

## **Jürgen Basedow, Should the European Union accede to the 2019 Hague Convention?**

(Paper submitted to the 2020 GEDIP meeting)

1. At present, the recognition and enforcement of third-State judgments in the Member States of the EU is regulated in an inconsistent manner: the *Member States* can regulate the matter by their autonomous law, but not by international treaties, and the *Union* can conclude treaties, but has no homogeneous rules of its own which it could offer to the world.
2. The Union's accession to the 2019 Hague Judgments Convention (HJC) would be a first step towards a more consistent legal situation. It would be in line with general policy orientations of the EU: promotion of global trade; multilateralism; support of the Hague Conference.
3. The accession must be put into effect by a Council Decision to be taken, on a proposal by the Commission and after the consent of the European Parliament, by a qualified majority in the Council.
4. The autonomous rules of Member States on the recognition and enforcement of third-State judgments range from liberal rules that only examine the respect for procedural safeguards in the country of origin, through the requirement of reciprocity to the categorical refusal of recognition of third-State judgments in the absence of an international agreement. For Member States of the latter groups the accession to the HJC would imply a significant step of liberalisation which they may be reluctant to make, as it also includes the irreversible transfer of control to the EU. A qualified majority in the Council is not secured.
5. This situation is aggravated by the fact that all States, regardless of the quality and independence of their courts, are entitled to approve the HJC and thereby put contracting parties such as the Union under the obligation to recognise and enforce their judgments. Art. 29 HJC takes account of this and allows contracting parties to notify that they do not want to be bound to specific contracting states.
6. In the case of the EU, such notification would presuppose a Council Decision. The proposal can be submitted by the Commission; but in this case, the right of initiating the Decision should also be conferred on the Member States. Once the Union is a contracting party, the accession of an unwelcome third State has the effect of depriving the Member States of their ability to decide on the recognition of that State's judgments; the EU's accession entails a loss of control over the recognition of that third State's judgments for the Member States. They should have the right to initiate a Council Decision on a notification under Art. 29 HJC.
7. In addition, the Union should also lodge a Declaration under Art. 19 HJC, protecting its own financial interests and also those of the Member States.
8. It is unlikely that the maxim *exequatur sur exequatur ne vult* can be maintained *within* the Union with regards to decisions taken in a Member State under the HJC on the recognition and enforceability of third-State judgments. The maxim is not in line with the quality of the Union as a single contracting party to the Convention.
9. In the case of the Union's accession the jurisdiction of the Member States for proceedings concerning the recognition and enforcement of third-State judgments should be regulated at the level of the Union. It should exclusively attach to the judgment debtor's domicile; in the absence of such domicile, the location of the judgment debtor's assets are decisive.
10. The need for further rules concerning applications for non-recognition and the *enforcement procedure* is to be examined. Rules of the Brussels I Regulation may serve as a model.