

Enforcement in the EU: UK blocked from Lugano, what now?



Following the end of the Brexit transition period on 31 December 2020 (discussed more specifically in our [June 2020 blog](#)), and an initial application in April 2020, the UK sought to accede to the Lugano Convention (“Lugano”) in its own right.

Like the Recast Brussels Regulation (EU 1215/2012), that applied to the process of reciprocal enforcement across the EU pre-Brexit, the Lugano Convention provides for reciprocal enforcement of judgments between the EU and European Free Trade Areas (EFTAs) such as Iceland, Norway and Switzerland.

The Lugano signatory states were encouraged to proffer their consent to the UK’s accession in its own right within a year of the application (i.e. April 2021), and the majority of EFTAs (bar Denmark) were prompt in confirming their consent, the EU however has declined so far to consent to the UK’s accession to Lugano.

In May 2021 the European Commission (EC), issued a communication to the European Parliament and European Council stating that it objected to the accession of the UK to Lugano, on the basis that it saw Lugano as a tool for reciprocity across the EU, EFTA and EEA states, and the UK no longer falls within these defined classes. A formal communication followed on 28 June 2021, which essentially blocked the UK from accession to Lugano.

So where does that leave us?

Essentially, with no formal treaty for reciprocal enforcement of all UK judgments across the EU. However, some solace can be found in the Hague Choice of Court Convention (2005) (“HCCC”), which confers the right to



reciprocal enforcement of a contracting state where an exclusive jurisdiction clause is present that provides for another contracting state to hear a dispute.

Contracting states presently include the EU, Mexico, Montenegro, Singapore and, more recently, the UK in its own right. The HCCC will not apply where unilateral or non-exclusive jurisdiction clauses exist (common in financial/trade finance agreements). A further nuance to use of the HCCC, relates to when the UK is deemed to have acceded to the Convention.

It joined as a contracting party in its own right in January 2021, but was a contracting state within the greater EU from October 2015 – the question is, where judgment is issued in relation to contracts executed between October 2015 and January 2021, will the UK be deemed a contracting state?

It remains to be seen how the UK's membership will be interpreted but the EC have indicated that their view is that the UK *cannot* be seen as a signatory prior to January 2021, however, a judgment from the Court of Justice of the European Union (CJEU) is required before this is determinative.

In addition to the HCCC, *most* EU member states will enforce UK judgments of their own accord, usually through issuance of exequatur proceedings through local law. Certain conditions will have to be met (and vary slightly from state to state), such as:

- the requirement that the judgment be for a definite/finite sum
- not subject to further challenge, and
- not contrary to any provisions of the local law itself.

The time and process for reciprocal enforcement can vary widely from state to state and can be relatively quick (a matter of days in some instances such as Belgium) to up to 24 months (lead time for issue of an exequatur in Germany can be up to 24 months) and will necessitate the engagement of a local lawyer.

Whilst the UK continues to challenge the rejection of its application for accession to Lugano (the decision ultimately lying with votes within the European Council, as opposed to the viewpoint of the EC) hope remains on the horizon for more general recognition of judgments in the form of the Hague Judgment Convention 2019 ("HJC"), not yet in force – this convention offers a more holistic process in relation to reciprocal enforcement to all contracting states, and would apply regardless of the form of the jurisdiction clause.

The text of this convention has been settled since 2019 but the convention itself is not yet in force, those states who are current signatories (not including the EU, although the EC has recently proposed an intention to accede) have indicated their intention to accede instead of accession itself.

Furthermore, the convention will allow a 12-month lead in period for each acceding state to allow the current members to determine whether it will allow reciprocal enforcement with that contracting state, the incoming state will have the same option – the HJC once ratified and in force will therefore act more as a framework for a bilateral treaty between agreeable contracting parties rather than as prescriptive regulation and reciprocity.

Despite the issues surrounding EU enforcement, the post-Brexit UK remains a commercial and pragmatic jurisdiction within which to bring litigation, and Brexit's impact does not invalidate the choice of English Courts and English law as a certain and viable option and choice of law. English law, based on precedential form remains one of the strongest choices of law in the world and an effective/efficient place to bring litigation. However, the impact of leaving the EU means that cross border enforcement with the member states is not a uniform process and thought must be given on a case by case basis.



Next Steps

Check your jurisdiction clauses – particularly in high value or complex contracts, ensuring that an exclusive jurisdiction clause is present may become invaluable in the future and ensure the enforceability of UK judgments in HCCC contracting states.

Contact our [commercial disputes](#) team for more help or advice on cross-border enforcement if you know that a party you are in dispute with holds assets in the EU. Working in conjunction with a network of international lawyers we will be able to expertly advise you on the best steps to enforcing in the EU or elsewhere.

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