



EUROPEAN COMMISSION

Cabinet of High Representative/Vice-President Josep Borrell Fontelles
Head of Cabinet

Brussels, 11 July 2023
A(2023)2137675 – 5992046

Ms Pichamon Yeophantong
Chair-Rapporteur
OHCHR Working Group on the issue of human rights and
transnational corporations and other business enterprises
Geneva

Dear Chair-Rapporteur,

I refer to your communication of 14 March 2023 (your reference: AL OTH 20/2023) addressed to the European Commission President Ursula von der Leyen, who asked me to reply. Your communication concerns the application of the United Kingdom to accede to the 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Lugano Convention”) and the EU’s refusal to give its consent to the accession of the United Kingdom to the Lugano Convention.

The external competence to decide on matters relating to the Lugano Convention lies exclusively with the European Union, which is represented on such matters by the European Commission (Article 17(1), sixth sentence TEU). The Commission has deposited on 28 June 2021 the position of the European Union to the depositary of the Lugano Convention after having given the Council and the European Parliament an opportunity to express their views in line with EU’s founding treaties.

The Lugano Convention applies to all EU Member States and three out of the four members of the European Free Trade Association (Switzerland, Norway and Iceland, referred to as “EFTA States”). In 2020, the United Kingdom withdrew from the EU. For the reasons set out in the Commission’s Communication of 2021 referred to in your letter, the United Kingdom is no longer a member of the Lugano Convention, which no longer applies to the United Kingdom.

As the Lugano Convention mirrors internal EU law (Council Regulation (EC) 44/2001), the Lugano Convention is a flanking measure of the internal market relating to the EU-EFTA/EEA context. In particular, only the “EFTA States” participate, at least partly, in the EU’s internal market, comprising the free movement of goods, services, capital and persons. During the process of departure, the EU and the United Kingdom laid down the

pillars of their future relationship in a non-binding Political Declaration of 17 October 2019 and in a binding Trade and Cooperation Agreement, which was provisionally applied since 1 January 2021. Neither of the two documents refers to the re-accession of the United Kingdom to the Lugano Convention, since the level of participation of the UK in the EU's internal market after its withdrawal from the European Union is fundamentally different from the one of the "EFTA States".

This means that the United Kingdom applies its national law to establish the international jurisdiction of its courts in civil and commercial matters and to enforce foreign judgments. The United Kingdom has ratified a number of instruments to facilitate the recognition and enforcement of judgments in civil and commercial matters. These include certain conventions under the auspices of the Hague Conference on Private International Law, to which you refer.

If you consider that national law in the United Kingdom limits the possibilities of a plaintiff in a cross-border dispute to bring an action before a United Kingdom court and raises an issue under the UN Guiding Principles on Business and Human Rights, we would advise you to consult the United Kingdom on this matter. This holds also for the enforceability of foreign judgments in the United Kingdom since the European Union is no longer responsible for the laws and regulations in the United Kingdom.

I wish to express my assurances of highest consideration.

Yours faithfully,

A handwritten signature in blue ink that reads "Camilo Villarino". The signature is written in a cursive style and is positioned above a horizontal line that extends to the left and right.

Camilo Villarino