

Recognition and enforcement of UK judgments in Germany post no-deal Brexit

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Dispute Resolution analysis: Dr Kathrin Nordmeier, counsel at Noerr LLP in Frankfurt, considers the question of enforceability of UK judgments in Germany following the UK's departure from the EU, and predicts there will be some uncertainty regarding judgments rendered in the UK before Brexit but for which enforcement proceedings have not yet been started or have not yet been completed when Brexit occurs.

How are UK judgments currently enforced in Germany?

UK judgments in civil and commercial matters are currently enforced in Germany under [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. Pursuant to [Article 36\(1\)](#) of Regulation (EU) 1215/2012, Brussels I (recast) a judgment given in a Member State of the EU shall be recognised—and hence enforced—in the other Member States without any special procedure being required. In principal, a party who wishes to enforce a UK judgment in Germany needs to produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and the certificate issued pursuant to [Article 53](#) of Regulation (EU) 1215/2012, Brussels I (recast). The latter is issued by the court of origin and confirms that the judgment falls within the scope of [Regulation \(EU\) 1215/2012](#), Brussels I (recast). [Regulation \(EU\) 1215/2012](#), Brussels I (recast) makes it possible to directly start enforcement proceedings without the need to obtain a declaration of enforceability from the German courts first.

The non-recognition of a judgment by the recognising Member State can only occur upon the application of an interested party if that party successfully argues that one of the reasons listed in [Article 45\(1\)](#) of Regulation (EU) 1215/2012, Brussels I (recast) applies. If an application requesting that recognition be refused on the basis of one of those grounds has been submitted, the court before which enforcement of the judgment is sought may suspend the enforcement proceedings. As suspension of the enforcement proceedings is not mandatory, it is possible to continue enforcing the judgment at issue while the proceedings regarding its enforceability are pending.

Will that enforcement regime no longer apply following no-deal Brexit?

[Article 36\(1\)](#) of Regulation (EU) 1215/2012, Brussels I (recast) only applies to judgments given in a Member State of the EU. As the UK will no longer be a Member State once Brexit occurs, the regime provided for by [Regulation \(EU\) 1215/2012](#), Brussels I (recast) will cease to apply after a no deal Brexit.

Will the bilateral treaty for enforcement of civil and commercial judgments in use prior to the EU regulations coming into force be applied by the German courts?

German courts are likely to apply the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters that Germany and the UK entered into on 14 July 1960 (German-British Convention). The German-British Convention allows for the enforcement of judgments in civil and commercial matters over a specified amount for a definite sum of money. Further, per Article VII of the German-British Convention, to enforce a UK judgment in Germany, one must first apply for, and receive, a declaration of execution from the appropriate German court. Article III of the German-British Convention lists potential reasons for the denial of recognition and enforcement that go beyond the reasons listed in [Regulation \(EU\) 1215/2012](#), Brussels I (recast). Hence, judgments that are recognisable and enforceable under that regulation may no longer be recognised and enforced after Brexit. In addition, the question of whether reasons for the denial of recognition and enforcement of a judgment exist will be decided in the exequatur proceedings. Enforcement proceedings can only start after the German court issues a judgment for the declaration to execute. This will lead to substantial delays and increase the costs when enforcing a UK judgment in Germany.

If not, what will be the process for enforcement of a UK judgment in Germany post exit day?

The German-British Convention only applies to judgments over a definite sum of money. Accordingly, the German courts are likely to apply the general rules for the recognition and enforcement of judgments under section 722, subsection 328 of the German Code of Civil Procedure (German CCP) to any other UK judgment. German CCP, s 722, subs 328, provides for the need of exequatur proceedings. Hence, as under the German-British Convention and unlike the regime of [Regulation \(EU\) 1215/2012](#), Brussels I (recast), enforcement cannot start before the question of enforceability has been decided.

If enforcement of a UK judgment is not completed prior to exit day can the judgment creditor change enforcement regimes to ensure enforcement of the UK judgment?

The enforcement regimes under [Regulation \(EU\) 1215/2012](#), Brussels I (recast), on the one side and under the German-British Convention, respectively the German CCP, on the other side differ in so far as under the regulation, there is no need for exequatur proceedings. Hence, one can apply directly to the court competent for the enforcement proceedings. The latter is a different court than the court competent for the exequatur proceedings under the German-British Convention, respectively the German CCP. Accordingly, if the court concludes that the judgment creditor has started the wrong enforcement proceedings, the court will end these proceedings and the judgment creditor will have to file a second application under the proper regime.

It is uncertain what view the German courts will take regarding the proper enforcement proceedings. The crucial question is how the German courts, respectively the European courts, will interpret the wording in [Article 36\(1\)](#) of Regulation (EU) 1215/2012, Brussels I (recast) as to what constitutes a judgment 'given in a Member State'. One can argue that 'given in a Member State' means that the country of origin of the judgment must be a Member State throughout the enforcement proceedings, or one can argue that it is sufficient that the country of origin was a Member State when the judgment was rendered. There are arguments for and against both views. Hence, there will be some uncertainty regarding judgments rendered in the UK before Brexit but for which enforcement proceedings have not yet been started or have not yet been completed when Brexit occurs.

Dr Kathrin Nordmeier is a German qualified lawyer whose practice focuses on international litigation. Nordmeier has extensive experience in international procedural law, including cross-border enforcement of judgments as well as the international taking of evidence. Her practice has a strong focus on disputes related to the US. She also advises clients in cartel damage claims and other complex litigation, including insurance law.

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