

The revision of 2007

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The Brussels Convention was transformed into Council Regulation (EC) No 44/2001 (Brussels I), which applied from 1 March 2002. The parallel Lugano Convention had to follow. Because the Regulation had transferred the subject to Community law, the question arose whether the member states or the Community itself should negotiate the new Convention. In its Opinion 1/03 of 7 February 2006 the Court of Justice held that the conclusion of the new Lugano Convention fell entirely within the exclusive competence of the Community.¹ The revised Convention was accordingly signed in Lugano on 30 October 2007 by the European Community, Denmark (which does not participate in the Community's civil justice measures), Norway, Iceland and Switzerland. It entered into force on 1 January 2010 for the European Union, Denmark and Norway, on 1 January 2011 for Switzerland and on 1 May 2011 for Iceland.² The Swiss Federal Assembly had approved it on 11 December 2009 and Switzerland deposited its instrument of ratification on 20 October 2010. In Switzerland the Convention carries the number SR 0.275.12.

The Swiss date of 1 January 2011 was chosen with care, because the federal Code of Civil Procedure (CPC) entered into force on the same day. The legislator used the federal decree approving the Convention to amend the Debt Enforcement and Bankruptcy Act (DEBA) and to adapt the Swiss rules on the declaration of enforceability and on attachment, which later sections of this chapter discuss.³ A Swiss practitioner thus received three new instruments at once: a federal procedural code that replaced twenty-six cantonal codes, a revised Lugano Convention and a reformed law of attachment.

Date Event 3 January 1933 Swiss–Italian convention on recognition of judgments 27 September 1968 Brussels Convention (EEC) 16 September 1988 First Lugano Convention signed in Lugano 1 January 1992 In force for Switzerland 1 December 1992 In force for Italy 7 February 2006

Opinion 1/03 of the Court of Justice 30 October 2007 Revised Convention signed in Lugano 1 January 2011 In force for Switzerland, with the federal CPC 10 January 2015 Brussels Ia Regulation applies in the EU 28 June 2021 EU declines consent to UK accession

1 Uniform interpretation without a common court

Switzerland, Norway and Iceland are not subject to the Court of Justice. The Convention therefore relies on Protocol No. 2 on uniform interpretation. Courts of the non-EU states must "pay due account" to the principles laid down by the courts of the other contracting parties, including the Court of Justice. Article 3 of the Protocol establishes a system for the exchange of information on relevant judgments, which the European Commission administers. Article 4 creates a Standing Committee of representatives of the contracting parties, which can be consulted on the functioning of the Convention and on revisions.⁴ The Standing Committee met in 2011, 2013, 2017 and 2022. At its meeting of June 2022 the parties agreed to wait with an adaptation of the Convention to the Brussels Ia Regulation until the possible revision of that Regulation itself.

In practice, the Swiss Federal Supreme Court follows the case law of the Court of Justice closely. It draws on the judgments of the Court of Justice on the parallel provisions of the Brussels instruments when it interprets the Convention. In its judgment of 6 May 2013 on the consumer rules, for instance, it relied on the *Gruber* judgment of the Court of Justice of 20 January 2005 to place the burden of proof on the party invoking the protective forum.⁵ Italian courts are bound by the Court of Justice directly, since the Convention is an act of Union law for the European Union. The result is a high degree of uniformity. A Ticino lawyer who argues a question of jurisdiction before the Pretura of Lugano will cite the same judgments of the Court of Justice that a Milan lawyer cites before the Tribunale di Milano.

Essentials. The Lugano Convention exists in two versions: the Convention of 16 September 1988 (SR 0.275.11), in force between Switzerland and Italy from 1 December 1992, and the revised Convention of 30 October 2007 (SR 0.275.12), in force for Switzerland since 1 January 2011. Both were signed in Lugano. The revised Convention mirrors the Brussels I Regulation of 2001 and binds the European Union as a whole, together with Denmark, Norway, Iceland and Switzerland. It replaced, within its scope, the Swiss–Italian convention of 3 January 1933. Uniform

interpretation rests on Protocol No. 2, under which Swiss courts must pay due account to the case law of the Court of Justice.

2 Notes

1. Court of Justice of the European Communities, press release No. 10/06 on Opinion 1/03, 7 February 2006, <https://curia.europa.eu/en/actu/communiques/cp06/aff/cp060010en.pdf>. ↩
2. FOJ, "Lugano Convention 2007" (above); LC 2007, SR 0.275.12, header (above). ↩
3. Federal Decree on the approval and implementation of the revised Lugano Convention (draft annexed to the Federal Council's message of 2008), <https://www.news.admin.ch/news/message/attachments/77512.pdf>; Lukas Müller, "The Revised Lugano Convention from the Swiss Perspective", Columbia Journal of European Law Online 18 (2011), <https://www.alexandria.unisg.ch/server/api/core/bitstreams/92b70bc2-c31c-4c8b-b63e-c51d9a29d225/content>. ↩
4. LC 2007, Protocol No. 2, Art. 1, 3 and 4 (above); FOJ, "Lugano Convention 2007" (above); FOJ, "Lugano Convention 2007" (above). ↩
5. Philipp Fischer, commentary on Federal Supreme Court judgment 4A_27/2013 of 6 May 2013, cdbf.ch, 11 July 2013, <https://cdbf.ch/fr/885/> (reliance on Court of Justice, judgment of 20 January 2005, Gruber, C-464/01). ↩

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