

Post-Brexit Disputes with UK Parties – Continued Uncertainty as Decision on Lugano Awaited

A year on from the UK's application to accede to the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Lugano"), a final decision is still awaited on whether the UK will be permitted to re-join the Convention as an independent contracting party. Lugano deals with two important issues in the context of cross-border disputes – jurisdiction and enforcement. For this reason, the ongoing delay has created uncertainty in relation to new and future proceedings involving UK and EU parties. For Irish entities dealing with UK counterparties, issues of dispute resolution may be more complex as a result.

The pre-Brexit position would be restored to a significant extent (at least prospectively) if the UK's accession to Lugano is approved. However, that outcome is not certain. While non-EU parties to Lugano have given their support to UK accession, the EU Commission surprisingly decided earlier this week to oppose the UK's application. The EU's position will now be determined by a weighted member state vote, and it is not clear which way that vote may go. Without EU support, the UK will not be able to accede to Lugano as consent of the existing contracting parties must be unanimous.

What is Lugano?

Lugano is a multi-party convention comprising the EU member states, Norway, Iceland and Switzerland. As between those parties, it contains rules for establishing court jurisdiction in civil and commercial matters, and provides

for the mutual enforcement and recognition of court judgments. In this way, the provisions of Lugano are substantially similar (though not identical) to the Brussels Recast Regulation (EU 1215/2012) ("Brussels Recast") which applies between EU member states.

Brexit Changes

Pre-Brexit, the UK was a party to both Brussels Recast and Lugano by virtue of its EU membership. However, due to Brexit, both Brussels Recast and Lugano ceased to apply to the UK from 1 January 2021.

Proceedings issued before the end of the Brexit transition period (i.e. before 11pm GMT on 31 December 2020) are unlikely to be affected by these changes. However, Brexit has created new uncertainty regarding the status of proceedings issued since 1 January 2021, and future proceedings.

Why Lugano Matters

Issues of jurisdiction and enforcement are of critical importance in the context of cross-border disputes. In the absence of rules which establish jurisdiction, parties may face an increased risk of parallel proceedings in more than one country, and possibly conflicting judgments. Without an effective mechanism for enforcing judgments in the jurisdiction where a party (and / or their assets) is based, successful litigants may also find they are unable to extract the benefit from a court judgment obtained in their favour.

Key Takeaway

While uncertainty still prevails, there are actions that parties can take now to help protect their interests. For Irish parties with commercial or financial relationships with UK counterparties, it would be prudent to consider whether issues such as jurisdiction and service of proceedings are addressed in existing contracts. Parties should be aware that, depending whether and how these matters have been addressed, Brexit may be a complicating factor in future disputes. In some cases, re-papering may be desirable to mitigate future risks. Where proceedings are in active contemplation, parties should seek urgent advice on jurisdiction and ensure they are aware of any new limitations that may apply to their ability to enforce Irish judgments in the UK, and vice versa.

For further information, please reach out to your usual Maples Group contact or any of the persons listed here.

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