Studies and Articles

The Convention of the Hague of 2 July 2019 on the Recognition of Foreign Sentences: Approaches and Comments

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Abstract: The present work deals with the conference and the adoption of the Hague of 2 July 2019 not entry in force which is concentrated in the analysis of the recognition and execution of decisions of civil and commercial matters in the international private EU law.

Keyworks: Convention of Hague of 2019; execution of sentences; Reg. 1215/2012; CJEU

1. Introduction: Genesis and Purpose of the Convention

The 22nd Diplomatic Session of the Hague Conference on Private International Law closed, on 2 July 2019, with the adoption of the convention on the recognition and enforcement of foreign decisions in civil and commercial matters, also known as Judgments Convention.

The event is significant to more than one title. It is, on the one hand, because the Conference, after a pause of twelve years, has returned to play the most characteristic of its tasks, confirming itself capable of complementing the work of maintenance of the existing conventions with a properly normative action. The adoption of the convention is significant, on the other hand, because with it comes to completion one of the most ambitious projects that the Conference has ever pursued: That of giving life to a regime of general application, with a universal vocation, on the international circulation of judgments.

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The new instrument, in effect, aims to fill a void. With the exception of the Hague Convention of 1 February 1971 on the recognition and execution of foreign judgments in civil and commercial matters, which immediately proved to be a failure, the only multilateral instruments bearing uniform rules on the effectiveness of foreign sentences are in fact of instruments relating to particular matters, such as the Geneva Convention of 19 May 1956 on the international road haulage contract (CMR), or regional instruments, such as Regulation (EU) no. 1215/2012 of December 20, 2012[1] on jurisdiction, the recognition and enforcement of decisions in

[1] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, entry in force from 10 January 2015. See in argument: P.A. NIELSEN, The New Brussels I Regulation, in Common Market Law Review, 50 (3), 2013, pp. 503ss. P. HAY, Notes on the European Union's Brussels-I "Recast" Regulation, in The European Legal Forum, 2013, pp. 2ss. M. POHL, Die Neufassung der EuGVVO-im Spannungsfeld zwischen Vertrauen und Kontrolle, in Praxis des Internationalen Privat-und Verfahrensrechts, 33, 2013, pp. 109ss. A. NUYTS, La refonte du règlement Bruxelles I, in Revue Critique de Droit International Privé, 2013, pp. 3ss. I.P. BERAUDO, Regards sur le nouveau Règlement Bruxelles I sur la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, in Journal du Droit International, 2013, pp. 742ss. A. STAUDINGER, Schiedsspruch und Urteil mit vereinbarten Wortlaut, in Festschrift für Friedrich Graf von Westfalen, Dr. Otto Schmidt Verlag, Köln, 2010, pp. 662ss. V. RIJAVEC, W. JELINEK, W. BREHM, Die Erleichterung der Zwangsvollstreckung in Europa, ed. Nomos, Baden-Baden, 2012, pp. 214ss.V. PULJKO, Regulation (EU) n. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters with special reference to the relationship between the Regulation and arbitration, in Interdisciplinary Management Research, 17, 2015, pp. 4ss. F. GASCÓN-INCHAUSTI, La reconnaissance et l'exécution des décisions dans le règlement Bruxelles I bis, in E. GUINCHARD (eds), Le nouveau règlement Bruxelles I bis. Règlement n° 1215/2012 du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, op. cit., pp. 210ss. See in argument the next cases from the CJEU: C-368/16, *Assnes Havn v. Navigatos Management (UK) limited* of 13 July 2017, ECLI:EU:C:2017:546; C-341/16, *Hanssen Beleggingen v. Tanja Prast-Knippin* of 5 October 2017, ECLI:EU:C:2017:738; C-230/15, *Brite Strike Techonologies v. Strike Strike Tecnologies SA* of 13 July 2016, ECLI:EU:C:2016:560; C-350/14, *Lazar v. Allianz SpA* of 10 December 2015, ECLI:EU:C.2015:802; C-536/13, *Gazprom v. Lietuvos Respublika* of 4 December 2014, ECLI:EU:C:2014:316, all the above cited cases published in the electronic reports of the cases. G. PAYAN, Droit européen de l'exécution en matière civile et commerciale, ed. Bruylant, Bruxelles, 2012. B. KÖHLER, Dual-use contracts as consumer contracts and no attribution of consumer status of a third party to the proceedings under Brussels-I Regulation, in Praxis des Internationalen Privat-und Verfahrensrecht, 37, 2017, n. 6 and in particular the next cases from the CJEU: C-70/15, *Emmanuel Lebek v. Janusz Domino* of 7 July 2016, ECLI:EU:C:2016:524; C-12/15, *Universal Music International Holding BV v. Michael Tètreault Shilling* of 16 June 2016, ECLI:EU:C:2016:449; C-605/14, *Virpi Kom v. Pekka Komu and Jelena Komu* of 17 December 2015, ECLI:EU:C:2015:833; C-438/12, *Irmengard Weber v. Mecthilde Weber* of 3 April 2014, ECLI:EU:C:2014:212, the just cited cases published in the electronic Reports of the cases. In particular in this ultimate case the Court has declared that: "(...) Since the "jurisdiction of the Court first seized (could not be) be formally established (…) the Advocate General confirmed (…) that there was no lis pendens in operation in this case and proceedings in the Court second seized need not be stayed. He relied on dicta (…) to justify that it was inappropriate for it to stay proceedings pending before it (…) the justification for the "reliable assessment" this was premised on the fact that the Court first seized did not have jurisdiction and could not therefore either determine the question of lis pendens nor issue

civil and commercial matters (Brussels I bis) or the Lugano Convention of October 30, 2007[1], establishing a "parallel" regime to that of Brussels.

a judgment capable of recognition under Articles 35(1) and 45(1) (...)". We continue with the next cases: C-218/02, *Lokman Emrek v. Vlado Sabranovic* of 17 October 2013, ECLI:EU:C:2013:62, I-01241; C-190/11, *Daniela Mühlleitner v. Ahmad Yusufi* of 6 September 2012, ECLI:EU:C:2012:542, published in the electronic Reports of the cases. See, J.P. BERAUDO, Regards sur le nouveau règlement Bruxelles I sul la compètence judiciaire, la reconnaisssance et l'exècution des dècisions en matière civile et commerciale, op. cit., pp. 742ss. L. GRARD, La communautarisation de "Bruxelles I", in Revue Gènèrale de Droit International Public, 117 (4), 2013, pp. 530ss. P. BEAUMONT, M. DANON, K. TRIMMINGS, B. YÜKSEL, Cross-border litigation in Europe, Hart Publishing, Oxford & Oregon, Portland, 2017. F. GASCÓN-INCHAUSTI, La reconnaissance et l'exécution des décisions dans le règlement Bruxelles I bis, in E. GUINCHARD (eds), Le nouveau règlement Bruxelles I bis. Règlement n° 1215/2012 du 12 décembre 2012 concernant la compétence judiciaire, la reconnaissance et l'exécution des décisions en matière civile et commerciale, ed. Larcier, Bruxelles, 2014, pp. 210ss. D. **LIAKOPOULOS, European integration and its relation with the jurisprudence of European Court of Human Rights and private international law of European Union, in Homa Publica.Revista Internacional de Direitos Humanos e Impresa, 2 (2), 2018. D. LIAKOPOULOS, Interactions between European Court of Human Rights and private international law of European Union, in Cuadernos de Derecho Transnacional, 10 (1), 2018.**

[1] The CJEU has issued an important decision that is halfway between the lis pendens and the question of the circulation of decisions. CJEU, C-456/11, Gothaer Allgemeine Versicherung AGcontro Samskip GmbH of 15 November 2012, ECLI:EU:C:2012:719, published in the electronic Reports of the cases. The dispute concerns a lawsuit for damages caused by the Samskip carrier to a brewery plant transported to Mexico on behalf of the German company Krones, brought by Krones itself and by four insurance companies. The particularity is that the parties are acting in Germany before the Landgericht Bremen only after the decision of the Hof van beroep of Antwerp declares the defect of the Belgian jurisdiction on the basis of a clause on the jurisdiction contained in the bill of lading, which elects Iceland which competent forum. The clause in favor of the Icelandic judge falls within the Lugano system and not in the context of Regulation 44/2001, but the issue of the effectiveness of the Belgian judgment in Germany is a matter for Brussels I. Following the defenses carried out by the carrier, the Landgericht considers it appropriate to request the interpretation of the CJEU whether the Belgian decision is binding on the German court and to what extent. In particular, the judge asked whether (1) in the notion of "decision" the decisions which are exhausted in ascertaining the absence of the procedural conditions of admissibility (so-called merely procedural sentences), such as (2) a final judgment of the degree, are also included of judgment, by which the court seised declines its international jurisdiction on the basis of a clause conferring jurisdiction and specifically if (3) each Member State is obliged to recognize the decisions issued by the court of another Member State concerning the effectiveness a clause conferring jurisdictional rights stipulated inter partes, when, according to the national law of the judge of the country of origin, the verification of the effectiveness of this clause has the authority of res judicata, even if the decision in this regard constitutes part of a merely procedural sentence that rejected the appeal (paragraph 21). The European court, taking up the ranks of its previous case-law as a point of recognition, before the circulation regime? "also applies to a decision by which the court of a Member State declines its jurisdiction on the basis of a clause conferring jurisdiction, regardless of the classification of that decision under the law of another Member State" (paragraph 32). It therefore concludes that "the judge before whom the recognition of a decision by which the court of another Member State has declined its competence on the basis of a jurisdiction clause is bound is bound by the ascertainment of the validity of this clause, contained in the justification of a decision, which has become final, declaring the inadmissibility of the action "(paragraph 43). For further details see also: T.C. HARTLEY, Choice of Court Agreements under the european and international instruments: The Revised Brussels I Regulation, the Lugano Convention and the Hague

The purpose of judgments Convention, as stated in the preamble, is to facilitate the circulation of decisions. The idea, which is not new in itself, is that, in order to promote the development of transnational relationships between private individuals, it is good to ensure that those concerned can easily assert their rights based on a decision made in a given country anywhere this is necessary. That is, they can project the effects of the decision in question outside the country of origin, without excessive limitations, and in any case on internationally homogeneous conditions. And this to implement judge's command (typically, in the event of a conviction, to demand the forced execution of that command in the country where the debtor possesses assets that can be assaulted), either to oppose the res judicata to those who essentially claim to reopen, in one country, a dispute already settled in another definitively.

Basically, it is the same objective that the Hague Conference pursued with the convention of 30 June 2005 on the exclusive election agreements of the forum, currently in force in relation to the European Union, Mexico, Singapore and a few others states. The conventions of 2005 and 2019, moreover, are linked by a very close relationship, constituting, in essence, distinct outcomes of a single enterprise, still launched in the early 1990s of the last century. As noted in the preamble to the most recent of the two texts, the Convention of 2019 and that of 2005 are in fact complementary instruments, designed to operate jointly and characterized, according to this, by a largely common language.

2. General Characters

The 2019 Convention obeys, in its layout, a completely traditional scheme. In a nutshell, it lists, on the one hand, the conditions under which a Contracting State (the requested state) has the obligation to recognize, and possibly declare enforceable, decisions coming from another Contracting State (the state of origin). On the other hand, the Convention indicates the circumstances in which the authorities of the requested state are authorized to deny the recognition or execution of a decision for which, otherwise, the obligation indicated above would exist.

The conditions that qualify a decision as eligible for recognition pertain, in particular, to its origin. To this end, the Convention prepares jurisdictional “filters”, or criteria of international or indirect competence. In fact, it subordinates the

Convention, Oxford University Press, Oxford 2013, pp. 4-6, 129-130. R. GARNETT, Substance and procedure in private international law, Oxford University Press, Oxford. 2012, pp. 105ss.

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recognition of a judgment to the fact that it has been rendered in a country with which the case presents a connection that the Convention itself considers to be congruous.

The judgment Convention is, in this sense, a "simple" convention, not a "double" convention, as was the Brussels Convention of 27 September 1968 on the recognition of judgments[1], a predecessor tool of the aforementioned Brussels I bis regulation. Unlike the double regimes, which combine the unification of the rules on the circulation of decisions with the introduction of uniform rules conferring jurisdiction, the 2019 Convention merely performs the first of the two functions, leaving the contracting states free to trace how they believe the scope of the jurisdiction of their own judges. The jurisdictional filters used by the judgment Convention can, of course, indirectly influence the physiognomy of the rules attributing the jurisdiction of the contracting states to the extent that they allow the use of jurisdiction titles other than those that the Convention identifies as adequate. The Contracting states in fact prevent the decisions of their judges, if based on those titles, from benefiting from the circulation regime established by the Convention. This could actually induce the contracting states to align their jurisdiction rules with conventional filters, but such a development is in no way imposed by the Convention.

On the contrary, the freedom of maneuver that the contracting states retain in the field of jurisdiction is in a certain sense amplified by art. 15 of the Convention, pursuant to which-except for an exception which will be discussed below-nothing prevents the contracting states from recognizing a decision coming from another Contracting State even when the latter does not meet the jurisdictional requirements established by the Convention itself (or however, it does not conform to the uniform regime in some respects), where recognition is possible under the relevant provisions

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[1] Already with reference to the 1968 Brussels Convention, the CJEU had lastly referred to the citation note of a manifest and immense "violation" of a fundamental right, based on the exceptional nature of the limit of public order. See in the same spirit the case. CJEU, C-394/07, Gambazzi of 2 April 2009, ECLI:EU:C:2009:219, I-02563, par. 33. the English procedural law opens up, to be true, a rather unhelpful remedy for the unsuccessful party sentenced to be default and which does not appear in line with art. 47 CFREU. This is the application to set aside, provided for by Rule 13 Cpr, whose acceptance requires the demonstration of a realistic prospect of resisting the demand (Godwin v. Swindon BC 82001) 4 ER 641, for May Lj; Akram v. Adam 820049 EWCA Civ. 1601; ED & F may prodcuts ltd v. Patel & Anr, 82003), EWCA Civ. 472, Potter LJ; standard bank Plc v. Sgrivest International inc., 82010, EWCA Civ. 1400, moore-bick LK. The imposition of unnatural and higher charges and probative standards for the default, than would be for the defendant constituted. The limitation of the right to the trial of the default; the absence of judgment, if not indirectly, as a reflection of the validity of the impedimental, amending, extinctive facts deduced from the dispute, on the constituting facts of the right asserted by the plaintiff and the discretionality of the return in the defensive powers of the involuntary default make this remedy a blunt weapon.

of the requested state. In practice, the Convention provides a series of opportunities for the circulation of sentences between the contracting states, without claiming that those opportunities are the only ones possible within its field of application. The use of attribution titles other than those contemplated by the Convention does not tout court the circulation of the decision in the contracting states, but simply deprives such decision of the advantages inherent in the Convention, without precluding (beyond the case of which it will be said) that same be recognized in those states by another way.

The judgment Convention also differs in this respect from the 2005 Convention on the agreements of election of the forum, of which also, as mentioned, generally represents the complement. The 2005 Convention, a genuinely double instrument, imposes, on the contrary, on states that are bound by it particularly stringent obligations on the terrain of jurisdiction. Dealing with agreements aimed at investing the judges of a certain state with an exclusive competence, the 2005 Convention requires that the extended court exercise the jurisdiction thus conferred, and at the same time requires that the judges of any other Contracting State refrain from taking cognizance of the questions covered by the agreement of the parties. Moreover, only the decisions made by the elected judge circulate in the contracting states by virtue of that Convention.

3. Scope of Application

The Convention deals with the effectiveness, in a Contracting State, of the decisions (only those expressing a cognitive judicial activity, excluding therefore precautionary measures) rendered by the authorities of another Contracting State in civil or commercial matters (they are likewise assimilated to the decisions, for the spending of the relative executive effects, the judicial transactions, where the conditions foreseen for this purpose are met). The Convention does not indicate how the adjectives "civil" and "commercial" should be understood, except to clarify that tax, customs and administrative provisions are outside its material sphere. Furthermore, as is clear from the draft explanatory report prepared by Francisco Garcimartín Alférez and Geneviève Saumier, it is not disputed that the aforementioned expressions, as in general the technical-legal formulas used in the Convention, should be reconstructed in an autonomous key, and not as a postponement to the notions of a particular national legal system. Moreover, art. 20

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requires the interpretation of the Convention taking into account its international character and the need to promote its uniform application.

In fact, the material scope of the Convention is limited to judgments given by state authorities concerning private causes. Hence the exclusion of arbitration, explicitly stated in art. 2, par. 3, and the statement, in art. 2, par. 5, that the Convention does not in any way affect the privileges and immunities of states and international organizations. The public nature of the cases for which those privileges and immunities subsist places the relative sentences outside the bounds of the uniform regime, but the clarification has nevertheless seemed appropriate.

The Convention, in reality, does not fully embrace civil and commercial matters, understood in this way. Article. 2, par. 2, indeed provides a long list of excluded subjects. Some reflect the politically sensitive nature of the interests they deal with in decisions relating to certain segments of private law, such as decisions on state and capacity and in succession or in general family decisions. The exclusion of such decisions from the field of application of the Convention reflects the widespread perception of the need to elaborate, for the recognition of judgments concerning those sectors, special rules, adapted to the material values at stake. In fact, the judgment Convention essentially concerns the circulation of decisions relating to private equity transactions, whether of a contractual, extra-contractual or real nature.

Even in this context, however, the applicability of the Convention is limited. Bankruptcy decisions, in broad agreement, are excluded from the uniform regime, as are, among others, decisions concerning the validity and dissolution of legal persons and other entities, and those concerning registrations and transcriptions in public registers. They are also excluded, because they are the subject (at least in part) of special agreements, often bearing special rules on recognition, decisions relating to the transport of goods and passengers, those concerning marine pollution and those relating to liability arising from nuclear accidents.

Intellectual property is also included among the excluded subjects. The inclusion of the decisions in this area in the sphere of the judgment Convention formed the object of discussion until the final phase of the negotiation, when it became clear that the states opposed to inclusion were unavailable to consider any solution on this ground of compromise.

A different fate has been given to another sensitive subject, that of competition decisions. During the Diplomatic Session, the closing positions taken by a small number of states did not prevent the acceptance of a solution of cautious inclusion,

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transfused in article 2, par. 1, lett. p), so that the Convention applies to decisions relating to a list of antitrust law issues, on condition that these are decisions coming from the country in which both the conduct in question and its effects are produced.

The difficulties encountered in the negotiation in reaching widely shared solutions as regards the delimitation of the material sphere of the Convention are found in art. 18. It is envisaged that states that have a "strong interest" in not applying the Convention to a particular segment of civil or commercial matters may issue a declaration to this effect, making sure that their scope is not "wider than necessary". The declaration made for this title-in practice, a particular species of reserve-exempts the declaring state from the obligation to apply the Convention to the decisions included in the matter indicated, and at the same time exempts the other states from the same obligation when it comes to relative decisions to this subject coming from the declaring state.

The Convention clarifies, in art. 8, how the decisions which, although pronouncing on a matter included in the application sphere of the Convention, also deal with issues outside of it, for the purposes of the agreement regime. Article. 8, par. 1, establishes that, for the head of the decision that has established in a subject excluded, the Convention has no effects. On the other hand, pursuant to art. 8, par. 2, the contracting states may deny the recognition and enforcement of a decree per se comprised in the material sphere of the Convention if, and to the extent that, it is based on a decision concerning an excluded matter. The solution accepted in the final text reflects the concerns expressed by states reluctant to bring decisions relating to certain sensitive matters, and in particular intellectual property, back under the Convention. The exclusions decided in art. 2 come out reinforced. Various hypotheses of compromise were proposed in the final phase of the negotiation with the aim of ensuring the recognition of decisions based on a ruling relating to an excluded subject (especially along the lines of the provisions of art. 8, par. 3, of the 2005 Convention), but on none of these hypotheses was it possible to coagulate the consent of the states involved in the negotiations.

4. The So-Called Jurisdictional Filters

The Convention contains provisions on the so-called international jurisdiction of the court of origin, or indirect jurisdiction. It thus outlines, in a uniform way, a classic requisite for recognition and execution that assumes importance in contexts characterized by a lower degree of mutual trust than that which, for example, permeates European civil judicial cooperation.

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Indeed, the multiplicity, variety and different inspiration of the principles underlying the exercise of jurisdiction in each state could have discouraged the inclusion of uniform criteria on indirect competence or hindered the identification of common principles. Think, for example, of the role of the forum (non) conveniens, unknown to or even forbidden in many jurisdictions, or to the obligatory presentation of a counterclaim for not incurring the forfeiture of the action, which is also uncommon globally.

The text expresses a cautious feeling of equivalence towards the aforementioned principles with the result that the respect, sometimes very detailed, of only one of the connecting factors between controversy and state of origin indicated in art. 5 allows the sentence to circulate.

In this regard, they can detect factors of various kinds. Article. 5, par. 1, uses alternatively the habitual residence of the party against whom the recognition and execution are requested or its main business location in competition with the circumstance that the dispute arose from the conduct of such business; the presence of a branch, an agency or a dependency of the defendant combined with the fact that the dispute arose from the activities carried out by these secondary offices; the place of performance of the contractual obligation deducted in court (place identified by the parties or by the lex contractus, provided that there is a real link between defendant's activities and state of origin); the presence of the property in the event of disputes from rental contracts or contractual disputes concerning services guaranteed by real estate when the application also relates to the real guarantee right; the location of the deed or event generating the damage in cases involving non-contractual liability falling within the scope of the agreement; the principal place of administration of the trust in the event of disputes relating to a trust (the criterion competes with that of the choice of court agreement).

They also note, alternatively the quality of the actor in the process of origin of the person against whom recognition and execution are requested; the express acceptance of jurisdiction by the defendant or its tacit acceptance resulting from the defense of merit experienced without raising the jurisdiction defect-or without invoking the displacement of jurisdiction due to the forum non conveniens-in the terms imposed by the law of origin (unless it is evident that the jurisdiction exception, although raised in terms, would have had no effect according to the same law); the non-exclusive extension of jurisdiction (for the exclusive extension of the aforementioned 2005 Convention).

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With regard to disputes concerning consumer or labor contracts, art. 5, par. 2, called a restrictive regulation, under which some jurisdictional filters of art. 5, par. 1, must be considered inoperative (this is the case, in particular, of the filter of the contractual matter, centered on the locus solutionis criterion), while other filters operate only when particular circumstances are involved (so, for example, the acceptance of jurisdiction by the defendant operates as a criterion of indirect competence only if it is expressed before the court).

For disputes relating to residential rentals of properties, pursuant to art. 5, par. 3, a single filter, that of the situs rei. Article 6 concerns sentences concerning real rights on immovable property. These are subtracted from the filters of art. 5 to be delivered to a rule of exclusive indirect jurisdiction, by virtue of which the sentences in question are effective if, and only if, they come from the state of the situs rei. This is the only situation in which, as anticipated, the Convention - in addition to imposing the recognition of judgments that satisfy the conditions in it - requires states to refrain from recognizing a provision that, conversely, does not come from the country designated by the filter. This solution is corroborated by the clarification made in art. 15, that the freedom granted to the contracting states to give effect according to their own internal rules to judgments that do not integrate the conventional requirements does not exist with respect to the falling decisions referred to in art. 6.

With specific regard to the sentences rendered on counterclaims, the agreement distinguishes between sentences of acceptance and of rejection. With regard to the former, the counterclaim must derive from the same facts or from the same relationship on the sensu side underlying the main claim (in the absence of such a common derivation, the sentence may nevertheless circulate if other requirements occur, such as, for example, habitual residence of the principal actor in the state of origin). The close connection between the two questions is not required in the event of a rejection sentence, but the sentence will not be able to circulate thanks to the requisite in question if the applicant was obliged to promote the counterclaim for not having to face exclusions.

5. The Conditions of Recognition and Procedure

As noted, the Convention aims to create a uniform body of core rules. If this objective, so to speak minimalist, has been achieved also in the discipline of conditions impeding recognition, with regard to the exequatur procedure the consensus has not been reached on a uniform core procedure that draws inspiration,

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as a result of compromise and balance, from national ones. The result is that the procedure is governed by the law of the requested state (article 13).

The reference to national law-which must be determined taking into account the rules of operation applicable in the case of multi-legislative systems (articles 22 and 25)- is not however total because the Convention, in addition to imposing to proceed expeditiously and not to refuse recognition because the request should have been presented in another state (art. 13), expressly regulates some aspects of the procedure, such as, in particular, the documentation with which the petitioner is required to accompany the request for recognition or execution (art. 12). In addition, art. 14 prohibits the submission of the request for recognition to cautionary deposits or other forms of guarantees solely because the applicant is a foreigner with respect to the requested state or in this neither domiciled or resident. It is a rule that is certainly obsequious to the right of access to justice, which, however, states can exclude using the reserve referred to in the same art. 14.

In order to circulate, the sentence must meet certain requirements and not run into certain impediments. On closer inspection, most of the positive recognition requirements correspond to the jurisdictional filters described above. On the other hand, the lack of positive requirements is equivalent to an impediment implied by recognition. Naturally, upstream of any evaluation on the susceptibility of the sentence to circulate there is the ascertainment that the Convention is applicable. This verification, according to art. 4, par. 2, should be conducted in an area of investigation marked by the ban on review of the merit.

In addition to jurisdictional filters, the Convention requires that the sentence be capable of producing effects (of judgment) where recognition is required, and that it is enforceable, if its execution is required. Both conditions must be ascertained according to the law of the state of origin (article 4).

The impediments are mainly listed in art. 7 and justify a check on the regularity of institution and the procedure of origin, on the compatibility of the sentence with the public order of the requested state (including the procedural public order and the protection of the security and sovereignty of the state itself), on the prohibition of fraud on the law, on compliance with jurisdictional extension agreements, on the compatibility of the judgment in question with judgments pronounced between the same parties in the requested state or with previous sentences rendered on the same dispute also pronounced elsewhere but capable of being recognized in the requested state, on lis pendens in favor of the judges of that state provided that there is a close connection between the latter and the dispute.

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Article 9 allows, then, a partial circulation of the sentence when the request for recognition concerns only a part of the sentence, or when the sentence can be recognized only partially due to the recognition requisites or the impeding conditions. A particular impediment is provided for in art. 10 with regard to decisions to condemn and exemplary or punitive damages. These decisions may not be recognized, or partially recognized, for the strictly compensatory portion.

States can offer their judges, through the appropriate declaration provided for by art. 17, the faculty to refuse entry of the sentence if the parties to the dispute are resident in the requested state and present, together with any other element of the dispute other than the location of the judge of origin, connections only with that state.

6. Relation of the Agreement with Other Rules on Recognition

The phenomenon that the judgment Convention proposes to regulate is the object, as mentioned above, of internationally uniform norms envisaged in various other instruments: Bilateral and multilateral conventions, and regional instruments. The rules governing the coordination of the Convention with these other texts are contained in art. 23.

First of all, the law (or, better, remember) that any conflicts between uniform regimes must be composed, where possible, on an interpretative level.

For its part, art. 23, par. 2, subordinates the Convention to pre-existing treaties, while par. 3 clarifies that the Convention does not affect the application of the subsequent treaties, as this does not compromise the observance of art. 6 with respect to state party to the Convention which are not parties to the treaty.

Article 23, par. 4, concerns the relation between the Convention and the rules contained in an instrument adopted by a regional economic integration organization, such as the Union. Essentially it concerns relation with the Brussels I bis Regulation. The solution is identical to that already illustrated with regard to the treaties: The pre-existing rules are preserved, while the subsequent ones are intended to prevail over the Convention, in its field of application, except for the respect of art. 6.

In practice, if and when the 2019 Convention comes into force for the Union, the regime established therein will not affect the operation of the Brussels I bis Regulation with respect to the decisions subject to it (those made in a EU member state, in as invoked in another member state), even if pronounced, by hypothesis, in relation to a real estate action relating to a property located in a third state, part of

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the Convention. Each subsequent regional regulation must instead guarantee, in the latter scenario, compliance with the obligations arising by art. 6 of the Convention.

7. Concluding Remarks and Possible Developments

The conclusion of the judgment Convention falls within the exclusive external competence of the Union. It is plausible that the Union resolves to express its consent to be bound in a relatively short time. The negotiation, albeit marked by the rejection of some of the solutions advocated by the Union, sometimes on particularly qualifying points of the text, resulted in the adoption of a text which, as a whole, appears to be fundamentally compliant with the outlined auspices, in due time, by the institutions[1].

The interest in the Convention expressed by the delegations of some non-European states suggests that other instruments of ratification can be deposited in a not too long time frame.

However, it is not realistic to expect any significant development in the immediate term. For the delegations engaged in the negotiation it is likely to be a priority, in this phase, to supervise the drafting of the final version of the explanatory report, expressing, according to a procedure defined by the Permanent Bureau of the Conference, any comments on the final draft that will be finalized in the coming weeks.

The entry into force of the Convention is subject to the deposit of just two instruments of ratification or accession. It is also useful to point out how the judgment Convention, taking up (moreover with various improvements) a controversial approach already experimented with the mentioned Convention of 1971, provides for a mechanism of "bilateralization" of relation between contracting states. Article 29 in fact contemplates the possibility that a state, at the time of expressing its consent to be bound by the Convention, declares that this consent does not constitute a relationship established by the Convention between itself and another contracting state. Conversely, each Contracting State may declare that the ratification or accession of a certain state will not have the effect of giving rise to a relationship between that state and itself.

[1] See the text, only partially declassified, of the recommendation for a Council decision concerning the start of negotiations, Council of the EU, Brussels 8 June 2017, 7746/16 EXT 1, JUSTCIV 51.

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The burden thus prefigured with regard to the procedure (and at the time) of ratifications and accessions reflects, once again, the politically sensitive nature of the matters governed by the Convention and the desire of individual states to maintain their international treatment under their respective sphere of control.

In the coming months, when the states and the European Union have just begun to assess what steps to take with regard to the Convention, the Hague Conference will be called upon to decide whether to start a reflection on the adoption of a possible future instrument with standards attributing jurisdiction in civil and commercial matters. In the conclusions of the meeting held between 5 and 8 March 2019[1], the Council on General Affairs and Conference Policy gave a mandate to the Permanent Bureau to convene the group of experts who assisted the Conference in relation to the Judgment Project. The results of the meeting will be discussed by the Council in the spring of 2020.

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[1] HCCH, Council on General Affairs and Policy 5-8 March 2019.

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