

## "No Go Lugano":

Commercial and Construction

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Commercial , European Law

### The EU Formally Withholds its Consent to the UK Joining the Lugano Convention 2007

The European Commission has formally rejected the UK's application to accede to the Lugano Convention on jurisdiction and the recognition and enforcement of civil and commercial matters that was concluded in Lugano on 30 October 2007. The current Contracting Parties are the EU, Denmark, Norway, Switzerland and Iceland.

The UK applied to accede to the 2007 Lugano Convention in its own right (and extend its scope to Gibraltar) in April 2020. The application was deposited on 8 April 2020 with the Swiss Federal Council who act as the official Depository of the Convention.

Article 72 (3) of the Convention provides that:

"Without prejudice to paragraph 4, the Depository shall invite the State concerned to accede only if it has obtained the unanimous agreement of the Contracting Parties. The Contracting Parties shall endeavour to give their consent at the latest within one year after the invitation by the Depository".

On 28 April 2021, the Depository notified the parties that under article 72 of the Convention, by that date "... the agreement of the European Union and of the Kingdom of Denmark is missing".

In a Note Verbale sent yesterday to the Swiss Federal Council as Depository of the Convention, the EU Commission stated:

"the European Union is not in a position to give its consent to invite the United Kingdom to accede to the Lugano Convention".

Whether that will prove to be the final word on this subject remains to be seen.

The refusal to accede to the application can be seen as part of the EU Commission's wider objective of trying to persuade economic actors within the EU to reconsider their English jurisdiction and choice of law provisions in their commercial contracts. The Commission's argument is that English jurisdiction clauses and English judgments are likely to be less effective in the future outside of the Brussels / Lugano regimes. The Commission is likely to be disappointed: the Common Law jurisdictional rules, the adoption of the Hague Choice of Court Convention (2005), and some antique (and indeed new) bilateral treaties on recognition and enforcement in civil and commercial matters will limit the impact of the end of UK participation in the Brussels / Lugano regime. In the short term, parties who have existing Lugano governed litigation will need to take advice on their position.

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