



HOUSE OF LORDS

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Rt. Hon Robert Buckland QC MP  
Lord Chancellor and Secretary of State for Justice  
102 Petty France  
London SW1H 9AJ

16 July 2021

Dear Robert,

**UK application to accede to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**

Thank you for your letter of 21 June 2021 updating the House of Lords Justice and Home Affairs Committee on the status of the UK's application to the 2007 Lugano Convention. Members of the Committee were grateful for your honest assessment of the recommendation of the European Commission advising against the UK's accession to the Convention, which I assume means that you do not believe any other factors were involved. The Committee also took note of your acknowledgement that alternatives to the Lugano Convention, including the framework provided by the Hague Conference on Private International Law, would take years to implement and are "narrower in scope".

The Justice and Home Affairs Committee remains greatly concerned about the prospect that the United Kingdom may be barred from acceding to the Lugano Convention. This Convention is of utmost importance for UK families and businesses. Were we to accede to it, it would avoid time-consuming and costly legal procedures, prevent parallel proceedings, and ensure the reciprocal enforcement of judgments in the UK, the EU, Denmark, Iceland, Norway, and Switzerland.

Despite concerns raised by multiple parties, including the EU Security and Justice Sub-Committee, the Government did not make the decision to apply to join the Lugano Convention until February 2020. At the time, Lord Keen of Elie's testimony to the EU Security and Justice Sub-Committee showed that the Government was very confident that the UK would be able to join the Lugano Convention. He said he found it "very difficult to conceive of any reason why the EU would not want to see us as members of Lugano", adding that "these are reciprocal arrangements that benefit all parties". The late decision to apply to join the Lugano Convention made a period during which the UK would not be a party to it (between the end of the transition period and a decision on the UK's application) almost inevitable. What was the reason for this delay?

Since the end of the transition period, the UK no longer benefits from the suite of so-called Brussels Regulations or the provisions of the Lugano Convention. The loss of these provisions of international law governing jurisdiction and the enforcement of judgments across the EEA will inevitably lead to increased litigation on these matters in the UK, placing greater burdens on the legal system here and its Courts. This will, in turn, lead to increased costs for litigants, including families who may be in very difficult and stressful circumstances. In your letter, you claimed that “any impact on the courts would be difficult to quantify but is likely to be small”. What is the basis for this? Has the Government carried out an assessment of the financial implications for the Courts of the UK not acceding to the Lugano Convention?

In your letter to this Committee, you acknowledged that “costs and complexities [...] would more likely fall on litigants rather than on the court system”. This is something that the Committee views with considerable concern. The International Academy of Family Lawyers (IAFL) issued a public statement describing some of these costs. The statement, which was endorsed by family lawyers from across Europe (since it is not only UK residents who will be affected), argued that “thousands of separating families and children across Europe risk missing out on maintenance payments or facing confusion, complication, inconsistency, delay and increased costs in establishing, amending or enforcing payments if the UK is not permitted to accede to the Lugano Convention”.<sup>1</sup> What is your assessment of the IAFL statement? What assessment have you made of the impact of these additional costs and complexities for litigants specifically?

The European Union has not yet decided whether to consent to the accession of the United Kingdom to the Lugano Convention. We understand that the final decision lies with the Council of the European Union which will take the decision by Qualified Majority Voting. Can you confirm that our understanding is correct and provide further details on the procedure? Are you expecting a decision to be reached on 21 or 22 October, when the European Council is due to meet next?

In your letter, you reported having had bilateral meetings with Justice Ministers from several nations. What is the purpose of these meetings if the relevant competence is exercised at the EU level? What did you hope to achieve? What were the outcomes of these meetings? I would be grateful for details of any further engagement work the Ministry of Justice or other Government Departments have undertaken with relevant actors, such as Members of the European Parliament, Members of national parliaments, representatives of the European External Action Service, and any Governments who have yet to decide on the UK’s application to the Lugano Convention.

The Lugano Convention contains provisions addressing family litigation and maintenance payments. Most of the concerns we have expressed in this letter relate to the impact on families of the Government’s failure to secure accession to the Convention, but family law forms only part of the picture. Until recently, the Brussels II Regulation recast and the Lugano Convention also settled conflict of law questions pertaining to Europe. Now that they no longer apply in the UK, the legal landscape looks very different. What assessment has the Government undertaken, if any, of the impact of this significant change? Do you anticipate that a return to the common law rule of *forum non conveniens* for European civil litigation will be a boost for the UK’s legal market? What impact do you expect this to have on UK litigants seeking justice within the European context? Have you consulted with the UK representatives

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<sup>1</sup> International Academy of Family Lawyers, 2021, *European and UK family lawyers call on the EU to allow UK accession to Lugano Convention by highlighting implications for families and children*, available at <https://www.iafl.com/media/6986/iafl-lugano-2007-a-family-law-perspective-english.pdf>.

of the legal profession, the judiciary, and consumers on this matter? If so, what were their views?

I would be grateful to receive answers to these questions by 27 August 2021 so these answers can feed into our conversation on 7 September, which we look forward to. In the meantime, I am copying this letter to the Rt Hon Dominic Raab MP, First Secretary of State and Secretary of State for Foreign, Commonwealth, and Development Affairs, Sir William Cash MP, Chair of the European Scrutiny Committee, Lord Goldsmith, Chair of the International Agreements Committee, Lord Kinnoull, Chair of the European Affairs Committee, Adrián Vázquez Lázara, Chair of the European Parliament JURI Committee, and Juan Fernando López Aguilar, Chair of the European Parliament LIBE Committee, all of whom have an interest in the matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sally Hamwee', written in a cursive style.

Baroness Sally Hamwee,

Chair, House of Lords Justice and Home Affairs Committee