



ASSEMBLEIA DA REPÚBLICA

EUROPEAN AFFAIRS COMMITTEE

WRITTEN OPINION

COM(2014) 46

Proposal for a DECISION OF THE COUNCIL regarding the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005, on the Choice of Court Agreements



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PART I – INTRODUCTORY NOTE

In accordance with the terms of Article 7 of Law No 43/2006 of August 2006, on monitoring, assessment and pronouncement by the Assembleia da República within the scope of the construction of the European Union, with the amendments introduced by Law No 21/2012 of 17 May, and with the procedures for the scrutiny of European draft acts approved on 8 January 2013, the European Affairs Committee received the Proposal for a DECISION OF THE COUNCIL regarding the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005, on the Choice of Court Agreements [[COM\(2014\) 46](#)]

In view of its subject, the draft act in question was referred to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, which analysed it and approved the Report annexed to this Written Opinion, of which it forms an integral part.

PART II - RECITALS

Whereas:

1. The European Union intends to create – as occurred previously with the European Community - a common judicial area based on the principle of mutual recognition of judicial decisions;
2. The Convention on Choice of Court Agreements (CCAs), concluded on 30 June 2005, under the Hague Conference, proposes to achieve, on a global scale, objectives similar to those identified, in the community sphere, by Article 25 of the Brussels I Regulation;
3. For the purpose, the Convention establishes uniform rules in matters of jurisdictional competence based on CCAs (agreements in which the parties establish that any litigation between them shall be decided by the courts of the designated State) and in matters of recognition and enforcement of the sentences, handed down by the courts selected, in the States that are parties to the Convention, promoting the strengthening of judicial cooperation and international trade, through greater predictability, certainty and legal certainty thus achieved;
4. The European Union signed the aforementioned Convention on 1 April 2009, according to the Council decision of 26 February 2009, taking into account the terms of the Treaty that established the European Community, namely Article 61(c), together with the first paragraph of Article 300(2);
5. The approval of the Convention shall be for the purpose of reducing legal uncertainty for European companies that operate outside the EU, thereby ensuring that the CCAs inserted into the contracts they sign are respected and that the sentences handed down by the courts



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selected in these agreements are recognised and executed in the other States that are parties to the Convention;

6. The EU, at the time of signing the Convention, excluded from its scope of application insurance contracts signed with consumers, for the purposes of protecting the weakest parties in these contracts, for whom access to the EU Courts was safeguarded (notwithstanding that large insurance contracts and commercial reinsurance could be covered by the Convention);

7. As a consequence of the impact assessment carried out in 2008 and subsequent considerations no other restrictions were raised in this phase, which were envisaged (copyrights, etc.) and which were and continue to be admissible in the light of the Convention;

8. Regulation (EU) No 1215/2012 already created, however, suitable conditions for ratification of the Convention, ensuring coherence between the rules of the Union on choice of court in civil and commercial matters, on the one hand, and the rules of the Convention, on the other;

9. By virtue of the competence of the Union on this matter, addressed below, by means of the declaration provided in Article 30 of the Convention, Member States (although they are not parties to it) are bound by the Convention by virtue of its approval by the Union;

10. It has been the constant understanding of the Court of Justice (with relevant expression in the Agreement of 31.03.71, Case 22/70) that, in cases such as this, we are facing an exclusive power of the Community/Union, and in a case such as this, that which is now expressed in Article 4(2)(j) ('The competences shared between the Union and the Member States apply to the area of freedom, security and justice') is not sufficient to change this understanding;

11. Indeed, external powers are at issue here, to be exercised by international negotiation, and it is certain that the aforementioned convention, as occurred with others in the past, will 'affect the uniform and consistent application of the Community rules as regards both the jurisdiction of courts and the recognition and enforcement of judgments and the proper functioning of the unified system established by those rules' (as stated in Opinion 1/03 of the Court of Justice, regarding the Lugano Convention);

12. For this reason (the exclusive nature of jurisdiction), the problem of subsidiarity was not raised as a principle, as it is also seen under the terms of the applicable Protocol annexed to the Treaty of Lisbon, that this type of act is not subject to this type of control;

13. Taking into account the analysis and conclusions of the Committee responsible for this matter, mentioned in the annexed report, the following conclusions are sustained:



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III –CONCLUSIONS

A –In terms of checking subsidiarity:

i) - In this case it is not appropriate to scrutinise compliance with the principle of subsidiarity, whether due to the nature of the power exercised by the Union (exclusive jurisdiction), or because the act in question is not included in the set of acts covered by the applicable Protocol.

B - In terms of political dialogue:

ii) - Taking into account the steps taken, in accordance with successive Treaties (Amsterdam, Nice and Lisbon), and the limitation of scope that was introduced, to include the principle of protecting the weaker party, a favourable opinion is hereby issued in approval of the Convention;

iii) - Bearing in mind the impact assessment, carried out in 2008, and the flexibility that the Convention maintains in relation to its scope, we consider it desirable that, following a minimum period of application of the Convention regulations that a new assessment be made, which considers the differential impacts on all of the rights that will come into effect in the EU, accessions meanwhile verified and restrictions introduced;

iv) - In cases such as this one, in which the exercise of an exclusive power of the Union - regardless of control by the national Parliaments - is the direct result of an international convention on the law of Member States, particularly in the area of freedom, security and justice, it is highly recommended - and arguably to be required in the future that there be a greater participation of national Parliaments in the later phases of the procedure.

São Bento Palace, 9 December 2014

Rapporteur - Alberto Costa

Committee Chairman - Paulo Mota Pinto



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PART IV – ANNEX

Report of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees.



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COMMITTEE ON CONSTITUTIONAL AFFAIRS, RIGHTS, FREEDOMS AND
GUARANTEES

REPORT

COM(2014) 46 final - PROPOSAL FOR A DECISION OF THE COUNCIL REGARDING THE APPROVAL, ON BEHALF OF THE EUROPEAN UNION, OF THE HAGUE CONVENTION OF 30 JUNE 2005, ON THE CHOICE OF COURT AGREEMENTS

I. Introductory note

The European Affairs Committee, in compliance with the terms of Article 7(2) of Law 43/2006 of 25 August, as amended by Law 21/2012 of 17 May, on *'Monitoring, assessment and pronouncement by the Assembleia da República within the scope of the construction of the European Union'*, referred COM(2014) 46 final to the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees for analysis and report.

Since this is a non-legislative draft act, it is not appropriate for the Committee to scrutinise compliance with the principle of subsidiarity.

II. Brief analysis

COM(2014) 46 final refers to the proposal for a Decision of the Council regarding the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005, on the Choice of Court Agreements.

Firstly, despite the selection of the term 'Choice' being the responsibility of the translation services of the European Commission, and that we are dealing with a Communications Committee, it is the responsibility of the Assembleia da República to be aware of this. It seems that instead of the word 'Choice', the term 'Select' should be used. Indeed, more than a choice of court, in this case the parties are faced with the selection of a court.

Through this draft act, the 'Committee proposes that the EU approve the Convention of 2005 on the Choice of Court Agreements'.

This Convention, signed on 30 June 2005, under the Hague Conference on International Law, is designed to promote the autonomy of the parties in international commercial transactions and to increase the predictability of legal solutions in these transactions.



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The European Union signed this Convention on 1 April 2009 based on the Council Decision 2009/397/EC, and this draft act aims to propose its approval by the EU.

According to the proposal, the 'approval of the Convention by the EU will reduce the legal uncertainty for European companies operating outside the EU, ensuring that the choice of court agreements in their contracts are respected and that the sentences handed down by the chosen courts in these agreements can be recognised and carried out in the other Party States in the Convention.'

But it notes that 'the approval of the Convention by the EU will complement achievement of the underlying objectives to the EU rules regarding the extension of competency, introducing a set of harmonised standards, at the EU level, applicable to the third party states that become Contracting Parties in the Convention.'

At EU level, the international competence of Union courts based on the choice of court agreements is regulated by the Brussels I Regulation¹. This does not, however, regulate signing within the Union of choice of court agreements in favour of the courts of third party States. This would be the case for the Convention on the Choice of Court Agreements approved by the Union. Therefore, the 'Conventions will confer to EU companies the legal security necessary so that their choice of court agreements in favour of a court located outside the EU will be respected in the EU, and that the agreement in favour of an EU court will be respected in third party States. It will also ensure that European companies can be assured that the decision handed down by the court of choice in the EU would be recognised and carried out in third party States that are Contracting Parties in the Convention and vice versa.'

It should be noted that the 'impact assessment of the Committee on the signing of the Convention by the EU (SEC/2008/2389 final) concluded that the approval of the Convention could lead to an increase in signing of choice of court agreements in international contracts in the context of companies, given the guarantee of greater legal security that they provide. In general, it could constitute a stimulus for international trade.'

When the European Union signed the Convention, it declared, under Article 30, that it has jurisdiction regarding all matters regulated by the Convention. Consequently, Member States shall be bound by the Convention based on its approval by the Union.

The text of the Convention is found in Annex I of the Proposed Decision.

¹ Council Regulation (EC) No 44/2001 regarding jurisdictional competence, the recognition and enforcement of judgements in civil and commercial matters - would be replaced, after 10/01/2015, by Regulation (EU) No 1215/2012, of the European Parliament and of the Council, regarding jurisdictional competence, by the recognition and enforcement of judgements in civil and commercial matters (reformulation). It should be noted that the Regulation (EU) No 1215/2012 prepared the approval of the Convention, ensuring coherence among the rules of the union on choice of court in civil and commercial matters, on the one hand, and the rules of the Convention, on the other.



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The Union shall, at the time of approval of the Convention, present the declaration provided in Article 21 with respect to insurance contracts.

The text of this declaration is contained in Annex II of the Proposed Decision and implies that the European Union shall not apply, except for certain exceptions, the Convention to insurance contracts.

According to the proposal the 'objective of the declaration is preserve the protective rules of competency provided in Section 3 of the Regulation (EC) No 44/2001 and that may be invoked by the policy holder, the insured and the beneficiary in insurance contracts.'

III – Conclusions

Mindful of the above, the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees declares:

- That this report on COM(2014) 42 final – *Proposal for a Decision of the Council regarding the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005, on the Choice of Court Agreements* – should be referred to the European Affairs Committee.

São Bento Palace, 13 October 2014

MP acting as Rapporteur - *Paulo Ribeiro*
Committee Chairman - *Fernando Negrão*