

CHART OF RULES APPLICABLE *POST-BREXIT* BEFORE THE FRENCH COURTS FOR FAMILY LAW ISSUES¹

The purpose of this presentation is to describe the rules applicable before the French courts whenever there is a foreign element with the United Kingdom.

It is important to recall that according to Art. 66-68 of the withdrawal agreement, the European Regulations will continue to apply during the transition period. Therefore, such Regulations will apply for all decisions rendered in legal proceedings initiated **before 31st Dec. 2020**. Conversely, any proceedings initiated **after that date** will be subject to the rules set out below.

The United Kingdom's accession to the Lugano Convention is still pending and this instrument will in any case not be applicable on 1st January 2021.

1. DIVORCE AND PARENTAL RESPONSIBILITY

MATTER	JURIDICTION	APPLICABLE LAW	RECOGNITION AND ENFORCEMENT
<p align="center">DIVORCE</p>	<p>Once the French court is seized of divorce proceedings, it will continue to determine its jurisdiction pursuant to Articles 3, 6 and 7 of the Regulation n° 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (called '<i>Brussels IIbis</i>' Regulation).</p> <p><u>Additional ground of jurisdiction with the United Kingdom as 1st Jan. 2021 - Application of French</u></p>	<p>The French judge will continue to apply Regulation n° 1259/2010 of 20 Dec. 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (called '<i>Rome III</i>' Regulation).</p>	<p>Regarding the recognition and enforcement of English divorce judgments, in the absence of applicability of the rules of the <i>Brussels IIbis Regulation</i>, the ordinary French rules on recognition and enforcement of judgments will apply.</p> <p>As a result, English decisions will no longer be eligible for the European certificate for the circulation of decisions provided for in the <i>Brussels IIbis Regulation</i>.</p>

¹ This chart has been prepared by Delphine Eskenazi, Lawyer admitted to the Paris and New York Bars (Libra Avocats).

	<p>international private rules in accordance with Art. 6 and 7 of the Brussels Ibis Regulation.</p> <p>If the defendant spouse is not a national of a Member State and no ground of jurisdiction under Art. 3 of the 'Brussels Ibis' Regulation exists, the French courts may, in a subsidiary manner, accept jurisdiction on the basis of (i) the habitual residence of one of the spouses even if this residence has been for less than 6 months (French spouses) or 12 months (foreign spouses) (<i>Article 1070 of the Civil Procedure Code</i> if the residence is with the children, otherwise <i>Article 14 of the Civil Code</i> if a foreign resident in France) or (ii) the French nationality of one of the spouses (<i>Article 14 of the Civil Code</i>).</p>		<p>More specifically, French law provides for <i>de plano</i> recognition of judgments² rendered in matters of status and capacity of persons. The principle of divorce will be <i>de plano</i> recognized. From an administrative point of view, it will still be necessary to go through the procedure of the “<i>control of opposability</i>” for the registration of the divorce on the French marriage certificate by referring the matter to the public prosecutor if there is a marriage certificate in France.</p> <p>Warning: France, unlike the United Kingdom, is not a Party to the <i>Hague Convention of 1st June 1970 on the Recognition of Divorces and Legal Separations</i>.</p>
<p>MATRIMONIAL PROPERTY REGIME</p>	<p>In matters of matrimonial property regimes, the French judge will apply the rules of jurisdiction of Articles 4 to 11 of the Regulation n° 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (<i>Matrimonial Property Regime' Regulation</i>).</p>	<p>To determine the law applicable to matrimonial property regimes, the French judge will continue to apply the conflict of law rules below:</p> <p>(i) For spouses married before 1st Sept. 1992, ordinary rules of private international law;</p>	<p>In the absence of a convention applicable between France and the United Kingdom, English decisions on matrimonial property regimes will be subject to the ordinary French process of <i>exequatur</i>, to be enforced in France.</p> <p>French ordinary rules on <i>exequatur</i>, although liberal, requires that for a foreign decision to be recognized and to produce</p>

² The *de plano* effect means that it will not be necessary for the foreign judgment to be covered by *exequatur* in order to produce some legal effects in France.

	<p>Remarks: The French divorce judge (who is seized under Art. 7 of the ‘Brussels IIbis Regulation’ in case of residual jurisdiction) will have jurisdiction to rule on the liquidation in case of agreement of the spouses on the basis of Art. 5 of the "<i>Matrimonial Property Regimes</i>" Regulation, or Art. 7 in case of choice of court, or Art. 6 if the defendant resides in France at the time of the seizure, or Art. 8 if the defendant appears in court, or Art. 10 if real property in France, or Art. 11 to avoid a denial of justice.</p>	<p>(ii) For spouses married between 1st Sept. 1992 and 29 Jan. 2019, <i>the 1978 Hague Convention on the Law Applicable to Matrimonial Property Regimes</i>;</p> <p>(ii) For spouses married after 1st Sept. 1992, ss. 22 and 26 of the ‘<i>Matrimonial Regime</i>’ Regulation.</p>	<p>its effects in France, it must meet the following conditions:</p> <ul style="list-style-type: none"> (i) Close connections with the matter; (ii) Absence of fraud; (iii) Absence of violation of the international public order.
<p>MAINTENANCE OBLIGATIONS BETWEEN SPOUSES</p>	<p>In matters relating to maintenance obligations between spouses, the French court will apply the rules of jurisdiction set out in Art. 3 et seq. of the Regulation n° 4/2009 of 18 Dec. 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (<i>‘Maintenance Obligations’ Regulation</i>)³.</p> <p>Remarks: the French court seized with jurisdiction for divorce may also have jurisdiction to rule on maintenance obligations between spouses pursuant to Art. 3, c) of the <i>‘Maintenance</i></p>	<p>As regards the law applicable to maintenance obligations, the French judge will continue to apply the rules of the <i>Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations</i>.</p> <p>By default, the law applicable will be the law of the place of habitual residence of the maintenance creditor (Art. 3). However, if another law has closer connection to the marriage, such law may be applicable (Art. 5).</p>	<p>The United Kingdom deposited on 28 Sept. 2020 its instrument of accession to the <i>Hague Convention of 23 Nov. 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance</i>. <i>This Convention will therefore be applicable between France and the United Kingdom</i>.</p> <p>This Convention establishes cooperation between the authorities of the Contracting States as regards the international recovery of maintenance obligations.</p> <p><i>The 2007 Hague Convention provides for a simplified exequatur system (Art. 23).</i></p>

³ An accession of the United Kingdom to the Lugano Convention would change the rules of jurisdiction in respect of maintenance obligations.

	<p><i>Obligations' Regulation</i> (unless such jurisdiction is based solely on the nationality of one of the parties).</p>	<p><u>French courts may for this reason apply English law to any issue of maintenance obligations between spouses upon divorce.</u></p> <p>Warning: the UK has never ratified this protocol and therefore it remains inapplicable in the UK. Consequently, if the judge having jurisdiction is the English judge, he or she will not apply the Protocol, unlike the French judge.</p>	<p>However, the French text allowing such a simplified <i>exequatur</i> to be filed directly by the maintenance creditor (rather than through the Central Authority) has still not been adopted.</p> <p>Therefore, for the maintenance creditor wishing to act directly, it will be necessary to follow the ordinary <i>exequatur</i> process (as described above).</p>
<p>PARENTAL RESPONSIBILITY</p>	<p>In matters of parental responsibility, in the absence of applicability of the <i>'Brussels IIbis' Regulation</i> between France and the United Kingdom, the French courts will apply the <i>Hague Convention of 19 Oct. 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children</i>.</p> <p>Article 5 of the latter provides for the principle of the jurisdiction of the courts of the State of the child's habitual residence.</p> <p>Unlike Art. 8 of the <i>Brussels IIbis Regulation</i>, in the event of a change of the child's habitual residence from France to the United Kingdom in the course of proceedings, the English</p>	<p>In matters of applicable law, the French courts will also apply the <i>1996 Hague Convention</i>.</p> <p>Art. 15 of the latter provides for the application of the law of the <i>forum</i>.</p>	<p>The <i>1996 Hague Convention</i> states in Art. 23 that '<i>The measures taken by the authorities of a Contracting State shall be recognized by operation of law in all other Contracting States</i>'.</p> <p>In the event of difficulties of enforcement, decisions rendered by the English courts based on this instrument will be subject to the conditions of <i>Art. 23, 2 of the Hague Convention</i>.</p>

	<p>courts will immediately acquire jurisdiction.</p> <p>In addition, if the children are habitually resident in the United Kingdom, the French courts, seized of the divorce proceedings, could benefit from a prorogation of jurisdiction (<i>Art. 10</i>) under the following conditions: ‘(a) <i>at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and</i> b) <i>the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child</i>’.</p> <p>Warning: the French court may, however, decline jurisdiction if it considers that the courts of another Contracting State are better placed to hear the case in the best interests of the child (<i>1996 Hague Conv., Art. 8</i>).</p>		
<p>MAINTENANCE OBLIGATIONS FOR CHILDREN</p>	<p>In matters relating to maintenance obligations for the children, the French court will apply the rules of jurisdiction set out in Art. 4 et seq. of the <i>Maintenance Obligations’ Regulation</i>.</p> <p>Remarks: Since the French judge has jurisdiction to hear divorce but also</p>	<p>As mentioned above, the French judge will apply the <i>Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations</i> and its principle of applying the law of the habitual residence of the maintenance creditor (Art. 3).</p>	<p>As in the case of maintenance obligations between spouses, at present, if the system of central authorities provided for by the <i>2007 Hague Convention</i> is not used by the maintenance creditor, <i>exequatur</i> proceedings will have to be introduced for</p>

	parental responsibility, he has jurisdiction on the question of the financial support and education of the child (<i>Maintenance Obligations' Regulation Art. 3 d</i>).		the enforcement of English decisions on maintenance obligations for children.
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LIS PENDENS EXCEPTION

Art. 19 of the *Brussels IIbis' Regulation* (for divorce and parental responsibility) and Art. 12 of the *Maintenance Obligations' Regulation* (for maintenance obligations between spouses and for children) will no longer apply between France and the United Kingdom.

Consequently, if the English Courts are seized before the French courts, an exception of *lis pendens* will have to be raised in France according to French rules of international private law. If this exception is upheld by the French courts, they will have to stay the proceedings and then to subsequently decline jurisdiction in favor of the English courts.

However, if the French courts are seized before the English courts, it is possible that the English court will nevertheless accept jurisdiction under the English rules of "*forum conveniens*". In this case, it will be possible to challenge enforcement in France of the English decisions in matters of maintenance obligations and parental responsibility on the following grounds:

Maintenance Obligations (2007 Hague Convention, Art. 22)

- a) recognition and enforcement of the decision is **manifestly incompatible with the public policy ("ordre public") of the State addressed;***
- b) the decision was obtained by fraud in connection with a matter of procedure;*
- c) **proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted;***

Parental responsibility (1996 Hague Convention, Art. 23)

- (a) if the measure was taken by an authority **whose jurisdiction was not based on one of the grounds provided for in Chapter II;***

2. INTERNATIONAL CHILD ABDUCTION

In matters of child abduction, the *Brussels IIbis* Regulation will no longer apply in relations between the United Kingdom and France. The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* will then apply. The procedure provided for in Art. 11 of the *Brussels IIbis* Regulation will no longer apply.

3. PROCEDURAL MATTERS

In the absence of the applicability of European Regulations on procedural matters, general internal conventions dealing with procedural issues will have to be applied in relations between the United Kingdom and France from 1st Jan. 2021.

SERVICE OF DOCUMENTS	<p>The United Kingdom is a Party to the <i>Hague Convention of 15 Nov. 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters</i>. France is also a Party.</p> <p>It should be noted that the United Kingdom has not made a reservation to Art. 10 of the Convention. Such article allows the possibility of direct service (subject to the English domestic rules for service).</p> <p>This is a major change since this possibility did not exist under the European Regulations on service.</p>
TAKING OF EVIDENCE	<p>The <i>Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters</i> will apply in relations between the United Kingdom and France.</p>