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Italy

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Italy.

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ITALY

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

Being a member of European Union, Italy is subject to European regulations, and in particular the Regulation (EU) no. 1215/2012 (also known as the Brussels recast Regulation, hereafter the **Brussels Regulation**) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, that recasts the Regulation (CE) 44/2011 and applies to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.

The Brussel Regulation states, as a general rule, that a judgment given in a member State shall be recognised in the other member States without any special procedures being required.

Italy is also subject to the Lugano Convention dated 30 October 2007 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the **Lugano Convention**) entered into between the European Union and Denmark, Iceland, Norway and Switzerland, which provides for the recognition of the judgments issued in an adhering State without any specific procedure being necessary.

Furthermore, the Hague Choice of Courts Convention concluded on 30 June 2005 (the **Hague Convention 2005**) also provides that the recognition of the judgments given by the court of a contracting State designated in an exclusive choice of court clause may be refused only on the grounds specified by the Convention.

Last but not least, on 29 August 2022 the European Union (with the exception of Denmark) ratified the Hague Convention concluded on 2 July 2019 on the

recognition and enforcement of foreign judgments in civil or commercial matters (the **Hague Convention 2019**), which will come into effect on 1 September 2023. Besides the European Union, to date the Hague Convention 2019 has been ratified only by Ukraine.

2. What, if any, reservations has your jurisdiction made to such treaties?

Italy did not make any reservations on any Conventions above indicated.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Yes, in the absence of an applicable convention, the Italian law 31 May 1995 no. 218 (**Italian private international law**) regulates the field of private international law and states that a judgment issued by a foreign court may be recognised and enforced within Italian territory, provided that the main criteria indicated by article 64 are met.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

Brussels Regulation

A judgment given in a member State does not need any specific procedures neither to be recognised, nor to be enforced.

Lugano Convention

The judgment issued by the court of a State bound by the Lugano Convention is recognised in the other adhering States without any special procedure being required.

However, in order to be enforced, it has to be declared enforceable in the State where it shall be enforced on the application of any interested party.

Hague Convention 2005

The judgment issued in a State bound by the Hague Convention 2005 may be recognised and enforced in another contracting State only if it is enforceable in the State of origin.

Italian general law

Italian general law does not require any specific procedures for the recognition of a judgment issued by a foreign State, provided that the prerequisites indicated in article 64 are met. In particular, amongst others, the foreign judgment has to be *res iudicata* and has not to be contrary to Italian public policy (see below, no. 11).

In any case, the recognition of the judgment issued by a foreign court is not limited to economic relief, provided that the specific criteria set forth in the applicable convention or the law are met.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Brussels Regulation

The party interested in invoking a member State judgment shall only produce (i) a copy of the judgment which satisfies the conditions necessary to establish its authenticity and (ii) the certificate pursuant to article 53, which is issued by the court of origin upon request of the interested party.

Lugano Convention

A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity, together with the certificate referred to in article 54, which is issued by the court of the State bound by the Lugano Convention where the judgment was given upon request of the interested party.

Hague Convention 2005

The party seeking for the enforcement of the judgment has to submit the documents indicated in article 13 of the Hague Convention 2005, together with a certified translation of all documents.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The procedure for formal recognition of the judgment is provided for by article 67 of law no. 218/1995 and applies only in case the counterparty fails to comply with the judgment or disputes the judgment itself. In such a case, the party interested in enforcing the decision in the Italian territory has to file a request before the Court of Appeal asking it to ascertain that the prerequisites for recognition set in article 64 are met. Pursuant to article 30 of legislative decree no. 150/2011, the Court of Appeal of the place where the judgment shall be enforced has jurisdiction on the proceedings, which will follow the procedure of the summary judgment (i.e. *procedimento semplificato di cognizione*) pursuant to article 281 *decies* of the Italian civil procedure code.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Brussels Regulation

The only requirement requested is to submit a copy of the judgment, which satisfies the conditions necessary to establish its authenticity and the certificate pursuant to article 53, which is issued by the court of origin upon request of the interested party.

Lugano Convention

The interested party must submit a copy of the judgment, which satisfies the conditions necessary to establish its authenticity, together with the certificate referred to in article 54.

Hague Convention 2005

The Hague Convention 2005 only requests for a certified translation of all documents.

Italian general law

Italian general law requests a certified copy of the judgment, together with the document attesting that it is *res iudicata*, and that all prerequisites indicated in article

64 of law no. 218/1995 are met. All documents must be submitted in the proceeding provided for by article 67 of law no. 218/1995, only in case of failure to comply with or dispute of the judgment by the counterparty.

The judgment should also be legalised or apostilled, depending on the State where the judgment was given.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

The procedure for the recognition of the judgment, in case of dispute or failure to comply with, shall last few months (the decision may be challenged before the Court of Cassation), depending on the competent court. Whereas the length of the enforcement procedure varies significantly depending on the assets seized: ranging from a few months in the case of the seizure of a bank account or a credit up to several years in the case of the seizure of a real estate.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Pending the formal proceedings for recognition provided for by article 67 of law no. 218/1995, it is possible to obtain interim relief, provided that the prerequisites requested by Italian laws are met (i.e. *periculum in mora* and *fumus boni iuris*).

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

Italian general law does not provide any specific statute of limitation for the recognition or enforcement of a foreign judgment. Therefore, according to general principles of law, the statute of limitation for recognition and/or enforcement is ten years from the moment the decision becomes *res iudicata*, pursuant to articles 2934 and 2936 of the Italian civil code.

11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

Brussels Regulation

The enforcement of foreign judgments can be challenged based on one of the following grounds:

- 1) The recognition of the judgment is contrary to Italian public policy;
- 2) The defendant did not appear in the proceedings in which the judgment was pronounced if it was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence (unless the defendant failed to commence proceedings to challenge the judgment when he could do so);
- 3) The judgment is irreconcilable with a judgment given between the same parties in Italy;
- 4) The judgment is irreconcilable with an earlier judgment given between the same parties in another member State or in a third State regarding the same claim if the earlier judgment fulfils the requirement for recognition in Italy;
- 5) The judgment violates the provisions on exclusive jurisdiction under Section 6 of Chapter I of the Regulation and on special jurisdiction for insurance, consumers' contract and contract of employment where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant.

Lugano Convention

The foreign judgment is immediately declared enforceable on request of the interested party if all the formalities required under article 53 are met, and at this stage the court does not assess the existence of any grounds for refusal. The defendant can file an appeal against the decision on the enforceability of the judgment, arguing the existence of a ground for refusal according to articles 34 and 35 of the Lugano Convention.

Hague Convention 2005

Recognition or enforcement may be refused if:

- 1) The choice of court agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;
- 2) A party lacked the capacity to conclude the agreement under Italian law;
- 3) The document which instituted the proceedings or an equivalent document, including the essential elements of the claim,

- was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or
- was notified to the defendant in Italy in a manner that is incompatible with Italian fundamental principles concerning the service of documents;

4) The judgment was obtained by fraud in connection with a matter of procedure;

5) Recognition or enforcement would be manifestly incompatible with the Italian public policy, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness in Italy;

6) The judgment is inconsistent with a judgment given in Italy in a dispute between the same parties or with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in Italy.

Italian general law

According to article 64, the recognition/enforcement of a judgment can be challenged if the following requirements are not met:

- 1) The judge who rendered the decision held jurisdiction on the case under the Italian principles of jurisdictional competence;
- 2) The document that instituted the proceedings was notified to the defendant according to the provisions applicable to the proceedings in which the judgment was pronounced and the rights of defence were not violated;
- 3) The defendant appeared in the proceedings according to the provisions applicable to the proceedings in which the judgment was pronounced, or the judgment was pronounced in absentia according to the applicable law;
- 4) The judgment is res judicata according to the provisions applicable to the proceedings in which it was pronounced;
- 5) The judgment is not inconsistent with a judgment given in Italy which is res judicata under Italian law;
- 6) Earlier proceedings between the same parties on the

same cause of action are not ongoing before an Italian court;

7) The judgment is not contrary to Italian public policy.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The Italian courts are not allowed to review the merits of the judgment under Italian general law, the Brussels Regulation, the Lugano Convention and the Hague Convention 2005.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Brussels Regulation

Article 45 (3) Brussels Regulation generally prohibits reviewing the jurisdiction of the court of origin with an exception for special and exclusive jurisdiction under the Brussels Regulation. In its examination of the grounds of jurisdiction, the Italian courts are bound by the findings of fact on which the court of origin based its jurisdiction.

Lugano Convention

Article 35 (3) Lugano Convention generally prohibits reviewing the jurisdiction of the court of origin, except for exclusive jurisdiction under Section 6 of Chapter II and for special jurisdiction for insurance and consumers' contracts.

Hague Convention 2005

The Italian courts are bound by the findings of fact on which the court of origin has based its jurisdiction unless the judgment was given by default.

Italian general law

The Italian courts will assess whether the judge who rendered the decision had jurisdiction over the case under the Italian principles on jurisdiction.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in

default be enforced?

Brussels Regulation

Enforcement of a foreign judgment by default shall be denied if the defendant, who did not appear in the proceedings, was not served with the document which instituted the proceedings, or with an equivalent document in a way as to enable him to arrange for his defence. This ground for refusal is not applicable if the defendant failed to commence proceedings to challenge the judgment in the State of origin when it was possible to do so.

Lugano Convention

The same principle is provided for in the Lugano Convention.

Hague Convention 2005

Recognition or enforcement may be refused if the document which instituted the proceedings or an equivalent document, including the essential elements of the claim,

1) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

2) was notified to the defendant in Italy in a manner incompatible with Italian fundamental principles concerning the service of documents.

Italian general law

Recognition or enforcement may be refused if the document which instituted the proceedings was not notified to the defendant according to the provisions applicable to the proceedings before the court of origin, and the rights of defence were violated.

Foreign judgment in default can only be enforced if the absentia was declared according to the law applicable to the proceedings in which the decision was issued.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

Italian courts have no discretion over whether or not to recognise foreign judgments if the requirements provided in the applicable provisions are met.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

Generally speaking, all foreign judgments which fulfil the requirements mentioned above can be enforced in Italy.

After the Italian Supreme Court ruling in 2017 (Court of Cassation, Joint Session, 5 July 2017, No 16601), foreign punitive damages judgments are now enforceable in Italy, provided that the order is issued on a legal basis that ensures its foreseeability.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

Foreign judgments governed by the Brussels Regulation and the Lugano Convention can be enforced in Italy if they are subjected to appeal or the appeal proceeding is ongoing in the State of origin – provided that they are (provisionally) enforceable in the country of origin.

Under the Hague Convention 2005 recognition or enforcement may be postponed or refused if the judgment is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

Under the Italian general law, foreign judgments can only be enforced if the decision is final and binding (res judicata) in the State of origin.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

In Italy, the decision recognising or enforcing a foreign judgment can be appealed under the Brussel Regulation, the Lugano Convention, the Hague Convention 2005 and the Italian general law.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Interest can be claimed to the extent that it is awarded in the foreign judgment.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

A foreign judgment in a foreign currency will be converted into local currency for the purposes of the enforcement.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Tax treatment must certainly be considered when enforcement takes place in Italy.

Indeed, Article 37 of Presidential Decree No. 131 of 26 April 1986) provides that judgments on the enforcement of foreign judgments are subject to registration tax. Since this tax is levied at a proportional rate of 3%, large claims can really be affected.

However, enforcement costs (e.g., court costs, parties' costs for lawyers, taxes) incurred by the creditor may be recovered from the debtor.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Italian law does not prevent the practice of litigation funding. Therefore, an enforcement action can be funded by a third party.

The third party is not considered a party to the proceedings; hence it cannot be held liable by the court for the costs incurred by the other party.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in

the next 5 years?

The Hague Convention 2019 could improve and facilitate the circulation of judgments within States to which the Brussel Regulation and the Lugano Convention are not applicable.

On 1st September 2023, the Hague Convention 2019 will enter into force for EU member States and Ukraine. So far, the United States of America, Russia Federation, Israel, Uruguay, Costa Rica, Montenegro and North Macedonia have signed the Hague Convention 2019.

Another significant development in the enforcement process in Italy concerns the legal framework applicable to the enforceability of the UK judgments after Brexit. From 1st January 2021, the UK is not bound to the Brussel Regulation nor to the Lugano Convention.

On 8th April 2020, the UK submitted an application for accession to the Lugano Convention, which should be approved by all the contracting parties. While Switzerland, Norway and Island approved the accession, the European Union declared not to be 'in a position to give it consent to invite the United Kingdom to accede the Lugano Convention'.

Considering this stalemate, the Hague Convention 2019 could be an alternative solution for the recognition and enforcement of UK judgments, subject to the signing and ratification of the Convention by the UK.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

Italy is bound by the Hague Convention 2005 due to the ratification by the EU.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

Both the European Union and Ukraine ratified the Hague Convention 2019 in August 2022. Therefore, the Hague Convention 2019 will enter into force on 1st September 2023 and will be binding for all European Union member States, including Italy.

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