



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

OFF - SEN

Baroness Hamwee
Chair of the Justice and Home Affairs Committee
House of Lords
London
SW1A 0AA

27 August 2021

Dear Sally,

**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 16 July regarding the UK's application to accede to the Lugano Convention.

Since I last wrote to the committee, you will be aware that on 23 June, the European Commission sent a Note Verbale (a formal diplomatic note) to the Swiss Depositary for Lugano notifying that it was "not in a position to give consent" to invite the UK to accede to the Convention. While this is disappointing in the short term, I maintain that the UK meets the criteria for accession both because it is open to countries outside the EU and all non-EU members already supported the UK's membership.

I am mindful of the benefits of Lugano membership which you recite and the more limited scope of the Hague 2019 Convention on the Recognition and Enforcement of Foreign Judgments to which you also refer. I remain committed to ensuring cross-border legal disputes can be resolved smoothly, in the interests of families, consumers and businesses both in the UK and across Europe. I will endeavour to address your questions in turn in what follows.

As I set out in my previous letter, the UK determined its overall position on future UK - EU negotiations in February 2020 and judged the best approach to CJC arrangements to be Lugano membership with the EU and EFTA. Having made that assessment, the Government made its application in April 2020. This gave the contracting parties sufficient time to decide the UK's application ahead of the end of the Transition Period. Switzerland gave their consent in September 2020, Iceland followed in February 2021 and Norway in March 2021. The EU declined to consider the application until after the TCA had been concluded in December 2020 and as you rightly state, has still not brought a draft decision before the Council to reach a final decision. The problem has not been the timing of the UK's application but the unwillingness of the EU to engage with it sooner and, crucially, the Commission's stance in objecting to our accession.

We have not received any indication from the EU as to when to expect a final decision on our application, so we are unable to comment on whether it will be concluded, or even considered, at the European Council meeting this October to which you refer. We expect, ultimately, the Commission to bring forward a formal proposal on which all the member states can vote, in order to finally determine the EU position (and in accordance with the EU Treaties we expect that to be by QMV). This means that it is important for the UK government to continue to make the case for its accession to Lugano to relevant counterparts in EU member states, not just to the Commission. Since my last letter, several EU countries have made

clear that, despite the Commission's position, they would welcome UK accession, whereas a smaller number have confirmed that they currently oppose it. I and my officials continue to engage in order to understand, as far as possible, how the EU and member states view the UK's pending application and when there is likely to be a final decision.

There is a range of views within the legal profession about the merits or otherwise of using the English common law as the basis for cross-border disputes. As you will be aware these were set out in the impact assessment for the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (published in 2019) which explored the possible impacts associated with Lugano. The principle of *forum non conveniens* and the use of anti-suit injunctions are an important part of that consideration. However, this needs to be balanced against the certainty that can be achieved for litigants through civil judicial cooperation agreements such as the Lugano Convention. My view remains that Lugano offers a sensible and pragmatic solution on jurisdictional rules as well as ensuring for the recognition and enforcement of judgments. My department will look to collect information on impacts and behaviour changes through engagement with the sector as the trends (including on the use of common law devices and principles) continue to emerge.

While we will continue to seek information and evidence at present the majority of cases will have commenced proceedings prior to the end of the Transition Period. This means that recognition and enforcement rules will still be applied under the Brussels Ia Regulation, or the Lugano Convention. Therefore, understanding the financial impact on the courts in respect of the post Transition Period processes, will take time to disaggregate. The current position is that, for cases commencing after the end of the Transition Period, the UK is no longer party to the Brussels regime and, with the exception of those cases falling under the Hague 2005 Convention on Choice of Court Agreements and the Hague 2007 Maintenance Convention, the domestic private international law rules of the countries of the parties to the dispute will apply.

With regard to your questions on family maintenance, while it is clear that the Hague 2007 Convention on maintenance does not extend to jurisdictional rules and is limited in relation to recognition and enforcement of foreign judgments, it is important to note that from a maintenance perspective courts in the UK could be using EU Maintenance Regulation or the Lugano Convention to recognise child, spousal and other family maintenance judgements for years to come. I therefore cannot agree with the assertion that "thousands of separating families and children across Europe risk missing out on maintenance payments." The majority of parents will still be able to get the maintenance payments they are due paid (whether for them or for their children). To take an example, a French court might have given a child maintenance order in 2019 when a child was 2, and the need for the creditor mother to enforce it might only arise in 2028 when the child is 11 because the debtor father relocates to the UK and stops paying maintenance. As long as the proceeding in which the judgement was made was initiated before 31 December 2020, the judgement must be recognised and enforced using the Maintenance Regulation.

With time, more maintenance orders will be made in proceedings instituted after 31 December 2020, and for those, depending on the state that made the order, the 2007 Hague Convention or the 1973 Hague Convention will apply. While the government has maintained that Lugano provides the most comprehensive framework for applicable law and jurisdiction rules, families and children across Europe should not miss out on maintenance payments.

I and my officials continue to work closely and regularly with the legal sector to understand the impacts of the UK not being party to Lugano on the sector as well as future plans for international cooperation in private international law. I am convinced that the UK will remain a global leader in this field.

I look forward to appearing before your committee on 7 September 2021 when we will be able to discuss these issues further.

I am copying this letter to my colleague, Dominic Raab, the Secretary of State for Foreign, Commonwealth and Development Affairs, to Sir William Cash, the Chair of the European Scrutiny Committee, Lord Goldsmith, Chair of the International Agreements Committee, Lord Kinnoull, Chair of the European Affairs Committee, Sir Robert Neill, Chair of the Justice Select 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 ever

A handwritten signature in black ink that reads "Robert Buckland". The script is cursive and fluid, with the first letters of the first and last names being capitalized and prominent.

RT HON ROBERT BUCKLAND QC MP