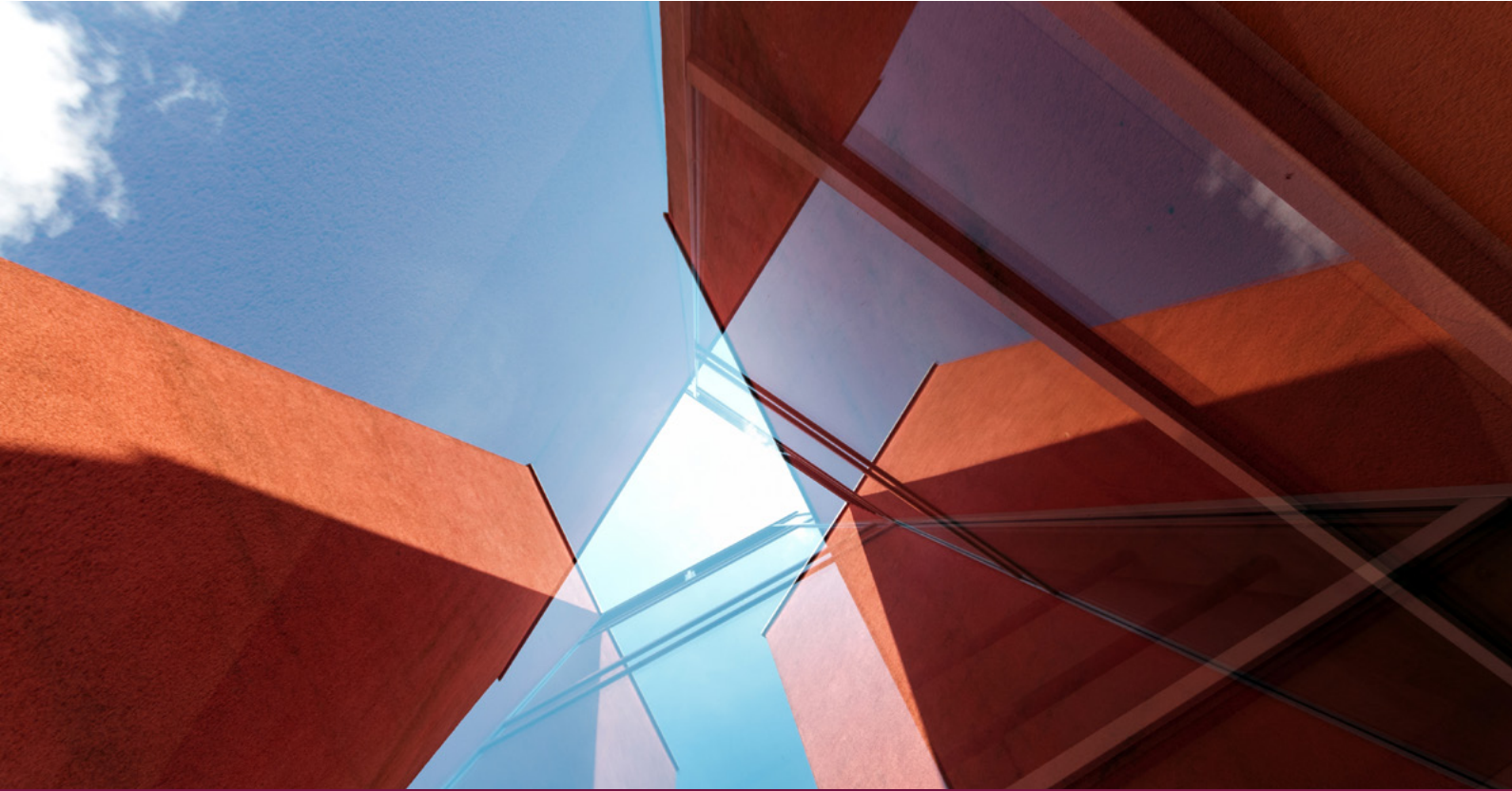


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**The 2019 Hague Judgments Convention
to enter into force in September 2023**

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On 29 August 2022, the European Union (the “EU”) deposited its instrument of accession to the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “**Hague Judgments Convention**”). Shortly after, Ukraine deposited its instrument of ratification. The effect of these steps is that the Hague Judgments Convention will enter into force on 1 September 2023 and will apply between EU Member States (other than Denmark) and Ukraine in relation to the recognition and enforcement of judgments arising out of proceedings commenced after that date.

While the overall impact of the Hague Judgments Convention will largely depend upon the number of States which sign and ratify the treaty, its entry into force in September 2023 is clearly a step towards the implementation of a reciprocal framework for the enforcement of foreign court judgments, designed to replicate the benefits, within the context of court judgments, of the uniform rules for the enforcement of arbitral awards under the 1958 New York Convention.

Background: The Hague Judgments Convention

The Hague Conference on Private International Law (the “**Hague Conference**”) agreed the Hague Judgments Convention on 2 July 2019. The Hague Judgments Convention is intended to facilitate the circulation of judgments among its Contracting Parties by establishing conditions for their recognition and enforcement, as well as possible grounds for the refusal of such enforcement.¹ The Hague Judgments Convention applies to the recognition and enforcement of judgments in civil or commercial matters,² including consumer and individual employment contracts.³

The Hague Judgments Convention applies between those States that sign it, ratify it and bring it into force, and will not come into force for any State until a period 12 months after ratification.⁴ Even then, it will not apply unless the proceedings that led to a judgment were instituted at a time when the Hague Judgments Convention was in force for both the State in which the judgment in question was rendered and the State where the judgment is to be enforced.⁵ This means that the full and effective application of the Hague Judgments Convention remains some time away.

Although it had been signed by six signatory States prior to signature by the EU in July 2022, it was only in August 2022 that a Contracting Party took steps to accede or ratify the treaty. Under the terms of the Convention, there was a requirement that at least two States ratify the Hague Judgments Convention for it to come into effect (with entry into force taking place 12 months after the date of ratification).

¹ Article 7 of the Hague Judgments Convention.

² Article 1 of the Hague Judgments Convention.

³ Certain matters (such as insolvency, privacy, intellectual property) are excluded from the scope of the Hague Judgments Convention ((Article 2(1) of the Hague Judgments Convention). In addition, it applies neither to arbitration and related proceedings (Article 2(3) of the Hague Judgments Convention), nor interim measures of protection (Article 3(1)(b) of the Hague Judgments Convention).

⁴ Article 28(1) of the Hague Judgments Convention.

⁵ Article 16 of the Hague Judgments Convention.

The EU and Ukraine's accession to the Hague Judgments Convention

On 29 August 2022, the EU acceded to the Hague Judgments Convention as its first Contracting Party. Ukraine followed shortly after. Since entry into force takes place 12 months after the date of ratification, this means the Hague Judgments Convention will come into force on 1 September 2023 between EU Member States (other than Denmark) and Ukraine and will apply to the enforcement of judgments in proceedings commenced after that date.

To date, the EU and Ukraine are the first two Contracting States for which the Hague Judgments Convention will enter into force on 1 September 2023. Five other States (namely Costa Rica, Israel, Russia, the United States and Uruguay) have already signed the Hague Judgments Convention, but the treaty will only come into force once these States ratify or accede to it.

Notably, the United Kingdom has not yet signed or ratified the Hague Judgments Convention

The Hague Judgments Convention and the Brussels Recast Regulation

Despite the fact that the EU has acceded to the Hague Judgments Convention and that EU Member States will therefore be required to apply the Hague Judgments Convention from 1 September 2023 onwards, the Hague Judgments Convention will cover only judgments for which recognition and enforcement is sought outside the EU, or the recognition or enforcement of foreign (non-EU) judgments in the EU. In the intra-EU setting, EU Member States will still be bound to apply relevant EU rules,⁶ in particular, Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the “**Brussels Recast Regulation**”).

Furthermore, the scope of the Hague Judgments Convention does not mirror the scope of the Brussels Recast Regulation completely. Whilst both instruments cover the recognition and enforcement of judgments in civil and commercial matters, the scope of the Hague Judgments Convention is slightly narrower than that of the Brussels Recast Regulation. In particular, the Hague Judgments Convention provides for certain express exclusions (such as the carriage of passengers and goods, intellectual property, privacy and certain competition law matters) which find no counterparts in the Brussels Recast Regulation.⁷

The Hague Judgments Convention and the 2005 Hague Choice of Court Convention

Rather than replacing the 2005 Hague Choice of Court Convention,⁸ the Hague Judgments Convention complements the 2005 Convention which still applies. Whilst the 2005 Hague Choice of Court Convention provides only for the enforcement of judgments which arise out of proceedings pursuant to an exclusive choice of court agreement, the Hague Judgments Convention has no such limitation and could apply to any judgments including judgments where the proceedings were based upon a non-exclusive jurisdiction clause. The subject matter scope of the newer Hague Judgments Convention is also slightly broader and applies to, for example, employment contracts.

⁶ Article 23(4) of the Hague Judgments Convention which contains a disconnection clause.

⁷ Article 2 of the Hague Judgments Convention.

⁸ The Convention of 30 June 2005 on Choice of Court Agreements (the “**2005 Hague Choice of Court Convention**”).

Conclusion: Possible further implications of the Hague Judgments Convention:

If no other States accede to the Hague Judgments Convention, the practical benefits of this instrument as of 1 September 2023 will be limited to the relationship between the courts of EU Member states and Ukraine. However, the accession of the EU to the Hague Judgments Convention may well encourage other States to sign and ratify the Convention.

Separately, should the UK sign and accede to the Hague Judgments Convention, this may simplify the enforcement of English court judgments within the EU post-Brexit given that the Brussels Recast Regulation and the Lugano Convention on the jurisdiction, recognition and enforcement of foreign judgments will no longer apply to the UK and the EU will not agree to the UK's re-accession to the Lugano Convention.⁹ However, as explained above, the impact of the Hague Judgments Convention in relation to the UK in the immediate future is likely to be limited given that there will be a delay in practice before the Hague Judgments Convention applies and the Hague Judgments Convention is still more limited in scope than the Lugano Convention (which still appears to be the UK's current preferred option to facilitate cross-border enforcement of UK judgments within the EU).

⁹ As they currently apply in respect of the UK only to proceedings which began before the end of the implementation period set out in the 2019 EU-UK Withdrawal Act.

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