

Litigation and Enforcement Across the Border: The Lugano Convention and Judicial Assistance — overview and summary

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The treaty that governs most civil litigation between Switzerland and the European Union carries the name of the financial centre that this book describes. On 16 September 1988 the member states of the European Communities and of the European Free Trade Association signed in Lugano a convention on jurisdiction and the enforcement of judgments in civil and commercial matters. On 30 October 2007 the European Community, Denmark, Norway, Iceland and Switzerland signed its revised version in the same city.¹ The name records only the place of signature, a Swiss city on the Italian border. For practitioners in Ticino the coincidence has a certain logic. A Lugano bank that sues a client in Milan, an Italian supplier that wants to enforce a judgment of the Tribunale di Como against a debtor in Mendrisio, and a fiduciary whose client faces an Italian payment order all work with the same instrument. They do so more often than lawyers in any other Swiss region.

This chapter asks how a creditor or a defendant can litigate and enforce across the Swiss–Italian border in 2026, and which instruments decide the outcome. Its argument is that the Lugano Convention provides a stable and predictable framework for jurisdiction and for the recognition of judgments. The decisive battles, however, are often fought elsewhere: in the Swiss attachment procedure, in the rules on service and evidence that protect Swiss sovereignty, in the two fields the Convention excludes (arbitration and insolvency) and in the criminal channels through which assets are traced, frozen and returned. The Convention also lags behind the law of the European Union, because the Brussels Ia Regulation of 2012 abolished the declaration of enforceability between member states while the Lugano Convention still requires it. A practitioner who understands

this asymmetry, and the domestic tools on each side of the border, can choose the forum, the timing and the procedure that suit the client.

The chapter begins with the history and structure of the Convention and then treats jurisdiction, parallel proceedings and provisional measures. It continues with recognition and enforcement, including the treatment of the Italian *decreto ingiuntivo* (payment order) in Switzerland, and with the relationship to the Brussels Ia Regulation and the failed accession of the United Kingdom. Further sections describe civil procedure in Ticino and in Italy, the Swiss attachment (*sequestro*, German *Arrest*), service of documents and the taking of evidence, arbitration and insolvency, and the recovery of assets through civil and criminal routes. Chapter G.III has already described the criminal law against money laundering and the cooperation between Swiss and Italian prosecutors in Mafia cases. The present chapter refers to it and concentrates on procedure. A toolkit for practitioners closes the chapter, followed by a conclusion to Part H.

1 Conclusion

The Lugano Convention gives litigation between Ticino and Lombardy a framework that most cross-border relationships outside Europe lack. Its rules on jurisdiction are clear, the case law of the Court of Justice gives them a common interpretation, and judgments circulate between Switzerland and Italy with few grounds for refusal. For a financial centre whose clients, counterparties and employees come largely from Italy, this predictability has real value. It explains why the Convention bears the name of Lugano with some justice, even though the name records only the place of signature.

The Convention is also a frozen text. It corresponds to the Brussels I Regulation of 2001, while the European Union moved on in 2015 to the abolition of exequatur and to the protection of exclusive choice of court agreements against torpedo actions. The Standing Committee has decided to wait for the next revision of Brussels Ia, and the failed accession of the United Kingdom has shown that the European Union treats the Convention as an instrument for its close neighbours. Swiss practitioners must therefore work with an older system than their colleagues in Milan use with Munich or Paris.

The decisive work is often done outside the Convention. The Swiss attachment freezes the Lugano accounts of Italian debtors, the rules on service and evidence protect Swiss sovereignty and banking secrecy, the PILA and the Italian Code of Business Crisis and Insolvency govern bankruptcy, and the New York Convention governs arbitration. When

fraud is involved, the criminal channels of mutual assistance, seizure and handover under Article 74a IMAC usually reach assets faster than any civil judgment. The practitioner who combines these instruments, and who knows the procedural culture on both sides of the border, serves clients in Lugano and Milan best.

2 In five sentences

The Lugano Convention, first signed in Lugano on 16 September 1988 and revised there on 30 October 2007, governs jurisdiction and the recognition of judgments between Switzerland and Italy and has been in force in its revised form for Switzerland since 1 January 2011. Its consumer rules can oblige a Lugano bank to litigate in Italy with an Italian private client whose relationship it acquired by directing activities to Italy, while the absence of the Brussels Ia reforms leaves Swiss choice of court clauses exposed to torpedo actions in Italy. Italian judgments are enforced in Ticino after a declaration of enforceability or through debt enforcement, but an Italian payment order declared enforceable *ex parte* cannot be used until the debtor has had an adversarial opportunity to contest it. The Swiss attachment under Article 271 DEBA, with the ground of the foreign judgment introduced in 2011, is the creditor's main weapon against Lugano assets, while service, evidence, arbitration and insolvency follow their own instruments. When crime is involved, Italian prosecutors reach Swiss assets through mutual assistance under the Agreement of 1998 and the handover of assets under Article 74a IMAC, which can extend even to Italian preventive confiscation.

3 Conclusion of Part H

Part H has treated Lugano's relationship with its Lombard hinterland, the counterpart to the Geneva volume's part on Africa. Chapter H.I described the Insubric economy: the axis between Milan and Lugano, the Regio Insubrica, the tens of thousands of cross-border commuters who work in Ticino and the new agreement on their taxation, which entered into force in 2023 and applies from 2024. It also discussed the special case of Campione d'Italia, the infrastructure that ties the region together through TILO trains, AlpTransit and Malpensa airport, and the political reactions in Ticino that culminated in the *Prima i nostri* initiative of 2016. The chapter showed that the border is at once the source of Ticino's labour supply and a constant subject of political tension.

Chapter H.II followed the movement of Italian entrepreneurs and companies to Ticino. It examined the Italian exit tax under Article 166

TUIR and the doctrine of *esterovestizione*, under which a Swiss company managed from Italy is treated as an Italian resident. It also covered the reform of Italian residence rules by Legislative Decree No. 209/2023, Swiss residence permits and the substance that a relocated company needs. Chapter H.III treated the double taxation convention of 9 March 1976 and its Protocol of 23 February 2015 as the instrument of everyday tax practice, covering dividends, interest and royalties, permanent establishment risk, withholding tax refunds, pensions and mutual agreement procedures. The present chapter added the procedural dimension: how claims and assets are pursued across the same border in civil, insolvency and criminal proceedings.

Taken together, the four chapters show that Lugano's relationship with Italy rests on a dense web of treaties, most of them bilateral and some multilateral, that have been negotiated, revised and tested over decades. The treaties on taxation, on cross-border workers, on mutual assistance and on judgments each answer a specific problem of a border economy, and practitioners in Lugano must master all of them. They also show the asymmetry of the relationship. Lombardy is one of Europe's largest regional economies, while Ticino is a small canton whose prosperity depends on serving its neighbour without being absorbed by it.

Part I turns to a field in which Lugano has tried to define itself independently of Italy. With Plan B, launched by the City of Lugano together with Tether in March 2022, the city set out to become a European centre for Bitcoin and for Kryptowerte und Digital Assets more generally. Chapter I.I examines the plan, its results and its legal limits under Swiss currency law. Chapter I.II sets out the Swiss legal framework for Kryptowerte und Digital Assets, from FINMA's token classification and the DLT Act of 2021 to the licences under discussion in 2025 and 2026. Chapter I.III describes the research institutions and the fintech ecosystem in Ticino, from the Università della Svizzera italiana to the Dalle Molle Institute for Artificial Intelligence. The question for Part I is whether technology can give Lugano a role that does not depend on the Italian border.

4 Notes

1. Federal Office of Justice (FOJ), "Lugano Convention 2007", <https://www.bj.admin.ch/en/lugano-convention-2007>; FOJ, "Convention de Lugano 1988", <https://www.rhf.admin.ch/fr/convention-de-lugano-1988>. ↩

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