Leeds
Manchester
Newcastle

ward hadaway

Response to Consultation on The Hague Convention of 2 July 2019 on The Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (Hague 2019)

Executive Summary

Ward Hadaway LLP welcomes the opportunity to respond to this important open consultation on the UK's plan to accede to the Hague Convention 2019 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters ("Hague 2019").

We have extensive experience in international work, in particular in respect of international aspects of insurance contracts and disputes as well as broader commercial matters and cross border corporate transactions and are increasingly encountering issues relating to the effective recognition and enforcement of judgments between UK/EU.

Our view is that it is preferable for the UK to accede to Hague 2019. However whilst this would be a step forward by restoring to some degree an effective and efficient mechanism to ensure most civil and commercial judgments are recognised and enforced, there are limitations to be addressed. The most notable exclusions from the scope of Hague 2019 are where the subject matter of the proceedings and the judgment to which they give rise concern: contracts relating to the carriage of passengers and goods; insolvency, intellectual property; maintenance obligations and family law matters including matrimonial property regimes and other rights or obligations arising out of marriage or similar partnerships.

As well as a strong network of overseas firms built up over many years we are also members of the world's leading multi-disciplinary alliance of professional services firms, GGI (Geneva Group International).

In preparing this response and dealing with the questions posed by this consultation we have incorporated responses from our GGI Partners based in the EU, as the practical consequences of questions relating to jurisdiction and an effective mechanism for the recognition and enforcement of judgments is not just a UK issue but is of equal concern to EU Member States involved in cross border matters seeking to enforce a foreign judgment in England and Wales.

We are happy to provide any further information and answer any questions you may have in respect of any of the responses given to the consultation.

Nichola Evans
Partner
0330 137 3335
0773 330 6502
nichola.evans@wardhadaway.com

Melissa Munday
Managing Associate
0330 137 3341
0779 557 8950
melissa.munday@wardhadaway.com

Introduction

Through our extensive experience of dealing with cross border matters it is apparent that parties involved in cross border matters have become increasingly concerned at the time, cost, and complexity of enforcing national court judgments across borders and lack of certainty regarding whether a court judgment from one jurisdiction will be recognised and enforced in another where their counterparty may have assets.

From FTSE 100 Companies to SMEs, issues relating to recognition and enforcement of UK/EU judgments have become more complex with greater focus on dispute resolution clauses in agreements to address increased enforcement risks.

Where parties want the certainty of being able to enforce judgments in the EU our Commercial Team is experienced in grappling with the competing measures to address this increasing concern. The inclusion of an exclusive jurisdiction clause to maximise the chances of the protections offered by the streamlined framework of rules of 2005 Hague Convention on Choice of Court Agreements (Hague 2005) relating to exclusive jurisdiction agreements and the subsequent recognition and enforcement of a judgment given by the chosen court may be appropriate. On the other hand to avoid the loss of flexibility of where a dispute may be heard, an arbitration clause may be more prudent given the well-established broader reciprocal regime for recognition of arbitration agreements and enforcement of arbitration awards (currently extending to 172 countries).

"Businesses are paying much closer attention to their dispute resolution clauses to ensure that they are tailored for cross border contracts and the prospect of cross border disputes. We have seen more interest in arbitration given that it is easier to enforce arbitration awards and with there being more certainty to that process. Even if the UK adopts Hague 2019 we expect the trend to continue given that even if the UK ratifies it, it will only come into effect after 12 months and even then it will only apply to proceedings issued after that date."
Nichola Evans, Partner, Commercial Litigation

Those dealing with cross border family matters currently face a complicated patchwork of provisions, some of international instruments and others of local domestic law affecting the whole spectrum of proceedings; from protective injunctions to child arrangements orders and divorce proceedings. This older less developed legislation does not provide identical protection, with maintenance decisions made in the UK requiring a declaration of enforceability to be formally recognised in the EU. It is also unclear whether there will be a need to apply for “mirror” orders in EU states to ensure recognition and enforcement of orders relating to parental responsibility. This is likely to lead to a loss of certainty in numerous areas which will likely lead to protracted proceedings, additional costs and greater uncertainty and expense for all parties involved. The exclusion of family and maintenance matters from Hague 2019 mean that other avenues will need to be considered to address the lack of a reliable framework for recognition and enforcement of judgments in this area.

"The issue of jurisdiction in respect of divorce and parental responsibility, maintenance obligations, enforcement, child abduction is now much less certain and there is a high chance that in many cases there will be additional litigation simply to determine venue, driving up costs and delaying the proceedings. Furthermore, whilst the UK recognises maintenance decisions of EU states, maintenance decisions made in the UK require a declaration of enforceability to be recognised in the EU which can result in delay or the loss of payments."
Christine Barker, Partner, Family & Matrimonial

In respect of insolvency matters it has become harder for UK proceedings to gain recognition in EU member states and for UK officeholders to deal with assets located within the EU. For recognition of EU proceedings and judgments in the UK there remains an effective legal framework, including the UK's enactment of UNCITRAL Model Law on Cross Border Insolvency. Where a foreign insolvency proceeding is recognised in the UK as a "main proceeding", UK civil proceedings against the debtor are stayed and the foreign insolvency practitioner may be entrusted with the administration or realisation of all or part of the debtor's estate which is located in the UK.

"Under the current regime Insolvency Practitioners and solicitors have to jump extra hurdles to track assets down across the EU with recognition of UK proceedings and judgments subject to the local laws of the EU state concerned. This leads to delays in enforcing judgments extending the length of time it takes to deal with insolvencies. A further risk factor has emerged namely the greater risk of parallel proceedings as a result of local insolvency proceedings being brought in EU member states meaning that extra costs have to be incurred dealing with parallel proceedings."
Steven Petrie, Partner Insolvency and Restructuring

One drawback for foreign debtors, however, is the English common law principle known as the "Gibbs principle" which provides that only an English court may discharge debt arising under English law, even if that debt has first been discharged in a foreign insolvency proceeding. This principle curtails the English courts' ability to give effect to non-UK statutory compromises affecting English law-governed contracts. This principle previously lacked significance in relation to UK–EU insolvencies due to the EU Insolvency Regulation which required the UK to recognise the substantive effect of EU insolvency proceedings. In the absence of this Regulation, the application of the Gibbs principle to EU proceedings is likely to mean an increase in time and costs.

Recognition of UK proceedings and judgments (including schemes of arrangement) in the EU are subject to the local laws of the EU state concerned. Crucially, the English law moratorium preventing the commencement of new civil proceedings against a debtor is no longer given automatic effect in EU states meaning a greater risk of parallel proceedings. UK officeholders will need to have UK proceedings recognised in individual EU states and/or open simultaneous local insolvency proceedings in those states. This may result in a lengthy recognition process and additional court applications and procedural hurdles.

On 7 July 2022 the UK announced a consultation on the proposed implementation of UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments which compliments the Model law on Cross Border insolvency.

Enforcement between UK/EU has become substantially more difficult since 31 December 2021. Hague 2019 is limited in its coverage to rules of recognition and enforcement and does not provide jurisdictional rules to determine which country's courts will hear a case.

Hague 2019 essentially compliments Hague 2005 but is much wider in scope, creating a framework for the recognition and enforcement of qualifying court judgments beyond cases where there is a judgment produced on the basis of a choice of court agreement between parties to an international dispute. The subject matter Hague 2005 is limited to commercial transactions and whilst Hague 2019 has some welcome additions, applying for example to employment and consumer contracts, both Hague 2005 and 2019 do not encroach on technical subject matters covered by more specialised treaties. Hague 2005 and 2019 therefore have some significant exclusions.

"In respect of contracts relating to the carriage of goods, advice from local lawyers about the state where the defendant is resident of domestic rules relating to the approach to recognition and enforcement of foreign will need to be considered prior to the issue of proceedings. The need to have UK judgments recognised in individual EU states and exequatur proceedings for a declaration of enforceability in that state is likely to increased cost and also consequential delay in subsequent enforcement of any judgment obtained. Such delay and increased costs will have an effect on the risks covered by cargo and/or liability insurers together with longtail claims causing issues for underwriting."

Melissa Munday, Managing Associate, Commercial Litigation

The recognition and enforcement of judgments is also an issue for EU Member States seeking to enforce a foreign judgment in the UK. We have a strong network of overseas firms and are also members of the world's leading multi-disciplinary alliance of professional services firms, GGI (Geneva Group International) because over the last few decades and more so in the last few years we recognise how essential it is for our clients, as well as those of our EU partners, involved in cross-border matters to have access to legal advice in local jurisdictions.

Therefore we considered it appropriate to seek the views of our GGI Partners located in EU/EFTA states on how essential they believe it is for the UK to improve matters regarding reciprocal recognition and enforcement of judgments in commercial matters to provide a full picture of the practical impact of the current situation and also what is being proposed to seek to remedy some of the difficulties following the UK's departure from the EU.

We have asked our GGI Partners based in EU/EFTA states to complete a short survey based on the questions posed in the consultation and incorporated their responses.

Response to the Consultation

QUESTIONS

Q1: Should the UK accede to Hague 2019? Please provide your reasoning. What do you expect the added value to be for the UK upon accession?

Since 1 January 2021 holders of an English judgment have been unable to use the Lugano Convention 2007 to enforce the judgment in the EU or proceedings after that date and essentially left with no formal treaty for reciprocal enforcement of all UK judgments across the EU and must therefore look to local reciprocal arrangements or other Conventions to try to address this lacuna.

To recap the Lugano Convention 2007 regulates between the EU and EFTA states (namely Iceland, Switzerland and Norway) whether a court is competent to hear a cross-border case and helps domestic courts rule on the recognition and enforcement of foreign judgments in civil and commercial matters. The Convention is also explicitly open to third parties to become a part of the legal regime which requires the express consent of all EU Member States.

In April 2020 the UK applied to rejoin to the Lugano Convention in its own right from 1 January 2021. While non-EU members of the Lugano Convention do not appear to view the Lugano Convention as an internal EU/EFTA instrument and have expressed support for UK accession, the EU Commission have made it quite clear that accession to the Lugano regime is bound up with the concept of close economic integration with the EU and that the Hague Conventions should provide the framework for future cooperation between the EU and UK in the field of civil judicial cooperation.

As the EU have made it clear that the UK should discount any likelihood of acceding now or in the medium term to the Lugano Convention, we therefore now have this consultation as to whether the UK should adopt Hague 2019

We believe the UK should accede to Hague 2019 as this appears to be the only viable option of going some way to providing a greater degree of certainty and an effective mechanism for mutual recognition and enforcement of judgments between UK/EU. Whilst it is, in our opinion, a step in the right direction there are some difficulties because not all judgments in the civil and commercial context are within its scope and there are some significant exclusions.

Whilst welcome as providing some certainty and greater ease of process, the UK's accession to Hague 2019 should not necessarily be considered as a silver bullet to providing a comprehensive multilateral framework for the efficient recognition and enforcement of UK/EU judgments given that a number of deficiencies still remain.

For those claims where the subject matter of the proceedings and the judgment to which they give rise to are excluded from Hague 2005 and Hague 2019 (see Q5 and Q11 responses) those parties will remain subject to domestic rules of recognition and enforcement of the state in which they are seeking to enforce the UK judgment, requiring detailed legal advice and increasing cost and delay to enforcement.

Furthermore without a detailed framework regarding mutual recognition and enforcement it is likely that some additional procedure, such as registration or separate claim for enforcement giving rise to a declaration of enforceability, being required before enforcement can take place. This may bring the risk that the other party may challenge or appeal the enforcement decision on the basis of procedural or substantive grounds of the law of the state in which enforcement is being sought.

In respect of expected added value for the UK upon accession to Hague 2019, it is anticipated that this will increase the range of disputes to which reciprocal arrangements regarding recognition and enforcement of UK/EU judgments will apply as it is not predicated on exclusive jurisdiction. It is also anticipated that given the largely pro-enforcement position of Hague 2019, accession will indicate a desire for a higher level of integration and therefore presumably a corresponding higher level of mutual trust between the national judiciaries given that (aside provisions relating to declarations regarding judgments of a particular states or subject matter) signatories should expect to provide reciprocal and equal treatment to qualifying foreign judgments within their own legal system.

Q2: Is this the right time for the UK to consider Hague 2019? Are there any reasons why you consider now would not be the right time for the UK to become a Contracting State to the Convention?

Yes. We believe this is the right time for the UK to consider becoming a Contracting State to Hague 2019 and do not consider there are any reasons why it should not do so.

Q3: What impact do you think becoming a Contracting State to the Convention will have for UK parties dealing in international civil and commercial disputes?

It is anticipated that accession to Hague 2019 will provide certainty and predictability to the issue of recognition and ease of process for enforcement of qualifying judgments i.e. those which fall within the regime due to the limited grounds on which a state may refuse to recognise a judgment. Therefore a party can make an informed decision about where to initiate proceedings taking into account whether the judgment is likely to recognised and enforced.

Hague 2019 is wider in scope than Hague 2005 as enforcement is not restricted only to the judgments which stem from an exclusive choice of court of agreement and includes subject matter previously excluded under Hague 2005. It is anticipated that accession to Hague 2019 should give parties involved with cross border commercial agreements greater freedom regarding dispute resolution provisions.

Hague 2019 deals with the issue of whether asymmetric clauses (exclusive jurisdiction clause which allows one party to sue another party in any jurisdiction but restricts the other to sue in only one exclusive jurisdiction), fall under the Hague 2005 regime. Where there is an asymmetric clause, Hague 2019 allows the state in which enforcement is being sought to consider that the minimum jurisdictional filters that qualifying judgments must pass through in the original proceedings in order to be eligible for recognition and enforcement set out in Article 5 are satisfied. Where there is an exclusive jurisdiction clause this will fall under the Hague 2005 regime. However the provision does increase the risk of parallel proceedings.

Under the 2005 Hague Convention, where the parties have chosen a court to have exclusive jurisdiction, any other courts of contracting states (even if the court first seized) must decline jurisdiction. This means that, for disputes brought in accordance with exclusive jurisdiction clauses, there is little risk of parallel proceedings occurring. However, there is no similar protection in the 2019 Hague Convention for non-exclusive or asymmetric jurisdiction clauses and therefore there is a risk that multiple proceedings brought in accordance with non-exclusive or asymmetric jurisdiction clauses, between the same parties and on the same subject matter, may take place in different states. While Hague 2019 addresses the priority of judgments arising out of parallel proceedings, and therefore the risk of inconsistent judgments, it does not prevent such proceedings taking place.

Q5: What downsides do you consider would result from the UK becoming a Contracting State to the Convention? Please expand on the perceived severity of these downsides.

In matters prior to 1 January 2021, jurisdiction and the recognition and enforcement of judgments in civil and commercial matters between UK/EU was dealt with by the recast form of the Brussels I Regulation (EU) No. 1215/2012. In keeping with the main objective of the Regulation to facilitate and accelerate mutual recognition of judgments between Member States, the need to make an application for a declaration of enforceability (known as the exequatur) was abolished. Judgments could be enforced in all other Member States without the need for further intermediate measures introducing a simplified mechanism for the recognition and enforcement.

Although the system of recognition and enforcement brought about by the Brussels I Regulation which governed did not abolish the need for a request for recognition or enforcement, the bases for a requested court to refuse such recognition or declaration of enforceability were defined narrowly.

The degree of legal integration provided for by Hague 2019 is far lower than the virtual automatic system of recognition provided for by the Lugano Convention or Brussels Recast Regulation.

A number of subject-matter areas are excluded from the Hague Convention (Article 2); specific grounds need to be established in order to recognise a judgment, such as in particular a connection of the defendant with the state in which the judgment was issued (Article 5); judgments awarding exemplary or punitive damages may be excluded from recognition (Article 10); and, finally, exequatur proceedings (for the recognition of a judgment) are kept in place and governed by the law of the state of recognition (Article 13).

Therefore although Hague 2019 provides a uniform and reliable framework for recognition and enforcement of UK/EU judgments the need to take further intermediate measures such as application for a declaration of enforceability may result in increased costs and delay in respect of enforcement.

Consideration also still needs to be given to uniform and reliable regime for recognition and enforcement of judgments excluded under Hague 2005 and 2019 that would otherwise have applied in the UK under the previous EU framework. At present, parties will have to obtain advice on the differing domestic rules which allow judgments from other countries to be recognised and enforced in another which is likely to increase cost and delay enforcement.

Q6: Are there any aspects or specific provisions in the Convention that cause concern or may have adverse effects from a UK perspective?

See responses to Q5, 9 and 11

Q 7: Do you have a view on whether the Convention should be implemented using a registration model for the purpose of recognition and enforcement of judgments from other Contracting States?

It is believed that the continuation of a registration requirement such as that under Hague 2005 would be sensible to enable a clear process to monitor the number of requests being made under Hague 2019 and establish a process for their handling and could provide useful data to inform future policy decisions regarding mutual recognition and enforcement of judgments.

Q9: In your view, are there any declarations which the UK should make? If so, why?

We would ask you to note the provisions which allow Contracting States to exclude the application of certain parts of Hague 2019 with regard to certain States. The inclusion of a bilateralisation clause (Article 29) is an interesting political mechanism which allows a Contracting State to pick and choose the other Contracting States with which it wishes to establish treaty relations at the time of each state's accession. Having such a clause could potentially lead to a more fragmented patchwork of selective recognition and enforcement, thereby defeating the stated purpose of Hague 2019 as providing a uniform framework for recognition and enforcement.

Similarly provisions allowing Contracting States to make a declaration that it will not apply Hague 2019 to a specific matter where it has a "strong interest" in not applying it also need to be considered with caution (Article 18). Although the requirement of a "strong interest" may act as a safeguard against sweeping use of this provision, its practical effect beyond the list of excluded subject matters may be questionable if there is no objective determination of what would constitute a legitimate "strong interest".

Article 14 also provides a mechanism for State to opt out of the no security rule in respect of some or all of its courts allowing a State to request payment when a party is applying for enforcement of a judgment which may give rise to increase costs.

Q11: While both Hague 2019 and the 2007 Lugano Convention provide a framework for recognition and enforcement of civil and commercial judgments, what drawbacks, if any, do you foresee if the UK were to apply only Hague 2019 with EU/EFTA States, given its narrower scope and lack of jurisdiction rules? Please provide practical examples of any problems.

- Hague 2019 only deals with the recognition and enforcement of judgments but does not address the jurisdiction of a court to hear a dispute until the enforcement stage, increasing the risk of parallel proceedings in different jurisdictions.

  The Lugano Convention and Brussels Recast Regulation are so-called “double conventions,” addressing both jurisdiction and the recognition and enforcement of judgments, reducing the likelihood of parallel proceedings.

- Significant gaps in coverage between the Hague 2005 and 2019 Convention and that previously offered by the Lugano Convention 2007 or indeed the Brussels I (Recast) Regulation (EU) 1215/2012. However, given there is no likelihood of the UK's accession to Lugano Convention in the medium term, Hague 2019 appears the only viable option to seeking to provide an effective framework for the mutual recognition and enforcement of the majority of judgments EU/UK and would be a welcome, albeit partial, solution to current deficiencies in this respect.

- Danger that a two-tier system of enforcement will be created between those disputes with subject matters which are within the ambit of the Hague 2019 and those which are excluded.

  By virtue of the give way’ clause in favour of treaties concluded on the same subject matter, either earlier or later than the Hague Judgments Convention (Clause 23) more finely-tuned regional treaties are not overridden by the more general provisions of the Hague Judgments Convention. Should the EU consent to the UK's accession to the Lugano Convention the latter would take precedence notwithstanding accession to Hague 2019.

- Whilst accession to Hague 2019 would provide a solution for qualifying judgments which fall within its regime, it leaves those whose claims are excluded from the regime having to seek

legal advice on local rules regarding enforcement of judgments with consequential uncertainty, delay and increased cost regarding whether the judgment obtained can effectively and easily be enforced in another jurisdiction.

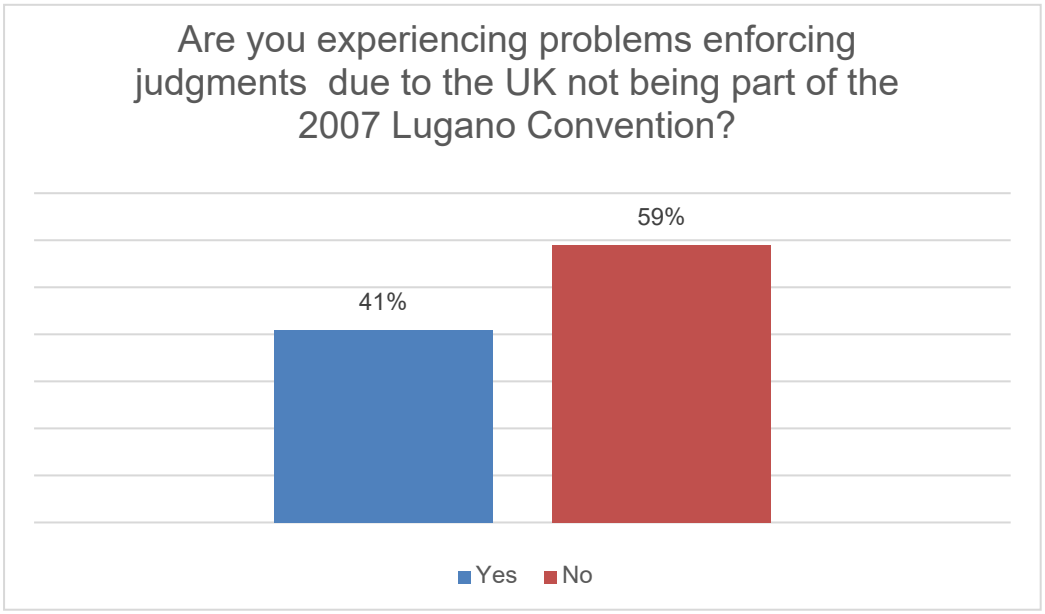
- The management of those claims which are excluded from the Hague 2019 regime of recognition and enforcement may be significantly effected.

  Claims relating to the carriage of goods are excluded from the Hague 2019 regime. The International Convention on the Carriage of Goods by Road (CMR Convention), unlike Hague and Hague Visby Rules relating to contracts concerning the carriage of goods by sea, does contain jurisdictional provisions regarding where a claim may be brought. Consideration is often given by parties, for example, bringing a claim against a foreign party to seizing a favourable jurisdiction where limitation of liability is more or less likely to be broken depending on the role and interests of the potential claimant in the proceedings.

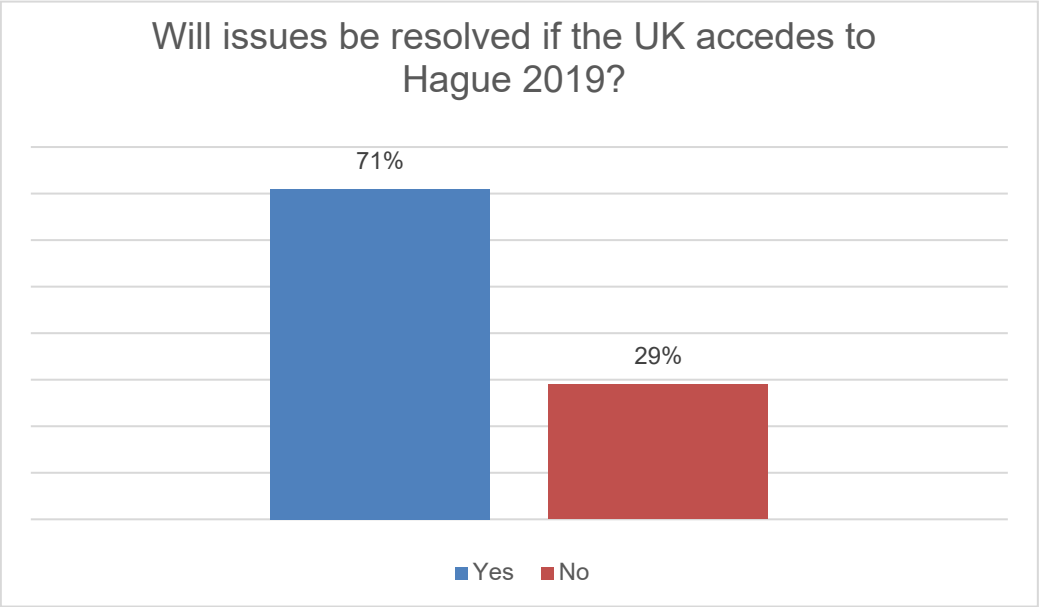
  However, in addition to consideration of jurisdiction is the potential delay and increased cost of enforcing any UK judgment against a foreign defendant. As opposed to automatic recognition of any judgment obtained and/or a reliable framework for recognition and enforcement of such judgments advice from local lawyers of domestic rules in the state where the defendant is resident will now need to be considered prior to the issue of proceedings. This is likely to lead to increased cost and also consequential delay in subsequent enforcement of any judgment obtained. Such delay and increased costs are also likely to have an effect on the risks covered by cargo and/or liability insurers.

As mentioned above, as enforcement of judgment UK/EU is not simply a UK issues, in the process of responding to this consultation we have sought the views of our GGI Partners located in EU/EFTA states by way of survey based on questions raised in the consultation on how essential they believe it is for the UK to improve matters regarding reciprocal recognition and enforcement of judgments in commercial matters.

The responses may be summarised as followed:

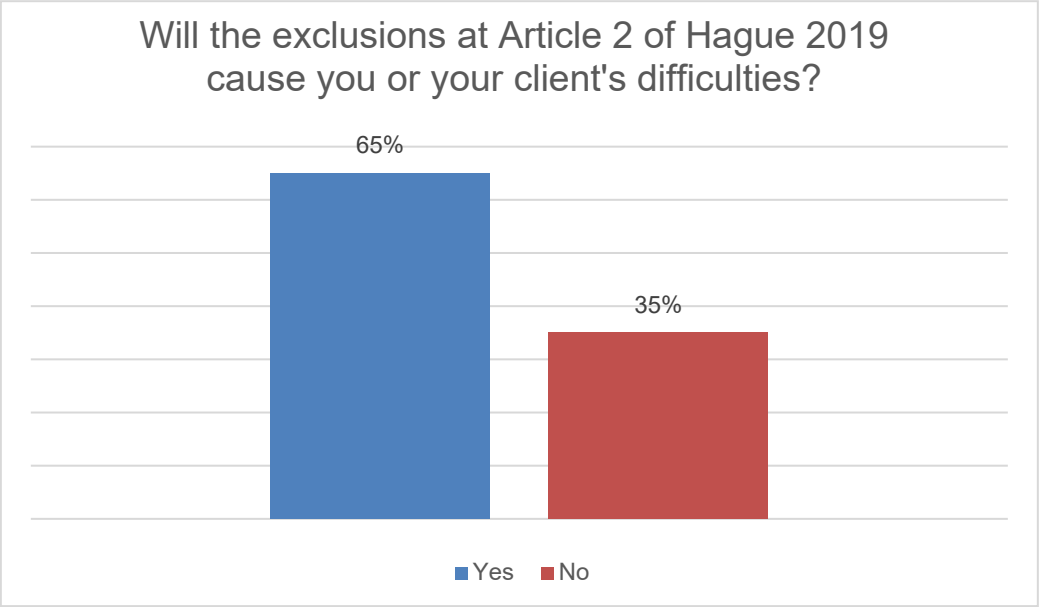


41% of GGI Partners in EU/EFTA states said their clients were experiencing problems regarding recognition and enforcement of judgments because the UK is not part of the 2007 Lugano Convention.



71% of GGI Partners were of the view that issues relating to recognition and enforcement of judgment UK/EU would be resolved if the UK acceded to Hague 2019, of which 58% confirmed they were not experiencing any issues regarding enforcement because of the UK not being a member of Lugano Convention.

Of the 29% of Partners who did not believe that Hague 2019 would resolve enforcement and recognition issues which were being experienced because UK is not a member of Lugano 2007, 99% deal with subject matter that is excluded under Hague 2019 which would therefore leave their client seeking advice from lawyers in the jurisdiction where enforcement was being sought as to the domestic rules relating to recognition and enforcement.



65% of GGI Partners confirmed the exclusions at Article 2 of Hague 2019 for matters concerning, amongst others, family law, wills and succession, insolvency, intellectual property, defamation and the carriage of passengers and goods would cause them or their client's difficulties

Mariagiulia Signori – Coma 10, Milan Italy in respect of IP exclusion commented:

> *"The subjects excluded from the Convention are 'sensitive' for clients. It would certainly help to have a single instrument for the enforcement of judgments, but taking into consideration all the exclusions, especially in commercial and intellectual property matters, we have to consider if it would not be better to obtain a judgment directly in the state of interest, so as to avoid the necessity to enforce it."*

Milchior Richard – IP Practitioner – Paris

Potential difficulties regarding recognition and enforcement of judgments

> *"...diminishes the interest of the use of the English Court."*

Q12: Do you consider that the UK becoming party, or not becoming party, to the Hague 2019 Convention would have equalities impacts in regards to the Equalities Act 2010?

We assume that the UK Government will carry out an impact assessment on the UK acceding, or not acceding, to Hague 2019 and reserve the right to comment further on seeing those findings.

Q13: Would you foresee any intra-UK considerations if the Hague 2019 was to be implemented in only certain parts of the UK?

We would ask you to note the provisions concerned with potential difficulties resulting from States composed of two or more territorial units each with its own judicial or legal system and the question of whether reference to a State in the Convention is to the State as a whole or whether it is to a particular territorial unit within that State.

It is noted that Hague 2019, as with Hague 2005 Convention, would not apply to recognition and enforcement of judgments between the legal jurisdictions of the UK and the recognition and enforcement obligations under Hague 2019 only arise in respect of foreign judgments in the international sense (Article 22(2)).

The long-standing practice of the UK when it ratifies a treaty is to do so on behalf of the United Kingdom of Great Britain and Northern Ireland and such (if any) of its territories as wish the treaty to apply to them. This approach was taken in respect of Hague 2005 Convention and it is understood all 3 UK legal systems are a party to the Hague 2005 Convention. We would ask you to note that in essence Hague 2019 complements Hague Convention 2005 by allowing enforcement of judgments in much broader circumstances and it is wider in scope than the 2005 Convention.

The UK Government's intention, with the agreement of the Scottish Government and the Northern Ireland Executive, to ratify Hague 2019 on behalf of the UK as a whole is said in the consultation brief to reflect that points arising in relation to the Convention are similar across the UK. However given the different position in respect, in particular, of trade regulations for carriage of goods to

and through Northern Ireland following the UK's departure from the EU this is not always a given. The legal jurisdictions of the UK may have different issues and concerns and tensions which need to be fully considered.

Given the gradual divergence of Welsh law from English law due to the increased legislative powers of the Welsh Parliament perhaps consideration should be given to recognising Wales as a separate system of law even if not yet a separate legal system.

The suggestion of intergovernmental co-operation between the UK Government and the devolved administrations to consider UK private international law policy is welcomed. It is assumed that the UK Government will obtain detailed comment and assessment from experts from each of the systems of law on private international law from academia, the judiciary and legal practice on implementation of Hague 2019 in all three legal jurisdictions of the UK. We reserve the right to comment further on seeing those findings.

14: What other comments, if any, do you have?

Following the departure from more comprehensive framework of mutual recognition and enforcement framework of the Brussels I (Recast) Regulation (EU) 1215/2012 (the Recast Brussels Regulation) and Lugano Convention 2007 after the UK's exit from the EU, accession to Hague 2019 is a welcome, albeit partial, solution.

Given the significant exclusions to the scope of Hague 2019, most notably family, insolvency and carriage of goods efforts should remain to seek a return to a more comprehensive regime for fear of a two-tier system of enforcement depending on the particular subject matter of the claim and consequential judgment.

Consideration also still needs to be given to a uniform and reliable regime for recognition and enforcement of judgments excluded under Hague 2005 and 2019. Those parties where the subject matter is excluded by Hague 2019 are likely to suffer increased costs and delays due to the need to obtain advice of the particular domestic rules on recognition and enforcement of judgments of the state in which they are likely to seek enforcement prior to the issue of proceedings to assess the risk that any judgment may not be enforceable and/or require substantive administrative steps to enable enforcement.

This may also result in the denial of access to justice for those with smaller budgets and may be an opportunity for a wider discussion about re-defining the nature of dispute resolution and embracing mediation and conciliation as integral processes to achieve resolution. The UK Government may wish to undertake an impact statement in respect of the access to justice issue.