

The declaration of enforceability

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Enforcement requires a separate step. Under Article 38, a judgment that is enforceable in the state of origin is enforced in another contracting state when, on the application of any interested party, it has been declared enforceable there. The application is submitted to the court or competent authority listed in Annex II, which for Switzerland is the cantonal enforcement court (*giudice cantonale dell'esecuzione*) and for Italy the *Corte d'appello*.¹ The first-instance procedure is *ex parte*. The judgment is declared enforceable immediately on completion of the formalities in Article 53, without any review under Articles 34 and 35. At this stage the party against whom enforcement is sought is not entitled to make submissions (Article 41). The applicant must produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and the certificate in the form of Annex V, issued by the court of origin.

Either party may appeal against the decision on the application. The appeal against a declaration of enforceability must be lodged within one month of service, or within two months if the party against whom enforcement is sought is domiciled in another contracting state (Article 43(5)). The court with which the appeal is lodged may refuse or revoke the declaration only on one of the grounds in Articles 34 and 35 and must give its decision without delay (Article 45).² During the time for appeal and until a decision has been given, only protective measures may be taken against the property of the party against whom enforcement is sought (Article 47(3)). The declaration of enforceability carries with it the power to proceed to any such protective measures.

1 The Swiss procedure

Switzerland implemented these rules in its procedural law with effect from 1 January 2011. For money judgments, the creditor has two routes. He can apply for a separate declaration of enforceability under Articles 335 ff. CPC,

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and on appeal against such a decision Article 327a CPC requires the higher court to examine the Convention's grounds for refusal with full power of review. Alternatively, he can initiate debt enforcement and ask for definitive setting aside of the debtor's objection (*rigetto definitivo dell'opposizione*, German *definitive Rechtsöffnung*) under Article 80 DEBA. In that case the court decides on enforceability as a preliminary question, and the debtor may raise the objections that the applicable treaty provides (Article 81(3) DEBA).³ In Ticino, both proceedings are summary proceedings before the Pretura of the district where the debtor is domiciled or where the assets are located, with an appeal to the Tribunale d'appello in Lugano.

The second route is usually faster because the Swiss enforcement procedure begins with a payment order (*precetto esecutivo*, German *Zahlungsbefehl*) that any creditor can obtain from the debt enforcement office without proving the claim. If the debtor files an objection, the creditor with an Italian judgment applies for definitive setting aside of the objection. The court then examines the conditions of the Convention incidentally, hears the debtor and decides. The decision on definitive setting aside also serves as a ground for attachment under Article 271(1)(6) DEBA, which links recognition with protective measures.⁴

2 Notes

1. LC 2007, Art. 38, 39 and Annex II; Art. 41 and 53 (above). ↩
2. LC 2007, Art. 43 and 45; Art. 47 (above). ↩
3. CPC, Art. 327a(1) and 335(1) and (3), at [droit-bilingue.ch](https://www.droit-bilingue.ch/it-en/2/27/272-327a-335.html), <https://www.droit-bilingue.ch/it-en/2/27/272-327a-335.html> and <https://www.droit-bilingue.ch/it-en/2/27/272-335-343.html>; Federal Act on Debt Enforcement and Bankruptcy of 11 April 1889 (DEBA), SR 281.1, Art. 80(1) and 81(3), at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-it/2/28/281.1-80-98.html), <https://www.droit-bilingue.ch/de-it/2/28/281.1-80-98.html> and <https://www.droit-bilingue.ch/de-it/2/28/281.1-81-99.html>. ↩

4. Federal Decree implementing the Lugano Convention (above), amendment of Art. 271(1)(6) DEBA; Urs Boller, "Arrest gestützt auf ausländische Entscheide: Erste Erfahrungen mit dem neuen Arrestrecht", Zeitschrift für Zivilprozess- und Zwangsvollstreckungsrecht (ZZZ) 2011/2012, [https://mll-legal.com/wp-content/uploads/2019/12/arrest_gestuetzt_auf_auslaendische_entschei de.pdf](https://mll-legal.com/wp-content/uploads/2019/12/arrest_gestuetzt_auf_auslaendische_entschei_de.pdf). ↩

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