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**REPORT OF THE FOURTH MEETING OF THE WORKING GROUP
ON THE JUDGMENTS PROJECT (3-6 FEBRUARY 2015)
AND PRELIMINARY DRAFT TEXT RESULTING FROM THE MEETING**

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**RAPPORT DE LA QUATRIÈME RÉUNION DU GROUPE DE TRAVAIL RELATIF
AU PROJET SUR LES JUGEMENTS (DU 3 AU 6 FÉVRIER 2015)
ET PROJET DE TEXTE PRÉLIMINAIRE RÉSULTANT DE LA RÉUNION**

*Preliminary Document No 7B of February 2015 for the attention
of the Council of March 2015 on General Affairs and Policy of the Conference*

*Document préliminaire No 7B de février 2015 à l'attention
du Conseil de mars 2015 sur les affaires générales et la politique de la Conférence*

Fourth Meeting of the Working Group on the Judgments Project (3-6 February 2015)



Report

Introduction

From 3 to 6 February 2015, the **Working Group on the Judgments Project** (“the Working Group”) met in The Hague for its fourth meeting under the chairmanship of Mr David Goddard QC. The Working Group was composed of 28 participants from 15 Members.¹

In accordance with the mandate given by the Council on General Affairs and Policy of the Conference (“the Council”) at its April 2012 meeting,² the Working Group continued its work towards the preparation of draft provisions for inclusion in a future instrument. The Working Group also considered, and has set out below, a suggested plan for further steps to be taken towards the development of a future Convention.

Status of work

At its meeting, the Group further developed its proposed provisions for a future Convention on the recognition and enforcement of judgments. There was general acceptance within the Group of the key pillars for this proposed Convention, which would make a significant contribution to circulation of judgments on a global basis, and thus improve access to justice and facilitate cross-border trade. The Group prepared a common draft text attached to this report, which sets out a possible architecture and draft provisions relating to the scope of the Convention, criteria for recognition and enforcement and procedure for recognition and enforcement. The Group has identified certain matters for further examination and discussion.

Future work

The Working Group envisages that it will be able to bring the draft text to the point where it can recommend to Council, prior to its 2016 session, that the text be submitted to a Special Commission. This will require one, and possibly two, more meetings of the Group. In that regard, the Working Group envisages that, with Council’s approval, it would hold a further meeting in mid-2015 and, if a second meeting is required, a meeting in October 2015.

The Working Group considers that it would be advisable for it to address matters within the mandate of the Experts’ Group in order to enable the Working Group to complete its own work and to make the appropriate recommendations to the Council.

The Hague, 6 February 2015

¹ The participating Members were Australia, Brazil, Canada, China, Cyprus, the European Union, Germany, India, Japan, the Republic of Korea, the Russian Federation, Spain, Switzerland, the United Kingdom and the United States of America.

² The mandate given by the Council to the Working Group was “to prepare proposals for consideration by a Special Commission in relation to provisions for inclusion in a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters” (Conclusions and Recommendations adopted by the Council of 17 to 20 April 2012, para. 17). At its 2014 meeting, “[t]he Council stressed the importance of this project and welcomed the significant progress made by the Working Group at its February 2014 meeting. The Council invited the Working Group to continue its work as set out in the February 2014 Working Group meeting Report (Annex to Prel. Doc. No 7), including a suggested plan for further steps to be taken towards the development of a Convention in this field. The Permanent Bureau will report to the Council of 2015” (Conclusions and Recommendations adopted by the Council of 8 to 10 April 2014, para. 6).

**PRELIMINARY DRAFT TEXT OF THE WORKING GROUP ON THE JUDGMENTS PROJECT
EMANATING FROM ITS FOURTH MEETING**

CHAPTER I – SCOPE AND DEFINITIONS

Article 1

Scope

1. This Convention shall apply to the recognition and enforcement of judgments relating to civil or commercial matters. It shall not extend in particular to revenue, customs or other administrative matters.
2. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given in another Contracting State.

Article 2

Exclusions from scope

1. This Convention shall not apply to judgments –
 - a) [relating to contracts to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party;]
 - b) [relating to contracts of employment, including collective agreements.]³
2. This Convention shall not apply to the following matters –
 - a) the status and legal capacity of natural persons;
 - b) maintenance obligations;
 - c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;
 - d) wills and succession;
 - e) insolvency, composition and analogous matters;
 - f) [the carriage of passengers and goods;]
 - g) [marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage;]
 - h) liability for nuclear damage;
 - i) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs;
 - j) the validity of entries in public registers;
 - k) [defamation].
3. Notwithstanding paragraph 2, a judgment is not excluded from the scope of this Convention where a matter excluded under that paragraph arose merely as a preliminary question in the proceedings in which it was given, and not as an object of the proceedings. In particular, the mere fact that a matter excluded under paragraph 2 arose by way of defence does not exclude a judgment from the Convention, if that matter was not an object of the proceedings.
4. This Convention shall not apply to arbitration and related proceedings.

³ Further consideration is needed of the proposals made to include specific provisions for recognition and enforcement of certain consumer and employment judgments.

5. A judgment is not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, was a party to the proceedings.

6. Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property.

Article 3
Definitions

1. In this Convention, "judgment" means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment.

2. A defendant that is an entity or person other than a natural person shall be considered to be [habitually] resident in the State –

- a) where it has its statutory seat;
- b) under whose law it was incorporated or formed;
- c) where it has its central administration; or
- d) where it has its principal place of business.

CHAPTER II – RECOGNITION AND ENFORCEMENT

Article 4
Recognition and enforcement

1. A judgment of a court of a Contracting State (State of origin) to which this Convention applies shall be recognised and enforced in another Contracting State (State addressed) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default.

3. A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

4. Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment. In such cases, the court addressed may also make enforcement conditional on the provision of such security as it shall determine.

Article 5
Refusal of recognition or enforcement

1. Recognition or enforcement may be refused if –
 - a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –
 - (i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defense, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested;⁴ or
 - (ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
 - b) the judgment was obtained by fraud in connection with a matter of procedure;
 - c) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;
 - d) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
 - e) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfills the conditions necessary for its recognition in the requested State.
2. Recognition or enforcement may also be refused if the proceeding in the court of origin was contrary to an agreement [valid under the laws of the State addressed] or a designation in a trust instrument under which the dispute in question was to be determined [other than by proceedings in] [in a court other than] the court of origin.⁵
3. Recognition or enforcement of a judgment may also be refused if it does not comply with the requirements of any of the following provisions –
 - a) the person against whom the judgment was rendered was a [habitual] resident of the State of the court of origin or the person that brought the claim on which the judgment is based;
 - b) the court of origin would have had jurisdiction in accordance with the law of the State addressed concerning recognition and enforcement of foreign judgments;
 - c) the [defendant] [person against whom the judgment was rendered] maintained a branch, agency, or other establishment without separate legal personality in the State of the court of origin, and the claim on which the judgment is based arose out of the activities of that branch, agency, or establishment;

⁴ Further consideration is needed as to whether this limb should be mandatory when the defendant has raised the point.

⁵ Additional provision for consideration: "Nothing in this Convention shall affect the application of the 1958 NY Convention or of the Choice of Court Convention. In particular, nothing in this Convention shall prevent denial of recognition or enforcement of a judgment on the basis of an arbitral award or the breach of an arbitration agreement."

- d) the [defendant] [person against whom the judgment was rendered] expressly consented to the jurisdiction of the court of origin in the course of the proceedings in which the judgment was given;
- e) [the judgment ruled on a contractual obligation and the [defendant] [person against whom the judgment was rendered] intentionally engaged in frequent or significant activity in the State of origin related to the obligation at issue;
- f) the judgment ruled on a contractual obligation and it was rendered by a court in the State in which performance of that contractual obligation by [defendant] [the person against whom the judgment was rendered] occurred, or in which the parties to the contract agreed that it should occur. This agreement should derive from the provisions of the contract. This shall not apply if the contractual obligation consists of a payment of money, unless such payment constituted the main obligation of the contract;]
- g) the judgment ruled on an obligation arising from death, physical injury, damage to or loss of tangible property, and the act or omission [directly] causing such harm occurred in the State of the court of origin, irrespective of where that harm occurred;
- h) the judgment ruled on an infringement of a patent, trademark, design or other similar right required to be deposited or registered and it was rendered by a court in the State in which the deposit or registration of the right concerned has taken place;
- i) the judgment concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, and the State of the court of origin is –
 - (i) designated in the trust instrument as a State in which disputes about such matters are to be determined;
 - (ii) the State whose law is expressly or impliedly designated in the trust instrument as the law governing the trust; or
 - (iii) the State expressly or impliedly designated in the trust instrument as the State in which the principal place of administration of the trust is situated;
- j) the judgment ruled on a counterclaim that arose out of the transaction or occurrence on which the original claim was based [, and the court of origin had jurisdiction on the original claim under one or more of paragraphs]. [However, the judgment on a counterclaim need not be recognised and enforced under this Convention if the law of the State of origin required the counterclaim to be brought under penalty of preclusion to the extent that the counterclaim claimant was unsuccessful on the counterclaim.]

Article 6

Recognition or enforcement on exclusive grounds

Subject to the provisions of paragraph 1 and notwithstanding paragraphs 2 and 3 of Article 5⁶ –

- a) a judgment that ruled on the registration or validity of patents, trademarks, designs, or other similar rights required to be deposited or registered shall be recognised and enforced if and only if the State of the court of origin is the State in which deposit or registration either (1) has been applied for, or has taken place, or (2) is deemed to have been applied for or to have taken place under the terms of an international or regional instrument; or

⁶ To accommodate other exclusive jurisdictions in particular Contracting States a declaration regime along the lines of Art. 20 of the Choice of Court Convention will need to be discussed.

- b) a judgment that ruled on rights in rem in immovable property [or tenancies of immovable property for a period of more than six months] shall be recognised and enforced if and only if it was given by a court of the Contracting State in which the property is situated.

Article 7
Preliminary questions

1. Where a matter excluded under Article 2, paragraph 2, or a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled arose as a preliminary question, the ruling on that question shall not be recognised or enforced under this Convention.
2. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment was based on a ruling on a matter excluded under Article 2, paragraph 2, or on a matter referred to in Article 6 on which a court other than the court referred to in that Article ruled.

Article 8
Damages

1. Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered.
2. The court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings.

Article 9
Judicial settlements (transactions judiciaires)

Judicial settlements (*transactions judiciaires*) which a court of a Contracting State has approved, or which have been concluded before that court in the course of proceedings, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment.

Article 10
Documents to be produced

1. The party seeking recognition or applying for enforcement shall produce –
 - a) a complete and certified copy of the judgment;
 - b) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;
 - c) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;
 - d) in the case referred to in Article 9, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin.
2. If the terms of the judgment do not permit the court addressed to verify whether the conditions of this Chapter have been complied with, that court may require any necessary documents.

3. An application for recognition or enforcement may be accompanied by a document relating to the judgment, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law.

4. If the documents referred to in this Article are not in an official language of the requested State, they shall be accompanied by a certified translation into an official language, unless the law of the requested State provides otherwise.

Article 11
Procedure

The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the State addressed unless this Convention provides otherwise. The court addressed shall act expeditiously.

Article 12
Severability

Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention.