

European Commission publish draft Withdrawal Agreement: impact on civil jurisdiction and judicial cooperation

The European Commission published its draft Withdrawal Agreement today. In this blog post we provide our initial observations on those articles in the draft Agreement that are particularly relevant to the recognition of English choice of law and court clauses, English judgments and the authority of the CJEU.

Submitted	28 February 2018
Applicable Law	UK
Topic	Brexit Dispute Resolution - Commercial Dispute Resolution - Financial Markets
Contact	Elizabeth Williams , Jamie Sawyer

The European Commission published its draft [Withdrawal Agreement](#) today.

We set out below our initial observations on those articles in the draft Agreement that are particularly relevant to the recognition of English choice of law and court clauses, English judgments and the authority of the Court of Justice of the European Union (CJEU).

In summary, the European Commission's previous negotiating position (as set out in its [Position Paper on Judicial Cooperation in Civil and Commercial Matters](#) dated July 2017) is reflected in the draft Agreement. One interesting difference is that the relevant date, prior to which English jurisdiction, choice of court agreements and enforcement of judgments will continue to be recognised, used by the European Commission is the date on which the transition period ends, proposed as 31 December 2020, rather than the "withdrawal date" of March 2019.

- **Governing law (article 62):** it confirms that Rome I and Rome II shall apply for contracts concluded/events giving rise to damage which occurred before the end of the transition period ie 31 December 2020 (rather than before the withdrawal date, as per the EU's negotiating position stated in July 2017).
- **Jurisdiction / choice of court agreements / recognition and enforcement of judgments (article 63):** it clarifies that (i) in the UK; and (ii) in Member States in situations involving the UK, the provisions of RBR will apply as follows:
 - **Jurisdiction:** RBR provisions on jurisdiction shall apply in respect of legal proceedings instituted before the end of the transition period (as above, rather than before the withdrawal date).
 - **Choice of court agreements:** RBR Article 25 on choice of court agreements will apply in respect of agreements concluded before the end of the transition period (rather than before the withdrawal date).
 - **Recognition and enforcement of judgments:** RBR provisions on recognition and/or enforcement of judgments shall apply to the recognition and enforcement of judgments given before the end of the transition

period (rather than before the withdrawal date).

- **CJEU (articles 82/83/85):**

- **Pending cases:** it confirms that the CJEU will have jurisdiction over: (i) any proceedings brought before it by/against the UK before the end of the transition period; and (ii) for preliminary rulings on requests from a UK court/tribunal referred before the end of the transition period. Judgments and orders in such cases will be binding in the UK even if handed down after the end of the transitional period.
- **New cases:** where questions are raised in a UK court/tribunal concerning the interpretation of the Treaties or validity/interpretation of acts of EU institutions etc., and the facts occurred before the end of the transition period, and a decision is necessary to enable the UK court/tribunal to give judgment, the CJEU may give a preliminary ruling.

- **Legal representation in CJEU cases (article 87):**

- If already representing a party in a CJEU case before the end of the transition period, a UK lawyer may continue to assist in those proceedings.
- UK lawyers may represent or assist parties before the CJEU in new cases as set out in article 83 (see above).

Please contact [Elizabeth](#), [Jamie](#), or your usual Simmons & Simmons contact if you have any questions or wish to discuss any aspect in more detail.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.

© Simmons & Simmons LLP 2018. All rights reserved. Registered in England & Wales Registered Number OC352713

ellexica Limited, CityPoint, One Ropemaker Street, London EC2Y 9SS T: +44 20 7628 2020