

No. 8290

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**NETHERLANDS  
and  
AUSTRIA**

**Treaty concerning the reciprocal recognition and enforcement of judicial decisions and authentic acts in the sphere of civil and commercial law. Signed at The Hague, on 6 February 1963**

*Official texts: Dutch and German.*

*Registered by the Netherlands on 5 August 1966.*

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**PAYS-BAS  
et  
AUTRICHE**

**Convention relative à la reconnaissance et à l'exécution réciproques des décisions judiciaires et des actes authentiques en matière civile et commerciale. Signée à La Haye, le 6 février 1963**

*Textes officiels néerlandais et allemand.*

*Enregistré par les Pays-Bas le 5 août 1966.*

[TRANSLATION — TRADUCTION]

No. 8290. TREATY<sup>1</sup> BETWEEN THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF AUSTRIA CONCERNING THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS AND AUTHENTIC ACTS IN THE SPHERE OF CIVIL AND COMMERCIAL LAW. SIGNED AT THE HAGUE, ON 6 FEBRUARY 1963

Her Majesty the Queen of the Netherlands and the Federal President of the Republic of Austria,

Desiring to provide for the reciprocal recognition and enforcement of judicial decisions rendered in civil and commercial matters and of authentic acts,

Have decided to conclude a treaty for that purpose and have appointed as their plenipotentiaries :

Her Majesty the Queen of the Netherlands :

Mr. H. R. van Houten, Secretary of State for Foreign Affairs;

The Federal President of the Republic of Austria :

Mr. Claus Winterstein, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria to the Kingdom of the Netherlands,

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

*Article 1*

(1) This Treaty shall apply to decisions rendered in matters relating to property by the ordinary courts of the High Contracting Parties.

(2) For purposes of the application of this Treaty, Austrian labour courts (*Arbeitsgerichte*) shall be treated as equivalent to ordinary courts.

(3) For purposes of the application of this Treaty, the term " matters relating to property " shall be deemed to include statutory claims for maintenance.

(4) For purposes of the application of this Treaty, the term " decisions " shall be deemed to refer to all decisions, regardless of the name given to them

<sup>1</sup> Came into force on 30 April 1966, the sixtieth day following the date of the exchange of the instruments of ratification which took place at Vienna on 1 March 1966, in accordance with article 12.

(e.g. judgements (*vonnissen, arresten, Urteile*), summary decisions (*beslissingen in kort geding*), orders (*beschikkingen, Beschlüsse*), payment orders (*dwangbevelen, Zahlungsbefehle, Zahlungsaufträge*)), which are rendered in adversary or non-adversary proceedings; the following shall, however, be excepted :

- (a) Decisions in bankruptcy proceedings, proceedings for a composition or proceedings for a moratorium;
- (b) Interim orders;
- (c) Decisions of the criminal courts in respect of claims arising under civil or commercial law;
- (d) Decisions of Netherlands courts directing the debtor to pay a penalty (*dwangsom*) to the creditor if the former fails to comply with his obligation to perform or forbear from an act, save where the amount of the penalty incurred has been fixed by a further decision of a Netherlands court.

#### Article 2

(1) Decisions rendered by the courts 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 decision was rendered by a court having jurisdiction under article 3 of this Treaty;
- (b) That the decision has become final;
- (c) That the parties were duly represented or, in the case of a decision by default, were duly summoned to appear; in the case of a payment order, the decision must have been duly communicated to the party against whom it was rendered;
- (d) That recognition is not contrary to the public policy of the State in which it is applied for and, in particular, that a final decision has not already been rendered in the same matter and between the same parties in the State in which recognition is applied for;
- (e) That proceedings instituted before the institution of proceedings in the State in which the decision was rendered are not pending in respect of the same matter and between the same parties in the State in which recognition is applied for.

(2) The condition laid down in paragraph (1) (c) shall be deemed not to have been satisfied if :

- (a) In the case of a decision by default, the defaulting party satisfies the court applied to for recognition that he did not receive notice of the proceedings in time to take part in them;

- (b) In the case of a payment order, the party against whom the decision was rendered satisfies the court applied to for recognition that he did not receive notice of the decision in time to oppose it.

### Article 3

(1) The court which rendered the decision shall be deemed to have jurisdiction within the meaning of article 2, paragraph (1) (a), save in the cases referred to in paragraph (2) below,

- (a) If, on the date of the institution of proceedings, the defendant had his domicile or habitual residence in the State whose court rendered the decision;
- (b) If the defendant had an enterprise or a branch establishment in the State whose court rendered the decision and suit was brought against him there in an action relating to the enterprise or branch establishment;
- (c) If, by written agreement or election of domicile, the defendant has submitted to the jurisdiction of the said court in respect of a particular action or in respect of actions arising from a particular legal relationship;
- (d) If the defendant has entered a defence on the merits without contesting the jurisdiction of the court (paragraph (4));
- (e) In the case of a counter-claim, if the court had jurisdiction within the meaning of this article in respect of the principal claim.

(2) In proceedings relating to rights *in rem* in immovable property or to the transfer of such rights *mortis causa*, the courts of the State in which the property is situated shall have jurisdiction.

(3) The courts of the State in which recognition is applied for shall be bound by the findings of fact which are set out in the decision and on the basis of which the court which rendered the decision claimed jurisdiction.

(4) Action to contest the jurisdiction of the court within the meaning of paragraph (1) (d) shall be deemed to include any statement by the defendant disputing that jurisdiction solely within the meaning of this article.

(5) The courts of the High Contracting Party in whose territory the decision was rendered shall not, however, be deemed to have jurisdiction within the meaning of article 2, paragraph (1) (a), if, under the law of the other High Contracting Party, the courts of that State or of a third State had sole jurisdiction.

### Article 4

The courts of the High Contracting Party in which recognition is applied for may examine the decision only for the purpose of determining whether the

conditions laid down in article 2 have been satisfied. Beyond that, the decision may not be examined in respect of either the facts or the law.

#### *Article 5*

(1) Any decision rendered by a Netherlands court which is enforceable in the Netherlands and which qualifies for recognition in Austria under the preceding articles may be enforced in Austria.

(2) Any decision rendered by an Austrian court which is enforceable in Austria and which qualifies for recognition in the Netherlands under the preceding articles may be enforced in the Netherlands after it has been declared enforceable by the competent Netherlands court.

(3) The proceedings for a declaration of enforceability (enforcement proceedings) shall be governed by the law of the High Contracting Party in whose territory the proceedings take place.

#### *Article 6*

If the decision deals with more than one claim but the conditions for recognition or enforcement have been satisfied with respect to only one or several of the claims, the decision shall be recognized or declared enforceable (enforced) to that extent.

#### *Article 7*

(1) The party applying for recognition or a declaration of enforceability (enforcement) must produce :

- (a) A copy of the decision;
- (b) Documentary proof that the decision has become final and, if a declaration of enforceability (enforcement) is applied for, that the decision is enforceable in the State in which it was rendered;
- (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, any documentary evidence that the decision has been duly communicated to the party against whom it was rendered.

(2) The documents to be produced shall be exempt from legalization but shall, if the court so requests, be accompanied by a translation. The translation must be certified correct by a sworn translator who is duly licensed in one of the two States.

*Article 8*

(1) Judicial settlements and notarial acts concluded or drawn up in one of the two States and enforceable in that State shall be declared enforceable (enforced) in the other State unless their enforcement is contrary to the public policy of the latter State.

(2) The applicant party must produce a copy of the settlement or notarial act showing that it is enforceable. The provisions of article 7, paragraph (2), shall apply.

(3) The provisions of the two preceding paragraphs shall apply to settlements concerning maintenance obligations concluded at Austrian Youth Offices (*Jugendämter*).

*Article 9*

Where a case is pending before a court of one of the two States and it is anticipated that the decision in the matter will require recognition in the other State, a court of the latter State shall decline to hear any action subsequently brought before it in the same matter and between the same parties.

*Article 10*

(1) This Treaty shall not affect the provisions of other agreements which are or may hereafter be in force between the two High Contracting Parties and which also govern the recognition and enforcement of judicial decisions or authentic acts.

(2) This Treaty shall apply only to executory instruments drawn up after its entry into force.

*Article 11*

(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 agreement, by means of 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 of the extension shall be specified.

*Article 12*

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

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

*Article 13*

(1) Either of the High Contracting Parties may denounce this Treaty 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 any area or areas to which the Treaty has been extended in accordance with the provisions of article 11, paragraph (2).

*Article 14*

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

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

DONE at The Hague on 6 February 1963, in duplicate in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands :

H. R. VAN HOUTEN

For the Republic of Austria :

Claus WINTERSTEIN