

The impact of Brexit on the operation of the EU legislative measures in the field of private international law

On 28 February 2018, the European Commission published the draft Withdrawal Agreement between the EU and the UK, based on the Joint Report from the negotiators of the two parties on the progress achieved during the first phase of the Brexit negotiations.

The draft includes a Title VI which specifically relates to judicial cooperation in civil matters. The four provisions in this Title are concerned with the fate of the legislative measures enacted by the EU in this area (and binding on the UK) once the “transition of period” will be over (that is, on 31 December 2020, as stated in Article 121 of the draft).

Article 62 of the draft provides that, in the UK, the Rome I Regulation on the law applicable to contracts and the Rome II Regulation on the law applicable to non-contractual obligations will apply, respectively, “in respect of contracts concluded before the end of the transition period” and “in respect of events giving rise to damage which occurred before the end of the transition period”.

Article 63 concerns the EU measures which lay down rules on jurisdiction and the recognition and enforcement of decisions. These include the Brussels I *bis* Regulation on civil and commercial matters (as “extended” to Denmark under the 2005 Agreement between the EC and Denmark: the reference to Article 61 in Article 65(2), rather than Article 63, is apparently a clerical error), the Brussels II *bis* Regulation on matrimonial matters and matters of parental responsibility, and Regulation No 4/2009 on maintenance.

According to Article 63(1) of the draft, the rules on jurisdiction in the above measures will apply, in the UK, “in respect of legal proceedings instituted before the end of the transition period”. However, under Article 63(2), in the UK, “as well as in the Member States in situations involving the United Kingdom”, Article 25 of the Brussels I *bis* Regulation and Article 4 of the Maintenance Regulation,

which concern choice-of-court agreements, will “apply in respect of the assessment of the legal force of agreements of jurisdiction or choice of court agreements concluded before the end of the transition period”(no elements are provided in the draft to clarify the notion of “involvement”, which also occurs in other provisions).

As regards recognition and enforcement, Article 63(3) provides that, in the UK and “in the Member States in situations involving the United Kingdom”, the measures above will apply to judgments given before the end of the transition period. The same applies to authentic instruments formally drawn up or registered, and to court settlements approved or concluded, prior to the end of such period.

Article 63 also addresses, with the necessary variations, the issues surrounding, among others, the fate of European enforcement orders issued under Regulation No 805/2004, insolvency proceedings opened pursuant to the Recast Insolvency Regulation, European payment orders issued under Regulation No 1896/2006, judgments resulting from European Small Claims Procedures under Regulation No 861/2007 and measures of protection for which recognition is sought under Regulation No 606/2013.

Article 64 of the draft lays down provisions in respect of the cross-border service of judicial and extra-judicial documents under Regulation No 1393/2007 (again, as extended to Denmark), the taking of evidence according to Regulation No 1206/2001, and cooperation between Member States’ authorities within the European Judicial Network in Civil and Commercial Matters established under Decision 2001/470.

Other legislative measures, such as Directive 2003/8 on legal aid, are the object of further provisions in Article 65 of the draft.