

Mutual trust and judicial cooperation in the EU's external relations - the blind spot in the EU's Foreign Trade and Private International Law policy?

Further to the splendid conference How European is European Private International Law? at Berlin on 2 and 3 March 2018, I would like to add some thoughts on an issue that was briefly raised by our fellow editor Pietro Franzina in his truly excellent conference presentation on "The relationship between EU and international Private International Law instruments". Pietro rightly observed an "increased activity on the external side", meaning primarily the EU's PIL activities on the level of the Hague Conference.

At the same time, there seems to be still a blind spot for the EU's Private International Law policy when it comes to the design of the EU's Free Trade Agreements (FTAs). Although there is an increasingly large number of such agreements and although "trade is no longer just about trade" (DG Trade) but additionally about exchange or even export of values such as "sustainability", human rights, labour and environmental standards and the rule of law, there seems to be no policy by DG Trade to include in its many FTAs a Chapter on judicial cooperation with the EU's respective external trade partners.

To my knowledge there are only the following recent exceptions: The Association Agreements with Georgia and Moldova. Both Agreements entered into force on 1 July 2016.

Article 21 (Georgia) and Article 20 (Moldova) provide:

"Legal cooperation: 1. The Parties agree to develop judicial cooperation in civil and commercial matters as regards the negotiation, ratification and implementation of multilateral conventions on civil judicial cooperation and, in particular, the conventions of the Hague Conference on Private International Law in the field of international legal cooperation and litigation as well as the

protection of children.”

Article 24 of the Association Agreement of 29 May 2014 with the Ukraine reads slightly differently:

“Legal cooperation: 1. The Parties agree to further develop judicial cooperation in civil and criminal matters, making full use of the relevant international and bilateral instruments and based on the principles of legal certainty and the right to a fair trial. 2. The Parties agree to facilitate further EU-Ukraine judicial cooperation in civil matters on the basis of the applicable multilateral legal instruments, especially the Conventions of the Hague Conference on Private International Law in the field of international Legal Cooperation and Litigation as well as the Protection of Children.”

All other FTAs, even those currently under (re-) negotiation, do not take into account the need for the management of trust in the judicial cooperation of the trade partners in their deepened and integrated trade relations. Rather, foreign trade law and PIL seem to have remained separate worlds, although the business transactions that are to take place and increase within these trade relations obviously rely heavily on both areas of the law.

Some thoughts on why there is no integrated approach to foreign trade and PIL in the EU, why this is a deficiency that should be taken care of and how this could possibly be done are offered here.