



# Recognition and Enforcement of Foreign Judgments Comparative Guide



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# Recognition & Enforcement of Foreign Judgements Comparative Guide

## Austria

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## Contributing Countries

Angola	France	Mozambique
Australia	Germany	Nigeria
Austria	Greece	Norway
Bahamas	Iraq	Portugal
Bangladesh	Iraq	Singapore
BVI	Ireland	UK
Cyprus	Italy	USA
Ecuador	Mexico	

## 1. Legal and judicial framework

### 1.1 Which legislative and regulatory provisions govern the recognition and enforcement of foreign judgments in your jurisdiction?

In addition to the bilateral and multilateral instruments discussed below, the Austrian Enforcement Act, the Austrian Code of Civil Procedure and the Austrian Jurisdiction Act govern the recognition and enforcement of foreign judgments. In case of a conflict between statutory law provisions and applicable treaty provisions, the latter will prevail. Although Austrian case law is not binding, it is given careful consideration.

### 1.2 Which bilateral and multilateral instruments on the recognition and enforcement of foreign judgments have effect in your jurisdiction?

Austria is a signatory to many bilateral and multilateral instruments. The most important in this regard is EU Regulation 1215/2012 of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Recast) (Brussels Ia Regulation). The Brussels Ia Regulation lays down uniform rules to facilitate the free circulation of judgments in the European Union and applies to legal proceedings instituted on or after 10 January 2015.

The Brussels Ia Regulation replaces EU Regulation 1215/2012 of 22 December 2000 (the Brussels I Regulation; together with the Brussels Ia Regulation, 'the Brussels regime'), which remains applicable to all legal proceedings instituted prior to 10 January 2015.

Other instruments regarding the recognition and enforcement of foreign judgments, between both EU and non-EU member states, are set out in the table below.

Instrument	Purpose	Jurisdiction
Regulation (EC) No 2201/2003 of the Council of 27 November 2003 (Brussels IIa)	Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility	EU
Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004	European enforcement order for uncontested claims	EU
Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006	European order for payment procedure	EU
Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007	European small claims procedure	EU
Regulation (EC) No 4/2009 of the Council of 18 December 2008	Jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations	EU
Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014	Established the European account preservation order procedure to facilitate cross-border debt recovery in civil and commercial matters	EU
Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015	Insolvency proceedings	EU
Regulation (EU) No 2015/848 of the European Parliament and of the Council of 20 May 2015	Insolvency proceedings	EU

## 1.3 Which courts have jurisdiction to hear applications for the recognition and enforcement of foreign judgments?

According to the Enforcement Act, the competent court for the declaration of enforceability, in general, is the district court of the opposing party's domicile. Once the declaration of enforceability has been obtained and is effective, the foreign judgment may be enforced. The court for the declaration of enforceability and the court for the motion for enforcement are different. The court proper for the motion for enforcement is:

- the district court where land property that is the object of enforcement is registered;
- the district court where immovable property not registered is located;
- the district court of the opposing party's domicile, in case of receivables; or
- the district court of the third party's domicile, in case of garnishment orders.

## 2. Requirements for enforceability

### 2. 1. What types of judgments may be recognised and enforced in your jurisdiction? Are any types of judgments specifically precluded from enforcement?

In general, all judgments ordered by a foreign court are enforceable in Austria. It is essential that the foreign judgment represents a writ of execution in its country of origin and is enforceable in that country. Section 403 of the Enforcement Act states that foreign legal acts and/or deeds shall be enforced in Austria after being declared enforceable. The term 'legal acts and/or deeds' should be interpreted as meaning any judgment given by a court or tribunal, as long as the executory title is enforceable in the state of issuance of the judgment.

Austrian public policy must be considered when assessing whether remedies are enforceable in Austria, as only those remedies that do not violate the fundamental principles of Austrian law will be enforceable.

### 2. 2. Must a foreign judgment be final and binding before it can be enforced?

In general, the foreign judgment need not be final and legally binding according to the laws of the country where it was rendered. As long as the judgment is enforceable in the country of origin, it must be declared enforceable in Austria as well.

Leave for enforcement and an enforcement authorisation may be ordered by an Austrian court regardless of whether the executory title in question is subject to appellate proceedings in its jurisdiction of origin.

### 2. 3. Is a foreign judgment enforceable if it is subject to appeal in the foreign jurisdiction?

Pursuant to Section 406 of the Enforcement Act, the foreign executory title may be enforced even if it is still subject to appeal, but enforceable in the state of the issuance of the award.

In case of an appeal against the decision to grant a declaration of enforceability, the appeal court may stay the proceedings until the foreign judgment has become final and binding.

## 2. 4. What is the limitation period for making an application for recognition and enforcement?

Limitation periods vary depending on the claim in question and the law applicable to such claim. Under Austrian law, a judgment may be enforced within 30 days of its entry into legal force. The limitation period starts from the day on which the judgment became legally binding.

In the case of a final judgment from a foreign court, Austrian law distinguishes between two scenarios:

- If the foreign judgment is enforceable in Austria, the statute of limitations must be assessed under the law applicable to the claim awarded in the judgment. In this case, the Austrian courts may reject the declaration of enforceability where, under the applicable foreign law, the right to enforce the judgment has already become time barred.
- If the foreign judgment is not enforceable in Austria, such a final judgment merely interrupts the statute of limitations under the law applicable to the claim awarded in the judgment and causes the limitation period to start to run again.

## 3. Recognition and enforcement process

### 3. 1. Is recognition of a foreign judgment a separate process from enforcement and does it have separate legal effects?

The enforcement of foreign judgments in Austria is contingent on the application and issuance of a declaration of enforceability. Once the declaration is effective, the judgment may be enforced. However, the application for a declaration of enforceability and the motion for enforcement may be filed at the same time.

On the other hand, under the Brussels regime, a judgment rendered in an EU member state is recognised in other member states without any separate recognition proceeding. Furthermore, a judgment issued in an EU member state and enforceable in that member state is also enforceable in any other member states without a declaration of enforceability. The judgment creditor need only provide a copy of the judgment and a certificate stating that the judgment is enforceable.

### 3. 2. What is the formal process for recognition and enforcement?

A party seeking enforcement must request leave for enforcement from the respective court. The application for a declaration of enforceability must be submitted to the court of the place where the debtor is domiciled. The party may combine this request with a request for an enforcement authorisation. In such case the court will decide on both simultaneously. Once a foreign judgment has been declared enforceable in Austria, its execution follows the same rules as those for a domestic judgment, meaning that the enforcement of judgments is regulated by the Enforcement Act.

The court will examine both the grounds for granting leave and the grounds for refusal, based only on the documents submitted. Either party may appeal the district court's order (see question 6). If a judgment contains a measure or an order which is not known in Austria, the court may adapt that measure or order a measure known in Austria which has the equivalent effect.



### 3. 3. What documents are required in support of an application for recognition and enforcement?

The party must submit the original foreign judgment or a copy issued by the same authority which rendered the foreign judgment. A full certified translation of the judgment must accompany the original or copy.

### 3. 4. What fees are payable for recognition and enforcement?

An application for a declaration of enforceability triggers no fees. However, an application for enforcement will trigger court fees, depending on the amount in respect of which the enforcement is sought. These court fees must be paid under the Court Fees Act, which also applies to the enforcement of domestic judgments.

### 3. 5. Is the applicant required to provide security for costs?

No, the applicant for recognition and enforcement in general need not provide security for costs. However, where there is an application to stay proceedings, if the stay of the enforcement proceedings might endanger satisfaction of the enforcing creditor's claim, the court may order an appropriate security deposit from the applicant.

### 3. 6. How long does it usually take to obtain a declaration of enforceability?

It takes approximately one to two months for a decision on recognition and enforcement to be rendered at first instance. This period may be extended by a maximum of a further six months if the decision is appealed.

### 3. 7. Can the applicant seek injunctive relief while the process is ongoing?

The parties to the proceedings may appeal the decision granting the declaration of enforceability within four weeks. However, this appeal does not constitute grounds to stay the enforcement proceedings. If the opposing party has appealed the writ of execution, it can apply for a stay of the proceedings in accordance with the Enforcement Act.

If the writ of execution is modified or suspended in its country of origin after the declaration of enforceability has become legally effective, the opposing party may file for the suspension or alteration of the declaration of enforceability.

If the enforcement is already approved before the issuance of a final declaration of enforceability, the enforcement proceedings must be initiated; but any realisation acts are not to be initiated until the declaration of enforceability has become final and legally binding.

## 4. Defences

### 4. 1. On what grounds can the defendant challenge recognition and enforcement of a foreign judgment?

A declaration of enforceability may be denied if:

- the foreign court did not have jurisdiction over the matter;
- the right to be heard was violated; or
- the judgment violates Austrian public policy.

A foreign judgment may not be reviewed as to its substance.

Under the Brussels regime, in cases where the judgment was rendered by another EU member state, recognition and enforcement will be refused if:

- this would be contrary to Austrian public policy;
- the defendant was not served with the document instituting proceedings following a proper service process;
- recognition or enforcement is irreconcilable with an earlier judgment given in another state involving the same parties and the same cause of action; or
- recognition or enforcement is irreconcilable with a judgment given in Austria involving the same parties.

### 4. 2. What is the limitation period for filing a challenge?

There is no limitation period. However, claims arising from a judgment expire 30 years after the date on which the judgment became final and binding. Periodical claims expire after three years.


### 4. 3. Can the defendant seek injunctive relief to prevent enforcement while a challenge is pending?

The parties to enforcement proceedings may request a stay of enforcement proceedings. The Enforcement Act allows certain grounds for such a stay of proceedings, including an application to set aside the judgment or a motion for the suspension or alteration of the declaration of enforceability. If the stay of the enforcement proceedings might endanger satisfaction of the enforcing creditor's claim, the court may order an appropriate security deposit from the applicant.

## 5. Court analysis and decision

### 5. 1. Will the court review service of process in the initial proceedings?

Yes. Both pursuant to Austrian statutory law and under the Brussels Ia Regulation, a declaration of enforceability of a foreign judgment may be refused if the defendant was not served with the document instituting the proceedings in time to arrange for a proper defence. Such an objection may be remedied where the defendant participated in subsequent proceedings.



Also, pursuant to Austrian case law, where the document was served in a foreign language on an Austrian addressee, it could be declined if no German translation was provided. However, if the defendant could understand the document, this objection will be disregarded.

## 5. 2. Will the court review the jurisdiction of the foreign court in the initial proceedings?

The Austrian courts will determine whether, pursuant to the Austrian rules on jurisdiction, the foreign court had jurisdiction over the legal matter. An objection for lack of jurisdiction may be established where the default judgment was rendered by a court that lacked jurisdiction over the matter and to which the defendant never submitted.

However, under the Brussels regime, the jurisdiction of the court of origin shall not be reviewed by the enforcing court. Furthermore, the Brussels Ia Regulation states that the test of public policy may not be applied to the rules relating to jurisdiction.

## 5. 3. Will the court review the foreign judgment for compliance with applicable law and public policy?

Generally, Austrian courts will examine foreign judgments for compliance with Austrian public policy. However, the declaration of enforceability may be refused only on the grounds of a violation of fundamental principles of Austria jurisdiction, such as the Constitution or criminal law.

## 5. 4. Will the court review the merits of the foreign judgment?

Under no circumstances may a foreign judgment be reviewed as to its merits.

## 5. 5. How will the court proceed if the foreign judgment conflicts with a previous judgment in relation to the same dispute between the same parties?

Austrian courts may refuse to issue a declaration of enforceability if the foreign judgment contradicts other final judgments involving the same parties. Under the Brussels regime, a court may refuse recognition and enforcement if:

- the judgment is irreconcilable with a judgment between the same parties in the addressed member state; or
- the judgment is irreconcilable with an earlier judgment between the same parties in a different member state or third state, involving the same cause of action, provided that the earlier judgment fulfils the conditions necessary for recognition in the addressed member state.

## 5. 6. Are there any other grounds on which the court may refuse to recognise and enforce the foreign judgment?

In addition to the general requirements for enforceability and the review process mentioned above, the declaration of enforceability may also be refused if:

- the right to be heard has been violated;
- the judgment is inadmissible under Austrian law;
- the judgment violates Austrian public policy; or
- the judgment is irreconcilable with previous judgments between the same parties on the same cause of action.





## 5.7. Is partial recognition and enforcement possible?

Yes – for example, where parts of the judgment would violate Austrian public policy, but other parts meet the requirements for enforceability. However, separation is possible only if the admissible part is clear and distinct from the inadmissible part.

## 5.8. How will the court deal with cost issues (eg, interest, court costs, currency issues)?

When deciding on enforceability, the courts will take into account attorneys' fees, court costs and interest claims. Further, the damages award will not be converted into local currency. However, when the realisation acts are being undertaken, the award must be converted into local currency.

Interest rates that violate Austrian public policy will be deemed unenforceable.

## 6. Appeals

### 6.1. Can decisions in relation to the recognition and enforcement of foreign judgments be appealed?

The decision on the declaration of enforceability may be appealed within four weeks of delivery. This timeframe may be extended to eight weeks if a party's habitual residence is not in Austria and the appeal constitutes the party's first opportunity to participate in the proceedings. Where the party files an appeal, the opposing party has four weeks from the time of being served with the appeal to file a reply.

The debtor must assert all grounds for dismissal of the application for recognition or a declaration of enforceability simultaneously in the appeal, and is precluded from asserting them at a later stage of the proceedings.

A second appeal to the Austrian Supreme Court against the appellate court's decision requires that the question for determination by the Supreme Court concern an issue of substantive or procedural law whose determination is deemed essential to legal certainty and security, or to the further development of the law. Furthermore, the admissibility of a second appeal depends on the amount in dispute, which must exceed €5,000.


### 6.2. Can the applicant seek injunctive relief while the appeal is pending?

See question 3.7.

## 7. Enforcing the foreign judgment

### 7.1. Once a declaration of enforceability has been granted, how can the foreign judgment be enforced?

Once a foreign judgment has been declared enforceable, execution follows the same rules as those for a domestic judgment. The enforcement of judgments is regulated by the Enforcement Act. Austrian enforcement law provides for various types of enforcement.



A distinction is made between title to be enforced directed at a monetary claim or at a claim for specific performance, and against which asset enforcement is to be levied. Generally, the usual methods for enforcement are:

- seizure of property;
- attachment and transfer of receivables;
- compulsory leasing; and
- judicial action.

Enforcement will be executed by a bailiff, who is an executive of the court and must comply with the court's orders.

With respect to immovable property, three types of enforcement measures are available:

- compulsory mortgage;
- compulsory administration, with the goal of generating revenue to satisfy the claim; and
- compulsory sale of an immovable asset.

With respect to movable property, Austrian law distinguishes between:

- attachment of receivables;
- attachment of tangible and moveable objects;
- attachment of claims for delivery against third-party debtors; and
- attachment of other property rights.

Austrian law does not allow for the attachment of certain specific receivables, such as nursing allowance, rent aid, family allowance and scholarships.

Finally, the enforcement court may also order specific performance.


## 7.2. Can the foreign judgment be enforced against third parties?

A foreign judgment can be enforced only against the party that is named as a debtor in the foreign judgment. The principles of agency and alter ego in order to enforce a judgment against a party not stated in the judgment do not apply in Austria.

## 8. Trends and predictions

### 8.1. How would you describe the current enforcement landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

On 1 January 2019 amendments to the Enforcement Act entered into force. These amendments now grant access to data about pending enforcement proceedings. Attorneys and notaries public may access information about the enforcement court, the case number and the amount of the debt that is subject to the enforcement proceedings. The database is available online and aims to assist potential claimants in evaluating the creditworthiness of their prospective respondents before commencing court or arbitral proceedings.



Another recent development is an Austrian Supreme Court decision handed down on 11 June 2018, confirming that the res judicata effect of a foreign judgment applies at all stages of proceedings conducted in Austria. This is particularly important as the decision clarifies that the effect of res judicata also applies to pending appellate proceedings. The Austrian Supreme Court emphasised that this is true with respect to both issues regarding res judicata – namely, the exclusiveness (ne bis in idem) and the binding effect (Bindungswirkung) of foreign judgments. Furthermore, the Austrian Supreme Court clarified that the interdiction of novation in appellate proceedings applies only to new facts and new evidence, and thus does not preclude the appellate court from considering the res judicata effect of a new foreign decision.

Regarding the enforcement of arbitral awards, a fairly recent decision of the Court of Justice of the European Union (CJEU) could have some impact. On 6 March 2018, in *Slovak Republic v Achmea BV*, the ECJ decided on the compatibility of a dispute settlement provision contained in Article 8 of the Netherlands-Slovakia bilateral investment treaty (BIT) with EU law. The CJEU concluded that Articles 267 and 344 of the Treaty on the Functioning of the European Union (TFEU) should be interpreted as precluding Article 8 of the Netherlands-Slovakia BIT, which allowed for resolution of investment disputes under that intra-EU BIT by way of arbitration. The CJEU seems to have based its decision on its view that the dispute resolution provision in the BIT may require a tribunal to interpret or apply EU law; this is inconsistent with Article 267 TFEU because, unlike a member state court, a tribunal cannot refer EU law questions to the CJEU.

In the case of further decisions following on from the decision rendered in *Achmea*, procedural rules may affect the tribunal's adherence to CJEU decisions. International Centre for the Settlement of Investment Disputes (ICSID) awards are not subject to review by national courts, but non-ICSID awards are. Accordingly, non-ICSID tribunals seated in EU jurisdictions might be more inclined to consider the application of EU law, including decisions of the CJEU, if the tribunal considers itself bound to render an award that is aligned with the public policy at the seat of arbitration. However, even if faced with the unfavourable stance of the European Union towards intra-EU investment treaty awards, claimants could seek to enforce their award outside of the European Union or consider selling the awards at a discount to third parties, such as investment funds, in order to avoid enforcement risks.

## 9. Tips and traps

### 9. 1. What are your top tips for smooth recognition and enforcement of foreign judgments, and what potential sticking points would you highlight?

Payment may result from recognition and enforcement only if the debtor owns assets of sufficient value. Publicly available information regarding this issue is scarce and not readily available. However, once a foreign executory title has become enforceable in Austria, the attorney representing the creditor is entitled to request information as to whether the debtor owns sufficient assets – for example, from credit agencies.

Also, as mentioned above and in light of the Enforcement Act amendments, it is recommended to inquire whether any enforcement proceedings are pending against a debtor or prospective respondent.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*



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