European Civil Procedure Law: a role model for potential candidate states in the Western Balkan region?

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Content

I. Introduction

One of the very essential preconditions for trade relations between countries is a precise legal framework.[1] Thus, when creating a common single market like the European Union (EU) one has to bear in mind that all obstacles for trade should be abolished by such a precise legal framework. Obstacles do not only exist in form of tariff barriers and non-tariff barriers within the meaning of Art. 28, 30 and 34 of the Treaty on the Functioning of the European Union (TFEU), but also when foreigners find it hard to access law courts in other countries.[2] Barriers also exist when foreigners are hindered to cross borders by different rules of procedure in different states.[3] Briefly, if it seems harder to pursue one's rightful claims into another state one might not make use the abilities granted by the Fundamental Freedoms.[4] Thereby, the whole point of a common single market loses momentum.

Sadly, this was the very situation when creating the EU: there were huge difficulties in the area of international proceedings, especially when it came to the recognition and the enforcement of foreign judgments:[5] there were cases in which the foreign judgment was examined a second time in the country where the enforcement should take place. Other times judgments were not recognized because there was no equivalent legal venue in the enforcement state or the recognition of foreign judgments was not possible at all.[6] This is why the first steps in the direction of a framework for cross-border proceedings within the European Community (EC) were taken and thereby an obstacle to free trade was pushed away taking a further step in allowing citizens and enterprises to make full use of the common single market. If the common single market is used in an ideal way, individuals as well as the Member States will benefit from the economic growth. Thereby the common market will be stabilized, which leads to political stability. But the benefits of a legal framework for proceedings in the EU are not strictly economical: vulnerable groups like private persons and small and medium-sized enterprises also benefit from the level playing field that allows them to pursue their rights all over the EU.[7] By making law accessible for every citizen of the EU, the guarantees of Art. 6 of the European Convention on Human Rights (ECHR) and Art. 47 of the EU Charter of Fundamental Rights are realized.[8]

[1]Wagner, Zeitschrift für Wirtschaft und Recht in Osteuropa (WiRO) 2000, p. 47.
[2]Kindler/Meller-Hanich/Wolf/Gerald/Mäsch, Gesamtes Recht zur Zwangsvollstreckung, 2nd Edition 2013 Vorbemerkung zu Art. 32 ff. mn 2.
[3]Kindler/Meller-Hanich/Wolf/Gerald/Mäsch, Gesamtes Recht zur Zwangsvollstreckung, 2nd Edition 2013 Vorbemerkung zu Art. 32 ff. mn 2.
[4]Kindler/Meller-Hanich/Wolf/Gerald/Mäsch, Gesamtes Recht zur Zwangsvollstreckung, 2nd Edition 2013 Vorbemerkung zu Art. 32 ff. mn 2.
[5]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 1.
[6]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 1.
[7]Vernadaki, p. 307; Recital (13) of Brussels I (EC No. 44/2001); Recital (18), Brussels Ia, EC No. 1215/2012.
[8]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 3; Seitz, Grundrechtsschutz durch Verfahrensrecht (The Protection of Fundamental Rights by Procedural Law), in: EuZW Vol. 7/2015, p. 273, concerning fair trial principle in administrative law.

II. Outline

In this thesis we will examine the substance and the essentials of European Civil Procedure Law. Having extracted the essentials of the relevant regulations and conventions we will show their guiding function for the South-Eastern European (SEE) countries, often referred to as the Western Balkans - Albania, Bosnia and Herzegovina, Kosovo, Former Yugoslav Republic (FYR) of Macedonia, Montenegro and Serbia that already drafted their own Regional Convention. We will then examine this Convention and see why the countries of the region should pursue the initiative and ratify the Convention not only from a European perspective, but also from their perspective.

III. The development process and the regulatory essentials of the Brussels Regime

Mutual recognition and enforcement of judicial decisions across borders have developed over a long time within the EU. The system of European Procedure Law must be seen in context with this development process and the historical background. In order to transfer the basic ideas and principles of our legal framework to the Western Balkan region, it is helpful to show, that it takes time, until legal systems adjust and mutual trust on the policy as well as on the legal level is established. Thus, in the following section we will shortly trace the historical developments of the Brussels Regime, before we draw conclusions concerning the essential provisions.

1. Overview of the historical and policy background of the Brussels Regime

The first step was the conclusion of a number of bilateral recognition and enforcement treaties between the Member States of the EC. Germany e.g. had such treaties with Italy, Belgium, Austria, the United Kingdom, Greece and the Netherlands.[9] The different treaties lead over time to the uncertainties described in the introduction. This situation was - as already stated - a contradiction to the common single market.[10] This is why later Art. 220 of the Treaty establishing the European Economic Community (TEEC) obligated the Member States to negotiate the facilitation of mutual recognition and enforcement of judgments and other facilitations with regard to civil procedure.[11]

On 27 September 1968, the Member States of the EC, acting under the above-mentioned Article 220 of the TEEC, established the "Brussels Convention". The Convention, which was an international multilateral agreement amongst the original Member States of the EC and came into force in 1973, replaced the bilateral agreements. The TEEC did not provide the EC a legislative competence for international civil procedural law. Therefore, the rules of the Brussels Convention 1968 could not be adopted as primary or secondary law. As a consequence, the regulations had become complex and unclear. The situation became even more complex because of the parallel running agreement of Lugano

[9]Wieczorek/Schütze/Schütze, der internationale Zivilprozess. 1. Einführung in das Internationale Zivilprozessrecht mn 27.
[10]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 1.
[11]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 1.

(1988) concluded with the European Free Trade Association (EFTA) States[12]. These inadequacies led to the next step in establishing European Civil Procedure Law.

Finally, Art. 61 lit. c, 65 of the Treaty of Amsterdam contained as a main objective of the European agenda to develop and enable a more intense cooperation in judicial matters among the Member States by abolishing all formalities that prevented the free circulation of judgments in the EU area.[13] For the first time, the Treaty of Amsterdam provided a legal basis for the adoption of a Regulation. In Art. 61 lit. c) TEEC judicial cooperation in civil matters is mentioned explicitly as one of the pillars of the EU. It was driven by the idea that judicial cooperation should contribute to the creation of a European area of justice in civil matters based on mutual recognition and trust.[14] On other policy levels, e.g. the Tampere European Council in 1999, further harmonization steps for facilitating cross-border litigation were brought forward in the 'catalogue of measures' of the European Ministers of Justice.[15] This shows that, civil procedure law had obtained an outstanding importance on the agenda of the European harmonization of law.[16]

In 2000 the EU made use of this legislative competence and the Council adopted on 22 December 2000 Regulation (EC) No 44/2001 (Brussels-I),[17] which replaced the 1968 Brussels Convention with regard to the territories of the Member States covered now by the TFEU, except Denmark. There are also other European procedural Regulations, e.g. for payment procedure[18] and for small claims procedures.[19] By council decision 2006/325/EC[20] the Community concluded an agreement with Denmark ensuring the application of the provisions of Brussels-I in Denmark. This treaty came into force on the 1 July 2007.[21] Denmark also expressed its intention to implement the new Regulation.[22] This is why the modified treaty with Denmark now resembles the Regulation (EU) No 1215/2012 (Brussels-Ia)[23] completely.[24]

Across the EU there was a general satisfaction[25] with the functioning of the former Regulation, Brussels-I, which is seen as the "most successful legal instrument within the EU"[26]. However, further steps for

[12]For further details on this agreement, please see our next section.
[13]Unalex Commentary, p. 10, Rn. 6.
[14]M. Freudenthal, The Future of European Civil Procedure, in: Electronic Journal of Comparative Law Vol. 7.5, December 2003.
[15]Koch, Einführung in das europäische Zivilprozessrecht, in: JuS 2003, p. 105 (p. 110).
[16]see Schlosser, EU-Zivilprozessrecht, 3rd edition, 2009, p. 8.
[17]OJ L 12/1, 16.1.2001.
[18]OJ L 399/1, (EC) No 1896/2006, 30.12.2006.
[19]OJ L 199/1, (EC) No 861/2007, 31.7.2007.
[20]OJ L 120, 5.5.2006, p.22.
[21]Musielak/Stadler, 11th Edition 2014, Vorbemerkungmn 4a.
[22]Saenger/Dörner, Zivilprozessordnung, 6th Edition 2015, Vorbemerkung zur EUGVVO mn 6.
[23] OJ L 351/1, 20.12.2012.
[24]Staudinge /, Steinröter, Zuständigkeit bei zivilrechtlichen Sachverhalten nach der Brüssel Ia-VO, in: JuS 2015, 1, p. 1.
[25]Lenaerts / Stapper, Die Entwicklung der Brüssel I-Verordnung im Dialog des Europäischen Gerichtshofs mit dem Gesetzgeber, in: RabelsZ 78 (2014), p. 252-293, p. 253: „a great success".
[26]European Parliament resolution of 7 September 2010 on the implementation and review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (2009/2140(INI)), p.3.

improvements in the application of the regulations' provisions, namely in the free circulation of judgment and the easier access to justice, have been seen over the years.

The revised version of Brussels-Ia[27] clarifies these goals and contains mostly technical, but meaningful modifications.[28] In accordance with the Stockholm Program from 2009[29] the abolishment of all interposed measures in matters of judicial cooperation was intended by this revision. Recital (1) points out that one of the main purposes of Brussels-Ia is to "improve the application of certain of its [Brussels-I] provisions", "further facilitate the free circulation of judgments" and "further enhance access to law".

2. Essential contents of the Brussels Regime and impact of the Court of Justice of the EU (CJEU)

a. Foundation and goals of the Brussels Regime within the European Legal Framework

The Brussels Regime aims to protect EU-citizens in their proceedings across the EU by finding secure and predictable judicial structures. Furthermore, it enables them to enforce their economic interests and claims. The TFEU provides in Chapter 3 – *Judicial Cooperation in Civil Matters* – Art. 81 the competence for the EU to adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring the mutual recognition and enforcement of judgments and decisions in extrajudicial cases between Member States. Based on the TFEU the main contents of the Brussels Regime are to ensure the free circulation of judgments in civil and commercial matters and their fast and uncomplicated recognition and enforcement in the EU. Another purpose is to ensure legal certainty and the predictability of jurisdiction.[30] The Brussels Regime aims to harmonize the legal frameworks regarding civil procedures within the EU on the long run, without ignoring the different legal cultures of the Member States, because harmonization does not lead to a total unification of the legal systems. Overall, it leads to an increased judicial cooperation in fostering mutual trust in each others´ legal systems and becoming familiar with the different legal cultures.

b. Main contents of the Brussels Regime

Key elements of the Brussels Regime are the international jurisdiction to the defendant, whose domicile is in a Member State of the EU, the recognition and enforcement of judicial decisions in civil and commercial matters originating from other Member States as well as the protection of vulnerable groups such as consumers and employees.

aa. Material and territorial scope

The scope of the Brussels Regime covers all legal disputes concerning civil and commercial matters. If Art. 1 is fulfilled; Brussels-Ia has priority over the national civil procedural law of the Member States.

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[27] OJ L 351/1, 20.12.2012.
[28] Lenaerts / Stapper, Die Entwicklung der Brüssel I-Verordnung im Dialog des Europäischen Gerichtshofs mit dem Gesetzgeber, in: RabelsZ 78 (2014), p. 252-293, p. 253.
[29] OJ C 115, 4.5.2010, p.1; http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/jl0034_en.htm.
[30] See case C-129/92, Owens Bank Ltd. v. FulvioBraccoanBraccoIndustriaChimicaSpA, 1994 E.C.R. I-117, par. 32.

The CJEU has defined an original, autonomous European notion of a civil and commercial matter under the former Regime of the Brussels Convention (1968). This serves the purpose to guarantee the consistent and uniform approach of this term, so that national courts will not judge differently whether it is a civil and commercial matter.[31] This is why it is essential, that the CJEU has autonomously defined the notion of this term. If both States involved are Member States the regulations of Art. 33 et. seq. about the recognition and enforcement of judicial decisions apply. On third-country judgments, this regulation does not apply.[32]

bb. International legal venue

Rules on the international legal venue are to be found in Art. 2 et seq. According to Art. 2 par. 1 the place of general jurisdiction is the defendant's domicile.[33] According to Art. 3, 4 debtors whose domicile is in the territory of a Member State have to be sued before the courts of this State regardless of their nationality.[34] This is the core provision of the Brussels regime concerning the place of jurisdiction.[35] It aims to protect the defendant and to establish legal clarity in transnational judicial disputes. It is the result of the considerations of interests of the protection of the defendant on the one hand, and the right to access to justice of the claimant on the other. The latter has to pursue his rights before a foreign court, but can enforce the decision immediately on the spot.[36] Art. 5 and 6 contain special venues for the place of jurisdiction. However, according to Art. 8 – 21 the general and special provisions on jurisdiction do not apply to matters relating to insurance, to contracts concluded with consumers and to contracts of employment. These regulations intent to protect weaker parties through more favorable provisions on the place of jurisdiction.[37]

cc. Recognition and enforcement of judgments

Art. 33 et. seq. contain the provisions on recognition and enforcement of judgements. Art. 33 provides the principle of automatic recognition.[38] In Art. 34 and 35 special conditions are laid down, under which a judgment shall exceptionally not be recognized. This means that the recognition as a general rule may not be made subject to substance review. According to Art. 36 the so-called *révision au fond* is inadmissible.[39] Thus, the court of the Member State where the decision shall be enforced may only examine whether the judgement of the foreign court fulfills the basic requirements for recognition and enforcement. Under no circumstances, is the court allowed to re-examine or change the judgment in its

[31]Unalex Commentary, p. 76, par. 3.
[32]Unalex Commentary, p. 30, par. 44.
[33]Vezyrtzi, Jurisdiction and International sales under the Brussels I Regulation.: Does forum shopping come to an end?, in: The Columbia Journal of European Law, p. 83.
[34]See recitals (8) and (9) of Brussels-I (EC No. 44/2001).
[35]UnalexCommentary, p. 163, par. 1.
[36]UnalexCommentary, p. 48, par. 77.
[37]See also Recital (13), Brussels I, EC No. 44/2001; Recital (18), Brussels-Ia, EC No. 1215/2012.
[38]UnalexCommentary, p. 765, par.11.
[39]UnalexCommentary, p. 763, par. 3.

substance.[40] This principle of automatic recognition is the key element of the Brussels regime. It shall abolish all formalities in cross-border recognition and enforcement of judicial decisions. Thereby, it assures the immediate recognition and uncomplicated enforcement of foreign judgements and leads to an efficient and accountable legal service across borders. Altogether, the facilitated enforcement procedures minimize the risk of foreign investments and enhance business opportunities across the EU. Thus, it serves the general purpose, to strengthen the EU as an area of justice, law and economic cooperation by enabling the mutual recognition and enforcement of commercial titles.[41] The benefits of this principle for economic growth are also of tremendous importance for the development of the Western Balkan Countries.

dd. Modifications brought by Brussels-Ia

In the following, we will present four essential changes that have been effected by Brussels-Ia.

(1) Enforceability declaration

The revised Art. 39 states that a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required. This means that the former existing declaration of enforceability does not exist any longer.[42] Thereby the last bit of uncertainty or unpredictability is lost since the other states cannot avoid the enforcement of the judgment; thereby the free circulation of judgements is guaranteed.[43] Only in extreme cases, the other Member Stater retains the possibility to avoid the enforcement on appeal of any interested party if a reason within Art. 45 par. 1 is given. Art. 45 par. 1 lit a. allows the refusal in the case of *ordre public* issues. Overall, a fine mix between accelerating enforcement and at the same time allowing for a stop in extreme cases is reached.

When thinking about whether this kind of acceleration should be transferred to the Regional Convention that was drafted for the Western Balkans one has to bear in mind that at the very start the participating states might fear to lose the characteristics of their legal system. The *ordre public* clause might stand a chance to stop the enforcement in extreme cases but is not a primary but a secondary control. Thus, Member States might get the feeling that they lose control of what is being enforced on their territory. We also have to bear in mind that several harmonization processes have taken place in the EU and that over the years the fear of losing control of enforcement slowly diminished. Therefore, one should not start off a Convention without a declaration of enforcement.

Thus, we would suggest: the treaty should include a declaration of enforceability. After five years there should be negotiations on the question whether to abandon the declaration of enforceability. However, the option to abandon the declaration of enforcement on grounds of *ordre public* should exist in any case. In

[40]UnalexCommentary, p. 763, par. 3.
[41]UnalexCommentary, p. 765, par. 11.
[42]Saenger/Dörner, Zivilprozessordnung, 6th Edition 2015, Vorbemerkung zur EUGVVO mn 2.
[43]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 20.

the case of Brussels-Ia there were a lot of discussions concerning the abolishment of the *ordre public* examination since many Member States raised concerns on such an abolishment.[44]

(2) "Torpedo Claims"

Brussels-I as well as Brussels-Ia uses the so-called "principle of priority" when it comes to decide which court of law should continue the proceeding. This means that the first law court seized should be the law court that rules the judgement, Art. 29 par. 1, 31 par. 1. This is why one litigation tactic emerged: if an obligor expected a proceeding of an oblige, he would bring legal proceedings in form of a negative declaratory action to a non-competent court known as slow, thereby blocking the proceeding for a certain time span (*"Torpedo claims"*).[45] Art. 31 par. 2 states that without prejudice to Art. 26, where a court of a Member State on which an agreement as referred to in Art. 25 confers exclusive jurisdiction is seized, any court of another Member State shall stay the proceedings until such time as the court seized on the basis of the agreement declares that it has no jurisdiction under the agreement. Recital 22 highlights that the purpose of this article is to „enhance the effectiveness of exclusive choice-of-court agreements[46] and to avoid abusive litigation tactics".

This alteration shows how a conclusion was drawn from an abusive tactic. As a consequence we highly recommend implementing a similar regulation. Also a regulation that prevents abuse on an even higher level is favorable if other states come up with one.

(3) Dealing with parallel proceedings in third states

Within the preconditions of Art. 33 par. 1 when proceedings are pending before a court of a third State at the time when a court in a Member State is seized of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings in several situations. Art. 34 par. 1 grants the same competence when the third state is seized with an action, which is related to the action in the court of the Member State. When deciding whether to stay the proceeding, the Member State has to consider several aspects, Art. 33, 34. The most important ones are stated in Art. 33 par. 1 lit. a, b:[47] the expectation that the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State and the court of the Member state is satisfied that a stay is necessary for the proper administration of justice. The goal of allowing the Member State to stay proceedings is taking the judgment in the third state into account.[48] This also explains the content of Art. 33 sec. 1 lit. a, b: when the judgement in the third State is capable of recognition in the Member State and the enforcement of the judgment in the Member State is possible, there is no necessity that the court in the Member State has to deal with the very same case.

[44]Jauernig/Hess, Zivilprozessordnung, 30th edition, 2. Kapitel. Deutsches Zivilprozessrecht im europ. Und intern. Umfeld, mn 9.
[45]Saenger/Dörner Zivilprozessordnung, 6th Edition 2015, Vorbemerkung zur EUGVVO Art.31 mn 2.
[46]See also: Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 20.
[47]Saenger/Dörner Zivilprozessordnung, 6th Edition 2015, Vorbemerkung zur EUGVVO Art. 33 mn 1.
[48]Saenger/Dörner, Zivilprozessordnung, 6th Edition 2015, Vorbemerkung zur EUGVVO Art. 33 mn 1.

By a rule like this the effectiveness of law proceedings is enhanced by unloading law courts in the Member States. These considerations are also useful for the Western Balkan states, since reducing court backlogs and enhancing the effectiveness of law is a universal principal.

(4) Protecting consumers

In order to further strengthen the protection of consumers` Brussels-Ia widens the possibilities of bringing proceedings to court for consumers against parties from third States.[49] Consumers are now able to bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled, regardless of the domicile of the other party, or in the courts for the place where the consumer is domiciled, Art. 18 par. 1. Art. 18 par. 2 states that proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled. Thus, the consumer can always bring proceedings in the court at his domicile. Thereby he is always granted the safety and security that he is not hindered to pursue his claims by the possibility of having to travel to another country.

By this new rule the so-called forum shopping is no longer usable against consumers. Forum shopping describes a situation in which the parties deliberately take advantage of the different substantive law in the Member States.[50] This kind of cherry picking seems harmful, as parties might be able to choose the law that suits them best. The new rule only prevents forum shopping against consumers, but not in other cases. The only way to fight forum shopping completely would be to enable the law court to reject the case and at the same time suggest taking the case to a more suitable Member State.[51] However, this kind of competence (known in the Anglo-American area as *forum-non-conveniens*) would lead to uncertainties and unpredictability.[52] Therefore, one of the main points of the common legal framework, which is achieving certainty and predictability, would get lost. This is why we would strongly suggest that the possibilities of forum shopping should not be excluded by giving law courts the possibility to reject cases. However, protecting consumers by the rules explained above should be taken into account.

ee. The role of the CJEU within the Brussels Regime

According to Art. 267 TFEU the CJEU holds a monopoly position for the ultimately binding decision about the validity and interpretation of EU-Law concerning the acts of EU bodies.[53] If questions occur before the court of a Member State that are related to the validity or interpretation of Union-Law, the national court can (and in some cases must) request the CJEU to give a ruling and a common interpretation; so that only national courts can access the CJEU for questions with regard to the interpretation Brussels-Ia and not the parties of the procedure themselves. However, the preliminary

[49]Staudinger / Steinrötter, Juristische Schulung (JuS) 2015, 1, p. 5.
[50]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 5.
[51]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 5.
[52]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 5.
[53]UnalexCommentary, Internationales Zivilprozessrecht, Brüssel I Verordnung, Kommentar zur VO (EG) 44/2001 und zum LugÜ, Thomas Simons / Rainer Hausmann (Hrsg.), p. 42, par. 65.

ruling procedure serves not only the purpose of common and harmonized application of Union-Law, but also to the protection of individuals' rights.[54]

The development process of the Brussels Regime can be seen as a dialogue between the jurisdiction of the CJEU and the policy level.[55] In the past, judgments of the CJEU have clarified the application criteria of the Regulation for the sake of a common interpretation of and approach to certain provisions and also served as a pulse generator for the modifications of the Regulation.[56] Therefore, the CJEU also contributes to the progressive establishment of an area of freedom, security and justice.[57] Furthermore, the jurisdiction of the CJEU is an essential pre-condition for a successful harmonization.[58] This is why the effectiveness of the inputs of a common legal order requires a central court, which can give orientation and be a guideline in cases where the interpretation of the common legal provisions by the courts of the Member States differ from one another. Moreover, only by a court that ensures the "right" implementation of the common provisions, the legal framework becomes mandatory. Therefore, the Western Balkan countries should also agree on a central court, that holds the monopoly for the last-binding interpretation of the intended Regional Convention. Since it is substantially designed like the Brussels Regime, we strongly recommend following the jurisdiction of the CJEU for this purpose.

IV. The Lugano Convention

1. History und developments

Initiated by Switzerland in the early 80ies the negotiations started to what should later form the Lugano Convention.[59] The Lugano Convention serves the purpose to integrate countries that are not Member States of the EU but the EFTA into the system of European Civil Procedure Law.[60] It was signed on 16 September 1988 by the Member States of the EC and the EFTA (at that time Finland, Iceland, Norway, Austria, Sweden and Switzerland) and came into force on 1st January 1992.[61] The Lugano Convention should only be in force for five years. After that there was the possibility of an implicit prolongation.[62] The Lugano Convention was revised and adjusted to the Brussels-I by the revised version of the Lugano Convention.[63] This revised version was signed on the 30 October 2007.[64] Unlike its preceptor the revised Lugano Convention is in force for an indefinite period of time, Art. 74 par. 1. The members of the revised

[54]ibid., p. 43, par. 65.
[55]Lenaerts / Stapper, Die Entwicklung der Brüssel I-Verordnung im Dialog des Europäischen Gerichtshofs mit dem Gesetzgeber, in: RabelsZ 78 (2014), p. 252-293, p. 253.
[56] see e.g. cases C-281-/02 Andrew Owusu v. N.B. Jackson et al., 2005, I-1383; C-185/07 Allianz SpA et. al v. West Tankers Inc., 2009, I-663; C 103/05 Reisch Montage AG v. Kiesel Baumaschinen Handels GmbH, 2006, I-6827.
[57]see Article 81 TFEU.
[58]Koch, Einführung in das europäische Zivilprozessrecht, in: JuS 2003, p. 105 (p. 110).
[59]Musielak/Stadler, 11th Edition 2014, Vorbemerkung, mn 10.
[60]Treciakowska,WiRO 2000, 404, p. 404.
[61]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. Rn 21; Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn 10.
[62]Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 26.
[63] Schimansky/Bunte/Lwowsi/Welter, 4. Auflage 2011, § 28 Rn 92; Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn 10.
[64] Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn 10.

Lugano Convention are the EU and Switzerland, Iceland, Denmark and Norway.[65] Before signing the revised Lugano Convention it was uncertain who holds the competence for signing the Convention. The European Parliament as well as the European Council agreed to the proposal of the European Commission that the EU should sign the revised Convention.[66] In the end, the CJEU expressed in an advisory opinion dated 7 February 2006 that the EU had the competence to sign the Convention.[67] The revised Lugano Convention came into force on the 1st January 2010.[68]

2. Content

The content is mainly parallel to Brussels-I.[69] In this thesis we will not focus on the small differences since our goal is to extract the very essentials of European Civil Procedure Law. The interpretation of the Lugano Convention is based on the precedence case system.[70] The parties agreed on creating a system for exchanging information about relevant judgements, Protocol II Art. 3 par. 1.[71] The central point for the exchange of information is the registrar of the CJEU.[72] Furthermore there is Standing Committee, Protocol II par. 4 par. 1, that holds the responsibilities listed in Protocol II par. 4 Sec. 2.[73] Parties of the Lugano Convention shall pay account to relevant decisions rendered by the courts of the Member States or the CJEU, Protocol II Art. 1 par. 1.[74] Thereby it is guaranteed that the interpretation of the Lugano Convention is as uniform as possible.[75] For the Member States the CJEU is responsible for the interpretation of the Lugano Convention, Protocol II par. 2.[76] As a consequence, Member States are bound to the proceeding in Art. 267 TFEU. The EFTA States cannot request the CJEU to give a ruling thereon, but they might be granted an advisory opinion in relevant proceedings.[77]

3. Accession modalities

While Brussels-I as a secondary law source applies only to Member States, the Lugano Convention as a multilateral Convention holds the option for other states to accede.[78] The procedure of joining the Lugano Convention is a very delicate and highly complicated one.[79] Firstly, the third country has to determine a member state to promote its entry into the Lugano Convention.[80] This member state will inform the

[65] Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn 10.
[66] Wagner, Neue juristische Wochenzeitschrift (NJW) 2009, 1911, p. 1912.
[67] Summary oft the legal opinion can be found in Europäische Zeitschrift für Wirtschaftsrecht (EuZW) 2006, p. 131.
[68] since that date it is applicable in relation to Norway, in relation to Switzerland it is applicable since 1st January 2011 and in relation to Iceland since 1st May 2011, see Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. Rn 23; Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn10.
[69] Treciakowska,WiRO 2000, 404, p. 404.
[70] Trzeciakowska,WiRO 2000, 404, p. 405.
[71] Trzeciakowska,WiRO 2000, 404, p. 405.
[72] Trzeciakowska,WiRO 2000, 404, p. 405.
[73] Trzeciakowska, WiRO 2000, 404, p. 405.
[74] Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 31.
[75] Müncher Kommentar zur ZPO/Gottwald, 4th Edition 2013, Vorbemerkung zu Art. 1 ff. mn 31.
[76] Musielak/Stadler, 11th Edition 2014, Vorbemerkung mn10.
[77] Musielak/Stadler, 11th Edition 2014, Vorbemerkungmn 10.
[78] Treciakowska, WiRO 2000, 404, p. 405.
[79] Wagner,WiRO 2000, 47, p. 49, also referring to other sources.
[80] Wagner,WiRO 2000, 47, p. 49.

Depositary (Switzerland, Art. 69, par. 2), that the third state is willing to join the Lugano Convention according to Art. 72 par. 1 lit. b of the Lugano Convention. In a next step the third state will submit declarations in accordance with Art. 1 and 3 of Protocol Nr. 1 as well as information in the sense of Art. 72 par. 2 lit c. (e.g. information about the judicial system, internal law concerning civil procedure). The Depositary transmits this information and the declaration to the other contracting parties. If all members of the Lugano Convention decide unanimously that the third state should join, the third state is invited to join. Even after the State has joined the Lugano Convention the other states are able to prevent it from coming into force in relation to them.[81] Poland managed to join the Lugano Convention on 1st February 2000. However, this cannot be seen as a general possibility for other states as the situation with Poland was very special: first of all Poland has always been highly active in terms of joining and forming bilateral and multilateral contracts.[82] Secondly, it was a tiger state in Eastern Europe thriving to get involved in the activities of Western Europe.[83] This is why Poland joined several conventions and treaties after the end of the Cold War.[84] Therefore, Poland seems to be rather the exception than the standard example. In addition, one has to bear in mind that the whole process of joining took seven years in the case of Poland.[85] This underlines that instead of waiting to become a member of the EU or the Lugano Convention states should – like Western Balkan countries are doing it – take action, form their own treaty and thereby get the chance of joining the Lugano Convention as a group of states with a functioning treaty.

4. Essential regulations

Summing up what we have examined there are six crucial points that should be transferred to the Regional Convention:

1. Rules on international jurisdiction are important for establishing legal clarity in transnational judicial disputes.

2. The automatic recognition and mutual enforcement of judgments in civil and commercial matters across borders is a necessary prerequisite for the facilitation of cross-border judicial proceedings and thereby minimizes the risks of foreign investments and stimulates economic cooperation.

3. The interpretation of the multilateral treaties must be defined: Different countries have different traditions of law. Thus, a common civil procedure law that enables traders as well as private persons to cross-border proceedings has to create a safe legal status and common standards in which the interpretation of law is foreseeable for all parties involved.

[81]Wagner,WiRO 2000, 47, p. 49.
[82]Wagner,WiRO 2000, 47, p. 47.
[83]Wagner,WiRO 2000, 47, p. 47.
[84]Wagner,WiRO 2000, 47, p. 47-48.
[85]Trzeciakowska,WiRO 2000, 405, p. 405.

4. There has to be an exchange of information in order to guarantee the uniform interpretation of the Regional Convention. For this purpose, a central committee should be established that collect the information and delivers it to the relevant law courts in the Member States of the treaty.
5. Since the Western Balkan countries do not have a common court of last instance, they have to agree on a central law court that holds the power to decide about uncertain questions concerning the interpretation of the Convention in a binding way. The national law courts should be obligated to ask for the legal opinion of the central law court in case of any uncertainties concerning the interpretation of the common treaty.
6. If the countries of the region decide that their Convention shall be open to access, they need to agree on a basic procedure for states that want to join it.

V. Brussels Regime as a guideline

In the following section, we will show how the guiding principals of European Civil Procedure Law can be used for an own Regional Convention on mutual recognition and enforcement of commercial titles for potential candidate countries to support their EU accession processes. For this purpose, we focus on the SEE countries, often referred to as the Western Balkans - Albania, Bosnia and Herzegovina, Kosovo, FYR Macedonia, Montenegro and Serbia, as these six countries share certain common characteristics: they were part of the economically integrated Socialist Federal Republic of Yugoslavia (SFR), their trade flows disrupted in the context of the civil wars in the 90ties and today, lack the legal framework for a common market structure. Furthermore, the states are all members of the Stability Pact for SEE and potential candidates diligently working to achieve EU accession.

1. Pre-war trade situation

Before the civil wars in the 90ties, the general situation in SEE was very different from the one today. Seven countries in the region were in a political and economic union within SFR Yugoslavia (Bosnia and Herzegovina, Croatia, FYR Macedonia, Montenegro, Serbia with its autonomous province Kosovo and Slovenia) and as such had a common market with substantial inter-republic trade.[86] This was facilitated not only by a common currency (the Yugoslav dinar) but also by a legal framework established by the 1957 Yugoslav Code of Civil Procedure that provided the conditions for mutual recognition and enforcement of commercial titles.[87]

2. Post-war disintegration

From the relative prosperity of Josip Broz Tito's time, SFR Yugoslavia's economy was severely undermined in the 90ties by the repercussions of the civil wars that split the country and disintegrated its

[86]Milica Uvalic, The European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 173.
[87]Ludwik Kos-Rabcewicz-Zubkowski, East European Rules on the Validity of International Commercial Arbitration Agreements, p. 97.

industries and infrastructure.[88] Due to political instability and associated risk, the overall level of trade was drastically reduced.[89] The disintegration of SFR Yugoslavia led to the *de facto* cessation of all economic relations with and through the country and to the breaking up of many traditional trade links. Moreover, the conflicts following the breakup fuelled bitter rivalries and hostilities that prohibited economic cooperation.[90] In addition, the process of state building led to the introduction of trade and other barriers to the free movement of goods, services, labour and capital as a means of protecting the newly created national economies.[91] Today, most of the former Yugoslav republics are challenged by poor infrastructure, high rates of poverty, political fragility and economic isolation.[92] The inter-regional trade is comparatively small. In 2013 the Central European Free Trade Agreement (CEFTA) Parties shares in exports and imports were on average at about 18 % of the overall trade.[93] However, with the advent of the EU accession process, regional trade cooperation has become an important factor for improving the competiveness of the region and promoting both economic recovery and political stability.[94] Due to the landlocked positions, with limited transport links, and the relatively small market sizes of most of the successor countries, cross-border business activities are required to generate economies of scale. In this regard, the common past, language and legal traditions as well as the historically inherited trade patterns are ideal prerequisites to stimulate transnational trade flows.[95] Despite significant trade facilitation efforts that have been achieved, like the CEFTA that entered into force for Bosnia and Herzegovina, Croatia, Kosovo, FYR Macedonia, Montenegro and Serbia in 2007,[96] the SEE region, its population, and businesses remain burdened by many practical obstacles, which resulted from the breakup of the former Yugoslavia. One of these is the difficult and complex enforcement of court decisions in civil and commercial matters.[97] While this was previously regulated by the uniform Yugoslav Code of Civil Procedure; today, it relies on a number of insufficiently implemented bilateral agreements between the countries of the region.[98] Regarding foreign judgments to which none of the above applies, enforcement happens through the diplomatic channel and depends on the principal of reciprocity.[99] Therefore, the execution of these matters is proceeding slowly, inadequately and in transparent.[100] This is an obstacle to common trade, because business stakeholders will not risk investing abroad, if the cross-border enforcement of transnational contracts is not assured. Additionally, it restricts the effective

[88]The World Bank, Building Market Institutions in South Eastern Europe, p. 21.
[89]The World Bank, Report No.PID8405, Macedonian Trade Facilitation Project.
[90] IFC SmartLessons, Regional Trade Facilitation Project in the Western Balkans, p. 1.
[91]MilicaUvalic, The European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 178.
[92] The World Bank - Building Market Institutions in South Eastern Europe, p. 21.
[93]see CEFTA trade statistics 2013 - half year update.
[94]Milica Uvalic, The European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 172.
[95]Elif Nuroglu, Nadja Dreca, Journal of Business and Economics, Jan-June 2011, p. 46.
[96]see http://www.cefta.int.
[97]GIZ ORF for SEE-Legal Reform - presentation of the sub-project on cross-border jurisdiction.
[98]GIZ minutes of the regional conference on cross-border enforcement in Sarajevo, 2011 - country reports.
[99]leaflet of the German embassy in Sarajevo, BiH.
[100]GIZ ORF for SEE-Legal Reform - presentation of the sub-project on cross-border jurisdiction.

application of consumer claims, because legally unrepresented consumers in most instances will not know that they have to contact their embassy in the enforcement procedure.

3. Regional Convention

Since joining the Brussels-Ia or the Lugarno convention seems impossible at this stage, the idea was born to replace the complex set of bilateral agreements by an own multilateral convention. Following consultations between representatives of the Western Balkans that identified a common understanding for the feasibility of unified procedures due to the shared legal traditions, the Republic of Slovenia in 2008 made an initiative with the EU that was supported by the European Commission. On the Ministerial Forum EU - Western Balkans in October 2011 in Ohrid the initiative was confirmed as a useful and perspective tool in judicial cooperation. Thus, on the 3rd annual ministerial conference in November 2011 in Belgrade an expert group was established for the preparation of a draft convention. The draft that was prepared by the experts takes into account the principles of the Brussels-I and the Lugano Convention. The scope is the same as for the Lugano Convention and excludes maintenance issues and family law matters, Art. 1. Regarding the provisions on international jurisdiction as well as *lis pendens* and related actions that aim to prevent parallel proceedings, it is designed like the Brussels-I Regulation. Especially to be emphasized is that the provisions, based on the principal of trust, have also been taken over. Like the Brussels Regulations, the draft foresees in its Art. 33 (1) the principal of automatic recognition and forbids substance review in its Art. 36 and 45. The principal of mutual trust that is especially expressed in these provisions is of outstanding importance for good neighborly relations and regional cooperation that shall be achieved in the Western Balkans. Therefore, we greatly support the adoption of this regulation.

Due to the number of bilateral agreements that have been agreed upon in the region, the draft convention stipulates that it shall supersede these, if they cover the same matter, Art. 64. A counter-exception is made in Art. 66 (3) in case bilateral agreements are “more favorable” for the free circulation of judgments. Thus, the Regional Convention will not prevent the application of other agreements that provide for a broader base of recognition, or for simplified, more expeditious enforcement procedures. This assures that the greatest potential for judicial cooperation can be achieved. Other important aspects are the regulations determined in the amendments. As we examined in the section dealing with the Lugano Convention, it is crucial for the uniform interpretation of the Regional Convention to agree on a central court, most suitable the CJEU, that holds the power to interpret, since the Western Balkans do not have a common court of last instance. A further crucial point we pointed out is the determination of the relevant body for the observation of the decisions and the promulgation of related information among the contracting countries. All this has been regulated in protocol 2 of the draft. It foresees, inspired by the Lugano Convention that the Regional Convention shall be applied in due consideration of relevant decisions rendered by the CJEU and intends the set up of a Standing Committee that shall coordinate these efforts. In addition,

protocol 3 stipulates the harmonization with the revised version of Brussels-Ia.[101] Thus, an effective mechanism is introduced to align the Regional Convention with legal developments that have been achieved on the European level. The revision process has brought important changes in the field of consumer protection, for example the new rule assuring that forum shopping is no longer usable against consumers. Therefore, it is highly recommendable to adopt this protocol, because it firstly guarantees the on time harmonization with European standards and secondly the incorporation of newly created legal safe guards.

The draft was agreed on the regional conference of the Ministries of Justice held in Belgrade in April 2013. The participants confirmed that the governments should designate representatives for the purpose of signing the convention by June 2013.[102] Although, this never happened due to the non-recognition of Kosovo as an independent state by Serbia and associated difficulties with the signing of the treaty, the Regional Convention is still of major interest for the Western Balkans. Therefore, the initiative was taken up again on a regional conference on judicial cooperation in civil and commercial matters in Podgorica, Montenegro in November 2014. During this conference, participants form Albania, Bosnia and Herzegovina, Kosovo, FYR Macedonia, Montenegro and Serbia agreed to resume the work on the initiative and find the required number of three states for the entry into force, Art. 68.[103] After entering into force, the Regional Convention would be open for accession by any other CEFTA country, contracting party to the Lugano convention or any other country wishing to accede, Art. 69, while members of CEFTA or the Lugano Convention may accede under a simplified regime, Art. 70.[104]

VI. Follow the right path

In the following abstract we will explain why it is highly desirable for the countries of the region to follow the described path and ratify the Regional Convention. The reason is that the successful implementation of it will lead to a removal of obstacles to economic relations, a better protection of consumer interests and improved cooperation in cross-border legal proceedings. Altogether, the draft convention aims directly at the implementation of the *acquis communautaire* and thereby supports the EU accession processes.

1. Removing economic obstacles

The facilitation of cross-border recognition and enforcement of commercial titles will serve to enforce contracts and thereby promote the reliability of transnational investments, enhance market opportunities and foster the economic upswing of the whole area.

[101]Explanatory report to Sarajevo Convention, 2012.
[102]see RCC press releases, South East European experts prepare regional conventions on criminal, civil and commercial matters, under RCC auspices.
[103]minutes of the GIZ conference on judicial cooperation in civil and commercial matters, 2014.
[104]Explanatory report to Sarajevo Convention, 2012.

Although, contract enforcement can be mediated through a variety of means, like relationships based on trust, private enforcement or governmental intervention, these efforts usually remain insufficient. Therefore, courts are the main institution enforcing contracts and solving business disputes. Without efficient courts and the expectation that courts will uphold contractual rights and obligations, firms will be less willing to deal with new clients and suppliers, and fewer cross-border transactions will take place.[105] To work efficiently, courts need appropriate legal frameworks. Thus, unified and simplified recognition and enforcement procedures would lead to more rapid proceedings, create greater legal certainty and minimize foreign investment risks.

In this way a climate would be created that will attract foreign investors and, if foreign trade increases sufficiently, it could create exceptionally strong impulses for economic development, the competiveness of the region and poverty reduction.[106] This will contribute to the fulfilment of the so-called Copenhagen criteria, which require the existence a functioning market economy,[107] and are, as referred to in Art. 49 sec. 1, subsec. 4 Treaty on European Union, the criteria for accession to the EU. Finally, the creation of greater legal certainty will also promote the objective of consumer protection laid down in Art. 12 TFEU. Since the EU is the Western Balkans' largest trading partner, accounting for over two thirds of the region's total trade,[108] European consumers will benefit from a better enforcement of contractual obligations and claims for damages in this region.

2. Regional Cooperation - EU integration

The implementation of unified procedures based on the principal of mutual trust will furthermore boost regional cooperation, which is in the best interest of the Western Balkan countries, as a key factor for establishing political stability, security, economic prosperity and overall ensuring their faster integration into the EU.[109]

All Western Balkan countries have a clear EU perspective because of the tight economic links between the two regions and their strategically important role in terms of borders, migration flows, fight against trafficking in human beings and smuggling of drugs as well as police and judicial cooperation.[110] Since Bulgaria and Romania joined the EU on in 2007 and Croatia in 2013, the Western Balkans region is completely surrounded by EU Member States.

Based on the view that the internal security of the EU can be improved best if security problems are

[105] see The World Bank, Building Market Institutions in South Eastern Europe, p. 38.
[106] MilicaUvalic, the European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 172.
[107] see EU glossary - europa.eu/legislation_summaries/glossary/accession_criteria_copenhague_en.htm.
[108] see http://ec.europa.eu/trade/policy/countries-and-regions/regions/western-balkans/.
[109] see http://ec.europa.eu/enlargement/pdf/nf5703249enc_web_en.pdf.
[110] http://www.europarl.europa.eu/webnp/webdav/site/myjahiasite/users/emartinezdealosmoner/public/Background%20note%20JPM%20on%20Western%20Balkans.pdf.

tackled at their external origin,[111] the promotion of peace, stability and prosperity in this part of Europe are of significant interest to the EU.[112] Therefore, right after the Kosovo crisis in mid-1999, the EU launched the Stabilisation and Association Process with the countries of the Western Balkans that emphasises the importance of regional cooperation for achieving permanent peace and stability.[113] The Stabilisation and Association Agreements that have been offered to all the countries since 2010 explicitly require progress in this field,[114] as a main condition for speeding up the process of EU integration.[115] Since then, enhanced regional cooperation has become an important criteria used in the EU screenings on the readiness for accession. The implementation of the proposed Regional Convention would foster the candidate countries' position in these screenings because it is based on trust in each other's justice systems and aimed to facilitate judicial cooperation and thereby will stimulate regional cooperation between the Western Balkans. The Standing Committee that is foreseen in protocol 2 of the draft, in its role to promulgate information among the contracting states, would be a suitable network for the facilitation of it.

The ratification of the draft convention would furthermore strengthen the prospects of EU accession in directly implementing parts of the *acquis communautaire* namely of the important chapter 23 (Judiciary and fundamental rights) - because it is substantially designed like the Brussels I, Ia Regulations. In applying EU law, the contracting countries would demonstrate that they are willing and able to harmonize their national legislation, as a sign of readiness for accession in the screening processes. In aligning their national civil procedure rules with those of the EU at an early stage, they would gain practical experiences in the application and would not have to start out of the blue in case of a future EU accession. As we described in the abstract on the historical development process of the Brussels Regime, this was a long and difficult task. Therefore, the countries should launch the process immediately and take advantage of the developments that have been achieved on the European level in adopting the guiding principals, as foreseen by the draft convention.

If the countries move forward along this path, they might also get better access to the Lugano Convention as a group of countries with a functioning Regional Convention than as individual states, because, as described in more detail above, the screening of the accession candidate's judicial system regarding civil procedure is a crucial step in the procedure of joining the Lugarno convention. This would further facilitate the economic relations with EU and EFTA members.

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[111]Trauner, 'EU Internal Security Policies in the Western Balkans: Analysing the Intersection between Enlargement and Civilian Crisis Management', 2009, paper presented to the 11th Biennial International Conference of the European Union Studies Association, available at www.euce.org.

[112]Olli Rehn, European Commissioner for Enlargement, 2004-2010; http://trade.ec.europa.eu/doclib/docs/2008/november/tradoc_141300.pdf.

[113]Milica Uvalic, The European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 180.

[114]see Art. 6, 10 lit. c), 14-17 of the Stabilisation and Association Agreement with Serbia, 2008, equivalent provisions are found in the other SAAs.

[115]Milica Uvalic, The European Journal of Comparative Economics, Trade in Southeast Europe: recent trends and some policy implications, p. 171.

Finally, strengthened cross-border judicial cooperation can increase mutual trust in the more secure implementation of regional legal operations, and can help to overcome political barriers at a technical level. This will support an overall integration and reconciliation in the region and lead to lasting stability and peace in the post-conflict societies. Like the example of the EU where armed conflicts became inconceivable after decades of close cooperation.[116] Once this is achieved, after five years, consultations should take place about the next steps to further encourage judicial cooperation, like the abolition of the declaration of enforceability.

VII. Conclusion

The Lugano Convention, and later on the draft of a Regional Convention designed like it shows how the main principles of European Civil Procedure Law, namely the determination of the international jurisdiction of the courts as well as the mutual recognition and enforcement of judgments in civil and commercial matters serve guiding purposes for other economically interlinked countries. Since the legislative procedure that finally led to the creation of the Brussels Regime has been a long and difficult process and, nowadays, there is general satisfaction with the functioning of its rules, it is more favourable for other economically interlinked countries to simply adapt these than to develop their own. This applies, in particular, to areas that maintain economic relations with the EU, like the EFTA and the Western Balkan states, because transnational business operations benefit from unified procedures guaranteeing the efficient mutual recognition and enforcement of commercial titles. Therefore, it was of major interest to the EFTA states to sign the Lugano Convention as a parallel agreement with the EU already in 1988. For the Western Balkan states it would certainly be the best possibility to get access to the Lugano Convention because one procedural regime is more transparent than parallel treaties and the judicial decisions issued in this area would be recognizable and enforceable in all EU and EFTA Member States. However, as we have shown above this does not seem possible at this stage. We thus highly recommend further pursuing the initiative of implementing the Regional Convention, designed like Brussels-I. The successful implementation of it will foster economic relations both between the countries in the region and with the EU and thereby enable their faster integration into the EU. Altogether, the closer economic cooperation can help to overcome political barriers and promote mutual understanding and reconciliation in this post-conflict context. Finally, once the rules have been implemented efficiently, there is a good chance that the countries might be invited to join the Lugano Convention as a group with a functioning treaty. This would enhance business opportunities in the EU and EFTA Member States even further.

[116] Priebe, Beitrittsperspektive und Verfassungsreformen in den Ländern des Westlichen Balkans, EUR 2008, p. 301.