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1. Brexit – Key dates
2. Post-Brexit, where are we now?
  - A. Cross-border service of judicial documents
  - B. Cross-border taking of evidence
  - C. Bank account preservation orders
3. Conclusions and key take-aways

# 1. Brexit – Key dates



- 23/06/2016: Brexit vote
- 31/01/2020 – 31/12/2020: transition period
- After 1/01/2021: EU law *per se*, i.e. except what has been retained, does not apply anymore.



**What are we left with ?**

Alternatives or back at common law.

## 2.

### Post-Brexit, where are we now?

- Cross-border service of judicial documents
- Cross-border taking of evidence
- Bank account preservation orders



## 2. Post-Brexit: where are we now?

Since 01/01/2021, the **3 EU regulations** regarding:

- A. Cross-border service of judicial documents;
- B. Cross-border taking of evidence; and
- C. Bank account preservation orders

do **NOT apply** anymore **to the United-Kingdom.**



## 2. Post-Brexit, where are we now?

### **2.A.** Cross-border service of judicial documents

**Before Brexit:** Regulation n°1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (which has been, from 1/07/2022, replaced by Regulation 2020/1784).

**Duration:** "as soon as possible", and maximum within 1 month of receipt. The goal is to render the judicial procedures efficient and speedy.

**Organs:**

- Agencies, in each EU country, responsible for the transmission and receipt of the documents. Information such as addresses and names of those agencies, as well as their territorial scope, must be transmitted to the European Commission.
- Central body: providing information and solutions to the agencies when the latter needs them.

**Standardised forms**

**Language:** one of the languages of the EU. However, the person receiving the document may refuse the document if they do not understand the language or if it is not in the official language of the place where the document is to be served.

**Costs:** single fixed fee fixed in advance by countries.

**Postal service:** uniformised conditions.



### After Brexit: Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

#### Possible types of services

Main way: **Central authority**. E.g.:

- **UK:** The Senior Master, Royal Courts of Justice - For the attention of the Foreign Process Section  
*Room E16 - Royal Courts of Justice - Strand - LONDON WC2A 2LL*
- **Belgium:** Service Public Fédéral Justice - Service de coopération internationale civile  
*Boulevard de Waterloo, 115 - 1000 BRUXELLES*

**Alternative ways:** diplomatic or consular channels, postal channels, or direct communication between competent persons.

### After Brexit: Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

#### Language: requirements for most states. E.g.:

- **UK:** the documents needs to be written in, or translated into, English
- **Belgium:** the document needs to be written in, or translated into, the official or one of the official languages of the place where the document will be served.

#### Costs. E.g.:

- **UK:** no extra cost, except if a particular method is needed or in exceptional circumstances.
- **Belgium:** an amount of 165 euros must be paid in advance for every act that needs to be served to a physical person or a company in order to pay the mandatory intervention of a bailiff.

General note: most states made declarations or reservations with respect to the model declaration.

### After Brexit: Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

- **82 Member States** : Albania, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Canada, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Kazakhstan, Kuwait, Latvia, Lithuania, Luxembourg, Malawi, Malta, Marshall Islands, Mexico, Monaco, Montenegro, Morocco, Netherlands, Nicaragua, North Macedonia, Norway, Pakistan, Paraguay, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Tunisia, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), and Viet Nam.
- **All the EU MS** are members.



#### **Overall:**

Slower and more complicated than EU law, especially given the recent amendment to the EU regulation.

**Focus** on an important practical issue: date of service , i.e. the date when the judicial document is considered to have been served.

→ How do we determine the date of service?

BEFORE BREXIT	POST BREXIT
<p>Article 9 of <b>Regulation n°1393/2007</b> :</p> <p>The date of service =</p> <ul style="list-style-type: none"><li>• date on which it is served in accordance with the law of the Member State addressed; or</li><li>• if a document has to be served within a particular period, the date shall be that determined by the law of the Member State which fixes the particular time limit.</li></ul>	<p>Nothing in <b>1965 Hague Convention</b> → back to national law.</p> <p>The determination of the date of service will therefore depend on the appreciation of each national court.</p> <p>This may give rise to rather bold interpretations. E.g.: Belgium Court of Cassation (21/12/2007) - recognition of the double date.</p>

### CONCLUSION

A step backwards and a return to some uncertainties that the EU Regulation had eliminated.

- How do to determine at which date the document is supposed to have been served citation?
- For instance, when does the time limit for appeals start to run?

The answers depend on the interpretation given to the “date of service”...



## 2. Post-Brexit, where are we now?

### **2.B.** Cross-border taking of evidence

**Before Brexit:** Regulation n°1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (which has now been replaced by Regulation n°2020/1783).

**Scope:** to request to another EU court to obtain evidence; and to request permission to gather evidence in the other EU country.

**Manner:** direct transmission between courts: list drafted by EU countries of the authorised courts.

### **Standardised form**

**Exception:** form can be refused:

- if outside the scope;
- if judiciary not competent;
- if incomplete request;
- if a person claims a right to refuse or a prohibition from giving evidence;
- or if the deposit or advance of the expert's costs has not been paid.

**Language:** in any official language or another language that the court accepts.

**Duration:** within 90 days of receipt of the request.

### After Brexit: Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

**Scope:** methods to provide and get evidence abroad.

**Manner:** letters of request, diplomatic or consular agents, commissioners.

**Central authority.** E.g.:

**UK - competent authorities:**

- **For England and Wales:** The Legalisation Office - The Foreign & Commonwealth Office  
*Norfolk House (West) ; 437 Silbury Boulevard ; Milton Keynes MK9 2AH*
- **For Northern Ireland:** The Master Royal Courts of Justice, Queen's Bench and Appeals, Belfast 1  
*Chichester Street, BELFAST BT1 3JF*
- **For Scotland:** Scottish Government Justice Directorate - Central Authority & International Law Team  
*St. Andrew's House (GW15), EDINBURGH EH1 3DG*

**Form:** nothing standardised but a series of elements to be mentioned (e.g. name, address,...)

**Exception:** can be refused if:

- judiciary not competent to execute the letter;
- or if the sovereignty or security of the state would thereby be prejudiced by the execution of the letter.



### **After Brexit: Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters**

- **66 Member States** : Albania, Andorra, Argentina, Armenia, Australia, Barbados, Belarus, Bosnia and Herzegovina, Brazil, Bulgaria, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Israel, Italy, Kazakhstan, Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Nicaragua, North Macedonia, Norway, Paraguay, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Türkiye, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of), and Viet Nam.
- **All EU Member States are members except Belgium, Austria, and Ireland.**

Left with common law if no alternative or bilateral instruments if they exist.

Belgium and the UK: 21/06/1922 Convention between Belgium and Great Britain governing the transmission of judicial and extrajudicial acts and the establishment of evidence.

### After Brexit: Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters

Left with common law if no alternative or bilateral instruments if they exist.

**Belgium and the UK:** 21/06/1922 Convention between Belgium and Great Britain governing the transmission of judicial and extrajudicial acts and the establishment of evidence.



#### Overall:

Some states are not signatories:  
system of rogatory letters to be sent  
via diplomatic channels to nationals  
courts.

This procedure is slower and more  
expensive than the EU regulation  
system.

**Focus** on an important practical issue: direct vs. indirect enforcement

BEFORE BREXIT	POST BREXIT
<p><b>Regulation n°1206/2001:</b> direct enforcement</p> <ul style="list-style-type: none"><li>• The <b>Regulation</b> itself offered the possibility to directly take evidence in another Member State</li><li>• In addition, this has been largely interpreted by the <b>CJEU</b> so that direct enforcement became the rule and provided the system with an extreme efficiency (i.e. C-332/11; C-170/11; C-188-22).</li></ul>	<p><b>1970 Hague Convention:</b> <u>no</u> direct enforcement</p> <ul style="list-style-type: none"><li>• Under the Convention, a State may not order measures (e.g. expert report or hearing of witnesses) without going through the local authorities of the other State.</li></ul>

### CONCLUSION

A step backwards and a return to national peculiarities surrounding enforcement that the EU Regulation and the CJEU had eliminated.



## 2. Post-Brexit, where are we now?

### 2.C. Bank account preservation orders

**Before Brexit:** Regulation n°655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters

**Scope:** in EU cross-border cases, it permits a court to freeze funds from a debtor's bank account located in a different EU state.

**Member States:** all EU countries except Denmark.

**Advantages:**

- Easy debt recovery;
- Quick process;
- *Ex parte* process: the debtor is not aware of the process, thereby they are not given time to organise their insolvency.

**Online form**

**After Brexit:** no multilateral or bilateral agreement regulating bank account preservation orders

→ back to national law.

### 2 issues

- Which judge has jurisdiction to order the seizure of a bank account?

→ Nothing in bilateral or multilateral conventions: back to national rules

- What is the procedure for recognition and enforcement of this attachment order?

→ Nothing in bilateral or multilateral conventions: back to national rules

**Before Brexit:** attachment orders were immediately enforceable without any procedure;

**Post Brexit:** it is now necessary to obtain an exequatur in the State where the bank account is located.

**Problem:** can an *ex parte* order be enforced under national law? This is certainly not be accepted by all national systems.

### CONCLUSION

The question will therefore be in each national law:  
*Does national law allow recognition of an ex parte decision?*





# 3.

## Conclusions and key take-aways



CONCLUSIONS	BEFORE BREXIT	POST BREXIT
<p><b>A. CROSS-BORDER SERVICE OF JUDICIAL DOCUMENTS</b></p>	<p><b>Regulation n°1393/2007</b> on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters</p>	<p><b>Hague Convention of 15 November 1965</b> on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters</p>
<p><b>B. CROSS-BORDER TAKING OF EVIDENCE</b></p>	<p><b>Regulation n°1206/2001</b> on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters</p>	<p><b>Hague Convention of 18 March 1970</b> on the Taking of Evidence Abroad in Civil or Commercial Matters</p> <p><b>National law</b></p>
<p><b>C. BANK ACCOUNT PRESERVATION ORDERS</b></p>	<p><b>Regulation n°655/2014</b> establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters</p>	<p>After: no similar multilateral agreement → <b>back to national law.</b></p>

KEY TAKE-AWAYS		PRACTICAL ISSUES
<b>A. CROSS-BORDER SERVICE OF JUDICIAL DOCUMENTS</b>	<b>1965 Convention system:</b> slower and more complicated, especially given the recent amendment to the EU regulation.	<ul style="list-style-type: none"> <li>Date of service</li> </ul>
<b>B. CROSS-BORDER TAKING OF EVIDENCE</b>	<b>Some EU Member States are not signatories of the 1970 Convention. For those states:</b> system of rogatory letters to be sent via diplomatic channels to national courts. This procedure is slower and more expensive than the EU regulation system.	<ul style="list-style-type: none"> <li>Direct vs indirect enforcement</li> </ul>
<b>C. BANK ACCOUNT PRESERVATION ORDERS</b>	<b>Concerning the freezing of assets: there are no post-Brexit substitutes</b> → return to national rules for obtaining a protective attachment on a bank account and enforce it in another jurisdiction.	<ul style="list-style-type: none"> <li>Which judge has jurisdiction to order the seizure of a bank account?</li> <li>What is the procedure for recognition and enforcement of this attachment order?</li> </ul>

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# Questions?



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Thank you!





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Hakim Boularbah, attorney at law, is Partner and heads the Litigation & Risk Management practice group in our Brussels office. He focuses on cross-border litigation and international arbitration. He is also a member of the France Region Team and of the US Region Team.

Hakim focuses on civil and corporate litigation (class actions, shareholders' disputes, post-acquisition claims, ...), international arbitration (including proceedings related to arbitration: enforcement of arbitral awards, setting aside, interim measures, ...) and asset recovery. Hakim is one of the most renowned specialists of collective redress. He also frequently acts as counsel or arbitrator in international arbitration matters.



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