



# Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

# 2012

Contributing editors: Mark Moedritzer and Kay C Whittaker



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Kay C Whittaker  
Shook, Hardy & Bacon LLP

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Dan White

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Subscriptions@  
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Jonathan Allen

### Subeditors

Caroline Rawson  
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### Editor-in-chief

Callum Campbell

### Publisher

Richard Davey

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# Sweden

Sverker Bonde, Polina Permyakova and Anna Backman

Advokatfirman Delphi KB

## 1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

Sweden is a party to several older treaties for the reciprocal recognition and enforcement of foreign judgments, including the Lugano Convention of 1988, the Brussels Convention of 1968, two multilateral treaties with Denmark, Finland, Norway and Iceland and two bilateral treaties with Austria and Switzerland. These treaties are essentially replaced by the Brussels I Regulation applicable to EU member states and the Lugano Convention of 2007 (the Lugano Convention) concluded between the EU and the EFTA countries, namely Iceland, Norway and Switzerland. The Brussels I Regulation and the Lugano Convention currently represent the most important framework for the recognition and enforcement of foreign judgments in Sweden. The older treaties remain relevant mainly with respect to some matters and titles for execution not covered by the Brussels I Regulation and the Lugano Convention and also with respect to certain older judgments. The Brussels I Regulation and the Lugano Convention have been supplemented with additional provisions in local Swedish legislation relating in principle to the procedural rules on the recognition and enforcement of foreign judgments.

Sweden is also a party to a number of conventions in certain special areas of property law such as patent law, international carriage of goods, oil pollution and some others. Foreign judgments relating to these areas can also be recognised and enforced under the relevant treaties. It is also worth mentioning that Sweden has an established framework for the immediate enforcement of foreign orders for payment of procedural costs and expenses, which is based on the Hague Conventions of 1905 and 1954 on civil procedure and the Hague Convention of 1980 on international access to justice.

In cases where the recognition and enforcement of foreign judgments is not based on legislative provisions or international treaties providing for such recognition and enforcement, or both, the traditional approach in Sweden has been that a foreign judgment is not recognised. However, some important exceptions to this rule have been developed by courts in practice (see question 26).

## 2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Yes, since Sweden has a uniform federal system the law on the enforcement of foreign judgments is the same across the country.

## 3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The sources of law regarding the enforcement of foreign judgments include both legislation and case law. Case law is particularly important with regard to the recognition and enforcement of foreign judgments that is not based on legislation and applicable international treaties (see question 26).

## 4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Sweden is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

## 5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Neither the Brussels I Regulation nor the Lugano Convention establish any limitation period for enforcement of foreign judgments. The limitation period is generally considered as a substantive issue and is therefore governed by the law applicable to the legal relationship. The limitation period in Sweden is normally 10 years, with a possibility to extend the period through a notice to the respondent.

## 6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Both monetary and non-monetary claims can be enforced in Sweden provided that there is a possibility to take an effective enforcement measure in Sweden, taking into account the connection of the object of enforcement or of the respondent in the enforcement proceedings to Sweden.

## 7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

The enforcement of foreign judgments under the Brussels I Regulation and the Lugano Convention requires summary exequatur proceedings in the country of enforcement. Applications seeking enforcement in Sweden must be brought in the Svea Court of Appeal.

The immediate enforcement provided for foreign orders for payment of procedural costs and expenses requires only application to the Enforcement Authority (Kronofogden) without the need for preceding exequatur proceedings in court.

### 8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Under the Brussels I Regulation and the Lugano Convention, a judgment given in an EU member state or a state bound by the Lugano Convention shall be recognised without any special procedure being required. The recognition of a judgment means in principle that the judgment can serve as basis for a Swedish judgment if an issue that it resolves has significance in the Swedish proceeding and also that the judgment prevents examination of the same issue between the same parties in Swedish courts (*res judicata*). In the event that the recognition of a judgment is disputed, an interested party can apply for a decision that a judgment be recognised in accordance with the procedure required for the enforcement of foreign judgments.

The procedure for the enforcement of a foreign judgment includes two stages. First, the enforcement of a foreign judgment is subject to summary exequatur proceedings. In this regard, a party that is entitled to request enforcement shall apply for a declaration of enforceability to the Svea Court of Appeal. The Svea Court of Appeal shall declare the judgment enforceable immediately on completion of certain formalities set out in the Brussels I Regulation or the Lugano Convention. This stage of the proceedings is carried out on an *ex parte* basis and the party against whom enforcement is sought is not entitled to make any submissions on the application. The judgment is also not subject to any review with respect to the existence of the grounds to refuse the recognition and enforcement.

If the judgment is declared enforceable, the declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if the judgment has not already been served on that party. At the second stage of the enforcement proceedings, either party may appeal the declaration of enforceability. The appeal shall also be lodged with the Svea Court of Appeal within one month of service. If the appeal is sought by a party domiciled in an EU member state or a state bound by the Lugano Convention other than that in which the declaration of enforceability was given, the time for appeal is extended to two months. The two-month time limit however does not apply to parties domiciled in foreign countries other than the states bound by the Brussels I Regulation or the Lugano Convention. A rejection of the application for a declaration of enforceability can be appealed with the Svea Court of Appeal within four weeks from the date of the decision.

### 9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

The possibility for a defendant to raise merits-based defences to liability or to the scope of the award entered in a foreign jurisdiction in the enforcement proceedings is generally excluded. Both the Brussels I Regulation and the Lugano Convention include a principal prohibition for the courts in the country of enforcement to review a foreign judgment as to its substance. The recognition and enforcement may only be refused on the basis of such formal mandatory grounds as:

- the judgment is manifestly contrary to public policy in Sweden;
- the judgment is rendered in default of appearance and the defendant was not served with an application for summons or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the judg-

ment when it was possible for him or her to do so;

- the judgment is irreconcilable with a judgment in a dispute between the same parties given in Sweden (or with an earlier judgment given in a third state and recognisable in Sweden, provided that the judgment involves the same cause of action between the same parties); or
- the judgment is irreconcilable with the special provisions of the Brussels I Regulation and the Lugano Convention on jurisdiction in matters relating to insurance, consumer contracts or exclusive jurisdiction of certain courts.

In addition to the aforementioned grounds, the Lugano Convention provides two further optional grounds to refuse recognition and enforcement, which practical implications are currently very limited and will therefore not be analysed.

### 10 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

Under the Brussels I Regulation and the Lugano rules, the scope of the summary exequatur proceedings for the recognition and enforcement of a foreign judgment is limited to the examination of whether the requested recognition and enforcement complies with the formal requirements under the mentioned instruments. Thus, the court shall secure that a party seeking recognition or applying for a declaration of enforceability has produced a copy of the judgment that satisfies the conditions necessary to establish its authenticity and, in cases where a declaration of enforceability is requested, also a certificate confirming that the judgment is enforceable in the state of origin. Further, the application shall concern the recognition and enforcement of a judgment given by a court or tribunal of an EU member state or a state bound by the Lugano Convention. The judgment shall also fall within the substantive scope of the Brussels I Regulation or the Lugano Convention and, as a general rule, shall also be the result of legal proceedings instituted after the entry into force of the respective instrument in the state of origin and in the state of enforcement. Judgments rendered after the entry into force of the Brussels I Regulation or the Lugano Convention but with respect to legal proceedings instituted before such entry into force can be enforced according to the Brussels I Regulation or the Lugano Convention if the proceedings in the state of origin were instituted after the entry into force of the Brussels Convention of 1968 or the Lugano Convention of 1988 both in the state of origin and in the state of enforcement. In Sweden, the Brussels Convention of 1968 entered into force on 1 January 1999 and the Lugano Convention of 1988 entered into force on 1 January 1993. A further exception is provided with respect to the legal proceedings instituted before the entry into force of the Brussels I Regulation or the Lugano Convention if jurisdiction in the state of origin was founded upon rules that accorded with the Brussels I Regulation or the Lugano Convention or with a convention concluded between the state of origin and the state of enforcement that was in force when the proceedings were instituted.

As mentioned above, the recognition and enforcement of a foreign judgment is also subject to several negative mandatory conditions, on the basis of which the recognition and enforcement shall be refused (see question 9).

### 11 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

Taking into account that the recognition and enforcement of foreign judgments in Sweden, as a general rule, is possible only on the basis of legislative provisions and applicable international treaties, the pro-

ceedings for recognition and enforcement are based on the formal requirements in the relevant instrument.

## 12 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

If the judicial proceedings where the judgment was entered suffered from such irregularities that are manifestly contrary to public policy in Sweden, the recognition and enforcement of a foreign judgment shall be refused. Both the Brussels I Regulation and the Lugano Convention include such ground to refuse recognition and enforcement and each state bound by the respective instrument is principally free to determine the matters that belong to its public policy. However, the public policy reservation is intended to apply only in exceptional situations, and the application of the reservation by national courts of the member states as a ground to refuse recognition and enforcement has been rare. In the practice of the EU Court of Justice, public policy has been found applicable as a ground to refuse recognition of a judgment rendered in a case where the respondent has been deprived of the right to be defended by an eligible person without personal appearance.

In Swedish legal literature, it has been argued that the lack of, or irregularities in, the service of documents during or after the proceedings could possibly be considered as contrary to public policy. There are however no legal precedents on the matter. Thus, the fact that the country where the judgment was rendered has a court system with features that are very different from the Swedish system does not in itself create a problem.

## 13 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

Under the Brussels I Regulation and the Lugano Convention, the jurisdiction of the court where the judgment was entered, as a rule, may not be reviewed in the enforcement proceedings. Exceptions to this principle are made with respect to special provisions of the Brussels I Regulation and the Lugano Convention on jurisdiction in matters relating to insurance and consumer contracts. Thus, if the jurisdiction of the foreign court is irreconcilable with these special provisions on jurisdiction the enforcement of the judgment shall be refused. When the jurisdiction of the court where the judgment was entered is examined in the enforcement proceedings, the court in the country of enforcement is bound by the findings of fact on which jurisdiction was based.

The enforcement regime under the Brussels I Regulation and the Lugano Convention described above differs significantly from the enforcement regime under the bilateral treaties. A fundamental prerequisite for the recognition of any foreign judgement under the bilateral treaties is that the foreign court had jurisdiction.

## 14 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

See question 13. With respect to the subject-matter jurisdiction, both instruments contain also a number of provisions on exclusive jurisdiction of certain courts. These provisions include such matters as rights in rem in immovable property or tenancies of immovable property, matters relating to the constitution and dissolution of legal persons or validity of the decisions of their organs, the validity of entries in public registers, the registration or validity of patents, trade marks, designs, or other similar rights and matters regarding the enforce-

ment of judgments. Likewise, if the jurisdiction of the foreign court is irreconcilable with the mentioned special provisions on jurisdiction the enforcement of the foreign judgment shall be refused.

## 15 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Under the Brussels I Regulation and the Lugano Convention, the recognition and enforcement of a foreign judgment shall be refused if the judgment was rendered in default of appearance and the defendant was not served with an application for summons or with an equivalent document such as a payment order in sufficient time and in such a way as to enable him or her to prepare his or her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him or her to do so. Documents that shall be served during or after the proceedings are not covered by this provision. It is not required that the defendant has actually taken part in or has knowledge of the application for summons. Generally, it is considered that the defendant can begin the preparation of his or her defence at the time when a regular service of process required by law has taken place. The way in which the application for summons should have been served is governed by the law of the country where the judgment was entered.

## 16 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

No, the court will not consider any other impediments to enforcement than those mentioned in question 9.

## 17 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

If the judgment was rendered as a result of fraud or corruption in the foreign court, the recognition and enforcement of such judgement would likely be seen as against Swedish public policy. The party that opposes the recognition and enforcement has the burden of proof with respect to any such circumstances.

If the court comes to the conclusion that the recognition and enforcement of the foreign judgment violates Swedish public policy the recognition and enforcement thereof will be refused.

## 18 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

See question 12.

The prevailing view is that the consistency of a foreign judgment with public policy in Sweden shall as a rule be considered by the court ex officio. However, it does not mean that the court is obliged to search on its own initiative for the circumstances that impede the recognition and enforcement. As mentioned above, the party that opposes the recognition and enforcement will have the burden of proof with respect to any such circumstances. The application of the public policy as a ground to refuse the recognition and enforcement is also subject to the general prohibition to review the judgment as to its substance. The consistency of a foreign judgment with substantive laws in Sweden is not examined, unless the inconsistency is a matter of public policy.

**19 Conflicting decisions**

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

If the foreign judgment is in conflict with a judgment in a dispute between the same parties given in Sweden, irrespective of their chronological order (or with an earlier judgment given in a third state and recognisable in Sweden, provided that the judgment involves the same cause of action between the same parties), the recognition and enforcement will not be granted.

**20 Alternative dispute resolution**

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Under the rules of the Brussels I Regulation and the Lugano Convention, the jurisdiction of the court where the judgment was entered may generally not be reviewed. As the recognition and enforcement of a foreign judgment may only be refused on the basis of grounds exclusively enumerated in the respective instrument, the existence of an enforceable agreement on alternative dispute resolution cannot be considered as a ground to refuse recognition and enforcement.

**21 Favourably treated jurisdictions**

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Apart from the obvious fact that jurisdictions with which Sweden has entered into different treaties are treated more favourably than jurisdictions where no treaties exist, no foreign jurisdictions are treated more favourably than others.

Even though we do not view it as being a more favourable treatment in substance, it is worth noting that the Swedish Supreme Court has in a recent ruling clarified when awards for which enforcement are sought need to be translated. The Court held that awards that are drawn up in Swedish, Norwegian, Danish and English normally need not be translated since courts normally shall be able to understand those languages.

**22 Alteration of awards**

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

No, the court will normally recognise the judgment in its entirety. If a part of the judgment is against Swedish public policy and the matters in the judgment are separable, it is conceivable that the court may declare that the judgment be recognised and enforced only in part.

**23 Currency, interest, costs**

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

The conversion of a damage award to local currency is not a part of the exequatur proceedings. Interest and costs included in the judgment are fully enforceable. When an application for enforcement is lodged with the Enforcement Authority after the exequatur proceedings, it will always accept that the defendant party pays in local currency. There are no exchange control regulations in Sweden that may affect the court's decision.

In Swedish law interest is seen as an issue of substantive law and not a procedural matter. Thus, the rate of interest is generally governed by the substantive law applicable to the legal relationship.

**Update and trends**

The enactment of the community instrument on the recognition and enforcement of foreign judgments such as the Brussels I Regulation and of the Lugano Convention of 2007 in relation between EU and EFTA countries, together with the older Brussels Convention of 1968 and the Lugano Convention of 1988, has in principle led to the establishment of a single European market with an efficient system for the recognition and enforcement of foreign judgments. It is not excluded that as a next step in the integration the exequatur proceeding, which has been viewed as burdensome, would be abolished, which would lead to an even more efficient system.

**24 Security**

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

Under the Brussels and the Lugano rules the respondent may request that the Svea Court of Appeal reviews its exequatur decision and may – if the review is negative – seek to appeal the exequatur decision to the Supreme Court. Such review or appeal procedures do not prevent enforcement.

The proceedings for the recognition of a foreign judgment in Sweden may be stayed by the Svea Court of Appeal if an ordinary appeal against the judgment has been lodged in the country where the judgment was rendered. The Svea Court of Appeal may also stay the proceedings for the enforcement of a foreign judgment if an ordinary appeal has been lodged against the judgment in the country where it was rendered or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged. In the alternative, the Svea Court of Appeal may make the declaration of enforceability conditional upon the respondent providing security for the amount in question.

It should be noted that the applicant at any time may apply for an interim measure with the ordinary Swedish courts to secure his or her claim until an enforcement order has been obtained. Such measures are normally granted if the applicant is able to show:

- a probable cause for the claim (a requirement that normally is met when a foreign award is enforceable in Sweden under the Brussels I Regulation or the Lugano Convention or otherwise); and
- that there is a risk that the respondent may seek to decrease the value of the relevant assets or otherwise try to evade enforcement.

Interim measures may be sought ex parte (without notifying the defendant) if there is a risk that the defendant will use such time to take measures to evade with the property. A decision with regard to an interim measure may be reviewed by the court.

The most common interim measure is to seek an arrest of the assets of the respondent, but a multitude of measures is available. Normally security, in the form of a bank guarantee or similar, must be provided by the applicant.

**25 Enforcement process**

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

If the foreign judgment has been declared enforceable in the exequatur proceedings the application for enforcement shall be made to the Swedish Enforcement Authority. There are no specific requirements set forth, but the Enforcement Authority will need sufficient documentation to try the application. Normally it will be sufficient to

provide a certified copy of the judgment, the decision from the Svea Court of Appeal and the power of attorney.

The Enforcement Authority will, upon the receipt of the application, follow Swedish rules on the enforcement of judgments and will communicate the application to the respondent.

The respondent may enter into a defence with the Enforcement Authority claiming that the payment has been made or that the judgment is time-barred. Such defences will be tried by the Enforcement Authority, and a decision thereof may be appealed separately. The defences that should be tried in the exequatur proceedings will be disregarded by the Enforcement Authority.

It is recommended that the applicant in addition to the necessary documents also provides the Enforcement Authority with as much information about the respondents assets as it has available, since that will speed up the proceedings in general and facilitate the seizure of assets, and thus hinder the respondent from disposing of them. This is especially true if the respondent is not resident in Sweden.

## 26 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

As described above, Sweden has been generally unwilling to recognise judgments rendered by foreign courts, unless the recognition and enforcement is based on legislation and international treaties to which Sweden is a party. However, over the years some important exceptions to this general rule have been developed in case law. This includes an indirect enforceability of a foreign judgment, namely the obtaining of a directly enforceable Swedish judgment on the basis of the foreign judgment without new examination of the subject matter. The possibility to obtain indirect enforceability of a judgment rendered by a foreign court on the basis of an exclusive prorogation agreement between the parties that the designated foreign courts had exclusive jurisdiction was confirmed in the Swedish Supreme Court Vakis case of 1973. In the practice of Swedish appellate courts, the indirect recognition of foreign judgments has also been allowed on the basis of a non-exclusive prorogation agreement. In other instances, Swedish courts have been willing to attribute evidentiary value to a foreign judgment by presuming that the foreign court has tried the matter correctly.

# Delphi

**Sverker Bonde**  
**Polina Permyakova**  
**Anna Backman**

**sverker.bonde@delphi.se**  
**polina.permyakova@delphi.se**  
**anna.backman@delphi.se**

Regeringsgatan 30-32  
111 84 Stockholm  
Sweden

Tel: +46 8 677 54 00  
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