## Portorož, 19 May 2017 Conference: EU Project "Remedies concerning Enforcement of Foreign Judgements according to Brussels I Recast., Brexit — Legal Implications and the International Private Law Context Prof. Dr. Verica Trstenjak, Former Advocate General at the Court of Justice of the European Union, University of Vienna (Austria) and the Max Planck Institute Luxembourg (Luxembourg) Prof. Trstenjak.aory: Copyright! Reproduction and citation forbidden without the consent of the author.

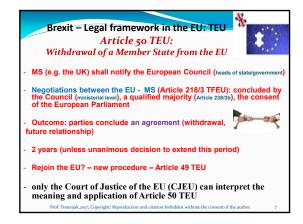


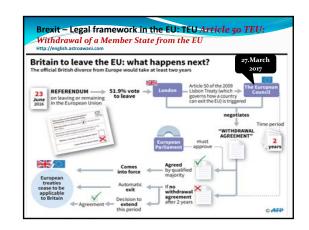


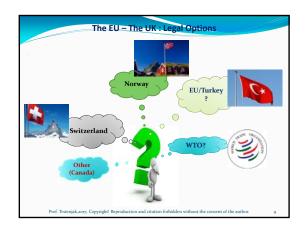




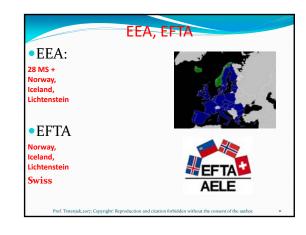




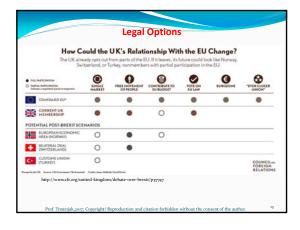












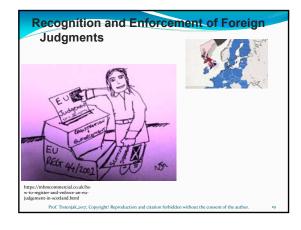








III. Brexit and the International Private Law Context			
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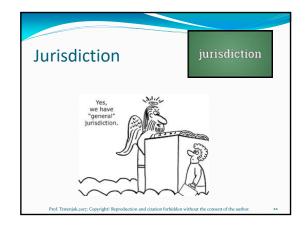


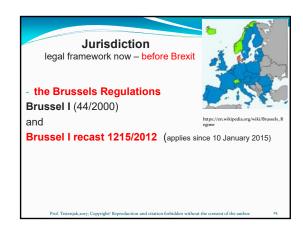
### Recognition and Enforcement of Foreign Judgments

- before Brexit
- the Brussels Regulations
  Brussel I (44/2000) and Brussel I recast
  1215/2012 (applies since 10 January 2015)
- the Lugano Convention 2007 for enforcement of judgments between the EU and three of the four EFTA members (i.e. Iceland, Norway and Switzerland except Liechtenstein)

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Recognition and Enforce	ment of Fo	reign Judg	ments
- afte	r-Brexit		
since Brussels R applicable, they have n law – thus after Bres longer apply in the UK	ot been tr	ansposed	l into UK
* Options:			
- the UK could <u>negotiate</u> other EU Member State enforcement of judgments			
- or ex bilateral agreements)	could apply	y? (e.g. Au	stria 1962,
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Jurisdiction - after Brexit



- \* Since Brussels Regulations are directly applicable, they have not been transposed into UK law thus, after Brexit, this provisions will no longer apply in the UK
- \* unclear what will happen after Brexit:
- prevailing view that without a specially negotiated agreement, the UK will not be able to fall back on the original Brussels Convention of 1968 and/or the Lugano Convention of 1988
- Other (e.g. the UK could negotiate new agreements/treaties with other EU MS or the UK could ratify the 2005 Hague Convention on Choice of Court Agreements (currently applies between the EU and Mexico and Singapore)

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### Applicable law - now : before Brexit

- in contractual disputes: the Rome I Regulation (for contracts entered into on or after 17.12.2009) or the Rome Convention apply to all EU member states
- in non-contractual obligations: the **Rome II Regulation** applies

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### Applicable law - after Brexit



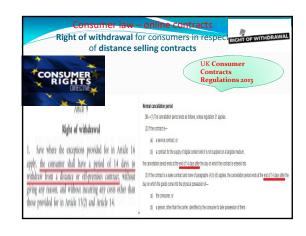
- since Regulations Rom I, Rom II are directly applicable, they have not been transposed into UK law - thus, after Brexit, this provisions will no longer apply in the UK
- the UK could simply incorporate the Rome Regulations into UK law
- Conflicts of law rules (in 27 member states ) will gain in importance
- other

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### POUR Passenger rights at hand DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 88/577/EEC and Directive 97/7/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and of the Council and Section 1999/44/EC of the European Parliament and Section 1999/44/EC of the European 1999

(Text with EEA relevance)





### After Brexit: Uncertain Future for UK (Consumer) Law? - soft or hard Brexit? - The Great Repeal Bill? - The Government's White Paper — consumer interests not among priorities - Converting current EU consumer law into Butter Why Brexit? The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con) My Lords, we are working with a range of stakeholders to understand the impact that withdrawal from the EU will have on consumers. We will work to ensure the best possible outcome for UK consumers. Wherever practical, the great repeal Bill will be convent current EU law into domestic law to give consumers as much certainly as possible.

V.Brexit and company law Freedom of Establishment CENTROS, C-212/97
Establishment of a company in another MS and establishment of a branch in the first MS
DANSKA
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### Freedom of Establishment CENTROS, C-212/97 - ISSUES

- Freedom of establishment (Art. 49 TFEU)
- Establishment of a company in another MS
- Establishment of a branch of a company
- Circumvention of national law
- Refusal to register



■ PRELIMINARY REFERENCE – a Danish court

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Brexit and company law Freedom of Establishment CENTROS, C-212/97

- Danish citizen PRIVATE LIMITED COMPANV in the UK -(100 pounds) - Centros Ltd.
- **A BRANCH IN DENMARK**
- DENMARK REFUSES TO REGISTER THE BRANCH
- CJEU judgement: Infringement of primary law on the freedom of establishment (today Articles 49 and 54 TFEU)

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# 28 judges - one from the UK 11 advocates general (AGs) - one from the UK working language - French 24 official languages (all judgments, Opinions of AGs, ...) - future of English language? Prof. Trstenják.2007. Copyright! Reproduction and citation forbidden without the consent of the author.

The Court of Justice of the European Union – CJEU

## The CJEU and the UK Possible procedures (Before withdrawal) • Infringement procedure against the UK (e.g. non-implementation of EU directives, obligations of the UK in different areas) • Actions: Member States against the UK; UK against other MS • Action for annulment (e.g. Austria v. Commission, Case T-356/15 - atomic energy, Commission Decision (EU) 2015/658) • References for a preliminary ruling from UK courts • Opinion procedure Article 218/11 TFEU (e.g. draft international treaty: EU - UK)



### Conclusion—My View Long and difficult negotiations with the EU (and also other states) The EU is not expected to be generous—no à la carte (the issue is a threat of triggering potential exits of other Member States, e.g. Austria, Hungary) several fields will be regulated similarly as they already are (the UK is not expected to change the existing legislation?) BUT: new problems: Jurisdiction? Applicable law?... (in the EU Brussels I, II, Rome I, II regulations); Public procurement Right to establishment (the CJEU case Centros), ... English language and the EU in the future? The EU will continue to exist (the UK was not in the EU until 1973 either) The EU needs to be reformed (the EURO crisis, the migration crisis)









