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No. 7957

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**NETHERLANDS**  
**and**  
**FEDERAL REPUBLIC OF GERMANY**

**Treaty concerning the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters. Signed at The Hague, on 30 August 1962**

*Official texts: Dutch and German.*

*Registered by the Netherlands on 13 October 1965.*

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**PAYS-BAS**  
**et**  
**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Convention relative à la reconnaissance et à l'exécution réciproques des jugements et autres titres d'exécution en matière civile et commerciale. Signée à La Haye, le 30 août 1962**

*Textes officiels néerlandais et allemand.*

*Enregistrée par les Pays-Bas le 13 octobre 1965.*

[TRANSLATION — TRADUCTION]

No. 7957. TREATY<sup>1</sup> BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE FEDERAL REPUBLIC OF GERMANY CONCERNING THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND OTHER EXECUTORY INSTRUMENTS IN CIVIL AND COMMERCIAL MATTERS. SIGNED AT THE HAGUE, ON 30 AUGUST 1962

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Her Majesty the Queen of the Netherlands and

The President of the Federal Republic of Germany,

Desiring to regulate the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters,

Have agreed to conclude a Treaty and have appointed as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Mr. J. M. A. H. Luns, Minister for Foreign Affairs,

The President of the Federal Republic of Germany :

Dr. J. Löns, Ambassador Extraordinary and Plenipotentiary at The Hague, and

Dr. A. Bülow, *Ministerialdirektor* in the Federal Ministry of Justice.

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

TITLE I

RECOGNITION OF JUDICIAL DECISIONS

*Article 1*

(1) Decisions rendered in civil or commercial matters by the courts of either State, whereby the rights of the parties are established in adversary or non-adversary proceedings, shall be recognized in the other State even if they have not yet become final. Such recognition shall confer upon the decisions the same authority as they possess in the State in which they were rendered.

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<sup>1</sup> Came into force on 15 September 1965, two months after the exchange of the instruments of ratification which took place at Bonn on 15 July 1965, in accordance with article 23.

(2) For the purposes of this Treaty, the term "decision" shall be understood to refer to all decisions, regardless of the name given to them (judgements (*vonnissen* and *arresten* ; *Urteile*), orders (*beschikkingen* ; *Beschlüsse*), writs of execution (*dwangbevelen* ; *Vollstreckungsbefehle*) and interim orders (*voorlopige maatregelen* ; *Arreste* and *einstweilige Verfügungen*)), including decisions whereby the amount of costs is fixed subsequently.

(3) This Treaty shall not apply

- (a) To decisions rendered in criminal proceedings in respect of claims arising out of a legal relationship under civil or commercial law ;
- (b) To decisions in matters relating to marriage or divorce and in other matters relating to personal status ;
- (c) To decisions instituting bankruptcy proceedings, proceedings for a composition or proceedings for a moratorium or to other decisions in such proceedings which affect solely the proceedings in question.

#### Article 2

Recognition shall not be refused unless :

- (a) It is contrary to the public policy of the State in which the decision is relied upon ; or
- (b) The courts of the State in which the decision was rendered cannot be recognized as competent for the purposes of this Treaty or of another treaty in force between the two States ; or
- (c) In the case of a decision by default, the defendant proves :
  1. That the summons or the order instituting the proceedings was not served on him in accordance with the law of the State in which the decision was rendered, or
  2. That he had no opportunity to defend himself because he did not receive the summons or the order or it did not reach him early enough ; this shall not apply, however, if the plaintiff proves that the defendant failed to appeal against the decision even though he had learned of it.

#### Article 3

(1) Recognition shall not be refused solely on the ground that the court which rendered the decision, observing the rules of its own private international law, applied laws other than those which would have been applicable under the private international law of the State in which the decision is relied upon.

(2) Nevertheless, recognition may be refused on the ground specified in paragraph (1) if the decision is based on the determination of a legal relationship under

family law or the law of succession, or of the legal or contractual capacity or legal representation of a national of the State in which the decision is relied upon, or on the declaration of the death of such a national, unless the decision would also have been justified under the private international law of the said State.

*Article 4*

(1) The courts of the State in which the decision was rendered shall be recognized as competent for the purposes of this Treaty :

- (a) If at the time of institution of the proceedings the defendant, according to the law of the State in which the decision was rendered, had either his domicile or his habitual residence in that State, provided that, in the latter case, he did not have his domicile in the other State ;
- (b) If the defendant has submitted, by agreement, to the jurisdiction of the courts of the State in which the decision was rendered, unless such agreement is contrary to the law of the State in which the decision is relied upon ; an agreement within the meaning of this provision shall be deemed to exist only if one party has made a declaration in writing which has been accepted by the opposing party, or if an agreement arrived at orally has been confirmed in writing by one party and such confirmation has not been contested by the opposing party ;
- (c) If the defendant submitted a defence on the merits of the case before the court of the State in which the decision was rendered, even though the said court did not otherwise possess jurisdiction which would have been recognized under this Treaty ; this shall not apply, however, if the defendant stated, before submitting a defence on the merits of the case, that he was appearing in the proceedings solely with reference to property situated in the State whose court was hearing the case ;
- (d) If, in the State in which the decision was rendered, suit was brought against the defendant at the place where his business establishment or branch establishment was situated, in connexion with claims arising out of the operation of the said establishment or branch establishment ;
- (e) If the subject-matter of the action was a claim arising out of a traffic accident involving a motor vehicle or out of a collision between vessels and the event occurred in the State in which the decision was rendered ;
- (f) If the subject-matter of the section was a right in immovable property or a claim arising out of a right in such property and the immovable property in question is situated in the State in which the decision was rendered ;
- (g) If the action was brought in a dispute relating to succession and the decedent had his last domicile in the State in which the decision was rendered, irrespective of whether the estate comprises movable or immovable property ;

- (h) If the defendant had neither his domicile nor his habitual residence in either of the two States but, at the time of institution of the proceedings, owned property in the State in which the decision was rendered ;
- (i) If, in the case of a counter-claim or a claim for the performance of a guarantee, the court would have been recognized under this Treaty as competent to adjudicate the principal claim. However, the said court shall not be recognized as competent with respect to a claim for the performance of a guarantee if the person who received the guarantee and the guarantor have agreed to accept the jurisdiction of another court and the agreement also covers the claim for the performance of the guarantee ;
- (j) If the subject-matter of the action was a claim for compensation or restitution on the ground that a decision of a court of the other State had been enforced and the said decision had been set aside or modified in that State.

(2) However, the courts of the State in which the decision was rendered shall not be recognized as competent in the cases specified in paragraph (1), sub-paragraphs (a)-(d), (h) and (i), if sole jurisdiction in the action which gave rise to the decision vests in the courts of the State in which the decision is relied upon or the courts of a third State ; this shall apply in particular to actions whose subject-matter is a right in immovable property or a claim arising out of a right in such property.

#### Article 5

(1) A decision rendered in either State which is relied upon in the other State may be examined only for the grounds for refusal specified in article 2 and article 3, paragraph (2). In determining whether the condition laid down in article 2, sub-paragraph (b), is satisfied, the court of the State in which the decision is relied upon shall be bound by the findings of fact and of law on the basis of which the court determined its jurisdiction.

(2) In no case shall the decision be examined from the standpoint of its correctness.

#### TITLE II

#### ENFORCEMENT OF JUDICIAL DECISIONS

#### Article 6

(1) Judicial decisions which are enforceable in one of the two States and which qualify for recognition in the other State under this Treaty shall be enforced in the latter State if enforcement has been authorized there by a grant of execution.

(2) This provision shall also apply to decisions which have not yet become final.

*Article 7*

Where the decision of a Netherlands court directs the debtor to pay a penalty to the creditor if the former fails to comply with his obligation to perform or forbear from an act, execution shall not be granted in the Federal Republic of Germany until the amount of the penalty incurred has been fixed by a further decision of the Netherlands court.

*Article 8*

The procedure for the grant of execution shall be governed, subject to the provisions of this Treaty, by the law of the State in which the decision is to be enforced.

*Article 9*

Application for the grant of execution may be made by any person entitled to avail himself of the decision in the State in which it was rendered.

*Article 10*

The party applying for the grant of execution must produce :

- (a) A copy of the decision entitling the holder to seek enforcement of the decision and containing a statement of the grounds on which it is based ;
- (b) The original or a certified true copy of the certificate of service or of any other document showing that the decision has been served on the party against whom it is to be enforced ;
- (c) Proof that the applicant has provided any security which may have been required of him ;
- (d) A translation of the above-mentioned documents into the language of the court applied to ; such translation must be certified correct by a diplomatic or consular representative or an officially appointed or sworn translator of one of the two States.

*Article 11*

(1) In ruling on the application for the grant of execution, the court applied to shall confine itself to determining

- (a) Whether the documents required under article 10 have been produced ;
- (b) Whether any of the grounds for refusal specified in article 2, sub-paragraphs (a) and (b), and article 3, paragraph (2), is present.

(2) In no case shall the decision which is to be granted execution be examined from the standpoint of its correctness.

*Article 12*

Execution may also be granted for only part of the decision

- (a) If the decision relates to one or more claims and the applicant party seeks the grant of execution in respect of only part of the claim or in respect of only one or several claims ;
- (b) If the decision relates to more than one claim and the application of the party seeking execution is valid with respect to only one or several claims.

*Article 13*

Enforcement shall not begin until the decision, accompanied by the execution, has been served on the debtor in accordance with the law of the State in which the decision is to be enforced.

*Article 14*

(1) The debtor may raise the following objections to a decision granting execution :

- (a) That execution should not have been granted ;
- (b) That one of the grounds for refusal specified in article 2, sub-paragraph (c), is present ;
- (c) That he is in a position to object to the claim itself on grounds which did not arise until after the judicial decision had been rendered.

(2) The proceedings in which these objections may be raised shall be governed by the law of the State in which the decision is to be enforced.

*Article 15*

If the party applying for execution was permitted to sue *in forma pauperis* in the State in which the judicial decision was rendered, he shall *ipso facto* enjoy the same right in the other State as well, both in the proceedings for the grant of execution and in the enforcement proceedings.

## TITLE III

## RECOGNITION AND ENFORCEMENT OF OTHER EXECUTORY INSTRUMENTS

*Article 16*

(1) In addition to judicial decisions, the following executory instruments shall be recognized and, in the same manner as final judicial decisions, enforced in the other State, provided that they are enforceable in the State in which they were drawn up :

- (a) Judicial settlements ;

- (b) Other authentic acts, in particular judicial or notarial acts, as well as acknowledgments of indebtedness and settlements drawn up by an administrative authority (Youth Office (Jugendamt)) in matters relating to maintenance ;
- (c) Proofs of debt in bankruptcy proceedings ;
- (d) Settlements confirmed by a court in bankruptcy proceedings, proceedings for a composition or proceedings for a moratorium.

2. Article 9, article 10, sub-paragraphs (a), (c) and (d), articles 12 and 13, article 14, paragraph (1), sub-paragraphs (a) and (c), and paragraph (2), and article 15 shall apply *mutatis mutandis* to the application for the grant of execution and to the further proceedings. In ruling on the application for the grant of execution, the court applied to shall confine itself to determining whether the required documents have been produced and whether the ground for refusal specified in article 2, sub-paragraph (a), is present.

#### Article 17

The recognition and enforcement of arbitral awards shall continue to be governed by such treaties as are or may hereafter be in force on the subject between the two States.

### TITLE IV

#### SPECIAL PROVISIONS

#### Article 18

(1) Where a case is pending before a court of one of the two States and the decision in the said case will require recognition in the other State, a court of the latter State shall decline to rule in any proceedings subsequently instituted before it in the same matter and between the same parties.

(2) However, the competent authorities of either State may in urgent cases authorize the application of the interim measures provided for in their municipal law, including measures of conservation, irrespective of which court is dealing with the merits of the case.

#### Article 19

This Treaty shall not affect the provisions of other agreements which are or may hereafter be in force between the two States and which, in particular spheres of law, govern the recognition and enforcement of judicial decisions or other executory instruments.



*Article 20*

This Treaty shall apply only to such judicial decisions and other executory instruments as may be rendered or drawn up after its entry into force.

## TITLE V

## FINAL PROVISIONS

*Article 21*

(1) This Treaty shall apply, in the case of the Kingdom of the Netherlands, only to that part of the Kingdom which is situated in Europe.

(2) This Treaty may be extended, by an exchange of notes between the Governments of the two States, to any of the parts of the Kingdom of the Netherlands which are situated outside Europe. In the exchange of notes, the date of entry into force shall be specified.

*Article 22*

This Treaty 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 Government of the Kingdom of the Netherlands within three months after the entry into force of the Treaty.

*Article 23*

(1) This Treaty shall be ratified. The instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) This Treaty shall enter into force two months after the exchange of the instruments of ratification.

(3) This Treaty may be denounced in writing at any time. The denunciation may be limited to any part of the Kingdom of the Netherlands, situated outside Europe, to which the Treaty has been extended in accordance with the provisions of article 21, paragraph (2). The denunciation shall take effect six months after notice is given thereof.

IN WITNESS WHEREOF the plenipotentiaries have signed this Treaty and have thereto affixed their seals.

DONE at The Hague on 30 August 1962 in two original copies, each in the Dutch and German languages, both texts being equally authentic.

For the Kingdom  
of the Netherlands :

(Signed) J. LUNS

For the Federal Republic  
of Germany :

(Signed) Dr. J. LÖNS  
(Signed) A. BÜLOW