
JURISDICTION: ITALY

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A. GENERAL INFORMATION

(i) Does your Jurisdiction permit the recognition and enforcement of foreign judgments on commercial matters?

Yes, Italy has two sets of legal rules applicable to the recognition and enforcement of foreign decisions.

The first one is applicable to decisions issued by a court of EU member countries and is regulated by Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Civil and Commercial Judgments, called "Brussels 1" and entered into force on 1 March 2002. Similar rules apply to Iceland, Norway and Switzerland.

The second one is the procedure applicable to all other foreign courts and is set forth by Article 64ff of Law 218/1995.

(ii) Is the existence of a treaty with the foreign country required to allow recognition and/or enforcement?

No. The rules dictated by Article 64ff of Law 218/1994 shall apply to all non treaty cases.

(iii) With which countries (if any) has your country concluded any international treaty (bilateral or multilateral) relating to recognition of foreign judgments?

Italy is a party to numerous bilateral or multilateral conventions for the reciprocal recognition of judicial decisions, however those conventions are quite old and the procedure is more burdensome than the one provided under Law 218/95 and will therefore it is preferable to rely on the more expedited procedures of Law 218/95.

In practice, the most important treaty is the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, which applies to decisions issues by a court of a country member of the European Union, which is now substituted by Council Regulation 44/2001. The same rules are also applicable, pursuant to the 1988 Lugano Convention, to Iceland, Norway and Switzerland.

B. RECOGNITION IN NON-TREATY CASES

(i) Apart from treaty cases, what conditions must a foreign judgment satisfy to be recognized for enforcement?

According to Article 64 of Law 218/95 a foreign decision issued by a Court of a country not governed by Regulation EU 44/2011 or the Lugano Convention is recognized in Italy without any proceeding when the following conditions are met:

- A. The foreign Court had jurisdiction to issue the judgment, according to Italian rules on jurisdiction.
- B. The initial subpoena was validly served upon the other party, pursuant to the rules in force in the foreign jurisdiction and there is no violation of the right of the party to defend its case.
- C. The parties have appeared in the proceeding according to the laws of the foreign jurisdiction or the failure to appear in court (contumacia), was declared by the court in accordance with its rules.
- D. The judgment is res judicata according to the law of the country where the decision was issued.
- E. There is no Italian judgment with the effect of res judicata relating to the same matter.
- F. No proceeding between the same parties for the same matter was started before an Italian court prior to the commencement of the foreign proceeding.
- G. The foreign judgment is not contrary to public order.

In practice, in case of decisions awarding damages, a proceeding is always required, unless the debtor pays spontaneously. In fact, Article 67 of Law 218/95 requires an exequatur proceeding when the defendant challenges the right of the creditor to enforce the decision and when the creditor wants to resort to a foreclosure procedure or to any other legal remedy for the effective implementation of the decision.

(ii) In what circumstances will a court refuse to recognize a non-treaty foreign judgment?

The foreign judgment shall not be recognized when not in compliance with the requirements set forth in Article 64 of Law 218/95. More specifically, with reference to each specific requirement:

Requirement sub A - Jurisdiction

The foreign judgment will not be recognized unless the foreign court had jurisdiction based on one of the following criteria:

- The defendant has its residence or domicile in the jurisdiction or has appointed a representative authorized to appear in court in that jurisdiction;
- there is jurisdiction pursuant to one of the criteria established by Title 2, Sections 2, 3 or 4, of the Brussels convention dated 1968;
- the defendant has accepted the jurisdiction of the foreign court either in writing or by appearing before the foreign court without challenging its jurisdiction.

Requirement sub B - Right to defend

The defendant must have received notice of the case and provided with adequate time to appear and defend

Requirement sub C - Default Judgments

If the defendant did not appear before the foreign court, such a failure must be declared by the court pursuant to the foreign law. Regardless of what the foreign law provides with respect to this issue, it is strongly recommended that the plaintiff asks the court to mention directly in the decision that the defendant was duly served and failed to appear. Failure to appear in court cannot be considered as the sole reason for granting an award against the defendant, and judgments issues for this reason only might be rejected.

Requirement sub D - Res Judicata

The foreign decision should be final and relevant evidence must be provided. From a practical point of view, it could be complicated to present evidence that the decision is no longer subject to any appeal. Affidavits are not normally introduced in Italian proceedings, and the best way for proving compliance with the requirement is that of supplying the relevant section of the rules of civil procedure of the foreign jurisdiction, translated into Italian, together with the petition for exequatur. If possible, it is better to obtain a declaration by the court (or by the clerk of the court) that the decision is res judicata under the local laws.

Interlocutory orders or procedural decisions are not recognized under Article 64.

Requirement sub E - Conflicting Italian decision

The existence of a final Italian conflicting decision will bar the enforcement of the foreign decision. According to Italian rules of civil procedure a matter is deemed res judicata if no ordinary appeal or recurses against the decision are available.

The decision must be exactly on the same grounds and between the same parties.

If the Italian decision is subject to appeal, the requirement under F) shall apply.

Requirement sub F - Prior Conflicting Italian proceeding

The foreign decision will not be recognized if a procedure between the same parties and on the same subject matter is pending in Italy and the Italian proceeding was commenced before the start of the foreign decision.

It must be noted that the Italian code of civil provides for two main ways of initiating a proceeding: (i) serving a petition upon the defendant and then filing the case in court, and (ii) filing the case in court and then serving the petition upon the defendant. In the first case, the start date of the proceeding is the date of service of process, in the latter case the start date is the filing date.

Requirement sub G – Public Order

This requirement is seldom used to bar recognition of foreign decisions in commercial matters.

Awards for punitive damages is likely to be held against public order.

(iii) In what circumstances (if at all) Is it possible to re-open the merits of the decision of the foreign court?

According to Italian rules it is not possible to re-open the merit of the foreign decisions.

(iv) What are the basic procedures for obtaining recognition of a non-treaty foreign judgment for the purpose of subsequent judicial enforcement? Please summarize and give legal citation.

The claimant must file a petition for recognition before the Court of Appeals of the district where the subsequent judicial enforcement must take place according to Article 702bis of the code of civil procedure.

The petition must be accompanied by a certified copy of the foreign decision, translated into Italian, with apostille or legalization. The petition must be also supported by documentation showing compliance with the requirements indicated above.

Requirements under (a), (e), (f) and (g) do not usually represent a problem and, in any event, are for the defendant to raise.

Regarding the requirements sub (b) - service of process, it is certainly recommended that the case be initiated by serving the petition in accordance with the Hague convention of 15 November 1965 or, if not available, through an Italian bailiff in accordance with Italian law. It is very important to obtain evidence that the petition was actually served upon the other party. If the petition is served under Italian rules of civil procedure, the bailiff will always return a report, attached to the petition, with an indication of the party to whom the petition was served and date of service. The original of that document is required to later enforce the decision in Italy. If the petition is served through the Hague convention, the central authority will issue a report that the petition was forwarded to the defendant, usually by certified mail. This statement is not sufficient to prove service of process, which is proven only when the return receipt of the certified mail is received by the plaintiff and the receipt indicates that the petition was actually delivered to the defendant. This receipt often gets lost in the international mail system and the plaintiff must be very careful and renew service of process, if the receipt is not received in a reasonable period of time.

Regarding the requirement under (c) - appearance, the best thing is to have the court indicate the point in the decision. If this is not possible, plaintiff will have to file documents evidencing that the defendant appeared in court (for example, a brief filed by the defendant). If the defendant failed to appear, such a failure must be noted in the decision.

The requirement under (d) - res judicata is one that often creates problems, due to the differences in the various jurisdictions and to the reluctance of Italian court to accept affidavits to explain foreign legislation. The best possible solution is that of filing a certification issued by the court to the effect that the decision is res judicata. Alternatively, plaintiff will have to submit a copy of the statute indicating the time after which the decision become final.

Upon receipt of the petition for exequatur the Court will schedule an hearing date and set a date for service upon the defendant. The defendant must file his reply brief and accompanying documents no later than 10 days before the hearing date.

Once the favorable decision of the court is obtained, the foreign decision, together with the decision of the Court of Appeal, constitutes a "titolo esecutivo", i.e. a document for which a party may request the use of judicial enforcement remedies if the decision is not spontaneously complied by the debtor.

(v) Which documents (if any) must be translated into which language(s)?

All documentation filed together with the petition, such as foreign decision and all documents required to prove requirements above indicated must be translated into Italian according to art 122 of Italian civil procedure code.

(vi) What appeals (if any) are available?

The decision of the Court of Appeals is subject to recourse before the Supreme Court for violation of law, according to Article 111 of the Constitution.

(vii) How much time approximately will the procedure for obtaining recognition take with/without challenge or appeal?

The duration of the procedure depends on the backlog of the competent Court of Appeal and completeness of documentation. In our experience first hearing is scheduled in approximately 3-4 months and the decision may be issued at such first hearing or at a later hearing. A total of 6-9 months is to be expected, excluding appeal to the Supreme Court.

(viii) What is the approximate cost of the recognition process with/without challenge or appeal?

Administrative filing fee: € 135,5. Service of process

Upon issuance of decision, registration tax whose amount varies depending on the award of the decision. Damage awards are normally taxed at 3%. Payment of consideration for sale of goods or services are subject to a flat tax of 168 EURO however interests are taxed at 3%.

Legal fees depend on the value and complexity of the dispute. Translation costs should be also added.

(ix) What costs (if any, likely proportion) are recoverable from the judgment debtor?

It is possible to recover administrative fees and registration tax. Legal fees are recoverable only if awarded by the decision of the Court of Appeals.

C. TREATY CASES

(i) What is the scope of any such treaty?

Regulation 44/2001 and Lugano Convention apply to all EU member countries, Iceland, Norway and Switzerland. The purpose is that of creating a common European judicial area of mutual recognition of decisions.

(ii) What conditions must a foreign judgment from a treaty country satisfy in order to be recognized for enforcement?

Please see response below sub (iii)

(iii) In what circumstances will the court refuse to recognize a foreign judgment obtained in a treaty country?

The Court refuses recognition, according to Article 34 of the Regulation 44/2001, when:

(a) recognition is manifestly contrary to public policy in the Member State in which recognition is required;

(b) where it was given in default of appearance, if the defendant was not duly served 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 it was possible for him to do so;

(c) if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is required;

(d) if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

(iv) In what circumstances (if any) is it possible to re-open the merits of the decision of the foreign court?

It is not possible to reopen the merit of the case.

(v) What are the basic procedures for obtaining recognition of a foreign judgment from a treaty country? Please summarize and give legal citation.

The application to enforce an EU judgment must be filed with the Court of Appeals of the district of residence of the defendant. The initial procedure is ex parte and the Court will make only a formal review of the documentation attached to the petition and issue an order granting or denying enforceability in Italy. The order is served upon the defendant, who has one month to file an opposition contesting the enforcement order. Pending the opposition, the party seeking enforcement may nevertheless obtain a lien on the assets of the defendant to insure payment of final award.

(vi) Are translations of documents required and, if so, which documents and in respect of which language(s)?

All documentation filed together with the writ of summons, such as foreign decision and all documents needed to prove requirements above indicated must be translated into Italian according to art 122 of Italian civil procedure code.

(vii) What appeals (if any) are available?

The decision of the Court of Appeals is always subject to recourse before the Supreme Court for violation of law, according to Article 111 of the Constitution.

(viii) How much time approximately will the procedure for obtaining recognition take with/without challenge or appeal?

The initial procedure ex parte by which the Court of Appeal declares the enforceability of foreign decision will take about 3-4 months from filing of petition.

The procedure of opposition, if any, will last about 1 year.

(Ix) What is the approximate likely cost of the recognition process with/without challenge or appeal?

Recognition before the Court of Appeal according to Reg. EU 44/2001 is free of charge.

Recognition according to Lugano Convention:

Administrative filing fee: € 135,5. Upon issuance of decision, registration tax whose amount varies depending on the award of the decision. Damage awards are normally taxed at 3%. Payment of consideration for sale of goods or services are subject to a flat tax of 168 EURO however interests are taxed at 3%.

(x) What costs (if any, likely proportion) are recoverable from the judgment debtor?

It is possible to recover administrative fees and registration tax, if any. Legal fees are recoverable only if awarded by the decision of the Court of Appeals

D. JUDICIAL ENFORCEMENT FOLLOWING RECOGNITION OF THE FOREIGN DECISION

(i) Is there a special court or judge who hears and decides procedural issues in relation to enforcement of judgments?

Yes, in Italy all questions regarding the proceedings to enforce a judgment will be decided by the Judge of enforcement (Giudice dell'Esecuzione)

(ii) If so, what are his/her role and responsibilities?

All actions and activities for the judicial enforcement of a decision, including appropriation and auction sale of assets are performed under the supervision of this judge, who will also decide on any opposition regarding the actual enforcement of the decision.

(iii) What options are available to enforce a judgment against

(A) Personal property

YES with some exemptions for personal properties used for daily living, such as beds, kitchen etc.

(B) Real property

YES.

(C) Bank or other accounts

YES, however it is not easy to find out where the debtor holds a bank account.

(D) Third party debts

YES.

(E) Earnings

Yes however in case of salaried employee only a portion of the salary may be taken.

(F) Other

Any asset which may have an economic value (inventory, intangible assets, etc)

(iv) What are the basic procedures and who undertakes the process in relation to each enforcement method? Please summarize and give legal citations.

The procedure depends on the location of the assets and, to a lesser extent, on the type of asset. All actions require the creditor to serve the decision, together with the court order authorizing execution in Italy, to the debtor together with a formal demand for payment ("Precetto"). If the debtor does not pay within 10 days, a foreclosure procedure may be commenced. The foreclosure procedures are extremely complex and detailed and the discussion below is only intended to provide a general background.

1) Foreclosure on assets at the domicile or residence of the debtor

The procedure is carried out by the bailiff of the court to whom the creditor must provide a copy of the judgment with the enforcement order. The bailiff will visit the domicile of the debtor and prepare a list of assets and related estimated value in case of forced sale. The bailiff will issue a formal order to the debtor not to remove the assets. The debtor is normally appointed as custodian pending the forced sale procedure, however the creditor may ask the court that assets be apprehended and deposited in a judicial repository. Assets are then sold at auction and the proceeds are disbursed to the creditor. Debtor may petition the judge for an installment repayment plan.

2) Foreclosure on third party debts (including bank accounts)

The creditor must send a notice, through a lawyer, to the third party, requesting the third party to provide information on any debts he may have towards the debtor and summoning the third party not to pay any amount to the debtor. The notice must include an hearing date. The third party may appear at the hearing or provide communication regarding the existence of any such debt. The debt is assigned to the creditor by the judge.

3) Foreclosure on real estate

The creditor must serve a notice through the bailiff who will provide to seize the property. The foreclosure notice is also registered on Register of Real Estate which will basically block any sale of the assets. The foreclosure procedure provides for the sale of the property through auction and the assignment of proceeds to the creditors.

(v) What other methods of enforcing a judgment are there?

NOT AVAILABLE

(vi) How much time approximately does each enforcement method take?

Foreclosure on third party debts are fairly quick and normally induce debtor to pay. Enforcement on real estate is usually very long, due to several problems with real estate auctions. Enforcement on movable assets is usually reasonably quick and takes a few months, however sales prices are often very low.

(vii) What is the approximate likely cost of each enforcement method and can this cost be added to the judgment debt?

Costs are not easy to predict as they depend on the assets on which the judgment is enforced, length of procedure, volume of assets to be placed on repository, number of sales auctions etc. Cost may be collected from proceeds of forced sales.

E. EMERGENCY OR PROTECTIVE MEASURES PRIOR TO ENFORCEMENT

(i) What, if any, emergency and/or protective measures are available to

(a) Prevent dissipation of assets by the judgment debtor prior to enforcement?

Seizure of assets.

(b) Require disclosure of assets and their location by the judgment debtor?

NOT AVAILABLE

(c) Preserve property and assets of the judgment debtor generally pending enforcement?

Please refer to point (d) below.

(d) What facts or prerequisites will the foreign judgment creditor need to establish in order to satisfy the court that emergency or protective measures should be granted?

Under Reg. 44/2001 and Lugano Convention the foreign decision is ground for requesting a seizure of assets from the Judge. If the *ex parte* exequatur is issued the preventing measures can be obtained without requesting an ad hoc judicial proceedings.

For all other decisions, the creditor must show that he has a prima facie right to obtain the enforcement and that the delay due to the procedure may cause a dissipation of the assets of the debtor, because of its financial situation or attitude and behavior. The order is issued by a Judge.

(e) For each such emergency or protective measure, what are the basic procedures? Please summarize and give legal citations.

A petition must be filed with the Court to obtain a preventive seizure on assets or other goods. The Judge issues an *inaudita alter parte* decision granting the measure or schedule an hearing to discuss it according to art 669 sexies and ss of civil procedure code.

(f) What is the approximate likely cost of obtaining such emergency or protective measures?

Administration filing fee: range between € 30 and € 700, depending on the value of the case .

Legal fees depend on the value and complexity of the dispute. Translation costs should be also added.

(ii) Will the court recognize and enforce a foreign court's interim or provisional order or judicial decision to preserve assets or protective measure against dissipation of the judgment debtor's assets?

No.

(a) If so, how does the procedure differ to that described in answer to the questions in section A ("Recognition")? Please summarize and give legal citations.

Not available.

(b) Must the judgment creditor provide security for costs that the judgment debtor may incur in challenging and/or appealing recognition of a foreign court's interim or provisional order? If so, please say how the court would deal with this.

NO.

F. ADDITIONAL USEFUL INFORMATION

(i) What agencies, registers or other resources (public or private) are available to provide information on a judgment debtor's assets and their location?

Company balance sheets are public and usually provide some information on location of main assets.

Real estate registries are also public and permit to locate real estate properties.

Bank information is usually not available.

(ii) Which (if any) any court or other procedures, apart from the emergency or protective measures referred to at section C above ("Protective Measures"), are there to obtain information on a judgment debtor's assets and their whereabouts?

NOT AVAILABLE

(iii) Will the court enforce a foreign judgment against the state or government agencies and/or against Local assets of foreign States (issues of immunity)?

NO.

(iv) If any documents have to be served on a judgment debtor who has no Service address in your jurisdiction, how may those documents be served? Please outline the procedure and the approximate time and likely costs involved.

It is possible to resort to the rules dictated by the 1965 Hague Convention on Service Abroad. Service is normally made by Italian bailiff via mail.

Service within the European Union is possible under Reg EU 1393/2007.

(v) Will the court enforce a foreign judgment in a foreign currency?

YES

(vi) If conversion of the judgment debt into the local currency is necessary, what is the rate of conversion?

The Court may convert the amount in Euro at the date of the decision or order payment in Euro at the conversion rate of the date of payment.

(vii) Can interest be claimed and be added to the judgment debt to be enforced and, if so, how is the interest calculated?

Interest is calculated as indicated in the foreign decision. If no order for interest is included in the foreign decision, legal interest rate (currently at 2,5%) is added from the date of petition

(viii) Is there a limitation period in your country in relation to the enforcement of judgments?

10 years.

(ix) What is the minimum amount of a foreign judgment that in your view it would be economical to seek to enforce in your country?

Approximately € 10.000.