

Enforceability of English Judgments in the EU – how will Brexit affect this?



Judgments obtained in England and Wales are currently enforceable in all European Member States in accordance with the Recast Brussels Regulation (EU 1251/2012). The procedure is based on legal reciprocity and is set out within the text of the EU Regulation, as such it involves a very simple and inexpensive procedure, which is the same across all 27 contracting Member States.

However, with the passing of the European Union (Withdrawal Agreement) Act in January this year, the UK signalled its intent to leave the EU on 31 January 2020. We are currently in the course of a transition period which runs up to and including 31 December 2020. For the duration of the transition period the UK continues to be treated as an EU Member State and the Recast Brussels Regulation continues to apply.

What does this mean in practical terms?

In essence if you have judgment for a specified sum of money against a debtor in England (a 'Money Order') and you know that the debtor holds money, property or other assets in Spain, you are entitled to obtain a reciprocal judgment in Spain based on your Money Order. The process involves obtaining a certificate from the Foreign Process Office in the form set out at Annex 1 of the Recast Brussels Regulation (an 'Annex 1 Certificate') and filing this together with a copy of the Money Order, and its translation before a local Court in Spain. A reciprocal judgment will thereafter be granted and be directly enforceable in Spain against your debtor's assets.

This applies in respect of all English judgments and foreign (EU) applications, which are made now, and for the next 5 months, however, when the transition period comes to an end on 31 December 2020, so too does the legal reciprocity between the EU and the UK as a Member State and the simple procedure for enforcing English



judgments in the EU. If you think you have, or may have, a claim against a debtor holding assets within the EU, then take action now.

What happens next, post-Brexit?

At present it is unclear what the position will be with regards to enforcement in the EU, from 1 January 2021. Due to the nature of the Recast Brussels Regulation, and its dependency on legal reciprocity, it cannot simply be transposed into UK law. An ideal solution would be for the UK to enter into a multilateral treaty applicable across all Member States, with the aim of maintaining reciprocal enforcement rights. However, given the looming deadline of 31 December, and the present climate and impact of Covid-19, it is unlikely that negotiation of such a treaty is particularly high on the political agenda. This leaves us with two viable options:

1. The UK could join the Lugano Convention 2007, as an independent contracting state, in a similar way to Switzerland. The Lugano Convention enables judicial enforcement between the EU and European Free Trade Association Countries, in a similar but less straightforward procedure to that outlined in the Recast Brussels Regulation. The complicating factor with the Lugano Convention is that domestic laws applicable to enforcement would apply, which differ for each EU Member State and contracting entity, the procedure for obtaining an enforceable judgment is therefore slower and more costly.
2. The UK could ratify the Hague Convention on Choice of Court Agreements in its own right. As a member of the EU, the UK has acceded to the Hague Convention since its inception on 1 October 2015, the Hague Convention applies to all EU Member States plus Singapore, Mexico and Montenegro. In essence the Hague Convention applies where there is a 'choice of law clause' in the underlying agreement. If the choice of law (and/or jurisdiction) clause nominates a country which has ratified the Hague Convention to have exclusive jurisdiction to decide disputes, any judgment obtained can thereafter be enforced within any other Hague contracting country. For most agreements which are litigated in the UK (and result in an English judgment) the choice of law and jurisdiction is that of England and Wales. Ratification of the Hague Convention is the most likely way forward for the UK on 1 January 2021 as it deposited its own 'instrument of accession' with the Hague in December 2018, in anticipation of leaving the EU with no agreement in March 2019. Whilst the December 2018 instrument of accession has been suspended, it is anticipated that a further instrument will be filed in September 2020, which will take effect following the end of the transition period on 31 December 2020. As with enforcement under the Lugano Convention, enforcement under the Hague Convention in contracting states will be dependent on local laws and more costly and time consuming than current enforcement under the Recast Brussels Regulation.

Notably arbitral awards are not affected by Brexit and will remain enforceable in contracting states in accordance with the New York Convention 1958 (to which all EU Member States + many others are signatories). The New York Convention is also based on reciprocity and may make arbitration a more attractive forum for dispute resolution, where there are international assets, in the future.

Act now

As the exact position of the UK from 1 January 2021 remains unclear, if you know that your debtor holds assets in Europe which you want to enforce against, you may wish to act now. Whilst it is unlikely that the impact of Brexit will undermine the certainty and reputation of the English Courts and judicial system, certainly in respect of its choice of law in international trade agreements, the ease with which we can currently enforce these English judgments in the EU will change in the very near future. Whilst we remain hopeful that a reciprocal multilateral treaty will be tabled for negotiation in the future, in the short term enforceability of judgments in the EU will become more complicated at the end of this year. If you are in any doubt about whether you will enforce within Europe and currently hold an English Money Order, you should also act now to obtain an enforceable reciprocal judgment in the relevant local Member State whilst the process remains both simple and inexpensive.



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