

## THE RECOGNITION AND ENFORCEMENT OF FOREIGN DECISIONS IN DENMARK

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### 1. The Danish reservation regarding justice and home affairs in the EU

In 1993 Denmark held a referendum and the Danish people voted against the ratification of the Treaty on European Union (the Maastricht Treaty), which created the pillar structure of the EU, including the pillar for justice and home affairs. Only after making four reservations to the Maastricht Treaty through the Edinburgh Agreement, including the possibility to opt-out of the rules regarding citizenship, the economic and monetary union, defence policy, and justice and home affairs was Denmark able to ratify the now modified Maastricht Treaty.

Because of the Danish reservation regarding justice and home affairs, common EU legislation creating rights and duties for EU nationals, which is enforceable before national courts elsewhere in the EU, is not applicable in Denmark. EU legislation with a legal base in justice and home affairs and with a direct effect, such as the Brussels I-regulation<sup>1</sup>, is therefore not directly enforceable in Denmark.

Denmark may, however, enter into agreements with the other EU Member States regarding regulations, such as the Brussels I-regulation, which (after implementation by national legislation) makes the relevant regulation applicable in Denmark despite the reservation.

Denmark has entered into four multilateral agreements<sup>2</sup> in respect of justice and home affairs: The most significant in respect of the present topic being the Brussels I-regulation and the Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters<sup>3</sup>. Therefore, both the Brussels I-regulation and the Regulation on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters are implemented by national legislation and apply in Denmark.<sup>4</sup> Denmark's requests for agreements regarding the European Enforcement Order for uncontested claims<sup>5</sup>, the Brussels II-regulation<sup>6</sup> and the Regulation on Insolvency Proceedings<sup>7</sup> have, however, not been settled and, therefore, these regulations have not been implemented in Denmark.

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<sup>1</sup> Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

<sup>2</sup> Council Regulation (EC) No 44/2001, Council Regulation (EC) No 1348/2000, Council Regulation (EC) No 343/2003 and Council Regulation (EC) No 2725/2000

<sup>3</sup> Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters

<sup>4</sup> The Danish Act of 20 December 2006 regarding the Brussels I-regulation and Art. 159a of the Danish Administration of Justice Act

<sup>5</sup> Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims

<sup>6</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility

<sup>7</sup> Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings

## 2. Recognition and enforcement of judgments given in an EU Member State

### 2.1 Recognition

According to the Brussels I-regulation, a judgment given in an EU Member State must be recognised in the other Member States without any special procedure being required.<sup>8</sup> This means that, as a general rule, the recognising and enforcing state cannot put up any additional requirements and, consequently, a judgment rendered by an EU Member State is recognised in Denmark in the same way as Danish judgments are.

Furthermore, a judgment given in an EU Member State will be recognised in Denmark from the date of the judgment even though the judgment does not yet have the force of law.<sup>9</sup>

If one party disputes the recognition of a judgment given in an EU Member State, the other party can apply for a decision that the judgment be recognised. The application must be submitted to the local Danish enforcement court having jurisdiction, and the rules regarding the application of a declaration of enforceability under Articles 38-58 of the Brussels I-regulation must be regarded.<sup>10</sup>

Recognition may only be denied under the circumstances described in Articles 34 and 35 of the Brussels I-regulation: If such recognition is manifestly contrary to public policy in the Member State in which recognition is sought; if the judgment was given in default of appearance and certain requirements were not fulfilled;<sup>11</sup> if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought; if the judgment is irreconcilable with an earlier judgment given in another Member State involving the same cause of action and between the same parties or if the judgment conflicts with the rules relating to jurisdiction of insurance matters<sup>12</sup>, consumer contracts<sup>13</sup> or exclusive jurisdiction<sup>14</sup>.

The Danish enforcement court may under no other circumstances review the jurisdiction of the court in the Member State of origin and may under no circumstances review the judgment as to its substance.<sup>15</sup>

### 2.2 Enforcement

Enforcement in Denmark of judgments given in other EU Member States is regulated by Chapter III, section 2, of the Brussels I-regulation.

The main rule is that a judgment, which is enforceable in the Member State where it was given, is enforceable once the Danish enforcement court has declared the judgment enforceable.<sup>16</sup>

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<sup>8</sup> Art. 33 (1) of the Brussels I-regulation

<sup>9</sup> Art. 37 (1) of the Brussels I-regulation

<sup>10</sup> Art. 33 (2) of the Brussels I-regulation

<sup>11</sup> See below regarding enforcement of default judgments

<sup>12</sup> Chapter II, section 3 of the Brussels I-regulation

<sup>13</sup> Chapter II, section 4 of the Brussels I-regulation

<sup>14</sup> Chapter II, section 6 of the Brussels I-regulation

<sup>15</sup> Art. 35 (3) and 36 of the Brussels I-regulation

Consequently, in order to commence the enforcement procedure, the party wishing to enforce a judgment has to apply to the local Danish enforcement court for a declaration of enforceability.<sup>17</sup> The domicile of the defendant is decisive as to which Danish enforcement court has jurisdiction. Therefore, the enforcement court within the judicial district of the defendant's domicile or – if the defendant is not domiciled in Denmark – the place where the defendant is currently staying or has assets has jurisdiction.

The applicant must appoint a representative *ad litem* domiciled in the same local Danish jurisdiction as the defendant.<sup>18</sup>

The application for enforceability has to be in writing and the application, including two copies, must be submitted in original to the enforcement court.<sup>19</sup>

It is advisable that the applicant applies for actual enforcement of the judgment along with the application for enforceability.<sup>20</sup> If an application for enforcement is forwarded with the application for enforceability, a court fee of DKK 285 plus 0.5% of the claim must be paid.<sup>21</sup>

Together with the application for a declaration of enforceability, the applicant must include a certified copy of the judgment. Usually, the court which has given the judgment will issue a certified copy confirming the authority thereof.

In addition to the certified copy of the judgment, a so-called Annex V certificate must be submitted.<sup>22</sup> The Annex V certificate is issued by the competent authority<sup>23</sup> in the Member State in which the judgment was given. The certificate includes information on the court which has given the judgment, the date of judgment, the names of the parties, the date of service of the document instituting proceedings, whether the judgment is a default judgment, and specifies the party against whom the judgment is enforceable in the Member State of origin.<sup>24</sup>

A certified translation into Danish of the application, the certified copy of the judgment and the Annex V certificate must also be included. The Danish enforcement court cannot require any legalisation or other formalities.<sup>25</sup>

The Danish enforcement court will declare the judgment enforceable once the formalities explained above have been fulfilled. The Danish enforcement court is not allowed to review the case on the merits and, in addition, the court cannot at this point use the grounds upon which recognition can be denied<sup>26</sup> to deny enforceability.<sup>27</sup> The party against whom enforcement is

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<sup>16</sup> Art. 38 (1) of the Brussels I-regulation

<sup>17</sup> Annex II of the Brussels I-regulation and section 2 (1) of the Danish Act of 20 December 2006 regarding the Brussels I-regulation

<sup>18</sup> Art. 40 (1) of the Brussels I-regulation

<sup>19</sup> Sec. 2 (1) of the Danish Act of 20 December 2006 regarding the Brussels I-regulation

<sup>20</sup> Sec. 2 (2) of the Danish Act of 20 December 2006 regarding the Brussels I-regulation

<sup>21</sup> Sec. 16 of the Danish Consolidated Act of 8 September 2006 no 936

<sup>22</sup> Art. 53 (1) and (2) of the Brussels I-regulation

<sup>23</sup> In Denmark, the competent authority is the court giving the judgment

<sup>24</sup> Annex V of the Brussels I-regulation

<sup>25</sup> Art. 56 of the Brussels I-regulation

<sup>26</sup> Art. 34 and 35 of the Brussels I-regulation

sought is not allowed to make any submissions and will in fact not be informed of the application of enforceability at this point.

If the judgment is declared enforceable, the Danish enforcement court will give notice to the defendant and the applicant. If enforceability is not granted, the enforcement court will only have to give notice to the applicant.<sup>28</sup>

Both the applicant and the defendant may lodge an appeal against the declaration of enforceability to the Danish High Court either within one month if the defendant is domiciled in Denmark or otherwise within two months. The appeal has to be lodged with the Danish enforcement court.<sup>29</sup> The appeal will be dealt with in accordance with the rules governing contradictory matters and will usually be dealt with in writing.<sup>30</sup>

The Danish High Court dealing with the appeal may only declare the judgment unenforceable with reference to the grounds specified in Articles 34 and 35 of the Brussels I-regulation mentioned above.<sup>31</sup>

Upon written submission from the defendant, the Danish High Court may stay proceedings if the judgment has been appealed or if the time for appeal has not yet expired. The Danish High Court is, however, not obliged to stay proceedings. If the court chooses not to stay the proceedings, the court may instead choose to make the enforcement conditional upon the provision of security.<sup>32</sup>

Once the time for appeal of the declaration of enforceability has expired, the enforcement proceedings may be commenced, including a compulsory sale of executed property. Until expiry of the time for appeal, execution may be levied, but neither arrest nor compulsory sale is allowed.<sup>33</sup>

### **3. Examples of the enforcement of judgments, etc., given in an EU Member State**

#### **3.1 Recognition and enforcement of interim remedies**

Interim remedies are enforceable in Denmark in the same way as judgments. This means that interim remedies, such as an arrest order or an injunction, will be recognised in Denmark and are enforceable through the procedure explained above.

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<sup>27</sup> Art. 41 of the Brussels I-regulation

<sup>28</sup> Art. 42 (1) and (2) of the Brussels I-regulation

<sup>29</sup> Sec. 393 of the Danish Administration of Justice Act

<sup>30</sup> Art. 43 (3) of the Brussels I-regulation and Sec. 398 of the Danish Administration of Justice Act

<sup>31</sup> Art. 45 of the Brussels I-regulation

<sup>32</sup> Art. 46 of the Brussels I-regulation

<sup>33</sup> Art. 47 of the Brussels I-regulation and Sec. 4 (2) of the Danish Act of 20 December 2006 regarding the Brussels I-regulation

It is, however, a requirement for recognition and enforceability that the interim remedy has been dealt with in accordance with the rules governing contradictory matters<sup>34</sup>, meaning that the Danish court will only enforce the interim remedy if the defendant has been informed of the case either before the order is issued or at least before the order becomes enforceable.<sup>35</sup>

## 3.2 Enforcement of appealed judgments

The Danish enforcement court is, as mentioned above, not allowed to review a judgment on the merits. Therefore, once the formality requirements are fulfilled, including enforceability in the Member State in which the judgment was given, the enforcement court will declare the judgment enforceable and, once the time for appeal has expired, the judgment can be enforced.

Consequently, even though the judgment has been appealed or the time for appeal has not expired, the Danish enforcement court will declare the judgment enforceable if the judgment is enforceable in the Member State of origin and if the formalities are fulfilled. In addition, even if the declaration of enforceability is appealed, the Danish High Court may choose not to stay proceedings and thereby uphold the declaration of appeal with or without requiring security.

This means that a judgment given in another Member State may be enforced in Denmark upon the defendant even if the judgment has been appealed in the Member State of origin, on the condition that it is enforceable in the Member State of origin.<sup>36</sup>

## 3.3 Enforcement of default judgments

As mentioned above, the Annex V certificate includes information on the date of service of the document instituting proceedings if the judgment is a default judgment. Consequently, if the document instituting proceedings has been served in accordance with the law of the Member State of origin, and the other formality requirements regarding enforcement are fulfilled, the judgment will be declared enforceable.

However, if the defendant appeals the declaration, the Danish High Court will be able to review the enforceability on the grounds listed in Articles 34 and 35 of the Brussels I-regulation. Such grounds include the requirement that the defendant must be served with the document which instituted the proceedings, or with an equivalent document, in sufficient time and in such a way as to enable the defendant 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.<sup>37</sup>

Therefore, with regard to default judgments, it is a requirement in respect of appeals that the writ or similar pleading has been served on the defendant within sufficient time and in such a way as to enable him to arrange for his defence. This means that service by remise au parquet or publication in the official gazette is not sufficient, and the enforceability will be denied by the

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<sup>34</sup> Judgment of the European Court of 21 May 1980, C-125/79, and Judgment of the European Court of 27 April 1999, C-99/96

<sup>35</sup> Judgment of the European Court of 14 October 2004, C-39/02

<sup>36</sup> The Danish weekly law reports, 1989, page 877

<sup>37</sup> Art. 34 (2) of the Brussels I-regulation

Danish High Court if the defendant did in fact not receive the document instituting proceedings within sufficient time.

However, if the defendant was able, but failed to commence proceedings to challenge the judgment, the default judgment will be enforceable, even though the above mentioned requirements are not fulfilled. This will be the case if the judgment was served on the defendant within sufficient time before the time for appeal expired.<sup>38</sup>

### 3.4 Arrest subsequent to judgment

A judgment given in a Member State is as mentioned above recognised immediately in Denmark in accordance with the Brussels I-regulation.

An effect of recognition and enforceability is that arrest in Denmark is no longer available. The reason for this is that arrest is regarded as an interim remedy in Denmark, which is only available when execution cannot be levied because a judgment or another basis of execution has not been obtained.

As a judgment rendered by a Member State is recognised and enforced in Denmark, execution will be available, and therefore arrest cannot be executed once a judgment has been obtained. Execution is, however, available also before the time for appeal of the declaration of enforceability expires, but compulsory sale of property is only available once the time for appeal has expired.

### 3.5 Recognition and enforcement of authentic instruments and court settlements

Authentic instruments which have been attested by a notary public will be recognised and enforced in Denmark in accordance with Article 57 of the Brussels I-regulation. This means that a party wishing to enforce an authentic instrument which is enforceable in the EU Member State of origin and has been attested by a notary public in such State can apply for a declaration of enforceability in accordance with the procedure set out in Article 38 et seq. of the Brussels I-regulation explained above.

A court approved settlement which is enforceable in the EU Member State of origin is also recognised and enforced in Denmark.<sup>39</sup> Consequently, a party seeking enforcement of a court approved settlement may apply for a declaration of enforceability with the Danish enforcement court in accordance with Article 38 et seq. of the Brussels I-regulation mentioned above.

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<sup>38</sup> Judgment of the European Court of 14 December 2006, C-283/05

<sup>39</sup> Art. 58 of the Brussels I-regulation

#### **4. Recognition and enforcement of judgments etc. given in Switzerland, Norway and Iceland**

Switzerland, Norway and Iceland (the EFTA states excluding Lichtenstein) have all ratified the 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the 2007 Lugano Convention). The convention's rules regarding recognition and enforcement are very similar to the rules set out under the Brussels I-regulation and the procedure for recognition and enforcement explained above does therefore also in general apply with regard to judgments, interim remedies, authentic instruments and court approved settlements etc. issued by a court in Switzerland, Norway or Iceland.

#### **5. Recognition and enforcement of judgments given in non-EU Member States (except Switzerland, Norway and Iceland)**

According to Danish national law, the Ministry of Foreign Affairs has the authority to pass statutory orders or enter into conventions rendering foreign judgments recognisable and enforceable in Denmark.<sup>40</sup> The authority has, however, not be utilized and, therefore, Denmark does not recognise nor enforce non-EU, foreign judgments.

As recognition and enforcement of a foreign judgment is not possible, a new court case has to be commenced in Denmark regarding the same dispute. The non-recognisable and non-enforceable judgment may, however, be regarded as having significant probative value both regarding the assessment of evidence and the application of law used by the foreign court.<sup>41</sup>

#### **6. Recognition and enforcement of out of court settlements**

Enforcement of out of court settlements are regulated by article 478 of the Danish Administration of Justice Act. According to article 478 an out of court settlement may be enforced if the settlement is in writing, concerns a monetary claim which is due, and if the settlement clearly states that it can be used as a basis for enforcement.<sup>42</sup>

This rule does also apply to foreign out of court settlements. Therefore, if a foreign out of court settlement fulfils the requirements stated above, it may be enforced in Denmark by the Danish enforcement court.

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<sup>40</sup> Sec. 223a and 479 of the Danish Administration of Justice Act

<sup>41</sup> The Danish weekly law reports, 2001, page 1949

<sup>42</sup> Sec. 478 of the Danish Administration of Justice Act

## 7. Recognition and enforcement of foreign arbitration awards

Recognition and enforcement of foreign arbitration awards are regulated by the Danish Arbitration Act.<sup>43</sup> According to section 38 of the Act, Danish as well as foreign arbitration awards are recognised without any special procedure or requirements. In addition, foreign awards may be enforced in the same way as Danish awards and Danish judgments and, therefore, no declaration of enforceability is required.

In order to commence enforcement proceedings of an arbitration award, an application for enforcement must be sent to the Danish enforcement court having jurisdiction together with the arbitration agreement, a certified copy of the award and a certified translation into Danish of both.<sup>44</sup> A court fee of DKK 285 plus 0.5% of the claim must be paid.<sup>45</sup>

Recognition and enforcement may only be denied on the grounds listed in section 39 of the Danish Arbitration Act, which is very similar to the grounds listed in the New York Convention, e.g. ordre public.<sup>46</sup>

## 8. Recognition of foreign bankruptcy proceedings

The Regulation on Insolvency Proceedings does, as mentioned above, not apply to Denmark. This means that Danish courts do not recognise foreign bankruptcy proceedings. The exception thereto is bankruptcy proceedings commenced in the Scandinavian countries.<sup>47</sup>

The legal effects of the lack of recognition of bankruptcies outside Scandinavia is, *inter alia*, that individual proceedings will not be barred; a separate Danish bankruptcy or restructuring is possible; a foreign bankruptcy estate can only come into possession of assets located in Denmark if a Danish bankruptcy is not a possibility; and avoidance proceedings can only be conducted in Denmark if a Danish court has jurisdiction.

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Copenhagen, 10 September 2012

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<sup>43</sup> The Danish Arbitration Act no 553 of 24 June 2005

<sup>44</sup> Sec. 38 (2) of the Danish Arbitration Act

<sup>45</sup> Sec. 16 of the Danish Consolidated Act of 8 September 2006 no 936

<sup>46</sup> Art. V of the 1958 Convention on the recognition and enforcement of foreign arbitral awards

<sup>47</sup> The Nordic Convention of 7 November 1933 regarding bankruptcy