



Council of the
European Union

Brussels, 16 July 2021
(OR. en)

10851/21

**Interinstitutional File:
2021/0208(NLE)**

**JUSTCIV 118
IA 141**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2021) 388 final
Subject:	Proposal for a COUNCIL DECISION on the accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

Delegations will find attached document COM(2021) 388 final.

Encl.: COM(2021) 388 final



Brussels, 16.7.2021
COM(2021) 388 final

2021/0208 (NLE)

Proposal for a

COUNCIL DECISION

on the accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

{SEC(2021) 279 final} - {SWD(2021) 192 final} - {SWD(2021) 193 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Currently, EU citizens and businesses seeking to have a judgment given in the EU recognised and enforced in a non-EU country face a scattered legal landscape due to the absence of a comprehensive international framework for the recognition and enforcement of foreign judgments in civil and commercial matters. This means that the judgment creditors have to navigate through a patchwork of national laws of non-EU countries on the acceptance of foreign judgments, as well as bilateral, regional and multilateral treaties in place. Therefore, to stand a chance that their judgment will be enforced, those engaging in international litigation have to invest resources, time and often external expertise to prepare a robust litigation strategy. This complexity, as well as the associated costs and legal uncertainty, are deterring factors which may cause businesses and citizens either to avoid court litigation and seek other forms of dispute resolution, give up on pursuing their claims, or decide not to engage in international dealings altogether. This, in turn, can have a negative impact on the willingness of EU businesses and citizens to engage in international trade and investment activities. In addition, because the enforcement of EU judgments in non-EU countries is uncertain, the right of access to justice of EU businesses and citizens is hampered.

The growth in international trade and investment flows increases these legal risks for EU businesses and citizens but this situation can be addressed through a predictable system of cross-border recognition and enforcement of civil or commercial judgments. However, until recently, at the international level the recognition and enforcement of foreign judgments in civil and commercial matters was not comprehensively regulated, even if some bilateral or multilateral agreements with limited scope exist. This situation has changed with the adoption of the **Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial matters** (the “Judgments Convention”)¹ in July 2019.

The Judgments Convention, adopted under the auspices of the Hague Conference on Private International Law (“HCCH”), has the potential to improve the current system of the circulation of foreign judgments. The Convention aims at promoting effective access to justice for all and facilitating rules-based multilateral trade and investment, and mobility, through judicial co-operation².

The EU has always been supportive of creating a multilateral system for the recognition and enforcement of judgments in civil or commercial matters and was thus actively involved in the negotiation process of the Convention with a view to its possible accession to this future international system. Based on the mandate given by the Council to the European Commission in May 2016³, the Commission represented the interests of the Union during the negotiation process at the HCCH.

The negotiations of the Judgments Convention were successfully concluded in July 2019 and the Convention is currently open for signature, ratification, or accession. Should the European Union accede to the Judgments Convention as proposed by the Commission, the Convention

¹ Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

² Preamble of the Judgments Convention.

³ See the *Outcome of the Council Meeting on Competitiveness (3470th Council meeting) of 26 and 27 May 2016, No 9357/16* and the *Draft Council Decision (No 8814/16) authorising the opening of negotiations on a Convention on the recognition and enforcement of judgments in civil and commercial matters (the Judgments Convention) in the framework of the Hague Conference on Private International Law*.

would apply to the recognition and enforcement of incoming and outgoing judgments among the EU Member States and other Contracting States of the Convention.

This proposal is in line with the objectives of the Commission set out in the Political Guidelines for the European Commission (2019-2024)⁴, in particular related to the priority “A new push for European democracy”⁵. It is in line with the Union’s commitment to multilateralism in international relations and it is likely to encourage other countries and EU trading partners to join the Judgments Convention. The EU accession to a multilateral convention on the recognition and enforcement of judgments in civil and commercial matters would also be in line with the Union’s policy aimed at increasing growth in international trade and foreign investment and the mobility of citizens around the world.

- **Consistency with existing policy provisions in the policy area**

The EU has a well-developed system⁶ of mutual recognition and enforcement of judgments in civil and commercial matters among Member States which was put in place as a necessary complement to its single market. However, the Brussels Ia Regulation⁷ does not apply to the recognition and enforcement of judgments rendered in non-EU countries.

At the international level, the EU has concluded an international convention with the EEA States and Switzerland (the 2007 Lugano Convention⁸). In addition, a first attempt to establish a multilateral framework for the recognition and enforcement of judgments has resulted in the conclusion of the 2005 Choice of Court Convention⁹. This convention ensures the recognition and enforcement of judgments in cases where the parties have agreed on the court having exclusive jurisdiction to hear their dispute. The Union has ratified this Convention in 2015, which means that it is now part of the Union *acquis*.

Beyond the 2005 Choice of Court Convention, which only has a limited scope of application, no global multilateral framework for the circulation of judgments exists.

The Judgments Convention would thus complement the existing legal framework in the Union, ensuring the circulation of foreign judgments beyond the existing system applicable among EU and EEA States and Switzerland.

The EU internal *acquis* would not be altered by the Convention in the absence of any declaration because the two instruments apply in different contexts¹⁰. This is so because the Brussels Ia Regulation applies to the recognition and enforcement of intra-EU judgments, while the Convention would apply to judgments originating in non-EU countries. However, a declaration is needed in order to ensure that the achievement of the policy objectives of the Brussels Ia

⁴ https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf.

⁵ While also supporting the objectives of the headline categories “A stronger Europe in the World” and “An economy that works for people”.

⁶ See Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Official Journal L 351, 20 December 2012, p. 1 (“Brussels Ia Regulation”).

⁷ *Ibid.*

⁸ Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 339, 21.12.2007, p. 3–41.

⁹ Convention of 30 June 2005 on Choice of Court Agreements.

¹⁰ See Article 23(4) of the Judgments Convention. It should be noticed that the application of the Lugano Convention or of the 2005 Choice of Court Convention would also not be affected by the Convention as earlier in time treaties take precedence, based on Article 23(2).

Regulation is not affected by the accession to the Convention. More specifically, in cases involving commercial tenancies, the Brussels Ia Regulation affords exclusive jurisdiction to courts in a Member State where the immovable property is located. The Judgments Convention does not include such exclusive jurisdictional rules for commercial tenancies. Therefore, under the Convention, Member States would be obliged to recognise and enforce third-country judgments on commercial leases of immovable property that is situated on their territory. This would be in contradiction to the policy objective behind the Brussels Ia Regulation to attribute exclusive jurisdiction to courts in the EU for disputes related to immovable property situated in the EU.

Therefore, a targeted declaration excluding the recognition and enforcement of judgments on commercial tenancies of immovable property situated in the EU should be made upon accession. This limited declaration guarantees coherence of the Convention with the EU *acquis* without impeding the full achievement of all the policy objectives of this proposal.

- **Consistency with other Union policies**

The Judgments Convention is the result of a gradual process of facilitating the circulation of judgments worldwide. It builds on the 2005 Choice of Court Convention, aiming at extending the scope of judgments which may circulate among States. The Conventions adopted under the auspices of the Hague Conference aim to do so without interfering with specialised conventions which may exist in particular areas such as maritime and transport matters nor with existing bilateral conventions.

Because of the increase in legal certainty and the reduced costs and length of proceedings in international litigation, the Judgments Convention has the potential to encourage EU businesses and citizens to engage in international dealings, thereby increasing the volumes of cross-border trade and investment.

Finally, accession to the Judgments Convention is in line with the Union's commitment to multilateralism and to a rules-based global order.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The competence of the Union to regulate matters of recognition and enforcement of foreign judgments in civil and commercial matters is based on Article 81(2), point (a) TFEU.

In line with Article 3(2) TFEU the Union has exclusive competence for the conclusion of an international agreement insofar as such conclusion may affect common EU rules or alter their scope. As a result of the adoption of the Brussels I Regulation, the Union has acquired such exclusive external competence to regulate matters concerning the recognition and enforcement of third-country judgments in civil and commercial matters¹¹.

The Judgments Convention on the recognition and enforcement of foreign judgments thus falls within this exclusive external competence of the Union. The Union may accede thereto on the basis of Articles 81(2), point (a) and 218(6), point (a) TFEU.

¹¹ This has been confirmed by the CJEU in its *Lugano Opinion*, where the CJEU held that the exclusive external competence of the European Community, applies *inter alia* to the recognition and enforcement of third-country judgments in civil and commercial matters. See Opinion 1/03, ECLI:EU:C:2006:81.

- **Subsidiarity (for non-exclusive competence)**

Not applicable

- **Proportionality**

The objectives of this proposal are to enhance access to justice for EU parties by facilitating the recognition and enforcement of judgments given by courts in the EU wherever the debtor happens to have assets, to increase legal certainty for businesses and citizens involved in international dealings and to decrease costs and length of proceedings in cross-border court litigation. At the same time, this proposal seeks to allow the recognition and enforcement of third-country judgments in the EU only where fundamental principles of EU law are respected and the internal *acquis* is not affected.

These objectives can only be achieved by adhering to a system of mutual recognition and enforcement of judgments among States, such as the one adopted in the Judgments Convention. The possibility to negotiate multilateral or bilateral conventions on recognition and enforcement of judgments is no longer available to the Member States because external competence in matters of international jurisdiction and recognition and enforcement of judgments in civil and commercial matters lies exclusively with the European Union.

Unilateral action at EU level would not achieve the objectives set out above because it would not facilitate the recognition and enforcement of EU judgments in non-EU countries.

Finally, acceding to an existing multilateral framework that the EU helped negotiate would be more efficient than entering into negotiations with non-EU States at a bilateral level. Depending on how many States will adhere to the Convention, it would ensure a common legal framework to deal with third-country judgments wherever they come from. It would also ensure one common legal framework for EU businesses and citizens seeking recognition and enforcement of judgments given by the courts in the EU in non-EU countries¹².

- **Choice of the instrument**

Not applicable

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

In the framework of assessing the different policy options related to the Judgments Convention, the Commission sought the stakeholders' opinions through an open public consultation and a

¹² On this matter, see also sections 3 and 4 of the Impact Assessment report accompanying this proposal.

workshop with the Member States¹³. In addition, a study was carried out by an external contractor who also conducted a number of consultation activities, such as an online survey, targeted interviews with stakeholders as well as a questionnaire distributed to Member States' authorities.

These consultation activities showed that accession to the Judgments Convention was supported both by Member States and by the overwhelming majority of stakeholders (for example legal professionals, businesses, professional organisations of lawyers and of bailiffs, academics). On the possibility to make declarations¹⁴, Member States opposed a declaration based on Article 19 of the Convention and did not express clear views on declarations under Article 18. Only a small number of stakeholders favoured accession with a declaration under Article 19 while there was no clear tendency detected for Article 18 declarations.

The input from these consultation activities was very important in forging the Commission's views on the best approach to be taken in this proposal. As a result, the Commission decided to propose the EU's accession to the Judgments Convention with a limited, targeted declaration excluding the recognition and enforcement by courts in the EU of third-country judgments which ruled on commercial leases (tenancies) of immovable property situated in the EU.

- **Collection and use of expertise**

In the process of negotiation of the Judgments Convention, the Commission has constantly consulted with and relied on the expertise provided by experts from the Member States. In addition, experts from the Member States were also consulted as part of the preparatory work for this proposal.

The Commission also relied on a study carried out by an external contractor in order to support the impact assessment analysis. This study¹⁵ contains an extensive economic and legal analysis of the different available policy options. The study uses different analytical tools, ranging from the use of empirical data gathered in different ways (online survey, questionnaire and interviews), to statistics or desk analysis. Where quantitative data was not available, qualitative estimates were used. These estimates, as well as the different assumptions used, were confirmed by external experts at a workshop meeting.

The study concluded that the most suitable way to achieve the policy objectives is to accede to the Convention without any declaration. This conclusion is reflected in this proposal as accession to the Judgments Convention is proposed only with a limited, targeted declaration that is considered necessary to achieve coherence with the existing EU *acquis*. At the same time, such a limited declaration does not hamper the achievement of the other objectives of this proposal nor its efficiency in terms of the expected direct benefits for EU businesses and citizens.

Finally, the Commission has relied on the extensive expertise on the recognition and enforcement of judgments at EU level with the application of the Brussels Ia Regulation, its

¹³ At the workshop, the Member States expressed their preliminary views pending further analysis of the implications of all policy options.

¹⁴ Declaration either based on Article 18 of the Convention (excluding certain matters) and/or Article 19 (excluding judgments in civil or commercial matters pertaining to States).

¹⁵ To be published once this proposal is adopted.

predecessor Regulation (EC) 44/2001¹⁶, which itself was the successor of the 1968 Brussels Convention¹⁷ on the same subject matter. Extensive guidance by the CJEU exists in relation to the interpretation and application of these instruments at EU level.

- **Impact assessment**

The desirability of the EU accession to the Convention was considered in the framework of an Impact Assessment report. For the scenario that the EU accedes to the Convention, several alternative policy options were taken into consideration. These policy options included the accession either without any declaration or with specifically defined declarations – either with a declaration under Article 18 of the Convention excluding certain matters from the scope (consumer, employment or insurance matters and/or commercial leases of immovable property), or with a declaration under Article 19 of the Convention excluding judgments in civil and commercial matters involving States or State entities.

The preferred option is to accede to the Convention with a limited, targeted declaration excluding the recognition and enforcement of judgments which ruled on commercial leases (tenancies) of immovable property situated in the EU.

For the purposes of quantifying the impacts of the Judgments Convention on the circulation of judgments between the EU and non-EU countries, a working assumption was made that eight selected non-EU countries would join the Convention. The selected non-EU countries were Australia, Argentina, Brazil, Canada, China, Japan, South Korea and the United States of America. All impacts were estimated for a reference period of 2022-2026.

The preferred option will enhance access to justice and increase legal certainty and predictability in international court litigation. The direct benefits for EU citizens and businesses when attempting to have an EU judgment recognised and enforced in the selected non-EU countries are estimated to be between EUR 1.1 and 2.6 Million by 2026. This has to do with a projected decrease of 10%-20% of costs related to the recognition and enforcement of EU judgments in non-EU countries. In addition, the average length of proceedings is expected to decrease by three to six months on average.

A simpler and more predictable system for the recognition and enforcement of foreign judgments in civil and commercial matters is also set to promote international trade and investment. As international trade and investment are likely to grow, there could be positive impacts both at micro and macro-level, as well as positive effects on the employment opportunities. Especially SMEs will benefit from the improved access to justice and legal certainty in international dealings brought about by the Judgments Convention.

Notably, the preferred policy option is fully in line with the EU *acquis* on this matter, namely the Brussels Ia Regulation. Under the preferred option, the commercial leases (tenancies) are excluded from the application of the Convention, since the Brussels Ia Regulation affords exclusive jurisdiction to courts in the EU to deal with disputes related to commercial tenancies of immovable property situated in the EU.

On the other hand, a declaration that would exclude the other considered matters¹⁸ was not deemed to be necessary. The Convention does provide adequate protection for weaker parties

¹⁶ See Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Official Journal L 12, 16 January 2001, p. 1.

¹⁷ See the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, Official Journal L 299, 31 December 1972, p. 32.

¹⁸ These were consumer, employment and insurance matters.

(consumers, employees or the insurance policyholder, the insured or the beneficiary of an insurance policy), albeit in a different fashion than the EU *acquis*. Moreover, unlike the commercial leases of immovable property situated in the EU, other declarations, which are broader in scope, could impede the full achievement of the objectives of this initiative.

The impact assessment report received a positive opinion of the Regulatory Scrutiny Board on 23 April 2021.

- **Regulatory fitness and simplification**

The proposal does not have cost implications for SMEs. In addition, because SMEs tend to favour court litigation over arbitration, the increase in legal certainty combined with lower costs and length of proceedings in international litigation is expected to have a positive effect on their willingness to engage in or expand international dealings. The accession to the Convention may also improve the competitiveness of SMEs. This is so because the costs of international litigation and thus indirectly of doing business internationally will decrease, which will provide SMEs having their seat in the EU with a comparative advantage over businesses from countries that did not ratify the Convention. The proposal is expected to also have a positive impact on international trade and investment.

- **Fundamental rights**

The proposal is set to improve access to justice for EU businesses and citizens because the cross-border recognition and enforcement of judgments, an integral part of the right of access to justice, will generally improve and be more predictable. The Convention reflects to a large extent the rules on the recognition and enforcement of judgments applicable internally in the EU (the Brussels Ia Regulation). Consequently, the Convention in principle does not diverge from EU fundamental rights and principles of procedural fairness. In particular, the Convention provides a ground to refuse the recognition and enforcement of judgments incompatible with fundamental principles of procedural fairness or with the public policy of the State where recognition and enforcement is sought. This would help to ensure on the basis of a tested approach¹⁹ that fundamental rights such as the right of the defence or the right to a fair trial have been duly observed in a non-EU country. In addition, by improving the recognition and enforcement of judgments given by EU courts in third countries the Convention is set to facilitate the freedom to conduct a business as well as to enhance the respect of the right to property in the EU.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications for the Union budget. Member States may have one-off costs for the implementation of the Convention and there could be slightly higher costs for the judiciary of the Member States due to the expected slight rise in the number of cases. However, it is expected that these costs will be offset in the medium and longer term by the expected decrease in the length of proceedings.

¹⁹ In addition to the Brussels Ia Regulation, this approach has been applied also in the Lugano Convention and the 2005 Choice of Court Convention.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

As the proposal concerns the EU accession to an international convention that contains clear rules as to the recognition and enforcement of foreign judgments, no implementation plan will be established.

With regard to monitoring and evaluation of the practical operation of the Convention, the EU will take part in Special Commission meetings organised regularly by the HCCH to take stock of the practical application of the Convention.

The EU's internal evaluation and monitoring mechanism will as much as possible correspond to the stocktaking mechanism at the HCCH. The evaluation will be performed at regular intervals and will include the assessment of the impacts flowing from the EU accession to the Judgments Convention as well as the evaluation as to whether the main objectives pursued through the accession have been achieved. Furthermore, the evaluation will also include an analysis of the desirability of declarations so as to assess whether to keep or revoke the declaration(s) already made or whether to make new declaration(s).

- **Explanatory documents (for directives)**

Not applicable

- **Detailed explanation of the specific provisions of the proposal**

Given the exclusive external competence of the European Union and the fact that the Judgments Convention allows, by virtue of its Article 26, that a Regional Economic Integration Organisation accedes thereto, the EU should become a Contracting Party to the Convention itself without the Member States based on a positive decision by the Council.

When acceding, the European Union should therefore make a declaration in accordance with Article 27 of the Convention that the EU exercises competence over all the matters governed by the Convention and that its Member States will not be Contracting Parties to the Convention, but will be bound by the Convention by virtue of the EU accession. In compliance with the Protocol (No 22) on the position of Denmark annexed to the Treaty on the Functioning of the European Union according to which Denmark does not take part in measures taken pursuant to Article 81(2) of the Treaty, the EU accession to the Judgments Convention does not include Denmark.

When acceding to the Convention, the EU should also make a declaration concerning the substantive scope of the Convention pursuant to Article 18 of the Convention, excluding from the scope of the Convention judgments that ruled on commercial leases (tenancies) of immovable property situated in the European Union.

Proposal for a

COUNCIL DECISION

on the accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 81(2), point (a) and 218(6), point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament²⁰,

Whereas:

- (1) The Convention on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters under the auspices of the Hague Conference on Private International Law ('the Convention') was concluded on 2 July 2019.
- (2) The Convention seeks to promote access to justice globally through enhanced international judicial cooperation. In particular, the Convention seeks to reduce risks and costs associated with cross-border litigation and dispute resolution and, as a result, to facilitate international trade, investment, and mobility.
- (3) The Union participated actively in the negotiations leading up to the adoption of the Convention and shares its goals.
- (4) Currently, Union citizens and businesses seeking to have a judgment given in the Union recognised and enforced in a non-Union country face a scattered legal landscape due to the absence of a comprehensive international framework for the recognition and enforcement of foreign judgments in civil and commercial matters. The growth in international trade and investment flows increases these legal risks for Union businesses and citizens but this situation should be addressed through a predictable system of cross-border recognition and enforcement of judgments in civil or commercial matters.
- (5) These objectives can only be achieved by adhering to a system of mutual recognition and enforcement of judgments among States, such as the one adopted in the Convention. At the same time, the Convention should only allow the recognition and enforcement of third-country judgments in the Union, where fundamental principles of Union law are respected and the internal *acquis* is not affected.
- (6) Pursuant to Article 26 of the Convention, regional economic integration organisations which have competence over some or all of the matters governed by the Convention, such as the Union can sign, accept, approve or accede to the Convention.
- (7) In accordance with Article 3(2) of the Treaty, the Union has exclusive competence for the conclusion of an international agreement insofar as it may affect common Union rules or alter their scope. The Convention affects Union secondary legislation on

²⁰ OJ C , , p. .

jurisdiction and the recognition and enforcement of the resulting judgments, in particular Regulation (EU) No 1215/2012 of the European Parliament and of the Council²¹. Therefore, the Union has exclusive competence in all matters governed by the Convention.

- (8) Pursuant to Articles 24(3) and 28 of the Convention, accession to the Convention can occur before its entry into force.
- (9) The Union should conclude the Convention by way of accession.
- (10) When acceding to the Convention, the Union should declare under Article 27 of the Convention that it exercises competence over all the matters governed by the Convention. Consequently, the Member States should be bound by the Convention by virtue of its conclusion by the Union.
- (11) In cases involving commercial leases (tenancies), Regulation (EU) No 1215/2012 affords exclusive jurisdiction to courts in a Member State where the immovable property is located. The Convention does not include such exclusive jurisdictional rules for commercial tenancies. Therefore, when acceding to the Convention, the Union should make a declaration under Article 18 of the Convention, excluding from the scope of the Convention judgments on commercial tenancies of immovable property situated in the Union.
- (12) Ireland is bound by Regulation (EU) No 1215/2012 and is therefore taking part in the adoption of this Decision.
- (13) In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark, annexed to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

HAS ADOPTED THIS DECISION:

Article 1

The Hague Convention of 2 July 2019 on Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters ('the Convention') is hereby concluded by the Union.

The text of the Convention is attached to this Decision.

Article 2

The Commission shall designate the person empowered to deposit, on behalf of the Union, the instrument of accession referred to in Article 24(4) of the Convention.

Article 3

When depositing the instrument referred to in Article 24(4) of the Convention, the Union shall make the following declaration in accordance with Article 27(1) of the Convention:

“The European Union declares, in accordance with Article 27(1) of the Convention, that it exercises competence over all the matters governed by this Convention. Its Member States will

²¹ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

not sign, ratify, accept or approve the Convention, but shall be bound by the Convention by virtue of its conclusion by the European Union.

For the purpose of this declaration, the term “European Union” does not include the Kingdom of Denmark by virtue of Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on the Functioning of the European Union”.

Article 4

When depositing the instrument referred to in Article 24(4) of the Convention, the Union shall make the following declaration in accordance with Article 18 concerning commercial leases (tenancies) of immovable property:

“The European Union hereby declares under Article 18 of the Convention that it will not apply the Convention to commercial leases (tenancies) of immovable property situated in the European Union.”

Article 5

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*²².

Done at Brussels,

For the Council
The President

²² The date of entry into force of the Agreement will be published in the Official Journal of the European Union by the General Secretariat of the Council.



Brussels, 16.7.2021
COM(2021) 388 final

ANNEX

ANNEX

to the

Proposal for a COUNCIL DECISION

on the accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

{SEC(2021) 279 final} - {SWD(2021) 192 final} - {SWD(2021) 193 final}

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL OR COMMERCIAL MATTERS

The Contracting Parties to the present Convention,

Desiring to promote effective access to justice for all and to facilitate rule-based multilateral trade and investment, and mobility, through judicial co-operation,

Believing that such co-operation can be enhanced through the creation of a uniform set of core rules on recognition and enforcement of foreign judgments in civil or commercial matters, to facilitate the effective recognition and enforcement of such judgments,

Convinced that such enhanced judicial co-operation requires, in particular, an international legal regime that provides greater predictability and certainty in relation to the global circulation of foreign judgments, and that is complementary to the Convention of 30 June 2005 on Choice of Court Agreements,

Have resolved to conclude this Convention to this effect and have agreed upon the following provisions –

CHAPTER I – SCOPE AND DEFINITIONS

Article 1

Scope

1. This Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters.
2. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.

Article 2

Exclusions from scope

1. This Convention shall not apply to the following matters –
 - (a) the status and legal capacity of natural persons;
 - (b) maintenance obligations;
 - (c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
 - (d) wills and succession;
 - (e) insolvency, composition, resolution of financial institutions, and analogous matters;
 - (f) the carriage of passengers and goods;
 - (g) transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;
 - (h) liability for nuclear damage;
 - (i) the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;

- (j) the validity of entries in public registers;
 - (k) defamation;
 - (l) privacy;
 - (m) intellectual property;
 - (n) activities of armed forces, including the activities of their personnel in the exercise of their official duties;
 - (o) law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;
 - (p) anti-trust (competition) matters, except where the judgment is based on conduct that constitutes an anti-competitive agreement or concerted practice among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce, and where such conduct and its effect both occurred in the State of origin;
 - (q) sovereign debt restructuring through unilateral State measures.
2. A judgment is not excluded from the scope of this Convention where a matter to which this Convention does not apply arose merely as a preliminary question in the proceedings in which the judgment was given, and not as an object of the proceedings. In particular, the mere fact that such a matter arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.
3. This Convention shall not apply to arbitration and related proceedings.
4. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.
5. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3
Definitions

1. In this Convention –
- (a) “defendant” means a person against whom the claim or counterclaim was brought in the State of origin;
 - (b) “judgment” means any decision on the merits given by a court, whatever that decision may be called, including a decree or order, and a determination of costs or expenses of the proceedings by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.
2. An entity or person other than a natural person shall be considered to be habitually resident in the State –
- (a) where it has its statutory seat;
 - (b) under the law of which it was incorporated or formed;
 - (c) where it has its central administration; or

(d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4

General provisions

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.
2. There shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention.
3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.
4. Recognition or enforcement may be postponed or refused if the judgment referred to under paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 5

Bases for recognition and enforcement

1. A judgment is eligible for recognition and enforcement if one of the following requirements is met –
 - (a) the person against whom recognition or enforcement is sought was habitually resident in the State of origin at the time that person became a party to the proceedings in the court of origin;
 - (b) the natural person against whom recognition or enforcement is sought had their principal place of business in the State of origin at the time that person became a party to the proceedings in the court of origin and the claim on which the judgment is based arose out of the activities of that business;
 - (c) the person against whom recognition or enforcement is sought is the person that brought the claim, other than a counterclaim, on which the judgment is based;
 - (d) the defendant maintained a branch, agency, or other establishment without separate legal personality in the State of origin at the time that person became a party to the proceedings in the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;
 - (e) the defendant expressly consented to the jurisdiction of the court of origin in the course of the proceedings in which the judgment was given;
 - (f) the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law;
 - (g) the judgment ruled on a contractual obligation and it was given by a court of the State in which performance of that obligation took place, or should have taken place, in accordance with

- (i) the agreement of the parties, or
- (ii) the law applicable to the contract, in the absence of an agreed place of performance, unless the activities of the defendant in relation to the transaction clearly did not constitute a purposeful and substantial connection to that State;
- (h) the judgment ruled on a lease of immovable property (tenancy) and it was given by a court of the State in which the property is situated;
- (i) the judgment ruled against the defendant on a contractual obligation secured by a right in rem in immovable property located in the State of origin, if the contractual claim was brought together with a claim against the same defendant relating to that right in rem;
- (j) the judgment ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission directly causing such harm occurred in the State of origin, irrespective of where that harm occurred;
- (k) the judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and –
 - (i) at the time the proceedings were instituted, the State of origin was designated in the trust instrument as a State in the courts of which disputes about such matters are to be determined; or
 - (ii) at the time the proceedings were instituted, the State of origin was expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated.

This sub-paragraph only applies to judgments regarding internal aspects of a trust between persons who are or were within the trust relationship;

- (l) the judgment ruled on a counterclaim –
 - (i) to the extent that it was in favour of the counterclaimant, provided that the counterclaim arose out of the same transaction or occurrence as the claim; or
 - (ii) to the extent that it was against the counterclaimant, unless the law of the State of origin required the counterclaim to be filed in order to avoid preclusion;
- (m) the judgment was given by a court designated in an agreement concluded or documented in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference, other than an exclusive choice of court agreement.

For the purposes of this sub-paragraph, an “exclusive choice of court agreement” means an agreement concluded by two or more parties that designates, for the purpose of deciding disputes which have arisen or may arise in connection with a particular legal relationship, the courts of one State or one or more specific courts of one State to the exclusion of the jurisdiction of any other courts.

2. If recognition or enforcement is sought against a natural person acting primarily for personal, family or household purposes (a consumer) in matters relating to a consumer contract, or against an employee in matters relating to the employee’s contract of employment –

- (a) paragraph 1(e) applies only if the consent was addressed to the court, orally or in writing;
- (b) paragraph 1(f), (g) and (m) do not apply.

3. Paragraph 1 does not apply to a judgment that ruled on a residential lease of immovable property (tenancy) or ruled on the registration of immovable property. Such a judgment is eligible for recognition and enforcement only if it was given by a court of the State where the property is situated.

Article 6

Exclusive basis for recognition and enforcement

Notwithstanding Article 5, a judgment that ruled on rights in rem in immovable property shall be recognised and enforced if and only if the property is situated in the State of origin.

Article 7

Refusal of recognition and enforcement

1. Recognition or enforcement may be refused if –

(a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –

(i) was not notified to the defendant in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant entered an appearance and presented their case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

(ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;

(b) the judgment was obtained by fraud;

(c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State and situations involving infringements of security or sovereignty of that State;

(d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court of a State other than the State of origin;

(e) the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties; or

(f) the judgment is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

2. Recognition or enforcement may be postponed or refused if proceedings between the same parties on the same subject matter are pending before a court of the requested State, where –

(a) the court of the requested State was seised before the court of origin; and

(b) there is a close connection between the dispute and the requested State.

A refusal under this paragraph does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 8

Preliminary questions

1. A ruling on a preliminary question shall not be recognised or enforced under this Convention if the ruling is on a matter to which this Convention does not apply or on a matter referred to in Article 6 on which a court of a State other than the State referred to in that Article ruled.

2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter to which this Convention does not apply, or on a matter referred to in Article 6 on which a court of a State other than the State referred to in that Article ruled.

Article 9 *Severability*

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.

Article 10 *Damages*

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.

2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Article 11 *Judicial settlements (transactions judiciaires)*

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State has approved, or which have been concluded in the course of proceedings before a court of a Contracting State, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 12 *Documents to be produced*

1. The party seeking recognition or applying for enforcement shall produce –

(a) a complete and certified copy of the judgment;

(b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;

(c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;

(d) in the case referred to in Article 11, a certificate of a court (including an officer of the court) of the State of origin stating that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.

2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document relating to the judgment, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 13
Procedure

1. The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise. The court of the requested State shall act expeditiously.

2. The court of the requested State shall not refuse the recognition or enforcement of a judgment under this Convention on the ground that recognition or enforcement should be sought in another State.

Article 14
Costs of proceedings

1. No security, bond or deposit, however described, shall be required from a party who in one Contracting State applies for enforcement of a judgment given by a court of another Contracting State on the sole ground that such party is a foreign national or is not domiciled or resident in the State in which enforcement is sought.

2. An order for payment of costs or expenses of proceedings, made in a Contracting State against any person exempt from requirements as to security, bond, or deposit by virtue of paragraph 1 or of the law of the State where proceedings have been instituted, shall, on the application of the person entitled to the benefit of the order, be rendered enforceable in any other Contracting State.

3. A State may declare that it shall not apply paragraph 1 or designate by a declaration which of its courts shall not apply paragraph 1.

Article 15
Recognition and enforcement under national law

Subject to Article 6, this Convention does not prevent the recognition or enforcement of judgments under national law.

CHAPTER III – GENERAL CLAUSES

Article 16
Transitional provision

This Convention shall apply to the recognition and enforcement of judgments if, at the time the proceedings were instituted in the State of origin, the Convention had effect between that State and the requested State.

Article 17
Declarations limiting recognition and enforcement

A State may declare that its courts may refuse to recognise or enforce a judgment given by a court of another Contracting State if the parties were resident in the requested State, and the relationship of the parties and all other elements relevant to the dispute, other than the location of the court of origin, were connected only with the requested State.

Article 18

Declarations with respect to specific matters

1. Where a State has a strong interest in not applying this Convention to a specific matter, that State may declare that it will not apply the Convention to that matter. The State making such a declaration shall ensure that the declaration is no broader than necessary and that the specific matter excluded is clearly and precisely defined.

2. With regard to that matter, the Convention shall not apply –

(a) in the Contracting State that made the declaration;

(b) in other Contracting States, where recognition or enforcement of a judgment given by a court of a Contracting State that made the declaration is sought.

Article 19

Declarations with respect to judgments pertaining to a State

1. A State may declare that it shall not apply this Convention to judgments arising from proceedings to which any of the following is a party –

(a) that State, or a natural person acting for that State; or

(b) a government agency of that State, or a natural person acting for such a government agency.

The State making such a declaration shall ensure that the declaration is no broader than necessary and that the exclusion from scope is clearly and precisely defined. The declaration shall not distinguish between judgments where the State, a government agency of that State or a natural person acting for either of them is a defendant or claimant in the proceedings before the court of origin.

2. Recognition or enforcement of a judgment given by a court of a State that made a declaration pursuant to paragraph 1 may be refused if the judgment arose from proceedings to which either the State that made the declaration or the requested State, one of their government agencies or a natural person acting for either of them is a party, to the same extent as specified in the declaration.

Article 20

Uniform interpretation

In the interpretation of this Convention, regard shall be had to its international character and to the need to promote uniformity in its application.

Article 21

Review of operation of the Convention

The Secretary General of the Hague Conference on Private International Law shall at regular intervals make arrangements for review of the operation of this Convention, including any declarations, and shall report to the Council on General Affairs and Policy.

Article 22

Non-unified legal systems

1. In relation to a Contracting State in which two or more systems of law apply in different territorial units with regard to any matter dealt with in this Convention –

(a) any reference to the law or procedure of a State shall be construed as referring, where appropriate, to the law or procedure in force in the relevant territorial unit;

(b) any reference to the court or courts of a State shall be construed as referring, where appropriate, to the court or courts in the relevant territorial unit;

(c) any reference to a connection with a State shall be construed as referring, where appropriate, to a connection with the relevant territorial unit;

(d) any reference to a connecting factor in relation to a State shall be construed as referring, where appropriate, to that connecting factor in relation to the relevant territorial unit.

2. Notwithstanding paragraph 1, a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to apply this Convention to situations which involve solely such different territorial units.

3. A court in a territorial unit of a Contracting State with two or more territorial units in which different systems of law apply shall not be bound to recognise or enforce a judgment from another Contracting State solely because the judgment has been recognised or enforced in another territorial unit of the same Contracting State under this Convention.

4. This Article shall not apply to Regional Economic Integration Organisations.

Article 23

Relationship with other international instruments

1. This Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether concluded before or after this Convention.

2. This Convention shall not affect the application by a Contracting State of a treaty that was concluded before this Convention.

3. This Convention shall not affect the application by a Contracting State of a treaty concluded after this Convention as concerns the recognition or enforcement of a judgment given by a court of a Contracting State that is also a Party to that treaty. Nothing in the other treaty shall affect the obligations under Article 6 towards Contracting States that are not Parties to that treaty.

4. This Convention shall not affect the application of the rules of a Regional Economic Integration Organisation that is a Party to this Convention as concerns the recognition or enforcement of a judgment given by a court of a Contracting State that is also a Member State of the Regional Economic Integration Organisation where –

(a) the rules were adopted before this Convention was concluded; or

(b) the rules were adopted after this Convention was concluded, to the extent that they do not affect the obligations under Article 6 towards Contracting States that are not Member States of the Regional Economic Integration Organisation.

CHAPTER IV – FINAL CLAUSES

Article 24

Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature by all States.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. This Convention shall be open for accession by all States.

4. Instruments of ratification, acceptance, approval or accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 25

Declarations with respect to non-unified legal systems

1. If a State has two or more territorial units in which different systems of law apply in relation to matters dealt with in this Convention, it may declare that the Convention shall extend to all its territorial units or only to one or more of them. Such a declaration shall state expressly the territorial units to which the Convention applies.

2. If a State makes no declaration under this Article, the Convention shall extend to all territorial units of that State.

3. This Article shall not apply to Regional Economic Integration Organisations.

Article 26

Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by sovereign States and has competence over some or all of the matters governed by this Convention may sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that the Organisation has competence over matters governed by this Convention.

2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, notify the depositary in writing of the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Organisation shall promptly notify the depositary in writing of any changes to its competence as specified in the most recent notice given under this paragraph.

3. For the purposes of the entry into force of this Convention, any instrument deposited by a Regional Economic Integration Organisation shall not be counted unless the Regional Economic Integration Organisation declares in accordance with Article 27(1) that its Member States will not be Parties to this Convention.

4. Any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation.

Article 27

Regional Economic Integration Organisation as a Contracting Party without its Member States

1. At the time of signature, acceptance, approval or accession, a Regional Economic Integration Organisation may declare that it exercises competence over all the matters governed by this Convention and that its Member States will not be Parties to this Convention but shall be bound by virtue of the signature, acceptance, approval or accession of the Organisation.

2. In the event that a declaration is made by a Regional Economic Integration Organisation in accordance with paragraph 1, any reference to a "Contracting State" or "State" in this Convention shall apply equally, where appropriate, to the Member States of the Organisation.

Article 28

Entry into force

1. This Convention shall enter into force on the first day of the month following the expiration of the period during which a notification may be made in accordance with Article 29(2) with

respect to the second State that has deposited its instrument of ratification, acceptance, approval or accession referred to in Article 24.

2. Thereafter this Convention shall enter into force –

(a) for each State subsequently ratifying, accepting, approving or acceding to it, on the first day of the month following the expiration of the period during which notifications may be made in accordance with Article 29(2) with respect to that State;

(b) for a territorial unit to which this Convention has been extended in accordance with Article 25 after the Convention has entered into force for the State making the declaration, on the first day of the month following the expiration of three months after the notification of the declaration referred to in that Article.

Article 29

Establishment of relations pursuant to the Convention

1. This Convention shall have effect between two Contracting States only if neither of them has notified the depositary regarding the other in accordance with paragraph 2 or 3. In the absence of such a notification, the Convention has effect between two Contracting States from the first day of the month following the expiration of the period during which notifications may be made.

2. A Contracting State may notify the depositary, within 12 months after the date of the notification by the depositary referred to in Article 32(a), that the ratification, acceptance, approval or accession of another State shall not have the effect of establishing relations between the two States pursuant to this Convention.

3. A State may notify the depositary, upon the deposit of its instrument pursuant to Article 24(4), that its ratification, acceptance, approval or accession shall not have the effect of establishing relations with a Contracting State pursuant to this Convention.

4. A Contracting State may at any time withdraw a notification that it has made under paragraph 2 or 3. Such a withdrawal shall take effect on the first day of the month following the expiration of three months following the date of notification.

Article 30

Declarations

1. Declarations referred to in Articles 14, 17, 18, 19 and 25 may be made upon signature, ratification, acceptance, approval or accession or at any time thereafter, and may be modified or withdrawn at any time.

2. Declarations, modifications and withdrawals shall be notified to the depositary.

3. A declaration made at the time of signature, ratification, acceptance, approval or accession shall take effect simultaneously with the entry into force of this Convention for the State concerned.

4. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall take effect on the first day of the month following the expiration of three months following the date on which the notification is received by the depositary.

5. A declaration made at a subsequent time, and any modification or withdrawal of a declaration, shall not apply to judgments resulting from proceedings that have already been instituted before the court of origin when the declaration takes effect.

Article 31
Denunciation

1. A Contracting State to this Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect on the first day of the month following the expiration of 12 months after the date on which the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the date on which the notification is received by the depositary.

Article 32
Notifications by the depositary

The depositary shall notify the Members of the Hague Conference on Private International Law, and other States and Regional Economic Integration Organisations which have signed, ratified, accepted, approved or acceded to this Convention in accordance with Articles 24, 26 and 27 of the following –

- (a) the signatures, ratifications, acceptances, approvals and accessions referred to in Articles 24, 26 and 27;
- (b) the date on which this Convention enters into force in accordance with Article 28;
- (c) the notifications, declarations, modifications and withdrawals referred to in Articles 26, 27, 29 and 30; and
- (d) the denunciations referred to in Article 31.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 2nd day of July 2019, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the Members of the Hague Conference on Private International Law at the time of its Twenty-Second Session and to each of the other States which have participated in that Session.

COM (2021) 338
Information Note

1. Proposal

Proposal for a Council Decision on accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

2. Date of Commission document

16/07/2021

3. Number of Commission document

COM (2021) 338

4. Number of Council document:

10851/21

5. Dealt with in Brussels by

JHA Council, Working Party on Civil Law Matters

6. Department with primary responsibility

Department of Justice

7. Other Departments involved

The Office of the Attorney General and the Courts Service may have an interest.

8. Background to, Short summary and aim of the proposal

The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“the Judgments Convention”) seeks to promote access to justice globally through enhanced international judicial cooperation. In particular, the Convention seeks to reduce risks and costs associated with cross-border litigation and dispute resolution and, as a result, to facilitate international trade, investment, and mobility.

Currently, European Union citizens and businesses seeking to have a judgment given in the Union recognised and enforced in a non-Union country face a scattered legal landscape due to the absence of a comprehensive international framework for the recognition and enforcement of foreign judgments in civil and commercial matters. The growth in international trade and investment flows increases these legal risks for European Union businesses and citizens but this situation should be addressed through a predictable system of cross-border recognition and enforcement of judgments in civil or commercial matters.

These objectives can only be achieved by adhering to a system of mutual recognition and enforcement of judgments among States, such as the one adopted in the Convention.

The European Union participated actively in the negotiations leading up to the adoption of the Convention and shares its goals. As the Judgments Convention falls under exclusive EU competence (in relation to the Brussels I recast Regulation), Member States cannot ratify the Convention in their own right, and the EU will do so on behalf of the Member States (except Denmark whose Protocol to the Treaty exempts it from this Decision).

9. Legal basis of the proposal

Treaty on the Functioning of the European Union, Articles 81(2), point (a) and 218(6), point (a), thereof

10. Voting Method

QMV

11. Role of the EP

Consent

12. Category of proposal

Some significance

13. Implications for Ireland & Ireland's Initial View'

Ireland is in favour of the proposal.

14. Impact on the public

The proposal has the potential to be of particular assistance to Irish litigants (both consumers and businesses) who are involved in cross-border litigation

15. Have any consultations with Stakeholders taken place or are there any plans to do so?

Various stakeholders including the Bar Council, the Law Society, legal firms which specialise in commercial law, and the Department of Enterprise, Trade and Employment have been consulted, and further engagement will take place as required.

16. Are there any subsidiarity issues for Ireland?

No

17. Anticipated negotiating period

2021/2022

18. Proposed implementation date

Not known

19. Consequences for national legislation

While the proposed Decision will have direct application in Irish law, some secondary legislative measures (Rules of Court and a SI under the European Communities Act 1972) will probably be necessary.

20. Method of Transposition into Irish law

N/A

21. Anticipated Transposition date

N/A

22. Consequences for the EU budget in Euros annually

None

23. Contact name, telephone number and e-mail address of official in Department with primary responsibility

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Date: 6 September 2021