

No. 21980

**FEDERAL REPUBLIC OF GERMANY
and
NORWAY**

**Treaty concerning the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters (with protocol).
Signed at Oslo on 17 June 1977**

Authentic texts: German and Norwegian.

Registered by the Federal Republic of Germany on 28 June 1983.

**RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE
et
NORVÈGE**

**Traité relatif à la reconnaissance mutuelle et à l'exécution des décisions judiciaires et autres instruments exécutoires en matière civile et commerciale (avec protocole).
Signé à Oslo le 17 juin 1977**

Textes authentiques : allemand et norvégien.

Enregistré par la République fédérale d'Allemagne le 28 juin 1983.

[TRANSLATION — TRADUCTION]

TREATY¹ BETWEEN THE FEDERAL REPUBLIC OF GERMANY
AND THE KINGDOM OF NORWAY CONCERNING THE RE-
CIPROCAL RECOGNITION AND ENFORCEMENT OF JUDI-
CIAL DECISIONS AND OTHER EXECUTORY INSTRUMENTS
IN CIVIL AND COMMERCIAL MATTERS

The President of the Federal Republic of Germany and
His Majesty the King of Norway,

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 to that end have appointed as their
plenipotentiaries:

The President of the Federal Republic of Germany:

Dr. Hans-Jochen Vogel, Federal Minister of Justice, and Dr. Karl Wand,
Chargé d'affaires a.i.;

His Majesty the King of Norway:

Inger Louise Valle, Minister of Justice.

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

PART ONE. SCOPE OF THE TREATY

Article 1. (1) This Treaty shall apply to decisions rendered by civil courts
of the two Contracting States adjudicating claims of the parties arising out of a
legal relationship under civil or commercial law.

(2) Decisions rendered by criminal courts shall be assimilated to decisions
rendered by civil courts in so far as claims of the injured party arising out of a
legal relationship under civil or commercial law are adjudicated thereby.

(3) The term "decision" shall be understood to refer to all judicial deci-
sions, whether they are designated as judgements (*Urteile; dommer*), orders
(*Beschlüsse; kjennelser* and *beslutninger*) or writs of execution (*Vollstreckungs-
befehle*) and irrespective of the designation of the proceedings in which they are
rendered. Orders of a clerk of court or registrar whereby the amount of costs
is subsequently fixed shall also be regarded as decisions.

Article 2. This Treaty shall apply to decisions on labour matters only if
they were rendered in civil disputes:

1. Between an employer and an employee arising out of an employment relation-
ship, or concerning the existence or non-existence of an employment rela-
tionship, arising out of negotiations for the conclusion of a contractual
relationship or out of its subsequent effects, or arising out of unlawful

¹ Came into force on 3 October 1981, i.e., 30 days after the exchange of the instruments of ratification, which took place at Bonn on 3 September 1981, in accordance with article 26 (2).

injurious acts in so far as they are connected with the employment relationship;

2. Between employees arising out of joint work, or out of unlawful injurious acts in so far as they are connected with the employment relationship.

Article 3. This Treaty shall not apply:

1. To decisions in matrimonial matters and other matters relating to personal status, or decisions pertaining directly to the legal or contractual capacity or legal representation of an individual, body corporate or company;
2. To decisions pertaining directly to liability for nuclear damage;
3. To decisions rendered in bankruptcy proceedings or proceedings for a composition, or decisions adjudicating the validity of a debtor's legal acts in respect of such proceedings; such decisions shall not be deemed to include:
 - (a) Decisions concerning claims for the exclusion of an item not belonging to the debtor from the estate appointed for settlement of the creditors' claims;
 - (b) Decisions concerning claims arising out of mortgages or similar rights, entitling the creditor to a separate settlement out of items belonging to the debtor;
 - (c) Decisions concerning obligations arising out of the administration or realization of the estate appointed for settlement of the creditors' claims;
4. To interim orders or injunctions and dstraint orders.

Article 4. (1) This Treaty shall not apply to decisions in cases concerning maintenance.

(2) As regards matters concerning maintenance, The Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children¹ shall apply. The Convention shall also apply to decisions concerning maintenance claimed by children who have already attained the age of 21 years and to decisions concerning maintenance claimed by spouses or former spouses. Any claims for support which the mother of an illegitimate child may have against the father by reason of the birth of the child shall also be regarded as claims to maintenance. Judicial settlements, judicial or notarial acts and commitments given or settlements entered into before an administrative authority (*Jugendamt*) shall be assimilated to decisions if they are enforceable in the State in which they were drawn up.

PART TWO. RECOGNITION OF JUDICIAL DECISIONS

Article 5. Decisions which are rendered by the courts of either State and to which this Treaty applies shall be recognized in the other State if:

1. They have become final;
2. The competence of the courts of the State in which the decision was rendered (the State of the decision) is required to be recognized in accordance with article 8.

¹ United Nations, *Treaty Series*, vol. 539, p. 27.

Article 6. (1) Recognition of a decision shall not be refused unless:

1. It is contrary to the public policy of the State in which the decision is relied upon (the State applied to);
2. An action between the same parties concerning the same subject-matter is pending before a court of the State applied to, and such court took cognizance of the action first;
3. The decision conflicts with the finality of a decision rendered in the State applied to.

(2) In the case of a decision by default, recognition of the decision may also be refused if:

1. The document instituting the proceedings was served on the defendant:
 - (a) In a manner that is not valid under the law of the State of the decision, or
 - (b) In a manner that is at variance with an agreement, or
 - (c) Not in sufficient time to enable him to defend himself;
2. The defendant proves that he was unable to defend himself because, through no fault of his own, the document instituting the proceedings either did not reach him at all or did not reach him in sufficient time.

Article 7. (1) Recognition shall not be refused solely on the ground that the court which rendered the decision applied, in accordance with the rules of its own private international law, laws other than those which would have been applicable under the private international law of the State applied to.

(2) However, 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 an individual, or on the declaration of the death of an individual; the same shall apply to a decision based on the determination of the legal or contractual capacity of a body corporate or a company, provided that it has its headquarters or main office in the State applied to. The decision shall nevertheless be recognized if it would also have been justified under the private international law of the State applied to.

Article 8. (1) The courts of the State of the decision shall be recognized as competent for the purposes of this Treaty:

1. If at the time of institution of the proceedings the defendant had his domicile or his habitual residence in the State of the decision or, in the case of a body corporate or a company, it had its headquarters or main office in that State;
2. If the defendant had, either by a written agreement or by an oral agreement confirmed in writing within a reasonable period of time, submitted to the jurisdiction of the courts of the State of the decision in respect of certain legal disputes, unless such an agreement, by reason of its subject-matter, is not admissible under the law of the State applied to;
3. If the defendant had submitted a defence on the merits of the case before the court of the State of the decision without challenging the competence of the court, unless the competence of the courts of the State of due decision, by reason of the subject-matter of the dispute, could not be established by

an agreement between the parties; in particular, the defendant shall not be deemed to have submitted a defence if, prior to consideration of the merits of the case, he had declared that he was appearing in the proceedings solely with reference to property situated in the State of the court which was hearing the case;

4. If the action was brought before the court of the State of due decision by the party against whom the decision is relied upon, unless the competence of the courts of the State of the decision, by reason of the subject-matter of the dispute, could not be established by an agreement between the parties;
5. If the case concerned a counter-claim and the counter-claim was connected with the principal claim or a plea contesting it, provided that the court of the State of due decision would be recognized as competent for the purposes of this Treaty to render a decision in the principal action;
6. If the defendant had a business establishment or branch in the State of the decision and he was sued in connection with the operation of that establishment or branch;
7. If the action pertained to a contract or a claim arising out of a contract and the obligation at issue was or should have been performed in the State of the decision;
8. If the action pertained to claims based on homicide, bodily injury or damage to health or loss of or damage to property and the perpetrator was in the territory of the State of the decision when the injurious act was committed;
9. If the action was based on an unlawful injurious act in business dealings or on infringement of a patent, design, trade mark, brand name or industrial design or model or copyright, and the act was committed in the State of the decision;
10. If the subject-matter of the action 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 of the decision;
11. If the action was brought in a dispute relating to succession and the decedent had his last domicile in the State of the decision, irrespective of whether the estate comprised movable or immovable property; this shall not apply, however, if the decision pertains to succession in respect of immovable property situated in the State applied to and where the succession is determined by the law of succession (*Anerbenrecht; odels- or åsetesrett*);
12. 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) Subject to the provisions of item 4 of the Protocol annexed to this Treaty, the courts of the State of the decision shall also be recognized as competent for the purposes of this Treaty if they are competent to render the terms of another agreement in force between the two States.

(3) However, the courts of the State of the decision shall not be recognized as competent if, under the law of the State applied to, sole jurisdiction in the action which gave rise to the decision vests in the courts of the last-mentioned State. The same shall apply if the State applied to is required, on the basis of its

national law or of an agreement, to recognize the sole jurisdiction of the courts of a third State.

Article 9. (1) Where a decision rendered in one State is relied upon in the other State, it may be examined only to determine whether:

1. The decision has become final;
2. The competence of the courts of the State of the decision is required to be recognized in accordance with article 8;
3. Any of the grounds for refusing recognition specified in article 6 and article 7, paragraph 2, is present.

(2) The decision may not be examined in any other respect.

(3) In determining whether the competence of the courts of the State of the decision is required to be recognized, the courts and authorities of the State applied to shall be bound by the findings of fact on the basis of which the court determined its competence. This shall not apply if the defendant had not appeared in the proceedings in the State of the decision.

PART THREE. ENFORCEMENT OF JUDICIAL DECISIONS

Article 10. (1) Decisions which are rendered by the courts of either State and to which this Treaty applies shall be liable to enforcement in the other State if:

1. They are enforceable in the State of the decision;
2. They are required to be recognized in the State in which enforcement is to be effected (the State of execution).

(2) Decisions which have not yet become final shall be liable to enforcement, under the terms of article 17, only provided that they pertain to a specific sum of money.

Article 11. The procedure for determining whether enforcement may take place and the enforcement itself shall, subject to the provisions of this Treaty, be governed by the law of the State of execution.

1. ENFORCEMENT OF FINAL DECISIONS

Article 12. An application for enforcement may be made by any person entitled to avail himself of the decision in the State in which it was rendered.

Article 13. (1) Applications for enforcement shall be submitted:

1. In the Federal Republic of Germany, to the *Landgericht*;
2. In the Kingdom of Norway, to the *namsrett*.

(2) Territorial jurisdiction shall vest:

1. In the Federal Republic of Germany, in the *Landgericht* in whose district the debtor has his domicile or, in the absence of such domicile, the debtor owns property or enforcement is to be effected;
2. In the Kingdom of Norway, subject to the exceptions provided for in item 6 of the Protocol annexed to this Treaty, in the *namsrett* in whose district the debtor has his domicile or, if the purpose of enforcement is to obtain the surrender of property, in the *namsrett* in whose district the property is situated.

Article 14. (1) The party applying for enforcement must produce:

1. A copy of the decision, containing a statement of the grounds for the decision;
2. Proof that the decision is final;
3. Proof that the decision is enforceable;
4. 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;
5. The original or a certified true copy of the certificate showing that the document instituting the proceedings was duly served on the defendant, if the defendant had not appeared in the proceedings in which the decision was rendered;
6. 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.

(2) The proof provided for in paragraph 1, subparagraphs 2 and 3, shall be furnished in the form of a certificate issued by the officer of the court which rendered the decision to be enforced, or of a higher court who is competent under the law of the State of the decision.

(3) The documents referred to in paragraphs 1 and 2 shall not require legalization or any other form of authentication.

Article 15. (1) In the proceedings concerning the application for enforcement, the examination shall be confined to determining whether:

1. The documents required under article 14 have been produced;
2. The competence of the courts of the State of the decision is required to be recognized in accordance with article 8;
3. Any of the grounds for refusing recognition specified in article 6 and article 7, paragraph 2, is present;

(2) The debtor may also oppose enforcement with the plea 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.

(3) The decision may not be examined in any other respect.

(4) The extent to which circumstances that may constitute grounds for refusing enforcement are to be considered *ex officio* or only at the instance of the debtor shall be decided in accordance with the law of the State of execution.

Article 16. Enforcement may also be authorized for only part of the decision if:

1. The decision relates to one or more claims and the creditor seeks enforcement in respect of only part of the claim or in respect of only one or some of the claims;
2. The decision relates to more than one claim and the application of the creditor seeking enforcement is valid with respect to only one or some of the claims.

II. ENFORCEMENT OF DECISIONS WHICH HAVE NOT BECOME FINAL

Article 17. (1) As regards the enforcement of decisions which have not yet become final (article 10, paragraph 2), articles 12 to 16 shall apply *mutatis mutandis*. If an application by the creditor is granted (article 10, paragraph 2, article 12), only such measures as serve to protect the creditor shall be authorized.

(2) If enforcement is conditional upon payment of security, the party applying for enforcement shall furnish proof that security has been paid.

PART FOUR. ENFORCEMENT OF OTHER EXECUTORY INSTRUMENTS

Article 18. (1) Settlements concluded in court proceedings in one State and entered in the court records shall be liable to enforcement in the other State if:

1. A judicial decision concerning the subject-matter of the settlement would have come within the scope of this Treaty had it been rendered;
2. The settlement is enforceable in the State in which it was concluded.

(2) Articles 11 to 16 shall apply *mutatis mutandis* to the application for enforcement and to the further proceedings. In ruling on the application for enforcement, the court applied to shall confine itself to determining whether:

1. The documents required under article 14, paragraph 1, subparagraphs 1, 3, 4 and 6, have been produced;
2. The parties are entitled, under the law of the State of execution, to conclude a settlement concerning the subject-matter of the proceedings;
3. Enforcement would be contrary to the public policy of the State of execution.

Article 19. The recognition and enforcement of arbitral awards shall be governed by the agreements for the time being in force between the two States.

PART FIVE. SPECIAL PROVISIONS

Article 20. (1) A person having his domicile or his habitual residence or, in the case of a body corporate or a company, having its headquarters or main office in one State may not be sued in the courts of the other State solely because such person has property in the territory of the other State (article 23 of the German Code of Civil Procedure, article 32 of the Norwegian Code of Civil Procedure).

(2) However, this shall not apply if:

1. The action pertains to a right in an item of property or a claim arising out of such a right, or to the possession of an item of property or a claim against the owner or person in possession of an item of property in his capacity as such, and in either case the item of property is in the State in which the court is situated;
2. The action pertains to a debt-claim and the debt is, on the basis of a legal transaction or by law, secured by an item of property in the State in which the court is situated or a ship or the freightage earned by such ship has, under a court order, been seized while the ship was in the State in which the court is situated as security for the debt;
3. The value of the claim asserted does not exceed the value of the property in the State in which the court is situated;

4. The purpose of the action is to seek a decision which does not come within the scope of this Treaty.

Article 21. (1) The courts of one State shall decline to rule on a decision or, where they deem it appropriate, shall suspend the proceedings if an action is already pending in the other State between the same parties concerning the same subject-matter and a decision required to be recognized in the State in which the court last applied to has its seat may be rendered in that action.

(2) However, application may be made to the courts of either State for the interim measures provided for under its law, including measures of conservation, irrespective of which court is dealing with the merits of the case.

Article 22. Subject to the provisions of article 4, paragraph 2, 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 and other executory instruments.

Article 23. (1) The two States undertake not to recognize or enforce decisions rendered by the courts of a third State against a person having his domicile or his habitual residence or, in the case of a body corporate or a company, having its headquarters or main office in the other State if the courts of the third State were competent solely because:

1. Property belonging to the defendant was situated or had been seized in the territory of that State, unless:
 - (a) The action pertained to a right in the item of property or a claim deriving from such a right, or to the possession of the item of property or a claim concerning the item of property;
 - (b) The action pertained to a debt-claim and the debt was secured by the item of property situated in the State of the decision;
2. The plaintiff was a national of the State of the decision;
3. The plaintiff had his domicile or his habitual residence of, in the case of a body corporate or a company, its headquarters, branch or business establishment in the State of the decision, unless the court considered itself competent with respect to certain contractual relations by reason of their particular nature;
4. The plaintiff carried on business in the State of the decision, unless the action related to such business;
5. The document instituting the proceedings was served on the defendant while he was temporarily present in the State of the decision;
6. The forum was unilaterally designated by the plaintiff, particularly in an invoice.

(2) The provisions of paragraph 1 shall apply only to decisions that would have come within the scope of this Treaty if they had been rendered in one of the two States.

(3) The provisions of paragraphs 1 and 2 shall not affect obligations under agreements which entered into force for one of the two States prior to 31 December 1972.

Article 24. This Treaty shall apply only to judicial decisions and other executory instruments rendered or drawn up after the date of its entry into force.

PART SIX. FINAL PROVISIONS

Article 25. This Treaty shall also apply to *Land Berlin*, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the Kingdom of Norway within three months from the date of entry into force of this Treaty.

Article 26. (1) This Treaty shall be ratified. The instruments of ratification shall be exchanged at Bonn.

(2) The Treaty shall enter into force 30 days after the date of exchange of the instruments of ratification.

Article 27. Either Contracting State may denounce the Treaty. Denunciation shall take effect one year after the date on which the other State is notified thereof.

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

DONE at Oslo on 17 June 1977 in duplicate in the German and Norwegian languages, both texts being equally authentic.

For the Federal Republic of Germany:

Dr. VOGEL

Dr. WAND

For the Kingdom of Norway:

INGER LOUISE VALLE

PROTOCOL

Upon signing the Treaty between the Federal Republic of Germany and the Kingdom of Norway concerning the reciprocal recognition and enforcement of judicial decisions and other executory instruments in civil and commercial matters, the plenipotentiaries have also agreed on the following provisions, which shall form an integral part of the aforesaid Treaty:

1. Criminal courts whose competence is limited to a particular category of persons shall not be considered criminal courts within the meaning of article 1, paragraph 2, of the Treaty.

2. The terms "employer" and "employee" within the meaning of article 2 of the Treaty shall also include their successors.

3. Article 4, paragraph 2, shall be understood to mean that decisions, settlements and acts concerning claims to maintenance acquired or obtained by any body corporate or individual to whom the claim to maintenance has passed by law because such body corporate or individual has provided maintenance or

support to the person entitled to maintenance shall also, to the extent provided for in article 4, paragraph 2, be recognized and enforced in accordance with The Hague Convention of 15 April 1958. The same shall apply where the claim to maintenance has, by an administrative act or by agreement, passed to a subject of public law who has provided maintenance or support to the person entitled to maintenance.

4. Either Contracting Party may make a declaration to the effect that competence under the terms of another agreement in force between the two States (article 8, para. 2) shall not be recognized for the purposes of this Treaty.

5. Either party to the Treaty may make a declaration designating another court as competent for the purposes of article 13, paragraph 1, if this becomes necessary owing to a change in its national law.

6. The exceptions to the territorial jurisdiction of the *namsrett* (article 13, paragraph 2, sub-paragraph 2) derive from articles 21 and 78 of the Norwegian Act of 13 August 1915 concerning execution; these provisions read as follows:

“*Article 21.* Unless the law specifically provides otherwise, the enforcing authority in individual cases shall be the *namsrett* of the parish in which the judgement was rendered and the enforcement official at the place where an act of enforcement is to be or has been carried out.

The parties may not agree on an enforcing authority other than that provided by law.

Article 78. Enforcement in respect of pecuniary claims shall first be sought at the place where the defendant has his domicile or is deemed by law to have his domicile for legal purposes.

Distrainment may be levied on property situated elsewhere:

- (1) If the defendant agrees;
- (2) If execution at the domicile of the defendant does not result in a full settlement or if it can be presumed from the outset that insufficient attachable property for a settlement is available at his domicile;
- (3) If the defendant has no known domicile in the country;
- (4) If distrainment is to be levied on an item of property on which the plaintiff has a mortgage or lien for the claim.”

7. The declarations provided for in items 4 and 5 shall be notified by the Government of one Contracting State to the Government of the other Contracting State. They may be revoked at any time.

The Government of the Kingdom of Norway shall inform the Government of the Federal Republic of Germany of any changes in articles 21 and 78 of the Norwegian Act of 13 August 1915 concerning execution referred to in item 6.

8. If The Hague Convention of 2 October 1973 on the recognition and enforcement of decisions relating to maintenance obligations¹ enters into force for both States, its provisions shall be applied instead of the provisions of The Hague Convention of 15 April 1958 (article 4, paragraph 2). The Convention of 2 October 1973 shall then apply to all the decisions referred to in the second

¹ United Nations, *Treaty Series*, vol. 1021, p. 209.

sentence of paragraph 2 of article 4 of the Treaty, even if one of the two States makes a reservation under article 26 of the Convention.

DONE at Oslo on 17 June 1977, in duplicate in the German and Norwegian languages, both texts being equally authentic.

For the Federal Republic of Germany:

Dr. VOGEL

Dr. WAND

For the Kingdom of Norway:

INGER LOUISE VALLE
