



SCOTLAND

Enforcing a court decision in Scotland in accordance with Brussels I Regulation

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJEU C 012 of 16.01.2001 p. 1), the 'Brussels I Regulation', has established a streamlined exequatur procedure to simplify the enforcement of a court decision in another Member State.

This regulation applies to civil and commercial matters in accordance with Community law. It does not extend, in particular, to revenue, customs or administrative matters. In addition, it does not apply to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession, judicial arrangements, compositions and analogous proceedings, social security and arbitration.

I. Having the judgment declared enforceable in Scotland :

In order to enforce a judgment given in a Member State in another Member State, the judgment has to be declared enforceable in the Member State of the place of enforcement. In order to obtain a declaration of enforceability, the litigant shall submit an application to the court or competent authority in the place of enforcement.

Article 38 § 1: *A judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.*

- **Finding the competent judicial authority:**
 - **The authority with substantive jurisdiction:**

The application must be submitted to the competent authority designated by each of the Member States and indicated in the list in Annex II to the Regulation.

Article 39 § 1: *The application shall be submitted to the court or competent authority indicated in the list in Annex II.*

In Scotland, the Court of Session, which is the supreme civil court and is in Edinburgh, receives all such applications, except for maintenance judgments. The sheriff courts, which, as district courts, have courthouses in forty nine places throughout Scotland, have a limited involvement as receiving authorities for orders made abroad. The background to this is that applications to register maintenance judgments are made to the sheriff courts, whereas non-maintenance





judgments are all sent to the Court of Session. The system is therefore that a non-maintenance judgment, if to be made enforceable in Scotland, requires to be registered at Edinburgh. It is the Keeper of the Registers of Scotland's issuing of an extract and warrant which ultimately allows messengers-at-arms (Scottish judicial officers – see E-note n°2) to enforce the judgment as if it were a Court of Session decree.

- **The authority with territorial jurisdiction:**

Pursuant to Article 39(2) of the Regulation, the local jurisdiction is determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

Article 39 § 2: *The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.*

- **Finding the contact details of the competent authority by using the European Judicial Atlas in Civil and Commercial Matters:**

Published on-line by the European institutions, the European Judicial Atlas in Civil and Commercial Matters is a tool that can be used by legal professionals to simplify the use of the European instruments applicable in this field. In particular it can be used to identify the courts and other competent authorities to which recourse can be made for various purposes, to fill in the required forms directly on-line and to change the language in which the forms are produced before printing them out.

On the site of the European Judicial Atlas in Civil Matters - http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm - select 'Recognising and enforcing judgments'.

On the page entitled 'Recognising and enforcing judgements', select the left-hand column and, under the heading 'Judgments in civil and commercial matters', click on the sub-heading 'Finding a court for an application'.

Select the country and enter the postal code or the name of the municipality (in the language of the country in question) of the domicile of the party against whom enforcement is sought, or the place of enforcement.

The page displaying the reply to the query will provide the contact details of the authority with which the application for the declaration of enforceability is to be lodged.

Contact : eje@europe-eje.eu

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



- **Filing the application:**
- **Making the application :**

The procedure for making the application is governed by the law of the Member State in which enforcement is sought.

Article 40 § 1: *The procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.*

All applications for enforcement in Scotland of a judgment given in another Member State and enforceable in the Member State of origin must be made by petition to the Court of Session, the supreme civil court. This petition can only be made by the petitioner (if an individual), or by solicitor, or counsel or other person having a right of audience. (This does not include a messenger-at-arms, who is judicial officer of this court.) The petition is supported by affidavit, which may have been sworn before any person who may competently take an oath, whether in Scotland or in any other country. The affidavit makes statements on six points:

- (i) whether the judgment provides for the payment of a sum of money;
- (ii) whether interest is recoverable on the judgment under the law of the country in which judgment was given and, if so, the rate of interest, the date from which interest is due and the date on which interest ceases to accrue;
- (iii) an address within the jurisdiction of the court for service on or intimation to the petitioner;
- (iv) the usual or last known place of residence or business of the person against whom the judgment was given;
- (v) the grounds on which the petitioner is entitled to enforce the judgment; and
- (vi) the part of the judgment which is unsatisfied.

If the affidavit is not in English a certified translation is required.

These other necessary documents must accompany the petition: an authentic copy of the judgment to be registered; a standard form of certificate of judgment, as provided by Annex V (see below) ; where judgment has been given in default of appearance, the original or certified copy of the document which establishes that the party against whom judgment was given in absence was served with the document initiating the proceedings. These documents lodged with the petition, if in a language other than English, require to be translated.

- **Giving an address for service of process**

The Regulation merely states that the applicant must give an address for service of process within the area of jurisdiction of the court applied to, and that if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant appoints a representative ad litem.

Article 40 § 2 : *The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the Member State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.*





The question of whether the procedure for filing the application calls for recourse to a lawyer should be put to the competent authority or to a legal professional in the executing Member State.

The applicant's affidavit makes statements on six points, which include the giving of an address in Scotland for service on or intimation to the petitioner (This address could be the address of the messenger-at-arms who is instructed to enforce the registered judgment.)

- **Documents to produce :**

The following should be produced:

- a copy of the judgment that satisfies the requirements necessary for establishing its authenticity;
- the certificate referred to in article 54 and provided in Annex V to the Regulation.

Article 40 § 3: *The documents referred to in Article 53 shall be attached to the application.*

Article 53 :

A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.

A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

- **a copy of the judgment which satisfies the conditions necessary to establish its authenticity:**

If the judgement has been given in Poland: in Poland, the judgments in originals are signed by a judge and left in the case files. Only copies of judgments are given to the parties. A copy of judgment to be establish authentic has to be a stamped document with the signature of a court clerk. The official seal of Polish courts is round with Polish emblem. The judgments which are valid and enforceable are provided with the ascertainment of validity, the official round court seal and the judge's signature.

If the judgment has been given in Italia : a certified copy of the judgment, issued by the registry of the judicial authority by which it has been handed down, must be attached.

If the judgment has been given in Belgium: the Belgian Judicial Code specifies what is meant by ".a copy of the judgment which satisfies the conditions necessary to establish its authenticity ". This is actually a copy of the ruling which presents certain formalism. This copy is issued by the Clerk to the parties at their request.

Contact : eje@europe-eje.eu

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



If the judgment has been given in Luxembourg, this is a certified copy of the judgment with the enforcement order to be provided on request by the clerk.

If the judgment has been given in France, it is a certified copy of the original decision – the certification is made by the chief clerk of the court which has ordered the decision.

NB: in Scotland, the Court of Session rules provide that a document, duly authenticated, which purports to be a copy of a judgment given by a court of a Member State other than the U.K. is, without further proof, deemed to be a true copy, unless the contrary is shown. A certificate obtained in accordance with Article 54 and Annex V is evidence, and in Scotland sufficient evidence, that the judgment is enforceable in the State of origin. A document purporting to be a copy of a judgment given by any such court of a Member State is duly authenticated if it purports to bear the seal of that court; or to be certified by any person in his capacity as a judge or officer of that court to be a true copy of a judgment given by that court.

- **a certificate:**

Article 54: *The court or competent authority of a Member State where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Regulation.*

To obtain this certificate, which must accompany the judgment, the interested party must apply before the court or competent authority of the Member State where the judgment was given.

This certificate is available in the European Judicial Atlas. On the page entitled 'Recognising and enforcing judgments', select the left-hand column and, under the heading 'Judgments in civil and commercial matters', click on the sub-heading 'Forms'.

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_jccm_forms1_en.jsp?countrySession=4&txtPageBack=rc_jccm_filling_uk_en.htm

If the judgment has been given in Poland: The procedure of issuing a certificate using the standard form in Annex V to Regulation 44/2001 is specified in Article 1144 point 1 of the Code of Civil Proceedings. Such a certificate is issued at the request of the applicant (a creditor) by the Court, which has given a judgment or confirmed a court settlement or before which a court settlement has been concluded. In case of other enforceable writs the District Court of drawing up the writ is competent to issue the certificate. This certificate is signed by the Presiding judge who has issued a judgment and stamped with the official round court seal with Polish emblem. The certificate is being served only to the applicant at the address given in the application. The certificate is not being served to the opponent.

If the judgement has been given in Italia: Under Italian statutory rules, there are no specific regulations regarding the issue of the certificate as per Annex V. Therefore, the ordinary rules are applicable, pursuant to Article 743 et seq. of the Code of Civil Procedure and Article 153 of





the implementing provisions of the Code of Civil Procedure. The person competent to issue the certificate is the court officer at the registry of the judicial authority that has delivered the judgment or the measure whose enforcement is sought. No time limit is specified for the filing of the request. The applicant in person, or his counsel holding a special power of attorney, presents an application to the competent court officer in order to obtain a copy of the certificate as per Annex V, giving the particulars of the judicial authority by which it has been delivered, the date, the judgment number and the parties. The court registry's seal is apposed on the certificate issued in this manner. Copy fees shall be paid on the issue of the certificate.

If the judgment has been given in Belgium: the clerk of the Court that has rendered the decision is the competent authority. A written request to the clerk of the jurisdiction is sufficient. Such a request can be made directly during the procedure, the judge may therefore accept to issue the certificate when making its decision. In any case, there is no time limit for such an application. Therefore, this request for issuance of certificate may be made after the decision has been made.

If the judgment has been given in Luxembourg : the clerk of the Court that has rendered the decision is the competent authority. The application must comprise the precise information of the documents but the application doesn't have to be justified. The litigant is exempted from the obligation to have an advocate. The certificate must be given to the applicant

If the judgment has been given in France, the chief clerk of the court (le « greffier en chef du Tribunal de grande instance ») that has rendered the decision is the competent authority. In France, the application for purpose of certification of French enforceable instruments for their recognition and their enforcement abroad must be presented at the chief clerk of the court that has rendered the decision. The application must be made in duplicate. It must comprise the precise information of the documents mentioned (in the petition). The litigant is exempted from the obligation to have an advocate. The application could be submitted by the litigant or by any proxy. The certificate must be given to the applicant against annotating or receipt, or must be notified to him by registered letter with request for notice of receipt. The double of the application as well as the certificate or the decision must be kept at the clerk's office.

NB: In Scotland, where a person seeks to apply under Chapter III of the Council Regulation for recognition or enforcement in another Member State of a judgment given by the Court of Session, he applies by letter to the Deputy Principal Clerk of Session for (a) a certificate under Article 54; (b) a certified copy of the judgment; and (c) if required, a certified copy of the opinion of the court. The certificate will not be issued unless there is produced an execution (i.e. certificate) of service of the judgment on the person against whom enforcement is sought. Where a person seeks to apply under Article 57 or 58 for enforcement in another Member State of an authentic instrument or court settlement registered for execution in the Books of Council and Session, application is made by letter to the Keeper of the Registers of Scotland for (a) a certificate under Article 57 or 58; and (b) an extract (official copy) of the authentic instrument or court settlement. This certificate would also not be issued unless there is produced to the Keeper of the Registers an affidavit verifying that enforcement has not been suspended and that the time available for enforcement has not expired. Where judgment was given in the Sheriff



Court, it is assumed that application for the certificate under Article 54, in the form provided by Annex V, would be made to the sheriff clerk at the sheriff court at which the decree had been granted. The enforcement of sheriff court interlocutors and decrees in another Contracting State, with reference to the Civil Jurisdiction and Judgments Act 1982, is regulated by subordinate legislation. Curiously, however, no separate Sheriff Court rules appear to deal with applications under Brussels 1.

In some Member States, it is possible to contest the refusal of delivery of the certificate.

If the judgment has been given in Poland: Issuing the certificate as well as a refusal of its issuing cannot be appealed in Poland.

If the judgment has been given in Italia : Under ordinary statutory rules, a refusal or a delay on the part of court officers in the production of a copy of the documents requested would constitute either a criminal offence (under Article 328 of the Criminal Code, omission or refusal of official instruments) or a civil wrong that, besides being a disciplinary offence, might render them liable to the payment of compensation for the loss consequent on the delay/refusal together with any further expenses that may be incurred. Pursuant to article 745 of the Code of Civil Procedure, the complainant may file an appeal before the magistrate or the President of the lower court or the higher court at which the officer performs his duties.

If the judgment has been given in Belgium: Belgian law provides no appeal to contest the refusal of delivery of the certificate.

If the judgment has been given Luxembourg: the law provides no appeal to contest the refusal of delivery of the certificate.

If the judgment has been given in France, the refusal of the delivery of the certificate may be submitted to the president of the Court (Tribunal de grande instance). He will decide in final instance upon petition. The applicant and the necessary authority will be summoned and heard.

NB: in Scotland, the rules provide for an appeal against refusal to grant warrant for registration. The Court of Session remains the competent authority.

- **The translation of the documents produced**

The foreign court seized of the application for the declaration of enforceability may require a translation of the documents produced.

Article 55 § 2: *If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States.*





In Scotland, the translator must certify as correct his translation. This certificate must include his full name, address and qualifications. According to the Court of Session rules, there is no particular qualification or standard of qualification required of a translator.

- **The decision on the application for a declaration of enforceability**

The court seized makes a purely formal check of the documents produced. The party against whom enforcement is sought will not at this stage of the proceedings be entitled to make any submissions on the application. On completion of this verification of the formalities, the court gives its decision on the declaration of enforceability.

- **the information of the applicant**

The decision is brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.

Article 42 § 1: *The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the Member State in which enforcement is sought.*

In Scotland, the Court of Session issues an interlocutor upon being satisfied that the petition complies with the requirements of Brussels 1 and the Clerk of Court intimates a copy of the interlocutor to the petitioner (applicant) and also enters the judgment in a register of judgments, authentic instruments and court settlements under Brussels 1. This intimation to the applicant is made by registered or first class recorded delivery postal service.

- **The service of the judgment**

The judgment given is served on the party against whom enforcement is sought, accompanied by the judgment if it has not already been served on that party.

Article 42 § 2: *The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.*

If necessary, this declaration on enforceability, accompanied by the decision, must be served on the debtor pursuant to Regulation 1393/2007 by transmitting the instrument to the competent entity as required, the contact details of which are also given in the European Judicial Atlas.

The procedures for redress against the declaration of enforceability must be indicated.

Contact : eje@europe-eje.eu

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



In Scotland, the rule states that the petitioner shall serve a copy of the interlocutor granting warrant for registration of a judgment and a notice in prescribed form on the person liable under the judgment. The petitioner must then have a copy of the interlocutor served on the other party. This may be served by a messenger-at-arms or a solicitor, if posted, or by only a messenger-at-arms, if served personally or by leaving at the party's address.

II. The decision on the application for a declaration of enforceability may be appealed against by either party.

Provision for an appeal against the decision on enforceability is contained in article 43 of the Regulation, whose paragraph 1 states that 'The decision on the application for a declaration of enforceability may be appealed against by either party'.

Article 43 § 1: *The decision on the application for a declaration of enforceability may be appealed against by either party.*

The appeal is to be lodged with the court indicated by each of the Member States in the list in Annex III. The contact details of the competent court are available on the site of the European Judicial Atlas: on the page entitled 'Recognising and enforcing judgments', select the left-hand column and, under the heading 'Judgments in civil and commercial matters', click on the sub-heading 'Finding a court for an appeal.'

Article 43 § 2: *The appeal is to be lodged with the court indicated in the list in Annex III.*

In Scotland, this is the Court of Session.

The time for appealing shall be one month and shall run from the date of service if the party against whom enforcement is sought is domiciled in the Member State in which the declaration of enforceability was given; it is two months from the date of service on the party in person or at his residence, if the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given.

Article 43 § 5: *An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a Member State other than that in which the declaration of enforceability was given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.*

The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters on one of the grounds referred to in articles 34 and 35 of the Regulation. Under no circumstances may the foreign judgment be reviewed as to its substance.

Article 43 § 3: *The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.*





In Scotland, an appeal under Article 43 is made by motion to the Lord Ordinary (Court of Session judge). If the appeal is against the granting of the warrant for registration, appeal is made within one month of the service of the warrant for registration, or within two months of such service where service was executed on a person domiciled in another Member State. If the respondent in any such appeal is domiciled outside the United Kingdom, intimation of the motion is made to the address for service of the respondent in Scotland. If the appeal is against refusal to grant warrant for registration it must be made within one month of the date of the interlocutor which refused to grant the warrant for registration of the judgment. If the respondent in the appeal is domiciled furth of the U.K., intimation could, if appropriate, still be made if the person's address is not known. Where an appeal against registration is successful, the court will, on a motion of the appellant, pronounce an interlocutor recalling any protective measure.

Article 34: *A judgment shall not be recognised:*

- 1. if such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;*
- 2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;*
- 3. if it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;*
- 4. if it is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.*

Article 35:

- 1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, or in a case provided for in Article 72.*
- 2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the Member State of origin based its jurisdiction.*
- 3. Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.*

The judgment given on the appeal may be contested

Article 44: *The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.*

In Scotland, it is assumed that appeal would be made to the Inner House of the Court of Session.

Contact : eje@europe-eje.eu

This publication reflects the views only of the author, and the Commission cannot be held responsible for any use which may be made of the information contained therein.



III. Enforcement of the judgment

Enforcement procedures are governed by the law of the Member State of enforcement. The judgment accompanied by the decision of enforceability will be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.

No security, bond or deposit, however described, is required of a party who in one Member State applies for enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.

Note: during the time specified for an appeal against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may be taken other than protective measures against the property of the party against whom enforcement is sought.

Note: a foreign judgment ordering a periodic payment by way of a penalty will be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin.

