

ROYAL DECREE LAW 5/2019: EFFECTS OF THE SPANISH TRANSITIONAL REGIME ON JUDICIAL COOPERATION BETWEEN THE UK AND SPAIN IN THE EVENT OF A HARD BREXIT

On 1 March 2019, the Spanish Council of Ministers approved Royal Decree Law 5/2019 (“RDL 5/2019”) by means of which contingency measures were adopted for the potential exit of the United Kingdom (“UK”) from the European Union (“EU”) without the agreement provided for in Article 50.2 of the European Union Treaty. RDL 5/2019 was published in the Spanish Official Gazette on 2 March 2019.

On 14 November 2018, the European Commission and the UK agreed upon the terms of the so-called withdrawal agreement, aimed at regulating the terms of the exit of the UK from the EU (“Withdrawal Agreement”). After the European Council’s endorsement of the same, all necessary steps have been taken to ensure that the Withdrawal Agreement enters into force on 30 March 2019.

An essential step is the UK’s ratification of the Withdrawal Agreement. However, given the continued uncertainty with regard to this ratification, the EU and its Member States are adopting contingency measures for two possible scenarios: (i) the exit of the UK in accordance with the terms agreed in the Withdrawal Agreement after the relevant transition period, that is, a “soft Brexit”; or (ii) the exit of the UK with no transition period, or a so-called “hard Brexit”.

The Spanish Government, in line with the position taken by other EU Member States, has issued RDL 5/2019, in order to put in place potential contingency measures in case of a hard Brexit. The purpose of this is to facilitate the transition to the new relationship between Spain and the UK with regard to issues such as citizenship, employment, healthcare, education, financial services, customs, public tenders, authorisations and licences, transportation and judicial proceedings.

The application of RDL 5/2019 is subject to the following conditions:

- (i) RDL 5/2019 shall only enter into force if the UK leaves the EU without having reached an agreement. This means that this regulation shall be applicable from the day on which the EU Treaties cease to apply to the UK. On the contrary, the RDL shall have no effect if the Withdrawal Agreement is eventually executed.

- (ii) Moreover, it must be noted that Royal Decree laws are regulations that can be issued provisionally by the Spanish Council of Ministers in the event of a situation of extraordinary need, but must be ratified by the Spanish Parliament within a 30-day term to become valid. In this regard, in addition to the requirement of section (i) (above), after RDL 5/2019 enters into force, its content shall have to be ratified by the Spanish Parliament.
- (iii) Furthermore, the content of RDL 5/2019 is also subject to the reciprocal adoption of these measures by the UK. In this regard, it must be noted that the adopted measures are unilateral, and shall be suspended if, two (2) months after RDL 5/2019 has entered into force, the UK does not respond in a similar manner, thus guaranteeing the reciprocal treatment of Spanish residents in the United Kingdom and in Gibraltar.

As far as the impact on judicial issues is concerned, RDL 5/2019 includes several measures to avoid potential difficulties that a hard Brexit may entail regarding (i) the notification of parties in Spain regarding UK proceedings, and (ii) the enforcement and recognition of UK judicial resolutions by Spanish courts.

In this regard, Article 17 of RDL 5/2019 establishes two different regimes for this purpose, the application of which shall depend on when the petition for judicial cooperation is submitted:

- (i) Hence, any judicial cooperation procedures on civil and commercial matters instituted before RDL 5/2019 enters into force shall be processed and resolved under the applicable European regulations (that is, the regulations in force at the time of the submission of the application).
- (ii) After the conclusion of the relevant judicial cooperation proceedings, any effects arising out of the latter shall be governed by any international agreements in force between Spain and the UK, as well as by the applicable Spanish domestic regulations.
- (iii) With regard to any proceedings initiated after RDL 5/2019 enters into force, their processing and effects shall be also subject to the applicable international and domestic regulations.

Having said this, in principle, 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 judgements in civil and commercial matters (recast) (“**Regulation 1215/2012**”) shall no longer be applicable to the potential recognition and enforcement proceedings to be instituted after RDL 5/2019 enters into force.

The foregoing has an important impact, particularly regarding the recognition and enforcement of UK resolutions. Under Regulation 1215/2012, no previous recognition of the enforceability (“*exequatur proceedings*”) of a ruling issued by an EU Member State is needed for its later enforcement, in light of the principle of automatic recognition.

In the current situation, in the event of a hard Brexit, and in the absence of bilateral treaties entered into by the UK and Spain (or by the UK and the EU), recognition and enforcement proceedings would be regulated by Act 29/2015, of 30 July, on International Legal Cooperation on Civil Matters.

In such case, and according to such regulation, in order to enforce a UK judgement, it would be necessary to go through the aforementioned two-stage procedure: recognition and enforcement, since the judgement would be considered foreign, and thus, must be judicially recognised in Spain in order to be enforced. Under these *exequatur proceedings*, the defendant (the party against whom the recognition and enforcement of the ruling is addressed) would be able to challenge such application. All the foregoing would cause additional costs and delays.

For the full text of RDL 5/2019, see:

<https://www.boe.es/boe/dias/2019/03/02/pdfs/BOE-A-2019-2976.pdf>

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