

EXÉCUTION DES JUGEMENTS  
ENFORCEMENT OF JUDGMENTS

Liste récapitulative commentée – Annexe II  
Annotated Checklist – Annex II

janvier / January 2013



**LISTE RÉCAPITULATIVE COMMENTÉE DES QUESTIONS À ABORDER PAR LE GROUPE  
DE TRAVAIL SUR LA RECONNAISSANCE ET L'EXÉCUTION DES JUGEMENTS**

**TABLE PAR ARTICLES**

*établie par le Bureau Permanent*

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**ANNOTATED CHECKLIST OF ISSUES TO BE DISCUSSED BY THE WORKING GROUP ON  
RECOGNITION AND ENFORCEMENT OF JUDGMENTS**

**CROSS-REFERENCE TABLE**

*prepared by the Permanent Bureau*

*Document à l'attention du Groupe de travail  
(réunion de février 2013)*

*Document for the attention of the Working Group  
(meeting of February 2013)*

Provision	1971 Enforcement Convention	Interim Text	Choice of Court Convention	Child Support Convention
<b>Part I – Substantive Scope</b>				
<b>1. Matters generally considered outside of scope</b>				
(a) Revenue, customs, and administrative matters	<b>Art. 1, para. 3</b> “This Convention does not apply to decisions for the payment of any customs duty, tax or penalty.”	<b>Art. 1(1)</b> “The Convention applies to civil and commercial matters. It shall not extend in particular to revenue, customs or other administrative matters.”		
(b) Matters on the status and legal capacity of natural persons	<b>Art. 1(1)</b> “This Convention [...] shall not apply to decisions the main object of which is to determine - (1) the status or capacity of persons [...]”	<b>Art. 1(2)(a)</b> “The Convention does not apply to - a) the status and legal capacity of natural persons; [...]”	<b>Art. 2(2)(a)</b> “This Convention shall not apply to the following matters - a) the status and legal capacity of natural persons; [...]”	<b>Art. 2(4)</b> “(4) The provisions of this Convention shall apply to children regardless of the marital status of the parents.”
(c) Maintenance obligations	<b>Art. 1(1) &amp; (3)</b> “This Convention [...] shall not apply to decisions the main object of which is to determine - (1) [...] questions of family law, including personal or financial rights and obligations between parents and children or between spouses; [...] (3) maintenance obligations, so far as not included in subparagraph (1) of this Article; [...]”	<b>Art. 1(2)(b)</b> “The Convention does not apply to - [...] b) maintenance obligations; [...]”	<b>Art. 2(2)(b)</b> “This Convention shall not apply to the following matters - [...] b) maintenance obligations; [...]”	<b>Art. 2(1)</b> “(1) This Convention shall apply - a) to maintenance obligations arising from a parent-child relationship towards a person under the age of 21 years; b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of subparagraph a); and c) with the exception of Chapters II and III, to spousal

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				support.”
(d) Matrimonial property regimes and other rights and obligations arising out of marriage or similar relationships	<p><b>Art. 1(1)</b></p> <p>“This Convention [...] shall not apply to decisions the main object of which is to determine -</p> <p>(1) [...] questions of family law, including personal or financial rights and obligations between parents and children or between spouses; [...]”</p>	<p><b>Art. 1(2)(c)</b></p> <p>“The Convention does not apply to -</p> <p>[...]</p> <p>c) matrimonial property regimes and other rights and obligations arising out of marriage or similar relationships; [...]”</p>	<p><b>Art. 2(2)(c)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>c) other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships; [...]”</p>	<p><b>Art. 2(1)(b) &amp; (c)</b></p> <p>“(1) This Convention shall apply -</p> <p>[...]</p> <p>b) to recognition and enforcement or enforcement of a decision for spousal support when the application is made with a claim within the scope of subparagraph a); and</p> <p>c) with the exception of Chapters II and III, to spousal support.”</p>
(e) Matters of wills and succession	<p><b>Art. 1(4)</b></p> <p>“This Convention [...] shall not apply to decisions the main object of which is to determine -</p> <p>[...]</p> <p>(4) questions of succession; [...]”</p>	<p><b>Art. 1(2)(d)</b></p> <p>“The Convention does not apply to -</p> <p>[...]</p> <p>d) wills and succession; [...]”</p>	<p><b>Art. 2(2)(d)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>d) wills and succession; [...]”</p>	
(f) Matters whose object is rights <i>in rem</i> in immovable property	<p><b>Art. 10(3)</b></p> <p>“The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention -</p> <p>(3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin”</p>	<p><b>Art. 1(2)(l)</b></p> <p>“The Convention does not apply to -</p> <p>[...]</p> <p>l) rights <i>in rem</i> in immovable property; [...]”</p>	<p><b>Art. 2(2)(l)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>l) rights <i>in rem</i> in immovable property; [...]”</p>	

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(g) Matters of tenancies of immovable property	<p><b>Art. 10(3)</b></p> <p>“The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention -</p> <p>(3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin”</p>	<p><b>Art. 12(1)</b></p> <p>“In proceedings which have as their object rights <i>in rem</i> in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated have exclusive jurisdiction, unless in proceedings which have as their object tenancies of immovable property [concluded for a maximum period of six months], the tenant is habitually resident in a different State.]</p>	<p><b>Art. 2(2)(l)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>l) tenancies of immovable property; [...]”</p>	
(h) Validity of entries in public registers		<p><b>Art. 12(3)</b></p> <p>“In proceedings concerning the validity of entries in public registers other than those dealing with intellectual property rights, the courts of the Contracting State in which the register is kept shall have exclusive jurisdiction.”</p>	<p><b>Art. 2(2)(p)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>p) the validity of entries in public registers; [...]”</p>	
(i) Insolvency, composition, or analogous matters	<p><b>Art. 1(5)</b></p> <p>“This Convention [...] shall not apply to decisions the main object of which is to determine -</p> <p>[...]</p> <p>(5) questions of bankruptcy, compositions or analogous proceedings, including decisions which may result therefrom and which relate to the validity of the acts of the</p>	<p><b>Art. 1(2)(e)</b></p> <p>“The Convention does not apply to -</p> <p>[...]</p> <p>e) insolvency, composition or analogous proceedings; [...]”</p>	<p><b>Art. 2(2)(e)</b></p> <p>“This Convention shall not apply to the following matters -</p> <p>[...]</p> <p>e) insolvency, composition and analogous matters; [...]”</p>	

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	debtor; [...]"			
<b>2. Matters generally included in scope</b>				
(a) Electronic commerce matters		<p><b>Art. 4(2)(b)</b></p> <p>"An agreement within the meaning of paragraph 1 shall be valid as to form, if it was entered into –</p> <p>[...]</p> <p><i>b)</i> orally and confirmed in writing or by any other means of communication which renders information accessible so as to be usable for subsequent reference; [...]"</p>	<p><b>Art. 3(c)(ii)</b></p> <p>"For the purposes of this Convention –</p> <p>[...]</p> <p><i>c)</i> an exclusive choice of court agreement must be concluded or documented –</p> <p>[...]</p> <p><i>ii)</i> by any means of communication which renders information accessible so as to be usable for subsequent reference; [...]"</p>	<p><b>Art. 3(d)</b></p> <p>"<i>d)</i> "agreement in writing" means an agreement recorded in any medium, the information contained in which is accessible so as to be usable for subsequent reference;"</p>
(b) Insurance matters			<p><b>Art. 17</b></p> <p>"(1) Proceedings under a contract of insurance or reinsurance are not excluded from the scope of this Convention on the ground that the contract of insurance or reinsurance relates to a matter to which this Convention does not apply.</p> <p>(2) Recognition and enforcement of a judgment in respect of liability under the terms of a contract of insurance or reinsurance may not be limited or refused on the ground that the liability under that contract includes liability to indemnify the insured or reinsured in respect</p>	

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			of - a) a matter to which this Convention does not apply; or b) an award of damages to which Article 11 might apply."	
(c) Matters where a State is a Party to civil litigation		<p><b>Art. 1(4)</b>  "A dispute is not excluded from the scope of the Convention by the mere fact that a government, a governmental agency or any person acting for the State is a party thereto."</p> <p><b>Cf. Art. 1(5)</b>  "Nothing in this Convention affects the privileges and immunities of sovereign States or of entities of sovereign States, or of international organisations."</p>	<p><b>Art. 2(5)</b>  "Proceedings are not excluded from the scope of this Convention by the mere fact that a State, including a government, a governmental agency or any person acting for a State, is a party thereto."</p> <p><b>Cf. Art. 2(6)</b>  "Nothing in this Convention shall affect privileges and immunities of States or of international organisations, in respect of themselves and of their property."</p>	
<b>3. Matters requiring further consideration</b>				

Provision	1971 Enforcement Convention	Interim Text	Choice of Court Convention	Child Support Convention
(a) Admiralty or maritime matters		<p><b>Art. 1(2)(h)</b></p> <p>"The Convention does not apply to -</p> <p>[...]</p> <p><i>h)</i> admiralty or maritime matters; [...]"</p>	<p><b>Art. 2(2)(f)(g)</b></p> <p>"This Convention shall not apply to the following matters -</p> <p>[...]</p> <p><i>f)</i> the carriage of passengers and goods;</p> <p><i>g)</i> marine pollution, limitation of liability for maritime claims, general average, and emergency towage and salvage; [...]"</p>	
(b) Arbitration and related proceedings	<p><b>Art. 12</b></p> <p>"The jurisdiction of the court of the State of origin need not be recognised by the authority addressed in the following cases -</p> <p>[...]</p> <p>(3) if the authority addressed considers itself bound to recognise an agreement by which exclusive jurisdiction is conferred upon arbitrators."</p>	<p><b>Art. 1(2)(g)</b></p> <p>"The Convention does not apply to -</p> <p>[...]</p> <p><i>g)</i> arbitration and proceedings related thereto; [...]"</p> <p><b>Art. 1(3)</b></p> <p>"[This Convention shall not apply to arbitration and proceedings related thereto, nor shall it require a Contracting State to recognise and enforce a judgment if the exercise of jurisdiction by the court of origin was contrary to an arbitration agreement.]"</p>	<p><b>Art. 2(4)</b></p> <p>"This Convention shall not apply to arbitration and related proceedings."</p>	
(c) Matters of liability for nuclear damage	<p><b>Art. 1(7)</b></p> <p>"This Convention [...] shall not apply to decisions the main object of which is to determine -</p>	<p><b>Art. 1(2)(j)</b></p> <p>"The Convention does not apply to -</p> <p>[...]</p> <p><i>j)</i> nuclear liability;]</p>	<p><b>Art. 2(2)(i)</b></p> <p>"This Convention shall not apply to the following matters -</p> <p>[...]</p>	

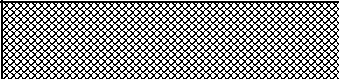
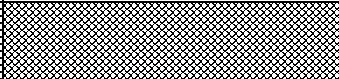
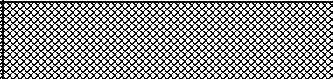
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	[...] (7) questions relating to damage or injury in nuclear matters."	[...]"	i) liability for nuclear damage; [...]"	
(d) Validity of legal persons and validity of decisions of their organs	<b>Art. 1(2)</b> "This Convention [...] shall not apply to decisions the main object of which is to determine – [...] (2) the existence or constitution of legal persons or the powers of their officers; [...]"	<b>Art. 1(2)(m)</b> "The Convention does not apply to – [...] [m] validity, nullity, or dissolution of a legal person and decisions related thereto."	<b>Art. 2(2)(m)</b> "This Convention shall not apply to the following matters – [...] m) the validity, nullity, or dissolution of legal persons, and the validity of decisions of their organs; [...]"	
(e) Antitrust and competition matters		<b>Art. 1(2)(i)</b> "The Convention does not apply to – [...] [i] anti-trust or competition claims; [...]"	<b>Art. 2(2)(h)</b> "This Convention shall not apply to the following matters – [...] h) anti-trust (competition) matters; [...]"	
(f) Intellectual property matters		<b>Art. 12(4)</b> "[Alternative A In proceedings in which the relief sought is a judgment on the grant, registration, validity, abandonment, revocation or infringement of a patent or a mark, the courts of the Contracting State of grant or registration shall have exclusive jurisdiction." <b>Art. 12(5)</b> "[In proceedings in which the	<b>Art. 2(2)(n) (o)</b> "This Convention shall not apply to the following matters – [...] n) the validity of intellectual property rights other than copyright and related rights; [...]" o) infringement of intellectual property rights other than copyright and related rights, except where infringement proceedings are	



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		<p>relief sought is a judgment on the validity, abandonment, or infringement of an unregistered mark [or design], the courts of the Contracting State in which rights in the mark [or design] arose shall have exclusive jurisdiction.]</p> <p>[Alternative B</p> <p>5A. In relation to proceedings which have as their object the infringement of patents, trademarks, designs or other similar rights, the courts of the Contracting State referred to in the preceding paragraph [or in the provisions of Articles [3 to 16]] have jurisdiction.]”</p> <p><b>Art. 12(6)</b></p> <p>“Alternatives A and B</p> <p>[6. Paragraphs 4 and 5 shall not apply where one of the above matters arises as an incidental question in proceedings before a court not having exclusive jurisdiction under those paragraphs. However, the ruling in that matter shall have no binding effect in subsequent proceedings, even if they are between the same parties. A matter arises as an incidental question if the court is not requested to give a judgment on that matter, even if a ruling on it is necessary in arriving at a decision.]”</p>	<p>brought for breach of a contract between the parties relating to such rights, or could have been brought for breach of that contract; [...]”</p>	

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(g) Consumer contract matters		<p><b>Art. 7</b></p> <p>Allows a consumer to bring suit in the State of his own habitual residence where either "the contract [...] is related to trade or professional activities that the defendant has engaged in or directed to that State, in particular in soliciting business through means of publicity," or "the consumer has taken the steps necessary for the conclusion of the contract in that State." Allows claims against consumers only "before the courts of the habitual residence of the consumer" in absence of a choice of court agreement.</p>	<p><b>Art. 2(1)(a)</b></p> <p>"This Convention shall not apply to exclusive choice of court agreements –</p> <p>a) to which a natural person acting primarily for personal, family or household purposes (a consumer) is a party; [...]"</p>	
(h) Employment matters		<p><b>Art. 8 (Individual contracts of employment) and Annex II</b></p>	<p><b>Art. 2(1)(b)</b></p> <p>"This Convention shall not apply to exclusive choice of court agreements –</p> <p>[...]</p> <p>b) relating to contracts of employment, including collective agreements."</p>	
(i) Defamation matters				
<b>Part II – What judgments should be covered?</b>				
<p><b>1. Should the new instrument apply only to judgments by courts?</b></p>	<p><b>Art. 2 para. 1</b></p> <p>"This Convention shall apply to all decisions given by the courts of a Contracting State, irrespective of the name given</p>	<p><b>Art. 23</b></p> <p>"For the purposes of this Chapter, 'judgment' means any decision given by a court, whatever it may be called,</p>	<p><b>Art. 4(1)</b></p> <p>"In this Convention, 'judgment' means any decision on the merits given by a court, whatever it may</p>	<p><b>Art. 19(1)</b></p> <p>"This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance</p>

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	by that State to the proceedings which gave rise to the decision or of the name given to the decision itself such as judgment, order or writ of execution. "	including a decree or order, as well as the determination of costs or expenses by an officer of the court, provided that it relates to a decision which may be recognised or enforced under the Convention."	be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment."	obligation. The term "decision" also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses."
<b>2. Should default judgments be covered?</b>	<p><b>Art. 6</b></p> <p>"Without prejudice to the provisions of Article 5, a decision rendered by default shall neither be recognised nor enforced unless the defaulting party received notice of the institution of the proceedings in accordance with the law of the State of origin in sufficient time to enable him to defend the proceedings."</p>	<p><b>Art. 27(2)</b></p> <p>"In verifying the jurisdiction of the court of origin, the court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default."</p> <p><b>Art. 29(1)(b)</b></p> <p>"The party seeking recognition or applying for enforcement shall produce -</p> <p>b) if the judgment was rendered by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party"</p>	<p><b>Art. 8(2)</b></p> <p>"Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default."</p> <p><b>Art. 13(1)(c)</b></p> <p>"The party seeking recognition or applying for enforcement shall produce -</p> <p>c) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party"</p>	<p><b>Art. 22(e)</b></p> <p>"Recognition and enforcement of a decision may be refused if -</p> <p>[...]</p> <p>e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin -</p> <p>i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or</p> <p>ii) when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; [...]"</p>

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<p><b>3. Should provisional and protective measures be covered?</b></p>	<p><b>Art. 2, para. 2</b>            "However, it shall apply neither to decisions which order provisional or protective measures nor to decisions rendered by administrative tribunals."</p> <p><b>Art. 23(4)</b>            "In the Supplementary Agreements referred to in Article 21 the Contracting States may agree -            (15) to apply this Convention to decisions ordering provisional or protective measures"</p>	<p><b>Art. 23A</b>            "[Alternative A            1. A decision ordering a provisional and protective measure, which has been taken by a court seised with the claim on the merits, shall be recognised and enforced in Contracting States in accordance with Articles [25, 27-34].            2. In this article a reference to a provisional or protective measure means -            a) a measure to maintain the status quo pending determination of the issues at trial; or            b) a measure providing a preliminary means of securing assets out of which an ultimate judgment may be satisfied; or            c) a measure to restrain conduct by a defendant to prevent current or imminent future harm.]            [Alternative B            Orders for provisional and protective measures issued in accordance with Article 13 shall be recognised and enforced in the other Contracting States in accordance with Articles [25, 27-34].]"</p>	<p><b>Art. 4</b>            "In this Convention, "judgment" means any decision on the merits given by a court, whatever it may be called, including a decree or order, and a determination of costs or expenses by the court (including an officer of the court), provided that the determination relates to a decision on the merits which may be recognised or enforced under this Convention. An interim measure of protection is not a judgment."  <b>Art. 7</b>            "Interim measures of protection are not governed by this Convention. This Convention neither requires nor precludes the grant, refusal or termination of interim measures of protection by a court of a Contracting State and does not affect whether or not a party may request or a court should grant, refuse or terminate such measures."</p>	<p><b>Art. 31</b>            "Where a decision is produced by the combined effect of a provisional order made in one State and an order by an authority in another State ("the confirming State") confirming the provisional order -            a) each of those States shall be deemed for the purposes of this Chapter to be a State of origin;            b) the requirements of Article 22 e) shall be met if the respondent had proper notice of the proceedings in the confirming State and an opportunity to oppose the confirmation of the provisional order;            c) the requirement of Article 20(6) that a decision be enforceable in the State of origin shall be met if the decision is enforceable in the confirming State; and            d) Article 18 shall not prevent proceedings for the modification of the decision being commenced in either State."</p>
<p><b>4. Should non-money</b></p>	<p><b>Art. 23(15)</b>            "In the Supplementary</p>			

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<i>judgments be covered?</i>	<p>Agreements referred to in Article 21 the Contracting States may agree –</p> <p>(15) to regulate the enforcement of judgments other than those which order the payment of a sum of money”</p>			
<b>5. Should judgments awarding non-compensatory damages be covered?</b>		<p><b>Art. 33</b></p> <p>“1. A judgment which awards non-compensatory damages, including exemplary or punitive damages, shall be recognised and enforced to the extent that a court in the State addressed could have awarded similar or comparable damages. Nothing in this paragraph shall preclude the court addressed from recognising and enforcing the judgment under its law for an amount up to the full amount of the damages awarded by the court of origin.</p> <p>2. a) Where the debtor, after proceedings in which the creditor has the opportunity to be heard, satisfies the court addressed that in the circumstances, including those existing in the State of origin, grossly excessive damages have been awarded, recognition and enforcement may be limited to a lesser amount.</p> <p>b) In no event shall the court addressed recognise or enforce the judgment in an amount less than that which</p>	<p><b>Art. 11(1)</b></p> <p>“Recognition or enforcement of a judgment may be refused if, and to the extent that, the judgment awards damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered. ”</p>	

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		<p>could have been awarded in the State addressed in the same circumstances, including those existing in the State of origin.</p> <p>3. In applying paragraph 1 or 2, the court addressed shall take into account whether and to what extent the damages awarded by the court of origin serve to cover costs and expenses relating to the proceedings."</p>		
<p><b>6. Should parts of a judgment that fall outside of scope be severable?</b></p>	<p><b>Art. 14, para. 2</b></p> <p>"If the decision contains provisions which can be dissociated, any one or more of these may be separately recognised or enforced."</p>	<p><b>Art. 34</b></p> <p>"[Alternative A</p> <p>If the judgment contains elements which are severable, one or more of them may be separately recognised, declared enforceable, registered for enforcement, or enforced.]</p> <p>[Alternative B</p> <p><i>Partial recognition or enforcement</i></p> <p>Partial recognition or enforcement of a judgment shall be granted where:</p> <p>a) partial recognition or enforcement is applied for; or</p> <p>b) only part of the judgment is capable of being recognised or enforced under this Convention; or</p> <p>c) the judgment has been satisfied in part.]"</p>	<p><b>Art. 15</b></p> <p>"Recognition or enforcement of a severable part of a judgment shall be granted where recognition or enforcement of that part is applied for, or only part of the judgment is capable of being recognised or enforced under this Convention."</p>	<p><b>Art. 21</b></p> <p>"(1) If the State addressed is unable to recognise or enforce the whole of the decision, it shall recognise or enforce any severable part of the decision which can be so recognised or enforced.</p> <p>(2) Partial recognition or enforcement of a decision can always be applied for."</p>
<p><b>7. Should judicial</b></p>	<p><b>Art. 19</b></p>	<p><b>Art. 36</b></p>	<p><b>Art. 12</b></p>	<p><b>Art. 19(1)</b></p>

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<b>settlements be covered?</b>	"Settlements made in court in the course of a pending proceeding which may be enforced in the State of origin shall be enforceable in the State addressed under the same conditions as decisions falling within this Convention, so far as those conditions apply to settlements."	"Settlements to which a court has given its authority shall be recognised, declared enforceable, registered for enforcement, or enforced in the State addressed under the same conditions as judgments falling within the Convention, so far as those conditions apply to settlements."	"Judicial settlements ( <i>transactions judiciaires</i> ) which a court of a Contracting State designated in an exclusive choice of court agreement has approved, or which have been concluded before that court in the course of proceedings, and which are enforceable in the same manner as a judgment in the State of origin, shall be enforced under this Convention in the same manner as a judgment."	"This Chapter shall apply to a decision rendered by a judicial or administrative authority in respect of a maintenance obligation. The term "decision" also includes a settlement or agreement concluded before or approved by such an authority. A decision may include automatic adjustment by indexation and a requirement to pay arrears, retroactive maintenance or interest and a determination of costs or expenses."
<b>8. Should judgments rendered in class actions be covered?</b>				
<b>Part III – Mechanics of the recognition and enforcement scheme</b>				
<b>1. Introduction</b>	<b>Art. 4 para. 1</b> "A decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State under the terms of this Convention – [...]"	<b>Art. 25(1)</b> "A judgment based on a ground of jurisdiction provided for in Articles 3 to 13, or which is consistent with any such ground, shall be recognised or enforced under this Chapter."	<b>Art. 8(1)</b> "A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention."	<b>Art. 20(1)</b> "A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if – [...]"
<b>2. Which conditions should be provided for?</b>	<b>Art. 4</b> "A decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State under the	<b>Art. 25(2)(3)(4)</b> "2. [In order to be recognised, a judgment referred to in paragraph 1 must have the effect of <i>res judicata</i> in the State of origin.]	<b>Art. 8(3)(4)</b> "(3) A judgment shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of	<b>Art. 20(1)(6)</b> "(1) A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if –

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	<p>terms of this Convention -</p> <p>(1) if the decision was given by a court considered to have jurisdiction within the meaning of this Convention, and</p> <p>(2) if it is no longer subject to ordinary forms of review in the State of origin.</p> <p>In addition, to be enforceable in the State addressed, a decision must be enforceable in the State of origin."</p>	<p>or</p> <p>[A judgment referred to in paragraph 1 shall be recognised from the time, and for as long as, it produces its effects in the State of origin.]</p> <p>3. [In order to be enforceable, a judgment referred to in paragraph 1 must be enforceable in the State of origin.]</p> <p>or</p> <p>[A judgment referred to in the preceding paragraphs shall be enforceable from the time, and for as long as, it is enforceable in the State of origin.]</p> <p>4. However, recognition or enforcement may be postponed [or refused] if the judgment is the subject of review in the State of origin or if the time limit for seeking a review has not expired."</p>	<p>origin.</p> <p>(4) Recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment."</p>	<p>(a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>(b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;</p> <p>(c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>(d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;</p> <p>(e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or</p> <p>(f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.</p> <p>(6) A decision shall be recognised only if it has effect in the State of origin, and</p>

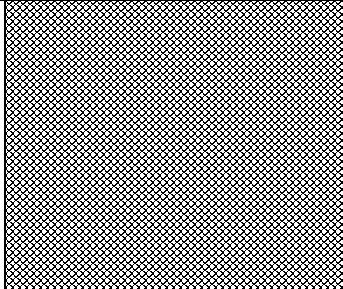


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				shall be enforced only if it is enforceable in the State of origin."
<b>3. Which grounds for refusal of recognition and enforcement should be provided for?</b>				
(a) Incompatibility with public policy	<p><b>Art. 5(1)</b></p> <p>"Recognition or enforcement of a decision may nevertheless be refused in any of the following cases –</p> <p>(1) if recognition or enforcement of the decision is manifestly incompatible with the public policy of the State addressed or if the decision resulted from proceedings incompatible with the requirements of due process of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case; [...]"</p>	<p><b>Art. 28(1)(f)</b></p> <p>"Recognition or enforcement of a judgment may be refused [only] if –</p> <p>[...]</p> <p>f) recognition or enforcement would be manifestly incompatible with the public policy of the State addressed."</p>	<p><b>Art. 9(e)</b></p> <p>"Recognition or enforcement may be refused if –</p> <p>[...]</p> <p>e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State; [...]"</p>	<p><b>Art. 22(a)</b></p> <p>"Recognition and enforcement of a decision may be refused if –</p> <p>a) recognition and enforcement of the decision is manifestly incompatible with the public policy ("ordre public") of the State addressed; [...]"</p> <p><b>Art. 30(4)(a)</b></p> <p>"Recognition and enforcement of a maintenance arrangement may be refused if –</p> <p>(a) the recognition and enforcement is manifestly incompatible with the public policy of the State addressed; [...]"</p>
(b) Procedural fairness	<p><b>Art. 5(1)</b></p> <p>"Recognition or enforcement of a decision may nevertheless be refused in any of the following cases –</p> <p>(1) if recognition or enforcement of the decision is manifestly incompatible with the public policy of the State addressed or if the decision resulted from proceedings incompatible with the requirements of due process</p>	<p><b>Art. 28(1)(c)</b></p> <p>"Recognition or enforcement of a judgment may be refused [only] if –</p> <p>[...]</p> <p>c) the [judgment results from] proceedings [in the State of origin were] incompatible with fundamental principles of procedure of the State addressed, [including the right of each party to be heard by an impartial and</p>	<p><b>Art. 9(e)</b></p> <p>"Recognition or enforcement may be refused if –</p> <p>[...]</p> <p>e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of</p>	

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	of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case; [...]"	independent court]; [...]"	procedural fairness of that State; [...]"	
(c) Procedural fraud	<p><b>Art. 5(2)</b></p> <p>"Recognition or enforcement of a decision may nevertheless be refused in any of the following cases –</p> <p>[...]</p> <p>(2) if the decision was obtained by fraud in the procedural sense; [...]"</p>	<p><b>Art. 28(1)(e)</b></p> <p>"Recognition or enforcement of a judgment may be refused [only] if –</p> <p>[...]</p> <p>e) the judgment was obtained by fraud in connection with a matter of procedure; [...]"</p>	<p><b>Art. 9(d)</b></p> <p>"Recognition or enforcement may be refused if –</p> <p>[...]</p> <p>d) the judgment was obtained by fraud in connection with a matter of procedure; [...]"</p>	<p><b>Art. 22(b)</b></p> <p>"Recognition and enforcement of a decision may be refused if –</p> <p>[...]</p> <p>b) the decision was obtained by fraud in connection with a matter of procedure; [...]"</p> <p><b>Art. 30(4)(b)</b></p> <p>"Recognition and enforcement of a maintenance arrangement may be refused if –</p> <p>(b) the maintenance arrangement was obtained by fraud or falsification; [...]"</p>
(d) Lack of proper notice	<p><b>Art. 6</b></p> <p>"Without prejudice to the provisions of Article 5, a decision rendered by default shall neither be recognised nor enforced unless the defaulting party received notice of the institution of the proceedings in accordance with the law of the State of origin in sufficient time to enable him to defend the proceedings."</p>	<p><b>Art. 28(1)(d)</b></p> <p>"Recognition or enforcement of a judgment may be refused [only] if –</p> <p>[...]</p> <p>d) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence [, or was not notified in accordance with [an applicable international convention] [the</p>	<p><b>Art. 9(c)</b></p> <p>"Recognition or enforcement may be refused if –</p> <p>[...]</p> <p>c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,</p> <p>i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without</p>	<p><b>Art. 22(e)</b></p> <p>"Recognition and enforcement of a decision may be refused if –</p> <p>[...]</p> <p>e) in a case where the respondent has neither appeared nor was represented in proceedings in the State of origin –</p> <p>i) when the law of the State of origin provides for notice of proceedings, the respondent did not have proper notice of the proceedings and an</p>

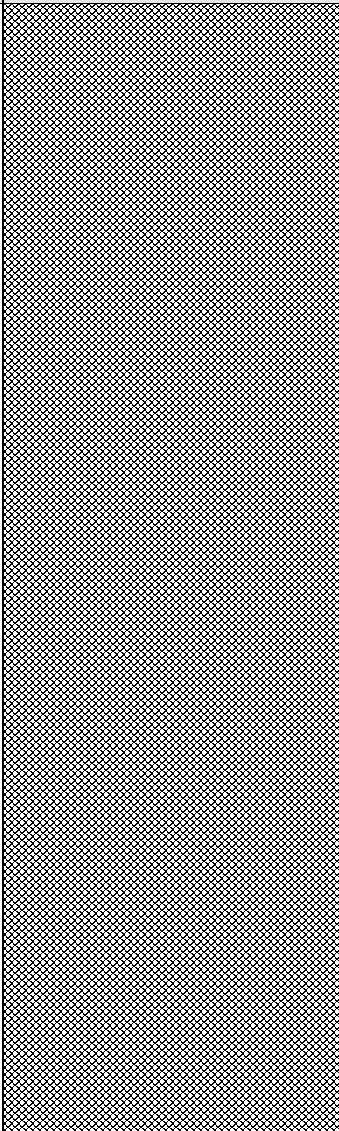
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		domestic rules of law of the State where such notification took place]], unless the defendant entered an appearance and presented his case without contesting the matter of notification in the court of origin, provided that the law of that court permits notification and the defendant did not object. [...]"	contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or  <i>ii)</i> was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents; [...]"	opportunity to be heard; or  <i>ii)</i> when the law of the State of origin does not provide for notice of the proceedings, the respondent did not have proper notice of the decision and an opportunity to challenge or appeal it on fact and law; [...]"
(e) Parallel proceedings before a court of the State addressed?	<b>Art. 5(3)(a)</b> "Recognition or enforcement of a decision may nevertheless be refused in any of the following cases - [...] (3) if proceedings between the same parties, based on the same facts and having the same purpose -  <i>a)</i> are pending before a court of the State addressed and those proceedings were the first to be instituted, [...]"	<b>Art. 28(1)(a)</b> "Recognition or enforcement of a judgment may be refused [only] if -  <i>a)</i> proceedings between the same parties and having the same subject matter are pending before a court of the State addressed, if first seised in accordance with Article 21; [...]"	<b>Art. 22(2)(b)</b> "(2) Where recognition or enforcement of a judgment given in a Contracting State that has made such a declaration is sought in another Contracting State that has made such a declaration, the judgment shall be recognised and enforced under this Convention, if - [...]  <i>b)</i> there exists neither a judgment given by any other court before which proceedings could be brought in accordance with the non-exclusive choice of court agreement, nor a proceeding pending between the same parties in any other such court on the same cause of action;	<b>Art. 22(c)</b> "Recognition and enforcement of a decision may be refused if - [...]  <i>c)</i> proceedings between the same parties and having the same purpose are pending before an authority of the State addressed and those proceedings were the first to be instituted; [...]"
(f) Inconsistency with a judgment given in the State addressed or in another State	<b>Art. 5(3)(b) &amp; (c)</b> "Recognition or enforcement of a decision may nevertheless be refused in any of the following cases -	<b>Art. 28(1)(b)</b> "Recognition or enforcement of a judgment may be refused [only] if - [...]"	<b>Art. 9(f) &amp; (g)</b> "Recognition or enforcement may be refused if - [...]  <i>f)</i> the judgment is	<b>Art. 22(d)</b> "Recognition and enforcement of a decision may be refused if - [...]"

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	<p>[...]</p> <p>(3) if proceedings between the same parties, based on the same facts and having the same purpose –</p> <p>[...]</p> <p>b) have resulted in a decision by a court of the State addressed, or</p> <p>c) have resulted in a decision by a court of another State which would be entitled to recognition and enforcement under the law of the State addressed.”</p>	<p>b) the judgment is inconsistent with a judgment rendered, either in the State addressed or in another State, provided that in the latter case the judgment is capable of being recognised or enforced in the State addressed; [...]"</p>	<p>inconsistent with a judgment given in the requested State in a dispute between the same parties; or</p> <p>g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.”</p> <p>"</p>	<p>d) the decision is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed; [...]"</p> <p><b>Art. 30(4)(c)</b></p> <p>"Recognition and enforcement of a maintenance arrangement may be refused if –</p> <p>(c) the maintenance arrangement is incompatible with a decision rendered between the same parties and having the same purpose, either in the State addressed or in another State, provided that this latter decision fulfils the conditions necessary for its recognition and enforcement in the State addressed."</p>
<p><b>4. Which procedural aspects of recognition and enforcement should a future instrument regulate?</b></p>	<p><b>Art. 14(1)</b></p> <p>"The procedure for the recognition or enforcement of foreign judgments is governed by the law of the State addressed so far as this Convention does not provide otherwise."</p>	<p><b>Art. 30</b></p> <p>"The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the State addressed so far as the Convention does not provide otherwise. [...]"</p>	<p><b>Art. 14</b></p> <p>"The procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State unless this Convention provides otherwise. [...]"</p>	<p><b>Art. 23(1)</b></p> <p>"Subject to the provisions of the Convention, the procedures for recognition and enforcement shall be governed by the law of the State addressed."</p>

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(a) Should the instrument limit the review of foreign judgments by the court addressed?	<p><b>Art. 8</b></p> <p>"Without prejudice to such review as is required by the terms of the preceding Articles, there shall be no review of the merits of the decision rendered by the court of origin."</p>	<p><b>Art. 28(2)</b></p> <p>"Without prejudice to such review as is necessary for the purpose of application of the provisions of this Chapter, there shall be no review of the merits of the judgment rendered by the court of origin."</p>	<p><b>Art. 8(2)</b></p> <p>"Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default."</p>	<p><b>Art. 28</b></p> <p>"There shall be no review by any competent authority of the State addressed of the merits of a decision."</p>
(b) Should the instrument at least require the court addressed to act within a certain time limit?		<p><b>Art. 30</b></p> <p>"[...] The court addressed shall act [in accordance with the most rapid procedure available under local law] [expeditiously]."</p>	<p><b>Art. 14</b></p> <p>"[...] The court addressed shall act expeditiously."</p>	<p><b>Art. 23(3)</b></p> <p>"Where the request is made directly to a competent authority in the State addressed in accordance with Article 19(5), that authority shall without delay declare the decision enforceable or register the decision for enforcement."</p>
(c) What documentary evidence should be produced?	<p><b>Art. 13 para. 1</b></p> <p>"The party seeking recognition or applying for enforcement shall furnish –</p> <p>(1) a complete and authenticated copy of the decision;</p> <p>(2) if the decision was rendered by default, the originals or certified true copies of the documents required to establish that the summons was duly served on the defaulting party;</p> <p>(3) all documents required to establish that the decision</p>	<p><b>Art. 29(1)</b></p> <p>"The party seeking recognition or applying for enforcement shall produce –</p> <p>a) a complete and certified copy of the judgment;</p> <p>b) if the judgment was rendered by default, the original or a certified copy of a document establishing that the document which instituted the proceedings or an equivalent document was notified to the defaulting party;</p> <p>c) all documents required</p>	<p><b>Art. 13(1)</b></p> <p>"The party seeking recognition or applying for enforcement shall produce –</p> <p>a) a complete and certified copy of the judgment;</p> <p>b) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;</p> <p>c) if the judgment was given by default, the original or a certified copy of a document establishing that the document which instituted</p>	<p><b>Art. 25(1)</b></p> <p>"An application for recognition and enforcement under Article 23 or Article 24 shall be accompanied by the following –</p> <p>a) a complete text of the decision;</p> <p>b) a document stating that the decision is enforceable in the State of origin and, in the case of a decision by an administrative authority, a document stating that the requirements of Article 19(3) are met unless that State has specified in accordance with</p>

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	<p>fulfills the conditions of subparagraph (2) of the first paragraph of Article 4, and, where appropriate, of the second paragraph of Article 4;</p> <p>(4) unless the authority addressed otherwise requires, translations of the documents referred to above, certified as correct either by a diplomatic or consular agent or by a sworn translator or by any other person so authorised in either State."</p>	<p>to establish that the judgment is <i>res judicata</i> in the State of origin or, as the case may be, is enforceable in that State;</p> <p>d) if the court addressed so requires, a translation of the documents referred to above, made by a person [legally] qualified to do so."</p>	<p>the proceedings or an equivalent document was notified to the defaulting party;</p> <p>d) any documents necessary to establish that the judgment has effect or, where applicable, is enforceable in the State of origin;</p> <p>e) in the case referred to in Article 12, a certificate of a court of the State of origin that the judicial settlement or a part of it is enforceable in the same manner as a judgment in the State of origin."</p>	<p>Article 57 that decisions of its administrative authorities always meet those requirements;</p> <p>c) if the respondent did not appear and was not represented in the proceedings in the State of origin, a document or documents attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard, or that the respondent had proper notice of the decision and the opportunity to challenge or appeal it on fact and law;</p> <p>d) where necessary, a document showing the amount of any arrears and the date such amount was calculated;</p> <p>e) where necessary, in the case of a decision providing for automatic adjustment by indexation, a document providing the information necessary to make the appropriate calculations;</p> <p>f) where necessary, documentation showing the extent to which the applicant received free legal assistance in the State of origin."</p> <p><b>Art. 30(3)</b></p> <p>"An application for recognition and enforcement of a maintenance arrangement shall be accompanied by the following –</p>

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				(a) a complete text of the maintenance arrangement; and  (b) a document stating that the particular maintenance arrangement is enforceable as a decision in the State of origin."
(d) Should the instrument make provision for the use of a prescribed form?		<b>Art. 29(2)</b> [An application for recognition or enforcement may be accompanied by the form annexed to this Convention and, if the court addressed so requires, a translation of the form made by a person [legally] qualified to do so.]"	<b>Art. 13(3)</b> "An application for recognition or enforcement may be accompanied by a document, issued by a court (including an officer of the court) of the State of origin, in the form recommended and published by the Hague Conference on Private International Law."	<b>Art. 12(2)(3)</b> "(2) (...)The application shall be accompanied by the transmittal form set out in Annex 1. [...]  (3) The requested Central Authority shall, within six weeks from the date of receipt of the application, acknowledge receipt in the form set out in Annex 2, and inform the Central Authority of the requesting State what initial steps have been or will be taken to deal with the application, and may request any further necessary documents and information. [...]"
<b>Part IV – Jurisdictional filters</b>				
<b>1. What should the nature of the jurisdictional filters be?</b>				

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<p>(a) Should the jurisdictional filters apply as conditions or exceptions?</p>	<p><b>Art. 10</b></p> <p>"The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention -</p> <p>(1) if the defendant had, at the time when the proceedings were instituted, his habitual residence in the State of origin, or, if the defendant is not a natural person, its seat, its place of incorporation or its principal place of business in that State;</p> <p>(2) if the defendant had, in the State of origin, at the time when the proceedings were instituted, a commercial, industrial or other business establishment, or a branch office, and was cited there in proceedings arising from business transacted by such establishment or branch office;</p> <p>(3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin;</p> <p>(4) in the case of injuries to the person or damage to tangible property, if the facts which occasioned the damage occurred in the territory of the State of origin, and if the author of the injury or damage was present in that territory at the time when those facts occurred;</p> <p>(5) if, by a written</p>	<p><b>Art. 26</b></p> <p>"A judgment based on a ground of jurisdiction which conflicts with Article 4, 5, 7, 8 or 12 ["exclusive jurisdiction"], or whose application is prohibited by virtue of Article 18, shall not be recognised or enforced."</p>		<p><b>Art. 20</b></p> <p>"(1) A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if -</p> <p>a) the respondent was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity;</p> <p>c) the creditor was habitually resident in the State of origin at the time proceedings were instituted;</p> <p>d) the child for whom maintenance was ordered was habitually resident in the State of origin at the time proceedings were instituted, provided that the respondent has lived with the child in that State or has resided in that State and provided support for the child there;</p> <p>e) except in disputes relating to maintenance obligations in respect of children, there has been agreement to the jurisdiction in writing by the parties; or</p> <p>f) the decision was made by an authority exercising jurisdiction on a matter of personal status or parental</p>



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	<p>agreement or by an oral agreement confirmed in writing within a reasonable time, the parties agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of the State addressed would not permit such an agreement because of the subject-matter of the dispute;</p> <p>(6) if the defendant has argued the merits without challenging the jurisdiction of the court or making reservations thereon; nevertheless such jurisdiction shall not be recognised if the defendant has argued the merits in order to resist the seizure of property or to obtain its release, or if the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute;</p> <p>(7) if the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings, unless the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute.”</p> <p><b>Art. 11</b></p> <p>“The court of the State of</p>			<p>responsibility, unless that jurisdiction was based solely on the nationality of one of the parties.</p> <p>(2) A Contracting State may make a reservation, in accordance with Article 62, in respect of paragraph 1 c), e) or f).</p> <p>(3) A Contracting State making a reservation under paragraph 2 shall recognise and enforce a decision if its law would in similar factual circumstances confer or would have conferred jurisdiction on its authorities to make such a decision.</p> <p>(4) A Contracting State shall, if recognition of a decision is not possible as a result of a reservation under paragraph 2, and if the debtor is habitually resident in that State, take all appropriate measures to establish a decision for the benefit of the creditor. The preceding sentence shall not apply to direct requests for recognition and enforcement under Article 19(5) or to claims for support referred to in Article 2(1) b).</p> <p>(5) A decision in favour of a child under the age of 18 years which cannot be recognised by virtue only of a reservation in respect of paragraph 1 c), e) or f) shall be accepted as establishing the eligibility of that child for maintenance in the State addressed.</p>

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	<p>origin shall be considered to have jurisdiction for the purposes of this Convention to try a counterclaim -</p> <p>(1) if that court would have had jurisdiction to try the action as a principal claim under sub-paragraphs (1)-(6) of Article 10, or</p> <p>(2) if that court had jurisdiction under Article 10 to try the principal claim and if the counterclaim arose out of the contract or out of the facts on which the principal claim was based.”</p> <p><b>Art. 12</b></p> <p>“The jurisdiction of the court of the State of origin need not be recognised by the authority addressed in the following cases -</p> <p>(1) if the law of the State addressed confers upon its courts exclusive jurisdiction, either by reason of the subject-matter of the action or by virtue of an agreement between the parties as to the determination of the claim which gave rise to the foreign decision;</p> <p>(2) if the law of the State addressed recognises a different exclusive jurisdiction by reason of the subject-matter of the action, or if the authority addressed considers itself bound to recognise such an exclusive jurisdiction by reason of an agreement between the parties; [...]”</p>			<p>(6) A decision shall be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.”</p>

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<p>(b) Should the court addressed be bound by the court of origin's findings of fact?</p>	<p><b>Art. 9</b>            "In questions relating to the jurisdiction of the court of the State of origin, the authority addressed shall be bound by the findings of fact on which that court based its jurisdiction, unless the decision was rendered by default."</p>	<p><b>Art. 27(2)</b>            "In verifying the jurisdiction of the court of origin, the court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default."</p>	<p><b>Art. 8(2)</b>            "Without prejudice to such review as is necessary for the application of the provisions of this Chapter, there shall be no review of the merits of the judgment given by the court of origin. The court addressed shall be bound by the findings of fact on which the court of origin based its jurisdiction, unless the judgment was given by default."</p>	<p><b>Art. 27</b>            "Any competent authority of the State addressed shall be bound by the findings of fact on which the authority of the State of origin based its jurisdiction."</p>
<p><b>2. What should the content of the jurisdictional filters be?</b></p>				

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(a) Should jurisdiction based on the defendant's submission be accepted?	<p><b>Art. 10(6)</b></p> <p>"The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention – [...]</p> <p>(6) if the defendant has argued the merits without challenging the jurisdiction of the court or making reservations thereon; nevertheless such jurisdiction shall not be recognised if the defendant has argued the merits in order to resist the seisure of property or to obtain its release, or if the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute; [...]"</p>	<p><b>Art. 4(3)</b></p> <p>"Where a defendant expressly accepts jurisdiction before a court of a Contracting State, and that acceptance is [in writing or evidenced in writing], that court shall have jurisdiction."</p>	<p><b>Art. 8(1)</b></p> <p>(1) A judgment given by a court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States in accordance with this Chapter. [...]</p> <p><b>N.B:</b> choice of court agreement understood as submission</p>	<p><b>Art. 20(1)(b)</b></p> <p>"A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if – [...]</p> <p>b) the respondent has submitted to the jurisdiction either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; [...]"</p>
(b) Should jurisdiction based on the defendant's home forum be accepted?	<p><b>Art. 10(1)</b></p> <p>"The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention –</p> <p>(1) if the defendant had, at the time when the proceedings were instituted, his habitual residence in the State of origin, or, if the defendant is not a natural person, its seat, its place of incorporation or its principal place of business in that State; [...]"</p>	<p><b>Art. 3</b></p> <p>"1. Subject to the provisions of the Convention, a defendant may be sued in the courts of [a] [the] State [in which] [where] that defendant is [habitually] resident.</p> <p>[2. For the purposes of the Convention, a natural person shall be considered to be resident –</p> <p>a) if that person is resident in only one State, in that State;</p> <p>b) if that person is resident in more than one State,</p>		<p><b>Art. 20(1)(a)</b></p> <p>"A decision made in one Contracting State ("the State of origin") shall be recognised and enforced in other Contracting States if –</p> <p>a) the respondent was habitually resident in the State of origin at the time proceedings were instituted; [...]"</p>

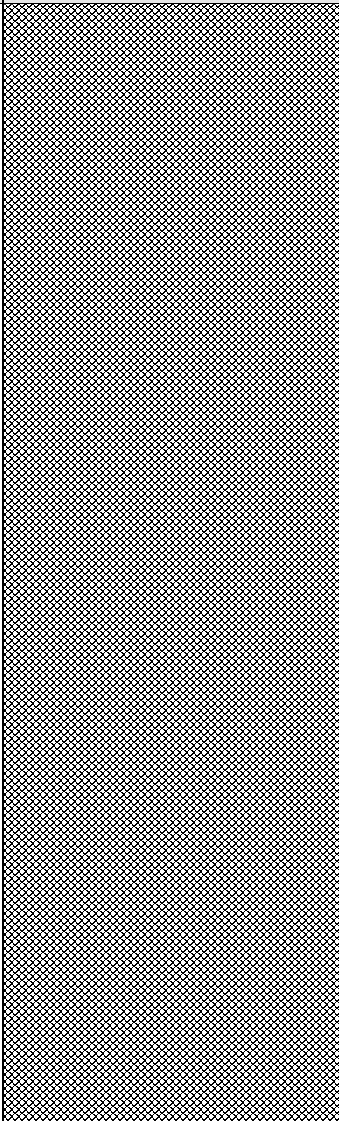
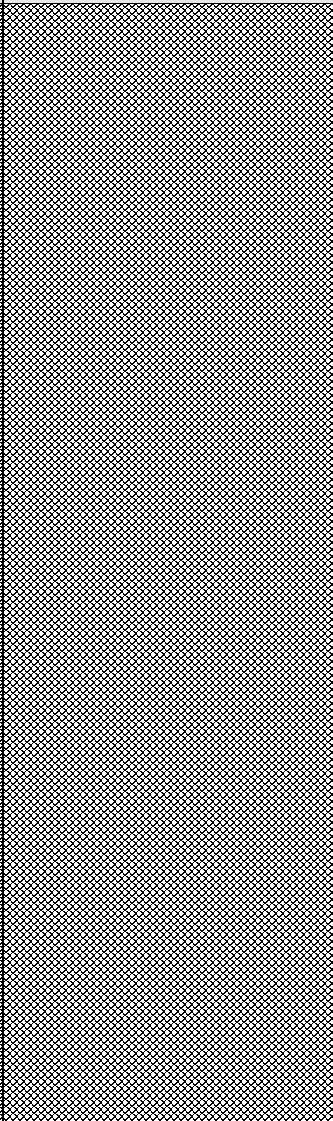
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		<p><i>i)</i> in the State in which that person has his or her principal residence; or</p> <p><i>ii)</i> if that person does not have a principal residence in any one State, in each State in which that person is resident.]</p> <p>3. For the purposes of the Convention, an entity or person other than a natural person shall be considered to be [habitually] resident in the State –</p> <p><i>a)</i> where it has its statutory seat;</p> <p><i>b)</i> under whose law it was incorporated or formed;</p> <p><i>c)</i> where it has its central administration; or</p> <p><i>d)</i> where it has its principal place of business.”</p>		
<p>(c) Should jurisdiction based on the defendant’s branch be accepted?</p>	<p><b>Art. 10(2)</b></p> <p>“The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention –</p> <p>[...]</p> <p>(2) if the defendant had, in the State of origin, at the time when the proceedings were instituted, a commercial, industrial or other business establishment, or a branch office, and was cited there in proceedings arising from business transacted by such establishment or branch office; [...]”</p>	<p><b>Art. 9</b></p> <p>“1. A plaintiff may bring an action in the courts of a State in which a branch, agency or any other establishment of the defendant is situated, [, or where the defendant has carried on regular commercial activity by other means,] provided that the dispute relates directly to the activity of that branch, agency or other establishment [or to that regular commercial activity].</p> <p>[2. For purposes of applying paragraph 1, a legal entity shall not be considered</p>		

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		a 'branch, agency or other establishment' by the mere fact that the legal entity is a subsidiary of the defendant.]"		
(d) Should jurisdiction based on the defendant's regular commercial activities be accepted?		<p><b>Art. 9</b></p> <p>"1. A plaintiff may bring an action in the courts of a State in which a branch, agency or any other establishment of the defendant is situated, [, or where the defendant has carried on regular commercial activity by other means,] provided that the dispute relates directly to the activity of that branch, agency or other establishment [or to that regular commercial activity].</p> <p>[2. For purposes of applying paragraph 1, a legal entity shall not be considered a 'branch, agency or other establishment' by the mere fact that the legal entity is a subsidiary of the defendant.]"</p>		
<p><b>3. Should additional filters related to specific matters be included?</b></p>				

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(a) Should a specific rule for actions in contract be included?		<p><b>Art. 6</b></p> <p>"[Alternative A</p> <p>1. [Subject to the provisions of Articles 7 and 8,] a plaintiff may bring an action in contract in the courts of the State -</p> <p>a) in which the defendant has conducted frequent [and] [or] significant activity; [or</p> <p>b) into which the defendant has directed frequent [and] [or] significant activity;] provided that the claim is based on a contract directly related to that activity [and the overall connection of the defendant to that State makes it reasonable that the defendant be subject to suit in that State].</p> <p>[Variant 1</p> <p>2. For the purposes of the preceding paragraph, 'activity' means one or more of the following -</p> <p>a) [regular and substantial] promotion of the commercial or professional ventures of the defendant for the conclusion of contracts of this kind;</p> <p>b) the defendant's regular or extended presence for the purpose of negotiating contracts of this kind, provided that the contract in question was performed at least in part in that State. [Performance in this sub-paragraph refers [only] to</p>		

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		<p>nonmonetary performance, except in case of loans or of contracts for the purchase and sale of currency];</p> <p>c) the performance of a contract by supplying goods or services, as a whole or to a significant part.]</p> <p>[Variant 2</p> <p>2. For the purpose of the preceding paragraph, 'activity' includes, <i>inter alia</i>, the promotion, negotiation, and performance of a contract.</p> <p>[3. The preceding paragraphs do not apply to situations where the defendant has taken reasonable steps to avoid entering into or performing an obligation in that State.]]</p> <p>[Alternative B</p> <p>A plaintiff may bring an action in contract in the courts of a State in which –</p> <p>a) in matters relating to the supply of goods, the goods were supplied in whole or in part;</p> <p>b) in matters relating to the provision of services, the services were provided in whole or in part;</p> <p>c) in matters relating both to the supply of goods and the provision of services, performance of the principal obligation took place in whole or in part.]”</p>		



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<p>(b) Should a specific rule for actions in tort be included?</p>	<p><b>Art. 10(4)</b></p> <p>"The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention –</p> <p>[...]</p> <p>(4) in the case of injuries to the person or damage to tangible property, if the facts which occasioned the damage occurred in the territory of the State of origin, and if the author of the injury or damage was present in that territory at the time when those facts occurred; [...]"</p>	<p><b>Art. 10</b></p> <p>"1. A plaintiff may bring an action in tort [or delict] in the courts of the State –</p> <p>a) in which the act or omission that caused injury occurred, or</p> <p>b) in which the injury arose, unless the defendant establishes that the person claimed to be responsible could not reasonably foresee that the act or omission could result in an injury of the same nature in that State.</p> <p>[2. A plaintiff may bring an action in tort in the courts of the State in which the defendant has engaged in frequent or significant activity, or has directed such activity into that State, provided that the claim arises out of that activity and the overall connection of the defendant to that State makes it reasonable that the defendant be subject to suit in that State.]</p> <p>[3. The preceding paragraphs do not apply to situations where the defendant has taken reasonable steps to avoid acting in or directing activity into that State.]</p> <p>[4. A plaintiff may also bring an action in accordance with paragraph 1 when the act or omission, or the injury may occur.]</p> <p>[5. If an action is brought</p>		

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		in the courts of a State only on the basis that the injury arose or may occur there, those courts shall have jurisdiction only in respect of the injury that occurred or may occur in that State, unless the injured person has his or her habitual residence in that State.]”		
(c) Should a specific rule for actions relating to immovable property be included?	<p><b>Art. 10(3)</b></p> <p>“The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention – [...]</p> <p>(3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin; [...]”</p>	<p><b>Art. 12(1)</b></p> <p>“[1. In proceedings which have as their object rights <i>in rem</i> in immovable property or tenancies of immovable property, the courts of the Contracting State in which the property is situated have exclusive jurisdiction, unless in proceedings which have as their object tenancies of immovable property [concluded for a maximum period of six months], the tenant is habitually resident in a different State.]”</p>		
(d) Should a specific rule for actions relating to trusts be included?		<p><b>Art. 11</b></p> <p>“1. In proceedings concerning the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing, the courts of a Contracting State designated in the trust instrument for this purpose shall have jurisdiction, and that jurisdiction shall be exclusive unless the instrument provides otherwise. Where the trust instrument designates a court</p>		

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		<p>or courts of a non-Contracting State, courts in Contracting States shall decline jurisdiction or suspend proceedings unless the court or courts chosen have themselves declined jurisdiction. [The validity of such a designation shall be governed by the law applicable to the validity of the trust.]</p> <p>2. In the absence of such [valid] designation, proceedings may be brought before the courts of a State –</p> <p><i>a)</i> in which is situated the principal place of administration of the trust; or</p> <p><i>b)</i> whose law is applicable to the trust; or</p> <p><i>c)</i> with which the trust has the closest connection for the purpose of the proceedings, taking into account in particular the principal place where the trust is administered, the place of residence or business of the trustee, the situation of the assets of the trust, and the objects of the trust and the places where they are to be fulfilled; or</p> <p><i>d)</i> in which the settlor (if living) and all living beneficiaries are habitually resident, if all such persons are habitually resident in the same State.</p> <p>[3. This Article shall only apply to disputes among the</p>		

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		trustee, settlor and beneficiaries of the trust.]”		
<b>Part V – Additional mechanisms</b>				
<p><b>1. Co-operation (including judicial communication)</b></p>	<p><b>1980 Access to Justice Convention</b></p> <p><b>Art. 16</b></p> <p>“Each Contracting State shall designate one or more transmitting authorities for the purpose of forwarding to the appropriate Central Authority in the requested State applications for rendering enforceable orders to which Article 15 applies.</p> <p>Each Contracting State shall designate a Central Authority to receive such applications and to take the appropriate steps to ensure that a final decision on them is reached.</p> <p>Federal States and States which have more than one legal system may designate more than one Central Authority. If the Central Authority to which an application is submitted is not competent to deal with it, it shall forward the application to whichever other Central Authority in the requested State is competent to do so.</p> <p>Applications under this Article shall be transmitted without the intervention of any other authority, without prejudice to an application being transmitted through</p>			<p><b>Art. 5</b></p> <p>“Central Authorities shall -</p> <p><i>a)</i> co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention;</p> <p><i>b)</i> seek as far as possible solutions to difficulties which arise in the application of the Convention.”</p> <p><b>Art. 6</b></p> <p>“(1) Central Authorities shall provide assistance in relation to applications under Chapter III. In particular they shall -</p> <p><i>a)</i> transmit and receive such applications;</p> <p><i>b)</i> initiate or facilitate the institution of proceedings in respect of such applications.</p> <p>For further details, see paras. 2 and 3</p> <p>(4) Nothing in this Article or Article 7 shall be interpreted as imposing an obligation on a Central Authority to exercise powers that can be exercised only by judicial authorities</p>

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	<p>diplomatic channels.</p> <p>Nothing in this Article shall prevent applications from being made directly by the person entitled to the benefit of the order unless the requested State has declared that it will not accept applications made in this manner."</p>			<p>under the law of the requested State."</p>
<p><b>2. Exchange of information</b></p>				<p><b>Art. 57</b></p> <p>"(1) A Contracting State, by the time its instrument of ratification or accession is deposited or a declaration is submitted in accordance with Article 61 of the Convention, shall provide the Permanent Bureau of the Hague Conference on Private International Law with –</p> <ul style="list-style-type: none"> <li>a) a description of its laws and procedures concerning maintenance obligations;</li> <li>b) a description of the measures it will take to meet the obligations under Article 6;</li> <li>c) a description of how it will provide applicants with effective access to procedures, as required under Article 14;</li> <li>d) a description of its enforcement rules and procedures, including any limitations on enforcement, in particular debtor protection rules and limitation periods;</li> <li>e) any specification</li> </ul>

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				<p>referred to in Article 25(1) <i>b</i>) and (3).</p> <p>(2) Contracting States may, in fulfilling their obligations under paragraph 1, utilise a country profile form recommended and published by the Hague Conference on Private International Law.</p> <p>(3) Information shall be kept up to date by the Contracting States."</p>