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"Remedies concerning Enforcement of Foreign Judgements according to Brussels I Recast.."

**Brexit –
Legal Implications and
the International Private Law Context**

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Lecture Outline

I. Introduction

II. Brexit

- Legal framework in the EU: Art 50 TEU (Treaty on the EU)
- Procedure
- Solutions/options for the UK
- Impact

III. Brexit and the International Private Law Context

- Recognition and Enforcement of Foreign Judgments
- Jurisdiction
- Applicable law

IV. Brexit and consumer law

V. Brexit and company law

VI. Conclusion

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Brexit

GOOD LUCK

**Brexit will cost £43.8 billion*
let's fund our NHS instead** There's still time
Let's be sensible about this

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I. Introduction
History of the EU



- It began as an idea of peace
- From an economic to a political union
- Monetary union

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The EU and the UK - I.

- **The UK as an EU Member State since 1973**
- **EU single market**
- **4 Fundamental (Economic) Freedoms:**
 1. Free movement of persons
 2. Free movement of services
 3. Free movement of capital
 4. Free movement of goods



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The EU and the UK - II.
Exemptions for the UK in the EU



- **Schengen** (free movement of persons without internal border controls)
 - 22 EU Member States and Switzerland, Norway, Iceland, Lichtenstein
 - **EU Schengen Borders Code** – Regulation 562/2006 for EU Member States
 - **International Schengen Agreement 1985** (e.g. Switzerland)
 - Exception for the UK, e.g. cooperation in criminal matters (Council Decision 2000/365/EC)
- **Euro** (19 Member States)
- **Other** (e.g. ...)

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The EU – The UK : Legal Options

- **the EU/Swiss deal (the system of bilateral/sectoral agreements):** limited access to the internal market; no full access to EU services, including financial markets (crucial for the UK)
- **EEA (European Economic Area) - “the Norway option”:** seems to be the best option
- **the EU/Turkey arrangement:** unsuitable, it is a custom union (the UK would not be able to negotiate its own trade deals with third countries)
- **“the WTO alternative”:** leaving the single market; the UK would negotiate deals with individual countries (“Hong Kong model”)
- **Other (Canada)**

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EEA, EFTA

- **EEA:**
28 MS + Norway, Iceland, Lichtenstein
- **EFTA**
Norway, Iceland, Lichtenstein, Swiss

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The EU – The UK : Legal Options – “the Norway option”:

Advantages

- Norway has **full access to the single market**, it adopts EU laws in this field as they are made;
- **the UK would remain to be part of the EEA** (Norway, Iceland and Liechtenstein);
- the UK would **be part of the internal market** – “four - 4 (economic freedoms”
- - the UK would not be bound by the EU’s fisheries, agriculture, VAT policy; the EEA also does not cover foreign policy or criminal law

Disadvantages:

- the UK **would no longer have a voting right on EU laws!** In practice, this means that the UK is becoming a **“rule taker rather than rule maker”**
- **Others: no single market, ...**

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Development in 2017 in the EU and UK

- UK notification on 29 March 2017
- EU: guidelines for Brexit negotiations (29 April 2017)




European Council
Council of the European Union
European Council (Art. 50) guidelines for Brexit negotiations
29/04/2017 | 13:50

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The EU, the UK, other countries

- if the UK left the EU: Australia, Canada, the USA.... would have to negotiate a separate deal with the UK

(in various areas: trade, consumers, data protection, protection of intellectual property)



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III. Brexit and the International Private Law Context

- Recognition and Enforcement of Foreign Judgments
- Jurisdiction
- Applicable law



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Recognition and Enforcement of Foreign Judgments




<https://mbmcommercial.co.uk/how-to-register-and-enforce-an-eu-judgment-in-scotland.html>

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Recognition and Enforcement of Foreign Judgments

- before Brexit

- the Brussels Regulations
Brussel I (44/2000) and Brussel I recast 1215/2012 (applies since 10 January 2015)
- the Lugano Convention 2007 for enforcement of judgments between the EU and three of the four EFTA members (i.e. Iceland, Norway and Switzerland except Liechtenstein)

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Recognition and Enforcement of Foreign Judgments

- after-Brexit

- since Brussels Regulations are directly applicable, they have not been transposed into UK law – thus after Brexit, this provisions will no longer apply in the UK

* Options:

- the UK could negotiate (new) agreements/treaties with other EU Member States for mutual recognition and enforcement of judgments
- or ex bilateral agreements could apply? (e.g. Austria 1962,)

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Jurisdiction

jurisdiction



Yes, we have "general" jurisdiction.

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Jurisdiction
legal framework now – before Brexit



- the Brussels Regulations
Brussels I (44/2000)
and
Brussels I recast 1215/2012 (applies since 10 January 2015)

https://en.wikipedia.org/wiki/Brussels_Regime

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Jurisdiction – before Brexit

Before Brexit (now)

- if the **defendant is domiciled in the EU**, EU regulations and conventions determine which court has jurisdiction (e.g. the Brussels I, Brussels I Recast)

Article 4

1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.



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Jurisdiction – after Brexit



* Since **Brussels Regulations** are **directly applicable**, they have not been transposed into UK law - **thus, after Brexit, this provisions will no longer apply in the UK**

* **unclear what will happen after Brexit:**

- prevailing view that **without a specially negotiated agreement, the UK will not be able to fall back on the original Brussels Convention of 1968 and/or the Lugano Convention of 1988**

- **Other** (e.g. the UK could negotiate new agreements/treaties with other EU MS or the UK could ratify the 2005 Hague Convention on Choice of Court Agreements (currently applies between the EU and Mexico and Singapore))

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Recognition and Enforcement of Foreign Judgments, Jurisdiction –

after Brexit –alternatives for MS



VERTRAG ZWISCHEN DER REPUBLIK ÖSTERREICH UND DEM VEREINIGTEN KÖNIGREICH VON GROSGBRITANNIEN UND NÖRDLICHEN IRLAND ÜBER DIE GEGENSEITIGE ANERKENNUNG UND VOLLSTRECKUNG GERICHTLICHER ENTSCHEIDUNGEN IN ZIVIL- UND HANDELSSACHEN
SINCE 1968 NO. 224 (1962) (NR. 67) (XV. 179 AB 1968 S. 95. DR. S. 100)

1937
CONVENTION
BETWEEN
THE KINGDOM OF YUGOSLAVIA
AND
THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND
RELATING TO THE MUTUAL ASSISTANCE IN
THE CONDUCT OF LEGAL PROCEEDINGS
IN CIVIL AND COMMERCIAL MATTERS
WHICH ARE BEING DEALT WITH OR
SHOULD BE DEALT WITH BY THE
RESPECTIVE JUDICIAL
AUTHORITIES

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Applicable law

Legal framework now – before Brexit
Regulations Rome I & II



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Applicable law – now : before Brexit

- in contractual disputes: the **Rome I Regulation** (for contracts entered into on or after 17.12.2009) or the Rome Convention apply to all EU member states
- in non-contractual obligations: the **Rome II Regulation** applies

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Applicable law – after Brexit



- since Regulations Rom I, Rom II are directly applicable, they have not been transposed into UK law - thus, **after Brexit, this provisions will no longer apply in the UK**
- the UK could simply incorporate the Rome Regulations into UK law
- **Conflicts of law rules** (in 27 member states) will gain in importance
- other

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IV. Brexit and consumer law
- Hard or soft Brexit?





DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 25 October 2011
on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council
(Text with EEA relevance)

**Brexit and Consumer law –
online contracts**

- **EU:** The Consumer Rights Directive 2011/83
- **UK:** The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013



Right of withdrawal for consumers and model withdrawal form in English European Union



RIGHT OF WITHDRAWAL

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Consumer law – online contracts

Right of withdrawal for consumers in respect of distance selling contracts



ARTICLE 9
Right of withdrawal

1. Save where the exceptions provided for in Article 16 apply, the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract without giving any reason, and without incurring any costs other than those provided for in Article 17(2) and Article 14.

UK Consumer Contracts Regulations 2013

Normal cancellation period

30--(1) The cancellation period ends as follows, unless regulation 31 applies.

(2) If the contract is--

- (a) a service contract, or
- (b) a contract for the supply of digital content which is not supplied on a tangible medium,

the cancellation period ends at the end of 14 days after the day on which the contract is entered into.

(3) If the contract is a sales contract and none of paragraphs (4) to (6) applies, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of--

- (a) the consumer, or
- (b) a person, other than the carrier, identified by the consumer to take possession of them.

**After Brexit:
Uncertain Future for UK (Consumer) Law?**

- soft or hard Brexit?
- The Great Repeal Bill?
- *The Government's White Paper* – consumer interests not among priorities
- Converting current EU consumer law into domestic law?



BUT:
WHY BREXIT?

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con)

My Lords, we are working with a range of stakeholders to understand the impact that withdrawal from the EU will have on consumers. We will work to ensure the best possible outcome for UK consumers. Wherever practical, the great repeal Bill will convert current EU law into domestic law to give consumers as much certainty as possible.

V. Brexit and company law
Freedom of Establishment
CENTROS, C-212/97

- Establishment of a company in another MS and establishment of a branch in the first MS

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Freedom of Establishment
CENTROS, C-212/97 - ISSUES

- Freedom of establishment (Art. 49 TFEU)
- Establishment of a company in another MS
- Establishment of a branch of a company
- Circumvention of national law
- Refusal to register

■ **PRELIMINARY REFERENCE – a Danish court**

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Brexit and company law
Freedom of Establishment
CENTROS, C-212/97

- **Danish citizen - PRIVATE LIMITED COMPANY in the UK - (100 pounds) – Centros Ltd.**
- **A BRANCH IN DENMARK**
- **DENMARK REFUSES TO REGISTER THE BRANCH**

- **CJEU judgement: Infringement of primary law on the freedom of establishment (today Articles 49 and 54 TFEU)**

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Company law, Centros and problems after Brexit

- After Brexit: companies established in the UK will no longer be in the EU – **NO freedom of establishment, what taxes?, customs duties** again... ?



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**The Court of Justice of the EU – CJEU (Luxembourg)
The EU, the UK and the CJEU**



European Court will have no influence over Britain after Brexit, Theresa May to pledge

By Peter Dominick, POLITICAL EDITOR
15 JANUARY 2017 - 14:40PM

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The Court of Justice of the European Union – CJEU

- 28 judges - **one from the UK**
- 11 advocates general (AGs) – **one from the UK**
- working language – French
- 24 official languages (all judgments, Opinions of AGs, ...) – **future of English language?**



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The CJEU and the UK- Possible procedures
 (Before withdrawal)



- **Infringement procedure against the UK** (e.g. non-implementation of EU directives, obligations of the UK in different areas)
- **Actions:** Member States against the UK; UK against other MS
- **Action for annulment** (e.g. Austria v. Commission, Case T-356/15 - atomic energy, Commission Decision (EU) 2015/658)
- **References for a preliminary ruling from UK courts**
- **Opinion procedure** Article 218/11 TFEU (e.g. draft international treaty: EU - UK)

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UK und CJEU after Brexit:
 Is the UK going to respect „old“ CJEU judgments?



Court of Justice of the European Union
PRESS RELEASE No 21/17
 Luxembourg, 2 March 2017

Judgment in Case C-568/15
 Centrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main eV v comtech GmbH

The cost of a call to an after-sales telephone number must not exceed the cost of a standard call



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Conclusion – My view



- **Long and difficult negotiations with the EU** (and also other states)
- **The EU is not expected to be generous – no à la carte** (the issue is a threat of triggering potential exits of other Member States, e.g. Austria, Hungary)
- **several fields will be regulated similarly as they already are** (the UK is not expected to change the existing legislation?)
- **BUT: new problems:**
 - Jurisdiction? Applicable law?... (in the EU Brussels I, II, Rome I, II regulations);
 - Public procurement
 - Right to establishment (the CJEU case Centros), ...
- **English language** and the EU in the future?
- **The EU will continue to exist** (the UK was not in the EU until 1973 either)
- The EU needs to be reformed (the EURO crisis, the migration crisis)

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News

Juncker on Brexit: forget a la carte single access

What cities could steal London's financial crown?

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Problems for the EU and the UK after the withdrawal: example

- Example *prosecco* - whisky and free movement of goods:
- Italy won't be able to export *prosecco* to the UK
- The UK won't be able to export *whisky* to the 27 MS of the EU

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After brexit?

REMAIN OR LEAVE?

What we get in the EU	And if we leave the EU?
Free trade with the world's biggest, richest marketplace - the EU	We don't know - but less likely
A say in the rules, laws and future direction of the EU	We don't know - but unlikely
EU citizenship: The right to live, work, study or retire across the EU	We don't know - but unlikely
Access to the state health care of any EU nation when living there	We don't know - but unlikely
Access to free or low-cost health care when visiting any EU nation	We don't know - but unlikely
EU-wide laws protecting the rights of workers, consumers & travellers	We don't know - but unlikely
Favourable trade agreements with many of the world's countries	We don't know (it would take years)
Shared security, crime prevention & defence between EU members	We don't know - but less likely
EU laws to protect our environment & tackle climate change	We don't know - but unlikely

Reasons2Remain.eu

GREEK MYTHOLOGY

Brexit – dangers for the UK – the EU?

between Scylla and Charybdis

Brexit

EU

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(All photos from Google; CJEU judgment, press release: curia.europa.eu)

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