

No. 14719

**AUSTRIA
and
LUXEMBOURG**

**Convention concerning the recognition and enforcement of
judgements and authentic acts in civil and commercial
matters. Signed at Luxembourg on 29 July 1971**

Authentic texts: German and French.

Registered by Austria on 21 April 1976.

**AUTRICHE
et
LUXEMBOURG**

**Convention sur la reconnaissance et l'exécution des décisions
judiciaires et des actes authentiques en matière civile
et commerciale. Signée à Luxembourg le 29 juillet 1971**

Textes authentiques : allemand et français.

Enregistrée par l'Autriche le 21 avril 1976.

[TRANSLATION — TRADUCTION]

**CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND
THE GRAND DUCHY OF LUXEMBOURG CONCERNING
THE RECOGNITION AND ENFORCEMENT OF JUDGEMENTS
AND AUTHENTIC ACTS IN CIVIL AND COMMERCIAL
MATTERS**

The Federal President of the Republic of Austria and His Royal Highness the Grand Duke of Luxembourg, desiring, in relations between the two States, to ensure the recognition and enforcement of judgements and authentic acts in civil and commercial matters, have resolved to conclude a Convention for this purpose and have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Mr. Franz Weidinger, Ambassador Extraordinary and Plenipotentiary of the Republic of Austria;

His Royal Highness the Grand Duke of Luxembourg: Mr. Gaston Thorn, Minister for Foreign Affairs and External Trade;

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

Article 1. This Convention shall apply to judgements given in civil and commercial matters by the courts of the High Contracting Parties, with the exception of judgements relating to bankruptcy, composition and moratorium.

Article 2. For the purposes of this Convention:

1. The term "judgement" means any decision, however described, given in contentious or voluntary proceedings, even if rendered by a criminal court.

2. The term "court of origin" means the court which rendered the judgement whose recognition or enforcement is sought.

3. The term "State of origin" means the State in whose territory the court of origin has its seat.

4. The term "court applied to" means, in Luxembourg, the court applied to for an executory declaration and, in Austria, the court applied to for enforcement.

5. The term "State applied to" means the State in whose territory recognition or enforcement is sought.

Article 3. (1) Judgements rendered by a court of one of the High Contracting Parties shall be recognized in the territory of the other if the court of origin had jurisdiction within the meaning of articles 6 to 11 of this Convention and if, under the law of the State of origin, the judgement has become final.

¹ Came into force on 29 December 1975, i.e., the sixtieth day following the date of the exchange of the instruments of ratification, which took place at Vienna on 30 October 1975, in accordance with article 20.

(2) In the case of a judgement by default, the defendant must have been duly summoned to appear. In the case of a warrant or order for payment, the decision must have been duly notified to the judgement debtor.

Article 4. Recognition shall be refused in the following cases:

1. if it is contrary to the public policy of the State applied to;
2. if the same claim, based on the same cause of action, has already formed the subject, as between the same parties, of a judgement on the merits which has become final and which was rendered in the State applied to or was rendered in a third State and is recognized in the State applied to;
3. if, as between the same parties, the same claim, based on the same cause of action, is pending before a court of the State applied to and the action was brought in such court before it was brought in the court of origin;
4. if, in the case of a judgement by default, the party in default did not acquire knowledge of the proceedings in sufficient time to act upon it, or, in the case of a warrant or order for payment, the judgement debtor did not have sufficient time to apply for a stay of proceedings.

Article 5. (1) Recognition shall not be refused on the ground that the court of origin applied a law other than that which would have been applicable under the rules of private international law of the State applied to, except with regard to the status or capacity of natural persons, matrimonial régimes, wills and inheritances. Even in such cases, recognition shall not be refused if the application of the aforementioned rules would have led to the same result.

(2) Recognition shall be refused if the rules concerning the representation of persons under disability prescribed by the law of the State applied to have been disregarded.

Article 6. This Convention shall not affect the rules relating to the jurisdiction of the courts of the High Contracting Parties. Nevertheless, under article 3, paragraph (1), recognition shall not be granted unless the court of origin had jurisdiction within the meaning of articles 7 to 11.

Article 7. (1) The Courts of the State of origin shall have jurisdiction in matters relating to status and capacity if, on the date of the institution of proceedings, one of the persons whose status or capacity is at issue is a national of that State. Stateless persons who are domiciled or habitually resident in the territory of the State of origin shall be assimilated to nationals of that State.

(2) The same shall apply if, on the aforementioned date, all the persons whose status or capacity is at issue are domiciled or habitually resident in the territory of the State of origin and are nationals of the State applied to.

Article 8. The courts of the State of origin shall have jurisdiction in cases where the subject-matter of the proceedings is a right *in rem* in respect of immovable property situated in the territory of that State. Such jurisdiction shall also extend to inheritance cases relating to such a right *in rem*.

Article 9. The courts of the State of origin shall have jurisdiction in matters relating to the inheritance of movable property if the deceased was a national of that State or was last domiciled there.

Article 10. In matters other than those mentioned in articles 7 to 9, the courts of the State of origin shall have jurisdiction:

1. if, on the date of the institution of proceedings, the defendant is domiciled or habitually resident in that State;
2. if the defendant has or had a commercial, industrial or other establishment or branch establishment in the territory of that State and is served with a summons there in action relating to the operation of such establishment or branch establishment;
3. if, in the case of a claim for damages based on extracontractual liability, the tort was committed in the territory of that State;
4. if, on the date of the institution of proceedings, the defendant owns property in the territory of that State and is neither domiciled nor habitually resident in the territory of the other State.

Article 11. In matters other than those mentioned in articles 7 to 9, the court of origin shall also have jurisdiction:

1. if the defendant has expressly submitted to the jurisdiction of that court, provided that the law of the State applied to does not otherwise require by reason of the subject-matter of the action;
2. if the defendant has entered a defence on the merits without contesting the jurisdiction of the court of origin or stating that he submits to such jurisdiction only in respect of property situated in the State of origin;
3. if, in the case of a counter-claim, the court of origin had jurisdiction under article 10 or under this article in respect of the principal claim.

Article 12. The court in which it is sought to obtain recognition shall be bound by the findings of fact which are contained in the judgement and provide the basis for the jurisdiction of the court of origin.

Article 13. The party seeking to obtain recognition must produce:

1. a complete and duly authenticated copy of the judgement;
2. (a) if the judgement was given in Austria, a statement by the court which rendered judgement in first instance certifying that the judgement has become final;
(b) if the judgement was given in Luxembourg, a document indicating the date of notification, a statement by the clerk of the court certifying that no proceedings for a stay of execution or appeal are pending against the judgement, and, in cases where an appeal to the Court of Cassation would entail suspension of execution, a statement certifying that no such appeal has been made;
3. in the case of a judgement by default, a certified true copy of the summons or other documentary evidence that the defendant was duly summoned to appear;
4. in the case of a warrant or order for payment, documentary evidence that the decision was duly notified to the judgement debtor.

Article 14. (1) The courts of either of the High Contracting Parties shall, in accordance with the provisions of their national law, either refuse to proceed

with the case or defer judgement if, as between the same parties, the same claim, based on the same cause of action, is already pending before a court of the other State and the proceedings may lead to a decision which qualifies for recognition under this Convention.

(2) Nevertheless, in urgent cases, application may be made to the courts of either of the High Contracting Parties for interim or conservatory measures (*vorläufige oder sichernde Massnahmen — mesures provisoires ou conservatoires*), irrespective of which court is dealing with the merits of the case.

Article 15. (1) Any judgement given by a Luxembourg court shall be enforceable in Austria if it is enforceable in Luxembourg and the conditions for its recognition are fulfilled.

(2) Any judgement given by an Austrian court shall be declared enforceable in Luxembourg if it is enforceable in Austria and the conditions for its recognition are fulfilled. A stay of execution may not be granted against the executory declaration.

Article 16. The party applying for the enforcement in Austria of a judgement given in Luxembourg, or for the grant of an executory declaration in Luxembourg in respect of a judgement given in Austria, must produce, in addition to the documents specified in article 13, documentary evidence that the judgement is enforceable in the territory of the State of origin.

Article 17. (1) Authentic acts drawn up and enforceable in Luxembourg shall be enforceable in Austria. Authentic acts drawn up and enforceable in Austria shall be declared enforceable in Luxembourg; a stay of execution may not be granted against the executory declaration.

(2) In each of the two States, the court shall confine itself to verifying that the act is duly authenticated and that its enforcement is not contrary to the public policy of the State applied to.

(3) The provisions of this article shall also apply to enforceable settlements in civil and commercial matters drawn up before a judge and enforceable settlements in matters relating to maintenance drawn up before the Austrian public authorities responsible for the guardianship of minors.

Article 18. (1) Documents to be produced under this Convention shall be exempt from legalization.

(2) Documents to be produced in Luxembourg must be drawn up in French or German or be accompanied by a translation in one of those languages. Documents to be produced in Austria must be drawn up in German or be accompanied by a translation in that language. The translation must be certified correct by a person duly authorized in one of the two States.

Article 19. (1) This Convention shall not affect the provisions of other conventions or agreements to which the two States are parties and which govern the recognition and enforcement of judgements or authentic acts.

(2) This Convention shall apply only to judgements rendered after the date of its entry into force. It shall apply to authentic acts even if they were drawn up before that date.

Article 20. (1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Vienna.

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

Article 21. Either of the High Contracting Parties may denounce this Convention by giving notice in writing to the other High Contracting Party. The denunciation shall take effect six months after the date of such notice.

Article 22. Any disputes concerning the interpretation or application of this Convention which may arise between the High Contracting Parties shall be settled through the diplomatic channel.

IN WITNESS WHEREOF the plenipotentiaries have affixed their signatures to this Convention.

DONE at Luxembourg, on 29 July 1971, in duplicate in the German and French languages, both texts being equally authentic.

For the Federal President of the Republic of Austria:

FRANZ WEIDINGER

For His Royal Highness the Grand Duke of Luxembourg:

GASTON THORN
