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NOTICE TO STAKEHOLDERS

WITHDRAWAL OF THE UNITED KINGDOM AND EU RULES IN THE FIELD OF CIVIL JUSTICE AND PRIVATE INTERNATIONAL LAW

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INTRODUCTION

Since 1 February 2020, the United Kingdom has withdrawn from the European Union and has become a “third country”.¹ The Withdrawal Agreement² provides for a transition period ending on 31 December 2020. Until that date, EU law in its entirety applies to and in the United Kingdom.³

During the transition period, the EU and the United Kingdom will negotiate an agreement on a new partnership, providing, notably for a free trade area. However, it is not certain whether such an agreement, if concluded, will enter into force at the end of the transition period. In any event, such an agreement would create a relationship which in terms of market access conditions will be very different from the United Kingdom’s participation in the internal market,⁴ in the EU Customs Union, and in the VAT and excise duty area.

Moreover, after the end of the transition period the United Kingdom will be a third country as regards the implementation and application of EU law in the EU Member States.

Therefore, all interested parties, and especially economic operators, are reminded of the legal situation after the end of the transition period.

Advice to stakeholders:

To address the consequences set out in this notice, stakeholders are advised to assess past and future contractual choices of UK jurisdiction.

¹ A third country is a country which is not member of the EU.

² Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29, 31.1.2020, p. 7 (“Withdrawal Agreement”).

³ Subject to certain exceptions provided for in Article 127 of the Withdrawal Agreement, none of which is relevant in the context of this notice.

⁴ In particular, a free trade agreement does not provide for internal market concepts (in the area of goods and services) such as mutual recognition, the “country of origin principle”, and harmonisation. Nor does a free trade agreement remove customs formalities and controls, including those concerning the origin of goods and their input, as well as prohibitions and restrictions for imports and exports.

Stakeholders that intend to conclude contracts with a person or company in the United Kingdom or to launch proceedings in civil or commercial matters related to the United Kingdom or to enforce judgments in such matters should seek legal advice.

Please note:

This notice does not address:

- specific consumer protection issues other than those related to applicable law;⁵ and
- EU company law.

For these aspects, other notices are in preparation or have been published.⁶

After the end of the transition period, the following rules will apply in the field of civil justice and private international law:

1. INTERNATIONAL JURISDICTION

EU private international law establishes uniform rules for international jurisdiction in areas of civil and commercial matters, including insolvency and family law. Subject to various exceptions, these uniform rules apply where a defendant is domiciled or habitually resident in an EU Member State.⁷

1.1. Legal proceedings instituted before the end of the transition period

According to Article 67(1) of the Withdrawal Agreement, in respect of proceedings instituted⁸ before the end of the transition period, the EU rules on international jurisdiction continue to apply in the United Kingdom and in the Member States in situations involving the United Kingdom.⁹

Article 67(1) of the Withdrawal Agreement covers all EU instruments setting out rules on conflicts of jurisdiction, i.e. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on

⁵ See point 2 of this notice concerning applicable law.

⁶ https://ec.europa.eu/info/european-union-and-united-kingdom-forging-new-partnership/future-partnership/preparing-end-transition-period_en

⁷ While the EU Treaties provide for specific arrangements for the (non)participation of Ireland and Denmark in this part of the EU *acquis*, for the sake of simplicity, the notion "EU Member States" is used. Regarding Denmark, see Article 69(2) and (3) of the Withdrawal Agreement.

⁸ Where appropriate, the Title VI of Part three of the Withdrawal Agreement ("Ongoing judicial cooperation in civil and commercial matters") uses the terminology of EU instruments in civil and judicial matters. For example, for the notion of "proceedings instituted", see Article 66(1) of Regulation (EU) No 1215/2012.

⁹ "Situations involving the United Kingdom" is a formulation, which reflects the fact that the Withdrawal Agreement is based on reciprocal application and only applies in the EU-UK relationship. This refers, for example, to proceedings involving, according to the instrument, a defendant domiciled or habitually resident in the United Kingdom or a debtor having the centre of its main interest in the United Kingdom.

jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,^{10 11} as well as *leges speciales* which lay down specific jurisdiction rules.¹²

Article 67(1) of the Withdrawal Agreement specifies that EU rules on jurisdiction also apply to “proceedings or actions that are related to such legal proceedings” even if such related proceedings or actions are instituted after the end of the transition period.¹³ This addresses situations where proceedings involving the same cause of action and between the same parties are brought in the courts of a Member State and the United Kingdom (“*lis pendens*”) before and after the end of the transition period respectively (or *vice-versa*). The aim is to ensure that, in these cases, the EU rules on conflict of jurisdictions continue to apply where the court has been seized after the end of the transition period in an EU Member State or in the United Kingdom.

1.2. Proceedings instituted after the end of the transition period

For proceedings instituted after the end of the transition period, the courts in the EU Member States will determine their international jurisdiction:

- in matters falling within the scope of EU instruments in civil and commercial matters, on the basis of these EU instruments, including family law. If provided for by the instrument in question,¹⁴ a court of a Member State may apply its national rules of international jurisdiction.
- in matters falling outside the scope of EU instruments, international jurisdiction will be governed by the national rules of the Member State in which a court has been seized. In some cases, international conventions, in particular conventions adopted by the Hague Conference on Private International Law, will replace EU law in the relationships between the EU and the United Kingdom provided that both the EU/EU Member States and the United Kingdom are parties to the convention (hereafter “relevant international conventions”).¹⁵

In respect of proceedings or actions instituted in a court in a Member State after the end of the transition period that are related to legal proceedings pending before a court in the United Kingdom seized after the end of the

¹⁰ OJ L 351, 20.12.2012, p. 1.

¹¹ Cf. Article 67(1)(a) of the Withdrawal Agreement.

¹² Cf. Article 67(1)(b)-(d) of the Withdrawal Agreement.

¹³ Pursuant to Articles 29, 30 and 31 of Regulation (EC) No 1215/2012, Article 19 of Regulation (EC) No 2201/2003 and Articles 12 and 13 of Council Regulation (EC) No 4/2009.

¹⁴ E.g. Article 6(1) of Regulation (EU) 1215/2012.

¹⁵ Usually, these conventions are transposed into national law of each State that is party to the Convention.

transition period, Articles 33 and 34 of Regulation (EU) No 1215/2012 will apply in the Member States.

2. APPLICABLE LAW IN CONTRACTUAL AND NON-CONTRACTUAL MATTERS

EU private international law establishes uniform rules in EU Member States for conflicts of laws in contractual and non-contractual obligations.

2.1. Contractual obligations

2.1.1. Rules on applicable law applicable in the United Kingdom

According to Article 66(a) of the Withdrawal Agreement, Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I)¹⁶ is to apply in the United Kingdom in respect of contracts concluded¹⁷ before the end of the transition period.

2.1.2. Rules on applicable law applicable in the EU

Article 66(a) of the Withdrawal Agreement does not address the rules applicable in the EU. Rather, in the EU, Regulation (EC) No 593/2008, which provides for universal application,¹⁸ applies.

Example: Article 6 of Regulation (EC) No 593/2008 ensures that, irrespective of the law chosen by the parties or of which law applies by default, consumers with their habitual place of residence in an EU Member State enjoy the mandatory protection of that law if they are targeted there by third country traders whether or not those traders are established in the EU or a third country.

2.2. Non-contractual obligations

2.2.1. Rules on applicable law applicable in the United Kingdom

According to Article 66(b) of the Withdrawal Agreement, Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations (Rome II)¹⁹ is to apply in the United Kingdom in respect

¹⁶ OJ L 177, 4.7.2008, p. 6.

¹⁷ Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notion of “contract concluded”, see Article 28 of Regulation (EC) No 593/2008.

¹⁸ Article 2 of Regulation (EC) No 593/2008. Universal application means that the regulation is applied even where it leads to the application of the law of a third country.

¹⁹ OJ L 199, 31.7.2007, p. 40.

of events giving rise to damage, where such events occurred before²⁰ the end of the transition period.

2.2.2. *Rules on applicable law applicable in the EU*

Article 66(b) of the Withdrawal Agreement does not address the rules applicable in the EU. Rather, in the EU, Regulation (EC) No 864/2007, which provides for universal application,²¹ applies.

3. **RECOGNITION AND ENFORCEMENT**

EU private international law sets out rules to facilitate recognition and enforcement in Member States of judicial decisions given in other Member States.

3.1. **Proceedings instituted before the end of the transition period**

According to Article 67(2) of the Withdrawal Agreement, the following applies:

- **Regulation (EU) No 1215/2015** is to 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 concluded²² before the end of the transition period.
- **Regulation (EC) No 2201/2003 (Brussels IIa)**²³ is to apply to the recognition and enforcement of 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 concluded²⁴ before the end of the transition period.

²⁰ Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notion of “events giving rise to damage”, see Article 31 of Regulation (EC) No 864/2007.

²¹ Article 3 of Regulation (EC) No 864/2007.

²² Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notions of “legal proceedings instituted”, “authentic instruments formally drawn up or registered”, and “court settlements approved or concluded”, see Article 66(2) of Regulation (EU) No 1215/2015.

²³ Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L338, 23.12.2003, p.1.

²⁴ Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notions of “legal proceedings instituted”, “authentic instruments formally drawn up or registered”, and “court settlements approved or concluded”, see Article 64(1) of Regulation (EC) No 2201/2003.

Example: A UK divorce judgment, the proceedings for which have been instituted before the end of the transition period, will be recognised in the EU in accordance with Article 21 of Regulation (EC) No 2201/2003 even when the judgment is handed down after that date.

- **Regulation (EC) No 4/2009 (Maintenance Regulation)**²⁵ shall apply to recognition and enforcement of decisions given in legal proceedings instituted before the end of the transition period and to court settlements approved or concluded and authentic instruments established²⁶ before the end of the transition period.
- **Regulation (EC) No 805/2004 (European Enforcement Order for uncontested claims)**²⁷ 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.

Article 67(2)(a) to (c) of the Withdrawal Agreement refers of to the “institution of proceedings” of the act to be enforced. Thus, this provision covers also situations where:

- a judicial procedure has been instituted in the United Kingdom or an EU Member State, but the judgement is handed down only after the end of the transition period;
- a judgement has been handed down by a court in the United Kingdom or an EU Member State before the end of the transition period, but not been enforced in an EU Member State or the United Kingdom respectively before the end of the transition period; and
- a judgment of a UK or EU Member State court has been *exequatored* (declared enforceable) in an EU Member State or the United Kingdom respectively before the end of the transition period but not been enforced in an EU Member State or the United Kingdom respectively before the end of the transition period.

In some cases, judgement creditors may seek enforcement of judgments pre-dating the entry into application of Regulation (EU) No 1215/2012 on 10

²⁵ Council 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.

²⁶ Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notions of “legal proceedings instituted”, “authentic instruments formally drawn up or registered”, and “court settlements approved or concluded”, see Article 75(1) of Regulation (EC) No 4/2009.

²⁷ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004, p. 15.

January 2015, which was preceded by the Brussels I Regulation (EC) No 44/2001 or even the 1968 Brussels Convention. Each successor instrument contains a provision to establish the temporal scope.²⁸ The reference to the legal instruments in Article 67(2) of the Withdrawal Agreement includes the reference, in these legal instruments, to preceding instruments.

3.2. Proceedings instituted after the end of the transition period

EU rules on enforcement will not apply to judicial decisions where the original proceedings have been instituted after the end of the transition period.

In some instances, relevant international conventions (see above) will apply.

Example 1:

As regards **divorce proceedings** initiated in an EU Member State after the end of the transition period, the 1970 Hague Convention on the recognition of divorces and legal separations²⁹ deals with the matter at the international level. The United Kingdom is party to this Convention, but currently only 12 EU Member States are contracting parties.³⁰

Example 2:

As to **child maintenance proceedings** initiated in an EU Member State after the end of the transition period, the 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance³¹ deals with the matter at the international level. The United Kingdom has expressed its intention to sign and ratify the Convention. The Convention will apply between the EU and the United Kingdom to requests and applications made after the United Kingdom has become party in its own right to the Convention.³²

Where international conventions do not apply, the recognition and enforcement of a UK judgment will be governed by the national rules of the Member State in which recognition/enforcement is sought.

3.3. Aspects related to choice of court agreements

Section 3.1. and 3.2 of this notice also apply to the recognition and enforcement of a judgment given by a court in the United Kingdom designated in a choice of court agreement. This means that proceedings

²⁸ For example, Article 66(2) of Regulation (EC) No 2201/2003 referring to the applicability of Regulation (EC) No 44/2001; and Article 66 of Regulation (EC) No 44/2001 referring to the Brussels Convention.

²⁹ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=80>

³⁰ See status table <https://www.hcch.net/en/instruments/conventions/status-table/?cid=80>

³¹ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=131>

³² Article 56(1) of the Convention.

instituted, based on a choice of court agreement, in UK courts after the end of the transition period no longer benefit from EU rules on recognition and enforcement in EU Member States.

The United Kingdom has expressed its intention to accede in its own right to the 2005 Hague Convention on Choice of Court Agreements³³ after the end of the transition period. The Convention will apply between the EU and the United Kingdom to exclusive choice of court agreements concluded after the Convention enters into force in the United Kingdom as party in its own right to the Convention.³⁴

4. SPECIFIC EUROPEAN PROCEDURES

EU law on judicial cooperation in civil matters provides for several specific procedures, such as the European Payment Order Procedure³⁵ and the European Procedure for Small Claims.³⁶

Article 67(3) of the Withdrawal Agreement sets out, for the relevant European procedures, when each of these procedures are initiated, taking account of the procedural steps for each procedure.³⁷ For example:

- According to Article 67(3)(d) of the Withdrawal Agreement Regulation (EC) No 1896/2006 on European Payment Order Procedure is to apply to European payment orders applied for before the end of the transition period;
- According to Article 67(3)(e) of the Withdrawal Agreement Regulation (EC) No 861/2007 on the European Procedure for Small Claims is to apply to small claims procedures for which the application was lodged before the end of the transition period.

5. PROCEDURES FOR JUDICIAL COOPERATION BETWEEN MEMBER STATES

EU law on judicial cooperation in civil and commercial matters provides for procedures to facilitate judicial cooperation between Member States.

According to Article 68 of the Withdrawal Agreement, before the end of the transition period:

³³ This Convention has been signed and approved only by the EU so the United Kingdom has been bound by this Convention via its EU membership,

³⁴ Article 16(1) of the Convention.

³⁵ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

³⁶ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1.

³⁷ Regarding insolvency proceedings, see section 6 of this notice.

- Regulation (EC) No 1393/2007 on Service of Documents³⁸ is to apply to judicial and extrajudicial documents which were received³⁹ for the purposes of service before the end of the transition period.

This means that Regulation (EC) No 1393/2007 will no longer apply to a service of documents initiated after the end of the transition period in relation to the pending recognition and enforcement of a judgment under Regulation (EU) No 1215/2012.

- Regulation (EC) No 1206/2001 on Taking of Evidence⁴⁰ is to apply to requests received⁴¹ before the end of the transition period.
- Council Decision 2001/470/EC establishing the European Judicial Network in civil and commercial matters⁴² is to apply to requests for judicial cooperation that were received from the requesting contact point before the end of the transition period.

After the end of the transition period, the EU Member States can no longer launch new judicial cooperation procedures involving the United Kingdom on the basis of EU law. Rather, such procedures will have to be initiated according to national law on judicial cooperation with third countries. In some instances, relevant international Conventions (see above) will apply, provided that both the EU/EU Member States and the United Kingdom are Parties to the relevant Convention.⁴³

6. INSOLVENCY

6.1. Main proceedings opened before the end of the transition period

According to Article 67(3)(c) of the Withdrawal Agreement, Regulation (EU) 2015/848 (Insolvency Regulation)⁴⁴ is to apply to insolvency proceedings,

³⁸ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), OJ L 324, 10.12.2007, p. 79.

³⁹ Received from the receiving agency, central body of the State where the service is to be effected or diplomatic or consular agents, postal services or judicial officers, officials or other competent persons of the State addressed.

⁴⁰ 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.

⁴¹ Received from a requested court, a central body of the State where the taking of evidence is requested or a central body or competent authority referred to in Article 17(1) of the Regulation.

⁴² See Article 8 of Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters OJ L 174, 27.6.2001, p. 25.

⁴³ For example, concerning international child abductions, the application from the requesting Central Authority can be examined by the requested Central Authority under the 1980 Hague Convention on the Civil Aspects of International Child Abduction instead.

⁴⁴ Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings, OJ L 141, 5.6.2015, p. 19.

and actions referred to in Article 6(1) of that Regulation, provided that the main proceedings were opened⁴⁵ before the end of the transition period.⁴⁶ Where, prior to the end of the transition period, main proceedings were opened in the United Kingdom and secondary proceedings were opened in the EU Member State(s), the courts of the Member State(s) in question will retain international jurisdiction according to Regulation (EU) 2015/848. The Regulation also applies to judgments, compositions or provisional measures handed down in these proceedings. Consequently, these judgments, compositions or measures are mutually recognized between the EU and the UK without further formalities, and – if necessary – are to be enforced in accordance with Articles 39 to 44 and 47 to 57 of Regulation (EU) No 1215/2012.

6.2. Main proceedings opened after the end of the transition period

After the end of the transition period, the United Kingdom will no longer be able to open insolvency proceedings on the basis of Regulation (EU) 2015/848.

The EU Member States will apply Regulation (EU) 2015/848 taking account of the United Kingdom as a third country to which the Regulation does not apply.

Insolvency proceedings initiated in the United Kingdom after the end of the transition period, will no longer be recognised by the EU Member States under Regulation (EU) 2015/848.

7. OTHER ISSUES

7.1. Public documents

Regulation (EU) 2016/1191 on Public Documents⁴⁷ is not addressed by the Withdrawal Agreement.

Regulation (EU) 2016/1191 abolishes legalisation and the apostille requirement between Member States for certain public documents (for example, a birth certificate) and simplifies other formalities. The application of this Regulation does not depend on the date of issue of the public document by a Member State authority but on the date when the public document is

⁴⁵ Where appropriate, the Title VI of Part three of the Withdrawal Agreement (“Ongoing judicial cooperation in civil and commercial matters”) uses the terminology of EU instruments in civil and judicial matters. For example, for the notions of “opening proceedings”, see Article 84(1) of Regulation (EU) 2015/848.

⁴⁶ The aim is to keep the main proceedings, secondary proceedings and actions under Article 6(1) of the Regulation as one package.

⁴⁷ Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents in the European Union and amending Regulation (EU) No 1024/2012, OJ L 200, 26.7.2016, p. 1.

presented to the authorities of another Member State. The Regulation will thus no longer apply to a public document issued by the United Kingdom authorities presented to the authorities of an EU Member State after the end of the transition period, regardless of its date of issue and period of validity.

After the end of the transition period, the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention)⁴⁸ will apply between the EU Member States and the United Kingdom.

7.2. Legal aid

According to Article 69(1)(a) of the Withdrawal Agreement, Council Directive 2003/8/EC establishing minimum common rules relating to legal aid for cross-border disputes⁴⁹ is to apply to applications for legal aid that were received by the receiving authority before the end of the transition period.

After the end of the transition period, Directive 2003/8/EC will no longer apply between the EU Member States and the United Kingdom.

There is no instrument under international law that would deal with the same issues as this Directive.⁵⁰ After the end of the transition period, the national law of the EU Member States will thus apply to legal aid in cross-border disputes.

7.3. Mediation

According to Article 69(1)(b) of the Withdrawal Agreement, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters⁵¹ is to apply where, before the end of the transition period the parties agreed to use mediation after the dispute had arisen, mediation was ordered by the court or the court invited the parties to use mediation.

7.4. European e-Justice Portal

The Commission provides for information on national judicial systems through the European e-Justice portal.⁵² As pending procedures and proceedings initiated before the end of the transition period will continue under EU law, the e-Justice Portal will maintain the information related to the

⁴⁸ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>. All EU Member States and the UK on its own right are parties to it.

⁴⁹ 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.

⁵⁰ The 1977 European Agreement on the Transmission of Applications for Legal Aid deals with some relevant matters. <https://rm.coe.int/1680077322>. All EU Member States and the United Kingdom on its own right are parties to this Agreement.

⁵¹ OJ L 136, 24.5.2008, p.3.

⁵² <https://e-justice.europa.eu/home.do?action=home&plang=en>

United Kingdom, including dynamic forms and the UK factsheets until the end of 2022.⁵³

The [European e-Justice Portal](#) and the [website of the Commission on civil justice](#) provide for information concerning the field of civil justice. These pages will be updated with further information, where necessary.

European Commission
Directorate-General Justice and Consumers

⁵³ The information is maintained following discussions with the United Kingdom.