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THE QUESTION OF AN APPROPRIATE METHOD: INCORPORATION OF THE COMMUNITY INSTRUMENT, INVITATION TO JOIN THE LUGANO CONVENTION OR A NEW CONVENTION?

Abstract: In the period preceding the expected accession to the European Union, the candidate and pre-candidate countries are rightfully concerned with fulfilling all the requirements set before them by the Union. Preparation for joining the European Judicial Area seems to be somewhat specific due to the direct effect of the majority of legal instruments in question. Since the transposition of these instruments is unsatisfactory preparatory method, the option of acceding to the Lugano Convention might be a useful alternative, particularly for those countries which are not scheduled for accession in the relatively near future. Regardless of the model pursued by a certain candidate or pre-candidate country, one thing should be common to them all. Developing, organising and executing the scheme for efficient and systematic education of the stakeholders is perhaps the most fundamental factor for successful preparation to operate within the European Judicial Area.

Key words: *European Judicial Area, candidate and pre-candidate countries, the Lugano Convention, the Brussels I Regulation*

This paper treats an important topic for the countries which aspire in becoming the Member States of the European Union, focusing in particular to the countries of the Central European Free trade Association (hereinafter: the CEFTA). One of the key questions that arise within the process of complying with the requirements for accession to the European Union is the method of preparing for entering the European Judicial Area.

I. BASIC NOTIONS AND FOUNDATIONS IN THE EC TREATY

Under the Treaty establishing the European Community (hereinafter: the EC Treaty) prior to the amendments pursuant to the Treaty of Lisbon,¹ an area of freedom, security and justice was regulated under the Title IV of the EC Treaty titled “Visas, asylum, immigration and other policies related to free movement of persons”.² It was also referred to in the Preamble of the Treaty on European Union.³ This multifarious concept was introduced in the European law with the amendments of the founding treaties in 1986,⁴ and represents the origin to the concept of the European Judicial Area through which the judicial cooperation in civil matters has been strongly linked to the ideal of free movement of natural persons on the European Community territory.⁵ This link was established by the Treaty of Amsterdam,⁶ the Treaty of particular significance for the private international law because of the famous communitarization in this field of law. As a result of this development, the number of instruments belonging to the European private international law has been rapidly growing in the past decade.

In the Treaty of Lisbon, a reference to the area of freedom, security and justice as an area of shared competences between the European Union and its Member States is made in Article 2C. More importantly, the entire Title IV has been renamed into the “Area of Freedom, Security and Justice” with five chapters, the third one concerning the judicial cooperation in civil matters. The Treaty of Lisbon pronounces that the Union shall consist of an area of freedom,

¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C306, 17.12.2007, p. 1.

² OJ C321E, 29.12.2006, p. 37, accessible at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf>> (last visited on 30 November 2009).

³ OJ C321E, 29.12.2006, p. 5. The “area of freedom” is usually understood as cooperation aimed at neutralising negative effects of the free movement of persons which result from abolishment of the checks when moving from one Member State to another. The “area of security” basically means cooperation intending to combat negative effects of the internal market which result in organised crime, terrorism and drug-related crimes. The “area of justice” denotes judicial cooperation in civil matters established with the purpose of making life easier for European citizens who find themselves in the cross-border situations, procedures or proceedings. See in details at <<http://www.diplomatie.be/en/policy/policynotedetail.asp?TEXTID=2019>> (last visited on 30 November 2009).

⁴ The Single European Act, OJ L169 29.6.1987, p. 1.

⁵ See W. MENG, Key Elements of the European Judicial Area, in: V. TOMLJENIĆ/E. ČULINOVIĆ HERC/V. BUTORAC MALNAR (eds.), *Republika Hrvatska na putu prema Evropskom pravosuđnom prostoru: Rješavanje trgovačkih i potrošačkih sporova*, Pravni fakultet u Rijeci, Rijeka, 2009, pp. 29–30.

⁶ Treaty of Amsterdam amending the Treaty on European Union, the treaties establishing the European communities and related acts, OJ C340, 10.11.1997, p.1.

security and justice with respect to fundamental rights and the different legal systems and traditions of the EU Member States. It provides that the Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.⁷ The judicial cooperation in civil matters having cross-border implications is understood to comprise adoption of measures for the approximation of the Member States’ laws and regulations, in principle under the ordinary legislative procedure. These measures are aimed at insuring, *inter alia*, mutual recognition and enforcement between the EU Member States of judgements and decisions in extrajudicial cases, as well as compatibility of rules applicable in the Member States concerning conflicts of laws and of jurisdiction. It seems important to emphasise that the Treaty of Lisbon provides that such measures shall be adopted, “particularly when necessary for the proper functioning of the internal market”.⁸ As a consequence of such less restrictively prescribed conditions for the European Union to take a legislative action, it is to be expected that the trend of progressive expanding the scope and volume of the instruments regulating the field of European private international law will continue in the future as well.

II. THE THREE OPTIONS

The discussion in relation to the appropriate method of harmonisation of national laws with the European law in this paper is set within the framework of the European Judicial Area, and more precisely, the jurisdiction and recognition and enforcement of judicial decisions in civil and commercial matters. The options examined here include the incorporation of the European Community instrument addressing these issues (option A), joining the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (option B) or concluding a new convention (option C).

1. Incorporation of the Community Instrument – option A

Among the options considered in this paper, the amendment of national law by incorporating the provisions contained in the respective Community instruments seems rather natural given the fact that a crucial step on the way to the European Union membership is the process of legal harmonisation. In a view of the limited scope of the paper, the Council Regulation No 44/2001 dated 22 December 2000 on jurisdiction and the recognition and enforcement of

⁷ Article 61(4) of EC Treaty as amended by the Treaty of Lisbon.

⁸ Article 65(2) of the EC Treaty as amended by the Treaty of Lisbon.

judgments in civil and commercial matters (hereinafter: Brussels I Regulation),⁹ is the Community instrument this discussion refers to. Nevertheless, certain conclusions may be pertinent to other instruments in the field as well.¹⁰

The Brussels I Regulation is the instrument with the longest history in the development of the European judicial area. Its predecessor was the Convention on jurisdiction and recognition and enforcement of judgements in civil and commercial matters of 27 September 1968, known as the Brussels Convention.¹¹ Upon the entry into force of the Treaty of Amsterdam, the Brussels I Regulation was the first instrument communitarising the judicial cooperation in civil matters. The Brussels I Regulation as such is binding in its entirety and directly applicable, without the need for transposition into the national legislation, and is subject to the interpretative assistance of the European Court of Justice. The Brussels I Regulation superseded the Brussels Convention and is currently in force in all EU Member States.¹²

The Brussels I Regulation is to be perceived as one of the measures within the field of judicial cooperation in civil matters which are necessary for the efficient operation of the internal market. The essential goal of the Brussels I Regulation is thus to neutralise the differences between national rules governing jurisdiction and recognition of judgments which hinder the sound operation of the internal market. This is done by unifying the rules of conflict of jurisdiction in civil and commercial matters and simplifying the formalities with a view to rapid and simple recognition and enforcement of judgments from the EU Member States bound by this Regulation. As B. Ancel puts it, the Brussels I Regulation creates “a single or common judicial system within which even the executory power of decisions will, in principle, circulate freely.”¹³ The Regulation is

⁹ OJ L12 16.1.2001, p. 1, L236 23.9.2003, p. 1, L363 20.12.2006, p. 1 and L304 14.11.2008, p. 1.

¹⁰ For instance, the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ L338, 23.12.2003, p. 1, and the Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L7, 10.1.2009, p. 1. There is also the Proposal for a Regulation of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession {SEC(2009) 410} {SEC(2009)411}.

¹¹ OJ L299, 31.12.1972, p. 32.

¹² On 19 October 2005 two parallel agreements were concluded between the European Community and Denmark to extend to the latter the provisions of the Brussels I Regulation and the Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, OJ L160, 30.6.2000, p. 37. They entered into force on 1 July 2007.

¹³ B. ANCEL, Brussels I Regulation: Comment, *Yearbook of Private International Law*, Vol. 3, 2001, p. 104.

based on the principle of mutual recognition,¹⁴ confirmed by the mention of mutual trust in the Recitals 15 and 16 of the Regulation Preamble.¹⁵ This principle is inherited from the Brussels Convention and further strengthened in the Brussels I Regulation; it is discoverable in several provisions of the Regulation. One of such provisions, contained in Article 35(3), essentially prevents the court asked to grant recognition of a judgement rendered by a court in another EU Member State to examine the competence of that foreign court of origin. Pursuant to the provision in Article 33(1) of the Brussels I Regulation, the court decision rendered in one EU Member State is recognised in another EU Member State without the need for any special procedure. Moreover, the provisions of Article 27 of the Brussels I Regulation lay down that in case of *lis pendens* before the courts of two EU Member States, the one that was later seised has to respect the decision of the first seised court on establishing its own jurisdiction. All this blindfold reliance is achievable because there is basically a trust in the administration of justice among the courts of the EU Member States. Narrowing the scope of the Member States' national sovereignties in this field was the price that had to be paid in order for this trust to be put into effect.

Currently, the Brussels I Regulation is undergoing its first revision envisaged in its Article 73. Prior to the opening of the revision procedure, two studies commissioned by the European Commission were submitted on the application of the Brussels I Regulation rules by national courts: the Hess/Pfeiffer/Schlosser Report on Application of the Brussels I in the Member States,¹⁶ and Nuyts Report Study on Residual Jurisdiction.¹⁷ Upon their receipt, the Commission produced its own official Report to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.¹⁸ These reports have pinpointed the

¹⁴ This principle is contained in Article 65 of the EC Treaty as amended by the Treaty of Lisbon, which provides that “judicial cooperation in civil matters having cross-border implications [is] based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases”.

¹⁵ Generally on the principle of mutual recognition in European law and European private international law see e.g., M. FALLON/J. MEEUSEN, *Private International Law in the European Union and the Exception of Mutual Recognition*, *Yearbook of Private International Law*, Vol. 4, 2002, pp. 37-66; GÚZMAN ZAPATER, Mónica, El principio del reconocimiento mutuo: un nuevo modelo para el Derecho Internacional Privado Comunitario?, *Revista de Derecho Comunitario Europeo*, No. 3, 1998, pp. 137-170; F. PADOA SCHIOPPA (ed.), *The Principle of Mutual Recognition in the European Integration Process*, Palgrave Macmillan, Basingstoke, 2005.

¹⁶ Study JLS/C4/2005/03, Final version September 2007, <http://ec.europa.eu/civiljustice/news/whatsnew_en.htm> (last visited on 9 September 2009).

¹⁷ Study JSL/C4/2005/07-30, Final Version September 2007, <http://ec.europa.eu/civiljustice/news/whatsnew_en.htm> (last visited on 9 September 2009).

¹⁸ Brussels, 21.4.2009, COM(2009) 174 final.

most problematic provisions in the Regulation where the judicial practice leads to undesirable results and proposed possible amendments to the Regulation which are expected to take place in 2010.

2. The Accession to the Lugano Convention – option B

The Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (hereinafter: the Lugano Convention) dates back to 16 September 1988.¹⁹ Although it was negotiated on the basis of the Brussels Convention as interpreted by the European Court of Justice at the time, a decade later it became apparent that amendments are necessary. Being the parallel to the Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 27 September 1968 (hereinafter: the Brussels Convention), it was only natural to carry out the work on the new Lugano Convention alongside the revision of the Brussels Convention. The latter Convention had to be amended primarily because of the European Court of Justice interpretations. In 1999 the working group of both organisations, the European Union and the European Free Trade Association (hereinafter: the EFTA), completed a draft of the Lugano and Brussels Conventions. However, the revision of the Brussels Convention was not pursued any further than that since, already in May 1999, the Treaty of Amsterdam came into force enabling adoption of the Community instrument in the field. On the other hand, the signing of the revised Lugano Convention was postponed due to certain still unresolved issues, including the exclusive or shared competence of the EC for concluding the revised Convention,²⁰ the special status of Denmark,²¹ and the transitional provisions in the new Convention. The new Lugano Convention was finally signed on 30 October 2007 among all parties except Denmark which signed it on 5 December 2007.

¹⁹ The original Lugano Convention together with its Protocols is available at <http://curia.europa.eu/common/reccdoc/convention/en/c-textes/_lug-textes.htm> (last visited on 7 December 2009).

²⁰ Opinion 1/03 of 7 February 2006 (Competence of the Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) relating to the conclusion of the new Lugano Convention. The Court of Justice of the European Communities confirmed that the Community has acquired exclusive competence to conclude an international agreement like the Lugano Convention with the third countries on matters affecting the rules laid down in the Brussels I Regulation. Consequently, there were five contracting parties to the Lugano Convention (European Community, Denmark, Iceland, Norway and Switzerland) while the EU Member States enjoy observer status in the negotiations.

²¹ See the Protocol on the Position of Denmark, OJ C321E, 29.12.2006, p. 201.

The revised Lugano Convention shall enter into force on the first day of the sixth month following the date on which the European community and one EFTA Member State deposit their ratification instruments. In fact, the Convention will enter into force between the European Community and Norway as of 1 January 2010 due to the fact that it was first ratified by the European Community on 18 May 2009, followed by Denmark on 24 September 2009, and Norway on 1 July 2009.²² As of that date the new Lugano Convention replaces the 1988 Lugano Convention between the respective states. For the reason that the former Lugano Convention is soon going to be replaced by the revised one and because of the fact that the revised Lugano Convention contains provisions which have been aligned with the Community instrument and the European Court of Justice interpretations, this paper does not deal with the accession to the former Lugano Convention, but only with the accession to the revised one.

The revised Lugano Convention has abandoned a relatively complicated “sponsorship” system of accession of the new States which was envisaged under the former Convention due to its ineffectiveness, and replaced it with the system “in which a positive declaration of acceptance of an application is given after proper examination of the judicial and procedural system of the applicant State”.²³ The issue of accession of the States non-signatories to the revised Lugano Convention is regulated under Articles 70-73 thereof. While, according to Article 70 of the Lugano Convention, the accession procedure is always commenced by addressing the application for accession to the Depositary, the steps that follow differ depending on the category to which the applicant State belongs to. There are three categories:

- the States which, after the opening of this Convention for signature, become Members of the EFTA,
- Member States of the European Community acting on behalf of certain non-European territories that are part of the territory of that Member State or for whose external relations that Member State is responsible, and
- any other State.

The first two categories of states need to follow the procedure provided for in Article 71 of the Lugano Convention. Such a State shall communicate the information required for the application of this Convention (Annexes I-IV and VIII) and

²² The ratifications of Iceland and Switzerland are still awaited. There is a possibility that the Convention might enter into force in respect of Switzerland on 1 January 2011. See the official website of the Swiss Federal Department of Justice and Police at <http://www.bj.admin.ch/bj/en/home/themen/wirtschaft/internationales_privatrecht/lugano_uebereinkommen/0.html> (last visited on 7 December 2009).

²³ F. POCAR, Explanatory Report to the Lugano Convention, <<http://www.bj.admin.ch/etc/media/lib/data/wirtschaft/ipr.Par.0029.File.tmp/ber-pocar-e.pdf>> (last visited on 7 December 2009), p. 135.

may submit declarations in accordance with Articles I and III of Protocol 1. Upon receipt the Depositary transmits the information to the other Contracting Parties prior to the deposit of the instrument of accession by the State concerned.

The third category of State, which all the CEFTA countries belong to at this point, in addition to communicating the information required for the application of this Convention (Annexes I-IV and VIII) and submitting declarations in accordance with Articles I and III of Protocol 1, if any, need to provide the Depositary with information on, in particular:

- their judicial system, including information on the appointment and independence of judges,
- their internal law concerning civil procedure and enforcement of judgments, and
- their private international law relating to civil procedure.

The Depositary transmits any information received to the other Contracting Parties and invites them to give their consents to the accession of the applicant State. The Contracting Parties are encouraged to give their consent within one year after being invited to do so by the Depositary. When all Contracting Parties have communicated their consent, the applicant State will be invited to accede by depositing an instrument of accession. In respect of an acceding State, the Convention shall enter into force on the first day of the third month following the deposit of its instrument of accession. However, if before the entry into force a Contracting Party objects the accession, the revised Lugano Convention shall enter into force only in relations between the acceding State and the Contracting Parties which have not made any objections to the accession. Thus, it may as well happen that the Lugano Convention will be binding between an acceding state and some Parties to it and not the others.

3. A New Regional Convention – option C

The third suggested option is conclusion of a new convention which would regulate the issues within the scope of the Brussels and Lugano regimes. The new convention would be modelled upon the two instruments, the Brussels I Regulation and the Lugano Convention. Given the scope of this entire volume it is conceivable that the idea of a new convention would be limited to the CEFTA countries as the contracting parties: Albania, Bosnia and Herzegovina, Croatia, Kosovo, Moldova, Montenegro and Serbia. It is most certain that the new convention would not involve the EU Member States or the EFTA Member States since the same goal could in such a case be better achieved by accession to the Lugano Convention. While indeed the new regional convention would be similar to the Lugano Convention in its contents, it would differ in its underlying purpose. The purpose of the Lugano Convention is to extend the benefits the European Union has in terms of the unified jurisdiction rules and rapid and

simple recognition and enforcement of judgements to the European Economic Area, which includes the EFTA Member States in addition to the EU Member States. Conversely, the purpose of the new convention would not be as much the unification of jurisdiction rules and facilitation of recognition and enforcement of judgements between the contracting parties (the CEFTA countries), but more so the preparation of the judicial systems of the candidate and pre-candidate countries for smoother operation within the European judicial area following the accession to the European Union.

III. EVALUATION OF THE OPTIONS

Although the incorporation of the provisions of the Brussels I Regulation in the national laws is identified as the first option (option A), it is submitted that this option may be viewed as including at least two sub-options: the “hard and swift” option of incorporation of the provisions of the Brussels I Regulation in full and without changes (option A1) and the “flexible” option of selective and adjusted incorporation of those provisions into the national law (option A2). These two options will be treated separately for the purpose of this evaluation. The evaluation then continues in regard to the option B involving the accession to the Lugano Convention, and option C entailing the conclusion of a new regional convention.

A. Evaluation of the option A1

The advantages of the option A1 are certainly quick, simple and cheap modernisation of the current private international laws of the CEFTA countries in part which regulates jurisdiction and recognition and enforcement of judgements in civil and commercial matters.²⁴ These advantages derive from the fact

²⁴ Sajko's short comment on these issues seems to reveal an inclination towards the method here named the option A1. In its article of 1993, this author has identified three possible methods for harmonisation of the Croatian law with the European law: first, adopting the generally accepted solutions in the national laws of the West European countries, second, adopting the solutions in the European unifying instruments and in the field not regulated by the European instruments using the first method, and third, accession to the then Lugano Convention and supposedly also using the first method as subsidiary one. Sajko concludes that the second solution is the most favourable since it leads to desired harmonisation in a quicker and better way. See: K. SAJKO, O prilagodbi hrvatskog međunarodnog procesnog prava Europskom pravu: otvorena pitanja i moguća rješenja, in: P. KONČAR (ed.), *Zbornik ljubljansko-zagrebskega kolokvija*, Pravna fakulteta Univerze u Ljubljani, Ljubljana, 1993, p. 88. The works published on the Croatian private international law reform hitherto do not reveal the exact position on these issues since they do not include the rules on jurisdiction and recognition and enforcement but only rules designating the governing law. See Thesis for the Croatian Act on Private International Law published in: K.

that this option requires no more than a good translation of the Brussels I Regulation and certain minor adjustments when incorporating those provisions in the national law. It is indeed convenient from the perspective of the European Union that the EU candidate and pre-candidate countries do not delay the implementation of these provisions in the national laws and thus allow for the national judiciaries to learn and accept the new rules sufficiently in advance to the accession to the European Union. In addition to this pre-membership practice in using the respective rules allowing gradual preparation for their application, applying the same rules to all situations seems to be another important advantage of the option A1. By introducing the unified European rules in the national law, a country would avoid the parallelism between one set of rules for cross-border situations under the scope of the Community regulations and the other set of rules for all other cross-border situations. This would undoubtedly make the courts' task easier as they would not need to distinguish between the situations that fall within the scope of the Brussels I Regulation and those which do not, the issue that hitherto produced certain difficulties in the application of the Brussels I Regulation.²⁵

Despite these obvious advantages, there are strong weaknesses in this European-national law fusion. First of all, full and plain incorporation of the Brussels I provisions in the national law means that all categories of legal relations bearing an international element will be decided on the basis of these rules. The hazard implied in the failure to differentiate between various categories of cross-border legal relations in this context lays in the fact that the national law would offer to all countries in the world the same degree of trust that is given to the EU Member States. This is far from what the Brussels I Regulation intends to create – the mutual trust among those that are truly trustworthy; trustworthiness being established by the admission to the European Union membership. Such extended application of the Brussels I rules to the entire world would severely jeopardise national interests that need to be protected in respect to the countries outside the European Union. The CEFTA countries have already accepted or will soon accept the legal standards applied in the European Union, and hence there is no risk for a CEFTA country in trusting the EU Member States even in advance to becoming the EU Member States themselves. However, such blank trust should not be given to other countries in the world as

SAJKO/H. SIKIRIĆ/V. BOUČEK/D. BABIĆ/N. TEPEŠ, *Izvori hrvatskog i europskog međunarodnog privatnog prava*, Informator, Zagreb, 2001, str. 259–340.

²⁵ The B. HESS/T. PFEIFFER/P. SCHLOSSER Report on Application of the Brussels I in the Member States demonstrates that such problems exist in respect to the parallel proceedings before an European Union Member State and a non-EU Member State. Study JLS/CA/2005/03, Final version September 2007. <http://ec.europa.eu/civiljustice/news/whatsnew_en.htm> (last visited on 9 September 2009).

this might adversely affect national interests in such relations.²⁶ A CEFTA country needs to ask itself whether it indeed wishes that, in a case of *lis pendens*, its courts unreservedly decline their jurisdiction because the court in a certain non-EU Member State has ruled that it has jurisdiction. Or whether a CEFTA country wishes its courts to declare enforceable a foreign decision without attentively reviewing it, or enforce it automatically if in the future the *exequatur* in the Brussels I Regulation is abolished. The fact that generally the EU Member States have not, even after more than a half of a century, amended their national laws in order to apply to all cross-border situations the same rules they apply to relationships within the scope of the Community regulations speaks sufficiently for itself.²⁷

Recently published Green Paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters²⁸ clearly shows that the intention of the Brussels I Regulation is not to treat all the cross-border situation alike, but to construct the internal market offering security primarily to the defendants domiciled in the European Union.²⁹ Indeed the discussion is ongoing as to the extent to which broadening the personal scope of the Brussels I Regulation to defendants domiciled in the non-EU Member States is recommendable, as to the optimal

²⁶ Conversely, there might be good reasons to align the unified European rules for cross-border situations and the rules for purely internal situations having in mind the considerations of legal security and efficient administration of justice. This was debated in the context of the unification of the civil procedure rules, namely, the payment order and small claims procedure where it was proposed that European Union Member States should adapt their internal systems to the Union rules for international transactions. See, W. MENG, Key Elements of the European Judicial Area, in: V. TOMLJENOVIĆ/E. ČULINOVIĆ HERC/V. BUTORAC MALNAR (eds.), *Republika Hrvatska na putu prema Europskom pravosuđnom prostoru: rješavanje trgovačkih i potrošačkih sporova*, Pravni fakultet u Rijeci, Rijeka, 2009, p. 41. This, however, cannot be pertinent to the options evaluated in this paper since these are not the purely internal situations limited to a single Member State, on the contrary these are the situations bearing contact with one or more EU Member States and one or more non-EU Member States.

²⁷ Among the old Member States an example is the United Kingdom where they differentiate between the "traditional rules" developed as of the 19th century onwards and the Brussels and Lugano regimes (J. O'BRIAN, *Smith's Conflict of Laws*, 2nd ed., Cavendish Publishing Limited, London, 1999, pp. 179 et seq.), while among the recently acceded member States, Slovenia is the closest example of such parallel systems of rules on international jurisdiction and recognition and enforcement of foreign judgements (*Zakon o mednarodnem zasebnem pravu in postopku*, Official Journal of the Republic of Slovenia 56/99).

²⁸ Brussels, 21.4.2009, COM(2009) 175 final, pp. 3–4.

²⁹ See the already cited European Court of Justice Opinion 1/03 (supra note 20), paras. 148–149, where the Court stated, in particular that the jurisdiction rules of the Regulation apply when the defendant is domiciled in a Member State in cases where the connecting factors for exclusive jurisdiction under Articles 22 and 23 of the Regulation are situated in a non-EU Member State, denying the possibility of the so-called *effet réflexe*.

treatment of *lis pendens* in an EU Member State and a non-EU Member State, and as to the usefulness of the unified rules on recognition and enforcement of judgements rendered in the non-EU Member States. Yet, in all these discussion it was never assumed as inevitable that the persons domiciled in a non-EU Member State or the judgements originating from a non-EU Member State would enjoy equal status as the persons domiciled in a Member State or judgments originating from a Member State; rather it is likely that there will be special unified rules for such cases.

In addition to the problems depicted above, there is also an issue of transposition of the regulations. Although it is plain that the obligations within the accession negotiation process entail implementation of the EC directives into the national law of a respective candidate or pre-candidate country, it does not, in our opinion, compel that country to simply rewrite in its national laws all the provisions contained in the EC regulations. This is simply not necessary; the EC regulations are directly applicable without being transposed into national laws.³⁰ In the context of private international law, one may take into consideration the Croatian example. Croatia and European Community and its Member States signed the Stabilisation and Association Agreement on 29 October 2001, which entered into force on 1 February 2005.³¹ Croatia acquired the status of the candidate country on 18 July 2004 and the accession negotiations begun on 3 October 2005.³² Under the SAA Title VI “Approximation of laws, law enforcement and competition rules”, the harmonisation shall commence as of the day of signing the SAA, while it has to be completed within six years as of its entry into force.³³ Article 69(1) of the SAA provides that the Parties to the SAA with Croatia recognise the importance of the approximation of Croatia’s existing legislation to that of the Community and that Croatia shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community *acquis*.³⁴ Besides the fact that the wording of this provision

³⁰ Article 249 of the EC Treaty.

³¹ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part. OJ L26 28.01.2005, p. 3; Official Journal of the Republic of Croatia 14/01, 14/02, 1/05, 7/05, 9/05 and 11/06.

³² V. DROBNJAK, Pregovori o članstvu Republike Hrvatske u Europskoj uniji, in: J. BARBIĆ (ed.), *Godišnjak tribine Pravnog fakulteta u Zagrebu i Kluba pravnika Grada Zagreba*, Zagreb, 2005, p. 196.

³³ Article 69(2) and 5 of the SAA with Croatia.

³⁴ Another provision that is often cited in this context is that of Article 120(1) of the SAA with Croatia which provides: „The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.” This general provision regulates only the issue of how the obligation is to be fulfilled, and not what the obligations are, and hence does not affect the above interpretations of Article 65(1) of the SAA with Croatia.

suggests that copying the whole of the Community instruments is not at all required, it also mentions the areas defined in the SAA, among others also the Title VII “Justice and home affairs”. This Title is silent on the judicial cooperation in civil matters; it does not refer to these matters at all as it does to number of other related matters.³⁵ Hence, it is to be concluded that there is no obligation for Croatia under the SAA to import the rules contained in the Community instruments in the field of judicial cooperation in civil matters, including the Brussels I Regulation, in the Croatian law in the course of the accession negotiations.³⁶

By attempting to implement an EC regulation into the national law, an EU Member State may obstruct the direct effect inherent in the regulations and other rules of Community law. It may also hamper the simultaneous and uniform application of Community regulations throughout the Community. In addition, the transposition may result in altering or adversely affecting the content of the regulation. For all these reasons, the European Court of Justice ruled

³⁵ Conversely, the cooperation was envisaged for the criminal matters and migrations. See Article 76-80 of the SAA with Croatia. The literature on the 2004/2007 enlargement also reflects the same P.A. POOLE, *Europe Unites: The EU's Eastern Enlargement*, Praeger Publishers, Westport, 2003, especially Chapter 12. Justice and Home Affairs, pp. 161–174, where there is virtually a single parenthetical mention of the judicial cooperation in civil matters.

³⁶ There are doctrinal opinions to the contrary. Although, when mentioning Chapter 24 Justice, freedom and security and Chapter 23 Judiciary and fundamental human rights as the most relevant chapters in the Croatian accession negotiations in relation to private international law, Bouček does not in his most recent book draw any conclusions as to the necessity to transpose the European Community rules into the Croatian national law (V. BOUČEK, *Europsko međunarodno privatno pravo u eurointegracijskom procesu i harmonizacija hrvatskog međunarodnog privatnog prava*, Zagreb, 2009, pp. 234–235), in his article on the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L199, 13.7.2007, p. 4, the same author points out the necessity to harmonise the Croatian private international law with the European private international law stating also: “If the Croatian court would apply, in resolving the applicable law for non-contractual situations with an international element, the connecting factor of party autonomy and the closest connection in all its possible manifestations, it would at the same time fulfil also the international obligation arising out of the harmonisation clause contained in Art. 69 and Art. 120 of the Stabilisation and Association Agreement of 29 October 2001.” (translation by I.K.) (V. BOUČEK, Uredba Rim II – komunitarizacija europskog međunarodnog deliktneog prava: Opće povelje deliktneog statuta uredbe Rim II i harmonizacija hrvatskog MPP-a, *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 45, No. 3, 2008, p. 503). Likewise, Deskoski seems to be of the opinion that Macedonian Private international law needs to be amended as the European regulations in the field of judicial cooperation in civil matters are enacted, although the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part signed on 9 April 2001 does not contain additional provisions to those in the parallel agreement with Croatia in the Title VII “Justice and home affairs”. T. DESKOSKI, *New Macedonian Private International Law Act of 2007*, *Yearbook of Private International Law*, Vol. 10, 2008, pp. 450 and 458.

that any attempt by an EU Member State to transpose the regulation into the national law is deemed contrary to the EC Treaty.³⁷ Although this is not equal to the situation in which a candidate or pre-candidate country would before joining the EU enact same legal rules as contained in the EC regulations, it still has to be pointed out that precisely due to the reasons why regulations are not to be transposed into the national legal systems the process of harmonisation of national law of a candidate country with the EU law does not entail transposing the EC regulations, but merely taking preparatory actions for the proper functioning of a certain regulation once a country enters the EU. A case in point are the rules in the Croatian Trademark Act and Industrial Design Act which contain rules regulating the transition issues related to the Community trademark and Community design which are otherwise defined by the respective EC regulations.³⁸ This example clearly shows that there is no need for implementing the EC regulations rules into national legislation since, without such implementation of the rules contained in the Community Trademark Regulation and the Community Design Regulation, the Chapter 7 on Intellectual Property within the Croatian accession negotiations was successfully closed in December 2008.³⁹ On top of that, the quantity of the *aquis communautaire* is enormous; it suffices to say that it has more than tripled in the period from 1973 when Denmark, Ireland and UK were preparing for the membership, until 2008 when Croatia was in the middle of its accession negotiations.⁴⁰ If a country would have to implement all the EC regulations prior entering the EU, it might in future become a nearly impossible undertaking. For all these reasons, the exact transposition of the Brussels I Regulation in the national laws of the candidate and pre-candidate countries is not only unwarranted but also objectionable.

³⁷ See, European Court of Justice C-50/76 *Amsterdam Bulb BV v. Produktschap voor Siergewassen*. [1977] ECR 137.

³⁸ See, for instance, Article 67i of the Croatian Trademark Act, Official Journal of the Republic of Croatia 173/2003, 76/2007, 30/2009, and Article 44g of the Croatian Industrial Design Act, Official Journal of the Republic of Croatia 173/2003, 76/2007, 30/2009. Compare to Article 91 of the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L011 14.1.1994, p. 1., L070 9.3.2004, p. 1., L296 14.11.2003, p. 1, L245, 29.9.2003, p. 36, L236 23.9.2003, p. 342, L122 16.5.2003, p. 60, L349 31.12.1994, p. 83, and Article 80 of the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, OJ L3 5.1.2002, p. 1, as amended by the Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, OJ L386 29.12.2006, p. 14.

³⁹ See the status of the accession negotiation with Croatia at the official web page <<http://www.eu-pregovori.hr/files/PREGLED%20STANJA%20PROCESA%20PREGOVORA-2009-10-02-M-upute.pdf>> (last visited on 9 December 2009).

⁴⁰ V. BOUČEK (*supra* note 35), pp. 230–231.

B. Evaluation of the option A2

The “flexible” option A2 involves selective and adjusted incorporation of the rules contained in the Brussels I Regulation into the national legal system of a candidate or pre-candidate country. The fundamental premise is that the rules in the Brussels I Regulation are extremely important source of inspiration in the comparative legal research preceding the process of drafting the new national rules because it represents the consensus on the most appropriate conflict of jurisdiction rules among the 27 European countries.⁴¹ This having been said, no rule originating from the Brussels I Regulation should be accepted without testing against the specific interests a country may have in drafting different rules on the same issue. Such interest may be imposed by the concerns for legal certainty, procedural efficiency, parties’ legitimate expectations, protection of a weaker party, or other. In described situations there might be an interest of the national legislator to depart from the unified rules contained in the Brussels I Regulation and adopted issue-specific or country-specific solution. This approach would guarantee that the national interests of a CEFTA country in the relationships with non-EU Member States would be protected against such practices that do not live up to the standards employed in the respective CEFTA country.

Mentioned evaluation requires the in-depth analysis of the interests served by a certain norm in the Brussels I Regulation and the counterpart norms in the national laws used for comparative research, as well as the projection of possible outcomes in the operation of such norms. This leads to one of the main disadvantages of this method, the timely and costly reform of the domestic private international law. However, serious projects on drafting new private international law rules, such as Swiss, Belgian or Dutch ones, have been lengthy and not particularly easy processes but on the whole produced very successful codes. Thus, a CEFTA country would need to weigh up the pros and cons of such an approach, but there will certainly be no benefit from the new private international law rules insufficiently thought through and adopted in haste.

Parallelism of different legal rules for different international relations, those under the scope of the Brussels I and those outside that scope, is a negative aspect of the option A1. There is a frequent disregard for the international element in the proceedings before the courts of many CEFTA countries. Burdening these courts with two systems instead of former one might cause confusion and difficulties in enforcement of both systems. Generally, the court systems of candidate and pre-candidate countries need to undergo fundamental

⁴¹ When talking about three important characteristics of the European private international law, Bouček emphasises that „the European private international law also features as a legal pattern or model system for harmonisation of the Croatian PIL” (translation by I.K.) *Ibid.*, p. 4.

changes in regard to the organisation of judges' training. The methodical education and training seems to have been of the utmost importance in Slovenia,⁴² which has neither copied the Brussels I Regulation in national law nor acceded to the Lugano Convention, instead it begun systematic and detailed education of its judges sufficiently prior to the accession and thus successfully prepared for the application of the Brussels I Regulation and other acts.⁴³

3. Evaluation of the option B

Accession to the revised Lugano Convention is a further option which might logically come to mind in the attempt of a candidate or pre-candidate country to prepare for entering the European judicial area. This path was followed by different countries in the past, such as Finland, Sweden and Austria,⁴⁴ and most recently Poland. Poland was the first Central-Eastern European country to become Party to the former Lugano Convention on 1 February 2000, and benefited from this experience for several years before entering the EU in the so called "big bang" variant of the EU enlargement in 2004. Nevertheless, none of the other 11 countries that joined the EU in the two waves of Eastern Block enlargement in 2004 and 2007 followed the same path. After Poland became a Party to the Lugano Convention in 2000, the procedure for possible accession to the Convention has been initiated as regards Estonia, Hungary and the Czech Republic, nevertheless they did not become the Parties to the former Lugano Convention before they entered the EU.⁴⁵

This is precisely one of the shortcomings of the option B since, regardless of the simplified accession procedure, joining the Lugano Convention would still require not less than a year for the reaction of the Parties on the application and then also a year or so for the formal procedure in each of the Parties competent bodies relating to the ratification of the new Party's accession. In a view of

⁴² I would hereby like to thank to Rajko Knez who has provided me with the insider information regarding the experiences Slovenia had in its preparation for the accession to the European Union, and in particular for the application of the Brussels I Regulation.

⁴³ It suffices to mention just few examples of such decisions: Higher Court in Maribor (VSM sklep I Cp 328/2007) of 13. 2.2007; Higher Court of Mribor (VSM sklep I Ip 49/2009) of 18.03.2009; High Court of Maribor (VSM sklep III Cp 1643/2007) of 27.08.2007. There were some erroneous decisions such as that of the Higher Court in Kopar (VSK sklep Cp 1000/2007), 13.02.2008, but this does not depart from the regular situation in all other fields of law.

⁴⁴ They became Member States of the European Community on 1 January 1995 but had been parties to the then Lugano Convention since 1 April 1993.

⁴⁵ In regard to the Czech Republic there were expectations that it would be admitted to the Lugano Convention at the end of 2001 or beginning of 2002 (see N. ROSEHNALOVA, Country Report: Czech Republic, in: A. OTT/K. INGLIS (eds.), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, The Hague, T.M.C. Asser Instituut, 2002, p. 804), but this did not happen.

this fact, each CEFTA country needs to assess its interests in pursuing this path. It seems not a particularly good timing for a candidate country such as Croatia, which has progressed a lot on its way towards the EU membership by successfully closing 11 out of the entire 35 negotiation chapters and which is expected to complete the negotiations in the year 2010, to opt for this method now at the very end of 2009 for the sole reason that it might not achieve the main purpose of preparing the judiciary for the European judicial area due to the lack of time. This having been said, the Croatian application to accede the revised Lugano Convention might have been a prudent move several years ago and might still be reasonable in case the political assessment reveals that the projections on the period to pass before Croatia is supposed to join the EU might not be valid. Status of a Party to the Lugano Convention would allow enjoyment of all benefits of this regime, including the pre-membership practice in application of its rules facilitating more efficient functioning within the European judicial area. The latter conclusion surely holds true for the rest of the CEFTA countries since at this point in time, they seem to be somewhat further than Croatia on their paths in approaching the EU. The pre-candidate countries included in EU enlargement process are Albania, Bosnia and Herzegovina, Montenegro and Serbia including Kosovo (pursuant to the UN Security Council Resolution No 1244). On the other hand Macedonia is the only candidate country other than Croatia as of 17 December 2005.⁴⁶ The decision of whether to apply for the Lugano Convention or not should therefore be made individually for each of the CEFTA countries on the basis of its position on the way to the EU membership and other relevant circumstances.

One of such circumstances is also an evident advantage of option B being entirely independent from the national reform of the rules on international jurisdiction and recognition and enforcement of foreign judgements. In other words, joining the Lugano Convention does not depend on the time and resources a country would need to invest in the legislative reform itself. On the other hand, if a country has already completed or is currently undertaking a reform in the field of private international law then it might feel that joining the Lugano Convention might be either redundant as the rules in its national law are or will be similar, or overburdening for the courts to have to apply two sets of new rules in the same issues introduced at approximately the same time.

In evaluating its interests in joining the Lugano Convention, a country might also want to analyse and be aware of the likelihood that it will receive the consent by all the Parties, or whether perhaps some Parties would use the possi-

⁴⁶ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, was signed on 9 April 2001.

bility and raise an objection prior to accession, in which case the Convention would be entering into force only in between the acceding country and the Parties not raising the objection.⁴⁷ Although the accession to the Lugano Convention might improve the acceding country's image among the EU Member States and EFTA Member States, some objections might have completely the opposite effect.

4. Evaluation of the option C

Option C relates to the conclusion of a regional (CEFTA) convention unifying the rules on international jurisdiction and recognition and enforcement of foreign judgements. This convention may be seen as a means to encourage the CEFTA countries in establishing closer cooperation in this area and to assure sufficient practice to their judiciary in operating within the para-Brussels/Lugano system. Additionally, this model would be in line with the development in CEFTA in general: all former CEFTA countries joined the EU, so in reality CEFTA has served as a preparation for the EU membership. Nevertheless, the question remains as to whether a CEFTA convention paralleling the Brussels I Regulation and the Lugano Convention would achieve the desired result and is the convention reasonably achievable itself.

There are certain concrete advantages to this model, mainly shared with the option B, such as the independence from the domestic private international law reform which a certain country may or may not have commenced or run as planned, and which should not, as explained above, be oriented towards “had and fast” copying of the European rules in the domestic law. To the extent that an envisaged regional convention would closely follow the Brussels/Lugano rules it would serve as a good practising ground for the countries prior to becoming the EU Member States. Furthermore, this convention would expand the

⁴⁷ The Parties to the Lugano Convention seriously assess the applicant's capacities to operate within the Lugano system. Thus the UK Government, Second Standing Committee on Delegated Legislation on 21 June 2000, when discussing the adoption of the Draft Civil Jurisdiction and Judgments Act 1982 (Amendment) Order 2000 whose main purpose was to make some minor modifications to the 1982 Act to reflect the accession of Austria, Finland and Sweden to the 1968 Brussels Convention, and whose other purpose was to make the necessary changes to the 1988 Lugano Convention which will reflect the accession of Poland to this agreement on 1 February 2000, stated: “In order for Poland to be allowed to accede, the consent of all the member states to the Lugano Convention was required, and it has been given. It was agreed that the Polish legal system could be trusted to produce civil judgments worthy of recognition and enforcement in other member states and that its procedures for the enforcement of civil judgments justified confidence that judgments from other member states would be properly enforced in accordance with the principles of the convention. The Government were able to give their consent to Poland's accession after consulting widely, particularly among British lawyers practising in Poland. We are grateful for the work that they have undertaken in assisting the Government.”

territories covered with the same unified rules enlarging the potential for legal security and uniformity of decisions. This having been said, the actual realisation of these potentials might be compromised by the fact that the courts in these countries often encounter difficulties in applying rules on conflict of jurisdiction and conflict of laws, which may become even more complicated if they are forced to apply an additional set of rules to those already in force.

In addition, there are several bilateral conventions in the field of civil procedure binding the CEFTA countries. For instance, Croatia concluded four conventions on legal assistance in civil and criminal matters with the CEFTA countries: Slovenia,⁴⁸ Macedonia,⁴⁹ Bosnia and Herzegovina,⁵⁰ and Serbia.⁵¹ Croatia does not have similar agreements concluded with Albania, Moldavia, Montenegro or Kosovo.⁵² Likewise, Bosnia and Herzegovina concluded such conventions with Macedonia,⁵³ Montenegro and Serbia.⁵⁴ The mentioned agreements, except for the one binding Croatia and Serbia, contain rules on recognition and enforcement of the decisions rendered in another Counteracting Party. These convention rules are in principle more moderate in their requirements than the national rules and do bear certain resemblance to the Brussels/Lugano rules.

The complete network of these bilateral conventions between the CEFTA countries might provide certain insight into another issue of relevance here. It makes sense to enquire into the advantages and disadvantages of concluding a

⁴⁸ Official Journal of the Republic of Croatia, International Treaties 3/1994. Signed in Zagreb on 7 February 1994 and entered into force on 19 August 1995.

⁴⁹ Official Journal of the Republic of Croatia, International Treaties 3/1995. Signed in Skopje on 2 September 1994 and entered into force on 29 May 1995.

⁵⁰ Official Journal of the Republic of Croatia, International Treaties 12/1996, 5/2003 and 4/2006. Signed in Split on 26 February 1996, and entered into force on 20 December 1996.

⁵¹ Official Journal of the Republic of Croatia, International Treaties 6/1998. Signed in Belgrade on 15 September 1997, and entered into force on 28 May 1998.

⁵² The Agreement binding Croatia and Serbia was initially agreed between Croatia and the then Federative Republic of Yugoslavia. It is in force in relation to Serbia, but its status in relation to Montenegro or Kosovo has not been defined by any declarations on the part of the respective countries.

⁵³ In addition to the one with Croatia and Bosnia and Herzegovina, Macedonia has such convention with Slovenia signed on 6 February 1996 and entered into force on 5 September 1997, Albania signed on 5 January 1998 and entered into force on 2 October 1998, Serbia signed on 6 July 2004 and entered into force on 9 March 2005. Information according to the official web site of the Macedonian Ministry of Foreign Affairs <<http://www.mfa.gov.mk/default1.aspx?ItemID=335>> (last visited on 9 September 2009).

⁵⁴ Information according to the database at the official web page of the Ministry of Foreign Affairs of Bosnia and Herzegovina <<http://www.mpr.gov.ba/hr/str.asp?id=23>> (last visited on 9 December 2009) and the official web page of the Ministry of Foreign Affairs of Montenegro <http://www.mip.gov.me/index.php/Bilateralni-ugovori/?cat_id=209&searchword=>> (last visited on 9 December 2009).

CEFTA convention on jurisdiction and recognition and enforcement of judgements, once it is probable that the CEFTA countries will be able to reach an agreement on the convention. Namely, the negotiations of such convention require time and resources to be invested by each country and all governments need certain assurance that their efforts will not be made in vain. Evaluation of this probability, apart from very important political considerations, needs to take into account circumstances such as what issues require priority status in the relationships among the countries,⁵⁵ readiness of an individual country to establish mutual cooperation in the field of civil procedure with all other CEFTA countries,⁵⁶ and ability to agree and trust all CEFTA countries to the extent that a *convention double* whose content would fully reflect the Brussels/Lugano rules is adopted. The existing network of bilateral convention puts some things into perspective and raises certain doubts as to the usefulness of the project concerning the CEFTA convention.

IV. CONCLUSION

It has been recently stated that the European Judicial Area is the cornerstone of the European integration.⁵⁷ Thus, the effectiveness of the judiciary of any new EU Member State to function within this area is of crucial importance. The issue of the most appropriate method for the candidate and pre-candidate countries to prepare their judiciary for the challenges related to the judicial cooperation in civil matters, in particular the application of the Brussels I Regulation, is one which each country should thoroughly consider and construct a plan of required measures.

The discussion in this paper evolved around three available options. The first option entails either the “hard and fast” approach (option A1), or the “flexible” approach (option A2) to the incorporation of the Brussels I Regulation in the domestic private international law. The second option is accession to the Lugano Convention (option B), while the third option suggests conclusion of a new convention between the CEFTA countries unifying their rules on in-

⁵⁵ Currently, one of the issues that seem to be very problematic is the double or even triple citizenship which enables persons who are prosecuted or convicted of criminal offence to escape justice due to the constitutional principle on non-extradition of own citizens.

⁵⁶ By now, the readiness for regional cooperation was measured also through the number and scope of bilateral conventions concluded among the countries belonging to the stabilisation and association process.

⁵⁷ Communication from the Commission to the European Parliament and the Council: An area of freedom, security and justice serving the citizen, COM (2009) 262/4, accessible at <<http://www.statewatch.org/news/2009/jun/eu-com-stockholm-prog.pdf>> (last visited on 30 November 2009).

ternational jurisdiction and recognition and enforcement of foreign judgements which would be the same as in the Brussels I Regulation and Lugano Convention (option C). In evaluating each of the methods, it was concluded that the option A1 is unacceptable due to several reasons, mainly the disregard for the country-specific interests that would not necessarily be mirrored in the norms if they were copied from the Brussels I Regulation. Likewise, option C, calling for a new CEFTA convention, was considered rather obsolete due to certain number of already existing bilateral agreements between these countries and possibly hard to attain because of the special political, judicial and other circumstances in the region. The option B recommending the candidate and pre-candidate countries to join the Lugano Convention was deemed to be a generally helpful choice, but not as much the means of preparation to apply the Brussels I Regulation, as the sensible choice in improving the acceding country's prospects for economic and social development and international image. On the other hand, option B cannot serve as sufficient means for preparing a country to enter the European judicial area, especially not for that country which seems to be a few years from the EU membership. Finally, the option A2 was considered as a good model, but again not as much for preparing the country's judiciary for cooperation in civil matters within the EU, rather as the model of reforming the proper private international law and using the Brussels I Regulation in that process as one of the utmost comparative law sources. In order to achieve this goal it is necessary for the government to assign a group of selected academics, practitioners and government representatives with the task of drafting the national reformed code taking account of both, the modern comparative law developments and specific national interests.

The evaluation carried out in this paper shows that neither of the proposed methods by itself offers satisfactory model for preparation of the candidate and pre-candidate countries to function well within the European judicial area. The reason for this insufficiency of the models lays in the fact that they fail to take into account an old truth: the law is as good as the judge applying it. Consequently, the focus of a country's preparation action plan should be on the human resources rather than on the legal norms. Especially in a view of the fact that with the accession to the EU, a country's courts are assigned a tremendously demanding and voluminous task of national enforcement of the entire body of European law. It is therefore submitted that the optimal method of preparation would be to design the lifelong education plan for all stakeholders (judges, public prosecutors, attorneys, and others), which would include also the special training in application of the EC regulations enacted as part of the judicial cooperation in civil matters. The means to assure quality and efficiency in realisation of this plan is to prescribe the obligation of annual number of credits to be

earned by each stakeholder and the list of qualifying domestic and foreign institutions/courses where such credits could be earned.

The CEFTA countries are not the only countries that have been faced with the issue of how to prepare for the EU membership in this respect, yet they have an important advantage over some others. The advantage is the possibility to learn from the other countries' experiences which show that amending the national law or joining the Lugano Convention are not at all the necessary preconditions for successful application of the Brussels I Regulation. It is the systematic and continuous education and training in this field of international procedure law that may guarantee long-term results. Because this approach does not produce results over night, it is essential to commence its realisation sufficiently in advance to the EU membership. In this context, the academics also need to be aware and readily embrace their important roles. Not only that they may assist in educating and training the stakeholders because they possess specific and in-depth knowledge in the area, but may also contribute to the overall preparation process by producing so much needed commentaries of the EC regulations in their own languages. Only if all the relevant factors in the country (above all government, judiciary, commercial sector and academia) actively take on their responsibilities in the process of preparing a country for the EU membership by means of a lifelong education and training may this process be successfully carried out.

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Који метод изабрати: инкорпорација уредби, позив за приступање Луганској конвенцији или нова конвенција?

Резиме

У периоду који претходи очекиваном приступању Европској унији, државе кандидаткиње и предкандидаткиње с правом се фокусирају на испуњавање услова које им поставља Унија. Чини се ипак да је припрема за улазак у Европску правосудну област на одређени начин специфична због директног ефекта који производи главнина релевантних правних прописа. Услед околности да је преузимање тих прописа незадовољавајући начин припреме, могућност приступања Луганској конвенцији могла би бити корисна алтернатива, посебно за оне државе за које се не предвиђа приступање Европској унији у релативно блиској будућности. Без обзира на то који модел прилагођавања одабере нека држава кандидаткиња или предкандидаткиња, једно би им свима требало бити заједничко. Развој, организовање и спровођење структуре ефикасног и систематског образовања свих учесника вероватно је основни фактор успешне припреме за деловање у оквиру Европског правосудног простора.

Кључне речи: *Европска правосудна област, државе кандидаткиње и предкандидаткиње, Луганска конвенција, Уредба Брисел I.*