

No. 5566

BELGIUM
and
FEDERAL REPUBLIC OF GERMANY

Convention (with Additional Protocol and exchange of letters) concerning the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authentic acts in civil and commercial matters. Signed at Bonn, on 30 June 1958

Official texts : French and German.

Registered by Belgium on 1 February 1961.

BELGIQUE
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE

Convention (avec Protocole additionnel et échange de lettres) concernant la reconnaissance et l'exécution réciproque, en matière civile ou commerciale, des décisions judiciaires, sentences arbitrales et actes authentiques. Signée à Bonn, le 30 juin 1958

Textes officiels français et allemand.

Enregistrée par la Belgique le 1^{er} février 1961.

[TRANSLATION — TRADUCTION]

No. 5566. CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS, ARBITRAL AWARDS AND AUTHENTIC ACTS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT BONN, ON 30 JUNE 1958

His Majesty the King of the Belgians and
The President of the Federal Republic of Germany

Wishing to ensure the reciprocal recognition and enforcement of judicial decisions and arbitral awards rendered in civil and commercial matters and of authentic acts ;

Have decided to conclude a convention to that end and have appointed as their plenipotentiaries :

His Majesty the King of the Belgians

His Excellency Baron Hervé de Gruben, Ambassador of the Kingdom of Belgium,
and

Mr. A. J. Herment, Inspecteur Général at the Ministry of Foreign Affairs

The President of the Federal Republic of Germany

Dr. Hans Berger, *Ministerialdirektor*, Director of the Legal Department at the Federal Ministry of Foreign Affairs, and

Professor Dr. Arthur Bülow, *Ministerialdirigent* at the Federal Ministry of Justice,

who, having exchanged their full powers, which were found in good and due form, have agreed on the following articles :

PART I

RECOGNITION OF JUDICIAL DECISIONS

Article 1

(1) Judicial decisions rendered in civil or commercial matters by the courts of one of the two States under which the rights of the parties are established on a final basis regardless of such right of appeal as may still be open, shall be recognized in the other State in the absence of any of the grounds for refusal specified in article 2. Provisional decisions requiring the payment of a sum of money shall nonetheless be

¹ Came into force on 27 January 1961, three months after the exchange of the instruments of ratification, which took place at Brussels on 27 October 1960, in accordance with article 19. This Agreement is not applicable to the Trust Territory of Ruanda-Urundi.

recognized. Such recognition shall result in the decisions having the same authority which they have in the State in which they were rendered.

(2) Judicial decisions within the meaning of paragraph 1 of this article shall also include judgements rendered in civil or commercial matters by a criminal court.

(3) For the purposes of this Convention the term "decision" shall be deemed to mean any decision rendered in litigation or voluntary proceedings, regardless of the name given to them (such as judgement, decision, order or writ of execution) and including decisions under which the amount of the costs of the case is to be fixed subsequently.

(4) Nevertheless, this Convention shall not apply to decisions rendered in matters of bankruptcy or compulsory composition.

Article 2

(1) Recognition shall not be refused unless :

1. It is contrary to the public policy of the State in which it is invoked ;
2. In the case of a decision by default, the notice of proceedings was not served on the defendant in accordance with the laws of the State in which the judgement was rendered ; recognition may also be refused if the defendant proves that he has not received the summons to attend court or that it did not reach him in time for him to reply to it ;
3. The courts of the State in which the decision was rendered are not recognized as competent under the terms of this Convention.

(2) Recognition shall not be refused solely on the grounds that the court rendering the decision has, under the rules of its own private international law, applied laws other than those which would have been applicable under the rules of the private international law of the State in which the decision is invoked. Nevertheless, such recognition may be refused if the decision concerns the status, legal capacity or inheritance rights of a national of the State in which the judgement is invoked, or a declaration of the absence or death of such a national, unless the decision is equally applicable under the rules of the private international law of the State in which it is invoked.

Article 3

(1) In all matters, except those relating to marital and family status and matters affecting the legal capacity and the capacity to act or the legal representation, the courts of the State in which the decision was rendered shall be competent within the meaning of article 2, paragraph (1), 3 :

1. If, when the proceedings were instituted, the defendant, under the laws of the State in which the decision was rendered, had his domicile or usual residence on the territory of that State, provided that in the latter case, his domicile was not in the other State ;

2. If the defendant has agreed to accept the jurisdiction of the courts of the State in which the decision was rendered, provided that such agreement is not contrary to the laws of the State in which the decision is invoked ; such an agreement shall not be deemed to exist unless one of the parties has made a declaration to that effect which was accepted by the other party or, in the case of an oral agreement, unless it was confirmed in writing by one of the parties and not refuted by the other party ;
3. If the defendant has submitted a defence to the substance of the case without refusing to acknowledge the jurisdiction of the courts of the State in which the decision was rendered ;
4. If in the State in which the judgement was rendered, the defendant has been summoned to appear at the place where his commercial or industrial establishment, or a branch or agency thereof is situated, in connexion with any claim arising out of the operation of the said establishment, branch or agency ;
5. If a contract or a claim arising out of a contract is the subject of the complaint and the matter has been brought before a court of the State in which the obligation has been or should be carried out ;
6. If the proceedings arise out of an unlawful act or an act which under the domestic laws of the State in which the decision was rendered is deemed to be equivalent to an unlawful act and such act was committed on the territory of that State ;
7. If the subject of the proceedings was a right over an immovable property or a claim arising out of such a right, and the said immovable property is situated on the territory of the State in which the decision was rendered ;
8. If the proceedings related to a dispute in matters of inheritance and the deceased had his last domicile on the territory of the State in which the decision was rendered, irrespective of whether the estate comprises movable or immovable property ;
9. If the defendant was neither domiciled nor normally resident on the territory of either of the two States at the time when the proceedings were instituted but had property on the territory of the State in which the decision was rendered ;
10. If in the case of a counter-claim or claim for the performance of a guarantee, the court is recognized as competent under the terms of this Convention to hear the main claim.

Nevertheless, the court shall not be recognized as competent with respect to the claim for the performance of a guarantee claim if the guarantor and the party who received the guarantee have agreed to accept the jurisdiction of another court and the agreement also covers the claim for the performance of the guarantee.

(2) Nevertheless, the courts of the State in which the decision was rendered shall not be recognized as competent within the meaning of No. 3 of paragraph (1) of

article 2, if under the laws of the State in which the judgement is invoked the courts of that State are deemed to be exclusively competent with respect to the action that gave rise to the decision in question.

Article 4

(1) In all matters relating to the status or capacity of a national of one of the two States the courts of the State in which the decision was rendered shall be recognized as competent within the meaning of No. 3 of paragraph (1) of article 2, if the defendant, at the time when the proceedings were instituted, was a national of that State or was domiciled or normally resident therein.

(2) They shall also be recognized as competent, but only in matters of marriage, divorce or separation, when one of the two parties to the proceedings was a national of one of the two States and the two parties had their last joint resident in the territory of the State in which the decision was rendered, and if the claimant, at the time when the proceedings were instituted, was normally resident in the territory of that State.

Article 5

(1) A decision rendered in the territory of one of the two States for which recognition in the territory of the other State is invoked shall not be examined within the terms of the conditions enumerated in article 2 of the present Convention. In its examination of the conditions laid down in No. 3 of paragraph (1) of article 2, the court of the State in which the decision is invoked shall be bound by the evidence with respect to the facts on which the court has based its competence.

(2) In no case shall the substance of the decision be examined.

PART II

ENFORCEMENT OF JUDICIAL DECISIONS

Article 6

(1) Judicial decisions which are enforceable in one of the two States and comply with conditions for recognition in the other State under the terms of this Convention may be enforced in the territory of the latter State so soon as they have been declared enforceable in that State.

(2) Such decisions may be declared enforceable in the territory of the other State even though a right of appeal is still open in the State in which they were rendered.

Article 7

The enforcement procedure shall be governed by the laws of the State in which application for enforcement has been made.

Article 8

The application for enforcement shall be submitted to the competent court by any person entitled to benefit under the decision in the State in which that decision was rendered.

Article 9

The applicant for enforcement must produce :

1. A copy of the decision stating the grounds on which it is based and duly certified according to the law of the country in which the decision was rendered ;
2. The original or a certified true copy of the document establishing that the document giving due notice of the introduction of the proceedings was served on the defaulting party in accordance with the terms of article 2, paragraph (1) 2 ;
3. The original or a certified true copy of the notice or any other document establishing that the decision has been notified to the party against whom the enforcement is requested ;
4. Any document or attestation establishing that the decision is enforceable under the law of the State in which it was rendered ;
5. Proof that the applicant has provided any security which may have been required of him ;
6. A translation into the language of the court appealed to of the above-mentioned documents, which must be certified correct by a diplomatic or consular agent or by an officially appointed or sworn translator of one of the two States.

Article 10

(1) The court to which the application for enforcement has been submitted shall restrict its examination to the points enumerated in article 2 of this Convention and to the documents required under the terms of article 9. In no case shall the substance of the decision be examined.

(2) If the decision the enforcement of which is requested is still open to appeal in the State in which it was rendered, the decision of enforcement may be deferred if the defendant can prove that he has instituted appeal proceedings. If an appeal against the decision has been entered and the time-limit within which it may be lodged has not yet expired under the laws of the State in which the decision was rendered, the court to which application has been made may, at its discretion, defer its decision of enforcement and grant the party against which the decision is to be enforced a time-limit within which to lodge the appeal.

(3) The decision of enforcement shall be deferred if the defendant proves that he has been granted a stay of execution of the judgement and that he has fulfilled the necessary conditions to benefit from it.

Article 11

If an order is made under the decision with respect to more than one claim and enforcement cannot be allowed for every claim, the court may declare the decision enforceable in respect of only one claim or of more than one claim. The plaintiff may apply for enforcement of part only of the decision, whether it refers to one or more claims.

Article 12

When granting enforcement the court shall prescribe such measures as may be needed to ensure that the foreign decision has the same effect as it would have had if pronounced by the courts of the State in which it is rendered enforceable.

PART III

ENFORCEMENT OF ARBITRAL AWARDS AND AUTHENTICATED INSTRUMENTS

Article 13

(1) Arbitral awards rendered in one of the two States shall be recognized and rendered enforceable in the other State if they are enforceable in the State in which they were rendered, if such recognition is not contrary to the public policy of the State in which they are invoked, and if the copy of the arbitral award produced for the purpose has been duly authenticated.

(2) Compromise agreements concluded before a court of arbitration shall be deemed to be arbitral awards.

(3) Enforcement shall be granted :

in Belgium, by the President of the court of first instance of the place in which the decision is to be enforced and,

in the Federal Republic of Germany, by the *Amtsgericht* or the *Landgericht* which would have been competent to decide the dispute.

(4) The enforcement procedure shall be governed by the law of the State in which enforcement is requested.

Article 14

(1) Authenticated instruments drawn up and enforceable in one of the two States may be rendered enforceable in the territory of the other State. For the purposes of this Convention the Belgian authorities shall consider as authenticated instruments any compromise agreements concluded before a court and enforceable in the Federal Republic of Germany.

(2) The court of the State in which application for enforcement has been made shall confine itself to verifying that the copy of the authenticated instrument fulfils

the conditions laid down for its admissibility as evidence in accordance with the laws of the State in which the authenticated instrument was drawn up and that its enforcement is not contrary to the public policy of the State in which the enforcement is requested.

PART IV

PLEA OF « PENDENTE LITE »

Article 15

(1) The courts of each of the two States shall, on an application made by one of the parties to the case, abstain from ruling in a case if proceedings in connexion with the same cause of action and between the same parties are already pending before a court of the other State which would be competent under the terms of this Convention if the proceedings could result in a decision which would have to be recognized in the territory of the other State.

(2) Nevertheless, the competent authorities of either State may in a case of emergency adopt the provisional measures provided in their domestic legislation including measures of conservation, irrespective of the court dealing with the substance of the case.

PART V

SCOPE OF THE CONVENTION

Article 16

The provisions of this Convention shall not affect other conventions or agreements to which the two States are or may become parties and which, in specific matters, govern the recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments.

Article 17

The provisions of this Convention shall apply only to such judicial decisions, arbitral awards and authenticated instruments as may be issued or drawn up after its entry into force.

PART VI

FINAL PROVISIONS

Article 18

(1) The present Convention shall not apply to the Belgian Congo or to the territory of Ruanda-Urundi.

(2) It may be extended to the Belgian Congo and the territory of Ruanda-Urundi through a simple exchange of notes between the Contracting Parties.

Article 19

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Brussels.

(2) The present Convention shall come into force three months after the exchange of the instruments of ratification.

(3) It shall cease to have effect six months after its denunciation by one of the Parties.

IN WITNESS WHEREOF the plenipotentiaries of the two Parties have signed the present Convention and have thereto affixed their seals.

DONE at Bonn on 30 June 1958 in two originals, in the French and German languages, both texts being equally authentic.

For the Kingdom of Belgium :

Baron DE GRUBEN

A. J. HERMENT

For the Federal Republic of Germany :

H. BERGER

A. BÜLOW

ADDITIONAL PROTOCOL

I

The High Contracting Parties undertake, in order to simplify matters in their relations with each other, to regulate the procedure for the enforcement of judicial decisions, arbitral awards and authenticated instruments in civil or commercial matters as follows :

In Belgium :

1. There shall be no opposition to a decision relating to applications for enforcement ;

2. An appeal against such a decision may be lodged within twenty-eight days of its issue by the court if the case was defended and within twenty-eight days of notification if the decision was rendered by default ;

In the Federal Republic of Germany :

The procedure for enforcement of judicial decisions and authenticated instruments shall be based on the procedure in effect for the enforcement of foreign arbitral awards.

II

If a decision declared to be enforceable is annulled or modified, the court of enforcement which has granted to the party against whom the enforcement proceedings were taken the restoration of conditions preceding the proceedings, restitution and, where applicable, damages, shall be recognized as competent within the meaning of No. 3 of paragraph (1) of article 2 of this Convention.¹

DONE at Bonn on 30 June 1958 in two originals, in the French and German languages, both texts being equally authentic.

For the Kingdom of Belgium :

BARON DE GRUBEN
A. J. HERMENT

For the Federal Republic of Germany :

H. BERGER
A. BÜLOW

EXCHANGE OF LETTERS

I

MINISTRY OF FOREIGN AFFAIRS

30 June 1958

Your Excellency,

With reference to the Convention signed today between the Federal Republic of Germany and the Kingdom of Belgium on the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments in civil and commercial matters,¹ I have the honour to inform you as follows :

The Government of the Federal Republic of Germany, in agreement with the Senate of Berlin, desires to include the *Land* of Berlin within the scope of the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments in civil and commercial matters and therefore proposes that the Belgian Government should agree on the following :

The Convention shall also apply to the *Land* of Berlin unless a declaration to the contrary is made by the Government of the Federal Republic of Germany to the Belgian Government within three months of the date of exchange of the instruments of ratification.

¹ See p. 267 of this volume.

If the proposal of the Government of the Federal Republic of Germany meets with the agreement of the Belgian Government, it would be considered that, following confirmation of this letter, an agreement has been concluded between our two Governments to include the *Land* of Berlin within the scope of the Convention between the Federal Republic of Germany and the Kingdom of Belgium on the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments in civil and commercial matters.

I have the honour, etc.

BERGER

His Excellency Baron Hervé de Gruben
Ambassador of the Kingdom of Belgium
Bonn

II

BELGIAN EMBASSY

Bonn, 30 June 1958

Sir,

I have the honour to acknowledge receipt of the note of today's date in which you inform me that the Government of the Federal Republic of Germany, in agreement with the Senate of Berlin, has expressed the desire to include the *Land* of Berlin within the scope of the Convention signed today between Belgium and the Federal Republic of Germany on the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments in civil and commercial matters, and to agree with the Belgian Government on the following :

The Convention shall also apply to the *Land* of Berlin unless a declaration to the contrary is made by the Government of the Federal Republic of Germany to the Belgian Government within three months of the date of exchange of the instruments of ratification.

I have the honour to inform you that the proposal of the Government of the Federal Republic of Germany meets with the agreement of the Belgian Government. Your note and this reply will constitute the agreement of the two Governments to include the *Land* of Berlin within the scope of the Convention signed today between Belgium and the Federal Republic of Germany on the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authenticated instruments in civil and commercial matters.

I have the honour to be, Sir, etc.

Baron DE GRUBEN

Dr. Hans Berger, *Ministerialdirektor*,
Director of the Legal Department
at the Federal Ministry of Foreign Affairs