

UK Accession to the Lugano Convention 2007—View of the EU Commission

22 April, 2021

Reports on the EU Commission’s View about UK Accession to the Lugano Convention 2007. Reports¹ have emerged that the EU Commission has said it believes the UK should not be granted permission to accede to the Lugano Convention 2007 (“Lugano”). The reports on the EU Commission’s view come from a closed-door meeting with EU diplomats on 12 April 2021. It is the first time the Commission has voiced an official view on the UK’s accession to Lugano. However, this view is not final and the EU Commission is due to issue a formal communication to EU Member States in coming weeks.

Reasoning of the EU Commission. Reportedly, the EU Commission objected to the UK’s accession on the basis that it is neither a member of the European Economic Area nor of the European Free Trade Association. It apparently also stated that allowing the UK to re-join Lugano would provide other “third parties” grounds for requesting membership.

Why Does the UK Need to Accede in Its Own Right and What Needs to Happen for It to Do So? Lugano is a multi-lateral treaty that sets out a regime governing where court proceedings should be commenced and how judgments from national courts should be enforced in other contracting States.

The contracting States to Lugano are the EU, Denmark and certain EFTA states (namely Iceland, Norway and Switzerland). Prior to leaving the EU, the UK was party to Lugano by virtue of being an EU Member State although the main treaty which governed these issues was the Recast Brussels Regulation (the “Recast”, discussed below). Following the end of the Brexit Implementation Period on 31 December 2020, the UK is no longer party to either Lugano or the Recast.²

The UK requested to accede in its own right on 8 April 2020, but this request has not yet been granted. Article 72(3) of Lugano states that contracting states should “endeavour”

¹ See [Financial Times article, “Brussels opposes UK bid to join legal pact, splitting EU states”](#) (12 April 2021).

² As a result of the [Civil Jurisdiction and Judgments \(Amendment\) \(EU Exit\) Regulations 2019 \(SI 2019/479\)](#) amended by the [Civil, Criminal and Family Justice \(Amendment\) \(EU Exit\) Regulations 2020 \(SI/2020/1493\)](#).

to give their consent within a year from that date “*at the latest*”, and that accession requires unanimous consent from all parties, including the EU. At the time of writing, Iceland, Norway and Switzerland have consented, but Denmark and the EU have not.

The EU Council has the final say on behalf of the EU and has not yet made a decision. The EU Commission’s view is not at all determinative. The decision of the EU must be made by a qualified majority of the EU Council, meaning that 55% of member states must vote in favour. In practice, this means 15 out of 27.

What Is the Significance of Whether the UK Can Accede to Lugano? Whether or not the UK is a party to Lugano has a significant impact on issues relating to jurisdiction and enforcement of judgments in cross-border disputes with an EU element commenced after 31 December 2021 (for example, where a party is domiciled in an EU member state or where a party’s assets are located in an EU member state).

The Recast, i.e., *Regulation* (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, and Lugano set out a comprehensive regime concerning jurisdiction and enforcement of judgments in civil matters in the European context. The consequences of neither the Recast nor Lugano applying in the UK are discussed in our [11 November 2020 update on Post-Brexit Jurisdiction and Conflict of Laws Landscape](#) and in our [8 April 2021 update on service of a claim form out of the English courts’ jurisdiction in an EU member state](#).

As discussed in those two articles, the only international convention on jurisdiction to which both the UK and the EU are currently contracting parties is the 2005 Hague Convention on Choice of Court Agreements (the “2005 Hague Convention”), which the UK acceded to in its own right on 1 January 2021.

Broadly speaking, issues relating to jurisdiction and enforcement of judgments are now to be determined by a combination of the existing common law rules, the civil procedure rules and (where it applies) the 2005 Hague Convention.

If the UK is granted permission to accede to Lugano, this would change.

In the future, a new international treaty, the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the “Judgments Convention”), may change the landscape further by creating a truly international regime for the recognition and enforcement of judgments. However, this currently has only three signatories (Israel, Ukraine and Uruguay). Its impact will be dependent on widespread ratification and this may take many years.

For now, this remains a space to watch as a final decision is expected on the UK's accession to Lugano in coming weeks. As things currently stand, the consequence of neither the Recast nor Lugano applying in the UK at present is that the position will often be more complex and less certain than it would have been under either of those regimes. To avoid any unpleasant surprises, it is therefore important that advice on jurisdiction and potential enforcement is sought as early on in a dispute as possible.



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