

Ensuring Efficient Cooperation with the UK in civil law matters ¹

Situation after Brexit and Options for Future Cooperation

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee, analyses the implications of Brexit in relation to the profile of judicial cooperation in civil matters. It examines the existing legal framework in order to identify the areas of law in respect of which there is a gap in the relationship between the EU and the UK. It assesses the consequences of the UK's failure to accede to the 2007 Lugano Convention. Concludes that the conclusion of new treaties between the EU and the UK should be pursued in relation to those areas where there is a regulatory gap, with particular reference to the area of human rights.

Background

On 23 June 2016, the British people went to the polls to vote in the referendum on whether the United Kingdom should remain in the European Union. By a narrow majority (51.9% to 48.1%), the British people decided for the UK to leave the European Union and the European Atomic Energy Community. This triggered the Article 50(2) of the Treaty on European Union (TFEU) procedure, which led to the British government notifying the European Council of its intention. A long phase of negotiations led to the conclusion of the Withdrawal Agreement, which entered into force on 1 February 2020. As of that day, the United Kingdom ceased to be a member state of the European Union.

The Withdrawal Agreement provided for a transition period expiring on 31 December 2020, in order to cushion the consequences of leaving the Community, with the possibility of negotiating arrangements for future relations. Thus, for the duration of this period, the United Kingdom saw European law apply, normally with the same legal effects as Member States. As of 1 January 2021, the UK became a third state for all intents and purposes.

As from 1 January 2021, therefore, the numerous European regulations adopted with regard to individual areas of the broader field of civil law (including civil and commercial matters in the strict sense, insolvency proceedings, divorce and legal separation, and maintenance obligations), as well as with regard to instruments of cooperation between courts, no longer apply in relations between the European Union and the United Kingdom.

A first part of the paper is therefore devoted to the analysis of matters originally governed by European regulations and in which today, due to Brexit, there is a regulatory vacuum.

¹ Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743340/IPOL_STU\(2023\)743340_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743340/IPOL_STU(2023)743340_EN.pdf)



Aim

This study aims to analyze the consequences of Brexit from the perspective of judicial cooperation in civil matters, identifying in particular the areas most affected by the UK's withdrawal. To this end, it will proceed with the analysis and comparison of the legislation applicable to the United Kingdom, as a member state, and that in force after its withdrawal from the European Union.

The paper is divided into seven chapters.

In the first chapter, the effects of the Withdrawal Agreement in the field of civil judicial cooperation are outlined, with particular reference to the residual applicability of the individual European Regulations in relations with the UK in the so-called transitional period, that is, from the entry into force of the Withdrawal Agreement until December 31, 2020. The reasons why the revival of the 1968 Brussels Convention is not conceivable are also explained.

It then goes on to examine the "body of law" consisting of the Hague Conventions (1961 Apostille Convention; 1965 Service Convention; 1970 Evidence Convention; 1970 Divorce Convention; 1980 Child Abduction Convention; 1996 Child Protection Convention; 2005 Choice of Court Convention; 2007 Child Support Convention) to see which of them and to what extent still apply to the relationship between the EU and the UK.

The third chapter discusses the content of the so-called EU Retained Laws, i.e., the set of UK rules transposing sectors of EU legislation into that country's legal system. The continued applicability of the Rome I and Rome II Regulations and their effects in relations with the EU will be the subject of analysis, as well as, conversely, the superseded inapplicability of European simplified procedures and exclusion from the European Judicial Network.

The fourth chapter is specifically devoted to an analysis of the most relevant gaps left by Brexit in the area of, in particular, the following matters: legal separation and divorce, maintenance obligations, successions, notifications, taking of evidence, public documents, access to justice, mediation, and insolvency.

Particular attention is paid in Chapter Five to the effects resulting from the United Kingdom's non-accession to the 2007 Lugano Convention.

Indeed, as is well known, on June 28, 2021, the European Commission submitted a Note Verbale to the Swiss Federal Council as the Depositary of the Lugano Convention, in which it denied its consent to the UK's application for accession.

The effect of the UK's accession to the aforementioned Lugano Convention would have been that Regulation No. 44/2001, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (so-called Brussels I), would also apply to it. This accession would have entailed renewed UK participation in the European judicial area, albeit without the automatic recognition of court decisions introduced only by the subsequent Regulation No. 1215/2012 (so-called Brussels I bis).

The effects on the legal services market of the UK's exclusion from the European legal system are also analysed. Indeed, there is the emergence of specialized commercial courts, located in several EU countries, which are bidding to be alternative judicial hubs to the London courts.

Such competition would be fostered by the easier circulation of judicial orders rendered by EU courts in the European legal space than judicial orders rendered by UK courts.

The study dwells on the actual likelihood of success of such initiatives, raising the possibility in the future of the establishment at the EU level of a single court specializing in commercial matters, which could more effectively undermine the continued attractiveness of London courts.

The study then turns to viable remedies to prospectively reduce the impact of Brexit in the area of rights protection, with particular reference to individuals, families and Small Medium Enterprises (SMEs).

In particular, a possible path is outlined, as a result of which covenanted regulations can be introduced in the following matters: divorce and legal separation, alimentary obligations, Small Claims, and cross-border insolvencies.

Finally, special attention is given to the phenomenon of Strategic Lawsuits Against Public Participation (SLAPPs), the subject of a European Commission proposal for a directive, concluding as to the desirability of agreements involving the UK as well, in order to ensure broader protection for freedom of the press and opinion, limiting phenomena of forum shopping and possible circumvention of decisions on the subject.

In summary, the study pragmatically suggests that the parties establish negotiations on specific and limited matters of particular social relevance as a first step in rebuilding a system of international cooperation between the EU and the UK.

At the same time, the study points to the existence of areas in which economic competition is currently taking place in the area of legal services.

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