

CCBE Comments on the Hague Principles on the Choice of Law in International Contracts

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The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 31 member countries and 11 further associate and observer countries, and through them more than 1 million European lawyers.

First of all, the CCBE would like to express its gratitude for having been accepted as an observer member to the Working Group on Choice of Law in International Contracts of the Hague Conference on Private International Law. The CCBE has since long actively followed political and legislative developments in the field of international private law and has contributed to the debate through various position papers which support initiatives to promote legal certainty for individuals and companies in cross-border dealings. The CCBE therefore looks forward to engaging with all Parties to the Hague Conference.

Following a recent evaluation by the CCBE European Private Law Committee of the Hague Principles on the Choice of Law in International Contracts (as approved by the November 2012 special Commission Meeting), the CCBE wishes to make the following comments:

The CCBE welcomes the Hague Principles on the Choice of Law in International Contracts, as they certainly will enhance the dominant principle of party autonomy in those legal systems which do not yet fully recognise and respect it.

The CCBE believes that these Principles, even though they are not binding, will foster international trade, as the parties, in adhering to the essence of these Principles, will be able to choose a law they believe to be an appropriate basis for any dispute that might arise between them.

The CCBE is, furthermore, convinced that these Principles will play a very important role in future arbitration proceedings and will give guidance to both the arbitrators and the party representatives in a similar way to the UNIDROIT principles.

However, the CCBE wants to submit the following specific remarks:

1. Whilst the CCBE agrees with the basic principles laid down in Art. 6, it also believes that para. 1 lit b) seems to be so complex that an easy comprehension of this text is not guaranteed. Therefore, the CCBE recommends redrafting this section in order to achieve more clarity.
2. With regard to Art. 10 the CCBE believes that it might be helpful to amend this Article by adding the issue of subrogation in order to improve the practicability of the Principles.
3. Concerning Art. 11 para. 4, the CCBE welcomes that the intricate issue of applicable “overriding mandatory rules” has been taken into account in the Principles. From a practical standpoint the CCBE believes that the acceptance of the Principles will be enhanced if the drafters could agree to find a uniform definition of such “overriding mandatory rules”. If that could materialise, then the Principles could also be used in those jurisdictions which currently do not have this concept.
4. However, the CCBE regrets that the Principles do not deal with the issue of the applicable law in those cases where the parties neither expressly nor impliedly chose the applicable law. The CCBE is convinced that the harmonisation of the objectively connecting factors that will determine the applicable law is most urgent, as the existing private international laws seem to be very heterogeneous in this respect.