



## THE EU COMMISSION RECOMMENDS THAT THE UK SHOULD NOT ACCEDE TO THE LUGANO CONVENTION

On 08.04.2020, the United Kingdom ("UK") submitted an application to accede to the Lugano Convention of 2007. This convention was already in force for the UK as it was a member state of the European Union; when it left the EU on 31.01.2020, these provisions continued to apply until 31.12.2020 by virtue of the transitional period.

### I. WHAT IS THE LUGANO CONVENTION?

The Lugano Convention of 2007 on judicial jurisdiction and the recognition and enforcement of decisions in civil and commercial matters was concluded between the contracting parties, consisting of the European Union, Denmark (as an independent contracting party), and the three EFTA states of Switzerland, Norway and Iceland (Liechtenstein is the only EFTA state not represented).

On the one hand, it contains regulations on international judicial jurisdiction, and on the other hand, provisions on the recognition and enforcement of foreign decisions in civil and commercial matters. It aims to ensure that the judgments of the courts of other member states are broadly equated with those of the national courts and is based on the Council Regulation (EC) No 44.2001 of 22 December 2000 on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters. However, the convention does not apply to tax, customs and administrative matters.

In principle, there is the possibility that future EFTA and EU Member States can also accede to the convention, in which case there must be unanimous agreement between the contracting parties regarding accession.

Purely theoretically, it would also be possible for any third country to accede to the convention. However, the convention supports the relations of the EU with third countries, which are particularly closely connected to the EU in the area of regulation. This is expressed, for example, by the fact that the Member States are, even if only partially, part of the EU internal market and are subject to the free movement of goods, services, capital and people.

### II. RECOMMENDATION BY THE EU COMMISSION

In a notification to the Council and the European Parliament on 04.05.2021, the European Commission has now issued a recommendation to the effect that the EU should not agree to the UK's accession to the Lugano Convention. The reasoning for this is that the UK is a third country without a special connection to the internal market. A free trade agreement has been in force between the UK and the EU since 01.01.2021, which indeed provides for relief in trade, but does not contain any fundamental freedoms and policies that belong to the internal market. Although the UK would be a third country, it is only a third country with a "normal" free trade agreement with no participation in the internal EU market.



Rather, the Hague Convention of 2005 ("Hague Convention") should apply to future judicial co-operation between the UK and EU in the area of civil law. However, the Hague Convention only applies to exclusive agreements on the place of jurisdiction and does not apply to some essential areas of civil law (this concerns above all non-contractual claims).

Furthermore, the question of whether agreements concerning the place of jurisdiction which already existed before 01.01.2021 can be applied to the courts in the UK in accordance

with the Hague Convention has not been conclusively clarified. There is also no consensus in this subject area, since the UK supports this, while the European Commission is opposed to the application of older jurisdiction agreements.

### III. CONCLUSION

As a final conclusion, it can be drawn that the corresponding contracts that concern the UK should be reviewed; the jurisdiction in court proceedings in the area of civil and corporate law has been governed by national law since 01.01.2021.

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