



Council of the
European Union

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JUSTCIV 206

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements

COUNCIL DECISION

of

**on the approval, on behalf of the European Union,
of the Hague Convention of 30 June 2005 on Choice of Court Agreements**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2), in conjunction with point (a) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ OJ C , , p. .

Whereas:

- (1) The European Union is working towards the establishment of a common judicial area based on the principle of mutual recognition of judicial decisions.
- (2) 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.
- (3) Article 29 of the Convention allows Regional Economic Integration Organisations such as the European Union to sign, accept, approve or accede to the Convention. The Union signed the Convention on 1 April 2009, subject to its conclusion at a later date, in accordance with Council Decision 2009/397/EC¹.

¹ Council Decision 2009/397/EC of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements (OJ L 133, 29.5.2009, p. 1).

- (4) 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 44/2001¹, which is to be replaced as of 10 January 2015 by Regulation (EU) No 1215/2012 of the European Parliament and of the Council².
- (5) With the adoption of Regulation (EU) No 1215/2012 the Union paved the way for the approval of the Convention, on behalf of the Union, by ensuring coherence between the rules of the Union on the choice of court in civil and commercial matters and the rules of the Convention.
- (6) 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.

¹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1).

² 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).

- (7) The Union should, when approving the Convention, in addition make the declaration allowed under Article 21 excluding from the scope of the Convention insurance contracts in general, subject to certain well-defined exceptions. The objective of the declaration is to preserve the protective jurisdiction rules available to the policyholder, the insured party or a beneficiary in matters relating to insurance under Regulation (EC) No 44/2001. The exclusion should be limited to what is necessary to protect the interests of the weaker parties in insurance contracts. It should therefore not cover reinsurance contracts nor contracts relating to large risks. 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 under Article 21.
- (8) 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.
- (9) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and 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 30 June 2005 on Choice of Court Agreements ("the Convention") is hereby approved on behalf of the European Union.¹

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 27(4) of the Convention.

The deposit of the instrument of approval referred to in the first subparagraph shall take place within one month of ...*²

Article 3

1. When depositing the instrument of approval provided for in Article 27(4) of the Convention, the Union shall, in accordance with Article 21 of the Convention, make a declaration relating to insurance contracts.

The text of that declaration is attached as Annex I to this Decision.

¹ The text of the Convention was published in OJ L 133, 29.5.2009, p. 3, together with the Decision on signature.

* OJ: please insert the date 6 months after the date of adoption of this Decision.

² The date of entry into force for the Union of the Convention will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

2. When depositing the instrument of approval provided for in Article 27(4) of the Convention, the Union shall make a unilateral declaration.

The text of that declaration is attached as Annex II to this Decision.

Article 4

This Decision shall enter into force on the date of its adoption.

Done at,

For the Council

The President

ANNEX I

Declaration by the European Union
at the time of approval of the Hague Convention of 30 June 2005
on Choice of Court Agreements ("the Convention")

in accordance with Article 21 thereof

The objective of this declaration which excludes certain types of insurance contracts from the scope of the Convention is to protect certain policyholders, insured parties and beneficiaries who, according to internal EU law, receive special protection.

1. The European Union declares, in accordance with Article 21 of the Convention, that it will not apply the Convention to insurance contracts, except as provided for in paragraph 2 below.
2. The European Union will apply the Convention to insurance contracts in the following cases:
 - (a) where the contract is a reinsurance contract;
 - (b) where the choice of court agreement is entered into after the dispute has arisen;

- (c) where, without prejudice to Article 1(2) of the Convention, the choice of court agreement is concluded between a policyholder and an insurer, both of whom are, at the time of the conclusion of the contract of insurance, domiciled or habitually resident in the same Contracting State, and that agreement has the effect of conferring jurisdiction on the courts of that State, even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State;
- (d) where the choice of court agreement relates to a contract of insurance which covers one or more of the following risks considered to be large risks:
 - (i) any loss or damage arising from perils which relate to their use for commercial purposes, of, or to:
 - (a) seagoing ships, installations situated offshore or on the high seas or river, canal and lake vessels;
 - (b) aircraft;
 - (c) railway rolling stock;
 - (ii) any loss of or damage to goods in transit or baggage other than passengers' baggage, irrespective of the form of transport;

- (iii) any liability, other than for bodily injury to passengers or loss of or damage to their baggage, arising out of the use or operation of:
 - (a) ships, installations or vessels as referred to in point (i)(a);
 - (b) aircraft, in so far as the law of the Contracting State in which such aircraft are registered does not prohibit choice of court agreements regarding the insurance of such risks;
 - (c) railway rolling stock;
- (iv) any liability, other than for bodily injury to passengers or loss of or damage to their baggage, for loss or damage caused by goods in transit or baggage as referred to in point (ii);
- (v) any financial loss connected with the use or operation of ships, installations, vessels, aircraft or railway rolling stock as referred to in point (i), in particular loss of freight or charter-hire;
- (vi) any risk or interest connected with any of the risks referred to in points (i) to (v);
- (vii) any credit risk or suretyship risk where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risk relates to such activity;

(viii) any other risks where the policy holder carries on a business of a size which exceeds the limits of at least two of the following criteria:

- (a) a balance-sheet total of EUR 6,2 million;
 - (b) a net turnover of EUR 12,8 million;
 - (c) an average number of 250 employees during the financial year.
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ANNEX II

Unilateral declaration by the European Union
at the time of the approval of the Hague Convention of 30 June 2005
on Choice of Court Agreements ("the Convention")

The European Union makes the following unilateral declaration:

"The European Union declares that it may, at a later stage in the light of the experience acquired in the application of the Convention, reassess the need to maintain its declaration under Article 21 of the Convention."
