

The Italian decreto ingiuntivo in Switzerland

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)

The Italian payment order procedure under Articles 633 ff. of the *Codice di procedura civile* allows a creditor with written evidence of a claim to obtain from the court an order to pay without hearing the debtor. The debtor may file an opposition within forty days. If he does not, the decree becomes final and enforceable. The court may also declare the decree provisionally enforceable from the outset under Article 642 c.p.c., for instance when the claim is based on a bill of exchange, a cheque or a notarial deed, or when there is a risk of serious prejudice.¹ The procedure is widely used against Swiss debtors, including Ticino companies that buy goods or services in Lombardy.

The Federal Supreme Court has drawn a clear line. Its judgment of 21 August 2015 concerned a *decreto ingiuntivo* of the Tribunale di Milano of 30 September 2011 against a Ticino company. The court held that a decree declared immediately enforceable under Article 642 c.p.c., issued ex parte before the debtor could exercise his right to be heard, is not a judgment within the meaning of Article 32 of the Convention and cannot be recognized or enforced in Switzerland. It made no difference that the debtor had later filed an opposition, because the remedies under Italian law had no suspensive or devolutive effect on enforceability.² The position is different when the debtor has had an opportunity to defend himself. A decree that became final because no opposition was filed within the time limit, after proper service, is a judgment capable of recognition. The same applies when the Italian court declares the decree provisionally enforceable under Article 648 c.p.c. in the course of the opposition proceedings. In a decision of 31 August 2007 the Federal Supreme Court held that such an order, made within the main proceedings after opposition, was a decision enforceable under the Convention and fell outside the provision on provisional measures.³

Common misconception. Italian creditors and their lawyers sometimes assume that a *decreto ingiuntivo provvisoriamente esecutivo* can be enforced against a debtor in Lugano as soon as it has been issued. Under the case law of the Federal Supreme Court, a decree that was declared enforceable *ex parte* under Article 642 c.p.c., before the debtor had any opportunity to be heard, is not a judgment that the Lugano Convention allows to be recognized or enforced in Switzerland. The creditor must wait until the decree has become final after proper service, or until the Italian court has confirmed enforceability in adversarial opposition proceedings. In the meantime, the Swiss attachment based on Article 271(1)(4) DEBA may protect the claim, provided that its conditions are met.

1 Swiss judgments in Italy

In the other direction, a Swiss judgment is declared enforceable in Italy by the *Corte d'appello* of the place of domicile of the party against whom enforcement is sought or of the place of enforcement.⁴ The procedure is again *ex parte* in the first stage and adversarial on appeal. Swiss practitioners should bear in mind that the Italian courts have handled such applications for decades under the Brussels Convention, so that the procedure is well established, but that the courts of appeal are among the slower parts of the Italian judicial system. Where the Convention does not apply, for example for judgments in matters excluded from its scope, Italian law recognizes foreign judgments without any special procedure if the seven conditions of Article 64 of Law No. 218 of 31 May 1995 are met. They include jurisdiction according to Italian principles, proper service, finality under the law of the state of origin, the absence of conflicting Italian judgments or prior Italian proceedings, and compatibility with public policy.⁵ Where enforcement is needed or recognition is contested, any interested party may ask the ordinary courts to establish that the conditions of recognition are met (Article 67 of the same law), and since 2011 these disputes follow the procedure of Article 30 of Legislative Decree No. 150 of 1 September 2011.⁶

2 Notes

1. Codice di procedura civile, Art. 633, 641, 642, 647 and 648, at Brocardi.it, <https://www.brocardi.it/codice-di-procedura-civile/libro-quarto/titolo-i/capo-i/art633.html> (and the following articles under the same path, art641.html, art642.html, art647.html and art648.html). ↩

2. Federal Supreme Court, judgment 5A_752/2014 of 21 August 2015, https://servat.unibe.ch/dfr/bger/2015/150821_5A_752-2014.html. ↩
3. Federal Supreme Court, 4A_80/2007 (above). ↩
4. LC 2007, Art. 39 and Annex II (above). ↩
5. Legge 31 maggio 1995, n. 218 (Riforma del sistema italiano di diritto internazionale privato), Art. 64, at Brocardi.it, <https://www.brocardi.it/legge-diritto-internazionale-privato/titolo-iv/art64.html>. ↩
6. Law No. 218/1995, Art. 67(1) and (1-bis), the latter added by Legislative Decree No. 150 of 1 September 2011, at Brocardi.it, <https://www.brocardi.it/legge-diritto-internazionale-privato/titolo-iv/art67.html>. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-the-italian-decreto-ingiuntivo-in-switzerland