

Commission Notices to Stakeholders on Civil Justice / Private International Law and on Company Law following Brexit

By Noel Dilworth

On 21 November, the European Commission's Directorate-General for Justice and Consumers issued two notices to stakeholders concerning the UK's decision to serve notice pursuant to Article 50 of the Treaty on European Union. This alerter briefly summarises their contents.

The Notice on Civil Justice and Private International Law contains no surprising statement of principle, but it recapitulates the primary areas of civil procedure likely to be impacted by a no-deal scenario. Aimed specifically at private parties in the Member States, the Commission's Notice draws particular attention to the following:

- (1) The rules on **international jurisdiction**, contained in the Brussels (Recast) Regulation (Regulation (EU) No 1215/2012), will, in the absence of agreement, no longer apply to judicial proceedings in the UK or to judicial proceedings in the EU involving civil and commercial cases where the defendant is domiciled in the UK. The national rules of the State of the Court first seized will apply. It also draws attention to the fact that there is uncertainty over pending proceedings.
- (2) **Recognition and enforcement** of judgments issued in the UK will, in the absence of agreement, no longer be governed by the Brussels (Recast) Regulation, but will be subject to the national law of the State in which recognition and enforcement is sought, or by international Conventions where both the relevant Member State and the UK are contracting parties.

- (3) Procedures for **judicial co-operation** (e.g. service of documents, taking of evidence) will, in the absence of agreement, no longer apply.
- (4) Specific EU procedures, such as the **European Payment Order Procedure** or the **European Procedure for Small Claims** will, in the absence of agreement, no longer be available in the UK. Nor will they be available in EU Member States where one or more parties are domiciled in the UK.

The Notice, which complements the Position Paper on Judicial Cooperation in Civil and Commercial Matters, issued by the Commission on 12 July 2017

(https://ec.europa.eu/commission/sites/beta-political/files/essential-principles-civil-commercial-matters_en_0.pdf), and which is available on the Commission's website

(http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607671), is intended primarily as a reminder to UK consumers and businesses of the sources of uncertainty in relation to trade with parties in the EU following expiry of the notice period under Article 50.

Similarly, the Commission's Notice on Company Law (http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=607669) iterates the approach that will be taken by the EU in company law matters in the absence of an agreement to the contrary, including:

- (1) There will be no **automatic recognition** of UK incorporated companies pursuant to Article 54 of the Treaty of Functioning of the European Union, insofar as they are third country companies. Recognition will be governed by the national law of the Member State concerned, which may mean that such companies do not have legal standing, with the result that shareholders might be personally liable for the debts of the company.
- (2) EU Branches of UK incorporated companies will be considered **branches of third country companies**. Rules governing third country companies will accordingly apply.
- (3) EU rules on **disclosure, incorporation, capital maintenance and alteration and cross-border mergers** will no longer apply to the UK. Thus, stakeholders, employees, creditors and investors dealing with the UK will have to rely on UK rules for safeguards.

- (4) **Access to company information in the EU business registers** will no longer apply to the UK.
- (5) The Company law **form of a European Company (SE)** will no longer be available in the UK.

The publication on the same date of these Notices is likely to focus attention on the disruption and likely additional cost for businesses in the event that no deal, transitional or otherwise, is reached concerning the terms for the UK's departure from the European Union.

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