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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

Assessment on the application of the United Kingdom of Great Britain and Northern Ireland to accede to the 2007 Lugano Convention

1. INTRODUCTION

1.1 The Lugano Convention

The 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("the Lugano Convention")[1] has been concluded between the European Union, Denmark in its own right and three out of the four members of the European Free Trade Association (Switzerland, Norway and Iceland, referred to as "EFTA States")[2].

Within the Union, the area of jurisdiction and the recognition and enforcement of judgments in civil and commercial matters is governed by Regulation (EU) No 1215/2012 (Brussels Ia recast Regulation). The Lugano Convention reflects the previous state of Union law in that area (Council Regulation (EC) No 44/2001).

The Lugano Convention is a "double convention", regulating both international jurisdiction (i.e. the question whether a court is competent to hear a cross-border case) and the recognition and enforcement of foreign judgments in civil and commercial matters.

The Convention is open to future members of the EFTA and to EU Member States in relation to certain of their non-European territories. Pursuant to Articles 70 to 72 of the Lugano Convention the accession to the Convention of any other State requires an application to the Depositary which is transmitted to the Contracting Parties. The Contracting Parties shall endeavour to give their consent at the latest within one year from the invitation by the Depositary[3]. Only if there is unanimous agreement of the Contracting Parties, the Depositary will invite the State to accede to the Lugano Convention. After the instrument of accession has been deposited, there is still a period for Contracting Parties to object. The Convention will enter into force only between the acceding State and those Contracting Parties that did not object before the first day of the third month following the deposit of the instrument of accession.

The external competence to conclude the 2007 Lugano Convention and thus also that to agree to the accession of a new Party and to object to the entry into force of the Convention between the Union and a new Party lies exclusively with the European Union.

1.2 The application of the United Kingdom

The Lugano Convention applied to the United Kingdom of Great Britain and Northern Ireland ("the United Kingdom") until 31 January 2020 via its EU membership. For the duration of the transition period, which ended on 31 December 2020, the other Parties to the Lugano Convention had been notified by the EU that the United Kingdom was to be treated as a Member State for the purposes of international agreements to which the Union was a Party, which covered the Lugano Convention[4].

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[1] Its predecessor was the 1988 Lugano Convention.

[2] Liechtenstein is not a Party to the Lugano Convention.

[3] This is not a binding deadline.

[4] Cf. Article 129(1) of the EU-UK Withdrawal Agreement.

On 8 April 2020, the United Kingdom applied to accede to the 2007 Lugano Convention in its own right. This application was submitted to the Depositary of the Lugano Convention[5]. The United Kingdom proposed to extend the application of the Convention to Gibraltar[6].

By a letter of 14 April 2020, the Depositary officially transmitted the application and the related information to the Lugano Contracting Parties, including the European Union, represented by the European Commission.

2. COMMISSION ANALYSIS

In view of the nature of the Lugano Convention (see below, section 2.1.) and the existing framework of judicial cooperation with third countries (see below, section 2.2.), the Commission considers that the EU should not give its consent to the accession of the United Kingdom to the Lugano Convention.

2.1 Nature of the Lugano Convention

The Lugano Convention mirrors the EU's rules of international jurisdiction and its quasi-automatic system of recognition and enforcement of civil and commercial judgments[7] vis-à-vis the EFTA States. It thus extends the benefits of the EU framework of recognition and enforcement of judgments to these countries as well as to the EU Member States with regard to those countries. As a consequence, it facilitates greatly the access of EFTA States civil judgments to the EU's area of justice in civil and commercial matters and vice versa.

The Lugano Convention represents an essential feature of a common area of justice and is a **flanking measure for the EU's economic relations with the EFTA/EEA countries**. With Norway and Iceland, these relations are based on the EEA Agreement[8], which brings together the EU Member States and the EFTA/EEA States[9] in the internal market. Switzerland's economic and trade relations with the EU are governed through a series of bilateral agreements where Switzerland has agreed to take over certain aspects of EU legislation in exchange for accessing part of the EU's single market. The current Contracting Parties all represent this context. These countries participate, at least partly, in the EU's internal market, comprising the free movement of goods, services, capital and persons.

Thus, the Lugano Convention supports the EU's relationship with third countries which have a **particularly close regulatory integration with the EU**, including by aligning with (parts of) the EU acquis. Though the Convention is, in principle, open to accession of "any other State" upon invitation from the Depositary upon unanimous agreement of the Contracting Parties (see above), it is not the appropriate general framework for judicial cooperation with any given third country. It is not aimed to all third countries, as can be seen from the fact that

[5] The Swiss Federal Council.
[6] During the EU membership of the United Kingdom, the Lugano Convention applied to Gibraltar.
[7] It does not reflect the latest state of EU law as per Regulation (EU) No 1215/2012, which completely abolished the need for a procedure to declare a foreign judgment enforceable.
[8] Agreement on the European Economic Area, which entered into force on 1.1.1994.
[9] Iceland, Liechtenstein and Norway.

since 1988 (when the first Lugano Convention was agreed), only Poland has joined the Convention as a third country, but it joined the Convention on its path towards the EU accession. There is no third country other than EFTA/EEA countries Party to the Convention. The United Kingdom is, since 1 January 2021, a third country with an "ordinary" Free Trade Agreement facilitating trade but not including any fundamental freedoms and policies of the internal market. The Convention is based on a high level of mutual trust among the Contracting Parties and represents an essential feature of a common area of justice commensurate to the high degree of economic interconnection based on the applicability of the four freedoms.

2.2 International framework for the EU's civil justice cooperation with third countries

The EU's long-standing approach is that the appropriate framework for cooperation with third countries in the field of civil judicial cooperation is provided by the multilateral Hague Conventions, i.e. the 2005 Hague Choice of Court Convention[10] and the 2019 Hague Judgments Convention[11]. The EU has concluded the 2005 Choice of Court Convention in 2014[12]. The 2005 Hague Choice of Court Convention is also a "double convention", but applies only where parties have made an exclusive contractual choice of court in a civil and commercial matter. The 2019 Hague Judgments Convention is a simple convention regulating only recognition and enforcement. It does not regulate direct jurisdiction of courts.

Consistent with this approach, the Political Declaration on the framework for the future relationship between the European Union and the United Kingdom of 17 October 2019 refers to the framework of the Hague Conventions[13]; the option of the United Kingdom acceding to the Lugano Convention is neither mentioned in the Political Declaration, nor in any other joint EU/UK document on the framework of the future relationship. Nor is it mentioned in the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom, of the other part, which was agreed on 24 December 2020 and is provisionally applied since 1 January 2021[14].

Before the end of the transition period, the 2005 Hague Choice of Court Convention applied in the United Kingdom, on the basis of its EU membership and, thereafter, of the transition period provided for in the Withdrawal Agreement. Since 1 January 2021, the United Kingdom is party to this Convention[15] in its own right[16]**.** Thus, this Convention covers the relations

[10] Convention of 30 June 2005 on Choice of Court Agreements.

[11] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The multilateral approach is reiterated for instance in the Council Conclusions on the Future Of Civil Justice Cooperation, the Justice and Home Affairs Council in December 2019 under the Finnish Presidency, 2019/C 419/02, OJ C 419/6 of 12/12/2019. On multilateralism, see Joint Communication to the European Parliament and the Council on strengthening the EU's contribution to rules-based multilateralism JOIN(2021) 3 final of 17.2.2021.

[12] Council Decision 2014/887/EU of 4 December 2014 on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Courts Agreements, OJ L 353, 10.12.2014, p.5.

[13] OJ C 34, 31.01.2020, p. 1.

[14] OJ L 444, 31.12.2020, p. 14.

[15] The 2005 Hague Choice of Court Convention only applies when the parties have made an exclusive choice of court clause, but not where an asymmetric or non-exclusive clause has been chosen or where there is no choice of court clause.

between the EU and the United Kingdom within its scope. The Commission is planning to propose EU conclusion of the 2019 Hague Judgments Convention in the near future. In the case the United Kingdom concludes that Convention, it would apply to the future judicial cooperation with the EU.

3. CONCLUSION

In view of the above, the Commission takes the view that the European Union should not give its consent to the accession of the United Kingdom to the 2007 Lugano Convention. For the European Union, the Lugano Convention is a flanking measure of the internal market and relates to the EU-EFTA/EEA context. In relation to all other third countries the consistent policy of the European Union is to promote cooperation within the framework of the multilateral Hague Conventions. The United Kingdom is a third country without a special link to the internal market. Therefore, there is no reason for the European Union to depart from its general approach in relation to the United Kingdom. Consequently, the Hague Conventions should provide the framework for future cooperation between the European Union and the United Kingdom in the field of civil judicial cooperation.

Stakeholders concerned, and in particular practitioners engaged in cross-border contractual matters involving the European Union, should take this into account when making a choice of international jurisdiction[17].

With this communication, the Commission informs the European Parliament and the Council of its assessment, and gives them an opportunity to express their views, before it will inform the Lugano Depositary accordingly.

[16] The United Kingdom extended the accession to Gibraltar.

[17] See readiness notice to stakeholders on withdrawal of the United Kingdom and EU rules in the field of civil justice and private international law published on 18 January 2019, updated on 27 August 2020 and available at https://ec.europa.eu/info/publications/civil-justice-judicial-cooperation-civil-and-commercial-matters_en