

# BULLETIN

## THE IMPACT OF THE BREXIT ON THE ENFORCEMENT IN BELGIUM OF UK JUDGEMENTS AND AWARDS

MANY GOOD ARTICLES AND NEWSLETTERS WERE DEDICATED TO THE LIKELY IMPACT OF THE BREXIT ON THE LEGAL BUSINESS. DO NOT EXPECT TO READ ANOTHER SET OF PREVISIONS. THIS BULLETIN MERELY ADDRESSES THE QUESTION WHETHER OR NOT THE BREXIT WILL AFFECT THE ENFORCEMENT IN BELGIUM OF UK COURT JUDGEMENTS AND ARBITRATION AWARDS. THE SHORT ANSWER IS THAT THE BREXIT WILL NOT SIGNIFICANTLY AFFECT THE ENFORCEMENT IN BELGIUM OF UK COURT DECISIONS: THE POST BREXIT SITUATION WILL BE COMPARABLE TO THE REGIME UNDER THE ORIGINAL BRUSSELS I REGULATION OF 2000. AND, THE BREXIT WILL NOT AT ALL AFFECT THE ENFORCEMENT IN BELGIUM OF UK ARBITRATION AWARDS.

ANTWERP, NOVEMBER 2017

### COURT JUDGEMENTS

The Brexit will cause the Brussels I Recast Regulation<sup>i</sup> of 2012 to become ineffective for the enforcement of UK judgements in the EU. We do not enter into speculations on the question whether or not the terms of the Brussels I Recast Regulation may be incorporated or not into a convention<sup>ii</sup> between the EU and the UK.

If it happens, then, nothing will change to the enforcement of UK judgements in the EU, and thus in Belgium: enforceable UK judgements will remain enforceable in Belgium without any court intervention, alike a Belgian enforceable judgement, as now provided for in the present article 41.1 of the Brussels I Recast Regulation.

If such a convention will not be entered into, then, two texts will no longer be superseded by the Brussels I Recast Regulation and therefore:

- the 1934 bilateral Convention for the Reciprocal Enforcement of

Judgements between Belgium and the UK<sup>iii</sup> will apply,

- and, for what is not governed by such 1934 Convention, the Belgian Code of International Private Law (CIPL)<sup>iv</sup>.

As a result, a UK court judgement will be made enforceable in Belgium by the Court of First Instance judging upon an application to that end. The court will not review the merits and only a limited number of grounds for refusal can be considered by the court.

In addition, it should be noted that the 2005 The Hague Convention on Choice of Court Agreements<sup>v</sup> also provides for a swift and comparable exequatur proceeding with restricted grounds for refusal. However, this Convention was entered into by the EU and not by the UK individually, so that it is unclear what the post Brexit effect thereof will be. That uncertainty has little practical impact, because of the aforementioned 1934 Convention and Belgian CIPL provisions with similar effects.

So once the Brexit will be materialized and if there is no convention instead of the Brussels I Recast Regulation then, a limited court intervention will be required, reverting to a system comparable to the one in force under the original Brussels I Regulation of 2000<sup>vi</sup>.

#### ARBITRATION AWARDS

The EU has not amended the provisions on the enforcement of foreign arbitration awards, so that the Brexit will leave unaffected the present system governed by the 1958 New York Convention.<sup>vii</sup>

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Warning. This bulletin is a summary, it does not include exceptions, it simplifies the statutory wording and may not apply to all cases or matters. This bulletin does not replace a legal opinion and should not induce any decision. There can be no liability deriving from what is expressed hereabove. We will be glad to give you some further directions, answer your queries or concerns, over the phone or otherwise. We will usually be able to give you a quick answer on the basis of specific information. As mentioned here above we will not charge fees until we so advise and you consent thereto.

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This Bulletin has been issued in November 2017 and further elaborated in January 2018.

<sup>i</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; a recast of the Brussels I Regulation of 2000 (see endnote vi).

<sup>ii</sup> The EU entered into a Convention on jurisdiction and the enforcement of judgements in civil and commercial matters signed in Lugano on 30 October 2007. Its effects are materially the same as the Brussels I Regulation and it governs the matters discussed here between the member states, Iceland, Switzerland and Norway.

<sup>iii</sup> Convention for the Reciprocal Enforcement of Judgements done at Brussels on 2 May 1934, superseded by Brussels I Regulation (Recast), by virtue of its article 69.

<sup>iv</sup> By virtue of its article 2, both EU law and international conventions overrule the CIPL. By virtue of article 25§2 CIPL the court shall not review the merits of the case. Article 25§1 CIPL restricts the basis for refusal to make the foreign judgement enforceable to nine grounds.

<sup>v</sup> Convention on Choice of Court Agreements, done at The Hague on 30 June 2005.

<sup>vi</sup> Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, known as Brussels I Regulation.

<sup>vii</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958.