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BREXIT AND PRIVATE INTERNATIONAL LAW: SOME SELECTED ISSUES

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1. The United Kingdom ceased to be a member of the European Union on 31 January 2020 at 24:00 CET time (23:00 UK time). The agreement on withdrawal (hereinafter referred to as «Withdrawal Agreement»)[1] entered into force on 1 February 2020 and provides for a transition period (which is set to last at least until 31 December 2020[2]) during which EU law in its entirety will continue to apply also in the field of enforcement and civil proceedings.[3]

[1] So called «Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community», OJ L 29, 31 January 2020, p. 7.

[2] According to Articles 126 and 132 of the Withdrawal Agreement, the transition period could be extended for up to two years by a «joint decision» to be taken by 1 July 2020. The UK Government, however, is prevented by section 33 of the European Union (Withdrawal Agreement) Act 2020 from agreeing any extension of said period.

[3] Pursuant to Articles 66 and 67 of the Withdrawal Agreement.

Consistently with the political declaration accompanying the Withdrawal Agreement,[4] the EU and the UK are now in the process of negotiating an agreement on a new partnership for a free trade area[5] which, even if concluded in time for its entrance into force by the end of the transition period[6], would however establish a EU-UK relationship very different from the UK's participation in the internal market, with the UK definitively acquiring – as a result of Brexit becoming fully effective at the expiration of the transition period – the status of a "third State" as regards the implementation and application of EU law.

2. In its Notice to Stakeholders entitled «Withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law» (the «Notice») dated 27 August 2020,[7] the EU Commission has addressed the question of the post-transition-period application of EU rules in the field of private international law as regards, *inter alia*, recognition and enforcement of judicial decisions in civil and commercial matters.[8]

In substance, according to the Commission, as pursuant to Article 67(2) of the Withdrawal Agreement the condition for the Brussels I Recast Regulation (the «Recast Regulation» or the «Regulation»)[9] to continue

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[4] «Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom», OJ C 34, 31 January 2020, p. 1.

[5] See *Avvio dei negoziati dell'unione europea con il Regno Unito per un nuovo accordo di partenariato*, *Rivista di diritto internazionale privato e processuale*, 2020, p. 531 ff.

[6] Which outcome, at least on the basis of the news reported in these days by newspapers, seems still highly improbable: see, among others, Sole 24 ore, *Brexit, UE e Londra negozieranno fino al 2 ottobre*, 1 August 2020.

[7] The Notice, retrievable at https://ec.europa.eu/info/publications/civil-justice-judicial-cooperation-civil-and-commercial-matters, replaces a previous Notice to Stakeholders and the Questions and Answers document dated, respectively, 18 January 2019 and 11 April 2019, which were available, respectively, at https://ec.europa.eu/info/sites/info/files/file_import/civil_justice_en.pdf and at https://ec.europa.eu/info/sites/info/files/file_import/civil-justice-qa_en.pdf.

[8] The Notice also deals with other major questions related to the end of the transition period, such as (*i*) international jurisdiction, (*ii*) applicable law in contractual and non-contractual matters, (*iii*) specific European procedures and (*iv*) insolvency.

[9] As well as for regulations (EC) no. 2201/2003 (Brussels IIa), (EC) no. 4/2009 (Maintenance Regulation) and (EC) no. 805/2004 (European Enforcement Order for uncontested claims), which are likewise covered by the mentioned Article 67(2) of the Withdrawal Agreement. Therefore, these

applying is that the relevant legal proceedings be commenced (in either the UK or any of the remaining EU – the «EU27» – States) before the end of the transition period, when such a condition is satisfied the rules on recognition and enforcement established by the Regulation shall remain applicable also with respect to judicial decisions: (*i*) handed down in the UK or in a EU27 State after the end of the transition period; (*ii*) handed down in the UK or in a EU27 State before the end of the transition period, but not enforced in a EU27 State or in the UK respectively before the end of the transition period; (*iii*) *exequatured* (declared enforceable) in a EU27 State or in the UK respectively before the end of the transition period, but not enforced in the UK or in a EU27 State respectively before the end of the transition period.[10]

When, on the contrary, the original proceedings are instituted after the end of the transition period, EU rules on enforcement shall be no longer applicable. In such cases, recognition and enforcement will be governed by the national rules of the State in which recognition/enforcement is sought, unless international conventions to which the EU/EU27 and the United Kingdom are parties apply.[11]

Therefore, according to the Commission, the continuous application, after the end of the transition period, of the EU rules on recognition and enforcement of judgments will be conditional upon the relevant British judgment having been given in legal proceedings instituted before the end

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regulations shall also apply to recognition and enforcement of judgments, authentic instruments and court settlements in either the UK or the EU27 in situations involving the UK, provided that they are issued in proceedings commenced (in either the UK or any of the remaining Member States) before the end of the transition period.

[10] The Commission adds that «[t]he reference to legal instruments in Article 67(2) of the Withdrawal Agreement includes the reference, in these legal instruments, to preceding instruments», that is to say, in relation to Regulation (EU) No 1215/2012, the Brussels I Regulation (EC) No 44/2001, or even the 1968 Brussels Convention, which might still be of relevance when it comes to recognition and enforcement of judgments pre-dating the entry into application (which, as well known, occurred on 10 January 2015) of the Recast Regulation.

[11] In this last regard, the Commission expressly refers, by way of example, to the 1970 Hague Convention on the recognition of divorce and legal separations (to which the UK, together with twelve EU Member States is already a party) as well as to the 2007 Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance (which the UK has expressed the intention to sign and ratify: see below, § 3) as regards, respectively, divorce proceedings and child maintenance proceedings initiated in an EU27 State after the end of the transition period.

of said period. Lacking such a condition and unless otherwise provided by a new comprehensive partnership agreement to be reached between UK and the remaining EU27 States, the rules in question will no longer apply and the need may arise to start enforcement proceedings in the EU27 State pursuant to the domestic enforcement provisions existing therein.

In the latter cases judgments issued in the EU27 States shall no more benefit in the UK from the simplified mechanism of recognition and enforcement provided by the Regulation. Likewise, English judgments would cease to be automatically enforced in the other Member States, given that, as well known, the applicability of the Regulation to recognition and enforcement of judgments presupposes the relevant judicial decision to have been handed down in an EU State. Borrowing the words of Professor Briggs, as a result of Brexit English judgments «will lose their passport to Europe».[12]

3. On the UK side, a number of statutory instruments have been enacted on post-Brexit issues of private international law. According to such instruments, whilst some rules may remain as part of EU retained law,[13] from the end of this year the UK will need to make alternative arrangements where EU rules are based on reciprocity, in particular for those (of special interest for the present purposes) contained in the Recast Regulation.[14]

In this vein, in February 2020, the UK Government published a document outlining its approach to negotiations with the EU,[15] whereby it

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[12] BRIGGS, *Brexit and Private International Law: An English Perspective*, *Rivista di diritto internazionale privato e processuale*, 2019, p. 261 ff., esp. p. 272 ff.

[13] Under the European Union (Withdrawal) Act 2018, as amended by the European Union (Withdrawal Agreement) Act 2020.

[14] As observed by RÜHL, *Private International Law post-Brexit: Between Plague and Cholera*, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3553768, pp. 6-7, «it does not come as a surprise that the UK plans to limit unilateral application of EU law to the Rome I and Rome II Regulation while excluding the Brussels Ia Regulation (with the exception of the provisions relating to consumer and employment contracts): both instruments do not rest on the principle of reciprocity. And since both instruments enjoy universal application, they will also be applied by Member State courts in cases relating to the UK after expiration of the transition period». On these aspects see also Commons Library Briefing, no. 8700, 28 August 2020, available at https://commonslibrary.parliament.uk/research-briefings/cbp-8700/.

[15] HM Government, *The Future Relationship with the EU: the UK's Approach to Negotiations*, February 2020, CP 211, available at

stated the UK's proposal to keep on «working together with the EU in the area of civil judicial cooperation through multilateral precedents» set by the Hague Conference on Private International Law and through the UK's accession as an independent contracting party to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.[16]

Accordingly, again in February this year, the UK Government has introduced the Private International Law (Implementation of Agreements) Bill into the House of Lords.[17]

The Bill originally included provisions for a delegated power which would have allowed the Government to implement international agreements in domestic law in future via secondary legislation. Since the Government lost the vote on this delegated power in the House of Lords, the amended version of the Bill (as subsequently introduced in the House of Commons) now basically provides for the implementation into domestic law of the Hague Conventions of (*i*) 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, (*ii*) 2005 on Choice of Court Agreements and (*iii*) 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

These treaties will apply to the UK as part of EU law until the end of the transition period specified in the Withdrawal Agreement. Before that date, the Government needs to take all necessary steps (including individual accession to said conventions[18]) to ensure the UK's participation in them in its own right together with their uninterrupted full implementation into domestic law. As a consequence, the Bill provides for its entry into force at the end of the transition period, which is referred to as «IP [Implementation Period] completion day».

4. Regardless of whether the above mentioned, ongoing negotiations for a post-Brexit EU-UK comprehensive partnership agreement will lead to such an agreement being actually signed and entered into force (or, on the contrary, we will witness a «hard Brexit»), the further issue arises as to the

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https://www.gov.uk/government/publications/our-approach-to-the-future-relationship-with-the-eu.

[16] Commons Library Briefing, no. 8700, 28 August 2020, cit.

[17] The entire dossier relating to the Bill is available at https://services.parliament.uk/Bills/2019-21/privateinternationallawimplementationofagreements/documents.html.

[18] See below, § 5, as regards the 2005 Hague Convention on Choice of Court Agreements.

possible arrangements that might be set up between the parties in order to establish a future and renewed post-Brexit cooperation in the field of (jurisdiction and) recognition and enforcement of judgments in civil and commercial matters. To this end, a number of possible models have been suggested.

The first option would be an exact replication of the Recast Regulation by a bilateral agreement between EU and the UK.

In this respect, some authors[19] have suggested seeking inspiration from the EU-Denmark agreement on the application of the Brussels I Regulation (the «Danish model»).[20]

Such a solution would have the advantage of (*i*) being consistent with the UK's preference for a stand-alone reciprocal enforcement agreement with the EU substantially reproducing the content of the Recast Regulation[21] and (*ii*) maintaining in place the existing framework for recognition and enforcement together with clear *lis pendens* rules on parallel proceedings in the UK and the EU after the withdrawal.[22]

However, one of the main problems that would come with this option pertains to the interpretation and enforcement of the EU-UK agreement given that, according to the Danish model, Denmark is required to refer questions of interpretation to the ECJ (Article 6(1)) and the Commission is allowed to bring proceedings against Denmark if it does not comply with the agreement (Art. 7(1)).

Therefore, even though, pursuant to Article 6(2), Denmark is not bound by an obligation of uniform interpretation but only to give «due account» to the ECJ decisions, it seems questionable, to say the least, that the UK, with its government having made it clear that one of the principal objectives of

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[19] See, among others, AIKENS, DINSMORE, *Jurisdiction, Enforcement and the Conflict of Laws in Cross-Border Commercial Disputes: What Are the Legal Consequences of Brexit?, Eur. Bus. Law Rev.*, 2016, p. 904 ff., esp. p. 915; MASTERS, MCRAE, *What Does Brexit Mean for the Brussels Regime?*, *Journ. Int. Arb*., 2016, p. 484 ff., esp. p. 486 ff.

[20] Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Rivista di diritto internazionale privato e processuale*, 2007, p. 527 ff.

[21] DICKINSON, *Close the Door on Your Way Out – A Bystander's Guide to Brexit* (March 1, 2017), Oxford Legal Studies Research Paper No. 39/2017, available at SSRN: https://ssrn.com/abstract=2964967.

[22] POESEN, *EU-UK civil judicial cooperation after Brexit: Challenges and prospects for private international law*, available at https://lirias.kuleuven.be/retrieve/507296.

Brexit has been to remove the UK from the ECJ's judicial authority,[23] would accept being required to turn to the ECJ for interpretative advice (not to mention being required to follow it) or to submit to any form of supervision by the EU Commission after withdrawal.[24] Equally, it seems unlikely that the EU will be willing to grant the UK direct access to the ECJ.

4.1. As a second and alternative option, it has been suggested that the UK and EU enter a bilateral agreement modelled on the Recast Regulation with the exclusion of elements (such as the ECJ's jurisdiction) which would be irreconcilable with the UK's upcoming status as a non-EU State (the «Brussels I model»).[25]

As appropriately pointed out in doctrinal writings, even admitting that the UK may be in favour of such a solution, there would be various reasons for the EU not to accept it.

First of all, the possibility that, with the UK no longer benefitting from the regime of the Recast Regulation as a consequence of Brexit, EU and non-EU businesses providing services within the single market will be induced to have their disputes adjudicated before the courts of the remaining Member States, which may give rise to potential advantages for their own legal services sectors.[26]

A second reason for refusing the Brussels I model solution is that it would allow the UK to participate in the Recast Regulation regime without accepting the jurisdiction of the ECJ nor committing to the single market or single justice area, according to what has been defined as a «cherry picking» approach that would send the wrong signal and, as such, is to be entirely avoided.[27]

It might also be, third, that the EU will not be inclined to extend the current legal framework to a «context not presided by the philosophy of integration». In other words, the «blind reciprocal trust» that underlies (and, at the same time, constitutes one of the main objectives of) the application

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[23] DICKINSON, *Close the Door* cit.

[24] RÜHL, *Judicial Cooperation in Civil and Commercial Matters after Brexit: Which Way Forward?, Int. Comp. Law Quart*., 2018, p. 99 ff., esp. p. 120.

[25] DICKINSON, *Close the Door* cit.

[26] DICKINSON, *Close the Door* cit.

[27] This is the view of the German Chancellor and the European Parliament's negotiator, Mr Verhofstadt as reported by DICKINSON, *Close the Door* cit.

of the Recast Regulation might be deemed available only to States taking part in, and committing to, the «greater common good» of EU integration.[28]

4.2. In the current discussion on the post-Brexit EU-UK judicial cooperation in civil and commercial matters a bilateral agreement between the UK and EU modelled on the (already mentioned[29]) 2007 Lugano Convention (the «Lugano model») has also been suggested as a further alternative option which would have the advantage of substantially aligning the UK with the current regime of EU co-operation without the drawbacks affecting the above referred models as regards, in particular, the jurisdiction of the ECJ.[30]

In this last respect, as recognised by the same UK government,[31] the Protocol on the uniform interpretation of the 2007 Lugano Convention would provide a possible template for future cooperation with the EU, capable of accommodating the ECJ's jurisprudence without accepting its judicial authority.[32]

This position rests on the consideration that, as well known, according to Protocol no. 2 to the 2007 Lugano Convention, (*i*) the courts of all contracting States, including those of non-EU States, have the mere obligation to «pay due account» to the principles laid down by any court of a contracting State as well as by the ECJ concerning the convention itself as well as similar provisions of the 1988 Lugano Convention, the 1968 Convention and the Brussels I Regulation (Art. 1(1)) and, (*ii*) differently from the EU-Denmark agreement, the courts of contracting States which are not EU Member States are not required (or allowed) to directly approach the ECJ.[33]

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[28] RÜHL, *Judicial Cooperation* cit., p. 118 f; see also JAULT-SESEKE, *Brexit et espace judiciaire européen*, *European Forum*, 26 April 2018, p. 387 ff., esp. p. 393, available at www.europeanpapers.eu.

[29] See above, § 3.

[30] On this alternative see UNGERER, *Consequences of Brexit for European Private International Law, European Forum*, 27 February 2019, p. 1 ff., p. 5; HESS, *The Unsuitability of the Lugano Convention (2007) to Serve as a Bridge between the UK and the EU after Brexit*. *MPILux Research Paper 2018*, available at SSRN: https://ssrn.com/abstract=3118360.

[31] HM Government, Enforcement and Dispute Resolution – A Future Partnership Paper, available at https://www.gov.uk/government/publications/enforcement-and-dispute-resolution-a-future-partnership-paper, para 50.

[32] DICKINSON, *Close the Door* cit.

[33] RÜHL, *Judicial Cooperation* cit., p. 120.

However, against the opinion that Protocol no. 2 would establish a compromise that might turn out to be acceptable for both the EU and the UK after Brexit[34] stands the view that such a Protocol would eventually be unsuitable to allow the UK achieving the intended total independence from the ECJ. In support of this view it is argued that, even though to a different extent, both the Lugano and the Brussels regimes are related to Luxembourg and that, despite under the Lugano model the UK would be relieved from having to request preliminary rulings from the ECJ, such a relief might sometimes be not beneficial and would in any case prevent the British from adjudication and participation in preliminary ruling procedures brought by others.[35]

The debate on the viability of the Lugano model as a possible arrangement for the future EU-UK civil judicial cooperation goes beyond the above reported questions regarding the ECJ jurisdiction over the 2007 Lugano Convention.

Preliminarily, and on a more general note, the capability of this model to be the panacea for all problems is rebutted on the ground that the Lugano Convention has not yet been aligned with the Recast Regulation and it is currently not foreseen any revision thereof in the near future.[36]

It follows that, even if the UK were to enter an agreement replicating it *vis-à-vis* the EU, the substantial improvements brought about by the Recast Regulation would not extend to the UK. This would mean that the latter, despite having lobbied for said improvements, would not benefit from the abolition of *exequatur* nor from the amendments undergone by the Brussels I Regulation in order to better protect the exercise of party autonomy and strengthen the effectiveness of jurisdiction clauses stipulated in the exercise thereof.

4.2.1. The above reported reasons against an EU-UK agreement replicating the 2007 Lugano Convention have not prevented the UK from depositing, on 8 April 2020, an application to accede to said convention with the Swiss Federal Council as the depositary thereof.[37]

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[34] DICKINSON, *Close the Door* cit.; AIKENS, DINSMORE, *Jurisdiction, Enforcement and the Conflict of Laws* cit., p. 915.

[35] UNGERER, *Consequences of Brexit* cit., p. 6

[36] RÜHL, *Judicial Cooperation* cit., p. 126 f; POESEN, *EU-UK civil judicial cooperation* cit.

[37] Pursuant to Article 69(2) of the 2007 Lugano Convention. On this application see, among others, LEHMANN, *UK Applies for Accession to Lugano Convention*, available at https://eapil.org/2020/04/25/uk-applies-for-accession-to-lugano-convention/.

This unilateral initiative – which, as seen, the UK Government committed to undertake as early as in February this year[38] – raises at least two additional problems in connection with: (*i*) the conditions for the UK's accession to the 2007 Lugano Convention and (*ii*) the UK's involvement in the convention's reform process.

As to the first point, it is worth remembering that the 2007 Lugano Convention has been ratified by the EU in the exercise of its exclusive power in foreign affairs. Consequently, as a result of Brexit becoming fully effective after the end of the transition period, the UK will no longer be a contracting party and its individual accession to such convention shall take place in accordance with the relevant provisions thereof.[39]

Pursuant to the rule on third State accession envisaged by Art. 70(1)(c) of the convention, this is however subject to the unanimous approval of all the contracting parties. While Iceland, Norway and Switzerland have expressed their support,[40] the position of the EU towards the UK's accession is still unclear, and its approval certainly cannot be taken for granted.[41] Even if so, the EU could make an objection so that the British accession would not become valid towards the EU Member States.[42]

As mentioned, another controversial issue connected with the option for the Lugano model has to do with the extent of the British involvement into any reform of the convention in order for the UK to be considered bound by the consequent amendments or changes thereof. A possible compromise between the foreseeable respective positions of the UK and the EU, which latter will likely be against admitting the British participation to the negotiations, would be to allow the UK as an observer without a voting right. Otherwise, the same solution adopted with Denmark could be resorted to: accordingly, the UK would only be bound by the new rules of the convention if it chooses to be so bound having previously given notice thereof to the EU Commission.[43] By contrast, a British refusal to accept the amendments or

[38] See above, § 3.

[39] UNGERER, *Consequences of Brexit* cit., p. 5.

[40] In this regard see <https://www.gov.uk/government/news/support-for-the-uks-intent-to-accede-to-the-luganoconvention-2007>.

[41] On this point see RÜHL, *Judicial Cooperation* cit., p. 126, and the views reported therein at footnote 170.

[42] Pursuant to Art. 72, para. 4, of the 2007 Lugano Convention.

[43] Equally to what established by Article 3(1) and (2) of the EU-Denmark agreement.

failure to implement them would result in the entire agreement's termination.[44]

4.3. The fourth suggested option for future EU-UK judicial cooperation in civil and commercial matters consists of negotiating a new bespoke bilateral treaty on issues of recognition and enforcement.[45]

This option too, however, comes with problems,[46] in that, first of all, as the negotiation of a treaty is normally time-consuming, no new agreement would be realistically concluded before the expiration of the transition period, with the option in question having to be regarded, at most, as a long-term solution.[47]

A further problem would arise in relation to the enforcement of such a bilateral treaty as well as to the dispute resolution mechanism that it should envisage. As suggested in doctrinal writings, a possible compromise for both the EU's and the UK's positions might be to replicate the above seen model provided by Protocol no 2 to the Lugano convention.

However, the most serious concern raised in relation to this option is that, at least from the EU's viewpoint, the existence of a new treaty in the field of private international law would increase the uncertainty as to the (already fragmented) rules actually applicable in this very sector, making it more complex for the parties and the EU27 courts to establish such rules' respective scope of application.[48]

5. The UK's refusal to accept any residual authority of the ECJ together with the lengthy procedures for the negotiation of the UK's accession to the 2007 Lugano Convention, let alone of any eventual bespoke EU-UK bilateral agreement, suggest the opportunity that the post-transition-period consequences on the recognition and enforcement of judgments be dealt with in the context of multilateral treaties with other non-EU States.[49]

In this vein, it certainly does not come as a surprise that the already mentioned February 2020 (*i*) programme on EU-UK future relationship in the field of civil judicial cooperation and (*ii*) Private International Law (Implementation of Agreements) Bill presented by the UK Government point to the implementation into domestic law of «multilateral precedents»

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[44] In accordance with Article 3(3) to (5) and Article 3(7) of the EU-Denmark agreement.

[45] DICKINSON, *Close the Door* cit.

[46] RÜHL, *Judicial Cooperation* cit., p 121 ff.

[47] RÜHL, *Private International Law post-Brexit* cit., p 6.

[48] RÜHL, *Judicial Cooperation* cit., p 119.

[49] Of this view JAULT-SESEKE, *Brexit et espace judiciaire européen* cit., p. 394.

set by the Hague Conference on Private International as privileged means to deal with private international law (including recognition and enforcement of judgments) issues after the end of the transition period.

As pointed out by scholars,[50] the advisability of the UK's post-Brexit individual accession to the 2005 Hague Convention on choice of court agreements (the «2005 Hague Convention») would be inferable, first, from the fact that, unlike in the case of the 2007 Lugano convention, this step can be taken unilaterally, without the need for consent of the EU27.[51]

Further, despite it being applicable to a much narrower range of choice of court agreements than those encompassed in the Brussels or Lugano regime,[52] the 2005 Hague Convention nonetheless addresses some of the concerns of parties to commercial contracts regarding the increased enforcement risks associated with jurisdiction agreements in favour of UK courts.[53] In addition, choice-of-forum clauses as well as all judgments rendered on the basis of any such clauses shall be enforceable in the contracting States, including EU27.[54]

However, the UK's participation in such convention is a consequence of the EU having ratified it as a Regional Economic Integration Organisation on the basis of its exclusive external power on behalf of all its Member

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[50] DICKINSON, *Close the Door* cit.; see also BERTOLI, *La «Brexit» e il diritto internazionale privato e processuale*, *Rivista di diritto internazionale privato e processuale*, 2017, p. 599 ff., p. 613 f. and the authors therein cited at footnote 62.

[51] According to Article 27(1) and (3) of the Convention any State is allowed to accede.

[52] As highlighted by RÜHL, *Judicial Cooperation* cit., p. 127, the substantive scope of the convention is limited, pursuant to Article 1, to exclusive choice-of-forum clauses concluded among companies and other professional parties in an international situation in civil and commercial matters with the exception of those (such as consumer contracts and anti-trust) listed by Article 2. In addition, also the geographic scope of the Convention is limited, as it is in force only in the EU, Mexico, Singapore and Montenegro. On the 2005 Hague Convention's scope of application see also POESEN, *EU-UK civil judicial cooperation* cit.; UNGERER, *Consequences of Brexit* cit., pp. 6-7.

[53] DICKINSON, *Close the Door* cit. According to BRIGGS, *Brexit and Private International Law* cit., p. 274, on the contrary, adhering to the convention «will achieve rather little», given that «[i]t will make no real difference to the behaviour of English courts» and «[a]ll the really interesting questions are ignored by the Convention».

[54] It seems worth recalling that Denmark has deposited its instrument of accession to the 2005 Hague Convention on 30 May 2018; the convention has entered into force for this State on 1 September 2018.

States. It follows that, as soon as the transition period will come to an end, the 2005 Hague Convention will cease to apply within the British legal system.

The UK deposited the instrument of accession to the convention on 28 December 2018. However, as a reaction to the adoption of the Withdrawal Agreement, the instrument was withdrawn on 31 January 2020 with the parallel declaration that a new instrument of accession would be deposited before completion of the transition period. [55]

In the meantime, as seen,[56] the UK legislative process for the adoption of the Private International Law (Implementation of Agreements) Bill is underway for the purposes of implementing (together with the other two above mentioned Hague Conventions) the 2005 Hague Convention into domestic law by the end of the transition period and thus ensuring the country's continued participation therein.

6. The 2005 Hague Convention has been complemented by the global judgments convention with respect to civil and commercial matters whose adoption has recently taken place on the occasion of the XXII Diplomatic Session of the Hague Conference held on 2 July 2019 (the «Hague Judgments Convention»).[57]

Whereas the original 1999 draft of such convention was framed as a double convention, providing rules on jurisdiction combined with a detailed regulation on recognition and enforcement of judgments, the final edition thereof confines itself to regulating the recognition and enforcement of judgments in civil and commercial matters (with a number of exclusions) subject to specific conditions of eligibility.

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[55] RÜHL, *Private International Law post-Brexit*, p 9. The full declaration is available at https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1318&disp=resdn.

[56] Above, § 3.

[57] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, available at www.hcch.net. See for a first appraisal FRANZINA, LEANDRO, *La convenzione dell'Aja del 2 luglio 2019 sul riconoscimento delle sentenze straniere: una prima lettura*, available at http://www.sidiblog.org; NORTH, *Conclusion of the HCCH Judgments Convention: The objectives and architecture of the Judgments Convention, a brief overview of some key provisions, and what's next?*, Conflictoflaws.net, 2 July 2019, available at http://conflictoflaws.net/2019/conclusion-of-the-hcch-judgments-convention-the-objectives-andarchitecture-of-the-judgments-convention-a-brief-overview-of-some-key-provisions-and-whats-next/.

Despite being inspired by the Brussels I regime, profound differences exist between such latter discipline and the one currently envisaged by Hague Judgments Convention. First, *exequatur* has not been abolished. Moreover, since equally to the existing Hague conference treaties the interpretation of the Judgment Convention will be the task of the contracting States' courts, the uniform interpretation thereof is at risk.[58]

The above notwithstanding, the expectation is that the EU, having been closely involved in the negotiations of the convention, will ratify it. And it may well be that, instead of opting for one of the cooperation models described above, the EU/EU27 deem their interests better served by the parallel UK's ratification of this convention, with a view to making the latter more attractive in the eyes of the other third countries which are the EU's most important trading and commercial partners.[59]

[58] POESEN, *EU-UK civil judicial cooperation* cit.
[59] As suggested by DICKINSON, *Close the Door* cit.