

Regional og global  
anerkendelse og fuldbyrdelse af  
domme i  
civil-og handelsretlige sager

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# Dagens temaer

- Fire afgørende forhold for parterne
- International voldgift
- Internationale retssager regionalt
  - EU's Domsforordning
- Internationale retssager globalt
  - Haagerværnetingsaftalekonventionen, 2005
  - Haagerdomskonventionen, 2019

# Fire afgørende forhold

- Retssag eller voldgift?
- Hvor?
- Hvordan er processen?
- Anerkendelse og fuldbyrdelse af afgørelser

# International voldgift

## Den retlige ramme

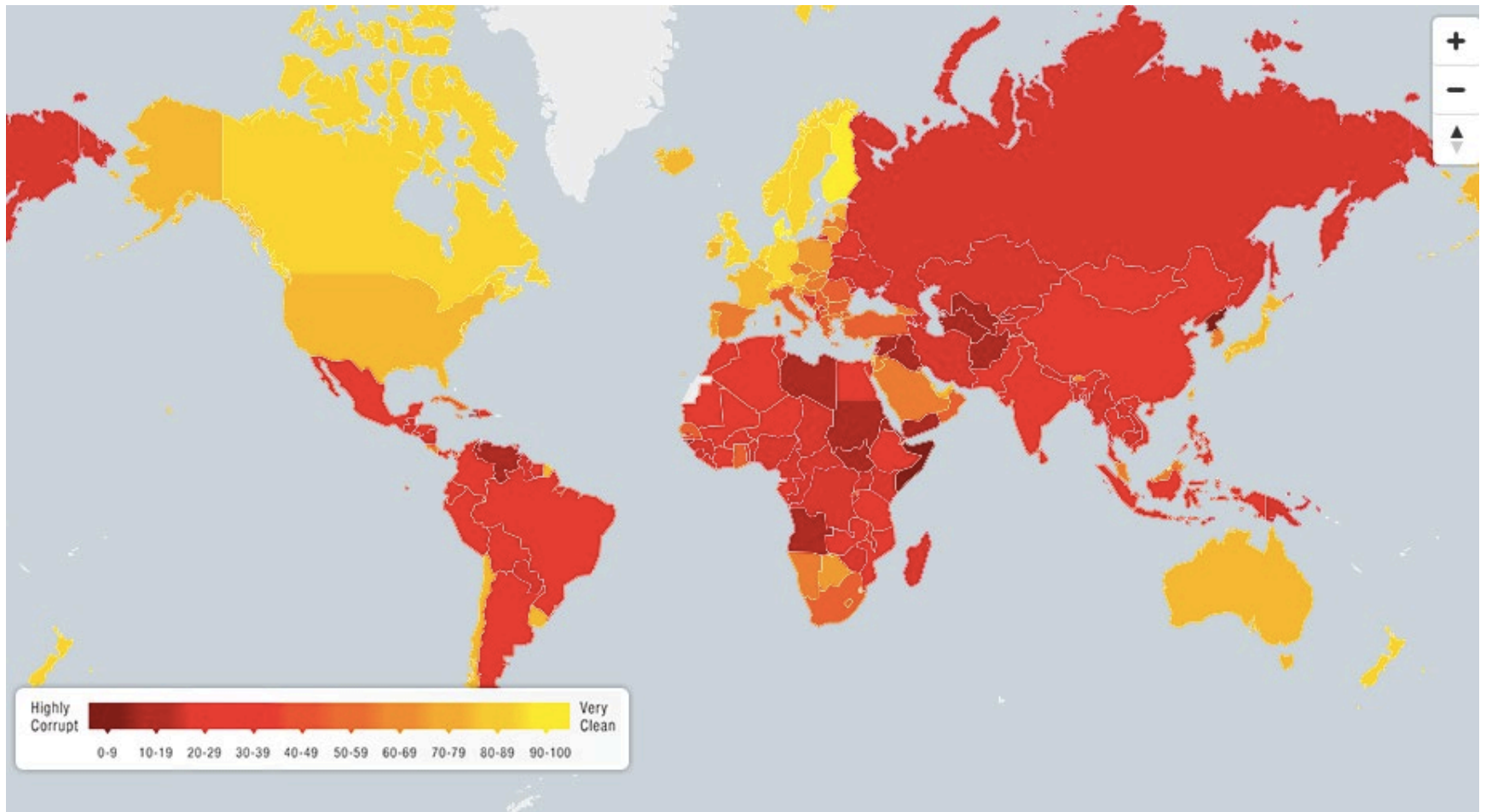
- Lex arbitri / Modelloven 1985/2006
- New York-konvention, 1958
- Øvrige regelsæt
  - UNCITRAL
  - Voldgiftsinstitutioner

# Internationale retssager

## Den retlige ramme

- National procesret/Internationale regelsæt
- Anerkendelse og fuldbyrdelse af domme
  - EU-Domsforordningen 2012
  - Haagerværnetingsaftalekonventionen 2005
  - Haagerdomskonventionen 2016

# Transparency International's korrupsions-index



# International voldgift

- Retssag eller voldgift?
- Hvor?
- Hvordan er processen?
- Anerkendelse og fuldbyrdelse af afgørelser

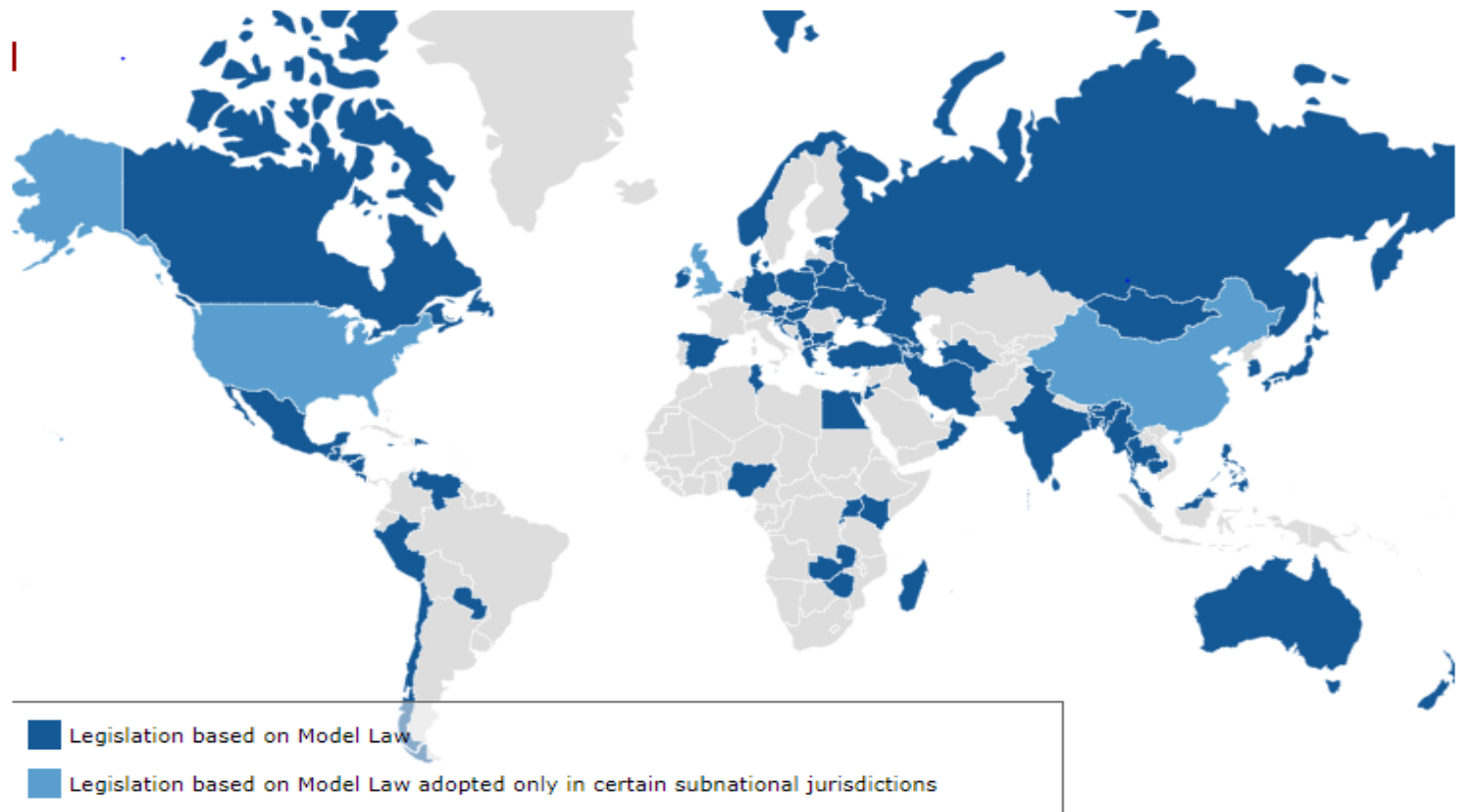
# International voldgift

Lex arbitr, evt. også parternes bopæls-/hjemstedslov afgør:

- Retssag eller voldgift?
- Hvor?
- Hvordan er processen?



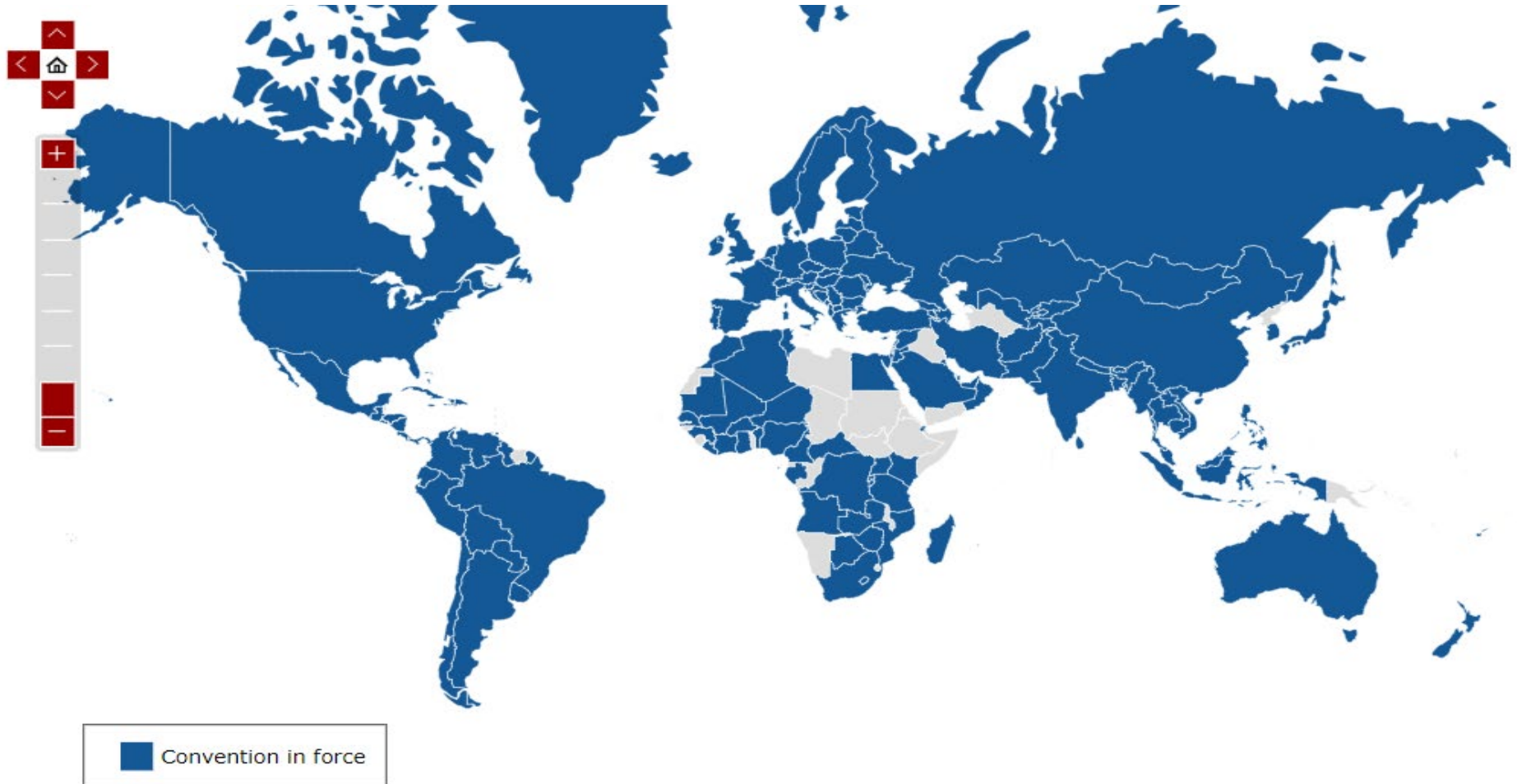
# The Model Law on International Commercial Arbitration — 85 stater, 120 jurisdiktioner



# International voldgift – Modelloven

- Indholdet af arbitrabilitet er overladt til modellandet
- Parterne kan aftale hvor voldgiften skal finde sted, art. 20
- Processen fremgår af modelloven med nationale variationer

# New York-konventionen – 172 stater



# International voldgift – New York-konventionen

- Gyldige voldgiftsaftaler skal respekteres af domstolene, art. II
- Voldgiftskendelser skal anerkendes og fuldbyrdes, art. III
- Undtagelser til anerkendelse og fuldbyrdelse fastsat i art. V

# International voldgift – New York-konventionen, art. V

- Ufravigelige nægtelsesgrunde
  - Manglende arbitrabilitet
  - Ordre public

# Fravigelige nægtelsesgrunde, NYK, art. V

- en af parterne i voldgiftsaftalen manglede retlig handleevne
- den part, mod hvem voldgiftskendelsen påberåbes, ikke fik behørig meddelelse om udpegningen af en voldgiftsdommer eller om voldgiftssagens behandling eller af andre grunde var ude af stand til at fremføre sin sag
- voldgiftskendelsen behandler en tvist, der ikke er omfattet af voldgiftsaftalen, eller afgør spørgsmål, som falder uden for voldgiftsaftalen
- voldgiftsrettens sammensætning eller voldgiftssagens behandling ikke var i overensstemmelse med parternes aftale eller med loven i det land, hvor voldgiften fandt sted
- voldgiftskendelsen endnu ikke er blevet bindende for parterne eller er blevet tilsidesat eller suspenderet af en domstol i det land, hvor den er afsagt, eller efter hvis ret den er afsagt

# Internationale retssager

- Retssag eller voldgift?
- Hvor?
- Hvordan er processen?
- Anerkendelse og fuldbyrdelse af afgørelser

# Internationaler retssager

- Valget mellem voldgift og retssager reguleres af forum-statens lov og parternes bopæls-/hjemstedslove
- Parterne kan generelt aftale i hvilket land retssagen skal finde sted ved en værnetingsaftale
- Processen fremgår af forum-statens retsplejelov



# Internationale retssager – Kompetence og anerkendelse og fuldbyrdelse af domme

## Folkeretten

- International kompetence
  - A minimum connection between the dispute and/or the parties and the Forum State
- Anerkendelse og fuldbyrdelse af domme
  - Gensidighed (typisk civil law)
  - Ensidig anerkendelse og fuldbyrdelse (typisk common law)

# Internationale retssager

## Globalt samarbejde

- Haagerdomskonventionen, 1971
- Haagerværnetingsaftalekonventionen, 2005
- Haagerdomskonventionen, 2019

# Internationale retssager

## EU-samarbejdet

- Domskonventionen, 1968
- Domsforordningen, 2001
- Domsforordningen, 2012 (Recast)
  
- Luganokonventionen, 1988
- Den nye Luganokonvention, 2007

# Internationale retssager

## Konventionsmodeller

- En simpel konvention
- En dobbelt konvention
- En blandet konvention

# Internationale retssager

## Den simple konvention

- Kompetence reguleret af national ret
- Anerkendelse og fuldbyrdelse reguleret af konventionen
- Indirekte krav i konventionen til kompetencereglerne i national ret
- Modellen set fra parternes side
- Modellen set fra lovgivers side

# Internationale retssager

## En dobbelt konvention

- Kompetence reguleret af konventionen
- Anerkendelse og fuldbyrdelse reguleret af konventionen
- Modellen set fra parternes side
- Modellen set fra lovgivers side

# Internationale retssager

## En blandet konvention

- Kompetence reguleret af konventionen og national ret
- Anerkendelse og fuldbyrdelse reguleret af konventionen og national ret
- Modellen set fra parternes side
- Modellen set fra lovgivers side

# Det regionale samarbejde i EU – Domsforordningen

- En dobbeltkonvention
- Domsforordningens kompetencereglerne skal anvendes over for sagsøgte med bopæl/hjemsted i en EU-stat
- Nationale kompetenceregler anvendes over for sagsøgte med bopæl/hjemsted uden for EU
- Domsforordningens regler om anerkendelse og fuldbyrdelse skal anvendes på alle EU-domme uanset kompetencegrundlaget (DF/national ret)



# Domsforordningen

## Kompetencereglerne

- Sagsøgtes bopæl/hjemsted, art. 4
- Kontraktværneting, art. 7, stk. 1
- Deliktværneting, art. 7, stk. 2
- Særlige forbrugerregler, især e-handel, art. 17-19
- Eksklusiv kompetence, fast ejendom mv., art. 24
- Værnetingsaftaler, art. 25
- Litis pendens, art. 29 og 31, stk. 2-4

# Domsforordningen – en udvalgt problemstilling

## Italienske torpedoer, Domsforordningen, 2001

- Litis pendens, art. 27
- Gasser mod Misat, Sag C-116/03
- Kritik

# Domsforordningen – en udvalgt problemstilling

## Italienske torpedoer, Domsforordningen, 2012

- Den omvendte litis pendens-regel, art. 31, stk. 2-4
- Formål

# Domsforordningen – art. 31, stk. 2 og 3

2. Når en sag anlægges ved en ret i en medlemsstat, som er tillagt enekompetence ved en aftale omhandlet i artikel 25, skal enhver ret i en anden medlemsstat udsætte sagen, indtil den ret, hvor sagen er anlagt på grundlag af aftalen, erklærer, at den ikke har kompetence i henhold til aftalen, jf. dog artikel 26.

3. Når den ret, der er udpeget i aftalen, har fastslået sin kompetence i henhold til aftalen, erklærer enhver ret i en anden medlemsstat sig inkompetent til fordel for denne ret.

# Domsforordningen

## Anerkendelse og fuldbyrdelse

## De to grundlæggende principper

- Forbuddet mod revision af kompetence-reglerne, art. 45, stk. 3
- Forbuddet mod materiel revision af dommen, art. 53

# Domsforordningen

Nægtelsesgrunde, art. 45, udtømmende liste i princippet

- Denilauler, Sag 125/79
- Ordre public
- U-domme
- Modstridende dom i A+F-staten mellem samme parter
- Modstridende domme fra to MS mellem samme parter og om samme tvist, som begge søges anerkendt i en tredje MS

# Internationale retssager – Det globale samarbejde

## Haagerkonferencen for International Privat- Procesret

- Haagerværnetingsaftalekonventionen, 2005
- Haagerdomskonventionen, 2019

# Haagerværnetingsaftalekonventionen

- Forhandlingerne startede i 1998
- Fra 1998-2000 var målet at lave en bred dobbelt-konvention, men det mislykkedes
- Fra 2001-2003 var målet at lave en blandet konvention, men det mislykkedes
- Fra 2003-2005 var det realistiske mål at få lavet en værnetingsaftalekonvention



# Haagerværnetingsaftalekonventionen

- En dobbelt konvention
- En kopi af strukturen i New York-konvention of 1958
  - Harmoniserede regler om eksklusive værnetingsaftalers indhold og retsvirkninger
  - Harmoniserede regler om anerkendelse og fuldbyrdelse af domme afsagt af en domstol, hvis kompetence beroede på en eksklusiv værnetingsaftale
- Forklarende rapport af professor Trevor Hartley og professor Masato Dogauchi
- EU, UK, DK, Montenegro, Ukraine, Mexico og Singapore

# Haagerværnetingsaftalekonventionen

## Jurisdiction, prorogation, art. 5(1)

The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

- The law of that State – includes the State's PIL rules

# Haagerværnetingsaftalekonventionen

## Jurisdiction, derogation, art. 6

A court of a Contracting State other than that of the chosen court shall suspend or dismiss proceedings to which an exclusive choice of court agreement applies unless:

- a) the agreement is null and void under the law of the State of the chosen court;
  - b) a party lacked the capacity to conclude the agreement under the law of the State of the court seised;
  - c) giving effect to the agreement would lead to a manifest injustice or would be manifestly contrary to the public policy of the State of the court seised;
  - d) for exceptional reasons beyond the control of the parties, the agreement cannot reasonably be performed; or
  - e) the chosen court has decided not to hear the case.
- The law of the State of the chosen/seised court - includes that State's PIL rules

# Haagerværnetingsaftalekonventionen

## Recognition and Enforcement, art. 8

(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. Recognition or enforcement may be refused only on the grounds specified in this Convention.

(2) 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.

(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 origin.

# Haagerværnetingsaftalekonventionen

## Exceptions to Recognition and Enforcement, art. 8

- (a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;
- b) a party lacked the capacity to conclude the agreement under the law of the requested State;
- c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,
  - 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 contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
  - ii) 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;

# Haagerværnetingsaftalekonventionen

## Exceptions to Recognition and Enforcement, art. 8, continued

d) the judgment was obtained by fraud in connection with a matter of procedure;

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;

f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or

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.

# Haagerværnetingsaftalekonventionen

## Punitive damages, art. 11

(1) 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.

(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.

# Haagerdomskonventionen

- Forhandlingerne startede i 2016 og sluttede i 2019
- En simpel konvention
  - International kompetence: National ret
  - Anerkendelse og fuldbyrdelse: Konventionens regler, herunder betinget af “indirect jurisdiction”
- Forklarende Rapport af professor Francisco Garcimartín og professor Geneviève Saumier
- EU, Ukraine og Uruguay
- DK forpligtet under EU-samarbejdet til at ratificere



# Haagerdomskonventionen

- International kompetence reguleres af national ret i forum-staten
- Indirekte kompetence: Domstolen i domsstaten kunne have haft kompetence i henhold til en af de kompetenceregler, der er anført i art. 5 og 6 i Haagerdomskonventionen
- Denne “kunne have haft-undersøgelse” foretages af domstolen i anerkendelsesstaten

# Haagerdomskonventionen

## Eksempler på “kompetence-filtre”, art. 5

- Judgment debtor habitually resident in the State of origin
- Judgment debtor had a branch in the State of origin, and the claim arose out of activities of that branch
- Express consent to jurisdiction by the judgment debtor

# Haagerdomskonventionen

Eksempler på kompetence-filtre, art. 5,  
forsat

- Contract jurisdiction
- Tort jurisdiction
- Agreed jurisdiction other than exclusive jurisdiction

# Haagerdomskonventionen

## Anerkendelse og fuldbyrdelse, art. 4

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Recognition or enforcement may be refused only on the grounds specified in this Convention.

2. There shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention.

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 origin.

# Haagerdomskonventionen

## Undtagelser til anerkendelse og fuldbyrdelse, art. 7(1)

(a) the document which instituted the proceedings or an equivalent document, including a statement of the essential elements of the claim –

(i) 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 entered an appearance and presented their case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

(ii) 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;

# Haagerdomskonventionen

(b) the judgment was obtained by fraud;

(c) 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 and situations involving infringements of security or sovereignty of that State;

(d) the proceedings in the court of origin were contrary to an agreement, or a designation in a trust instrument, under which the dispute in question was to be determined in a court of a State other than the State of origin;

(e) the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties; or

(f) the judgment is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

# Haagerdomskonventionen

- Punitive damages, art. 10

(1) 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.

(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.

# De to Haagerkonventioner

- Skal ses som en pakkeløsning
- De to konventioner supplerer og komplementerer hinanden
- Eksklusive værnetingsaftaler er ikke omfattet af Haagerdomskonventionen, men kun af Haagerværnetingsaftalekonventionen
- Stater står frit med hensyn til at acceptere kun én af de to konventioner, begge to eller ingen af dem
- Fremtiden?



# Strategiske overvejelser

- To scenarier
  - Hovedformål: Anerkendelse og fuldbyrdelse af afgørelsen
- Det regionale scenarie
  - Dansk virksomhed – EU-virksomhed
- Det globale scenarie
  - Dansk virksomhed – Tredjelandsvirksomhed