

No. 23230

**AUSTRIA
and
ITALY**

**Convention concerning the recognition and enforcement
of judicial decisions in civil and commercial matters,
of judicial settlements and of notarial acts. Signed at
Rome on 16 November 1971**

Authentic texts: German and Italian.

Registered by Austria on 9 January 1985.

**AUTRICHE
et
ITALIE**

**Convention sur la reconnaissance et l'exécution des dé-
cisions judiciaires en matière civile et commerciale, des
transactions judiciaires et des actes notariés. Signée à
Rome le 16 novembre 1971**

Textes authentiques : allemand et italien.

Enregistrée par l'Autriche le 9 janvier 1985.

[TRANSLATION — TRADUCTION]

CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE ITALIAN REPUBLIC CONCERNING THE RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS IN CIVIL AND COMMERCIAL MATTERS, OF JUDICIAL SETTLEMENTS AND OF NOTARIAL ACTS

The Federal President of the Republic of Austria and the President of the Italian Republic, desiring to ensure, in civil and commercial matters, the reciprocal recognition and enforcement of judicial decisions, judicial settlements and notarial acts, have decided to conclude a Convention to that end.

For that purpose they have appointed as their plenipotentiaries:

The Federal President of the Republic of Austria: Dr. Rudolf Kirchschläger, Federal Minister for Foreign Affairs;

The President of the Italian Republic: Prof. Aldo Moro, Minister for Foreign Affairs;

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

Article 1. (1) Final decisions rendered by the courts of one of the two States in civil and commercial matters shall be recognized as valid in the other State if the courts of the State in which the decision was rendered have jurisdiction within the meaning of the following articles and provided that, under the legal system of the State applied to, exclusive competence to render the decision does not reside in that State's own courts or in the courts of a third State.

(2) For the purposes of this Convention the term "decision" shall mean any decision, however designated, rendered in contentious or voluntary proceedings by the courts of one of the two States.

(3) This Convention shall also apply to decisions in civil and commercial matters rendered in criminal proceedings. However it shall not apply to interim orders, to decisions in bankruptcy, composition or similar proceedings or to decisions pertaining to taxes and charges.

Article 2. In matters concerning personal status and legal capacity, the courts of the State of which one of the persons whose personal status or legal capacity is at issue is a national on the date of the institution of proceedings shall have jurisdiction.

Article 3. Where the subject of the proceedings is a right *in rem* in respect of immovable property, the courts of the State in which the immovable property is situated shall have jurisdiction.

¹ Came into force on 2 October 1974, i.e., three months after the exchange of the instruments of ratification, which took place at Vienna on 2 July 1974, in accordance with article 16 (2).

Article 4. In matters concerning succession, the courts of the State of which the deceased person was a national at the time of death, or in whose territory that person was last domiciled, shall have jurisdiction. However, if the law of one of the two States, being applicable in the absence of any international agreement, provides that its own courts shall have jurisdiction in cases of succession with respect to immovable property situated in its territory, such jurisdiction shall be considered exclusive within the meaning of article 1, paragraph 1, of this Convention.

Article 5. In matters other than those mentioned in articles 2 to 4, the courts of the State in which the decision was rendered shall have jurisdiction:

1. If, on the date of the institution of proceedings, the defendant was domiciled or habitually resident in the territory of 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 an action relating to the operation of such establishment or branch establishment;
3. If, by express or tacit agreement between the plaintiff and the defendant, the contractual obligation which is the subject of the action has been or should have been discharged in the territory of that State;
4. If the subject of the proceedings is an extracontractual liability and the incident giving rise to such liability occurred in the territory of that State;
5. If the defendant has expressly submitted to the jurisdiction of that court, either by election of domicile or through an agreement conferring jurisdiction, save where the legislation of the State applied to provides to the contrary on account of the subject of the action;
6. If the defendant has entered a defence on the merits without contesting the jurisdiction of the court or without stating that he submits to its jurisdiction only in respect of property situated in the State in which the decision was rendered;
7. If, in the case of a counter-claim, the court has been recognized as having jurisdiction within the meaning of this article in respect of the principal claim.

Article 6. The courts of the State applied to shall, when examining the circumstances on which the competence of the court of the other State is based, shall be bound by the findings of fact contained in the decision.

Article 7. Recognition shall be refused:

1. If the decision is contrary to the public policy of the State applied to;
2. If the legal provisions of the State applied to concerning legal representation of persons who are incompetent or not fully competent have been violated;
3. 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 judicial order to pay (*Zahlungsbefehl/ingiunzione di pagamento*) or a payment order (*Zahlungsauftrag/ordine di pagamento*), the judgement

debtor was unable, for reasons beyond his control, to oppose it or enter an objection in time;

4. If an identical action between the same Parties, based on the same cause and relating to the same subject-matter, has already been the subject of a final decision, rendered in the State applied to or rendered in a third State and recognized in the State applied to;
5. If an action between the same Parties, based on the same cause and relating to the same subject-matter, 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 the State in which the decision was rendered;
6. If the decision pertains to private-law claims arising from acts which have been the subject of criminal proceedings in the applicant State and if such acts are deemed to be of a political nature by the court of the State applied to.

Article 8. (1) Decisions rendered by the courts of one of the two States, which are recognized in the other State in accordance with this Convention, shall be enforceable in that State if they are enforceable in the State in which they were rendered.

(2) The procedure for obtaining a grant of execution (*Bewilligung der Exekution*) in Austria or a *dichiarazione di efficacia* in Italy and the execution proceeding (*Zwangsvollstreckung/esecuzione forzata*) shall be governed by the legal provisions of the legal provisions of the State in which such measures are taken.

Article 9. (1) The Party seeking recognition of a decision in the other State must produce:

1. An authentic copy of the decision;
2. (a) If the decision was rendered in Austria, a statement by the court rendering judgement in the first instance confirming that the decision has become final;
(b) If the decision was rendered in Italy, a statement from the clerk of the court (*cancelliere*) confirming that no appeal or petition for cessation has been lodged within the time limit prescribed by law;
3. 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;
4. In the case of a judicial order to pay or a payment order, any documentary evidence that the decision has been duly communicated to the judgement debtor.

(2) Where enforcement of a decision is sought, the authentic copy of the decision shall contain the executory formula.

(3) The documents referred to in this article shall be accompanied by a translation, certified by a sworn translator of one of the two States.

(4) The documents referred to in this article shall not require legalization, or be subject to any other similar formality, for use in the State applied to.

Article 10. (1) Settlements concluded in a court of one of the two States and enforceable there shall be recognized as valid and enforced in the other

State provided that such recognition or enforcement is not contrary to the public policy of the State applied to.

(2) Settlements concluded at an Austrian Youth Office (*Jugendämter*) shall be assimilated, in so far as they concern maintenance, to the settlements referred to in paragraph (1). Recognition and enforcement shall, however, be refused if the person responsible for providing maintenance proves that he was not allowed to consult or be represented by legal counsel.

(3) The Party seeking recognition of a settlement in the other State must produce an authentic copy of the settlement and a statement by the court or youth office at which the settlement was concluded confirming that the settlement has the force of a document warranting execution (*Exekutionstitel/titolo esecutivo*). The provisions of article 9, paragraphs 3 and 4, shall apply.

Article 11. (1) Notarial acts which are enforceable in the State in which they were drawn up shall be enforced in the other State in accordance with the procedure provided for judicial decisions, in so far as it is applicable and provided that enforcement is not contrary to the public policy of the State applied to.

(2) The Party seeking recognition of a notarial act in the other State must produce an authentic copy of the document, bearing the seal or stamp of the notary, and a statement by the notary to the effect that the act has the force of a document warranting execution (*Exekutionstitel/titolo esecutivo*). The provisions of article 9, paragraphs 3 and 4, shall apply.

Article 12. The courts of each of the two States shall decline to hear an action where a case is pending between the same Parties and concerning the same subject-matter before a court of the other State whose decision may be recognized under this Convention.

Article 13. This Convention shall apply irrespective of the nationality of the Parties, save as otherwise provided in articles 2 and 4.

Article 14. (1) This Convention shall not affect the provisions of other agreements to which the two States are parties and which, in specific matters, govern the recognition and enforcement of judicial decisions, judicial settlements and notarial acts.

(2) This Convention shall not apply to decisions rendered or to judicial settlements concluded or to notarial acts drawn up before its entry into force.

Article 15. Any dispute arising between the two States concerning the interpretation or application of this Convention shall be settled through the diplomatic channel.

Article 16. (1) This Convention shall be ratified. The instruments of ratification shall be exchanged at Vienna.

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

(3) Each of the Contracting States may denounce the Convention by giving written notice to that effect. The denunciation shall take effect six months after the date on which notice is given to the other State.

IN WITNESS WHEREOF the plenipotentiaries have signed this Convention.

DONE at Rome, on 16 November 1971, in duplicate in the German and Italian languages, both texts being equally authentic.

For the Federal President of the Republic of Austria:

RUDOLF KIRCHSCHLÄGER

For the President of the Italian Republic:

ALDO MORO
