



APRIL 28, 2023

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EU and Ukraine to Recognize and Enforce Each Other's Court Decisions

On April 24, 2023, the EU Council announced that it will seek treaty relations with Ukraine under the framework of the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters¹ (the "Judgments Convention" or the "Convention"). The Convention will enter into force between the EU and Ukraine on September 1, 2023.

By this decision, the EU Council has confirmed that there are no "fundamental obstacles" - such as human rights issues or the independence of the judiciary - that would prevent the EU from entering into treaty relations with Ukraine under the Judgments Convention. This is an important development for the recognition and enforcement of European and Ukrainian judgments in both civil and commercial matters, particularly in light of the ongoing Russian invasion of Ukraine and Ukraine's pending application for EU membership.

Background to the Judgments Convention

The Judgments Convention is a multilateral treaty adopted by the Hague Conference on Private International Law on July 2, 2019. As with foreign arbitral awards under the New York Convention,² the aim of the Judgments Convention is to provide a predictable and uniform framework for the recognition and enforcement of civil or commercial judgments rendered by courts of one Contracting State in the territory of another Contracting State. Currently, that matter is left to often burdensome local procedures and, to a great extent, comity.

The Convention has been signed by 48 States but has only been ratified by 42. Notably, the United States and the Russian Federation have signed but not yet ratified the Convention.

Pursuant to Article 24 of the Judgments Convention, any State can accede to the Convention. However, accession only creates treaty relations between two Contracting States if "neither of them" has notified the depositary that the accession shall "not" have the effect of establishing



treaty relations with the other. Under Article 29(2), such a notification must be submitted within a period of 12 months after the date on which the accession was notified. The Convention will therefore enter into force between the EU and Ukraine on September 1, 2023, which is 12 months after both the EU and Ukraine deposited their instruments of accession and ratification to the Convention.

The main features of the Judgments Convention

The Judgments Convention imposes the obligation on Contracting States to recognize and enforce a foreign judgment of another Contracting State without reviewing the merits of the judgment.³ The Convention applies to civil or commercial judgments,⁴ except for judgments over intellectual property, carriage of passengers and goods, family matters, insolvency, and the status and capacity of persons. Contracting States can also limit the Convention's application to certain matters or state that the Convention will not apply between them and another Contracting State. Those declarations can be modified or withdrawn at any time.

The Judgments Convention also establishes a simplified process of recognition and enforcement. Specifically, it enumerates the limited grounds under which a foreign judgment can be denied recognition and enforcement: (1) insufficient notice to the defendant, (2) fraud, (3) manifest incompatibility with the public policy of the requested State, (4) conflict with a choice of forum agreement, or (5) a conflict with a prior judgment rendered in a dispute between the same parties.

What does the future bring?

For civil and commercial matters, the Judgments Convention will help bring certainty and predictability, shortened timeframes, and decreased costs for the recognition and enforcement of EU judgments in Ukraine and Ukrainian judgments in the EU. Notwithstanding the prospect of Ukraine establishing treaty relations with the EU under the Judgments Convention, judgment creditors will likely continue to face considerable practical difficulties in successfully enforcing against the Russian State due to a limited pool of enforceable assets, competing creditors, and sovereign immunity challenges.

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- ¹ Council of the European Union “*The EU and Ukraine will recognise and enforce each other’s court decisions*” April 2024, <https://www.consilium.europa.eu/en/press/press-releases/2023/04/24/the-eu-and-ukraine-will-recognise-and-enforce-each-other-s-court-decisions/>.
 - ² Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).
 - ³ Articles 4 (1) and (2) of the Convention.
 - ⁴ Article 1 of the Convention.