

No. 6883

**NETHERLANDS
and
ITALY**

Convention on the recognition and enforcement of judicial decisions in civil and commercial matters (with Protocol of signature). Signed at Rome, on 17 April 1959

Official text: French.

Registered by the Netherlands on 26 August 1963.

**PAYS-BAS
et
ITALIE**

Convention sur la reconnaissance et l'exécution des décisions judiciaires en matière civile et commerciale (avec Protocole de signature). Signée à Rome, le 17 avril 1959

Texte officiel français.

Enregistrée par les Pays-Bas le 26 août 1963.

[TRANSLATION — TRADUCTION]

No. 6883. CONVENTION¹ BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE ITALIAN REPUBLIC ON THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT ROME, ON 17 APRIL 1959

Her Majesty the Queen of the Netherlands and the President of the Italian Republic, wishing to regulate relations between the two countries with respect to the recognition and enforcement of judicial decisions in civil and commercial matters, have resolved to conclude a Convention for this purpose and have appointed as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Mr. Willem Lodewijk Frederik van Bylandt, Ambassador of the Netherlands to Italy ;

The President of the Italian Republic :

Mr. Giuseppe Pella, Minister for Foreign Affairs,

who, having found their full powers in good and due form, have agreed as follows :

Article 1

Decisions rendered in civil and commercial matters by the courts of one of the two States shall have the force of *res judicata* in the other State if they satisfy the following conditions :

(1) That the decision was rendered by a court having jurisdiction under article 2 of this Convention ;

(2) That recognition of the decision is not contrary to the public policy or principles of public law of the State in which the decision is invoked ;

(3) That the decision does not conflict with a decision already rendered on the same case by a court of the State applied to ;

(4) That the decision has acquired the force of *res judicata* under the laws of the State in which it was rendered ;

(5) That, in the event of a judgement by default, the summons giving notice of the proceedings was served on the defaulting party in good time.

¹ Came into force on 18 May 1963, one month after the exchange of the instruments of ratification which took place at The Hague on 18 April 1963, in accordance with article 16.

Any party concerned may apply for recognition that a decision has the force of *res judicata* in accordance with the rules of procedure obtaining in the State applied to.

Article 2

The courts of the State where the decision was rendered shall be deemed to have jurisdiction within the meaning of article 1, sub-paragraph 1, if another convention between the High Contracting Parties so provides or in the following circumstances :

(1) If the defendant, or, where there were several defendants in the same case, one of the defendants, had his domicile in the State where the decision was rendered ;

(2) If the defendant had agreed in writing to accept in specified cases the jurisdiction of the court which rendered the decision, unless all the parties had their domicile in the State where the decision is invoked or the dispute concerns the possession or ownership of immovable property situated in a State other than that in which the decision was rendered, or direct rights in such property.

The situation shall be the same if the defendant has, without reservation, raised the substance of the dispute ;

(3) If the defendant had a commercial or industrial establishment or branch establishment in the State where the decision was rendered and was summoned there in an action relating to the business of the establishment or branch establishment ;

(4) If, jurisdiction being recognized with respect to the principal claim, there is a subsidiary claim, a claim for the performance of a guarantee or a counter-claim connected with the principal claim or with the defence put forward against it ;

(5) In all matters relating to the status, legal capacity or family rights of nationals of the State in which the decision was rendered ;

(6) If the proceedings relate to the possession or ownership of immovable property situated in the State where the decision was rendered, or to a direct right in such property ;

(7) In matters of inheritance, if the deceased had his domicile in the State where the decision was rendered, irrespective of whether the estate comprises movable or immovable property :

(a) in actions claiming the rights of an heir, actions for partition and all other actions between joint heirs, until partition ;

(b) in actions for avoidance or rescission of a partition and actions for the guarantee of shares, until two years from the date of partition ;

(c) in actions against the executor, until partition, or, if partition is not necessary, until two years from the death of the deceased ;

(d) in actions by legatees and creditors not having direct rights in immovable property, within the time-limits indicated in the preceding sub-paragraph.

The foregoing provisions shall not apply to cases which are recognized under the law of the State applied to as being exclusively within the jurisdiction of its own courts or those of a third State.

Article 3

Judicial decisions rendered by the courts of one of the two States and satisfying the conditions set forth in article 1 may, after having been declared enforceable at the request of any party concerned, give rise in the other State to distraint on movable or immovable property or to formal acts such as registration in the public records.

Only decisions which can be enforced in the State in which they were rendered shall be declared enforceable in the State applied to.

The competent judicial authority in the State applied to shall proceed automatically to ascertain whether the conditions set forth in article 1 and in the preceding paragraph are met, and shall state its findings in its decision. The decision shall have effect between all the parties to the application for exequatur and throughout the territory of the State applied to.

The exequatur may be granted on a partial basis for only one or another item in the foreign decision.

The procedure for applying for exequatur shall be governed by the law of the State in which enforcement is requested.

Article 4

When considering whether the conditions for the courts of the other State to have jurisdiction are met, the courts of the State in which the decision is invoked shall not be bound by the findings contained in the decision.

They shall not review the substance of the decision.

Article 5

The party invoking the decision shall produce :

(1) A copy of the decision duly certified ;

(2) Documentary proof that the decision has acquired the force of *res judicata* and, where appropriate, that it is enforceable ;

(3) The original or a certified true copy of the summons served on the defaulting party and any documentary evidence that the summons reached him in good time ;

(4) A translation of the documents listed above, certified as accurate in accordance with the rules laid down by the laws of the State in which the decision is invoked or by treaty, except where a waiver is granted by the competent judicial authority.

If these documents are drawn up, issued or legalized by a court of one of the High Contracting Parties, they shall not require any legalization in order to be used in the territory of the other Party, provided that they bear the seal or stamp of the court in question.

Article 6

Any party entitled to free legal aid in one of the two States shall be entitled to it as of right in proceedings instituted with a view to a decision in his favour being recognized or declared enforceable in the territory of the other State.

Article 7

As far as the recognition and enforcement of arbitral awards is concerned, the Convention on the Execution of Foreign Arbitral Awards, deposited for signature at Geneva on 26 September 1927,¹ shall govern relations between the two States, applying to all arbitral awards made in either of the two States without regard to the restrictions contained in the first paragraph of article 1 of the Convention.

Article 8

Authentic acts enforceable in one of the two States may be declared enforceable in the other State by the competent authority in accordance with the law of the latter State.

The said authority shall merely ascertain whether the act in question has been duly authenticated in the State where it was drawn up, whether it is enforceable there and whether enforcement of the provisions in question is contrary to the public policy or principles of public law of the State where the exequatur is applied for.

The foregoing provisions shall apply to transactions and agreements concluded before the judicial authorities and certified or confirmed by them.

Article 9

The courts of one of the two States shall, if one of the Parties so requests, refrain from proceeding with actions brought before them when such actions are already

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. CXCIII, p. 269 ; and United Nations, *Treaty Series*, Vol. 122, p. 346 ; Vol. 134, p. 402 ; Vol. 269, p. 384, and Vol. 325, p. 353.

pending before the courts of the other State, provided that the latter courts are competent under the rules of this Convention.

The foregoing provision shall not apply when proceedings for validation of seizure, or for replevin, with respect to goods distrained upon in one of the two States is brought before the courts of that State. In such cases the courts in question shall be fully competent to rule on the substance of the case in accordance with their domestic law, despite the fact that the case is already pending before the courts of the other State.

Article 10

This Convention shall not apply to decisions ordering sequestration or any other provisional measure, to decisions rendered in proceedings instituted by a private person for damages parallel to prosecution in a criminal case, or to decisions rendered with regard to a stay of execution or a bankruptcy.

Article 11

For the purposes of this Convention, the word "domicile" shall mean :

(1) In the case of a legally competent person who is of age, of an emancipated minor, or of a person over age who is only required to have legal assistance for the execution of certain acts, the place in one of the two States where he has his residence or, if there is no such place, the place in one of the two States which is the main seat of his interests ;

(2) For persons under parental authority or guardianship, the place of the domicile of their legal representative ;

(3) In the case of a married woman, the place of her husband's domicile when the law expressly so provides. Nevertheless, if the husband's domicile is unknown or if the woman is separated from bed and board or authorized to have a separate domicile, her domicile shall be determined in accordance with sub-paragraph (1) above ;

(4) In the case of companies and bodies corporate other than companies, even during their liquidation, the site of their registered head office.

Article 12

This Convention shall not affect the provisions of agreements governing judicial competence and the recognition and enforcement of judicial decisions in special matters.

Article 13

Decisions relating to the costs and expenses referred to in the first and second paragraphs of article 18 of the Convention Relating to Civil Procedure, signed at The Hague on 1 March 1954,¹ that are rendered in one of the two States shall be

¹ United Nations, *Treaty Series*, Vol. 286, p. 265.

rendered enforceable in the other State not only upon a request being made through diplomatic channels but also upon a direct request being made by the party concerned.

Article 14

The provisions of this Convention shall apply whatever the nationality of the parties, apart from the exceptions provided for in international conventions.

Article 15

This Convention shall apply only to the European territories of the two High Contracting Parties.

Article 16

This Convention shall be ratified. The instruments of ratification shall be exchanged at The Hague as soon as possible.

The Convention shall enter into force one month after the exchange of the instruments of ratification. It shall apply only to judicial decisions and arbitral awards that acquire the force of *res judicata* after its entry into force and to acts of the kind provided for in article 8 that are likewise drawn up after that time.

The Convention may be denounced by either State. Nevertheless, it shall remain in force for one year after denunciation.

DONE at Rome, in duplicate, in the French language, on 17 April 1959.

For the Kingdom
of the Netherlands :
(Signed) W. F. L. VAN BYLANDT

For the Italian
Republic :
(Signed) PELLA

PROTOCOL OF SIGNATURE

At the time of signing the Convention¹ between the Kingdom of the Netherlands and the Italian Republic on the Recognition and Enforcement of Judicial Decisions in Civil and Commercial Matters, the undersigned plenipotentiaries have agreed as follows :

This Convention shall not affect the currency laws and regulations of either country.

Rome, 17 April 1959.

For the Kingdom
of the Netherlands :
(Signed) W. F. L. VAN BYLANDT

For the Italian
Republic :
(Signed) PELLA

¹ See p. 209 of this volume.