Hague Convention (2005) on Choice of Court Agreements

2014/0021(NLE) - 04/12/2014 - Final act

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

NON-LEGISLATIVE ACT: Council Decision 2014/887/EU on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements.

BACKGROUND: the European Union is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.

The Convention on Choice of Court Agreements concluded on 30 June 2005 under the auspices of the Hague Conference on Private International Law ('the Convention') makes a **valuable contribution to promoting party autonomy in international commercial transactions and to 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 will be respected and that a judgment given by the chosen court will be capable of recognition and enforcement in international cases.

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

Given that the Convention affects Union secondary legislation relating to jurisdiction based on the choice of the parties and to the recognition and enforcement of the resulting judgments, in particular Council Regulation (EC) No 44/2001, which is to be replaced as of 10 January 2015 by Regulation (EU) No 1215/2012, it is in the interests of the EU to approve the Convention.

When signing the Convention, the Union declared under Article 30 of the Convention that it exercises competence over all the matters governed by the Convention. Consequently, the Member States shall be bound by the Convention by virtue of its approval by the Union.

It is now necessary for the Convention to be approved on behalf of the European Union.

CONTENT: under this Decision, the 2005 Hague Convention on Choice of Court Agreements is approved, on behalf of the EU.

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:

- 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
- 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.

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
- 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.

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: a declaration seeks to **exclude certain types of insurance contracts from the scope of the Convention, without laying down additional conditions**. The exclusion should be limited to what is necessary to **protect the interests of the weaker parties** (in principle, the policy holder, the insured or beneficiary) in insurance contracts, as is defined in the rules on protective jurisdiction of the Brussels I Regulation.

A second declaration stipulated that the Union should at the same time make a unilateral declaration stating that it may, at a later stage in light of the experience acquired in the application of the Convention, reassess the need to maintain its declaration.

Territorial provisions: the United Kingdom and Ireland are bound by Regulation (EC) No 44/2001 and are therefore taking part in the adoption and application of this Decision. On the other hand, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

ENTRY INTO FORCE: 4.12.2014.