

## Promoting the internationalisation of the Andorran jurisdiction: the Principality of Andorra's accession to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

On 4 December, the Official Gazette of the Principality of Andorra published the accession to this Convention. Although its effects will not be immediate, as each State Party will have one year to reject its binding force vis-à-vis the Principality of Andorra, the Convention will facilitate the enforcement of judgments rendered by the State Parties' courts of justice. Currently, these include the Member States of the European Union (except Denmark), the United Kingdom, Croatia, Ukraine, and Uruguay. Below, we outline its practical consequences.

### Is the Convention of universal application?

No. The Convention only applies if both the State of Origin (which issued the judgment) and the Requested State (where recognition and enforcement is sought) are parties to the Convention.

Additionally, State Parties may exclude certain matters, although such exclusions will operate in a reciprocal manner, meaning they will also prevent the enforcement of judgments from the State making the reservation in other States Parties. The Principality of Andorra's reservation excludes the following matters:

- Disputes concerning non-residential leases of real estate located in the Principality of Andorra. This limitation is consistent with the exclusion of the enforcement of judgments regarding rights in rem in immovable property not located in the State of Origin.
- Employment contracts, thus maintaining exclusive jurisdiction of Andorran courts over employment matters performed within the Principality.

### Does the Convention replace Andorran law on the recognition and enforcement of foreign judgments?

The application of the Convention is subsidiary and does not affect national laws in this regard. Therefore, a foreign judgment must still be recognised prior to enforcement, as has been the case to date.

### What resolutions can be subject to recognition?

The Convention is limited to judgments and other judicial decisions which, regardless of their designation, resolve the substantive issues raised, as well as the determination of judicial costs, in matters covered by the Convention. As for settlements, these must be judicially approved or adopted within the framework of legal proceedings. In both cases, the decision must be enforceable and final in the State of Origin. Consequently, the Convention does not cover provisional or precautionary measures, arbitration, or alternative dispute resolution methods.

### What is meant by civil and commercial matters?

The Convention follows the model of Regulation Brussels I bis ("**RBI**") and excludes public law (tax, customs, and administrative matters), military activities, sovereign debt restructuring measures unilaterally imposed by a State, and the immunity from jurisdiction and enforcement of States and international organisations. Beyond these matters, judgments on civil and commercial matters concerning public entities, as well as those rendered by courts outside the civil or commercial sphere, benefit from the Convention.

The Convention does not cover all civil and commercial matters, as it excludes: the status and capacity of natural persons, maintenance obligations, family law, wills and succession, insolvency, composition proceedings, the winding-up of financial institutions, and similar matters. Finally, the Convention also excludes: (i) matters covered by specific international treaties, (ii) defamation and privacy matters, (iii) the validity or nullity of legal persons or associations without legal personality and decisions of their organs, (iv) the validity of entries in public registers, and (v) intellectual and industrial property. In competition matters, only judgments concerning cartels are covered when both the conduct and its effects took place in the State of Origin.

### Is there any control over the jurisdiction of the court in the State of Origin?

Yes. The Convention requires that there is a relevant connection between that jurisdiction and the dispute. Several criteria for indirect judicial competence are established, with specific rules for consumers, and judgments on residential leases of registered immovable property, which must be resolved by the courts of the State where they are located.

These connection criteria are in line with the RBI and are as follows:

- The habitual residence of the person against whom recognition or enforcement is sought in the State of Origin when such person becomes a party to the proceedings.
- In the case of self-employed persons against whom recognition or enforcement is sought, having the main place of business in the State of Origin when such person becomes a party to the proceedings, and the claim being based on such business activities.

- Where the person against whom recognition or enforcement is sought has brought the claim, except through a counterclaim.
- Where the defendant has a branch, agency, or another establishment in the State of Origin, and the claim relates to the activities of that establishment.
- The express or tacit submission of the defendant.
- In contractual matters, where the place of performance of the obligation, as agreed or otherwise as per the applicable law, was in the State of Origin.
- The judgment ruled against the defendant on a contractual obligation secured by a right in rem in immovable property located in the State of origin, if the contractual claim was brought together with a claim against the same defendant relating to that right in rem.
- In tort matters involving death, physical injury, or damage to or loss of tangible property, the place where the act or omission causing the damage directly occurred, irrespective of where that harm occurred.
- In matters of trust, the courts of the place designated in the trust instrument or the place designated as the location of its principal administration.
- The judgment on a counterclaim: (i) where this has succeeded, provided it arose from the same legal relationship or facts as the claim, or (ii) where the counterclaim has been dismissed, to avoid preclusion if so required by the State of Origin.
- The existence of a non-exclusive submission agreement made or documented in writing, or by any other means of communication permitting reference.

#### **What happens with judgments involving multiple defendants?**

Unlike the RBI, the Convention is silent on this matter. The most cautious approach would be to evaluate the requirements outlined above in relation to each party independently. Additionally, Article 9 of the Convention allows for the partial recognition of a judgment if it is divisible, ensuring the application of the part that meets the requirements.

#### **What grounds for opposition to recognition and enforcement does the Convention allow?**

The opposition grounds provided by the Convention are subsidiary and will not apply where they do not exist or are limited in the Requested State. These grounds are as follows:

- The document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim was not notified to the defendant in sufficient time and in such a way as to enable them to arrange for their defence, unless the defendant has appeared and failed to contest the notification or its absence and could have done so. A notification in the Requested State incompatible with its domestic law is not valid.

- Fraud in connection with the rendering of the judgment.
- Manifest incompatibility with the public policy of the Requested State, particularly with respect to the fundamental principles of procedural fairness in the Requested State and the security or sovereignty of that State.
- Non-compliance with the jurisdiction clauses of the agreement or trust instrument, under which the dispute in question was to be determined in a court of a State other than the State of Origin. This type of opposition is not admissible under Andorran law.
- Res judicata with regard to another judgment rendered in the Requested State in a dispute between the same parties, which, under Andorran law, would have merely incidental effect. The res judicata exception regarding a judgment rendered in another State in a dispute between the same parties and on the same matter, if such judgment meets the conditions for recognition in the Requested State.

In contrast, Article 428.2 of Act 22/2021 of 17 September, on the consolidated text of the Civil Procedure Code, recognises only five grounds for opposition: (i) the jurisdiction of the foreign court, (ii) the fairness of the proceedings (which, under the Convention, should be limited to denial of justice and fraud against national law, excluding foreign law), (iii) the application of the applicable law under national conflict of laws (this type of opposition will not apply under the Convention), (iv) compliance with national and international public policy, and (v) the absence of fraud against national law.

#### **Are there provisions regarding the exception of litispendence?**

Yes, but its effect is merely dilatory, delaying the recognition or enforcement of a foreign judgment if there is a pending case between the same parties and on the same matter before a court in the Requested State, provided that: (i) the dispute was initiated prior to the lodging of the claim in the State of Origin, and (ii) there is a close connection between the dispute and the Requested State.

#### **Is the Convention limited to pecuniary resolutions?**

There are no specific limitations in this regard. Notwithstanding the foregoing, coercive fines imposed by the court of the State of Origin to ensure compliance with judgments are excluded, unlike Article 55 of the RBI, as their purpose is not reparative. Therefore, the adoption of such measures would only be possible under the law of the Requested State by its competent authority.

**What procedure must be followed for the recognition and enforcement of judgments?**

The Convention refers to the procedural law of the Requested State and only stipulates the documentation that must be attached to the application. For this purpose, the court in the State of Origin may issue a form in accordance with the model provided in the Convention.

**Does the Convention address the prescription or expiration periods of the title?**

Nothing is stated, so the law of the Requested State applies. We understand that the law of the Requested State cannot provide different time limits for domestic and foreign judgments. Additionally, the Convention applies only to judgments and settlements that are enforceable in the State of Origin. Therefore, if under the domestic law of the State of Origin the decision ceases to have effect due to the passage of time, it will not be enforceable in other State Parties, even if the law of the Requested State provides for longer periods. In Andorra, this period is thirty years.

**Can States unilaterally denounce the Convention?**

Yes, according to Article 31 of the Convention. The denunciation must be addressed to the depositary of the Convention (the Netherlands) and will take effect one year after deposit. However, States may establish a longer period or limit its effects to a specific territorial unit.

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