

Brexit, again: White Paper on the Great Repeal Bill

Since Wednesday it is official: The UK will leave the EU. What this means for judicial cooperation in cross-border matters has been the subject of an intense debate over the last months. The UK government, however, has thus far not indicated how it plans to proceed. A White Paper that was released yesterday now gives some basis for speculation:

- The UK will adopt a Great Repeal Bill that will convert the current body of EU law, notably directly applicable EU Regulations, into UK domestic law (para. 2.4).
- When applying the EU-derived body of law UK courts will be required to give “historic” CJEU decisions, i.e. decisions that the CJEU will render up until the day of Brexit, the same binding, or precedent status as decisions of the UK Supreme Court (para. 2.14).
- To the extent that EU law cannot simply be converted into domestic law, because it is based on reciprocity, the UK will seek to secure reciprocal arrangements as a part of the new relationship with the EU (para. 3.3).

Applied to conflict of laws this suggests that the UK will most likely convert the non-reciprocal regulations, notably the Rome I and the Rome II Regulations, into domestic law and apply them unilaterally. UK courts will then be required to follow and apply relevant CJEU decisions that have been and will be rendered up to the date of Brexit. As regards regulations that rest on the principle of reciprocity, notably the Brussels Ia Regulation but also the Service and Evidence Regulation, the UK will most likely seek to secure their continued reciprocal application.

Of course, this leaves a lot of questions open. What will, for example, happen to post-Brexit CJEU decisions relating to the Rome I and the Rome II Regulation? Will they have any meaning for UK courts? And what happens to the Brussels Ia Regulation if the UK and the EU do manage to reach agreement on its continued reciprocal application?

So, stay tuned.