

**GROUPE EUROPEEN DE DROIT INTERNATIONAL PRIVE
EUROPEAN GROUP FOR PRIVATE INTERNATIONAL LAW**

**Observations on the possible accession of the European Union to the Hague Convention
of 2 July 2019 on the Recognition of Foreign Judgments**

*Text adopted on 9 December 2020
following the virtual meeting of 18-19 September 2020*

The European Group of Private International Law,
Taking cognizance of the public consultation by the European Commission of 22 June 2020 on the subject of International Enforcement of Courts Rulings and of a possible accession by the Union to the Hague Convention of 2 July 2019 on the recognition and enforcement of foreign judgments in civil and commercial matters (hereinafter, the “Judgments Convention”),
Recalling the Group’s 2010 proposal on amending the Regulation 44/2001 in order to apply it to external situations, and in particular to the recognition and enforcement of judgments rendered in States that are not a member of the European Union,¹
Believes that the following considerations should guide the European Union’s decision to accede to the Judgments Convention:

1. The Group welcomes the conclusion of the Judgments Convention as an ambitious contribution to international judicial co-operation. The Group believes that the effective recognition and enforcement of foreign judgments facilitates global trade and development on the basis of a rule-based multilateralism. Together with the *1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* and the *2005 Hague Convention on Choice of Court Agreements*, the Judgments Convention is a valuable step toward a comprehensive system of international dispute resolution based on multilateral agreements.
2. In the opinion of the Group, the accession to the Judgments Convention by the European Union will enhance the Convention’s chances of success in those foreign countries that are interested in promoting the recognition and enforcement of their judgments by all EU Member States. As a consequence, it may also facilitate the recognition of EU Member States’ judgments by third countries, particularly those that currently take a restrictive stance on recognition and enforcement of foreign judgments. This would help reduce the current imbalance in the relationship with some important commercial partners of the European Union.
3. In this respect, the Group points out that the Judgments Convention reduces the grounds for refusal of recognition to a minimum (Article 7). As to the list of acceptable recognition bases (Articles 5 and 6 of the Convention), these broadly reflect the approach to jurisdiction prevailing within the European Union and most of its Member States, so that judgments rendered in the Union would be entitled to recognition and enforcement in the other Contracting States of the Convention. While this factor militates in favor of accession to the new instrument, the Group also underlines that a number of judgments rendered in EU Member States would not be able to circulate under the Convention because: (a) important matters are excluded from the Convention’s material scope of (Article 2); and (b) the list of admissible recognition bases

¹ Consolidated version of a proposal to amend Regulation 44/2001 in order to apply it to external situations (Bergen 2008, Padua 2009, Copenhagen 2010), accessible on the website of the Group at the address <<https://www.gedip-egpil.eu/documents/gedip-documents-20vce.htm>>.

does not include certain jurisdictional grounds that are used in the European Union and several Member States, such as those based on the place of the damage, the working place of an employee, the domicile of a consumer, and some grounds of derived jurisdiction.

4. With respect to incoming judgments, the accession to the Judgments Convention would establish a common minimum standard among the EU Member States, which at present follow very different approaches with respect to the recognition and enforcement of third-country judgments. This will help prevent or reduce potential distortions within the internal market. However, no full uniformity will be ensured. Indeed, Article 15 will still allow the most liberal ones to maintain their current, more recognition-friendly solutions – which is to be welcomed in the interest of the global circulation of judgments.

5. The open character of the Judgments Convention – an instrument that can theoretically be ratified or accessed by every State – may raise some concern with respect to judgments rendered in countries where the rule of law and fundamental due process requirements are frequently disregarded. While a declaration under Article 29 of the Convention might provide a remedy in the most serious situations, the Group recognizes the difficulties inherent in the implementation of this provision. Because such a declaration might trigger severe political and diplomatic consequences in the relationship between the European Union and the third State concerned, it seems unrealistic to assume that a declaration would be resorted to in all situations in which it might be needed. In addition, the mechanism of Article 29 appears to be too rigid in the case of change of circumstances: while a previous declaration can be withdrawn when the political and institutional framework improves in the third country, no new declaration may be made when the situation worsens.

6. It is therefore crucial to make sure that the courts of the EU Member States will apply the public policy ground for refusal of recognition provided by Article 7(1)(c) of the Judgments Convention) whenever sufficient evidence is provided that the rule of law and fundamental due process principles are systematically disrespected in the country of origin of the foreign judgement. To that end, the European institutions might be well-advised to give guidance to the courts of the Member States, notably in a recital in the decision approving the accession to the Convention.

7. It is also important to ensure that the courts of the Member States interpret the concept of public policy as including the fundamental principles of EU law, the rights recognised by the Charter of Fundamental Rights, and the overriding mandatory provisions of EU law. This will ensure that the recognition and enforcement of a third-country judgment will not jeopardize crucial European principles and policies.

8. The Judgments Convention includes a number of legal concepts, the interpretation of which may give rise to discrepancies among the courts of the Contracting Parties. The European Union should encourage and support the efforts of the Hague Conference of Private International Law to promote the uniform application of the instrument through measures of post-convention assistance, such as the creation of an appropriate database and regular follow-up conferences.

9. In the opinion of the Group, the accession to the Judgments Convention should be an opportunity to restart the process of extending the rules of the Regulation 1215/2012 to third States, a process that had been only partially brought about by the 2012 recast. In line with its 2010 proposal, the Group calls for the inclusion of a set of uniform European rules on the recognition and enforcement in the Member States of third-country judgments. It also

recommends the replacement of current Article 6 of that Regulation by jurisdictional rules applicable to defendants domiciled in third countries (in line with the approach followed in all most recent EU regulations). Indeed, there is a discrepancy between the design of the jurisdictional filters in the Judgments Convention, which largely build on the existing rules of the Regulation 1215/2012, and the non-application of most of these rules to defendants domiciled in a third State. If the European Union wishes to ensure recognition and enforcement of judgments given by its courts under the Convention, it should ensure that its courts exercise jurisdiction regarding those defendants based on the rules of EU law.

10. The Group also believes that the accession to the Judgments Convention is an opportunity to consider the possible EU-wide effects of a decision of a Member State to recognize or not recognize a foreign judgment both under the Regulation 1215/2012 (or other EU regulations, or the Lugano Convention) and the Judgments Convention.