

No. 6356

**BELGIUM
and
SWITZERLAND**

**Convention concerning the recognition and enforcement of
judicial decisions and arbitral awards. Signed at
Berne, on 29 April 1959**

Official text: French.

Registered by Belgium on 23 October 1962.

**BELGIQUE
et
SUISSE**

**Convention sur la reconnaissance et l'exécution de décisions
judiciaires et de sentences arbitrales. Signée à Berne,
le 29 avril 1959**

Texte officiel français.

Enregistrée par la Belgique le 23 octobre 1962.

[TRANSLATION — TRADUCTION]

No. 6356. CONVENTION¹ BETWEEN BELGIUM AND SWITZERLAND CONCERNING THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND ARBITRAL AWARDS. SIGNED AT BERNE, ON 29 APRIL 1959

His Majesty the King of the Belgians and
The Swiss Federal Council,

Desiring to regulate relations between the two countries in the matter of the recognition and enforcement of judicial decisions and arbitral awards, have resolved to conclude a convention on the subject and for this purpose have appointed as their Plenipotentiaries :

His Majesty the King of the Belgians :

Mr. Fernand Seynaeve, Ambassador Extraordinary and Plenipotentiary to Switzerland;

The Swiss Federal Council :

Mr. Max Petitpierre, Federal Counsellor, Chief of the Federal Political Department;

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

Article 1

1. The authority of judicial decisions made in civil and commercial matters in one of the two States, even if made by a criminal court, shall be recognized in the other State if they satisfy the following conditions :

- (a) that recognition of the decision is not incompatible with the public policy of the State in which it is applied for;
- (b) that the decision was made by a court having jurisdiction under article 2;
- (c) that, under the laws of the State in which the decision was made, ordinary remedies are no longer available against it;
- (d) that, in the case of a decision by default, the notice of proceedings or the summons was served on the defendant in accordance with the laws of the State in which the decision was made and the conventions, if any, in force between the two countries, and that it reached him in due time.

¹ Came into force on 15 October 1962, two months after the date of the exchange of the instruments of ratification which took place at Brussels on 14 August 1962, in accordance with article 14.

2. Decisions ordering sequestration or any other provisional or protective measure and decisions relating to bankruptcy or composition shall not be recognizable or enforceable under the terms of this Convention.

3. For the purposes of this Convention, the decisions of administrative authorities responsible in Switzerland for arranging and supervising guardianship shall be deemed to be judicial decisions.

Article 2

1. The courts of the State in which the decision was made shall be deemed to have jurisdiction with the meaning of article 1, paragraph 1 (b) in the following cases :

- (a) where, on the date of the institution of proceedings, the defendant had his domicile in the State in which the decision was made or where, not having his domicile in either of the two States, he had his habitual residence in the State in which the decision was made;
- (b) where the defendant has agreed to accept the jurisdiction of the court which ruled on the merits of the case, provided that such an agreement shall not be deemed to exist unless, at the least, one of the parties has made a declaration in writing 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;
- (c) where the defendant has entered a defence on the merits without contesting the jurisdiction, under the terms of this Convention, of the courts of the State in which the decision was made;
- (d) where, in the case of a counter-claim to the principal claim, the court which made the decision was competent, under the terms of this Convention, to rule on the principal claim;
- (e) where the defendant, having a commercial or industrial establishment, a branch establishment or an agency in the State in which the decision was made, was summoned there in any action arising out of the operation of such establishment or agency;
- (f) where the decision relates to compensation for damages arising out of accidents caused by the use of road vehicles in the State in which the decision was made;
- (g) where the decision was made by a court deemed to have jurisdiction under the terms of an international convention which does not itself contain provisions relating to recognition and enforcement;
- (h) where the subject of the proceedings was a right *in rem* in respect of immovable property situated in the State in which the decision was made;
- (i) in matters of status, legal capacity or family rights concerning nationals of the State in which the decision was made;

(j) in the case of actions between the heirs relating to the estate of a person who had his last domicile in the State in which the decision was made, irrespective of whether the estate comprises movable or immovable property.

2. Notwithstanding the provisions of paragraph 1, sub-paragraphs (a), (b), (c), (d) and (e), of this article, the courts of the State in which the decision was made shall not be deemed to have jurisdiction within the meaning of article 1, paragraph 1 (b), in cases where, under the laws of the State to which application is made, another court has exclusive jurisdiction.

Article 3

Decisions made by the courts of one of the two States, recognition of which is sought in the other State, shall be scrutinized only as regards the conditions stipulated in article 1 of this Convention. In no case shall the merits of the decisions be reviewed.

Article 4

Decisions made by the courts of one of the two States which satisfy the conditions prescribed in article 1 may, after being declared enforceable, be enforced in the other State.

Article 5

1. In Switzerland, jurisdiction and procedure for enforcement shall be governed, where enforcement relates to a sum of money or to sureties to be given, by the federal laws concerning actions for debt and bankruptcy, and in other cases by the procedure provided by law in the canton in which the decision is to be enforced.

2. In Belgium, application for exequatur shall be made to the court of first instance of the place in which the decision is to be enforced.

3. The exequatur procedure shall be as simple, expeditious and inexpensive as possible.

Article 6

1. The party applying for exequatur shall produce :

- (a) the original decision or an authenticated copy thereof;
- (b) any document or affidavit which establishes that, under the laws of the State in which it was made, ordinary remedies are no longer available against the decision and that it is enforceable;
- (c) any document or affidavit which establishes that the decision has been communicated, in accordance with the laws of the State in which it was made and the conventions, if any, in force between the two countries, to the party against whom enforcement is sought;

(d) in the case of a decision by default, original documentary proof or a certified copy thereof, that the party in default was summoned in conformity with the requirements of article 1, paragraph 1 (d).

2. If so required by the authority to which application for exequatur is made, the applicant party shall produce, in addition, a translation of the documentary proof referred to in paragraph 1 of this article. Such translation shall be certified correct by a diplomatic or consular representative, or by a sworn translator, of one of the two States.

3. The documents to be produced under this article shall not require legalization.

Article 7

Applications for exequatur shall be scrutinized only with respect to the conditions stipulated in article 1 of this Convention and to the documents to be produced under article 6. In no case shall the merits of the decision be reviewed.

Article 8

1. In Belgium, a judgement relating to an application for exequatur may not be opened, but an appeal may be lodged against it, in the case of a contested action, within thirty days following the date on which it was pronounced and, in the case of a judgement by default, within thirty days following the date of notification.

2. In Switzerland, a decision relating to an application for exequatur may be subject to appeal under public law to the federal court within thirty days after notification thereof.

Article 9

1. Arbitral awards made in one of the two States shall be recognized and rendered enforceable in the other State if they satisfy the conditions prescribed in article 1, paragraph 1, sub-paragraphs (a), (c) and (d), and if the copy of the award produced has been duly authenticated.

2. Exequatur shall be refused if under the terms of the award its enforcement was subject to conditions which have not been satisfied at the time of the application for exequatur.

3. A decision relating to an application for exequatur shall be open to such remedies as are provided by the legislation of the State in which it is given.

Article 10

1. The courts of each of the two States shall, on a motion by one of the parties to the proceedings, decline to rule on an application if an application

based on the same cause and between the same parties is already pending before a court of the other State which would have jurisdiction under the terms of this Convention and if such application could result in a decision which would have to be recognized in the other State.

2. The provisional or protective measures provided by the laws of Belgium and Switzerland may in case of emergency be adopted by the authorities of either State, irrespective of the court dealing with the merits of the case.

Article 11

This Convention shall not apply to judicial decisions and arbitral awards made before the date of its entry into force.

Article 12

1. This Convention shall apply irrespective of the nationality of the parties.

2. It shall not preclude the application of other conventions or agreements to which the two States are or may become parties and which regulate, or may in the future regulate, the recognition and enforcement of judicial decisions or arbitral awards.

Article 13

The High Contracting Parties may extend the application of this Convention, by agreement through an exchange of notes, to the Belgian Congo and to the territory of Ruanda-Urundi.

Article 14

1. This Convention shall be ratified.

2. The instruments of ratification shall be exchanged at Brussels as soon as possible.

3. The Convention shall enter into force two months after the date of the exchange of the instruments of ratification.

4. It may be denounced by either of the High Contracting Parties; it shall cease to have effect one year after denunciation.

IN WITNESS WHEREOF, the Plenipotentiaries of the two High Contracting Parties have signed this Convention and have hereto affixed their seals.

DONE at Berne, in two originals, on 29 April 1959.

For the Kingdom
of Belgium :
F. SEYNAEVE

For the Swiss
Confederation :
MAX PETITPIERRE