



BREXIT: CONSEQUENCES FOR JUDICIAL PROCEEDINGS

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The result of the referendum on whether or not to remain in the European Union held in the United Kingdom on 23 June 2016 was clear: the majority of the British who voted decided to put an end to the country's more than 43-year relationship with the European Union. "Leave" beat "Remain" with 51.9% of the votes and, in principle, this will lead the United Kingdom (UK) to give notice to the European Council of its intention to leave the European Union (EU).

Besides the natural economic and political consequences, Brexit will have a direct impact on existing and future legal proceedings involving parties domiciled or based in the UK.

Of particular importance is the fact that, as soon as Brexit takes effect, it will no longer be possible to have recourse to the various EU regulations on procedural matters in the case of disputes that have a connection with the UK. Among the matters that will be impacted by Brexit, we would highlight: (i) the international jurisdiction of the Portuguese courts; (ii) the recognition and review of foreign judgments, (iii) service of judicial documents, and (iv) insolvency and the special revitalisation process, referred to by its Portuguese initials PER.

INTERNATIONAL JURISDICTION

Brexit will lead to an immediate change in determining whether the Portuguese courts have jurisdiction when the defendant is domiciled in the UK.

Up to now, the international jurisdiction of the Portuguese courts has been determined under Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of 12 December. When Brexit takes effect, the jurisdiction of Portugal's courts will be determined under its own internal civil procedure rules.

In practical terms, and as a general rule, the Portuguese courts will no longer automatically lose jurisdiction to decide on disputes that involve defendants domiciled in the UK – regardless of their nationality – to the courts in the UK.

After Brexit, the Portuguese courts will have jurisdiction when (i) the act that gave rise to the legal action occurred in Portugal, (ii) the right invoked can only take effect by bringing the action in Portugal, or (iii) there is a considerable difficulty in bringing the action abroad.

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SERVICE OF JUDICIAL DOCUMENTS

Brexit will lead to considerable delays in serving documents when the defendant is domiciled or has its registered office in the UK.

Up to now, service of judicial documents on defendants domiciled or with their registered office in the UK was done under the terms of Regulation (EU) no. 1393/2007 of the European Parliament and of the Council of 13 November, which establishes rules aimed at speeding up service. For example: (i) judicial documents must be served within one month of receipt and when service is impossible, that fact must be communicated immediately to the Portuguese courts; (ii) if the addressee refuses to accept service of a document on the grounds that there is no translation into a language that the addressee understands, this situation can be remedied by re-serving the document together with the necessary translation.

When Brexit takes effect and this Regulation ceases to apply, service on addressees domiciled or with their registered office in the UK will take substantially longer (several months).

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

Brexit may also mean that the judgments of courts in the UK will no longer be recognised without formalities and will not automatically be enforced in Portugal, as they currently are under the above-mentioned Regulation (EU) no. 1215/2012.

After Brexit, judgments of the UK courts will only be recognised in Portugal and may only be enforced here after being submitted to a process of review and confirmation by the Portuguese courts.

Furthermore, it will no longer be possible for Portuguese judgments to be automatically recognised and enforced in the UK under the above Regulation. Recognition and enforcement will depend on the provisions of internal UK laws on these matters.

INSOLVENCY AND PERs

Brexit will also have implications for cross-border insolvency and PER proceedings.

At present, these proceedings are governed by the provisions of Regulation (EC) no. 1346/2000 of the Council of 29 May 2000. Among others, this Regulation provides that any decision to open insolvency proceedings made by a court in an EU Member State is automatically recognised in all other Member States.

In the circumstances, after Brexit, when insolvency proceedings are opened in the UK for a company or individual based or domiciled there, the proceedings will not be immediately and automatically recognised in Portugal and will not produce the same effects they produce in the UK.

The same applies to the opening of insolvency proceedings and to insolvency orders in Portugal (or in another Member State) in terms of their effects in the UK.

Brexit will also make it more difficult to find out whether a company or individual is in an insolvency situation in the UK. This is because that information will no longer appear in the interconnected insolvency records of the Member States and the European e-Justice Portal, as established by Regulation (EU) no. 2015/848 of the Council of 20 May 2015, for insolvency proceedings begun after 26 June 2017.

OTHER MATTERS

In truth, Brexit may have an impact on many other procedural issues. For example, it will no longer be possible to use the European Enforcement Order for uncontested claims provided for in Regulation (EC) no. 805/2004 of the European Parliament and of the Council of 21 April, or the European order for payment procedure provided for in Regulation (EC) no. 1896/2006 of the European Parliament and of the Council of 12 December.

Despite everything we have said above, at this point, it is not possible to determine the full extent of the procedural consequences of Brexit.

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WHEN WILL BREXIT TAKE EFFECT?

Article 50 of the Treaty on European Union (in the wording given by the Treaty of Lisbon signed on 13 December 2007) provides that, after notifying the European Council of its intention to withdraw from the European Union, the UK will begin negotiations with the European Council to establish the conditions for its exit. There are no deadlines, as such, for the duration of the negotiations. However, 2 years after the UK's notification, the EU treaties will cease to apply to the UK, unless they are extended by the European Council.

This means, first, that the impact of Brexit will not be felt in the near future, because the UK's exit will not take place immediately. Secondly, negotiations may lead to some form of cooperation that will make it possible for some of the procedural rules referred to above to remain in force between the UK and the EU Member States.

For example, the impact of Regulation (EU) no. 1215/2012 ceasing to apply to the UK could be mitigated if the UK joins the European Free Trade Association and, in turn, becomes a party to the Lugano Convention of 16 September 1988 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Brexit will also have implications for cross-border insolvency and PER proceedings.

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 Iberian Law Firm of the Year
The Lawyer European Awards, 2015-2012

 Portuguese Law Firm of the Year
Who's Who Legal, 2016, 2015, 2011-2006
Chambers European Excellence Awards, 2014, 2012, 2009

 Top 5 - Game Changers of the last 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011