is a court decision on non-recognition. The fact that the legal regime subsequently changes will not deprive such a status decision of its effect. However, if a divorce judgment is challenged in the EU as from the withdrawal date, EU rules on grounds of non-recognition of a divorce judgment will no longer apply, but grounds of non-recognition are subject to national law.

¹⁰ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=98>.

¹¹ Initial date of accession signalled by the United Kingdom was 1 April 2019, but the United Kingdom has currently postponed it to either 13 April or 23 May 2019 depending on scenarios, see also footnote 3.

¹² OJ L 338, 23.12.2003, p. 1.

Proceedings initiated as from the withdrawal date in the EU-27 Member States

The 1970 Hague Convention on the recognition of divorces and legal separations¹³ deals with the matter at the international level. The United Kingdom is party to this Convention, but currently only 12 EU-27 Member States are contracting parties. Any EU Member State intending to join the Convention would need an EU authorisation to do so.

Proceedings pending on the withdrawal date in the EU-27 Member States

For issues of proceedings pending on the withdrawal date, please refer to the Brexit preparedness notice.

3.5. What about recognition and enforcement of a UK maintenance decision?

Proceedings initiated as from the withdrawal date in the EU-27 Member States

The 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance¹⁴ deals with the matter at the international level. On 28 December 2018 the United Kingdom signed and ratified this Convention. It will apply to the United Kingdom when the United Kingdom withdraws from the EU without a withdrawal agreement.

However, according to Article 56(1) of the Convention, **it will only apply to requests and applications made after the United Kingdom has become party to the Convention.**¹⁵

Proceedings pending on the withdrawal date in the EU-27 Member States

For issues of proceedings pending on the withdrawal date, please refer to the Brexit preparedness notice: For proceedings conducted before the courts of the EU Member States on the withdrawal date and involving a party domiciled in the United Kingdom, the provisions on recognition and enforcement under the EU law cease to apply as from the withdrawal date. These specific provisions are applicable only in cross-border cases as defined in the Regulation, i.e. where the recognition or enforcement of a maintenance decision originating from one Member State is sought in another Member State. As from the withdrawal date, this requirement will no longer be met for parties with domicile or habitual residence in the United Kingdom. It will then be for the EU-27 Member States to decide how to deal with the case in the procedural terms: whether they will continue in accordance with the national

¹³ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=80>.

¹⁴ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>.

¹⁵ Initial date of accession signalled by the United Kingdom was 1 April 2019, but the United Kingdom has currently postponed it to either 13 April or 23 May 2019 depending on scenarios, see also footnote 3.

procedural law or whether they will discontinue proceedings and require the claimants to re-initiate them under national procedural law. The Regulations do not provide for a unified solution for such cases.

4. INSOLVENCY

4.1. What about insolvency proceedings opened in an EU-27 Member State?

Main or secondary proceedings opened as from the withdrawal date in the EU-27 Member States

As from the withdrawal date, the United Kingdom can no longer open proceedings on the basis of Regulation (EU) 2015/848.

EU-27 Member States continue to apply Regulation (EU) 2015/848, taking account of the United Kingdom as a third country to which Regulation (EU) 2015/848 does not apply.

Main or secondary proceedings pending on the withdrawal date in an EU-27 Member State

Section 1. of the Brexit preparedness notice also applies to insolvency proceedings.

The EU rules on jurisdiction continue to apply. Where prior to the withdrawal date main proceedings were opened in the United Kingdom and secondary proceedings were opened in EU-27 Member State(s), the courts of Member State(s) in question retain international jurisdiction according to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings.¹⁶

4.2. What happens in case of insolvency proceedings opened in the United Kingdom before the withdrawal date?

Section 2. of the Brexit preparedness notice also applies to insolvency proceedings:

Insolvency proceedings, which commenced in the United Kingdom and are pending on the withdrawal date are no longer recognised by EU-27 Member States under Regulation (EU) 2015/848 as of the withdrawal date.

¹⁶ OJ L 141, 5.6.2015, p. 19.

5. OTHER ISSUES

5.1. What happens to specific European procedures (European Payment Order Procedure¹⁷ or the European Procedure for Small Claims¹⁸)?

Sections 1. and 2. of the Brexit preparedness notice also apply to the specific European procedures.

Procedures initiated as from the withdrawal date in the EU-27 Member States

For procedures involving a UK domiciled defendant initiated on or after the withdrawal date in the EU Member States, the EU-specific procedures will no longer be available.

Procedures pending on the withdrawal date in the EU-27 Member States

The European Payment Order Procedure and the European Procedure for Small Claims are available only in cross-border cases as defined in the relevant Regulations, i.e. where at least one party has a domicile or habitual residence in a Member State other than the one of the court seized.¹⁹ Procedures conducted before the courts of the EU-27 Member States on the withdrawal date and involving a party domiciled in the United Kingdom cease under the EU law as from the withdrawal date. It is for each EU-27 Member State to decide whether, on the basis of national procedural law

- The pending procedure is continued. Nothing in EU law prevents this.
- The procedure is discontinued, i.e. the claimant to re-initiate them under national procedural law.

5.2. Is there any alternative concerning legal aid in cross-border disputes as of the withdrawal date?

As of the withdrawal date, Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes²⁰ no longer applies in EU-27 Member States vis-à-vis the United Kingdom.

There is no instrument under international law that would deal with this matter. As from the withdrawal date, national law applies to legal aid in cross-border disputes.

¹⁷ 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.

¹⁸ 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.

¹⁹ Article 3(1) of Regulation (EC) No 1896/2006 and Article 3(1) of Regulation (EC) No 861/2007.

²⁰ OJ L 26, 31.1.2003, p. 41.

5.3. In the field of public documents, can an apostille be required again as from the withdrawal date for documents issued by the UK?

See Section 5. of the Brexit preparedness notice.

As from the withdrawal date, EU-27 Member States' authorities will be entitled to require an apostille under the 1961 Hague Apostille Convention²¹ and apply their national law regarding translations to any public document issued by the UK authorities presented to them as of the withdrawal date.

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²¹ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>.