

# **The Hague Judgments Project**

## **Public Hearing of the Committee on Legal Affairs**

**24 April 2018**

### **Report from the Commission on ongoing negotiations**

#### **Speaking points:**

##### **Introduction**

- The Hague Judgments project refers to the work undertaken at The Hague Conference on Private International Law with the aim of facilitating the recognition and enforcement of foreign judgments;
- The project started back in 1992 and led to the adoption of The Hague 2005 Choice of Court Convention, ratified by the European Union in 2015;
- In 2012 the project was relaunched with the establishment of an Expert Group that completed its work on the recognition and enforcement of judgments at the end of 2015 with the text of a draft convention. The positive results of the work undertaken by the Expert Group prompted the governing body of the Conference (the General Affairs Council) to convene a special commission in order to prepare a draft convention;
- That Commission met three times so far, in June 2016 and in February and November 2017. It will reconvene again in May 2018, with an eye at finalising the draft text and submitting it for approval at the Diplomatic Conference to be convened in mid-2019;
- The main objectives of the envisaged Convention are a) enhancing practical access to justice through the recognition and enforcement of judgments and b) facilitating trade and investment by enhancing legal certainty and reducing costs and uncertainties associated with cross-border dealings and with the resolution of cross-border disputes.
- In the EU there's currently no uniform legislation with regard to the recognition and enforcement of third-country judgments, a situation that can cause legal uncertainty. The most efficient way to remedy the

current lack of legal certainty is to work at a multilateral level. This level is more appropriate than the Union level (cfr. results of BXL I negotiations) and is also more efficient than a bilateral level with individual third States. It offers a possibility on the worldwide level to develop a framework favourable to the Union's companies and citizens.

- **What has been agreed so far:**

- The Convention provides for a core set of obligations to recognise and enforce judgments from other Contracting States while a more favourable recognition and enforcement of judgments under national law would in principle remain available;
- The Convention will apply in civil and commercial matters, with the express exclusion of a number of subject-matters; in particular, the Convention would apply to judgments in respect of consumer and employment contracts and at the same time would grant certain protection to the weaker parties, employees and consumers, when the enforcement of a judgment is sought against them (i.e. certain jurisdictional filters will not apply);
- The Convention would cover judgments, whatever that decision may be called (judgment, decree or order). It covers equally a determination of costs and judicial settlements, but it will not cover interim measures of protection;
- The Convention will set up a system providing for recognition and enforcement of a foreign judgment if the courts of origin rendered the judgment based on one of the jurisdiction grounds stipulated in the Convention ( the so-called “indirect jurisdiction”);
- The requested court would be able to refuse recognition and enforcement based on several refusal grounds, such as for instance public policy or the failure to serve the document instituting the proceedings to the defendant in sufficient time and in such a way as to enable him to arrange for his defence;
- The Convention builds in the flexibility which may be necessary to achieve a broad ratification: the Convention allows excluding from

its scope, via a declaration, specific matters where a State has a strong interest in not applying the Convention to such a matter.

- **What is still open:**

- No agreement was reached yet on whether to include intellectual property in the scope of application of the Convention because stakeholders became aware of the project at a very late stage. It was therefore decided to include the provisions in the bracketed text, reflecting different approaches, i.e. IP matters within the scope of the Convention and IP matters outside the scope of the Convention and, if included, the different ways to deal with those judgments. This matter will not be re-opened at the next Special Commission in order to provide enough time for consultation on the draft provisions regarding IP. A final decision will be taken in mid-2019, at the Diplomatic Conference, and the Commission has already started a constructive dialogue with stakeholders such as BusinessEurope, INTA and IFPI, many of which are in the room today;
- Further discussions are needed on the best way to cover judgments issued by courts common to two or more Contracting States. A provision to this effect would enable judgments issued by the Court of Justice of the European Union, the Unified Patent Court or the Benelux Court to circulate;
- The provision dealing with the application of the Convention in States having a non-unified legal system;
- The provision dealing with the costs of proceedings relating to recognition and enforcement (non-discrimination rule and circulation under the Convention of cost orders);
- A possible mechanism of declarations with respect to exclusion from the scope of the Convention of judgments pertaining to governments;
- The inclusion of privacy-related matters under the scope of application;

- The provision dealing with preliminary questions where a judgment ruling on the validity of an IP-right is concerned;
  - The provision dealing with relationship with other international instruments.
- With the exception of the inclusion of IP-matters under the scope of application, these open issues are subject to discussions in several Informal Working Groups which should report to the Special Commission in May;
- It cannot be excluded that other proposals will be made ahead of the SC;
- However, taking into account that the next Special Commission should conclude the work on the draft Convention to be submitted to the Diplomatic Conference, there will be no entire re-opening of the draft text of the Convention and in particular no reopening of the IP-related provisions;

### **Direct jurisdiction**

- With regard to the work on direct jurisdiction (in relation to third state defendants), as far as EU courts are concerned, it is recalled that this aspect remained to a large extent unresolved after the adoption of the Brussels I Regulation;
- At the time, it was considered more appropriate to reach agreement internationally on jurisdictional rules;
- The Judgments Convention is only dealing with indirect jurisdictional rules (i.e. the jurisdiction of courts giving the judgment checked only for the purpose of recognition and enforcement under the Convention);
- However, when the General Affairs Council of the Hague Conference decided in March 2016 to proceed with work on a Judgments Convention, it also decided to reconvene the Experts' Group of the Judgments Project when work is completed on the Judgments Convention to address matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens* / declining jurisdiction);
- The March 2018 GA Council reiterated this decision. The Experts' Group is to be reconvened shortly after the Diplomatic Conference, to take place in mid-2019.