



## **Brexit and the judicial cooperation in civil and commercial matters<sup>1</sup>**

### Introduction

On 31st January 2020 at 23:00 UK time (24:00 CET time), the United Kingdom stopped being a member of the European Union. The terms for the withdrawal of the UK from EU are agreed in the so called *Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*.

### The transition period

As part of the Agreement, from 1st February 2020 UK and EU entered in the so called *transition period*. This transition period will last (at least) until 31 December 2020. During this period, it will be “business as usual”, also in the field of enforcement and civil proceedings. Though the UK will no longer be represented in the EU institutions, agencies, bodies and offices, EU law will still apply until the end of the transition period. As it was agreed in October 2019 (the Political Declaration), the transition period will be used to come to an agreement on a new partnership. As mentioned, the transition period will last at least until 31 December 2020. However, it can be extended by one to two years. The joint decision on such extension needs to be taken before 1 July 2020.

### The Withdrawal Agreement (WA) and judicial cooperation in civil and commercial matters

The judicial cooperation in civil and commercial matters is regulated in detail in the Withdrawal agreement (title VI; articles 66-69). The transitory provisions are rather complicated. Here is a summary of the most important provisions:

---

<sup>1</sup> As per 3 February 2020.

<b>Applicable law in contractual and non-contractual matters (article 66 WA)</b>		
Regulation (EC) 593/2008 of 17 June 2008 on the law applicable to contractual obligations ( <b>Rome I</b> ) (OJ L 177, 4.7.2008, p. 6).		Applies in the UK in respect of contracts concluded before the end of the transition period
Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations ( <b>Rome II</b> ) (OJ L 199, 31.7.2007, p. 40).		Applies in respect of events giving rise to damage, where such events occurred before the end of the transition period.
<b>Jurisdiction (article 67 WA)</b>		
Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).	Articles 29,30,31	In the UK, as well as in the Member States in situations involving the UK, 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 the following provisions apply:
Regulation 2201/2003	Article 19	a) The provisions regarding jurisdiction of Regulation 1215/2012 <sup>2</sup>
Regulation (EC) 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1)	Articles 12, 13	b) The provisions regarding jurisdiction of Regulation 2017/1001, 6/2002, 2100/94, 2016/679 and directive 96/71 regarding jurisdiction c) The provisions of Regulation 2201/2003 regarding jurisdiction d) The provisions of Regulation 4/2009 regarding jurisdiction
<b>In respect of the recognition and enforcement of judgments, decisions, authentic instruments, court settlements and agreements (article 67 WA)</b>		
Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1) <sup>3</sup>		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

<sup>2</sup> This also applies in respect of the provisions of Regulation (EU) No 1215/2012 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (article 69 WA)

<sup>3</sup> This also applies in respect of the provisions of Regulation (EU) No 1215/2012 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (article 69 WA)

Regulation (EC) No 2201/2003		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;
	Chapter IV	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
Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1)		The provisions of Regulation (EC) No4/2009 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;
	Chapter VII	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
Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims		Regulation (EC) No 805/2004 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.
Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure (OJ L 399, 30.12.2006, p. 1).		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
Regulation (EC) No 861/2007 of 11 July 2007 establishing a European Small Claims Procedure (OJ L 199, 31.7.2007, p. 1)		Regulation (EC) No 861/2007 shall apply to small claims procedures for which the application was lodged before the end of the transition period
Regulation (EU) No 606/2013 of 12 June 2013 on mutual recognition of		Regulation (EU) No 606/2013 of the European Parliament and of the Council <sup>(81)</sup> shall apply to

protection measures in civil matters (OJ L 181, 29.6.2013, p. 4)		certificates issued before the end of the transition period
<b>Ongoing judicial cooperation procedures (article 68 and 69 WA)</b>		
Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L 324, 10.12.2007, p. 79) <sup>4</sup>		Regulation (EC) No 1393/2007 of the European Parliament and of the Council shall apply to judicial and extra judicial documents which were received for the purposes of service before the end of the transition period by one of the following:  (i) a receiving agency; (ii) a central body of the State where the service is to be effected; or (iii) diplomatic or consular agents, postal services or judicial officers, officials or other competent persons of the State addressed, as referred to in Articles 13, 14 and 15 of that Regulation;
Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1)		Council Regulation (EC) No 1206/2001 <sup>(83)</sup> shall apply to requests received before the end of the transition period by one of the following: (i) a requested court; (ii) a central body of the State where the taking of evidence is requested; or (iii) a central body or competent authority referred to in Article 17(1) of that Regulation;
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 disputes (OJ L 26, 31.1.2003, p. 41)		Council Directive 2003/8/EC shall apply to applications for legal aid that were received by the receiving authority before the end of the transition period. The requesting authority may request an acknowledgement of receipt within 7 days of the end of the transition period where it has doubts as to whether the request was received before that date
Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p. 3)		Directive 2008/52/EC of the European Parliament and of the Council shall apply where, before the end of the transition period:  (i) the parties agreed to use mediation after the dispute had arisen; (ii) mediation was ordered by the court; or (iii) a court invited the parties to use mediation
Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15)		Council Directive 2004/80/EC shall apply to applications received by the deciding authority before the end of the transition period

<sup>4</sup> This also applies with regard to the provisions of Regulation (EC) No 1393/2007 as applicable by virtue of the agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters (article 69 WA)