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Litigation: Enforcement of Foreign Judgments in Romania



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General framework

Domestic law

Which domestic laws and regulations govern the recognition and enforcement of foreign judgments in your jurisdiction?

The recognition and enforcement of foreign judgments in Romania are governed by:

- Book VII, Title III of the Civil Procedure Code (Law 134/2010), which was published in the Official Gazette (Part I, 545) on 3 August 2012 and entered into force on 15 February 2013 (replacing the Civil Procedure Code 1865);
- the Emergency Ordinance on Certain Measures Necessary for the Application of Certain European Regulations as of the date of Romania's Accession to the European Union (119/2006), which was published in the
- (Part I, 1036) on 28 December 2006; and
- certain provisions of Book VII of the Civil Code (Law 287/2009), which was published in the
- (Part I, 211) on 24 July 2009 and entered into force on 1 October 2011.

International conventions

Which international conventions and bilateral treaties relating to the recognition and enforcement of judgments apply in your jurisdiction?

Romania is a party to the following international treaties and conventions relating to the recognition and enforcement of judgments, among others:

- the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which was signed by the European Union, Denmark, Iceland, Norway and Switzerland on 30 October 2007 and entered into force on 1 January 2010;
- the Hague Convention on Civil Procedure, concluded on 1 March 1954, which relates to the communication of judicial and extrajudicial documents and requests to obtain evidence or for the performance of other judicial acts, among other things;
- the Hague Convention on the Choice of Court Agreements, concluded on 30 June 2005; and
- the Geneva Convention on the Contract for the International Carriage of Goods by Road, concluded on 19 May 1956.

In addition, Romania has concluded approximately 17 bilateral treaties on the recognition and enforcement of judgments with other countries, including Albany, Algeria, Russia, China and Cuba.

Aside from international treaties and conventions, various EU regulations regarding the enforcement of foreign judgements apply in Romania, including:

- the EU Brussels Ibis Regulation (1215/2012);
- the EU Brussels II Regulation (2201/2003) of 27 November 2003;
- the EU Regulation on Jurisdiction, Applicable Law, the Recognition and Enforcement of Decisions and Cooperation in Matters relating to Maintenance Obligations (4/2009) of 18 December 2008;
- the EU Regulation on Jurisdiction, Applicable Law, the Recognition and Enforcement of Decisions and the Acceptance and Enforcement of Authentic Instruments in Matters of Succession and on the Creation of a European Certificate of Succession (650/2012) of 4 July 2012; and
- the EU Enforcement Order for Uncontested Claims Regulation (805/2004) of 21 April 2004.

Competent courts

Which courts are competent to hear cases on the recognition and enforcement of foreign judgments?

Cases on the recognition and enforcement of foreign judgments are heard by second-degree courts (known as 'tribunals'). Cases involving the recognition of a foreign judgment are heard by the tribunal that has territorial jurisdiction in the district where the defendant is domiciled or headquartered. If the defendant's domicile or headquarters are unknown or located outside Romania, the Bucharest Tribunal will hear the case. Cases involving

the enforcement of a foreign judgment are heard by the tribunal that has territorial jurisdiction in the county where the forced execution occurred.

Distinction between recognition and enforcement

Is there a legal distinction between the recognition and enforcement of a judgment?

Although the proceedings for the recognition and enforcement of a judgment are similar, the effects are different. The recognition of a judgment provides only *res judicata* (ie, it becomes a matter that has already been judged and will thus be denied reconsideration by the courts), whereas enforcement proceedings are aimed at a party obtaining an enforceable title that enables it to initiate the forced execution against the counterparty.

Ease of enforcement

In general, how easy is it to secure recognition and enforcement of foreign judgments in your jurisdiction?

It is generally easy to secure the recognition and enforcement of foreign judgments in Romania.

Reform

Are any reforms to the framework on recognition and enforcement of judgments envisioned or underway?

No – the latest reform entered into force on 15 February 2013.

Conditions for recognition and enforcement

Enforceable judgments

Which types of judgment (eg, monetary judgments, mandatory or prohibitory orders) are enforceable in your jurisdiction and which (if any) are explicitly excluded from recognition and enforcement (eg, default judgments, judgments granting punitive damages)?

Monetary judgments and mandatory and prohibitory orders are enforceable in Romania. Further, the following types of judgment are not explicitly excluded from recognition and enforcement:

- default judgments (ie, when the defendant fails to perform a court-ordered action and the foreign court subsequently settles the legal dispute in the claimant's favour); and
- judgments granting punitive damages, such as exemplary, retributory or vindictive damages (ie, damages awarded in excess of the claimant's loss, which are intended to punish the defendant).

However, these judgments can raise public order violation issues, as the court may consider that the principle of proportionality between the prejudice and the repair measures is thereby violated.

How are foreign judgments subject to appeal treated?

Foreign judgments subject to appeal cannot be recognised or enforced in Romania. However, certain exceptions to this rule exist, such as foreign judgments that are recognised in Romania *de jure* (ie, as of right, without there being a need for a Romanian court of justice ruling in this respect). Foreign judgments are recognised in Romania *de jure* if:

- they refer to the personal status of the citizens of the state where they have been issued; or
- when issued in a third state:
 - o the citizens' state of citizenship has previously recognised the judgment; or
 - o the judgment was issued based on the law determined to be applicable under Romanian private international law, provided that it is not contrary to the public order of Romanian law and that the right to defence has been respected.

Formal requirements

What are the formal and documentary requirements for recognition and enforcement of foreign judgments?

Requests for the recognition and enforcement of a foreign judgment will be drawn up in accordance with the general requirements regarding court claims set out in the Civil Procedure Code. The application should thus include:

- the parties' names and other identifying elements;
- the claims;
- the factual and legal reasons behind the claims;
- the supporting evidence; and
- the submitting party's signature.

The following documents should be enclosed:

- a copy of the foreign judgment;
- proof of the foreign judgment's definitive nature; and
- proof that the summons and the submission of the claim have been communicated to the counterparty by the foreign court or another official document stating that the counterparty knew of the summons and the claim in due course.

In addition to the enforcement request, evidence of the enforceability of the foreign judgment (ie, an official document issued by the foreign court that rendered the judgment) must be appended.

Substantive requirements

What substantive requirements (if any) apply to the recognition and enforcement of foreign judgments? Are enforcing courts in your jurisdiction permitted to review the foreign judgment on the merits?

Certain judgments are recognised de jure, such as:

- judgments regarding the personal status of citizens of the state where the judgments were pronounced;
- judgments pronounced in a third state, which were recognised in each parties' state of citizenship or nationality; and
- judgments that have been pronounced on the basis of the law determined to be applicable under Romanian private international law, provided that they are not contrary to the public order of Romanian law and that the right to a defence has been respected.

The following requirements must be met for the recognition of other judgments:

- the judgment must be final according to the law of the state where it was pronounced;
- the court issuing the judgment must, under the law of the state of residence, have jurisdiction to hear the case. However, the jurisdiction should not be determined exclusively by the presence in that state of the defendant or its property that does not relate directly to the dispute; and
- there must be reciprocity regarding the effects of foreign judgments between Romania and the state of the court that delivered the judgment.

The same conditions must be fulfilled for the enforcement of a judgment. In addition, the judgment must be enforceable according to the law of the state where it was delivered.

Enforcing courts cannot review foreign judgments on the merits.

Limitation period

What is the limitation period for enforcement of a foreign judgment?

The limitation period for the enforcement of a foreign judgment is governed by the law of the state that delivered the judgment. After a Romanian court delivers an enforcement decision, the limitation period for the forced execution is:

- 10 years in matters concerning real rights (eg, ownership, use, pledge, usufruct, mortgage, habitation and servitude); and
- generally three years for matters concerning personal rights (eg, the recovery of a receivable or loan and material prejudice).

Grounds for refusal

On what grounds can recognition and enforcement be refused?

Recognition and enforcement can be refused on the following grounds:

- the judgment is manifestly contrary to the public order of Romanian private international law; this incompatibility is determined by considering, in particular:
 - the intensity of the link between the case and the Romanian legal order; and
 - the gravity of the effect thus produced;
- the judgment rendered in a matter in which persons do not dispose of their rights freely has been obtained solely for the purpose of circumventing the cause of incidence of applicable law under Romanian private international law;
- the lawsuit has been settled between the same parties by a decision, even if not final, of the Romanian courts or is pending before them on the date of referral to the foreign court;
- the judgment is incompatible with a decision that has previously been pronounced abroad and is likely to be recognised in Romania;
- the Romanian courts had international exclusive jurisdiction to hear the case;
- the right to defence has been violated; or
- the judgment may be the subject of an appeal in the state that rendered the judgment (unless the judgment may be enforced even where it is not final, as discussed above).

Service of process

To what extent does the enforcing court review the service of process in the original foreign proceedings?

If the judgment was rendered in the absence of the party that lost the trial before the foreign court, the enforcing court must ensure that the losing party:

- received the counterparty's claim;
- was summoned for debates; and
- was given the opportunity to defend itself and appeal the decision.

For the court to be able to review the service of process (namely, to ensure that a party's right to defend itself was fully observed), the claimant must attach to the enforcement request:

- proof that the summons and a copy of the claim were handed in, as delivered to the missing party in the foreign court; or
- another official document stating that the summons and the claim were known in due time by the party against whom the ruling was pronounced.

Public policy

What public policy issues are considered in the court's decision to grant recognition and enforcement? Is there any notable case law in this regard?

The Romanian courts of justice do not grant recognition and enforcement if the foreign judgment is manifestly contrary to the public order of Romanian private international law. Notable public policy issues are:

- a party's right to defence;
- the adversarial principle (namely, if a party was incorrectly summoned);
- the exclusive international jurisdiction of the Romanian courts to hear the case; and

- a violation of the fundamental principles of Romanian law, EU law or fundamental human rights.

Jurisdiction

What is the extent of the enforcing court's power to review the personal and subject-matter jurisdiction of the foreign court that issued the judgment?

The enforcing court may deny the recognition or enforcement of a judgment only if:

- the Romanian courts had exclusive jurisdiction to hear the case; or
- there is no significant link between the state of the foreign court and the dispute solved by the foreign court.

Thus, the enforcing court does not analyse the personal and subject matter jurisdiction of the foreign court, which are determined by the law of the foreign state.

Concurrent proceedings and conflicting judgments

How do the courts in your jurisdiction address applications for recognition and enforcement where there are concurrent proceedings (foreign or domestic) or conflicting judgments involving the same parties/dispute?

The Romanian courts will deny the recognition or enforcement of a judgment issued by a foreign court if:

- the same dispute is pending before or has been resolved by a domestic court; and
- the judgment is irreconcilable with an earlier judgment issued by another foreign court that could be enforced in Romania.

Opposition

Defences

What defences are available to the losing party to a foreign judgment that is sought to be recognised and enforced in your jurisdiction?

The losing party to a foreign judgment can use procedural defences, such as:

- a violation of the right to a defence;
- the fact that the foreign judgment is not final; and
- the fact that the judgment regards rights that the parties cannot freely dispose of and has been obtained solely for the purpose of circumventing the cause of incidence of applicable law under Romanian private international law.

Injunctive relief

What injunctive relief is available to defendants (eg, anti-suit injunctions)?

There are no anti-suit injunctions under Romanian law.

Recognition and enforcement procedure

Formal procedure

What is the formal procedure for seeking recognition and enforcement of a foreign judgment?

A claimant must submit a request before the relevant court and enclose thereto the requisite documents. The court will deliver the request to the opposing party and summon the parties to a hearing, unless – according to the foreign judgment – the defendant agreed to the claim's admission. The court may then ask the claimant to submit additional documents, in which case the rendering of the judgment will be postponed. If no additional documents are requested from the claimant, the judgment will be issued.

Timeframe

What is the typical timeframe for the proceedings to grant recognition and enforcement?

Three to four months is the typical timeframe for the proceedings to grant recognition and enforcement. However, this can be much longer depending on the evidence requested by the parties and granted by the court (eg, official letters to the Ministry of Justice confirming the mutual recognition of judgments between the two states when no treaty has been signed, but the states' recognise each other's judgments).

Fees

What fees apply to applications for recognition and enforcement of foreign judgments?

The judicial stamp fee for the recognition and enforcement of a foreign judgment is approximately €4. Other fees relate to authorised translations and lawyers' fee, as well as the administration of evidence, as required.

Security

Must the applicant for recognition and enforcement provide security for costs?

No, the applicant for recognition and enforcement does not have to provide security for costs.

Appeal

Are decisions on recognition and enforcement subject to appeal?

Yes, decisions on recognition and enforcement are subject to appeal.

Other costs

How does the enforcing court address other costs issues arising in relation to the foreign judgment (eg, calculation of interest, exchange rates)?

The enforcing court will establish the amount due in the national currency by applying the exchange rate applicable on the date on which the judgment became enforceable in the state that issued the foreign judgment. Until the date of the conversion, the interest generated by the amount determined in the foreign judgment is governed by the law of the court that issued the judgment.

Enforcement against third parties

To what extent can the courts enforce a foreign judgment against third parties?

Courts cannot enforce a foreign judgment against third parties. Further, foreign judgments concerning interim remedies, which usually establish obligations on third parties, are specifically exempted from recognition and enforcement.

Partial recognition and enforcement

Can the courts grant partial recognition and enforcement of foreign judgments?

Partial recognition and enforcement of foreign judgments can be granted if there are multiple heads of claim which can be dissociated.