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Post BREXIT: How will EU-Judgments be enforced in the UK?

Hague Convention directly and thus benefit from the regulations of this Convention which is, however, only applicable to contracts where the contractual parties chose an exclusive place of jurisdiction of one of the Contracting States.

The UK could also become a member of the Lugano Convention on the recognition and enforcement of judgments from one member state in another member state. The Lugano Convention is applicable between the EFTA-states (European Free Trade Association) and can be considered as a predecessor of the Brussels Convention. However, adhesion to either EFTA or the Lugano Convention directly will require the consent of the other members, mainly identical with the members with the countries of the European Union. Thus, the UK will only be able to make use of this alternative by way of negotiations.

It goes without saying that any result achieved through negotiations between the “parties” (UK and EU) is better than no agreement at all. The EU Council already made a proposal suggesting that at least all judgments handed down before the UK’s withdrawal (end of March 2019) shall continue to be enforceable in accordance with the current rules (Directives of the EU Council on the Brexit-negotiations, published on 11 May 2017). But, again, also this small achievement is subject to mutual consent.

Mutual recognition and enforceability of judgments is of high value for businesses in a globalized world. Indirectly, it even determines payment behaviors of companies and individuals. Thus, this topic should be given some priority in the Brexit negotiations.

As a practical advice, existing contracts between EU companies and UK companies should be reviewed in due course with regard to jurisdiction and choice-of-law clauses. Obviously, it is too early to determine effective jurisdiction clauses under the post-Brexit regime. However, parties to existing and new business contracts should consider arbitration clauses as an alternative to jurisdiction before public courts. Recognition and enforcement of arbitral awards is not related to the membership to the European Union. It is governed by the New York Arbitration Convention. The vast majority of the member countries of the United Nations (154 out of 193 member countries) have adopted the New York Arbitration Convention, including the UK and all other EU member states. Thus, the UK’s withdrawal from the EU will have no impact on the enforceability of arbitral awards.