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PREPARE YOUR CONTRACTS FOR AFTER BREXIT

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The UK will have definitely left the EU on 29 March 2019 at the latest.

What needs to be done beforehand to secure your relationships with British clients and suppliers?

It is imperative that all litigation provisions are finalised to determine which law is enforceable and which courts have jurisdiction, or whether mediation can be used, to ensure there is no uncertainty.

British courts will most probably exercise their conflict of laws rule to enforce English law and retain their jurisdiction.

All EU regulations will cease to be enforceable in the UK from 30 March 2019, i.e. in particular EU regulation 1215/2012 on jurisdiction and enforcement of judgments, the Rome I regulation on enforceable law, the regulation on serving documents and the regulation on insolvency.

According to the last state of negotiations as of 8th December 2017, there is a disagreement as to whether a choice of court clause concluded before withdrawal should trigger the application of EU law on recognition and enforcement of judgements in litigation after withdrawal.

However, the other 27 countries remaining in the EU will continue to enforce EU regulations if English law has been provided for in the contract and has been chosen by the parties.

There is uncertainty over the measures the UK will take to deal with international conventions, namely the Rome convention on enforceable law, the old Brussels conventions for proceedings or the Lugano or The Hague conventions for the choice of jurisdiction.

However, the provisions included in existing contracts will be enforced.

Only in the event there is a lack of choice, or the provision has been poorly drafted, will interpretation by the British courts risk creating uncertainty since they will no longer have to enforce EU regulations, contrary to the 27 other countries.

Obviously, in the case of cross border cases, there will be issues in case of litigation and, once the court decisions have been given, they will no longer be automatically enforceable as was the case with EU regulations. There will therefore be exequatur proceedings both ways.

There is also a persisting disagreement regarding the question of the continued competence of the Court of Justice of the European Union in relation to the facts having arisen before the United Kingdom's withdrawal, the enforceability of the decisions of the Court after withdrawal and the possibility for the United Kingdom to intervene before the Court in the future.

As for arbitration decisions, these will be governed by the New York convention, they are actually not provided for in EU regulation 1215/2012.

There remains mediation which is common practice in the UK and seems more developed than it is in other countries, which will allow for solutions as long as such a provision is provided for in the contract.

2019 is close, there is no time to lose!