



Enforcement of Judgments under the Brussels Regulation

The Brussels regime consists of:

- The Brussels Regulation (*Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*).
- 1988 Lugano Convention (*The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters*).

The enforcement regime under the Brussels Regulation is a simplified and expedited version of the enforcement regime under the Brussels Convention and Lugano Convention which are similar (they have the same article numbers).

As a result of new member states joining the EU on the 1st May 2004, the Brussels Regulation also applies to the new EU member states. Although the Brussels Regulation is not directly applicable to Denmark, it has effectively been extended to Denmark by a separate agreement between the EU and Denmark which took effect on 1 July 2007. The position is therefore as follows:

- **Brussels Regulation** governs issues of jurisdiction as between all EU states (that is, Austria, Belgium, Bulgaria, Republic of Cyprus (not including Turkish Cyprus), Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom). Denmark is also included by virtue of the separate agreement.
- **Lugano Convention** governs the enforcement of judgment as between Iceland, Switzerland and Norway and all pre-2004 EU states plus Poland. Note that except for Poland, the EU states that joined the EU on 1 May 2004 have not ratified the Lugano Convention.

The effect of the Brussels regime

The aim is that a claimant who has obtained a judgment from a member state may enforce that judgment in all other member states without issuing separate proceedings in that other member state.

The courts of the enforcing state must first declare the judgment to be enforceable. Procedures differ from state to state and are governed by local law. It is imperative, therefore, that local lawyers are involved at an early stage. The state in which the judgment was given (the judgment state) and the state in which it is sought to enforce it (the enforcing state) both need to be bound by the Regulation or be signatories.

Not all types of claim can be enforced even if both States are bound by the Regulation or are signatories (*see below*).

As noted above, if the judgment is uncontested the creditor can elect to use the simplified EEO procedure.

Matters not falling within the scope of the Brussels regime

Even if the enforcing State is bound by the Regulation or a signatory to the Convention this enforcement regime will **not** apply to a judgment which:

- Does not fall within the category of "civil or commercial matter".
- Relates to bankruptcy or insolvency proceedings.
- Relates to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.

The Brussels regime does not, in addition, apply to arbitration (including court orders which give judicial force to an arbitration award).

Enforcing an English judgment in a member state

The United Kingdom (and hence England and Wales) is bound by the Brussels Regulation. It is also a contracting state to the Lugano Convention.

The Brussels regime enables the recognition of English judgments in other member states without needing to issue fresh proceedings in the enforcing jurisdiction.

"Judgment" includes:

- An order for costs.
- Many interlocutory orders (but not those relating to the conduct of the proceedings themselves).
- Injunctions (although there may be difficulties enforcing, in certain jurisdictions, orders obtained "without notice" such as freezing injunctions).
- Decrees for specific performance.

Procedure

The procedure to enforce an English judgment in another member state is as follows:

- Make a "without notice" application in the enforcing state for the judgment to be declared enforceable (Article 38 of the Regulation or Article 34 of the Convention). While in theory this provision should override any local law requirements of notification, local law advice should be sought, as in practice there may be important modifications.
- The appropriate body to which the application should be made in the case of each member state is listed in Annex II of the Regulation or Article 32 of the Convention.
- The procedure is a matter of local law - instruct local lawyers.

There follows a summary of what should be produced to the court in the enforcing state depending on whether you are operating under the Regulation or the Convention. This may vary in accordance with local law. Always instruct local lawyers.

Requirements on an application for recognition or declaration of enforcement under the Brussels Regulation

- Copy of the judgment.
- Certificate in the standard form set out in Annex V of the Brussels Regulation.
- Certified translations of the above, prepared by a translator qualified in enforcing state.
- Any other documents required by local law.

See Articles 53 to 54 of the Regulation.

Requirements on an application for recognition or enforcement under the Lugano Convention

- Copy of the judgment.
- In case of default judgment, the original or certified true copy of the document establishing service of the claim form (or equivalent).
- Opinion or other document establishing that, as a matter of English law, the judgment is enforceable (an affidavit or witness statement sworn or made by an English qualified lawyer would be an appropriate document).
- Evidence of service of the judgment on the defendant.
- Certified translations of the above, prepared by a translator qualified in the enforcing state.
- Any other documents required by local law.

See Articles 46 to 48 of the Convention.

Enforcing the order

Once an order for recognition or enforcement has been obtained, consider applying to the enforcing court for a freezing injunction or other protective measures to safeguard the assets in that jurisdiction. You can do this even if the defendant is appealing the decision to authorise enforcement.

It may be possible to obtain interim protection even before recognition; this should be considered particularly if there is a concern about, for example, dissipation of assets or to prevent continued unlawful activity.

Under the Brussels Regulation a judgment from a Regulation state is to be declared enforceable immediately on the completion of the formalities set out in Articles 53 to 54 of the Regulation. There is no power for the court in the enforcing state to refuse enforcement of its own motion by reference to the grounds for refusal that are set out in Articles 34 and 35 (*see below*). The only grounds for refusing enforcement at this stage are that the formalities in support of the application have not been complied with (that is, the documentation is faulty). Recognition can, however, still be refused by reference to the grounds set out in Articles 34 and 35 (*see below*).

By contrast, under the Convention, the court in the enforcing state has the power of its own motion to refuse enforcement at this stage by reference to the grounds set out in Articles 27 and 28 of the Convention.

If there is a refusal by the courts of the enforcing state to recognise or enforce, consider appealing. The appeal decision may then itself be appealed by either party. The relevant appeal body (in the case of each member state) is set out in Annex III of the Brussels Regulation or Articles 40 and 41 of the Convention. The Convention and the Regulation are silent on the question of time limits for appeals. Seek local law advice on this point and regarding procedure on appeals generally.

For further information and advice please contact:

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