The Impact of the EU-UK Draft Agreement on Judicial Cooperation in Civil and Commercial Matters

Yesterday, on 14 November 2018, the UK cabinet, after five hours of deliberation, accepted the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, as agreed at negotiators' level on the same day. The text (TF 50 [2018] 55) contains provisions on judicial cooperation in civil and commercial matters in Articles 66 to 69. Pursuant to Article 66(a) of the Draft Agreement, the Rome I Regulation shall apply in the UK in respect of contracts concluded before the end of the transition period, which will be on 31 December 2020 (Article 126 of the Draft Agreement). Under Article 66(b) of the Draft Agreement, the Rome II Regulation shall apply in the UK in respect of events giving rise to damage, where such events occurred before the end of the transition period. The remaining EU Member States will continue to apply the Rome I and II Regulations in EU-British relations anyway following the principle of universal application (Article 2 Rome I, Article 3 Rome II).

Article 67 of the Draft Agreement deals with jurisdiction, recognition and enforcement of judicial decisions, and related cooperation between central authorities. This article reads as follows

"1. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, in respect of legal proceedings instituted before the end of the transition period and in respect of proceedings or actions that are related to such legal proceedings pursuant to Articles 29, 30 and 31 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council, Article 19 of Regulation (EC) No 2201/2003 or Articles 12 and 13 of Council Regulation (EC) No 4/2009, the following acts or provisions shall apply:

(a) the provisions regarding jurisdiction of Regulation (EU) No 1215/2012;

(b) the provisions regarding jurisdiction of Regulation (EU) 2017/1001, of Regulation (EC) No 6/2002, of Regulation (EC) No 2100/94, of Regulation (EU) 2016/679 of the European Parliament and of the Council and of Directive

96/71/EC of the European Parliament and of the Council;

(c) the provisions of Regulation (EC) No 2201/2003 regarding jurisdiction;

(d) the provisions of Regulation (EC) No 4/2009 regarding jurisdiction.

2. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts or provisions shall apply as follows in respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements:

(a) Regulation (EU) No 1215/2012 shall apply to the recognition and enforcement of judgments given in legal proceedings instituted before the end of the transition period, and to authentic instruments formally drawn up or registered and court settlements approved or concluded before the end of the transition period;

(b) the provisions of Regulation (EC) No 2201/2003 regarding recognition and enforcement shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to documents formally drawn up or registered as authentic instruments, and agreements concluded before the end of the transition period;

(c) the provisions of Regulation (EC) No 4/2009 regarding recognition and enforcement shall apply to decisions given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded, and authentic instruments established before the end of the transition period;

(d) Regulation (EC) No 805/2004 of the European Parliament and of the Council shall apply to judgments given in legal proceedings instituted before the end of the transition period, and to court settlements approved or concluded and authentic instruments drawn up before the end of the transition period, provided that the certification as a European Enforcement Order was applied for before the end of the transition period.

3. In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following provisions shall apply as follows:

(a) Chapter IV of Regulation (EC) No 2201/2003 shall apply to requests and applications received by the central authority or other competent authority of the requested State before the end of the transition period;

(b) Chapter VII of Regulation (EC) No 4/2009 shall apply to applications for recognition or enforcement as referred to in point (c) of paragraph 2 of this Article and requests received by the central authority of the requested State before the end of the transition period;

(c) Regulation (EU) 2015/848 of the European Parliament and of the Council shall apply to insolvency proceedings, and actions referred to in Article 6(1) of that Regulation, provided that the main proceedings were opened before the end of the transition period;

(d) Regulation (EC) No 1896/2006 of the European Parliament and of the Council shall apply to European payment orders applied for before the end of the transition period; where, following such an application, the proceedings are transferred according to Article 17(1) of that Regulation, the proceedings shall be deemed to have been instituted before the end of the transition period;

(e) Regulation (EC) No 861/2007 of the European Parliament and of the Council shall apply to small claims procedures for which the application was lodged before the end of the transition period;

(f) Regulation (EU) No 606/2013 of the European Parliament and of the Council shall apply to certificates issued before the end of the transition period."

Article 68 of the Draft Agreement concerns ongoing judicial cooperation procedures, in particular within the framework of the EU Regulations on cross-border service of documents and the taking of evidence. Article 69 of the Draft Agreement contains miscellaneous provisions dealing, inter alia, with legal aid, mediation, and relations with Denmark.

The full text of the Draft Agreement is available on the Commission's website here and in the press, e.g. via the Guardian's website here. It remains to be seen, however, whether the British Parliament will ratify this text (see here). Stay tuned!