

No. 7161

**BELGIUM
and
ITALY**

**Convention concerning the recognition and enforcement of
judicial decisions and other enforceable instruments
in civil and commercial matters. Signed at Rome, on
6 April 1962**

Official text: French.

Registered by Belgium on 9 March 1964.

**BELGIQUE
et
ITALIE**

**Convention concernant la reconnaissance et l'exécution des
décisions judiciaires et d'autres titres exécutoires en
matière civile et commerciale. Signée à Rome, le 6 avril
1962**

Texte officiel français.

Enregistrée par la Belgique le 9 mars 1964.

[TRANSLATION — TRADUCTION]

No. 7161. CONVENTION¹ BETWEEN THE KINGDOM OF BELGIUM AND THE ITALIAN REPUBLIC CONCERNING THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND OTHER ENFORCEABLE INSTRUMENTS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT ROME, ON 6 APRIL 1962

His Majesty the King of the Belgians and

The President of the Italian Republic,

Desiring to regulate relations between the two countries with respect to the recognition and enforcement of judicial decisions and other enforceable instruments in civil and commercial matters,

Have resolved to conclude a Convention for this purpose and have appointed as their plenipotentiaries :

His Majesty the King of the Belgians :

His Excellency Mr. Joseph van der Elst, Ambassador of the Kingdom of Belgium ;

The President of the Italian Republic :

His Excellency Mr. Giuseppe Lupis, Under-Secretary of State for Foreign Affairs,

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

PART I

RECOGNITION OF JUDICIAL DECISIONS

Article 1

Decisions made in civil and commercial matters by the judicial authorities of one of the two contracting States shall be recognized in the territory of the other State if they satisfy the following conditions :

¹ Came into force on 13 February 1964, three months after the exchange of the instruments of ratification which took place at Brussels on 13 November 1963, in accordance with the provisions of article 19.

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

(2) That the decision, even if the ordinary remedies are still available against it, has determined the rights of the parties in such manner as to remove the case from the jurisdiction of the court ;

(3) That, in the case of a judgement by default, the summons giving notice of the proceedings was served in good time ;

(4) That the decision is not contrary to a decision already made on the same action between the same parties by a judicial authority of the State in which recognition is applied for ;

(5) That no action based on the same cause and involving the same parties is pending before a court of the State in which recognition is applied for, having been brought before that court before the decision was made ;

(6) That the public policy of the State in which recognition is applied for is not opposed thereto.

Article 2

1. The judicial authority of the State in which the decision was made shall be deemed to have jurisdiction for the purposes of the foregoing article if, at the time when the application is made, one of the following conditions is satisfied :

(1) If, in the case of a personal action, the defendant or one of the defendants had, according to the law of the State in which the decision was made, his domicile or residence in the territory of that State ;

(2) If, in regard to a dispute concerning a specific contract, the defendant had agreed in writing to accept the jurisdiction of the State in which the decision was made, unless the parties to the said agreement are nationals of the State in which the decision is invoked and have their domicile or residence therein ;

(3) If the defendant entered a defence on the merits without refusing to acknowledge the jurisdiction of the judicial authorities of the State in which the decision was made;

(4) If the defendant had a commercial or industrial establishment or branch establishment in the State in which the decision was made and was summoned in an action arising out of the operation of the said establishment ;

(5) If in a case relating to a contract the action was brought before the judge of the State in which the obligation originated or was or should have been carried out ;

(6) If the proceedings arose out of an unlawful act committed in the territory of the State in which the decision was made ;

(7) If the action concerned a dispute relating to the status, legal capacity or family rights of nationals of the State in which the decision was made ;

(8) If the subject of the proceedings was a right *in rem* in respect of property situated in the State in which the decision was made ;

(9) In matters of inheritance, if the deceased had his last domicile in the State in which the decision was made, 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 co-heirs, until partition of the estate ;

(b) in actions for avoidance or rescission of a partition and actions for the guarantee of the 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 rights *in rem* in respect of immovable property, within the time-limits indicated in the preceding sub-paragraph ;

(10) 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 ;

(11) In any other case, if jurisdiction is determined by other Conventions in force between the two States or is based on the rules relating to international jurisdiction recognized by the law of the State in which the decision is invoked.

2. The foregoing provisions shall not apply to decisions concerning actions which are recognized under the law of the State in which recognition is applied for as being within the exclusive jurisdiction of its own judicial authorities or those of a third State.

Article 3

Decisions made in one of the two States by a criminal court ruling on the civil consequences of an offence which resulted in a conviction, shall be recognized in the other State if they were not pronounced by default and satisfy the following conditions :

(1) That the ordinary remedies are no longer available against the decision ;

(2) That the decision concerns an offence committed in the territory of the State in which the decision was made ;

(3) That the defendant was assisted or represented at the trial by counsel ;

(4) That the conditions prescribed in article 1 (4), (5) and (6) are satisfied.

Article 4

Provisional decisions made by the judicial authorities in matters relating to maintenance or to the custody of minors and enforceable in the State in which they were pronounced shall be recognized in the other State under the same conditions as the decisions referred to in article 1 (2).

Article 5

Decisions made by the judicial authorities of one of the two contracting States in *ex parte* proceedings shall be recognized in the other State under the same conditions as decisions made in contentious proceedings, in so far as those conditions are applicable to them.

Article 6

The instruments by which the judicial authorities of one of the two States communicate to the parties their conciliation or agreement shall be recognized in the other State provided only that they are not contrary to the public policy of that State.

Article 7

1. The decisions referred to in the foregoing articles, which have been made in the territory of one of the two States and recognition of which is sought in the territory of the other State, shall be scrutinized only as regards the conditions prescribed in this Convention.

2. In no case shall the merits of the decisions be reviewed.

PART II

ENFORCEMENT OF JUDICIAL DECISIONS

Article 8

The judicial decisions referred to in the foregoing articles which are enforceable in the State in which they were made may, if they satisfy the conditions necessary for their recognition, be enforced in the territory of the other State after they have been declared enforceable in that territory by the competent judicial authority. The said authority shall officially ascertain whether the conditions required for exequatur are satisfied. It shall so note in its decision. It shall in no case review the merits of the decision to be enforced.

Article 9

The exequatur procedure shall be governed by the law of the State in which enforcement has been applied for.

Nevertheless, 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 twenty-eight days following the date on which it was pronounced and, in the case of a judgement by default, within twenty-eight days following the date of notification.

Article 10

If an order is made under the decision with respect to more than one claim and exequatur cannot be granted for every claim, the judicial authority may grant exequatur for only one claim or for more than one claim. In addition, the applicant may apply for exequatur in respect of part only of the decision, whether it refers to one or to more than one claim.

Article 11

A decision to grant exequatur may be deferred if the defendant can prove that he has instituted appeal proceedings against the decision with respect to which exequatur is applied for. If such proceedings have not been actually instituted, but the time for appeal has not expired under the law of the State in which the decision was made, the judicial authority applied to may defer its decision so as to enable the party against whom judgement was given to institute such proceedings.

In the cases referred to above, the judicial authority applied to may also, if it grants the exequatur, require the applicant to deposit security.

PART III

DOCUMENTS TO BE PRODUCED

Article 12

The party applying for the recognition of a decision or for exequatur in respect thereof shall produce :

(1) A copy of the decision duly certified according to the laws of the State in which the decision was made ;

(2) In the case of decision by default, the original or a certified true copy of the summons and of any document establishing that the decision was communicated or notified to the party in default ;

(3) In the case of an application for exequatur, any document certifying that the decision is enforceable ;

(4) A translation of all the documents mentioned above, certified correct in accordance with the laws or usages observed by the judicial authorities of the State in which the decision is invoked.

Documents drawn up or issued by the judicial authorities of the State in which the decision was made shall be exempt from legalization, provided that they bear the stamp or seal of the judicial authority by which they were drawn up or issued.

PART IV

AUTHENTIC ACTS

Article 13

Contracts which have been executed before a notary public and are enforceable in one of the two States shall be made enforceable in the other State if they contain nothing contrary to the public policy of that State.

Articles 8 and 9 of this Convention shall apply to the exequatur procedure with respect to such contracts.

The party invoking such a contract in the other State shall produce an authenticated copy thereof bearing the seal or stamp of the notary public and a translation, certified correct in accordance with the rules in force in the State in which the contract is invoked, taking into account the provisions of article 12, paragraph (2); the said party shall also produce an attestation by the notary public who delivered the contract certifying that the said contract is enforceable.

PART V

PLEA OF "PENDENTE LITE"

Article 14

The judicial authorities of each of the two States shall, on a motion by one of the parties to the case, decline to rule on an application if an application based on the same cause and involving the same parties is already pending before a court of the other State which would have jurisdiction under the terms of article 2 and if such application could result in a decision which may be recognized under the terms of this Convention.

Nevertheless, the authorities of either State may adopt the provisional or interim measures provided in their domestic legislation, even if jurisdiction with regard to the merits of the case rests with the court of the other State.

PART VI

SCOPE OF THE CONVENTION

Article 15

The provisions of this Convention shall apply whatever the nationality of the parties.

Article 16

This Convention shall not apply to judicial decisions made with respect to bankruptcy, compulsory composition, stay of execution or administration of property under supervision.

Article 17

This Convention shall not apply to judicial decisions and enforceable instruments made or executed before its entry into force.

Article 18

This Convention shall not affect conventions to which the two States are parties and which, in special matters, govern the recognition and enforcement of the judicial decisions and other enforceable instruments referred to in this Convention.

PART VII

FINAL PROVISIONS

Article 19

This Convention shall be ratified and the exchange of the instruments of ratification shall take place at Brussels as soon as possible.

This Convention shall enter into force three months after the exchange of the instruments of ratification.

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 this Convention and have thereto affixed their seals.

DONE at Rome, in two originals, in the French language, on 6 April 1962.

For the Kingdom
of Belgium :

Baron J. VAN DER ELST

For the Italian Republic :

G. LUPIS