

**17. SUPPLEMENTARY PROTOCOL
TO THE HAGUE CONVENTION ON THE RECOGNITION AND ENFORCEMENT
OF FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS¹**

(Concluded 1 February 1971)

The States signatory to the present Protocol,

In the knowledge that certain grounds of jurisdiction, which are not included in Articles 10 and 11 of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, can only exceptionally justify the international recognition and enforcement of judgments, Convinced that the principles upon which this Protocol is founded shall prevail both in Supplementary Agreements which will be concluded under Article 21 of the said Convention and in other Conventions to be concluded in the future,

Have resolved to conclude a Protocol to this end, and agreed on the following provisions:

- (1) This Protocol shall apply to all foreign decisions, regardless of their State of origin, rendered in matters to which the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters extends, and directed against a person having his domicile or habitual residence in a Contracting State.
- (2) Recognition and enforcement of a decision to which Article 1 applies shall in a Contracting State be refused at the request of the person against whom recognition or enforcement is sought, where the decision was based, and in the circumstances could have been based, only on one or more of the grounds of jurisdiction specified in Article 4.
Recognition and enforcement need not, however, be refused where the jurisdiction of the court of the State of origin could in the circumstances also have been based upon another ground of jurisdiction which, as between the State of origin and the State of recognition, is sufficient to justify recognition and enforcement.
- (3) Contracting States for the purposes of Articles 1 and 2 are States which are Parties to the Convention, and are linked by a Supplementary Agreement in accordance with Article 21 thereof.
- (4) The grounds of jurisdiction referred to in the first paragraph of Article 2 are the following –
 - a) the presence in the territory of the State of origin of property belonging to the defendant, or the seizure by the plaintiff of property situated there, unless –
 - the action is brought to assert proprietary or possessory rights in that property, or arises from another issue relating to such property,
 - the property constitutes the security for a debt which is the subject-matter of the action;
 - b) the nationality of the plaintiff;
 - c) the domicile, habitual residence or ordinary residence of the plaintiff within the territory of the State of origin unless the assumption of jurisdiction on such a ground is permitted by way of an exception made on account of the particular subject-matter of a class of contracts;
 - d) the fact that the defendant carried on business within the territory of the State of origin, unless the action arises from that business;
 - e) service of a writ upon the defendant within the territory of the State of origin during his temporary presence there;

¹ This Protocol, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions”. For the full history of the Protocol, see Hague Conference on Private International Law, *Actes et documents de la Session extraordinaire (1966), Exécution des jugements* (514 pp.).

- f) a unilateral specification of the forum by the plaintiff, particularly in an invoice.
- (5) A legal person shall be considered to have its domicile or habitual residence where it has its seat, its place of incorporation, or its principal place of business.
- (6) This Protocol shall not prevail over present or future Conventions which, in relation to special fields, provide for any of the grounds of jurisdiction specified in Article 4.
- (7) This Protocol applies subject to the provisions of existing Conventions relating to the recognition and enforcement of foreign judgments.
- (8) In Supplementary Agreements concluded in accordance with Article 21 of the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, States Parties to those Agreements will not regard a court as possessing jurisdiction when it has proceeded on one or more of the grounds of jurisdiction specified in Article 4, unless it is necessary to do so to prevent a denial of justice to a litigant.
- (9) The present Protocol shall be open for signature by every State which has signed the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.
It may be signed and ratified by every State which is a Party to the Convention, and the instrument of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands which shall give all necessary notifications.
It shall enter into force on the sixtieth day after the deposit of the second instrument of ratification.
For every State which ratifies it subsequently it shall enter into force on the sixtieth day after the deposit of the instrument of ratification.
A denunciation of the Convention entails the denunciation of the Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at The Hague, on the first day of February, 1971, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law, and to Cyprus, Iceland and Malta.