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No. 6029

**BELGIUM
and
AUSTRIA**

Convention concerning the reciprocal recognition and enforcement of judicial decisions, arbitral awards and authentic acts in civil and commercial matters. Signed at Vienna, on 16 June 1959

Official texts: French and German.

Registered by Belgium on 8 January 1962.

**BELGIQUE
et
AUTRICHE**

Convention sur la reconnaissance et l'exécution réciproques des décisions judiciaires, sentences arbitrales et actes authentiques en matière civile et commerciale. Signée à Vienne, le 16 juin 1959

Textes officiels français et allemand.

Enregistrée par la Belgique le 8 janvier 1962.

[TRANSLATION — TRADUCTION]

No. 6029. CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE REPUBLIC OF AUSTRIA CONCERNING THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS, ARBITRAL AWARDS AND AUTHENTIC ACTS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT VIENNA, ON 16 JUNE 1959

His Majesty the King of the Belgians and the Federal President of the Republic of Austria, desiring to provide for the reciprocal recognition and enforcement of judicial decisions and arbitral awards made in civil and commercial matters, and of authentic acts, have resolved to conclude a Convention for this purpose and have appointed as their plenipotentiaries :

His Majesty the King of the Belgians :

Mr. Georges Delcoigne, his Ambassador to the Republic of Austria, and
Mr. A. J. Herment, Inspector-General at the Ministry of Foreign Affairs and Foreign Trade ;

The Federal President of the Republic of Austria :

Dr. Martin Fuchs, Ambassador Extraordinary and Plenipotentiary, Secretary-General for Foreign Affairs, and
Dr. Viktor Hoyer, Chief of Section at the Federal Ministry of Justice,

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

Article 1

(1) This Convention shall apply to judicial decisions made in civil and commercial matters by the courts of the High Contracting Parties.

(2) For the purposes of this Convention, the term "decisions" shall be deemed to mean any decisions made in contentious or voluntary proceedings, regardless of the name given to them, with the exception of decisions relating to bankruptcy, composition and the grant of time to pay.

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

¹ Came into force on 16 December 1961, the sixtieth day following the exchange of the instruments of ratification, which took place at Brussels on 17 October 1961, in accordance with the provisions of article 10. This Convention is not applicable to the Trust Territory of Ruanda-Urundi.

(4) For the purposes of this Convention, the expression "court of origin" shall be deemed to mean the court which made the decision, and the expression "court applied to" shall be deemed to mean, in Austria, the court applied to for enforcement, and in Belgium, the court which is asked to make the decision enforceable.

Article 2

(1) Decisions made by a court of one of the High Contracting Parties shall be recognized in the territory of the other High Contracting Party if they satisfy the following conditions :

- (a) That the court of origin had jurisdiction under article 3 of this Convention ;
- (b) That the ordinary remedies are no longer available against the decision ;
- (c) That, subject to the provisions of sub-paragraph (d) of this paragraph, the parties were duly represented or were duly declared in default, after having been duly summoned to appear ; this condition shall not be deemed to have been met if, in the case of a decision by default, the defaulting party satisfies the court applied to for recognition that he could not in fact have received notice of the proceedings in time to take part in them ; the service of summons on the defendant in accordance with the procedure prescribed in article 3 of the International Conventions relating to Civil Procedure concluded at The Hague on 17 July 1905¹ and 1 March 1954² shall constitute proof that he did in fact receive notice of the proceedings ;
- (d) That, in the case of a payment order or writ of execution, the decision has been duly communicated to the party against whom it was made ; this condition shall not be deemed to have been met if the said party satisfies the court applied to for recognition that he could not in fact have received notice of the decision in time to oppose it ; service on the said party in accordance with the procedure prescribed in article 3 of the International Conventions relating to Civil Procedure concluded at The Hague on 17 July 1905 and 1 March 1954 shall constitute proof that he did in fact receive notice of the decision ;
- (e) That the copy of the decision produced is duly authenticated in accordance with the laws of the State where the decision was made and that it bears the seal of the court of origin.

(2) Recognition shall, however, be refused :

- (a) If it is contrary to the public policy of the State in which it is applied for ; or
- (b) If the same claim, based on the same cause of action and involving the same parties, has already been the subject of a decision on the merits in the State in which recognition is applied for, even though remedies may still be available in that State ; or

¹ De Martens, *Nouveau Recueil général de Traités*, troisième série, tome II, p. 243 ; League of Nations, *Treaty Series*, Vol. L, p. 180 ; Vol. LIV, p. 434 ; Vol. XCII, p. 420, and Vol. C, p. 265 ; and United Nations, *Treaty Series*, Vol. 216, p. 432, and Vol. 293, p. 389.

² United Nations, *Treaty Series*, Vol. 286, p. 265.

- (c) If the same claim, based on the same cause of action and involving the same parties, is pending before a court of the State in which recognition is applied for, and such court was seized of the case before the court of origin.

Article 3

(1) The court of origin shall be deemed to have jurisdiction within the meaning of article 2, paragraph (1), sub-paragraph (a), if one of the following conditions is satisfied :

A. In the case of decisions not relating to the status or legal capacity of persons :

- (a) That, on the date of the institution of proceedings, the defendant had his domicile or habitual residence in the territory of the State of the court of origin, unless the subject of the proceedings is a right in immovable property situated in the territory of the State in which recognition is applied for ;
- (b) That, on the date of the institution of proceedings, the defendant had a commercial or industrial establishment, a branch establishment or an agency in the territory of the State of the court of origin and was summoned there in an action relating to the business of such establishment or agency ;
- (c) That, for the action in question, the defendant has expressly submitted to the jurisdiction of the court of origin, either by election of domicile or through some other agreement conferring jurisdiction, save where the legislation of the State in which recognition is applied for provides or may in future provide to the contrary ;
- (d) That the defendant has entered a defence on the merits without contesting the jurisdiction of the court of origin ;
- (e) That, in the case of a claim for damages based on extracontractual liability, the tort was committed in the territory of the State of the court of origin ;
- (f) That, in the case of a counter-claim, the court of origin is recognized as competent under the provisions of this article to rule on the principal claim ;
- (g) That, in the case of a contractual dispute relating to movable property, the action has been brought before a court of the State in which, by express or tacit agreement between the parties, the obligation has been or should have been discharged ;
- (h) That, on the date of the institution of proceedings, the defendant was neither domiciled nor habitually resident in the territory of either State but owned property in the territory of the State of the court of origin ;
- (i) That the subject of the proceedings was a right in immovable property situated in the territory of the State of the court of origin.

B. In the case of decisions relating to the status or legal capacity of persons :

1. Where the status or legal capacity of one person is involved, that on the date of the institution of proceedings :

- (a) The said person was a national of the State of the court of origin ; or
- (b) The said person was a national of the State where recognition is applied for or was stateless and had his last known domicile or habitual residence in the State of the court of origin ;

2. Where the status or legal capacity of two or more persons is involved, that on the date of the institution of proceedings :

- (a) One of them was a national of the State of the court of origin ; or
- (b) Each of them was a national of the State where recognition is applied for or was stateless and had his domicile or habitual residence in the State of the court of origin.

(2) The court applied to for recognition shall be bound by the findings of fact which are set out in the decisions and on which the court of origin based its competence.

(3) The court applied to for recognition shall apply the law of the State of the court of origin in ascertaining whether the conditions prescribed for jurisdiction in paragraph (1) of this article are met.

Article 4

(1) Any decision made by a Belgian court shall be enforceable in Austria provided that it is enforceable in Belgium and satisfies the conditions laid down in article 2 ; all appropriate remedies provided by Austrian law shall be available against the enforcement order.

(2) Any decision made by an Austrian court and enforceable in Austria shall be enforceable in Belgium under the exequatur of the competent Belgian court, which shall confine its review to the points enumerated in article 2 ; all appropriate remedies provided by Belgian law, except an application for reconsideration of an order made by default, shall be available against the exequatur.

Article 5

(1) An application for exequatur, in Belgium, or for enforcement of the decision, in Austria, shall be presented and dealt with in the form and according to the rules laid down by the laws of the State in which enforcement is sought.

(2) The applicant party shall produce :

- (a) A copy of the decision, showing the grounds therefor ;
- (b) Documentary proof that the ordinary remedies are no longer available against the decision and that it is enforceable ;
- (c) In the case of a decision by default, a certified true copy of the summons or any other documentary evidence that the defendant was duly summoned to appear ;

(d) In the case of a payment order or writ of execution, any documentary evidence that the decision has been duly communicated to the party against whom it was made ;

(3) The documents to be produced shall be exempt from legalization ; they shall be accompanied by a translation, certified correct by a sworn translator of one of the two States, into one of the official languages of the State applied to.

Article 6

(1) Arbitral awards made in civil and in commercial matters in one of the two States shall be recognized and enforced in the other State in accordance with the provisions of the Geneva Convention of 26 September 1927¹ on the Execution of Foreign Arbitral Awards, even where the parties are not subject to the jurisdiction of a State Party to the said Convention or to the jurisdiction of different States.

(2) In the event that the said Geneva Convention is replaced by another multi-lateral convention to which the two States are Parties, such other convention shall govern relations between Austria and Belgium as regards the recognition and enforcement of arbitral awards made in civil and in commercial matters.

(3) However, the provisions of article 5, paragraph (3), shall apply to the documents to be produced.

Article 7

(1) Authentic acts drawn up by the courts or by notaries and enforceable in Austria shall be declared enforceable in Belgium if they embody a settlement concluded between the parties in a civil or commercial matter. The exequatur shall be granted by the President of the court of first instance of the district in which the act is to be enforced.

(2) The enforcement of authentic acts embodying such settlements, which have been drawn up and are enforceable in Belgium, shall be authorized in Austria by the competent court of first instance.

(3) The judicial authority applied to shall confine itself to ascertaining whether the act in question has been duly authenticated in the State where it was drawn up and whether its enforcement is not contrary to the public policy of the said authority's own country.

(4) The provisions of article 5, paragraph (3), shall apply to the documents to be produced.

¹ League of Nations, *Treaty Series*, Vol. XCII, p. 301 ; Vol. XCVI, p. 205 ; Vol. C, p. 259 ; Vol. CIV, p. 526 ; Vol. CVII, p. 528 ; Vol. CXI, p. 414 ; Vol. CXVII, p. 303 ; Vol. CXXX, p. 457 ; Vol. CLVI, p. 210 ; Vol. CLXXXI, p. 389 ; Vol. CLXXXV, p. 391, and Vol. CXCI, p. 269 ; and United Nations, *Treaty Series*, Vol. 122, p. 346 ; Vol. 134, p. 402 ; Vol. 269, p. 384, and Vol. 325, p. 353.

(5) The remedies referred to in article 4, paragraphs (1) and (2) shall be available against the enforcement order or exequatur.

Article 8

(1) Save as provided in article 6 hereof, this Convention shall not affect the provisions of other conventions or agreements to which the two States are or may become Parties and which govern the recognition and enforcement of judicial decisions, arbitral awards or authentic acts.

(2) This Convention shall apply only to judicial decisions and arbitral awards made and authentic acts drawn up after the date of its entry into force.

Article 9

The High Contracting Parties reserve the right to extend the application of this Convention, by agreement through an exchange of notes, to the Belgian Congo and to the territory of Ruanda-Urundi. The notes shall fix the date on which such extension shall take effect.

Article 10

(1) This Convention shall be ratified. The exchange of the instruments of ratification shall take place at Brussels as soon as possible.

(2) The Convention shall enter into force on the sixtieth day following the exchange of the instruments of ratification.

Article 11

(1) Either High Contracting Party may denounce this Convention by giving notice in writing to the other High Contracting Party. The denunciation shall take effect one year after the date on which notice was given.

(2) The denunciation may be limited to the extension of application provided for in article 9 of this Convention.

Article 12

Any dispute which may arise between the High Contracting Parties concerning the interpretation or application of this Convention shall be settled through the diplomatic channel.

DONE at Vienna, on 16 June 1959, in duplicate in the French and German languages, both texts being equally authentic.

For the Kingdom
of Belgium :
G. DELCOIGNE
A.-J. HERMENT

For the Republic
of Austria :
Martin FUCHS
Viktor HOYER