A CONTRACT BETWEEN ENGLISH COMPANY AND GERMAN COMPANY: HOW DOES GERMAN COURTS RESPECT AND ENFORCE THE CLAUSE PROVIDING FOR THE JURISDICTION OF ENGLISH COURTS?*

Abstract
Jurisdiction clauses are important part of a contractual or commercial agreement especially in cross border agreement as they specify which State's court will have the powers to adjudicate and resolve disputes/issues arising from the agreement. Jurisdiction clauses are very significant as they give certainty to the location of the courts that will sit over any dispute from the contract. This study focuses on what amendments would be made to enable German courts respect and enforce a clause specifying that English courts have jurisdiction to entertain matters relating to a contract between an English company and a German company.

Keywords: English company, German company, Contract, Brexit, Enforcement, Jurisdiction

1. Introduction

Prior to 2020, United Kingdom (UK) was a full member State of European Union (EU) and as such under the instruments of EU. Recognition and enforcement of decisions and judgments of English Courts in other EU Member States including Germany were relatively guided by the EU Laws[1] and Brussels Regulations I[2], UK being an EU member State. However, Brexit has greatly impacted choice of jurisdiction and by extension jurisdiction clauses and enforcement of judgment between EU member States and UK. Due to limitation of words and unclear facts, this work will primarily focus on the effect and implication of Brexit on jurisdictional clause involving UK and an EU member state (in this case Germany) and practical amendment which will be necessary in the circumstance.

2. Discussion

The Brussels Regulation I (Recast)[3] provides that where a clause nominates the courts of one EU member State, the courts of all other member States must, as a general rule uphold that by accepting or declining jurisdiction in accordance with its terms. UK as an EU Member State enjoyed the automatic reciprocal recognition of courts and judgments. However, following Brexit, UK became and is acknowledged as a third country by EU perspective.[4] Thus the automatic reciprocal recognition of English courts and judgments no longer exist.[5] After the end of the transition period, all contracts and agreements entered into afterwards were no longer subject to the provisions of EU laws and Brussels Regulation. Without the benefits and protection of the EU Regulations, the process for recognizing English courts and judgments in Germany has become more complex and require taking additional steps.

In LG Fankfurt District Court[6], the jurisdiction clause which favoured the English court was held not to be enforceable. The court opined that allowing a third country in this case UK to have jurisdiction would undermine fundamental principles of German and European competition laws.[7] Having exited the EU, any agreement entered into from January 1, 2021 including jurisdictional clause in favour of English Courts ceases to enjoy automatic recognition and enforcement in EU member States and mostly faced with strict scrutiny and denial. In order to regain the automatic reciprocal recognition and enforcement, UK applied to accede to the Lugano Convention[8] as an independent member in its own right. However, this would require consent and agreement of all signatories to the convention, and EU has not consented to yet. If UK succeeds in acceding to the Lugano Convention, it will replicate the general jurisdictional provisions of Brussels I Regulation.[9]

By acceding to the Hague Convention[10] in its own right on 28 September, 2020, all contracts or agreements entered into on or after January 1 2021 favoring English Courts as a choice of jurisdiction will be governed and subject to the provisions of the Hague Convention[11] as between UK and EU members. Although, the Hague Convention is limited in many ways to Brussels I, it will play a significant role in international agreement between UK and EU member States especially with UK's new status as third country.[12] The Hague Convention applies and governs the recognition and enforcement of exclusive jurisdiction clause[13]. It provides the framework for mutual recognition and enforcement of choice of courts and judgments between UK and other participating Countries including EU and its member States. It then means, if parties to a contract involving UK and EU

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[1] Rome I and Rome II. These regulate choice of law governing a contract agreement.
[2] Brussels Regulation I Recast which regulates choice of jurisdiction.
[3] Article 25 (Chapter II Section 7)
[4] The provisions of EU Laws and Brussels Regulations I no longer apply to UK as a non-member State.
[5] This took effect by the end of transition period on 31st December 2020.
[6] Interim Judgment of July 5 2023, 2-06 257/21 – Visa-System, the main parts of the judgment have been published in NZKart 2023, 499
[7] Hausfield, 'Jurisdictional Clause Favouring English Courts held Invalid by Frankfurt District Court post-Brexit' https://www.hausfeld.com/en-de/what-we-think/competition-bulletin accessed 11th June 2025.
[8] Lugano Convention 2007 is an international treaty between EU and EFTA Countries
[9] Adam Sanitt, 'Impact of Brexit on Choice of Law, Jurisdiction and Enforcement' https://www.nortonrosefulbright.com/en-lu/knowledge/publications/a6ec9370/impact-of-brexit-on-choice-of-law-jurisdiction-and-enforcement accessed 14 June, 2025.
[10] Convention on Choice of Court Agreement, Hague 30 June, 2005.
[11] EU being a party to the Convention (by extension Germany)
[12] Clifford Chance, 'Brexit, Law and Jurisdiction: where will we be after transition?' https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/10/brexit-law-and-jurisdiction-where-will-we-be-after-transition.pdf accessed 13 June, 2025.
[13] Where parties have agreed that only one court will have jurisdiction.

member State choose English Courts in an exclusive jurisdiction clause, EU member courts will generally respect the choice. Although, asymmetric clauses are likely to face challenges in EU member States.

Consequently, in order for German courts to respect and enforce a choice of jurisdiction clause in a contract between an English company and a German company favouring English courts, the provisions of the jurisdiction clause amended to make the choice of English courts exclusive in order to be bound by the Hague Convention. The jurisdiction clause should be clear and unambiguous and exclusive in the choice of court. Furthermore, the agreement should contain a provision for appointment of any overseas counterparty of the agent to enable service of the defendant within jurisdiction. In addition, parties should significantly consider arbitration as UK and all EU members are parties to the 1958 New York Convention which enables a straightforward enforcement of arbitral awards similar to Brussels 1 Regulations Recast.

3. Conclusion

It is true that brexit impacted in no little measure the mutual recognition and enforcement of judgments between UK and EU member States which existed before. However, the provisions of the Hague Convention minimized the impact on choice of jurisdiction of court if made exclusive. UK having acceded to the Convention in its own right, the earlier existed mutual recognition and enforcement between UK and EU member States can be said to still exist by virtue of EU being a party to the Convention. However, in order to reap the full benefits and advantages of the Hague Convention in choice of court, the jurisdictional clause ought to be made exclusive which is a requisite requirement to invoke the powers or provisions of the Hague Convention. Companies are advised (those involving UK companies and other EU Members) to review their jurisdiction clause to reflect the exclusive requirement of Hague Convention.