

**Third Meeting of the Special Commission
on the Recognition and Enforcement of Foreign Judgments
13-17 November 2017**

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Title	Note on “common courts” in Article 22 of the February 2017 draft Convention	
Author	The Permanent Bureau	
Agenda item		
Mandate(s)		
Objective	To facilitate discussions on “common court” in Article 22 of the February 2017 draft Convention at the upcoming Special Commission meeting	
Action to be taken	For Approval <input type="checkbox"/> For Decision <input type="checkbox"/> For Information <input checked="" type="checkbox"/>	
Annexes	ANNEX I – Common courts with jurisdiction over a wider scope of civil or commercial matters. ANNEX II – Specialised common courts.	
Related documents	n.a.	

A. Introduction

1. The future Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the “Convention”) applies to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.¹ During the Special Commission meeting on the Judgments Project in February 2017, the participants discussed the need for a mechanism expressly including judgments given by courts common to two or more Contracting States (“common courts”), and a joint proposal was then made to include such a mechanism in the Convention.²

2. The proponents explained that the proposal is intended to capture various common courts, such as the Privy Council and the Andean Courts.³ The proponents further explained the scope and operation of the proposal (*see, infra*, Section B).⁴

3. Some delegations raised concerns as to the application of the proposal to investment courts (such as the EU-Canada Comprehensive Economic and Trade Agreement), other supra-national courts (such as the International Court of Justice), and the operation of the mechanism.⁵ The participants also discussed the scope of the mechanism, expressing the need for further elaboration as to what matters other than intellectual property would be covered by such courts.⁶

4. While there was substantial support for the inclusion of such a mechanism in the draft Convention, it was nevertheless agreed that there is a need for further consideration.⁷ The Special Commission, therefore, decided to put the proposed provision, reflected in Article 22, within square brackets in the February 2017 draft Convention.⁸

[Article 22 Declarations with respect to common courts

1. *A Contracting State may declare that –*
 - a) *a court common to two or more States exercises jurisdiction over matters that come within the scope of this Convention; and*
 - b) *such a court –*
 - i. *has only an appellate function; or*
 - ii. *has first instance and appellate functions.*
2. *Judgments of a Contracting State include –*
 - a) *judgments given by a court referred to in paragraph 1(b)(i);*
 - b) *judgments given by a court referred to in paragraph 1(b)(ii) if all States referred to in paragraph 1(a) are parties to this Convention.*
3. *If a court referred to in paragraph 1(b)(i) serves as a common court for States some of which are Contracting States and some of which are non-Contracting States to this Convention, judgments given by such a court shall only be considered as judgments of a Contracting State if the proceedings at first instance were instituted in a Contracting State.*
4. *In case of a judgment given by a court referred to in paragraph 1(b)(ii) the reference to the State of origin in Articles 5 and 6 shall be deemed to refer to the entire territory over which that court had jurisdiction in relation to that judgment.]*

¹ See the draft Convention on Judgments of February 2017, Art. 1(2) (available on the Hague Conference website at < www.hcch.net > under the “Judgments Section” and “Special Commission”).

² See Work. Doc. No 163 – proposal of the delegations of the European Union and the United States of America (Special Commission on the Recognition and Enforcement of Foreign Judgments (16-24 February 2017)). For the discussion on the proposal, see Minutes of the Second Special Commission meeting of February 2017 on the Recognition and Enforcement of Foreign Judgments (16-24 February 2017)”, [hereinafter, “Minutes of the February 2017SC”], Minutes No 11, paras 33 to 47.

³ See Minutes No 11, para. 33.

⁴ *Ibid.*

⁵ *Ibid.*, paras 35, 37, 39, 41 to 44.

⁶ *Ibid.*, paras 37 to 40.

⁷ *Ibid.*, paras 33 to 47.

⁸ See “*Aide mémoire* of the Chair of the Special Commission”, Second Special Commission meeting on the recognition and enforcement of foreign judgments (16-24 February 2017), para. 22.

5. With a view to facilitating further discussion on this provision at the November 2017 Special Commission meeting, this Note provides succinct information on the operation of Article 22 under the February 2017 draft Convention (Section B). Based on such information, the Note provides general information about common courts and an overview of the eight identified common courts in Section C and Section D, respectively. Relating to the questions whether, and if so how, common courts should be explicitly dealt with in the draft Convention, the Note flags the main issues requiring consideration and attempts to present the pros and cons of each option in Section E.

B. Scope and operation of Article 22

6. The concept of common courts provided in Article 22 focuses on two elements: (i) a court common to two or more States and (ii) such court exercising jurisdiction over matters that come within the scope of the draft Convention.⁹

7. From the outset and in line with the discussion at the 2017 February Special Commission meeting, common courts under the regime of the February 2017 draft Convention do not include:

- arbitration tribunals,¹⁰
- courts that have a purely administrative / constitutional role,¹¹
- international courts that deal with public international law,¹²
- specialised courts established by one State,¹³
- other types of bodies that may deal with the matters that fall under the scope of the draft Convention, but do not have an adjudicatory function.¹⁴

8. With regard to the application of the draft Convention, the two types of judgments given by a common court - judgments on the merits and preliminary rulings requested by national courts - should be distinguished. As under the February 2017 draft Convention "judgment" means any decision on the merits given by a court,¹⁵ preliminary rulings requested by national courts fall outside the scope of application.

9. As for its function, Article 22 looks at two different situations: the common courts that have only an appellate function and those that have first instance and appellate functions.

Common courts that only have an appellate function

10. In the situation where several States share the same appellate court, the national court of the first instance will be the key factor in the operation of Article 22. If the court of first instance, where the proceeding was instituted, was a court of a Contracting State, and this State had made a relevant declaration under Article 22,¹⁶ judgments from the common court would be entitled to recognition or enforcement under the draft Convention. In this context, the judgments of the common court are equal to judgments of the Contracting State. Conversely, if the court of first instance was a court of a *non*-Contracting State, judgments from the common court would not be entitled to recognition or enforcement under the draft Convention.

11. For the operation of the draft Convention, the State of origin, which is a term used in Articles 5 and 6 linking judgments with a specific State, will be the Contracting State where the proceeding at the first instance was instituted. Actual location of the common court, be it in

⁹ Art. 22(1)(a) of the February 2017 draft Convention.

¹⁰ *E.g.*, the Permanent Court of Arbitration (PCA) or the International Centre for Settlement of Investment Disputes (ICSID) Arbitral Tribunal.

¹¹ *E.g.*, the European Free Trade Association (EFTA) Court.

¹² *E.g.*, the International Court of Justice (ICJ) or the WTO Appellate Body.

¹³ *E.g.*, the Singapore International Commercial Court (SICC) or the Dubai International Finance Centre (DIFC).

¹⁴ *E.g.*, the Patent Office of the Co-operation Council for the Arab States of the Gulf. It should be noted that decisions of patent offices of Contracting States are not covered by the scope of the draft Convention, except the situation in Art. 8(3).

¹⁵ Art. 3(1)(b) of the February 2017 draft Convention.

¹⁶ Art. 22(1)(b)(i), (2)(a) and (3) of the February 2017 draft Convention.

a Contracting State to the draft Convention or not, or in a Contracting State other than the State of the court of first instance, is not relevant in this regard.

Common courts that have both first instance and appellate functions

12. Judgments from a common court with both first instance and appellate functions (in some cases a supra-national court), will be entitled to recognition or enforcement under the draft Convention if *all* parties to the agreement that established the common court are Contracting States to the draft Convention.¹⁷ As discussed at the February 2017 Special Commission meeting, this approach prevents a free-riding issue from arising when a Party to the agreement establishing the common court is not a Contracting State to the Convention.¹⁸

13. Article 22(4) further explains how the State of origin is defined in the situation where a common court has both first instance and appellate functions. Given that the common court replaces the relevant national courts in adjudicating cases at the first instance, there would be no actual "State of origin" as in the case of judgments delivered by national courts. In this context, the provision states that the reference to the State of origin in Articles 5 and 6 will be deemed to refer to the entire territory over which that court had jurisdiction in relation to that judgment.¹⁹ It should nevertheless be noted that the reference to Articles 5 and 6 is not intended to cover any judgment of every State in the territory concerned, rather that, in applying the filters in Articles 5 and 6, any State or territory over which the jurisdiction of the court extends would qualify.²⁰

14. With regard to its practical operation, Article 22 seems to require a Contracting State which was a Party to the instrument establishing a common court and wishes the judgments of the common court to be circulated under the draft Convention, to make a declaration under the draft Convention, as this will provide clarity and transparency for other Contracting States when they are requested to recognise or enforce such judgments. The declaration mechanism provided in Article 22 enables judgments from common courts to be circulated under the draft Convention, provided that the criteria set out in the draft Convention are met.

C. General remarks about common courts

15. Common courts are established for two main reasons: either for the purposes of regional economic integration or to deal with particular fields of law or subject matters.

16. Regional economic integration is mainly driven by the need of States to integrate their economies in order to achieve rapid economic development and build mutual trust. Depending on the degree of integration, these States often establish regional judicial bodies, such as courts, arbitration tribunals or mediation,²¹ so as to ensure the operation and implementation of the regional integration. A treaty establishing the framework of a regional integration process typically defines the operation, jurisdiction and functions of the established regional judicial body.

17. States with common interests, whether they are geographically close or not, establish specific courts to deal with particular fields of law or subject matters, such as intellectual property.²² The aim of these courts is to achieve a harmonised interpretation and application of the relevant regional or international legal instruments.

¹⁷ Art. 22(1)(b)(ii) and (2)(b) of the February 2017 draft Convention.

¹⁸ See Minutes No 11 of February Special Commission meeting, para. 33.

¹⁹ For a specific example, see "Discussion Document from the European Union on the operation of the future Hague Judgments Convention with regard to Intellectual Property Rights", Info. Doc. No 10 of September 2017 for the attention of the Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments (13-17 November 2017) (available on the Hague Conference website at < www.hcch.net > under the "Judgments Section" and "Special Commission").

²⁰ See Minutes No 11 of the February Special Commission meeting, para. 41.

²¹ In certain cases of regional co-operation, instead of a common court, the countries established specialised dispute settlement bodies. See, for example, instruments of the South Asian Association for Regional Co-operation available at the following address: < <http://www.saarclaw.org/saarc-agreements-and-conventions.php> >. These bodies are excluded from the scope of the February 2017 draft Convention (Art. 2(3)).

²² *E.g.*, Benelux Court of Justice and the future Unified Patent Court (UPC).

18. Another evolving phenomenon is the increased proliferation of bilateral investment treaties (BITs) aimed at boosting trade and encouraging investment. The distinctive feature of many BITs is that they allow for a dispute resolution mechanism, whereby an investor whose rights under the BIT have been allegedly violated would have recourse to international arbitration. Nowadays, BITs also establish investment court systems to deal with investor-State disputes.²³ It should be noted that as stated in the February 2017 draft Convention and in the preliminary Explanatory Report, the mere fact that a State, including a government, a government agency or any person acting for a State, was a party to the proceedings in the State of origin does not exclude a judgment from the scope of the draft Convention.²⁴

19. The issue of common courts is evolving and could be relevant for many jurisdictions. It would thus be useful for the Special Commission to address the treatment of judgments given by common courts.

D. Overview of the identified common courts

20. Based on the criteria set out in Section B and the information available, the Note identifies eight courts as common courts under the February 2017 draft Convention; it should be noted that the list is not exhaustive.

21. The Note addresses six regional/international courts with broad jurisdiction covering a wide range of civil or commercial matters. The six courts are: the Common Court of Justice and Arbitration of the Organization for the Harmonization of Business Law (CCJA), the Caribbean Court of Justice (CCJ), the Eastern Caribbean Supreme Court (ECSC), the Court of Justice of the Andean Community (TJCA), the Court of Justice of the European Union (CJEU) and the Judicial Committee of the Privy Council (JCPC).

22. The Note further identifies two regional/international courts specialised in intellectual property matters. The two courts are the Benelux Court of Justice and the future Unified Patent Court (UPC).

23. In terms of its contents, the Note addresses the main features – background, structure and subject matter jurisdiction – of each identified court. The Note focuses also on the regime for the recognition and enforcement of judgments given by common courts within the Parties to the instrument establishing the relevant common court and the possibility of the common court to recognise and enforce foreign judgments (*i.e.*, judgments delivered by a court of a State which is not a Party to the instrument establishing the common court). The Note further analyses whether common courts and relevant national courts have shared jurisdiction when adjudicating cases.

24. More information about identified common courts is provided in Annexes I and II, dealing with courts having jurisdiction over a wider scope of matters and those specialised in intellectual property, respectively. Several general findings are provided below.

- (i) There are common courts dealing with a wider scope of civil or commercial matters that fall under the scope of the draft Convention, such as contractual matters, company law related matters, etc. From available information, it appears that common courts dealing with specific subject matters that are within the scope of the draft Convention are only intellectual property courts.
- (ii) There are common courts with an appellate function only (*e.g.*, the CCJA), or with first instance and appellate functions (both in civil or commercial matters) (*e.g.*, the Benelux Court of Justice or the CJEU). There are also common courts with first instance and appellate functions, each function having jurisdiction over different subject matters, *e.g.*, the first instance may have jurisdiction over a subject matter

²³ *E.g.*, Chapter Eight, Section F of the EU-Canada Comprehensive Economic and Trade Agreement.

²⁴ Art. 2(4) of the February 2017 draft Convention and F. J. Garcimartín Alférez, G. Saumier, "Preliminary Explanatory Report on the draft Convention on Judgments", Prel. Doc. No 7 of October 2017 for the attention of the Third Meeting of the Special Commission on the Recognition and Enforcement of Foreign Judgments (13-17 November 2017), paras 17-18, 56 (available on the Hague Conference website at < www.hcch.net > under the "Judgments Section" and "Special Commission").

that falls outside the scope of the draft Convention, while the appellate function may have jurisdiction over matters within scope (the CCJ).

- (iii) The identified common courts often have specific regimes on the recognition and enforcement of their judgments within the Parties that established the common courts.
- (iv) None of the identified common courts recognises or enforces foreign judgments.
- (v) Except for the transitional period of the future Unified Patent Court, there is no shared jurisdiction between the identified common courts and their relevant national courts in adjudicating cases.

E. Issues requiring further reflection and discussion

25. There are two general options with regard to the treatment of common courts' judgments: to proceed without specifying the treatment of common courts' judgments in the draft Convention or to address this expressly in the draft Convention.

26. Not expressly including common courts' judgments in the draft Convention would give discretion to the court addressed to determine whether such judgments fall under the scope of the draft Convention and are therefore eligible for recognition and enforcement. It seems likely that some courts would consider a common court judgment to be covered by the draft Convention, and would therefore attempt to recognise or enforce the judgment, while the same judgment would not be treated in the same manner by the courts of other requested Contracting States, simply because the latter courts do not equalise, or do not have a basis to equalise, common courts' judgments to national court judgments. This approach would lead to an inconsistent interpretation of the draft Convention.

27. As discussed in Section C of this Note, there is a general trend to establish common courts. The draft Convention, as a forward-thinking global instrument on the recognition and enforcement of foreign judgments, should deal with this evolving issue and include rules on what types of common courts' judgments would be eligible for circulation under the draft Convention, and on what conditions.

28. The treatment of common courts' judgments provided under the February 2017 draft Convention may however cause uncertainties. This Note intends to flag these (potential) uncertainties so that they may be considered by the participants of the Special Commission and discussed at the November 2017 Special Commission meeting. These (potential) uncertainties include:

- (i) whether judgments given by investment courts established by bilateral or multilateral investment treaties are common courts' judgments under the draft Convention. It is commonly accepted that investment disputes involving States will fall outside the scope of the draft Convention. However, as stated in the February 2017 draft Convention and in the preliminary Explanatory Report, the mere fact that a State, including a government, a government agency or any person acting for a State, was a party to the proceedings in the State of origin does not exclude a judgment from the scope of the draft Convention. In fact, this should be determined by the nature of the dispute (*i.e.*, civil or commercial), irrespective of the nature of the parties or the courts;²⁵
- (ii) whether the definition of common courts should be provided separately in the draft Convention, instead of being provided in Article 22, so as to capture judgments of all common courts. The reasons for this consideration are two-fold. First, the practice suggested in Article 22 seems complex and cumbersome, as it seems to suggest that each and every Contracting State which is a Party to the instrument establishing a common court, and which wishes judgments of the common court to be circulated under the draft Convention, should make a declaration under the draft

²⁵ *Ibid.*

Convention. The second reason is related to the consideration that if a Contracting State has delegated its judicial power to a common court, judgments of the common court should be considered as judgments delivered by the courts of that Contracting State and should therefore be entitled to circulation under the draft Convention. The main disadvantage of this approach might be the lack of clarity and transparency, as the court addressed may not know whether a Contracting State has delegated its judicial power or not, and what subject matters are within the jurisdiction of the common court;

- (iii) whether the requested State would be entitled to object to the circulation of common courts' judgments, or whether a Contracting State to the draft Convention would be entitled to opt out from the recognition and enforcement of judgments of certain common courts;
- (iv) whether common courts' judgments under both Article 22(1)(b)(i) and (ii) would still be entitled to circulation under the draft Convention, if one of the Contracting States that established the common court made a subject matter declaration under Article 21. If not, how this should be reflected; and
- (v) whether the draft Convention intends to cover the type of common courts which have both first instance and appellate functions, but each function has jurisdiction over different subject matters (as described in paragraph 24 (ii) of this Note). A strict interpretation of Article 22(1)(b) does not seem to cover them: taking the CCJ as an example, situation (i) requires that the court *only* have an appellate function, which is not the case for the CCJ, as the CCJ has both functions, although with different subject matter jurisdiction; situation (ii) requires that the court have first instance and appellate functions, and the intention of this situation may be to cover the subject matters governed by the draft Convention at both functions, which is also not the case at the CCJ. If the Special Commission intends to cover this type of common courts, clarification will be needed either in the Explanatory Report or to be achieved via revision of the text.

A N N E X E S

ANNEX I

COMMON COURTS WITH JURISDICTION OVER A WIDER SCOPE OF CIVIL OR COMMERCIAL MATTERS

1. Common Court of Justice and Arbitration of the Organization for the Harmonization of Business Law (CCJA)

Background	Fourteen African countries signed the Treaty on the Harmonization in Africa of Business Law in Port Louis on 17 October 1993 (hereinafter, the "OHADA Treaty") to foster the economic growth of their respective region through the harmonisation of business law. ¹ The OHADA Treaty established the Organization for the Harmonization in Africa of Business Law (OHADA) with the CCJA as its key judicial institution. ²
Subject matter jurisdiction	<p>The OHADA Treaty lists areas of law that fall within the scope of its implementation - "all regulations concerning company laws and the legal status of business people, debt recovery, security interests and enforcing proceedings, companies receivership and judicial liquidation, arbitration law, labour law, accounting law, transportation and commercial transactions laws as well as any other issue decided and adopted unanimously by the Council of Ministers in accordance with this Treaty and the provisions of Article 8" shall fall within the framework of business laws.³ During its meeting in Bangui in March 2001, the Council of Ministers expanded this list by including the following areas: competition law, banking law, intellectual property law, contract law and the law of proof.⁴</p> <p>To ensure the implementation of the OHADA Treaty, OHADA passes Uniform Acts regulating the listed areas of law, including Uniform Acts on Commercial Companies and Economic Interest Group, General Commercial Law, Security Interests, Accounting Law and Financial Reporting, and Simplified Debt Collection Procedures and Enforcement Proceedings and Cooperatives.⁵</p> <p>The CCJA is the key judicial institution that ensures the implementation of these acts.⁶</p>

¹ The fourteen countries are: Republic of Benin, Burkina Faso, Republic of Cameroon, Central African Republic, Union of Comoros, Republic of Congo, Republic of Côte d'Ivoire, Republic of Gabon, Republic of Equatorial Guinea, Republic of Mali, Republic of Niger, Republic of Senegal, Republic of Chad, and Republic of Togo. The Democratic Republic of Congo, the Republic of Guinea and the Republic of Guinea Bissau subsequently joined. The Treaty was revised on 17 October 2008. The full text of the Treaty (including the 2008 revisions) is available at the following address: <<http://www.ohada.com/traite.html>>.

² Structurally, OHADA consists of the Conference of Heads of State and Government, the Council of Ministers, the Common Court of Justice and Arbitration and the Permanent Secretariat (Art. 3(2) of the Treaty). The Treaty establishes OHADA as the body tasked to perform duties under the Treaty (Art. 3(1) of the Treaty).

³ Art. 2 of the OHADA Treaty.

⁴ Compte rendu de la réunion du Conseil des Ministres de l'OHADA (Bangui, 22 and 23 March 2001), *Journal Officiel de l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires*, Nr. 12, 6. This report is available at the following address: <http://www.ohada.org/docs/JO_OHADA/JO_OHADA_journal_officiel_n_12.pdf>.

⁵ The process of adoption and modification of Uniform Acts is set out in Arts 5-12 of the OHADA Treaty.

⁶ Arts 13-20 define the framework for settlement of disputes relating to the interpretation and application of the uniform acts. Art. 14 specifically refers to the CCJA.

Function	The CCJA acts as a court of final appeal. The CCJA rules on decisions taken by appellate courts of the OHADA Member States in all matters relating to the application of the Uniform Acts and to the regulations contemplated by the OHADA Treaty, save decisions applying criminal sanctions. ⁷ The CCJA shall invoke and rule on the substance. ⁸
Recognition and enforcement of judgments of the court	<p>Judgments of the CCJA have the effect of <i>res judicata</i> and are enforceable under the same conditions as the decisions of national courts, on the territory of the OHADA Member States.⁹</p> <p>The OHADA Treaty establishes the prevalence of CCJA decisions. As provided in the Treaty, no decision inconsistent with a judgment of the CCJA, between the same parties and on the same merits, shall be executed on the territory of an OHADA Member State.¹⁰ It can be interpreted that the term “no decision” refers to decisions of courts of both OHADA States and non-OHADA States, and as a result, <i>e.g.</i>, a court judgment from Congo cannot be enforced in Burkina Faso, if the Congo judgment is inconsistent with a decision of the CCJA between the same parties and on the same merits; neither a German decision would be enforced in Burkina Faso if the German judgment is inconsistent with a decision of the CCJA between the same parties and on the same merits.</p>
Recognition and enforcement of foreign judgments	The OHADA Treaty does not provide rules on the recognition and enforcement of foreign judgments. OHADA has not passed a Uniform Act governing the recognition and enforcement of foreign judgments.
Relationship with national courts	When a case is on appeal by the CCJA, a national court of an OHADA Member State should stay its proceedings until the CCJA renders its decision. Such national court may resume its proceedings only if the CCJA declares that it lacks jurisdiction over a particular case. ¹¹

⁷ Art. 14(3) of the Treaty.

⁸ Art. 14(5) of the Treaty.

⁹ Art. 20 of the Treaty.

¹⁰ *Ibid.*

¹¹ See Art. 16 of the Treaty, “The hearing of a case on appeal by the Court, stays automatically all proceedings in view of instituting an appeal before a national court against the decision in question. However this rule does not interfere with the execution of proceedings. Such proceedings can only be carried out after that a decision of the Common Court of Justice and Arbitration declares itself as lacking jurisdiction to hear the matter in question.”

2. Caribbean Court of Justice (CCJ)

Background	Since 2001, the Caribbean Community (CARICOM) has been functioning within the framework of the Revised Treaty of Chaguaramas, including the Establishment of the CARICOM Single Market and Economy (CSME). ¹² Twelve members of CARICOM established the CCJ as the regional judicial tribunal (relevant establishing agreements hereinafter referred as the "CCJ Agreement"). ¹³
Subject matter jurisdiction	The CCJ has original and appellate jurisdiction. ¹⁴ With regard to the former, the CCJ has exclusive jurisdiction to hear (a) disputes between the Member States to the CCJ Agreement, (b) disputes between Member States to the CCJ Agreement and CARICOM, (c) referrals from national courts or tribunals of Contracting States, and (d) application of nationals of the Contracting Parties concerning the interpretation and application of the Treaty. ¹⁵ The appellate jurisdiction of CCJ, on the other hand, concerns civil or commercial disputes. ¹⁶
Function	Art. XXV, Part III of the CCJ Agreement provides for detailed rules on the appellate jurisdiction of the CCJ. To the extent it is relevant for this Note, the CCJ acts as the highest appellate authority over the decisions of the courts of CARICOM Member States in two situations. First, the CCJ has appellate jurisdiction over the decisions of the Court of Appeal of a Member State as of right in, <i>inter alia</i> , the following cases: <ul style="list-style-type: none"> • final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than twenty-five thousand dollars Eastern Caribbean currency (EC\$25,000) or where the appeal involves, directly or indirectly, a claim or a question respecting property or a right of the aforesaid value; • other cases as may be prescribed by any law of the Member State.¹⁷

¹² The Caribbean Community is one of the first integration movements among developing countries established by the original Treaty of Chaguaramas signed in 1973. The Treaty and its Annex (setting out the details of the Common Market Arrangements) came into effect on 1 August 1973. The community groups twenty countries: fifteen Member States and five Associate Members. See the official website: <http://caricom.org/about-caricom/who-we-are>.

¹³ The twelve Member States are: Antigua and Barbuda, Barbados, Belize, the Commonwealth of Dominica, Grenada, the Co-operative Republic of Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, St. Vincent and the Grenadines, the Republic of Suriname and the Republic of Trinidad and Tobago. In 2001, these States signed the CCJ Agreement. Further information on the CCJ is available at the following address: <<http://www.caribbeancourtjustice.org/about-the-ccj>>. The CCJ Agreement is available at the following address: <http://www.caribbeancourtjustice.org/wp-content/uploads/2011/09/ccj_agreement.pdf>.

¹⁴ Part II, Arts. XI-XXIV of the CCJ Agreement govern the original jurisdiction of the Court. Under Art. XXII of this Part, the CCJ's judgments are legally binding precedents for parties in proceedings before the Court. It appears that only the judgments laid down in the exercise of the CCJ's original jurisdiction have the *stare decisis* effect. Part III, Art. XXV governs the appellate jurisdiction of the Court.

¹⁵ Part II, Art. XII of the CCJ Agreement.

¹⁶ Part III, Art. XXV of the CCJ Agreement.

¹⁷ Part III, Art. XXV(1)-(2) of the CCJ Agreement.

	<p>Second, the CCJ has appellate jurisdiction <i>with the leave of the Court of Appeal of a Member State</i> from the decisions of the Court of Appeal in, <i>inter alia</i>, the following cases:</p> <ul style="list-style-type: none"> • final decisions in any civil proceedings where, in the opinion of the Court of Appeal, the question involved in the appeal is one that by reason of its great general or public importance or otherwise, ought to be submitted to the Court; and • such other cases as may be prescribed by any law of the Member State.¹⁸ <p>The CCJ enacted its Appellate Jurisdiction Rules on 21 April 2017 (replacing the 2015 version) which further govern the procedure in these cases.¹⁹</p>
<i>Recognition and enforcement of judgments of the court</i>	The Member States to the CCJ Agreement agreed to take the necessary steps, including the enactment of relevant national legislation, to ensure that judgments of the CCJ (and other decisions) are enforced in the same manner as judgments (or other decisions) of a national court concerned. ²⁰
<i>Recognition and enforcement of foreign judgments</i>	The CCJ Agreement does not expressly govern the recognition and enforcement of foreign judgments. However, the Member States may expand the scope of the CCJ's appellate jurisdiction; ²¹ such expansion may theoretically include recognition and enforcement of foreign judgments. It is not clear whether the Member States to the CCJ Agreement have done so thus far.
<i>Shared jurisdiction with national courts</i>	The CCJ acts as a superior court concerning final decisions of national courts. ²² Thus, it is unlikely that there will be parallel proceedings between the CCJ and a national court in the matters that fall within the scope of its jurisdiction.

¹⁸ Part III, Art. XXV(3) of the CCJ Agreement.

¹⁹ The full text of the CCJ Appellate Jurisdiction Rules is available in English at the following address: <<http://www.caribbeancourtjustice.org/wp-content/uploads/2011/06/AJR-2017.pdf>>.

²⁰ Part IV, Art. XXVI(a) of the CCJ Agreement.

²¹ See, *supra*, note 16 of Annex I.

²² Part III, Art. XXV, (1) and (6) of the CCJ Agreement: "In the exercise of its appellate jurisdiction, the Court is a superior Court with such jurisdiction and powers as are conferred on it by this Agreement, or by the Constitution or any other law of a Contracting Party" and "The Court shall, in relation to any appeal to it in any case, have all the jurisdiction and powers possessed in relation to that case by the Court of Appeal of the Contracting Party from which the appeal was brought."

3. Eastern Caribbean Supreme Court (ECSC)

Background	The Organization of Eastern Caribbean States (OECS) ²³ , established in 1981, ²⁴ is an inter-governmental organisation for, <i>inter alia</i> , economic harmonisation and integration in the Eastern Caribbean. In 2010, seven Eastern Caribbean States signed the Revised Treaty of Basseterre and established a single financial and economic space (hereinafter, the "Revised Treaty"). Within this structure, the ECSC is established as one of the regional institutions of the organisation. ²⁵
Subject matter jurisdiction	Subject to certain conditions, the ECSC has jurisdiction over civil cases. ²⁶
Function	<p>The ECSC consists of two divisions, a Court of Appeal and a High Court of Justice.²⁷ The rules of procedure of the court are set in the ECSC Civil Procedure Rules 2000.²⁸</p> <p>As stated, in respect of the High Court, the Court of Appeal has jurisdiction to hear and determine "any matter arising in any civil proceedings upon a case stated, or upon a question of law reserved by the High Court or by a judge." This is, however, subject to "any power conferred in that behalf by a law in operation in that State."</p> <p>Subject to certain exceptions, the Court of Appeal is empowered to "hear and determine the appeal from any judgment or Order of the High Court in all civil proceedings." For the purposes of determining any issues incidental to an appeal and the remedies, execution, and enforcement of any judgment or order made thereto, the Court of Appeal is endowed with "all the powers, authority and jurisdiction of the High Court."</p>
Recognition and enforcement of judgments of the court	The Revised Treaty does not explicitly equalize a decision of the ECSC with that of a national court of a Member, but the ECSC Rules of Civil Procedure do set out rules of enforcement applicable in the case where the parties do not voluntarily comply with the judgment. ²⁹

²³ The OECS is now a ten member grouping comprising the full Member States of Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, Saint Lucia and St Vincent and the Grenadines, with the British Virgin Islands, Anguilla and Martinique as associate members of the OECS.

²⁴ The text of the revised OECS Treaty is available at the following address: <<http://www.oecs.org/lsu-resources?task=document.viewdoc&id=679>>. The history of the development and establishment of the OECS is available at the following address: <<http://www.oecs.org/homepage/history>>.

²⁵ More information is available at the following addresses: <<http://www.oecs.org/institutions-of-the-oecs>> and <<https://www.eccourts.org/court-overview/>>.

²⁶ Further information is available at the following address: <<https://www.eccourts.org/court-overview/>>.

²⁷ The general overview of the ECSJ is available at the following address: <<https://www.eccourts.org/court-overview/>>.

²⁸ The ECSC Rules of Civil Procedure are available in English at the following address: <<https://www.eccourts.org/civil-procedure-rules/>>.

²⁹ Art. 42.9 of the ECSC Rules of Civil Procedure defines the time period for voluntary compliance with a judgment. Part 43, Art. 43.1-43.10 sets forth the rules of enforcement of ECSC's judgments, orders and decrees.

Recognition and enforcement of foreign judgments	The ECSC Rules of Civil Procedure set forth the “[p]rocedure whereby under the provisions of any enactment a judgment of a foreign court or tribunal may be registered in the High Court for enforcement within a Member State or Territory”. ³⁰ Therefore, it seems that a judgment creditor needs to register the judgment before the ECSC proceeds for enforcement in the requested Member State.
Shared jurisdiction with national courts	It appears that the ECSC has exclusive jurisdiction. Thus, it is unlikely that there will be a parallel proceeding between the ECSC and national courts in the matters that fall within the scope of the ECSC’s jurisdiction.

4. The Court of Justice of the Andean Community (Tribunal de Justicia de la Comunidad Andina) (TJCA)

Background	Five States entered into the Cartagena Agreement in 1969, thereby creating a sub-regional economic integration organisation known as the “Andean Pact”. ³¹ Almost three decades later, the Member States adopted the Modification Protocol to the Cartagena Agreement, which created the Andean Community (CAN, Comunidad Andina) (hereinafter, the “Modification Protocol”). ³² The TJCA is the judicial authority of the Andean Community. ³³
Subject matter jurisdiction	The TJCA has jurisdiction over disputes that may arise due to the application of Andean Community Law. ³⁴ One part of the Andean Community Law concerns intellectual property rights and copyright and therefore the TJCA has jurisdiction over these areas of law. ³⁵

³⁰ Part 72, Arts. 72.1-72.9 of the Civil Procedure Rules.

³¹ The group originally consisted of [Bolivia](#), [Colombia](#), [Ecuador](#), [Peru](#), and [Chile](#); [Venezuela](#) joined in 1973 but withdrew in 2006, and Chile withdrew in 1977. Peru suspended its membership in 1992 but resumed it in 1997.

³² The Official Codified Text of the Andean Subregional Integration Agreement (Cartagena Agreement) defines the structure and competences of the Andean Community (hereinafter, the “Andean Agreement”). Art. 5 establishes the Andean Community. As prescribed in Art. 48, the Community is a sub-regional organisation with international legal capacity or international legal status. The English version of the Andean Agreement is available at the following address: <<http://www.sice.oas.org/trade/JUNAC/Decisiones/dec563e.asp#CAG>>.

³³ Art. 6 of the Andean Agreement lists the relevant institutions, which include, *inter alia*, the Andean Presidential Council, the Andean Council of Ministers of Foreign Affairs, the TJCA, and the Andean Parliament. The Treaty Creating the Court of Justice of the Cartagena Agreement was signed on 28 May 1979, while the Protocol of Cochabamba Amending the Treaty Creating the Court of Justice was signed on 28 May 1996 (the Protocol of Cochabamba hereinafter referred to as the “TJCA Agreement”). Both treaties and the Official Codified Text of the Agreement, together with other relevant instruments of the Andean Community, are available at the following address: <http://www.sice.oas.org/Andean/instmt_e.asp>.

³⁴ Art. 47 of the Andean Agreement.

³⁵ The list of IP Decisions is available at the following address: <<http://www.wipo.int/wipolex/en/profile.jsp?code=CAN>>. One of the main instruments is Decision No. 486 Establishing the Common Industrial Property Regime enacted in 2000. The TJCA decides on the interpretation of the relevant acts within the scope of its jurisdiction. See *e.g.*, Case no. 43-IP-2014 available at the following address: <http://www.wipo.int/export/sites/www/scp/en/meetings/session_22/comments_received/colombia_2.pdf>. However, under Decision No. 486, infringement disputes are left to national authorities, not the TJCA (Title XV, Chapter 1, Art. 238 of Decision no. 486). According to the Annual Report of the TJAC, in 2013, 265 out of 273 cases that the TJAC heard are related to pre-judicial interpretation in IP matters. The Annual Report is available at the following address: <http://www.tribunalandino.org.ec/sitetjca1/index.php?option=com_filecabinet&view=files&id=3&Itemid=92>. See also L. R. Helfer et al., “Islands of effective international adjudication: Constructing an intellectual property rule of law in the Andean Community”, *American Journal of International Law*, vol 103 (1) (2009), p. 2, stating

	The TJCA has jurisdiction over three types of actions: the action of nullification, non-compliance, and pre-judicial interpretation over decisions, agreements and other legal instruments of the bodies of the Andean Community. ³⁶ In the number of cases requesting preliminary rulings interpreting Andean laws, references from national courts in the Andean Community are overwhelmingly dominated by intellectual property issues.
Function	The TJCA has an appellate function.
Recognition and enforcement of judgments of the court	All decisions of the TJCA are directly enforceable in the Andean Community Member States. ³⁷
Recognition and enforcement of foreign judgments	There is no provision on whether the TJCA has the power to enforce foreign judgments.
Shared jurisdiction with national courts	The TJCA has exclusive jurisdiction over the subject matters assigned to it in the Modification Protocol, ³⁸ and therefore there is no shared jurisdiction between the TJCA and the Andean Community Member States.

that around 90% of the backlog of TJAC cases concerns IP issues. The article is available at the following address: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2695&context=faculty_scholarship.

³⁶ Arts. 17-22 (nullification), 23-31 (noncompliance) and 32-36 (pre-judicial interpretation) of the TJAC Agreement.

³⁷ Chapter IV, Art. 41 of the TJAC Agreement: "In order to be carried out, the Court's rulings and arbitration awards and the arbitration awards of the General Secretariat shall not require official approval or exequatur in any Member Country."

³⁸ Chapter IV, Art. 42 of the TJAC Agreement: "Member Countries shall not submit any dispute that may arise from the application of provisions comprising the legal system of the Andean Community to any court, arbitration system or proceeding whatsoever except for those stipulated in this Treaty."

5. Court of Justice of the European Union (CJEU)

<p>Background</p>	<p>The CJEU is the key judicial authority of the European Union (EU). The Treaty on European Union (TEU) and the Treaty on Functioning of the European Union (TFEU) set out the structure and operation of the CJEU.³⁹</p> <p>The CJEU, which has its seat in Luxembourg, consists of two courts: the Court of Justice (ECJ) and the General Court (EGC). The Rules of Procedure of the ECJ and of the EGC provide for the procedure before these courts, respectively.⁴⁰ The ECJ deals with requests for preliminary rulings from national courts, certain actions for annulment and appeals.⁴¹ The EGC, on the other hand, rules on, among others, actions brought by individuals or companies against acts of EU organs, and against regulatory acts or against a failure to act on the part of those EU organs; actions based on contracts made by the EU which expressly give jurisdiction to the EGC, or actions relating to intellectual property brought against the EU Intellectual Property Office and against the Community Plant Variety Office, etc.⁴²</p>
<p>Subject matter jurisdiction</p>	<p>The CJEU can rule on civil or commercial matters. To the extent it is relevant for this Note, the CJEU has jurisdiction over intellectual property rights that are considered as unitary for the whole territory of the EU.⁴³ More specifically, the CJEU has jurisdiction to decide on validity and registrability under the EU Trade Mark Regulation, the EU Design Regulation and validity and grant in proceedings under the EU Plant Variety Rights Regulation.⁴⁴</p> <p>The CJEU can also be the chosen court in contracts governed by private law between the EU institutions and their contractors.⁴⁵</p>
<p>Function</p>	<p>The CJEU has first instance and appellate functions.</p>

³⁹ The consolidated text of the TEU and the TFEU is available at the following address: <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2010:083:FULL&from=en>>.

⁴⁰ The consolidated version of the Rules of Procedure of the Court of Justice of 25 September 2012 is available at the following address: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf>. The consolidated version of the Rules of Procedure of the General Court of 4 March 2015 is available at the following address: https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-08/rp_en.pdf

⁴¹ Further information on the ECJ and its case law is available at the following address: <https://curia.europa.eu/jcms/jcms/Jo2_7024/en/>.

⁴² In practice, this means that this court deals mainly with competition law, State aid, trade, agriculture, trademarks. Further information on the EGC and its case law is available at the following address: <https://curia.europa.eu/jcms/jcms/Jo2_7033/en/>.

⁴³ In terms of IP matters specifically, the individual regulations confer jurisdiction on the CJEU, e.g., Art. 65 of the Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark. See also, Recital (14) of the same regulation. The full text of the regulation is available at the following address: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:078:0001:0042:en:PDF>>.

⁴⁴ See Council Regulation (EC) No 207/2009 of 26 February 2009 on the European trade mark as amended by Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015. The official codified version is available online at: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1506691139520&uri=CELEX:02009R0207-20130701>>. See Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs as amended. The consolidated version is available at: <http://euipo.europa.eu/en/design/pdf/reg2002_6.pdf>. See Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights as amended. The consolidated version is available at: <<http://cpvo.europa.eu/sites/default/files/documents/lex/394R2100/EN394R2100.pdf>>. See "Discussion Document from the European Union on the operation of the future Hague Judgments Convention with regard to Intellectual Property Rights" (*supra*, note 19), para 40.

⁴⁵ Art. 272 of the TFEU.

Recognition and enforcement of judgments of the court	Judgments of the CJEU are enforceable under the rules of civil procedure in force in the Member State in the territory of which it is carried out. ⁴⁶
Recognition and enforcement of foreign judgments	The TFEU and the Rules of Procedure of the CJEU are silent on the issue of whether the CJEU can enforce judgments given by courts of non-EU Member States.
Shared jurisdiction with national courts	There is no shared jurisdiction between the CJEU and courts of the EU Member States, except for the situations in which the CJEU is the chosen court pursuant to non-exclusive choice of forum clauses.

6. Judicial Committee of the Privy Council (JCPC)

Background	The Privy Council, through its Judicial Committee (hereinafter, the "JCPC"), acts as the final court of appeal for the overseas territories of the United Kingdom (UK) and Crown Dependencies, and for any Commonwealth country that has retained an appeal to the Queen in Council. ⁴⁷
Subject matter jurisdiction	The JCPC has jurisdiction over international, constitutional, civil or criminal cases. Some of the civil cases include questions such as the proper construction of the term "loss of the controlling interest" in a shareholders' agreement, the circumstances in which the corporate veil can be pierced, issues concerning competition law, and torts and liabilities. ⁴⁸ The jurisdiction of the JCPC is generally subject to leave being granted by a national court. ⁴⁹
Function	The JCPC has an appellate function.

⁴⁶ Arts. 280 and 299 of the TFEU: "Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union."

⁴⁷ More information on the work and structure of the JCPC is available at the following address: <<https://www.jcpc.uk/>>. For further information on the Privy Council, its structure and functions, see M. Everett, *The Privy Council – Briefing Paper No CBP7460* (8 February 2016), available at the following address: <<http://researchbriefings.files.parliament.uk/documents/CBP-7460/CBP-7460.pdf>>. The countries of the Commonwealth include Antigua and Barbuda, The Bahamas, British Indian Ocean Territory, Cook Islands and Niue (Associated States of New Zealand), Grenada, Jamaica, St Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Tuvalu. The independent republics within the Commonwealth include the Republic of Trinidad and Tobago, the Commonwealth of Dominica, Kiribati and Mauritius. The Crown dependencies are Jersey, Guernsey and Isle of Man. The overseas territories of the UK are: Anguilla, Bermuda, British Antarctic Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena, Ascension and Tristan da Cunha, Turks and Caicos Islands. Additionally, JCPC can hear appeals from sovereign base areas in Cyprus: Akrotiri and Dhekelia.

⁴⁸ For further information, see the list of pending cases available at the following address: <<https://www.jcpc.uk/current-cases/index.html>>.

⁴⁹ See Art. 10 of the Judicial Committee (Appellate Jurisdiction) Rules 2009 - As amended, available at the following address: <<https://www.jcpc.uk/docs/judicial-committee-appellate-jurisdiction-rules-2009.pdf>>.

<i>Recognition and enforcement of judgments of the court</i>	Decisions of the Judicial Committee are declared through Judicial Orders in Council. ⁵⁰
<i>Recognition and enforcement of foreign judgments</i>	The JCPC deals with the recognition and enforcement of a foreign judgment to the extent that the appealed decision of a national court concerns this issue. ⁵¹
<i>Shared jurisdiction with national courts</i>	As the right of an appeal to the JCPC is subject to a leave of a national court whose decision is being appealed, it appears that the JCPC does not share jurisdiction with national courts.

⁵⁰ See M. Everett (*op. cit.*, note 47 of Annex I), p. 8.

⁵¹ See *e.g.*, JCPC Judgment in Vizcaya Partners Limited (Appellant) v Picard and another (Respondents) (Gibraltar) [2016] UKPC 5 available at the following address: <<https://www.jcpc.uk/cases/jcpc-2014-0048.html>>.

ANNEX II
SPECIALISED COMMON COURTS

1. Benelux Court of Justice

Background	In 1965, Belgium, Luxembourg and the Netherlands signed the Treaty on the Establishment and Statute of a Benelux Court of Justice, which entered into force on 1 January 1974 (hereinafter, the “Benelux Court of Justice Treaty”). ¹ The Treaty established the Benelux Court of Justice as an international court with the primary role to promote uniformity in the application of the legal rules of the Benelux countries in a wide range of fields. ²
Subject matter jurisdiction	<p>In 2012, the Benelux countries signed the Protocol amending the Benelux Court of Justice Treaty, which entered into force on 1 December 2016 (hereinafter, the “Protocol”). The Protocol expanded the powers of the Benelux Court of Justice.³ In particular, Article 1 of the Protocol states that, in order to ensure the uniform application of the legal rules common to the Benelux countries, the court shall have: (a) powers to deal with questions on the interpretation of legal rules; (b) jurisdictional powers; (c) advisory functions.⁴ The Protocol and other amendments to the Benelux Court of Justice Treaty shall hereinafter be referred to as “Consolidated Treaty”.</p> <p>At the moment, the extended scope concerns only trademark disputes. The jurisdictional powers essentially mean that in disputes concerning intellectual property, in particular trademark, models, designs the Benelux Court of Justice will hear direct actions and rule on the merits of the case; these judgments will, then, be subject to appeal to another chamber, but only on points of law.⁵</p> <p>In addition, there is a possibility of this jurisdiction to be exercised in other areas of law.</p>
Function	The Benelux Court of Justice consists of the First, Second and Third Chambers. ⁶

¹ Text of the consolidated Treaty and the Protocol thereto are available at the following address: <<http://www.courbeneluxhof.be/fr/basisdocumenten.asp>>.

² The presentation of the Benelux Court of Justice is available at the following address: <http://www.courbeneluxhof.be/fr/hof_intro.asp>. The type of matters include intellectual property law (trademarks and service marks, designs and models), motor vehicle liability insurance, penalty payments, visas, collection of tax claims, protection of birds and equal tax treatment.

³ The Benelux countries amended the Treaty and made it possible to transfer jurisdiction to the Benelux Court of Justice in specific matters falling within the scope of Regulation (EU) No 1215/2012 which was amended to regulate the relationship between the Treaty and the Regulation. See Regulation (EU) No 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) No 1215/2012 as regards the rules to be applied with respect to the Unified Patent Court and the Benelux Court of Justice. The Regulation is available at the following address: <<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0542>>.

⁴ Art. 1 of the 2012 Protocol and Art. 1(2) of the Consolidated Treaty.

⁵ Arts. 9bis-9quater of the Consolidated Treaty.

⁶ Art. 4quinquies the Consolidated Treaty.

<p><i>Recognition and enforcement of judgments of the court</i></p>	<p>In the context of the EU, the Brussels <i>Ibis</i> Regulation provides that judgments of the Benelux Court of Justice, as a common court within the meaning of said regulation, shall be recognised and enforced in EU Member States under the Brussels <i>Ibis</i> Regulation.⁷</p> <p>As for judgments of a Member State that is not a Party to the Benelux Treaty, they shall be recognised in the Benelux countries under the rules of the Brussels <i>Ibis</i> Regulation.</p> <p>However, where recognition and enforcement of a judgment given by the Benelux Court are sought in the Benelux countries, rules of the Treaty or its Protocols on the recognition and enforcement would be applicable, instead of the rules of the Brussels <i>Ibis</i> Regulation.⁸</p>
<p><i>Recognition and enforcement of foreign judgments</i></p>	<p>The relevant treaties do not provide rules on the recognition and enforcement of a judgment given by a court of non-EU Member States.</p>
<p><i>Shared jurisdiction with national courts</i></p>	<p>The Treaty and its Protocols do not contain rules on parallel proceedings between the Benelux Court of Justice and relevant national courts.</p>

⁷ Art. 71d of the consolidated Regulation No 1215/2012, *supra*, note 3 of Annex II, “This Regulation shall apply to the recognition and enforcement of: (a) judgments given by a common court which are to be recognised and enforced in a Member State not party to the instrument establishing the common court;”

⁸ Art. 71d of the consolidated Regulation No 1215/2012, *supra*, note 3 of Annex II, “This Regulation shall apply to the recognition and enforcement of: [...] and (b) judgments given by the courts of a Member State not party to the instrument establishing the common court which are to be recognised and enforced in a Member State party to that instrument. However, where recognition and enforcement of a judgment given by a common court is sought in a Member State party to the instrument establishing the common court, any rules of that instrument on recognition and enforcement shall apply instead of the rules of this Regulation.”

2. The future Unified Patent Court (UPC)

Background	The Agreement on a Unified Patent Court (hereinafter, the “UPC Agreement”) will establish the UPC as a common court to the Contracting Member States of the EU. ⁹
Subject matter jurisdiction	The UPC shall have jurisdiction for the settlement of disputes relating to European patents and European patents with unitary effect. ¹⁰
Function	Structurally, the UPC will consist of a Court of First Instance, a Court of Appeal and a Registry. ¹¹ Article 32(1) of the UPC Agreement defines exclusive competence of the UPC; among other things, it includes actions for actual or threatened infringements and related defences, actions for declaration of non-infringement, actions for provisional and protective measures and injunctions, as well as actions for revocation and counterclaims for revocation. ¹² The UPC's Court of Appeal may hear appeals against separate decisions on the merits in infringement proceedings and in validity proceedings together. ¹³
Recognition and enforcement of judgments of the court	In the context of the EU, the Brussels <i>Ibis</i> Regulation provides that judgments of the UPC, as a common court within the meaning of said regulation, shall be recognised and enforced in the EU Member States which are not Party to the UPC Agreement under the Brussels <i>Ibis</i> Regulation. ¹⁴ As for judgments of a Member State that is not a Party to the UPC Agreement, they shall be recognised and enforced in the Contracting Member States under the rules of the Brussels <i>Ibis</i> Regulation. However, where recognition and enforcement of a UPC judgment is sought in UPC Member States, the rules of the UPC Agreement on the recognition and enforcement would be applicable, instead of the rules of the Brussels <i>Ibis</i> Regulation. ¹⁵

⁹ Art. 1 of the UPC Agreement. The text of the UPC Agreement is available at the following address: <<https://www.unified-patent-court.org/sites/default/files/upc-agreement.pdf>>.

¹⁰ Under Art. 3, the scope of the UPC Agreement includes: European patents, European patents with unitary effect, European patents which have not yet lapsed at the date of entry into force of the Agreement or were granted after that date, supplementary protection certificates issued for a product protected by a patent and European patent applications. The area of exclusive competence of the UPC is specified in Art. 32 of the UPC Agreement. As the common court, UPC must respect and apply EU law and together with the CJEU ensure its correct application and uniform interpretation. The UPC will in particular have the same obligation as any national court to request preliminary rulings in accordance with Art. 267 of the TFEU.

¹¹ Art. 6 of the UPC Agreement.

¹² Art. 32 of the UPC Agreement.

¹³ Rule 220.5 of the draft Rules of Procedure of the UPC, available at the following address: <<https://www.unified-patent-court.org/sites/default/files/UPC-Rules-of-Procedure.pdf>>.

¹⁴ See, *supra*, note 7 of Annex II.

¹⁵ See, *supra*, note 8 of Annex II.

<i>Recognition and enforcement of foreign judgments</i>	The relevant treaties do not provide rules on the recognition and enforcement of a judgment given by a court of non-EU Member States.
<i>Shared jurisdiction with national courts</i>	<p>National courts delegate their judicial powers to the UPC and there would, in general, be no shared jurisdiction between the UPC and national courts. As stated in Article 32(2) of the UPC Agreement, “[th]e national courts of the Contracting Member States shall remain competent for actions relating to patents and supplementary protection certificates which do not come within the exclusive competence of the Court”.¹⁶</p> <p>However, the situation would be different during the transitional period, as “an action for infringement or for revocation of a European patent or an action for infringement or for declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent may still be brought before national courts or other competent national authorities.”¹⁷ Moreover, in accordance with Article 83(3) of the UPC Agreement, patent applicants / holders may decide to opt out from the exclusive jurisdiction of the UPC.¹⁸</p>

¹⁶ UPC Agreement, Art. 32(2).

¹⁷ *Ibid.*, Art. 83(1).

¹⁸ *Ibid.*, Art. 83(3).