

# The 2019 Hague Judgments Convention: Its Conclusion and the Road Ahead

Professor Marta Pertegás

Law Professor, Maastricht University and University of Antwerp

# The relevance of the new Convention

- For the HCCH itself and its Members
- For international civil and commercial dispute resolution
  - Attractiveness of (international commercial) courts
  - A must for Diversified Dispute Resolution (besides arbitration, mediation, conciliation, etc.)
- **For individuals and businesses in cross-border dealings:** it promises the facilitation of access to justice and cross-border trade and investment ... in troubled times for international trade.

## What kind of a Convention?

- On recognition and enforcement (R&E) (between Contracting States) of judgments relating to civil or commercial matters (**Art. 1**)
- It does not extend to excluded matters, such as, *inter alia*, defamation, privacy, intellectual property rights and most anti-trust (competition) matters (**Art. 2**)
- Main rule: R&E enabled without review of the merits (**Art. 4**)
- It allows refusal of recognition and enforcement only on the grounds specified in the Convention (**Art. 7**)
- It does not prevent recognition and enforcement under national law, except for rights in rem in immovable property (**Art. 6 and 15**)

## What next?

- Warmly welcomed by the international dispute resolution community.
- Speedy entry into force is desirable: when two States have ratified it (Art 24). Declarations and exclusions are possible (see, in particular Arts. 18, 19 and 29).
- Uruguay signed the Convention on the day of its adoption; Uruguay is thus expected to ratify the Convention in the foreseeable future.
- States that took an active role during the negotiations may be willing to follow suit.
- These include the EU, Singapore, Brazil and PR China. PR China is working towards the ratification of the 2005 Choice of Court Convention, which the Judgments Convention complements.

## In practice (after EIF)

- More legal certainty about the value of foreign judgments, instead of current reports of divergent outcomes (e.g. on the R&E of judgments between PR China and Japan, PR China and Australia, PR China and Korea, etc.).
- No change expected for excluded matters. Note that “high profile” cases on defamation, extraterritorial application of GDPR or patent infringement are outside scope.
- More resort to (international commercial) courts?
- Empirical studies and monitoring needed to measure real impact in practice.

## Some early references

- <https://www.hcch.net/en/instruments/conventions/full-text/?cid=137>
- C. North, <http://conflictoflaws.net/2019/conclusion-of-the-hcch-judgments-convention-the-objectives-and-architecture-of-the-judgments-convention-a-brief-overview-of-some-key-provisions-and-whats-next/>
- P. Franzina, <http://www.sidiblog.org/2019/07/11/la-convenzione-dellaja-del-2-luglio-2019-sul-riconoscimento-delle-sentenze-straniere-una-primalettura/> (in Italian)
- M. Douglas, M. Keyes, S. McKibbin and R. Mortensen, The HCCH Judgments Convention in Australian law, Federal Law Review (available on SAGE)
- <https://www.xn--hlnepro-20aif.fr/h/circulation-internationale-des-jugements-convention-de-la-haye-du-2-juillet-2019> (in French)

**Any questions?**

**Thank you for your attention**

**m.pertegas@maastrichtuniversity.nl**