

# Post-Brexit enforcement of court rulings – current developments in the transition period

## HOW DOES THE BREXIT AFFECT THE LUGANO CONVENTION AND WHAT ARE THE UNITED KINGDOM'S AMBITIONS?

### Executive Summary

- The Lugano Convention governs jurisdiction in civil and commercial matters between the EU Member States and Switzerland, Norway and Iceland and – for now – also still applies to the United Kingdom until 31 December 2020 (status quo).
- On 08 April 2020, the United Kingdom submitted a new application for accession to the Lugano Convention.
- Such an accession requires the approval of all parties to the Convention. At this point in time, there are doubts whether all EU Member States will approve this request. So far, only Switzerland, Norway and Iceland have explicitly welcomed the UK's renewed accession.
- Individual arbitration agreements can be a way to at least partially mitigate the resulting uncertainties in international trade, provided that no other treaty is predominant.

### 1. The Lugano Convention

The Lugano Convention is an agreement on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Legally speaking, it is a treaty under international law. The Convention was concluded in 2007 between the Member States of the European Union and the EFTA countries Switzerland, Norway and Iceland (excluding Liechtenstein). It is applicable in civil and commercial matters, regardless of the type of the jurisdiction. The Lugano Convention does not

apply in particular in tax, customs and administrative law matters. The Convention establishes the international jurisdiction of the courts of the states concerned. It is meant to ensure the enforcement of court rulings, authentic instruments and court settlements, thereby improving overall legal protection. A major advantage for commercial parties is that the competent courts are clearly defined and the place of jurisdiction can be taken into account within the framework of a calculable risk of litigation. The Lugano Convention is essentially modelled on the content of EC Regulation 44/2001 (Council Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, or also "Brussels I"). However, Brussels I only applies to Member States of the European Union.<sup>1</sup> The Lugano Convention is the ruling treaty among EFTA states (with the exception of Liechtenstein) and between EFTA and EU Member States.

### 2. The consequences of the Brexit

The United Kingdom left the European Union on 31 January 2020. In principle, this also means that the United Kingdom also withdrew from the Lugano Convention.<sup>2</sup> However, according to Art. 127(1) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, Union law continues to apply until the end of the transition period, unless expressly agreed otherwise in that Agreement. According to Art. 126, the transition or implementation period

<sup>1</sup> Brussels I was replaced in 2015 by EU Regulation 1215/2012 ("Brussels Ia").

<sup>2</sup> Cf. Sievi, in: AJP/PJA 2018, 1096, 1097.



ends on 31 December 2020. Thus, the Lugano Convention will continue to apply to the United Kingdom during the transition period. At the end of that period, relations with the United Kingdom would be subject to national law, the applicability of which would be determined by the relevant rules of private international law. Enforcement of German court rulings in the United Kingdom would in principle be governed by the rules of common law.

### 3. The UK's request for accession

However, it is possible that it won't ever come to that: the United Kingdom has recently announced its intention to rejoin the Lugano Convention. The application for accession was submitted on 8 April 2020. The reliable legal certainty and predictability the Lugano Convention provides are likely the reason for this request – especially since the United Kingdom will no longer be able to invoke “Brussels Ia” either once the transition period expires. The Lugano Convention has proven its effectiveness in its application by the EU and EFTA states and would save the United Kingdom from having to conclude individual treaties. However, accession to such a treaty requires the consent of all parties. This requirement is expressly reflected in Art. 72(3) of the Convention. The parties are to give their consent within one year of the request for accession. So far, Switzerland, Iceland and Norway have announced to support the UK's accession. It remains to be seen whether the other Member States will “fall in line”.

### 4. Our recommendations

Until a final decision regarding the United Kingdom's accession to the Lugano Convention is reached, uncertainties remain and may negatively impact trade relations with the United Kingdom. As a result, the trading parties should conclude individual arbitration agreements to mitigate and reflect the existing uncertainties in the context the further development of the Brexit.

Our GSK Stockmann Dispute team will be happy to advise you on any questions you may have in this regard.

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#### Dr. Justus Jansen

lawyer  
office Hamburg  
[justus.jansen@gsk.de](mailto:justus.jansen@gsk.de)

#### Birgit Wöhren, LL.M. (New York)

lawyer  
office Hamburg  
[birgit.woehren@gsk.de](mailto:birgit.woehren@gsk.de)

#### Dr. Antonius Jonetzki

lawyer  
office Hamburg  
[antonius.jonetzki@gsk.de](mailto:antonius.jonetzki@gsk.de)

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[www.gsk.de](http://www.gsk.de)

### GSK Stockmann

#### BERLIN

Mohrenstrasse 42  
10117 Berlin  
T +49 30 203907-0  
F +49 30 203907-44  
[berlin@gsk.de](mailto:berlin@gsk.de)

#### HEIDELBERG

Mittermaierstrasse 31  
69115 Heidelberg  
T +49 6221 4566-0  
F +49 6221 4566-44  
[heidelberg@gsk.de](mailto:heidelberg@gsk.de)

#### FRANKFURT / M.

Taunusanlage 21  
60325 Frankfurt am Main  
T +49 69 710003-0  
F +49 69 710003-144  
[frankfurt@gsk.de](mailto:frankfurt@gsk.de)

#### MUNICH

Karl-Scharnagl-Ring 8  
80539 Munich  
T +49 89 288174-0  
F +49 89 288174-44  
[muenchen@gsk.de](mailto:muenchen@gsk.de)

#### HAMBURG

Neuer Wall 69  
20354 Hamburg  
T +49 40 369703-0  
F +49 40 369703-44  
[hamburg@gsk.de](mailto:hamburg@gsk.de)

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#### LUXEMBOURG

GSK Stockmann SA  
44, Avenue John F. Kennedy  
L-1855 Luxembourg  
T +352 271802-00  
F +352 271802-11  
[luxembourg@gsk-lux.com](mailto:luxembourg@gsk-lux.com)



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