

and the forum state triggers the forum state's obligation under Article 6 of the Convention to provide the applicant with an effective access to court, while at the same time ensuring sufficient foreseeability for the defendant regarding the jurisdiction where he/she can be sued.

**Good Practice 1:** Courts and tribunals have jurisdiction over a case if there is a strong connection between the case and the jurisdiction they belong to.

#### (iv) Rules on direct international jurisdiction under the Lugano Convention regime

Rules under the Lugano Convention<sup>31</sup> are very similar to those laid down in EU law. Article 2 of the Lugano Convention provides that "persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State". Article 5(3) provides for special rules on jurisdiction and stipulates that in matters of tort, delict or quasi-delict, a defendant can be brought before the court of the place where the harmful event occurred or may occur. It should also be borne in mind that, according to its Protocol 2 on the uniform interpretation of the Convention, the Lugano Convention must be construed in light of EU law instruments on jurisdiction. National courts apply the rules on jurisdiction enshrined in the Lugano Convention while taking into account the ECJ's case-law. Therefore the considerations outlined above in relation to complex tort in defamation cases are also relevant in respect of the Lugano Convention regime.

#### (v) The rules on direct international jurisdiction in the context of Brexit

Until the exit of the United Kingdom from the European Union (Brexit)<sup>32</sup>, the rules of the Brussels Ibis Regulation will remain applicable in the UK. However, as from the Brexit date, UK national rules on jurisdiction will apply to all legal proceedings brought after this date, provided that no other international agreement is concluded.

To address, in particular, the issue of enforceability of the choice of forum clauses in commercial contracts after Brexit, the UK has deposited a ratification instrument to accede to the 30 June 2005 Hague Convention on the choice of courts agreements (the "Hague Convention"). The Hague Convention's scope of application is very limited as it does not encompass any jurisdictional rules in tort cases. In respect of the tort of defamation and in

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<sup>31</sup> The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, 16 September 1988, as amended in 2007 by a "new" Lugano Convention that entered into force on 1<sup>st</sup> January 2010. The objective of the Convention is to unify the rules on jurisdiction in civil and commercial matters and expand the applicability of the Brussels I regulation to the relations between the EU Member States and Norway, Iceland and Switzerland. The Brussels I regulation also applies in the Kingdom of Denmark under a separate agreement.

<sup>32</sup> As matters currently stand, the exit of the United Kingdom from the European Union is scheduled to take place on 31 October 2019.