

Enforcement of Foreign Judgments

Fundamental Principles [Denmark]

2020



TABLE OF CONTENTS

	Page
I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)	1
A. Ability to Apply for Recognition and Enforcement of a Court Judgment.....	1
1. Is it possible to apply for enforcement of a foreign court judgment in your country?	1
B. Applicable Law: General Rules	1
1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?	1
C. Special Rules: European Union	2
1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?	2
2. Does the European Union have a special procedure to enforce court judgments coming its member states?	2
D. Average Duration of Enforcement Procedure	2
1. What is the average length of time for this kind of procedure?	2
II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS	2
A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?	2
B. Costs and expenses	3
1. What kind of cost and expenses can a claimant expect in this enforcement procedure?	3
III. FORMAL REQUIREMENTS.....	3
A. Time limit	3
1. Is there a time limit to apply for enforcement of a foreign court judgment?	3

B.	Final and Definitive Court Judgment: Provisional Enforcement	3
1.	Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?	3
C.	Necessary Requirements.....	4
1.	What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?	4
D.	Other Formal Requirements: Court Fees.....	4
1.	Is it mandatory to pay Court Fees for this kind of application?	4
E.	Are there any other formal requirements in your country to enforce a court judgment?	4
IV.	PROCEDURE.....	4
A.	Competent court	4
1.	Which Court or courts are competent to decide an enforcement application?	4
B.	Informational Requirements for the Application to Enforce a Foreign Court Judgment	5
1.	What information must be contained in the enforcement application of a foreign court judgment?	5
C.	What documents must be included with/attached to the application to enforce a foreign court judgment?	5
D.	Phases of the Procedure	5
1.	What are the phases of the procedure to enforce a foreign court judgment?	5
E.	Opposition of the Defendant	6
1.	Can a defendant oppose to this enforcement application?	6
2.	Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?	6
F.	Appeal and its Consequences in this Procedure	6

1.	Is it possible to appeal a court decision to recognize and enforce a foreign court decision?	6
2.	Can this appeal suspend the enforcement?	6
G.	Recovery of judicial costs and expenses	6
1.	Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?	6
V.	RECOVERY OF THE DEBT	6
A.	Means of Enforcement.....	6
1.	What types of assets are subject to enforcement of the court's judgment?	6
VI.	OTHER ISSUES OF INTEREST IN YOUR JURISDICTION	7
A.	Any other issues of interest in your jurisdiction	7

I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer:

In general, retsplejeloven §223a (The Law of Civil Procedure) is applicable for the recognition and enforcement of foreign judgments.

Additionally, Law no. 1282 of 14 November 2018 implements:

- Council Regulation (EC) no. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and
- Lugano Convention of 16 September 1988 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters,
- Parts of Council Regulation no. 4/2009 of 18 December 2008 on maintenance obligations, and
- Haager Convention of 30 June 2005 on agreements about legal venue.

Furthermore, den nordiske domslov no. 635/1986 (Nordic law of recognition and enforcement of judgments) may be applicable. The law covers all judgments except those regarding family law, inheritance and bankruptcy between Denmark, Norway, Sweden, Finland and Iceland.

Lastly, other conventions and bilateral treaties with various countries may apply.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Council Regulation (EC) no. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

This Regulation applies to all Member States of the European Union (including Denmark which has concluded a parallel agreement to apply the Bruxelles-I Regulation, including Regulation 1215/2012 with the European Community). This agreement came into force on 1st July 2007.

2. Does the European Union have a special procedure to enforce court judgments coming its member states?

Answer: Yes, but Denmark is not part of the European Enforcement Order as set down in regulation No 805/2004 of the European Parliament and of the Council of 21 April 2004. Instead, foreign judgments must be processed according to Law no. 1282 of 14 November 2018 (mentioned above).

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: 1-3 months to have the case brought before a bailiff, and if debtor's assets are to be sold, this can take up to 4-6 months for moveable goods and up to approximately 8-10 months for real property.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes.

If Denmark has not entered into any treaty or convention with the country in which the judgment has been decided, the court may deny to enforce the judgment.

Additionally, recognition may be denied for formal reasons, for instance a judgment from an EU-member State may not be recognized if it conflicts with Sections 3 (jurisdiction in matters relating to insurance), 4 (jurisdiction over consumer contracts) or 6 (exclusive jurisdiction) of Chapter II of the Council Regulation (EC) no. 1215/2012.

Furthermore, reasons for denial for recognition are cited in section 45 and for denial of enforcement in section 46 of Council Regulation no. 1215/2012.

Lastly, public order has been cited as grounds for denial mostly in matters regarding family law and inheritance.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: The court fee and lawyers' fees usually depend on the amount claimed. There will be costs to translate documents into Danish. However, documents from Norway and Sweden do not have to be translated. The costs will be added to the debt by the bailiff's court if the claimant is successful.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: Any claim based on a court judgment including interest will, as a main rule, be time-barred when 10 years has passed after the date of the judgment. A claim for payment of interest will be time-barred when 3 years has passed after the date of the judgment unless the judgment has been brought before the bailiff's court in the interim. For example, if a judgment is not brought before the bailiff's court before 4 years after the date of the judgment, the creditor will lose 1 year of interest.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: No. Although it is not required that a judgment is final, it is required that it is enforceable.

If a court judgment has been appealed within the time limit for non-fulfilment, it may not be regarded as enforceable in Denmark. In Denmark, when a decision is made in a Danish court of first instance, the losing party may appeal the case before the second instance court within 4 weeks. However, if the case is appealed within two weeks, then the judgment of the court of first instance may not be enforced. If the

case is appealed within three to four weeks, then the first judgment is enforceable unless the second instance court grants the appeal suspensive effect.

In case a longer time limit for enforcement is set in the country of the judgment, the Danish courts, as a main rule, will accept that the set period of time must pass before enforcement may commence.

If there is a strong suspicion that the debtor will try to hide his assets, it may be possible to provisionally seize their assets until a final judgment is made.

C. Necessary Requirements

1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

Answer:

Regarding judgments from EU Member States or EEA-states, the requirements are set out in Council Regulation 1215/2012, respectively the Lugano Convention.

If Denmark has not entered into any treaty or convention regarding recognition and enforcement, the main rule is that a judgment will neither be recognized nor enforced, (cf. above).

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: Yes. The court fee depends on the amount of the claim.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which Court or courts are competent to decide an enforcement application?

Answer: The local bailiff's court which has jurisdiction in the area where the debtor is domiciled shall decide on the matter.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer:

Regarding judgments from EU member States or EEA-states, the requirements are set out in Council Regulation 1215/2012, respectively the Lugano Convention. The main information required is as follows:

- The standard request for enforcement as set out in the Regulation 1215/2012 must be attached to a confirmed print of the judgment from the foreign EU / EEA court.
- Proof must be provided that the judgment can be enforced in the country in which the judgment has been decided.
- If the judgment is made in the absence of a debtor, then proof must be provided that the debtor was aware of the litigation.
- There should be a updated statement of the debt including costs and interest, as of the date it was sent to the bailiff's court.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: Please see just directly above (Section IV, subsection B 1).

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: First, the court will examine whether it has jurisdiction, and then it will examine whether it has received all necessary documents, (cf. above).

After that, the debtor will be summoned to a meeting in order to enforce the judgment. Often, the debtor under oath shall account for his financial situation and confirm whether he has assets that can be sold to pay off his debt.

If the debtor protests against enforcement of the judgment, then the matter of enforceability may be decided by the bailiff's court with the option of appeal to the second instance court.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes.

If the court has decided that the claim can be enforced, then the debtor can only oppose it on grounds which are in accordance with the grounds listed in section 45 in Council Regulation 1215/2012, for instance procedural grounds or on grounds of public order. The material grounds for the judgment shall not be examined as they were examined when the original judgment was decided.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?

Answer: Yes.

2. Can this appeal suspend the enforcement?

Answer: Yes. Only if the court of first instance or the court of appeal has granted a suspensive effect.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: Yes. The debtor shall be ordered by the court to pay all reasonable costs incurred during enforcement, including legal fees, lawyer costs, costs of selling debtor's assets etc. if the claimant succeed in enforcing the judgment. If the application of enforcement is not successful, the applicant shall pay.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: All movable and immovable property as well as claims and real property rights may be subject to enforcement by the court.

Usually, the following assets are not subject to enforcement:

1. Assets that have been declared inalienable;
2. Secondary rights that cannot be alienated separately from the main ones;
3. Assets that in themselves have no economic value;
4. Assets expressly declared unattachable by a legal provision;
5. Necessary and not very expensive household items and furniture belonging to the home, as well as the clothes of the debtor and his family. In general, assets such as foodstuffs, fuel and other assets which, in the view of the court, are essential for the debtor and his dependents to live with decency are not subject to attachment. However, if the debtor owns an expensive television, and it is the only one in the house, it may be seized if the creditor replaces it with a cheap television.
6. Books and instruments needed by the debtor to exercise his profession, art or business if their value is not out of proportion to the amount claimed;
7. Sacred items and those used for the practice of legally registered religions;
8. Amounts expressly declared to be unattachable by the law. Payments from an insurance policy in connection with a personal injury are a prime example.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: The fact that Denmark is not part of the regulation regarding the European Enforcement Order and other parts of the legal cooperation inside the EU may only be changed by a referendum.

However, as Law no. 1282 of 14 November 2018 incorporates Denmark's parallel agreement, Council Regulation no. 1215/2012 and the Lugano Convention, the recognition and enforcement procedures for EU / EEA judgment is on level with recognition and enforcement procedures in other EU Member States.

Denmark

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