Hague Convention (2005) on Choice of Court Agreements

2014/0021(NLE) - 30/01/2014

PURPOSE: to approve, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the Convention on Choice of Court Agreements concluded on 30 June 2005 under the auspices of the Hague Conference on Private International Law makes a valuable contribution to promoting party autonomy in international commercial transactions and increasing the predictability of judicial solutions in such transactions. In particular, the Convention ensures the **necessary legal certainty for the parties that their choice of court agreement is respected and that a judgment given by the chosen court is eligible for recognition and enforcement in cross-border situations**.

Article 29 of the Convention allows Regional Economic Organisations such us the European Union to sign, accept, approve or accede to the Convention.

The Convention affects Union secondary legislation on jurisdiction based on choice by the parties and the recognition and enforcement of the resulting judgments, in particular Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation) (to be replaced by Regulation (EU) No 1215/2012 as of 10 January 2015), it is in the interests of the European Union to approve the Hague Convention so that it enters into force on the **same date** of the entry into application of Regulation (EU) No 1215/2012.

Moreover, the Union, should, when approving the Convention, make the declaration allowed under Article 21 excluding from the scope of the Convention **insurance contracts** in general, subject to defined exceptions in order to preserve the protective jurisdictional rules available to the policyholder, the insured party or a beneficiary in insurance contracts under Section 3 of Regulation (EC) 44/2001. The exclusion should be limited to whatever is necessary to protect the interests of the weaker parties in insurance contracts.

The Convention was signed by the Union on 1 April 2009 on the basis of the Council Decision 2009/397 /EC. It is now necessary to approve the Convention on behalf of the EU.

LEGAL BASIS: Article 81(2), in conjunction with point (a) of the first subparagraph of Article 218(6) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: under this proposal, the Council is requested to adopt a decision to approve, on behalf of the EU, the 2005 Hague Convention on Choice of Court Agreements.

Having the EU approve the Convention would reduce legal uncertainty for EU companies trading outside the EU by ensuring that choice of court agreements included in their contracts are respected and that judgments issued by the courts designated in such agreements would be eligible for recognition and enforcement in the other Contracting Parties to the Convention.

Overall, approval of the Convention by the EU would complement the realisation of the aims underlying the EU rules on the prorogation of jurisdiction, by creating a harmonised set of rules within the EU in respect of third states which will become Contracting Parties to the Convention.

The Hague Convention of 30 June 2005 on Choice of Court Agreements: the Convention on Choice of Court Agreements is designed to offer greater legal certainty and predictability for parties involved in business-to-business agreements and international litigation by **creating an optional worldwide judicial dispute resolution mechanism alternative to the existing arbitration system**.

In particular, the objective of the Convention is to promote international trade and investment through enhanced judicial cooperation by introducing uniform rules on jurisdiction based on exclusive choice of court agreements and on the recognition and enforcement of judgments given by the chosen courts in its Contracting Parties.

The Convention seeks to achieve a balance between:

(i) the need to guarantee to the parties that only the courts chosen by them will hear the case and that the resulting judgment will be recognised and enforced abroad, and

(ii) the need to allow States to pursue some aspects of their public policy, related in particular to the protection of weaker parties, protection against serious unfairness in particular situations and guaranteed respect for some grounds of exclusive jurisdiction of States.

How the Convention relates to the Brussels I Regulation: the Convention affects the application of the Brussels I Regulation if at least one of the parties is resident in a Contracting State to the Convention. **The Convention will prevail over the jurisdiction rules of the Regulation** except if both parties are EU residents or come from third states, not Contracting Parties to the Convention. The Convention will give EU business the necessary legal certainty that their choice of court agreements in favour of a court outside the EU are respected in the EU, and that agreements in favour of a court in the EU are respected in third States. It will also ensure that EU businesses can be confident that a **judgment given by the chosen court in the EU is eligible for recognition and enforcement in third states, Contracting Parties to the Convention**, and vice versa.

Declaration on insurance contracts: the Brussels I Regulation (Section 3) provides for special protective jurisdiction in matters of insurance aimed at protecting the weaker party (the policyholder, the insured party or a beneficiary) and the economic interests of the general public of the place where the weaker party is located. The insured party, as plaintiff, therefore has a choice of suing the insurer at several places, including the place where the insured party is domiciled; the insurer, as plaintiff, can sue the insured party in principle only where the latter is domiciled. These protective jurisdiction rules are based on the premise that the insured party is always the weaker party, even if he acts as a commercial operator in B2B relations. There is no change to this presumption in the Brussels I Regulation (recast). For this reason, the possibility of the parties concluding the choice of court agreement has been limited (Article 13 of the Regulation). The Convention on its part applies to insurance matters without limiting party autonomy to conclude choice of court agreements. The only substantive limitation results from Article 2(1)(a) of the Convention which excludes insurance contracts entered into by private persons as consumers.
This is partially contrary to the regime established in the Brussels I Regulation insofar as, for instance, the Convention would apply to insurance contracts concluded by SMEs. Once the Convention is approved by the EU, certain insurance contracts which now fall under the Brussels I Regulation, e.g. contracts between an EU policyholder and the EU branch of an insurer with headquarters outside the EU (Article 9(2) of the Regulation) would fall within the scope of the Convention (Article 26(6), in conjunction with Article 4(2) of the Convention). Therefore, if the Convention were to be concluded without excluding insurance contracts, there would be a lack of parallelism with the protective policy

established in the Brussels I Regulation which allows the insured party to sue an EU insurer (or a EU branch of third State insurer) in his own place of domicile irrespective of any other jurisdiction available under a choice of court agreement.

Other technical provisions have been included for the EU to exclude certain types of insurance matters falling within the scope of the Convention, without laying down additional conditions. The carve-out is as small as is needed to achieve the goal of protecting the interests of weaker parties in insurance contracts as reflected in the protective jurisdiction rules of the Brussels I Regulation.