

(Dieses Übereinkommen wurde nur in englisch und französisch erstellt.)

16. CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS¹

(Concluded 1 February 1971)

The States signatory to the present Convention,
Desiring to establish common provisions on mutual recognition and enforcement of judicial decisions rendered in their respective countries,
Have resolved to conclude a Convention to this effect and have agreed on the following provisions:

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

This Convention shall apply to decisions rendered in civil or commercial matters by the courts of Contracting States.

It shall not apply to decisions the main object of which is to determine –

- (1) the status or capacity of persons or questions of family law, including personal or financial rights and obligations between parents and children or between spouses;
- (2) the existence or constitution of legal persons or the powers of their officers;
- (3) maintenance obligations, so far as not included in sub-paragraph (1) of this Article;
- (4) questions of succession;
- (5) questions of bankruptcy, compositions or analogous proceedings, including decisions which may result therefrom and which relate to the validity of the acts of the debtor;
- (6) questions of social security;
- (7) questions relating to damage or injury in nuclear matters.

This Convention does not apply to decisions for the payment of any customs duty, tax or penalty.

Article 2

This Convention shall apply to all decisions given by the courts of a Contracting State, irrespective of the name given by that State to the proceedings which gave rise to the decision or of the name given to the decision itself such as judgment, order or writ of execution.

However, it shall apply neither to decisions which order provisional or protective measures nor to decisions rendered by administrative tribunals.

¹ Dieses Übereinkommen, sowie diesbezügliche Dokumente sind auf der Internetseite der Haager Konferenz für Internationales Privatrecht (www.hcch.net) in der Rubrik „Übereinkommen“ verfügbar. Weitere Informationen zur Geschichte des Übereinkommens finden Sie in Conférence de La Haye de droit international privé, *Actes et documents de la Session extraordinaire (1966), Exécution des jugements* (514 pp.).

Article 3

This Convention shall apply irrespective of the nationality of the parties.

CHAPTER II – CONDITIONS OF RECOGNITION AND ENFORCEMENT

Article 4

A decision rendered in one of the Contracting States shall be entitled to recognition and enforcement in another Contracting State under the terms of this Convention –

- (1) if the decision was given by a court considered to have jurisdiction within the meaning of this Convention, and
- (2) if it is no longer subject to ordinary forms of review in the State of origin.

In addition, to be enforceable in the State addressed, a decision must be enforceable in the State of origin.

Article 5

Recognition or enforcement of a decision may nevertheless be refused in any of the following cases –

- (1) if recognition or enforcement of the decision is manifestly incompatible with the public policy of the State addressed or if the decision resulted from proceedings incompatible with the requirements of due process of law or if, in the circumstances, either party had no adequate opportunity fairly to present his case;
- (2) if the decision was obtained by fraud in the procedural sense;
- (3) if proceedings between the same parties, based on the same facts and having the same purpose –
 - a) are pending before a court of the State addressed and those proceedings were the first to be instituted, or
 - b) have resulted in a decision by a court of the State addressed, or
 - c) have resulted in a decision by a court of another State which would be entitled to recognition and enforcement under the law of the State addressed.

Article 6

Without prejudice to the provisions of Article 5, a decision rendered by default shall neither be recognised nor enforced unless the defaulting party received notice of the institution of the proceedings in accordance with the law of the State of origin in sufficient time to enable him to defend the proceedings.

Article 7

Recognition or enforcement may not be refused for the sole reason that the court of the State of origin has applied a law other than that which would have been applicable according to the rules of private international law of the State addressed.

Nevertheless, recognition or enforcement may be refused if, to reach its decision, the court of the State of origin had to decide a question relating either to the status or the capacity of a party or to his rights in other matters excluded from this Convention by sub-paragraphs (1)-(4) of the second paragraph of Article 1, and has reached a result different from that which would have followed from the application to that question of the rules of private international law of the State addressed.

Article 8

Without prejudice to such review as is required by the terms of the preceding Articles, there shall be no review of the merits of the decision rendered by the court of origin.

Article 9

In questions relating to the jurisdiction of the court of the State of origin, the authority addressed shall be bound by the findings of fact on which that court based its jurisdiction, unless the decision was rendered by default.

Article 10

The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention –

- (1) if the defendant had, at the time when the proceedings were instituted, his habitual residence in the State of origin, or, if the defendant is not a natural person, its seat, its place of incorporation or its principal place of business in that State;
- (2) if the defendant had, in the State of origin, at the time when the proceedings were instituted, a commercial, industrial or other business establishment, or a branch office, and was cited there in proceedings arising from business transacted by such establishment or branch office;
- (3) if the action had as its object the determination of an issue relating to immovable property situated in the State of origin;
- (4) in the case of injuries to the person or damage to tangible property, if the facts which occasioned the damage occurred in the territory of the State of origin, and if the author of the injury or damage was present in that territory at the time when those facts occurred;
- (5) if, by a written agreement or by an oral agreement confirmed in writing within a reasonable time, the parties agreed to submit to the jurisdiction of the court of origin disputes which have arisen or which may arise in respect of a specific legal relationship, unless the law of the State addressed would not permit such an agreement because of the subject-matter of the dispute;
- (6) if the defendant has argued the merits without challenging the jurisdiction of the court or making reservations thereon; nevertheless such jurisdiction shall not be recognised if the defendant has argued the merits in order to resist the seizure of property or to obtain its release, or if the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute;
- (7) if the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in the court of origin and was unsuccessful in those proceedings, unless the recognition of this jurisdiction would be contrary to the law of the State addressed because of the subject-matter of the dispute.

Article 11

The court of the State of origin shall be considered to have jurisdiction for the purposes of this Convention to try a counterclaim –

- (1) if that court would have had jurisdiction to try the action as a principal claim under sub-paragraphs (1)-(6) of Article 10, or
- (2) if that court had jurisdiction under Article 10 to try the principal claim and if the counterclaim arose out of the contract or out of the facts on which the principal claim was based.

Article 12

The jurisdiction of the court of the State of origin need not be recognised by the authority addressed in the following cases –

- (1) if the law of the State addressed confers upon its courts exclusive jurisdiction, either by reason of the subject-matter of the action or by virtue of an agreement between the parties as to the determination of the claim which gave rise to the foreign decision;

- (2) if the law of the State addressed recognises a different exclusive jurisdiction by reason of the subject-matter of the action, or if the authority addressed considers itself bound to recognise such an exclusive jurisdiction by reason of an agreement between the parties;
- (3) if the authority addressed considers itself bound to recognise an agreement by which exclusive jurisdiction is conferred upon arbitrators.

CHAPTER III – RECOGNITION AND ENFORCEMENT PROCEDURES

Article 13

The party seeking recognition or applying for enforcement shall furnish –

- (1) a complete and authenticated copy of the decision;
- (2) if the decision was rendered by default, the originals or certified true copies of the documents required to establish that the summons was duly served on the defaulting party;
- (3) all documents required to establish that the decision fulfills the conditions of sub-paragraph (2) of the first paragraph of Article 4, and, where appropriate, of the second paragraph of Article 4;
- (4) unless the authority addressed otherwise requires, translations of the documents referred to above, certified as correct either by a diplomatic or consular agent or by a sworn translator or by any other person so authorised in either State.

If the terms of the decision do not permit the authority addressed to verify whether the conditions of this Convention have been complied with, that authority may require the production of any other necessary documents.

No legalisation or other like formality may be required.

Article 14

The procedure for the recognition or enforcement of foreign judgments is governed by the law of the State addressed so far as this Convention does not provide otherwise.

If the decision contains provisions which can be dissociated, any one or more of these may be separately recognised or enforced.

Article 15

Recognition or enforcement of an award of judicial costs or expenses may be accorded by virtue of this Convention only if this Convention is applicable to the decision on the merits.

This Convention shall apply to decisions relating to judicial costs or expenses even if such decisions do not proceed from a court, provided that they derive from a decision which may be recognised or enforced under this Convention and that the decision relating to costs or expenses could have been subject to judicial review.

Article 16

A judgment for costs or expenses given in connection with the granting or refusal of recognition or enforcement of a decision may be enforced under this Convention only if the applicant in the proceedings for recognition or enforcement relied on this Convention.

Article 17

No security, bond or deposit, however termed under the law of the State addressed, shall be required by reason of the nationality or domicile of the applicant to guarantee the payment of judicial costs or expenses if the applicant, being a natural person, has his habitual residence in or, not being a natural person, has a place of business in a State which has concluded with the State addressed a Supplementary Agreement in accordance with Article 21.

Article 18

A party granted legal aid in the State of origin shall be extended such aid in accordance with the law of the State addressed in any proceedings for the recognition or for the enforcement of a foreign decision.

Article 19

Settlements made in court in the course of a pending proceeding which may be enforced in the State of origin shall be enforceable in the State addressed under the same conditions as decisions falling within this Convention, so far as those conditions apply to settlements.

CHAPTER IV – CONCURRENT ACTIONS

Article 20

If two States have concluded a Supplementary Agreement pursuant to Article 21, the judicial authorities of either State may dismiss an action brought before them or may stay such an action when other proceedings between the same parties, based on the same facts and having the same purpose, are pending in a court of another State and these proceedings may result in a decision which the authorities of the State in which the first mentioned action was brought would be bound to recognise under the terms of this Convention.

The authorities of these States may nevertheless order provisional or protective measures regardless of proceedings elsewhere.

CHAPTER V – SUPPLEMENTARY AGREEMENTS

Article 21

Decisions rendered in a Contracting State shall not be recognised or enforced in another Contracting State in accordance with the provisions of the preceding Articles unless the two States, being Parties to this Convention, have concluded a Supplementary Agreement to this effect.

Article 22

This Convention shall not apply to decisions rendered before the entry into force of the Supplementary Agreement provided for in Article 21 unless that Agreement otherwise provides.

The Supplementary Agreement shall continue to be applicable to decisions in respect of which recognition or enforcement proceedings have been instituted before any denunciation of that Agreement takes effect.

Article 23

In the Supplementary Agreements referred to in Article 21 the Contracting States may agree –

- (1) to clarify the meaning of the expression "civil and commercial matters", to determine the courts whose decisions shall be recognised and enforced under this Convention, to define the expression "social security" and to define the expression "habitual residence";
- (2) to clarify the meaning of the term "law" in States with more than one legal system;
- (3) to include within the scope of this Convention questions relating to damage or injury in nuclear matters;
- (4) to apply this Convention to decisions ordering provisional or protective measures;
- (5) not to apply this Convention to decisions rendered in the course of criminal proceedings;
- (6) to specify the cases under which a decision is no longer subject to ordinary forms of review;

- (7) to recognise and enforce decisions upon which enforcement could be obtained in the State of origin even if such decisions are still subject to ordinary forms of review and in such a case to define the conditions under which a stay of proceedings for recognition or enforcement is possible;
- (8) not to apply Article 6 if the decision rendered by default was notified to the defaulting party and the latter had the opportunity to lodge a timely appeal against such a decision;
- (8 bis) that the Authority addressed shall not be bound by the findings of fact on which the court of the State of origin based its jurisdiction;
- (9) to consider the courts of the State in which the defendant has his "domicile" as having jurisdiction under Article 10:
- (10) that the court of origin shall be considered as having jurisdiction under the terms of this Convention in cases where its jurisdiction is admitted by another Convention in force between the State of origin and the State addressed if that other Convention contains no special rules relating to the recognition or enforcement of foreign judgments;
- (11) that the court of origin shall be considered as having jurisdiction under the terms of this Convention either when its jurisdiction is admitted by the law of the State addressed relating to the recognition or enforcement of foreign judgments, or on grounds additional to those in Article 10;
- (12) to define, for the purposes of the application of Article 12, the bases of jurisdiction which are exclusive by reason of the subject-matter of the action;
- (13) to exclude, in cases where jurisdiction is based on an agreement between the parties, the application of sub-paragraph (1) of Article 12 as well as to exclude that of sub-paragraph (3) of Article 12;
- (14) to regulate the procedure for obtaining recognition or enforcement;
- (15) to regulate the enforcement of judgments other than those which order the payment of a sum of money;
- (16) that the enforcement of a foreign judgment may be refused when a specified period has elapsed from its date;
- (17) to fix the rate of interest payable from the date of the judgment in the State of origin;
- (18) to adapt to the requirements of their legal systems the list of documents required by Article 13, but with the sole object of enabling the authority addressed to verify whether the conditions of this Convention have been fulfilled;
- (19) to subject the documents referred to in Article 13 to legalisation or to a similar formality;
- (20) to depart from the provisions of Article 17 and to depart from the provisions of Article 18;
- (21) to make the provisions of the first paragraph of Article 20 obligatory;
- (22) to include within the scope of this Convention "*actes authentiques*", including documents upon which immediate enforcement can be obtained, and to specify those documents.

CHAPTER VI – FINAL CLAUSES

Article 24

This Convention shall not affect other Conventions relating to the recognition and enforcement of judgments to which the Contracting States are already Parties so long as those States have not concluded a Supplementary Agreement under the terms of Article 21.

Unless it is otherwise agreed, the provisions of a Supplementary Agreement concluded under Article 21 shall prevail over the terms of any prior Conventions in force between the Parties relating to the recognition and enforcement of judgments to the extent that their terms are mutually inconsistent.

Article 25

Whether or not they have concluded a Supplementary Agreement under Article 21, the Contracting States shall not conclude between themselves other Conventions relating to the recognition and enforcement of judgments within the scope of this Convention unless they consider it necessary, in particular, because of economic ties or of particular aspects of their legal systems.

Article 26

Notwithstanding the provisions of Articles 24 and 25, this Convention and the Supplementary Agreements made under Article 21 shall not prevail over Conventions to which the Contracting States are or may become Parties in special fields and which contain provisions for the recognition and enforcement of judgments.

Article 27

This Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law and Cyprus, Iceland and Malta. It shall be ratified and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 28

This Convention shall enter into force on the sixtieth day after the deposit of the second instrument of ratification.

This Convention shall enter into force for each State which ratifies it subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 29

Any State not falling within the provisions of the first paragraph of Article 27 may accede to this Convention after it has entered into force in accordance with the first paragraph of Article 28. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

This Convention shall enter into force for such a State in the absence of any objection from a State which has ratified this Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, this Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 30

Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of this Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

This Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

The Parties to a Supplementary Agreement concluded under Article 21 shall determine its territorial application.

Article 31

This Convention shall have a duration of five years from the date on which it enters into force under the first paragraph of Article 28, even in its application to States which have subsequently ratified or acceded to it.

In the absence of any denunciation, this Convention shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

Such denunciation may be limited to any one of the territories to which this Convention applies. Such denunciation shall affect only the notifying State. This Convention shall remain in force for the other Contracting States.

Article 32

Each Supplementary Agreement concluded under Article 21 shall take effect from the date specified in such Agreement; a certified copy and, if necessary, a translation into French or English shall be communicated to the Ministry of Foreign Affairs of the Netherlands.

Any Contracting State may, without denouncing this Convention, denounce a Supplementary Agreement either under any provision for denunciation in such Agreement or, if such Agreement contains no such provision, by giving six months' notice to the other State. Any State denouncing a Supplementary Agreement shall so inform the Ministry of Foreign Affairs of the Netherlands.

Notwithstanding the denunciation of this Convention, it shall nevertheless continue to have effect between the denouncing State and any other State with which the former has concluded a Supplementary Agreement under Article 21, unless such Agreement provides otherwise.

Article 33

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 27, and to the States which have acceded in accordance with Article 29, of the following –

- a) the signatures and ratifications referred to in Article 27;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 28;
- c) the accessions referred to in Article 29 and the dates on which they take effect;
- d) the extensions referred to in Article 30 and the dates on which they take effect;
- e) a translation or a copy of the text in English or French of Supplementary Agreements concluded under Article 21;
- f) the denunciations referred to in the third paragraph of Article 31 and the second paragraph of Article 32.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the first day of February, 1971, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law, and to Cyprus, Iceland and Malta.