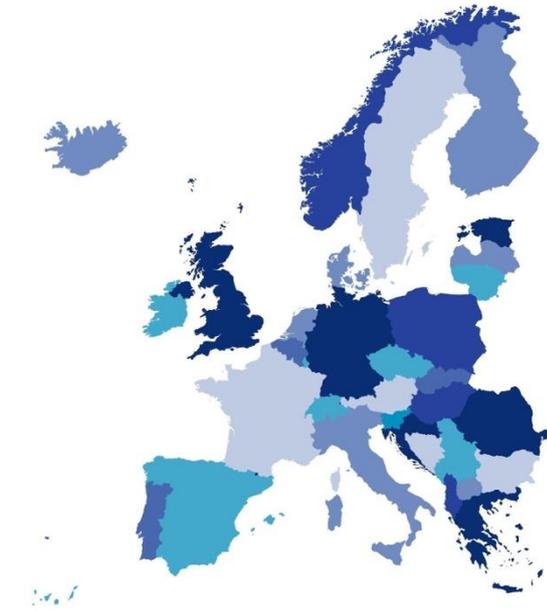


EUROPE

—Editors: Mukarrum Ahmed, Charles Mak, Christos Liakis, Minerva Zang



International Conventions

European Union: Council Decision concerning the accession of the European Union to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019

The Hague Judgments Convention 2019 will come into force on September 1, 2023 between EU Member States (except Denmark) and Ukraine. Under the terms of the Convention, it will apply to the enforcement of judgments in proceedings commenced after that date. In essence, the Hague Judgments Convention 2019 complements the Hague Choice of Court Convention 2005 by allowing enforcement of judgments in a broader range of cases via the use of jurisdictional filters. It applies to judgments where the court assumed jurisdiction under a non-exclusive choice of court agreement, including a unilateral or asymmetric choice of court agreement. Its material scope is also wider than the Hague Convention 2005, applying, for instance, to consumer and employment contracts. The European Commission has adopted the view that the Hague Conventions 2005 and 2019, and not the Lugano Convention 2007, are the way forward for civil and commercial judicial cooperation between the EU and the UK.

The Council Decision can be found here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022D1206>

Ukraine: Ratified the Choice of Court Convention

On April 28, 2023, Ukraine deposited its instrument of ratification of the Convention of June 30, 2005 on Choice of Court Agreements (2005 Choice of Court Convention).

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=912>.

Malta: Ratified the Convention of January 13, 2000 on the International Protection of Adults (2000 Protection of Adults Convention)

On March 8, 2023, H.E. Mr Mark Pace, Ambassador of the Republic of Malta to the Kingdom of the Netherlands, deposited Malta's instrument of ratification of the 2000 Protection of Adults Convention. The Convention will enter into force for Malta on July 1, 2023.

Montenegro: Signed the 2019 Judgments Convention

On April 21, 2023, H.E. Mr Marko Kovač, Minister of Justice, signed, on behalf of Montenegro, the Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention). The 2019 Judgments Convention will enter into force in September 2023, and for Montenegro only after the deposit of instrument of ratification (pursuant to Art. 28(2)).

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=911>.

Georgia: Signed the Child Support Convention and its Protocol

On May 25, 2023, H.E. Mr Rati Bregadze, Minister of Justice, signed, on behalf of Georgia, the Convention of November 23, 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Child Support Convention) and the Protocol of November 23, 2007 on the Law Applicable to Maintenance Obligations (2007 Maintenance Obligations Protocol). The 2007 Child Support Convention and the 2007 Maintenance Obligations Protocol will enter into force for Georgia further to the deposit of instruments of ratification.

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=918>.

North Macedonia: Signed the 2019 Judgments Convention

On May 16, 2023, H.E. Mr Krenar Lloga, Minister of Justice for North Macedonia, signed, on behalf of the Republic of North Macedonia, the Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019 Judgments Convention). The 2019 Judgments Convention will enter into force in September 2023, and for North Macedonia only after the deposit of an instrument of ratification (pursuant to Art. 28(2) of the Convention).

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=915>.

The United Kingdom: Agreement on the Privileges and Immunities of INTERPOL on the Territory of the United Kingdom of Great Britain and Northern Ireland

On February 2, 2023, the United Kingdom and the International Criminal Police Organization - INTERPOL concluded an agreement on the privileges and immunities of INTERPOL on the territory of the United Kingdom of Great Britain and Northern Ireland

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1145313/MS_3.2023_UK_Interpol_Agreement_Privileges_Immunities.pdf.

UK-Georgia: Agreement on the Readmission of Persons Residing without Authorisation

This agreement was presented to the Parliament in February 2023. It provides a framework for Georgia and the United Kingdom to manage the readmission of persons residing without authorization in either country. The agreement is not yet in force. Both the United Kingdom and Georgia must complete their own domestic processes for the agreement to come into effect. After approval by both legislatures, the terms of the agreement will be actionable

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1135115/CS_Georgia_1.2023_Agreement_Readmission_Persons_Residing_Without_Authority.pdf.

For the official announcement, please visit <https://www.hcch.net/en/news-archive/details/?varevent=904>.

UK-Japan: Agreement on the Facilitation of Reciprocal Access and Cooperation

The United Kingdom and Japan have concluded an agreement concerning the facilitation of reciprocal access and cooperation between the Self-Defense Forces of Japan and the Armed Forces of the United Kingdom. This agreement is aimed at fostering enhanced military cooperation between the two nations. The agreement has been signed and both countries are making efforts to bring the agreement into force as soon as practicable. The status of domestic ratification in both countries is currently unknown.

The Agreement can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1137171/CS_Japan_1.2023_Agreement_Facilitation_SelfDefense_Armed_Forces.pdf.

European Union

EU: Enhancing the protection of the fundamental rights of individuals

In its Opinion released on October 13, 2022, the European Data Protection Supervisor ('EDPS') supported the commencement of negotiations for a Council of Europe convention on artificial intelligence, human rights, democracy and the rule of law ('Convention'). The EDPS perceived the Convention as an essential opportunity to supplement the European Commission's proposed Artificial Intelligence Act by improving the protection of individuals' basic rights, such as the right to privacy and the protection of personal data.

The EDPS can be found at: https://edps.europa.eu/press-publications/press-news/press-releases/2022/ai-convention-stronger-protection-fundamental-rights-necessary_en.

EU: European Commission proposed a recognition of parenthood between Member States which is currently being discussed in the Council.

In December 2022, the EU Commission introduced a Regulation proposal aimed at standardizing the rules of private international law concerning parenthood across the EU. Aligned with the EU Strategy on the Rights of the Child, the proposal prioritizes the best interests and rights of the child. The proposal presents a groundbreaking opportunity for the EU to adopt a private international law instrument that encompasses the creation of family status, rather than solely addressing its effects. Its objective is to offer legal clarity for diverse family structures facing cross-border situations within the EU, whether due to relocation, travel, etc. A key aspect of the proposal is the recognition of parenthood established in one EU Member State across all other Member States, without the need for any special procedures. Full text of the proposal can be found here:

https://commission.europa.eu/document/928ae98d-d85f-4c3d-ac50-ba13ed981897_en.

European Parliament Study on Ensuring Efficient Cooperation with the UK in civil law matters: Situation after Brexit and Options for Future Cooperation

Released in March 2023, this study is commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee. It analyzes the implications of Brexit in relation to the profile of judicial cooperation in civil matters.

The study can be found here: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743340/IPOL_STU\(2023\)743340_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/743340/IPOL_STU(2023)743340_EN.pdf).

EU: Parliament adopts new law to fight global deforestation

On April 19, 2023, in order to combat climate change and the decline of biodiversity, the EU released a new legislation that mandates companies to verify that the products they sell in the EU have not contributed to deforestation and forest degradation such as cattle, cocoa, coffee, and charcoal. Additionally, companies will also be obligated to ensure that these products adhere to legislation of the country of production such as human rights and the rights of affected indigenous people.

The adopted text can be found here: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0109_EN.html.

The list of deforestation-free products can be found here: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA\(2023\)747086](https://www.europarl.europa.eu/thinktank/en/document/EPRS_ATA(2023)747086).

EU: The Council of the EU approved a compromise version of the proposed EU Artificial Intelligence (AI) Act

On May 11, 2023, EU Internal Market Committee and Civil Liberties Committee approved a preliminary proposal for negotiations regarding the establishment of regulations for AI. It is a significant regulatory initiative, marking the first major attempt by a regulator to enact a law specifically addressing AI. It received 84 votes in favor, 7 votes against, and 12 abstentions. Members of the European Parliament seek to guarantee that AI systems are governed by individuals, adhere to safety measures, exhibit transparency, and environmental sustainability. They revised the list of regulations to encompass prohibitions on invasive and discriminatory applications of AI systems.

Full amendment can be found here:

<https://www.europarl.europa.eu/resources/library/media/20230516RES90302/20230516RES90302.pdf>.

The updates of the act can be found here

<https://www.europarl.europa.eu/news/en/press-room/20230505IPR84904/ai-act-a-step-closer-to-the-first-rules-on-artificial-intelligence#:~:text=AI%20systems%20with%20an%20unacceptable,behaviour%2C%20socio%2Deconomic%20status%2C>.

European Union Case Law

Case C-590/21 Charles Taylor Adjusting (Opinion of Advocate General M. Jean Richard de la Tour)

This is a reference for a CJEU preliminary ruling from the Areios Pagos (Supreme Court of Greece) on the issue of the compatibility of the right to damages for breach of settlement and exclusive choice of court agreements with EU public policy in the recognition and enforcement of The Alexandros T litigation. Advocate General Richard de la Tour's opinion in Charles Taylor Adjusting confirms the characterization of an English judgment awarding damages for breach of settlement and exclusive choice of court agreements as a 'quasi anti-procedural injunction' ("quasi" injonctions anti-procédure en français) and therefore contrary to public policy.

The Opinion in French can be found here: <https://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=CELEX:62021CC0590>.

Case C-700/20 London Steam-Ship Owners' Mutual Insurance Association Limited v Kingdom of Spain EU:C:2022:488 (Grand Chamber)

This is a reference for a CJEU preliminary ruling from the Queen's Bench Division (Commercial Court) of the English High Court, concerning the Brussels I Regulation (EC) No 44/2001. The CJEU decided that Article 34(3) of the Brussels I Regulation must be interpreted as meaning that a judgment entered by a court of a Member State in terms of an arbitral award does not constitute a "judgment", within the meaning of that provision, where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of that Member State without infringing the provisions and the fundamental objectives of that Regulation, in particular as regards the relative effect of an arbitration agreement included in the insurance contract in question and the rules on *lis pendens* contained in Article 27 of that Regulation, and that, in that situation, the judgment in question cannot prevent, in that Member State, the recognition of a judgment given by a court in another Member State. Article 34(1) of the Brussels I Regulation must be interpreted as meaning that, in the event that Article 34(3) of that Regulation does not apply to a judgment entered in terms of an arbitral award, the recognition or enforcement of a judgment from another Member State cannot be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in terms of an arbitral award.

It is significant to observe that the ruling applies only in the context of domestic awards and cannot affect the application of the New York Convention 1958. Notwithstanding, the decision is likely to have some implications for the interface between litigation and arbitration within the EU. Although the decision was rendered under the Brussels I Regulation, the CJEU's reasoning remains relevant to the Brussels Ia Regulation. In terms of practical ramifications, it is clear that the approach adopted by the CJEU ensures that the avoidance of the specter of irreconcilable judgments (and parallel proceedings) underpinning the Brussels regime encroaches upon arbitration proceedings followed by a judgment rendered in terms of the arbitral award. It does so by relegating the *res judicata* effect acquired by the judgment entered in terms of an arbitral award. The CJEU's approach suggests that Member State court judgments should trump judgments merely recognizing an arbitral award at least in cases where to do otherwise would involve the right to an effective 'remedy' being denied to an aggrieved party. This will clearly make it more difficult to resist the recognition of Member State court decisions which are irreconcilable and inconsistent with decisions issued in parallel arbitration proceedings.

The judgment can be found here: <https://curia.europa.eu/juris/document/document.jsf?jsessionid=133608E0BFFC14B4B7C66BB82A27DD90?text=&docid=261144&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21198252>.

National Case Law

United Kingdom: The resurgence of Anti-Suit Injunctions in relation to proceedings before EU Member State courts in QBE Europe SA/NV and Anor v. Generali España de Seguros y Reaseguro [2022] EWHC 2062 (Comm) and Ebury Partners Belgium SA/NV v Technical Touch BV & Anor [2022] EWHC 2927 (Comm).

In *QBE Europe SA/NV and Anor v. Generali España de Seguros y Reaseguro*, an anti-suit injunction was granted to enforce an English arbitration agreement where contrary court proceedings were commenced in Spain. The central issue in the case was the nature of the proceedings. It was the defendant's position that its cause of action was an independent legal remedy under Spanish law. Hence, it was not subject to any dispute resolution obligations that might be found in the insurance policy. The English court rejected that argument, finding that the letter and purpose of the Spanish statute was not to create a new and independent legal relationship but merely to enable the victim to enforce directly against the insurer the same obligations as those that could have been enforced by the insured. The exercise of that right came within the scope of the obligation to arbitrate in England. The English court also rejected considerations of comity, describing this as 'a factor of little or no weight'. Regardless of the public policy considerations underpinning the Spanish statute, there was an obvious imperative in upholding the contractual obligation to arbitrate. The judge cited the decision of Longmore LJ in *The Yusuf Cepnioglu* [2016] EWCA Civ 386 that the 'invocation of comity in cases of this kind is not particularly apposite because it is never clear which country should give way to which'. Following the UK's withdrawal from the EU, English courts will in the interests of upholding an English arbitration or choice of court agreement be unconstrained by the principle of mutual trust that underpins the Brussels-Lugano regime.

The judgment can be found here: <https://www.bailii.org/ew/cases/EWHC/Comm/2022/2062.html>.

Ebury Partners Belgium SA/NV v Technical Touch BV & Anor confirms that English courts can now grant anti-suit injunctions to restrain proceedings in EU Member State courts brought in breach of an English exclusive choice of court agreement. The case concerned an agreement between two Belgian entities for the provision of foreign exchange currency services. The defendants had ticked the box on the claimant's online application form to agree to the claimant's terms and conditions including an English exclusive choice of court agreement and an English choice of law agreement. When a dispute arose over a failure to make payment, the defendants commenced proceedings in the Belgian courts in breach of the exclusive choice of court agreement, seeking a declaration of non-liability. The claimant brought proceedings in the English court and applied for an anti-suit injunction against the defendants to restrain the Belgian proceedings. The judge granted the anti-suit injunction. The decision contains useful guidance on some of the principles relevant to whether the court will exercise its discretion to grant such relief. An applicant must establish with a 'high degree of probability' that there is a choice of court agreement which governs the dispute in question. The court will ordinarily exercise its discretion to restrain proceedings commenced in breach of a choice of court agreement unless the defendant can show strong reasons to refuse the relief, and the burden is on the defendant to show this. The defendants could not show strong reasons in this case. The judge also dealt with the defendants' argument that an anti-suit injunction would not be recognized by the Belgian court and therefore might not be effective. He observed that it is not the habit of the English court in considering whether it will make an order to contemplate the possibility that it will not be obeyed.

The judgment can be found here: <https://www.bailii.org/ew/cases/EWHC/Comm/2022/2927.html>.

France: The Cour de Cassation refers issues of the validity of asymmetric choice of court agreements to CJEU in Cour de cassation, civile, Chambre civile 1, 13 avril 2023, 22-12.965, Publié au bulletin.

On April 13, 2023, the French Cour de Cassation referred the following questions to the CJEU:

- i. Is the validity of a unilateral choice of court agreement governed by EU law or national law? This question arises from the phrasing of Article 25 of the Brussels Ia Regulation, which states that the substantive validity of a choice of court agreement should be governed by the law of the chosen Member State. The CJEU will have to interpret the ambit of this provision. It is accepted that grounds such as a defect in consent relate to substantive validity, but the issue is whether it should be given a wider scope, to include the asymmetrical consequences of such agreements.
- ii. If the CJEU decides that EU law applies, does EU law prohibit such agreements? This second question will require the court to engage with the French courts' jurisprudence emanating from the *Banque de Rothschild* decision (Cass., civ. 1^{ère}, September 26, 2012, No. 11-26.022). In particular, it is likely to consider whether there is a requirement that choice of court agreements identify the designated courts by reference to objective factors. It may also address the issue of whether an asymmetry between the contracting parties should limit the use of unilateral choice of court agreements, outside the particular context of consumer, employment and insurance contracts.
- iii. If the CJEU decides that national law applies, which state's law should be applied when the choice of court agreement indicates multiple chosen courts, or exclusively designates one court whilst allowing the counterparty to commence litigation in any other court of competent jurisdiction?

The reference in French can be found here: https://www.legifrance.gouv.fr/juri/id/JURITEXT000047454833?fonds=JURI&page=1&pageSize=10&query=société+agora&searchField=ALL&searchType=ALL&tab_selection=all&typePagination=D_EFAULT.

Association and Events

9th Journal of Private International Law Conference 2023

The Journal of Private International Law Conference will be held at the Singapore Management University from August 3 to 5, 2023. Further information on the conference can be found here: <https://site.smu.edu.sg/9th-journal-private-international-law-conference-2023#home>.

The Hague Academy of International Law – Summer Courses

The Hague Academy of International Law's Summer Courses will be held on-site from July 10, 2023 to August 18, 2023. The Summer Courses consist of two three-week courses, one on Public International Law and another on Private International Law. Further information on The Hague Academy is found here: <https://www.hagueacademy.nl/programmes/the-summer-courses/>.

2023 ESIL Annual Conference on “Is International Law Fair?”

The 18th Annual Conference of the European Society of International Law will take place in Aix-en-Provence in France from August 31 to September 2, 2023. The main conference will be preceded by various workshops organized by the Society's Interest Groups on August 30 - 31, 2023. The general theme of the conference is 'Is International Law Fair?'.

Further information on the conference is found here: <https://esil-sedi.eu/2023-esil-annual-conference-on-is-international-law-fair-aix-en-provence-31-august-2-september-2023/>.

Recent Scholarly Works

Ulrich Magnus and Peter Mankowski (eds.), Brussels Ibis Regulation, <https://www.otto-schmidt.de/brussels-ibis-regulation-commentary-9783504080174>.