

Proposal for a Council decision on the accession to the Judgments Convention¹

02/10/2020

Fields marked with * are mandatory.

Introduction

Without a comprehensive global treaty on recognition and enforcement of foreign judgments in civil or commercial matters, each State determines whether and under which conditions judgments emanating from other States may be recognised and enforced in its jurisdiction. This situation creates legal uncertainty, which does not benefit international trade and commerce. In order to remedy this situation, in 2012 the Hague Conference on Private International Law decided to explore ways for improvement. The European Union and many of its major trading partners (e.g. the US, Canada, China, Japan, Brazil) are members of the Hague Conference. Currently the Conference has 83 members.

The work on this matter led to the creation of a working and expert group with the aim of exploring the possibility to work towards a Hague Convention. After four negotiation rounds in the summer of 2019 these talks were finalised during the Diplomatic Session, at the end of which the Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial matters (the “Judgments Convention”) was adopted. The European Union was actively involved in the negotiation process and the results of the negotiations reflect EU’s policy interests.

The core international obligation under this Convention is to recognise and enforce judgments given in another Contracting State, as set out in Article 4. For this purpose, the Convention establishes a system providing for recognition and enforcement of a foreign judgment if the courts of origin that rendered the judgment fulfilled the requirements of one of the jurisdiction grounds stipulated in the Convention (Articles 5 and 6). At the same time, the requested court would be able to refuse recognition and enforcement based on several refusal grounds, such as for instance public policy or the failure to serve the document instituting the proceedings to the defendant in sufficient time and in such a way as to enable him to arrange for his defence (Article 7). The Convention allows Contracting States to make certain declarations, for instance to exclude a specific matter from the application of the Convention (Article 18) or to exclude the application of the Convention to States, government agencies or natural persons acting for the State (Article 19).

The European Commission is in the process of assessing the costs and benefits of the potential EU accession to the Judgments Convention. In that context an Impact Assessment will be carried out which will examine, among other things, the expected economic and social impacts on EU businesses and citizens, the expected impact on the judiciary of the Member States and on other stakeholders actively involved in implementing the Convention (such as lawyers or bailiffs) and impacts on fundamental rights. This consultation is necessary in order to assess the impact of the various EU policy options for accessing the Judgments Convention, notably with or without the declarations permitted under the Convention.

¹ Only the questions to which the CCBE replied are listed below.

About you

* Language of my contribution

- English
- French

* I am giving my contribution as

- Non-governmental organisation (NGO)

* Scope

- International

* Organisation name

255 character(s) maximum

Council of Bars and Law Societies of Europe (CCBE)

* Organisation size

- Small (10 to 49 employees)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

- Belgium

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

- Public**

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

Part 1. Information about your profile and experience in international trade and investment

*** Question 1: Please indicate your status for the purpose of this questionnaire**

- Private individual
- Self-employed person
- Company
- Business association
- Consumer organisation
- Social partner/Employer's organisation
- Social partner/Trade union organisation
- Government expert
- Judge/Court
- Legal practitioner (lawyer, law firm)
- Enforcement authority (other than court)
- Association of any of the above, please specify...
- Academic
- Other

Please indicate the size of your company

- Large (more than 250 employees)
- Medium (between 50 and 250 employees)
- Small (between 10 and 50 employees)
- Micro (less than 10 employees)

Please specify

200 character(s) maximum

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers.

Part 2: Information about your experience with international litigation in civil or commercial matters

Question 12: In your experience, how important is legal certainty on the future recognition and enforcement of an EU judgment in civil or commercial matters in a country outside the European Union, in deciding whether or not to start court litigation against a party from outside the European Union?

- Very important
- Important
- Not very important
- Not important at all
- I don't know
- Not applicable

Question 27: In your view, how likely or unlikely is it that a potential future EU accession to the Judgments Convention would influence your decision to start international trade and investment activities in other countries outside the European Union or with companies from other countries outside the European Union?

- Very likely
- Likely
- Unlikely
- Very unlikely
- Neither likely nor unlikely
- I don't know
- Not applicable

Rather:

- Rather positive influence
- Rather negative influence

Question 29: In your view, how likely or unlikely is it that a potential future EU accession to the Judgments Convention would improve the prospects of successful recognition and enforcement of an EU judgment in civil and commercial matters in another Contracting State?

- Very likely
- Likely
- Unlikely
- Very unlikely
- Neither likely nor unlikely
- I don't know
- Not applicable

Question 31: In your view and based on your experience in previous similar litigation, how would a potential EU accession to the Judgment Convention affect your litigation costs in another Contracting State when requesting the recognition and enforcement of an EU judgment in civil or commercial matters?

- The costs are likely to decrease
- The costs are likely to increase
- There will be no change
- I don't know
- Not applicable

Specify by how much

- By less than 10%
- By between 10 and 20%
- By between 20 and 30%
- By between 30 and 40%
- By between 40 and 50%
- By more than 50%

Please specify

In general, having uniform applicable rules tends to decrease litigation costs. Although it is complicated to estimate how much such as a decrease would be, it should not exceed 30%.

Question 32: In your view and based on your experience in previous similar litigations, how would a potential EU accession to the Judgments Convention affect the length of proceedings in another Contracting State when requesting the recognition and enforcement of an EU judgment in civil or commercial matters?

- The length is likely to be unchanged
- The length is likely to decrease
- The length is likely to increase
- I don't know
- Not applicable

Please specify

Same as with the question of litigation costs, having uniform applicable rules tends to reduce the length of proceedings. It is, however, impossible to estimate such a decrease in weeks/ months/ years considering there are many other factors that can have an impact on the length of proceedings.

Question 34: In your view, do you think that the safeguards in the Convention (Articles 5, 6 and 7) are sufficient to guarantee adequate protection for your fundamental rights if a non-EU judgment in civil or commercial matters were brought for recognition and enforcement against you in a Member State of the European Union?

- Fully sufficient
- Reasonably sufficient
- Insufficient
- Very insufficient
- I don't know

Question 35: If your reply to the previous question was either insufficient or very insufficient, please specify in the comments box below why and explain briefly. In your explanation, please mention if the specific problems identified would occur with judgments originating in a particular non-EU country.

- My justice rights (access to justice, right to a fair trial and to effective remedy) would be infringed
- My property rights would be infringed
- My freedom to conduct a business would be infringed
- My personal data would not be protected
- I would be discriminated against
- Other, please specify below

Please briefly explain:

600 character(s) maximum

The safeguards provided in Art. 7 are of utmost importance, but may not be sufficient in cases where the situation as regards the respect of procedural rights and the rule of law is unknown/uncertain in a Contracting State and the possibility of excluding the application of the Convention with this state provided in Art. 29 has not been used, or the situation later changes.

Existing monitoring tools should be observed by the EU to check the justice situation in each state before ratification. Art. 29 should be used where needed.

The possibility to make declarations should also be considered.

Question 36: In your specific situation, do you think that the potential benefits from the EU accession to the Judgments Convention would outweigh the possible disadvantages?

- Yes
- No
- I don't know

Question 37: If your reply to the previous question was yes, you would favour an accession:

- Without making any declaration
- While making a declaration under Article 18 of the Judgments Convention excluding:
- While making a declaration under Article 19 of the Judgments Convention excluding the application of the Convention to States, government agencies or natural persons acting for the State
- While making the two types of declarations mentioned above
- I don't know

Please tick several boxes if applicable

- Consumer contracts
- Employment contracts
- Insurance contracts
- Disputes relating to tenancies or commercial lease or immovable property