

LEGAL UPDATE

Brexit: What does it mean for litigation concerning existing and new contracts?

Date: 7 December 2018

Following the leave vote in the Brexit referendum in June 2016, on 29 March 2017 the British Prime Minister Theresa May gave the European Council notice of the UK's intention to leave the EU (in accordance with Article 50, paragraph 2 of the Treaty on European Union (TEU)). On 25 November 2018, the European Council endorsed the agreement on the United Kingdom's withdrawal from the European Union. What are the legal consequences of this?

What does the TEU say?

Under Article 50, paragraph 3 of the TEU, the treaties on the European Union cease to apply to a state that has given notice that it wishes to withdraw from the EU 'from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2'. If no agreement on the withdrawal from the EU is concluded within the two-year period, i.e. in this case before 29 March 2019, the treaties will therefore no longer apply to the United Kingdom from 29 March 2019, unless another agreement is reached or this period is extended (Article 50, paragraph 3 TEU). Therefore, the objective is for the EU to conclude an agreement with the United Kingdom. After lengthy negotiations, such an agreement has been published and the cabinet of Theresa May endorsed the [Draft Agreement](#) for Brexit on 14 November 2018. This agreement has yet to be approved by the European Parliament and the British Parliament. So, it is not final yet.

What has been agreed in the Draft Agreement?

Transition period:

The Draft Agreement provides for a transition period that will run from 30 March 2019 to 31 December 2020 (Article 126 of Draft Agreement). Unless stipulated otherwise, EU law will continue to apply in the United Kingdom during this period (Article 127 of Draft Agreement). What does this mean for the two important regulations in international contract law, the Rome I Regulation (on the law applicable to contractual obligations) and the Brussels I bis Regulation (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)? In other words, what does the Draft Agreement mean for the question which law applies to an agreement? And what does it mean for the enforcement in the UK of judgments rendered in EU member states and vice versa?

Law applicable to contracts:

The Rome I Regulation on the law applicable to contractual obligations will continue to apply to contracts concluded before the end of the transitional period, i.e. before 31 December 2020 (Article 66 of Draft Agreement).

Jurisdiction and recognition and enforcement of foreign judgments in civil matters:

The Brussels I bis Regulation will also continue to apply to the question of which court has jurisdiction and to questions concerning the recognition and enforcement of foreign judgments. The Regulation will therefore continue to apply in the United Kingdom when determining which court has jurisdiction in respect of legal proceedings instituted before the end of the transition period. The Brussels I bis Regulation will also continue to apply to the recognition and enforcement of foreign judgments, provided that the judgment was given in legal proceedings instituted before the end of the transitional period (Article 67 of Draft Agreement).

Nuance and conclusion

An agreement on withdrawal from the European Union is concluded on behalf of the Union by the Council, acting by a qualified majority after having obtained the European Parliament's consent (Article 50, paragraph 2 TEU). As no consent has been granted yet by the European Parliament and the British Parliament has not yet voted on the proposal, it is not certain yet whether an agreement will be reached on the withdrawal on time. So, the future is still uncertain. Therefore, at this stage there is no certainty (yet) about what the implications of Brexit will be for existing agreements with parties in the United Kingdom.

This is a Legal update from Sonja Kruisinga.

For more information:

Sonja Kruisinga

+31 30 25 95 646

sonjakruisinga@vbk.nl