



Council of the
European Union

Brussels, 16 July 2021
(OR. en)

Interinstitutional File:
2021/0208(NLE)

10851/21
ADD 4

JUSTCIV 118
IA 141

COVER NOTE

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.:	SWD(2021) 193 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT Accompanying the document 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 SWD(2021) 193 final.

Encl.: SWD(2021) 193 final



Brussels, 16.7.2021
SWD(2021) 193 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

Accompanying the document

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

{COM(2021) 388 final} - {SEC(2021) 279 final} - {SWD(2021) 192 final}

Executive Summary Sheet

Impact assessment on **the accession by the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the "Judgments Convention")**

A. Need for action

Why? What is the problem being addressed?

Currently, EU citizens and businesses seeking to have a judgment given in the EU recognised and enforced in a third 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 third 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 third-countries is uncertain, **the right of access to justice** of EU businesses and citizens is **hampered**.

What is this initiative expected to achieve?

The general objectives are to enhance **access to justice** for EU businesses and citizens through a system that facilitates the recognition and enforcement of foreign judgments everywhere in the world where the judgment debtor happens to have assets, thereby **promoting international trade and investment**. More specifically, the initiative aims at **increasing legal certainty and predictability** of international litigation, **reducing costs and length of proceedings** and allowing the recognition and enforcement of third-country judgments in the EU only where **fundamental principles of EU law are respected** and **EU internal *acquis*** on the same subject matter **is not affected**.

What is the value added of action at the EU level?

The initiative falls under EU's exclusive competence. This means that the accession to this Convention by individual Member States is not possible and the sought objectives can only be achieved by action taken at the EU level.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Due to EU's constant support and involvement in the negotiations that led up to the adoption of the Convention in 2019, as well as the preservation of EU's main interests in the process, the option of not acceding to the Convention was mainly taken into account as a benchmark in order to assess the several policy options considering accession.

These options looked at EU's accession to the Judgments Convention either without any declaration, or while entering a declaration under Article 18 of the Convention excluding its application to certain matters (consumer, employment or insurance matters, as well as commercial leases of immovable property), or judgments in civil or commercial matters involving States or State entities, under Article 19 of the Convention. Yet another option was considered in the form of accession making both declarations under Articles 18 and 19.

The preferred option is to accede to the 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. A declaration that would exclude the other considered matters is deemed to be unnecessary because the Convention does provide adequate protection for weaker parties, albeit in a different fashion than in the EU *acquis*, and, unlike the preferred option, broader declarations could impede the full achievement of the objectives of this initiative. While **the preferred option enhances access to justice and is set to promote international trade and investment**, it will equally **increase legal certainty and predictability in international court litigation, reduce costs and length of proceedings and is fully in line with the EU *acquis* on this matter**, namely the Brussels Ia Regulation (Regulation (EU) No 1215/2012). Pursuant to this Regulation, courts in the EU have exclusive jurisdiction to rule on disputes related to commercial tenancies of immovable property situated in the EU.

Who supports which option?

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

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The **direct benefits for EU citizens and businesses** when attempting to have an EU judgment recognised and enforced in the key trading partners analysed (Argentina, Australia, Brazil, Canada, China, South Korea, Japan, United States) are estimated to be **between EUR 1.1 and 2.6 Million** during the reference period (2022-2026). This has to do with a **projected decrease of 10%-20% of costs** related to the recognition and enforcement of EU judgments in third countries. In addition, the average **length of proceedings** is expected to **decrease by between three to six months** on average.

This option will have a positive impact on most national legal systems of the Member States, standing to **improve the current level of acceptance of third-country judgments in 22 Member States**. For the remaining four Member States the situation after accession will not be worse off than today, but there would be little or no improvement compared to the current situation. In addition, this option is **fully in line with the EU *acquis*** (Brussels Ia Regulation) and, as a result, has the highest level of coherence at this level.

What are the costs of the preferred option (if any, otherwise main ones)?

The **public authorities of the Member States** are expected to have **some one-off costs** related to the implementation of the Convention but such costs are expected to be negligible. The judiciary would probably experience a **slight increase in the number of cases** in the reference period, but this increase will be **offset** by the expected **decrease in the length of proceedings**. There are **no costs foreseen for businesses or citizens**.

How will businesses, SMEs and micro-enterprises be affected?

EU businesses will benefit from the increase in legal certainty and predictability in international dealings. These benefits are expected to be **more prominent for SMEs** than for large businesses because the latter tend to prefer arbitration rather than court litigation when trying to resolve an international legal dispute. To the extent that EU businesses are engaging in court litigation, they will benefit from **improved access to justice** because of the higher likelihood of recognition and enforcement of European judgments in third countries, but also from **lower costs (between 10% and 20%) and shorter length of proceedings (between 3 to 6 months)**. Because of the reciprocal effect of the proposed declaration to be made by the EU, these benefits will not extend to EU businesses seeking recognition and enforcement of an European judgment that ruled on a commercial lease of an immovable property situated in the State where such enforcement is sought. However, the estimated low number of such judgments means that these situations will not affect the overall positive impacts on businesses.

Will there be significant impacts on national budgets and administrations?

The initiative is not expected to have significant impacts on national budgets and administrations. It is expected

that the current resources will be sufficient to deal with the implementation of the Convention.

Will there be other significant impacts?

By 2026 trade in goods and services as well as foreign direct investment with the selected third countries is expected to increase with figures of between 0.3% and 1.6%. In addition, the Convention may facilitate the recognition and enforcement of judgments where it is currently exceedingly difficult to have EU judgments enforced for the benefit of EU creditors, with the indirect effect of further promoting trade with such countries.

These indirect impacts could ultimately translate into improved economic growth and job creation.

D. Follow up

When will the policy be reviewed?

Three to five years after the EU's accession.