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Let it Brexit!



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Disputes resolution in the UK: will Brexit change anything?

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As we all know, on 23rd June 2016, the British electorate voted 51.9% in favour of leaving the European Union. A crucial question for the international business is the following: how will Brexit effect dispute resolution?

First of all, it is necessary to remark that these comments concern what might happen in the future: actually, nothing has changed so far – and nothing could have changed at all – because the EU legislation is still (and will remain) in force in the UK until the procedure provided by Article 50 TUE will have been completed.

The future effects on jurisdiction

Focusing now on dispute resolution procedures, the EU legislation regarding jurisdiction and reciprocal enforcement of judgments (the so-called ‘Brussels Regulation’) would be no longer applicable to the UK. The consequences are evident: in default of any parties’ choice of court, the English courts will exclusively refer to English domestic law.

However, other measures could be taken by the UK: for instance, the UK could try to reach an agreement with the European Union on these matters, just like other non-EU European countries (such as Switzerland, Iceland and Norway) have already done with the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Moving our focus on the enforcement of decisions, we must consider that the European Union (including – still today – the UK) is part of the 2005 Hague Convention on Choice of Court and it is foreseeable that the UK will accede to it as an independent State, so that nothing in this field would change.

Alternative dispute resolution: London as a seat of arbitration

London is often chosen as a seat in international arbitration and it is important to find out if the advantages of this arbitral seat could be in any way affected by Brexit. So the topic here is: will London lose its attractiveness?

As far as arbitration is concerned, we must take into account that the London’s arbitration law has its roots in the 1958 Convention on the Recognition of Enforcement of Foreign Arbitral Awards (better known as New York Convention) which provides the enforcement of arbitral awards in all the – EU or non-EU – signatory countries and in the Arbitration Act of 1996.

From these facts we can easily infer that the ‘skeleton’ of the London’s arbitration legislation has nothing to do with the UK’s membership of the European Union. Moreover, it is foreseeable that the attractiveness of London as a place of arbitration could even increase: since the ‘Brussels Regulation’ won’t be applicable anymore, the parties could find it safer to choose the arbitration instead of the ordinary jurisdiction.



Moreover, if the value of the pound sterling declines, the choice of the London could be cheaper than other jurisdictions. This fact could lead the parties to prefer London instead of, for instance, Paris.

The revival of the anti-suit injunction

A relevant aspect that may affect both ordinary dispute resolution and arbitration is the revival of the anti-suit injunction. This tool gives British judges the possibility to prevent any party to commence proceedings (or in some way restrict them) in a Member State despite the presence of an exclusive English jurisdiction clause.

The Court of Justice of European Union had declared the anti-suit injunction contrary to the principle of mutual trust between Member States courts. Firstly, the Court in 2004 stated it concerning the ordinary dispute resolution. Then, the same principle was affirmed in regard of arbitration in 2009. The revival of such an option is an outcome of the Brexit, since the UK will no longer be subjected to the CJEU's control.

Conclusions

To conclude, those aspects of dispute resolution that Brexit might affect are few and, in any event, the UK will probably take measures in order to mitigate the impact of this unprecedented decision to leave the EU, so that the change will not be as radical as it seems to be. However, we will have to wait to see what the UK manages to negotiate with the EU.