

# Continued recognition of civil judgments between the UK and Norway

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**Dispute Resolution analysis: Angharad Parry of Twenty Essex considers the current position as to the recognition and enforcement of judgments for cases in which, prior to IP completion day, this would have been achieved under the Lugano Convention 2007—since that date the UK is no longer a contracting party. A particular emphasis is placed on considering the agreement between the UK and Norway.**

Civil judgments were, until 31 December 2020, recognised and enforced under the Lugano Convention. Although the UK has sought to accede to the Lugano Convention in its own name, a process supported by Norway, Iceland and Switzerland, the process was not completed by 1 January 2021 and while this is still pending, a lacuna has emerged. Currently there is no enforcement regime between the UK and Lugano Convention contracting states as regards cases that were not within the scope of the transitional period regime. It is unknown if the UK will succeed in rejoining the Lugano Convention in its own name. It is thus realistically likely that, at least for some period of time, parties seeking to enforce judgments between UK and EU states or Lugano states, will have to review a patchwork of local laws, bilateral agreements with individual countries and the Hague Convention on Choice of Court Agreements (where relevant).

The UK and Norwegian Governments have acted to seek to fill that lacuna by entering into a bilateral agreement which was reached between the two countries on 13 November 2020 entitled 'Agreement on the Continued Application and Amendment of the Convention between the government of the UK of Great Britain and Northern Ireland and the government of the Kingdom of Norway providing for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters signed at London 12 June 1961 ('the 2020 Amendment Agreement'). According to the Explanatory Note to this agreement, absent the 1961 Convention or other agreement, UK civil and commercial judgments would cease to be recognised or enforced in Norway after 31 December 2020. The agreement seeks to provide for the mutual continued recognition and enforcement of civil judgments by updating a previous bilateral convention—Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil Matters in 1961 (1961 Convention).

The 1961 Convention has not been applied between the two countries following Norway's ratification of the Lugano Convention 2007 on 1 July 2009 and the UK becoming a party to the Lugano Convention 2007 by virtue of its EU Membership as the Lugano Convention 2007 was applied between the two countries in its place. The 1961 Convention had only applied to judgments given by specific courts and in respect of certain types of judgments, being civil judgments (with exclusions such as family and tax recovery) and criminal judgments for the payment of money as compensation or damages to an injured party.

## Functioning and Scope of the 2020 Amendment Agreement

In order to preserve enforcement of civil judgments between these two nations, the 1961 Convention has been updated to allow mutual recognition during such time as the Lugano Convention 2007 will not apply. This updating has been structured in the following way.

The 2020 Amendment Agreement recognises that the 1961 Convention continued to apply to such matters as were outwith the scope of the Lugano Convention 2007 but was superceded by it on matters within Lugano scope.

Article 2 provides that the 1961 Convention, as amended by the 2020 Amendment Agreement, will only apply to judgments given in proceedings that were instituted in a court of one of the parties to the 1961 Convention after the 2020 Amendment Agreement enters into force or is provisionally applied, whichever is the later date. Any judgments given in proceedings before the Lugano Convention 2007 ceases to apply will continue to be governed by the rules of the Lugano Convention 2007.

A new Article 12 is inserted in the 1961 Convention providing that the 1961 Convention shall not affect the obligations of either party under the Lugano Convention 2007. This further clarifies that, in the event of conflict between the 1961 Convention and the Lugano Convention 2007, the Lugano Convention 2007 is to take precedence.

Article 3 of the 2020 Amendment Agreement provides for entry into force when the Lugano Convention 2007 ceases to apply. The agreement can be provisionally applied by notification of exchanges through diplomatic channels.

## Implementation of the 2020 Amendments Agreement

The 2020 Amendment Agreement will be implemented in domestic legislation via Order in Council under the [Foreign Judgments \(Reciprocal Enforcement\) Act 1933](#). This is Reciprocal Enforcement of Foreign Judgments (Norway) (Amendment) (England and Wales and Northern Ireland) Order 2020, [SI 2020/1338](#) (the Order). This allowed for the 2020 Amendment Agreement to come into force at the end of the Brexit transition period. Pursuant to section 1(4) of the Order, notice was given on 24 December 2020 indicating that the Order would come into force at 11pm on 31 December 2020. Thus, the Order is now in force.

## Conclusion

The work of the UK and Norwegian Governments has thus yielded an enforcement regime between the two countries for the recognition and enforcement of judgments. This may be considered additional to the transitional provisions in UK domestic legislation that provide for enforcement under the Lugano Convention 2007 if a Norwegian judgment was handed down in proceedings commenced prior to 31 December 2020 at 11 pm and was sought to be enforced in the UK. (The relevant transitional provisions can be found in the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019, [SI 2019/479, regs 92](#) and [93](#) (as amended by the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020, [SI 2020/1493, reg 5](#))).

This agreement is instructive as to what can be achieved at a bilateral level and will be viewed as a positive step by the legal community. Nevertheless, it has received comparatively little publicity, and the details of its entry into force are hard to locate.

This is, however, only one bilateral agreement. More bilateral agreements would be needed to achieve wider spread continuity pending another broader solution. This structure does provide a model that is potentially capable of replication in other appropriate circumstances, notably providing a route for revitalizing an older instrument. The parties here benefited from a pre-existing bilateral agreement, predating Lugano Convention 2007, which was considered to have co-existed with the convention—covering the limited matters outside its scope. A key consideration was that neither party considered that the 1961 Convention had become defunct and this might be a point of distinction in relation to other bilateral conventions.

Further, the updating document is short: the 2020 Amendment Agreement runs to only seven pages. The implementation process is structured to be simple and speedy. This gives some hope that a similar structure could be adopted in appropriate other instances, as a ‘continuity first aid measure’ pending a more overarching solution.

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