

Bulgaria

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

Rules generally applicable to recognition and enforcement

Except for the international treaty regimes and the EU Judgment Regulation set out below, the basic criteria for the recognition and enforcement in Bulgaria of a foreign judgment are set out in s 117 of the Bulgarian International Private Law Code 2005 (**IPLC**). These criteria apply to judgments in all manner of private law proceedings, including foreign judgments against a foreign or in some cases, the Bulgarian state (subject to the exclusions and defenses described below).

Recognition and enforcement proceedings do not involve the Bulgarian courts in undertaking a review of the merits of the foreign judgment. In all cases below (unless otherwise stated), foreign courts include other authorities which exercise judicial functions in the jurisdiction of origin.

The criteria for recognition and enforcement in Bulgaria are the following:

1. The foreign court issuing the judgment must not have lacked jurisdiction according to the rules of Bulgarian private international law (*eg*, where property rights in land are concerned and such land is situated in Bulgaria, Bulgarian courts would assert a peremptory jurisdiction over the dispute).
2. Similarly, in disputes relating either to corporeal or incorporeal property rights, the only basis for the foreign court's jurisdiction must not have been the claimant's nationality or its registration in the country of the court's situs.
3. Prior to commencing enforcement proceedings, the judgment debtor must have been served with the claim; the parties must have been properly summoned (according to the law of the place of service); while the fundamental principles of Bulgarian due process relating to their representation must have been complied with.
4. There must have been no prior (to the judgment) judgment of a Bulgarian court that is in effect and: (a) decides a dispute between the same parties, (b) concerns the same cause of action; and (c) seeks the same remedies.
5. There must be no pending proceedings before a Bulgarian court with the same features as in 4 above.
6. The recognition or admission of the judgment for enforcement must not be contrary to Bulgarian public order.

It is possible to recognise and enforce in this manner both final and interim decisions and both judgments relating to orders for the payment of sums of money and involving remedies such as specific performance and others.

Procedure for enforcement generally

In the general scenario, enforcement of a foreign judgment in Bulgaria involves three procedural stages:

1. An application for recognition (in the exequatur procedure) submitted at the Sofia City Court (**SCC**).
2. Subject to SCC recognition, an application for a separate writ of execution to the SCC.
3. Subject to the writ of execution, an application to instruct a bailiff to institute enforcement proceedings proper (in Bulgarian terms, these are understood as the proceedings before a bailiff).

Service in the recognition and enforcement proceedings

The judgment debtor must be served with each of the recognition and writ of execution orders. Service in the recognition proceedings is by the SCC, with the foreign judgment and the order to recognise or not being served at the end of the recognition proceedings. Service of the writ of execution is by the bailiff.

The judgment debtor is entitled to appeal and there are two potential instances of appeal. Pending the outcome of an appeal, recognition and enforcement may be stayed but this may not affect any freezing remedies that might have been imposed in the meantime.

The Brussels Regime

The general regime pursuant to the IPLC however is displaced with respect to judgments given in EU Member States ('MS') chiefly by virtue of Regulation (EU) No 1215/2012 (recast) ('Brussels Recast' or 'Judgment Regulation').

The Judgment Regulation aims to abolish the recognition phase of proceedings within its domain of application. Judgments given in one MS are automatically recognised in other MS as long as they are enforceable in the MS of origin and certified by the court of origin as compliant. Recognition of a judgment may only be refused:

(a) if manifestly contrary to public order (*ordre public*) in the MS addressed;

(b) where judgment was given in default of appearance of the defendant, 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 them to arrange for their defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for them to do so. However, this does not apply to the enforcement of a protective measures in a judgment or where the person seeking enforcement applies for protective measures;

(c) if the judgment is irreconcilable with one given between the same parties in the MS addressed;

	<p>(d) if the judgment is irreconcilable with an earlier judgment given in another MS or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfills the conditions necessary for its recognition in the MS addressed; or</p> <p>(e) if the judgment conflicts with:</p> <p>(i) the rules on jurisdiction in matters relating to insurance, consumer contracts or over individual contracts of employment, where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or</p> <p>(ii) the rules on exclusive jurisdiction.</p> <p>Procedure in Judgment Regulation enforcement situations</p> <p>Unlike the IPLC procedure, enforcement in Judgment Regulation proceedings starts <i>ex parte</i> in the sense that there is no opportunity for the judgment debtor to object prior to the commencement of enforcement proceedings by the bailiff.</p> <p>The judgment creditor must present to the bailiff: (a) an authenticated copy of the judgment, (b) the standard certificate prescribed by Article 53 of the Judgment Regulation, and (c) a translation.</p> <p>Other international instruments governing recognition and enforcement</p> <p>Bulgaria does not apply a model treaty to the enforcement of foreign judgments.</p> <p>However, in addition to its EU obligations and the application of the Judgments Regulation above, it is a party to the 2007 Lugano Convention (Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) (which governs the recognition and enforcement of judgments from EFTA member states' courts) and the 2019 Hague Convention (Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters), which entered into force on 1 September 2023.</p> <p>Bulgaria is also a party to and applies the 1954 New York Convention (United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the 1965 Washington Convention/ICSID Convention (Convention on the Settlement of Investment Disputes between States and Nationals of Other States).</p>
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p>
	<p>Enforcement against states in Bulgaria</p> <p>The scope of this note in our view includes three scenarios: (a) a judgment rendered in a Bulgarian court against a foreign state; and (b) a judgment rendered in a foreign court against: (i) the Bulgarian state; or against (ii) any foreign state, whether that of the foreign court or another. As regards (b) the foreign judgment to be enforced in Bulgaria must be served on the foreign state which will be in accordance with the rules of Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (for service to EU Member States) or the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (for</p>

service in state parties to the Convention), to which Convention Bulgaria is also a party. Outside of these situations, s 32 IPLC applies according to which summoning is carried out through the Bulgarian diplomatic or consular representatives or the competent foreign authorities. The Bulgarian authorities approach them through the Bulgarian Ministry of Justice.

There is no requirement for a certification or intervention by the Bulgarian executive branch of government for the enforcement process to be initiated and therefore this is a purely judicial process.

Bulgarian law treats enforcement of judgments against the Bulgarian state differently to that against private parties and other states. Except for property governed by the 1961 Vienna Convention on Diplomatic Relations ('1961 Vienna Convention'), it treats foreign state property without any special respect (in its domestic law) to a doctrine of state or sovereign immunity. We deal first with the treatment of the Bulgarian state and in our answer to Q3 - with the issue of state immunity generally.

The Bulgarian state and Bulgarian state bodies as judgment debtors

A foreign judgment against the Bulgarian state would be subject to special considerations in enforcement in Bulgaria.

Per s 519 of the Bulgarian Civil Proceedings Code (**CPC**), enforcement proceedings in the strict sense are not allowed against the Bulgarian state (including the various state bodies/agencies) for monetary (i.e., financial) obligations¹.

Enforcement proper is substituted with a different procedure whereby a request for payment pursuant to a writ of execution is made to the state body which is the judgment debtor. The state body must arrange for funds to be made available for payment to the judgment creditor as soon as practicable. If funds are insufficient, provision must be made with the judgment debtor's next annual budget at the latest.

It is untested in domestic courts what, if any, remedies arise in favor of the judgment creditor in the event that the judgment debtor does not pay or provide for payment. In particular, it may currently be the safer view that no domestic administrative law remedies arise in the event of absence of provision.

The position is however different as regards non-pecuniary/non-financial judgments. Their enforcement is allowed as standard methods against state bodies (e.g. by proceedings for repossession of land).

Foreign states as judgment debtors

It would appear that the above limitation on enforcement of monetary judgments does not apply to foreign states' assets within the jurisdiction of Bulgaria and enforcement can be initiated against such assets on a general basis, provided that those are not covered by immunity to enforcement as detailed herein (in particular, in accordance with the 1961 Vienna Convention on Diplomatic Relations).

¹ This may be contrasted with state-owned enterprises (SOEs). SOEs are liable to enforcement of their debts under the generally-applicable rules.

3.	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p>
	<p>Sovereign immunity doctrine</p> <p>By ‘sovereign immunity’ we understand the legal doctrine whereby a sovereign or state is immune from the jurisdiction of the administrative or judicial authorities of other states. In the Bulgarian domestic legal order, this doctrine is of limited application for the reasons we set out below.</p> <p>Firstly, although per Article 5(4) of the Bulgarian Constitution, ‘<i>International treaties [highlight added] which have been ratified in accordance with the Constitution, promulgated and have entered into force in respect of the Republic of Bulgaria form part of domestic law</i>’ and ‘<i>shall prevail over contrary domestic law</i>’, this transposes the provisions of international <i>treaties</i> into domestic law but not the principles of customary international law or <i>jus cogens</i>.</p> <p>Bulgaria is not a party to the 1972 European Convention on State Immunity either directly or as part of EU membership or indeed to any other convention on that matter. It has not become a signatory to the 2004 UN Convention on Jurisdictional Immunities of States and Their Property (which itself has not yet come into effect).</p> <p>Secondly, there is an absence of any domestic legislation whatsoever providing for the application of state immunity.</p> <p>Enforcement proceedings against the Bulgarian state</p> <p>As noted in the answer to Question 2 above, enforcement proceedings must follow the domestic procedural rules and no enforcement proper can proceed against the Bulgarian state or its departments for monetary judgments.</p> <p>Enforcement proceedings against foreign states</p> <p>As discussed under Question 2, a Bulgarian court may recognise a foreign judgment against a foreign state and issue a writ of execution both for monetary and non-monetary judgment debts where that 1961 Vienna Convention does not apply.</p> <p>Exception for foreign diplomatic assets</p> <p>Importantly, enforcement is not applicable to foreign states’ assets in Bulgaria, covered by diplomatic immunity in accordance with the 1961 Vienna Convention. Such assets are usually premises, buildings and motor vehicles used by foreign missions. This protection however ought not to extend to other assets directly owned by such foreign states in Bulgaria, <i>eg</i> any undertaking registered in Bulgaria and solely owned by a foreign state, or a property which is not used for diplomatic purposes. The Bulgarian courts have not as yet grappled with questions such as what is the status of monies held in a bank account of the state which is used for the purposes of a diplomatic mission (even if not an account of that mission), for instance. It appears likely that the public international law doctrines on the application of state immunity (such as the distinction between <i>acta iure gestionis/imperii</i>) would be imported into Bulgarian domestic law through an interpretation of the 1961 Vienna Convention.</p>

4.	What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?
	Bulgarian law does not appear to provide for exceptions in case of a war of aggression or a breach of international law.
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	<p>Due process standards and exceptions generally</p> <p>Bulgarian domestic law applies requirements of due process to foreign judgments to be enforced in Bulgaria irrespective of whether their recognition and enforcement are governed by the Judgments Regulation, an international convention or the IPLC by default.</p> <p>The criteria for recognition and enforcement set out in both s 117 IPLC and article 45 of the Judgments Regulation provide a large part of the basis of the criteria for due process evaluation by the Bulgarian court.</p> <p>In sum and unless derogated from in an international convention in force in Bulgaria, they are that the judgment is (at the time of recognition/enforcement):</p> <ul style="list-style-type: none"> (a) issued by a competent authority in the state of origin; (b) not in conflict with Bulgarian domestic public order and public policy; (c) issued in proceedings where the defendant was served with the claim and had sufficient time to organize its defense; (d) irreconcilable with a judgment given between the same parties in the addressed state; (e) irreconcilable with an earlier judgment given in another state involving the same cause of action and between the same parties, provided that the earlier judgment fulfills the conditions necessary for its recognition in the addressed state. <p>Application of due process principles in recent case law</p> <p>Domestic case law, in particular that of the Bulgarian Supreme Court of Cassation (SCC), the most senior domestic court in civil and commercial matters, fleshes the above principles out.</p> <p>In Judgment 27 of 17 March 2008 in case 510 of 2007, the SCC held that a foreign judgment presented for recognition under s 117 IPLC must ‘bear the hallmarks of a court judgment’. Provisions guaranteeing due process protections in s 117 - 121 IPLC were also held to extend to court-sanctioned settlements, if they are equated to court judgments in the jurisdiction in which they have been entered. Per the SCC, these requirements do not extend to a writ of execution issued in a foreign state.</p> <p>Judgment 60044 of 16 September 2021 in case 2775 of 2019 dealt with how the Bulgarian courts must test for whether the foreign judgment is in force.</p>

	<p>The usual requirement for a certificate from the foreign court that its judgment has entered into force does not extend to an obligation for the Bulgarian court to assess evidence for the service of the judgment to the defendant under s 119 IPLC.</p> <p>Any certificate issued by the foreign court is necessary and sufficient to establish entry in force of the judgment. In the absence of such a certificate, the Bulgarian courts will hear other evidence as to entry into force. The court may investigate the authenticity and formal validity of any presented certificate. It is also possible to present evidence of appeal proceedings for the decision. Although in some jurisdictions this may not mean that the prior judgment has not entered into force and it may remain enforceable per the law of that jurisdiction, it is unclear how Bulgarian courts would countenance evidence on the foreign position in this regard.</p> <p>Deference to the law of the jurisdiction of origin</p> <p>The court may take into account the law of the jurisdiction of origin when reviewing if the foreign judgment was issued in compliance with due process standards. For example, if the judgment creditor cannot provide an enforceability declaration or a declaration that the foreign judgment has entered into force, the Bulgarian court may request evidence on the applicable foreign law in order to identify whether the judgment has entered into force or is enforceable in the jurisdiction of origin.</p> <p>Incidence of burden of proof</p> <p>The burden of proof is distributed between the parties. The judgment creditor must evidence the compliance with the s 117 IPLC criteria described above.</p> <p>If the defendant state as a judgment debtor wishes to appeal the recognition and/or the enforcement of the foreign judgment (where permitted), it will have the burden of proving that the documentation provided by the applicant is formally insufficient to demonstrate compliance with the respective legislation requirements.</p>
<p>a.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></p>
	<p>The court will analyze if the judgment debtor was properly served with regard to meeting due process requirements as above. Bulgaria will apply a hybrid of the requirements of the foreign and Bulgarian systems.</p> <p>While the question as posed concerns specifically service as against a state, principles applicable to other parties may inform the assessment of due process.</p> <p>Methods of service permitted by Bulgarian law</p> <p>Several methods of service are permitted by Bulgarian law. Documents may be served:</p> <p>(a) personally; or to</p> <p>(ii) an authorised agent or representative, including employees, directors or attorney-at-law; or</p>

	<p>(iii) by posting a notification to the respondent’s address - when the respondent cannot be found at the address provided in the proceedings to be served or at the address where they are domiciled or registered; or</p> <p>(iv) by publication of a notice in the State Gazette (a publication which serves as a list of public notices) - where the respondent does not have an address in Bulgaria or did not provide an address.</p> <p>Alternative methods</p> <p>Court documents in Bulgaria may be served also in hard copy or electronically (e.g. by email; electronic document exchange; etc.). For example, under s 52 CPC the Bulgarian state (and its various bodies) are obliged to nominate an employee responsible for the receipt of court documents (e.g. summons; claims; etc.).</p> <p>In addition, s 52(2) CPC provides that the service on the Bulgarian state shall be only via an electronic address specified by them either on their premises or website(s). This does not exclude service on the respective institution’s registered address.</p> <p>Bulgaria also permits service abroad</p> <p>In the general case, this is through diplomatic channels following the Hague Convention or analogous methods.</p>
<p>b.</p>	<p><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></p>
	<p>Under Bulgarian domestic law there are no express statutory provisions stipulating exceptions or solutions when the service against a state is impossible but as stated no means of service are in principle infeasible and service is assessed on its facts, with reference to principles of due process, the efforts and good faith of the parties including efforts to avoid receipt of service by the party being served and others.</p> <p>For instance, when it is impossible to otherwise serve, the Bulgarian courts may check whether the jurisdiction of origin permits service by gazetting or other public notice publication, provided such a means of service is appropriate and admissible.</p>
<p>c.</p>	<p><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></p>
	<p>Under Bulgarian law there are no express statutory provisions stipulating a standard of availability of representation for foreign states. Process standards may be derived in principle from case law and where necessary standards applicable to private parties would be imported.</p> <p>With representation, the main consideration of Bulgarian courts is as part of a holistic assessment of the exercise of the right of defense. In this regard, the Bulgarian court conducts a substantive examination and may go beyond the formal, when there is insufficient evidence of the judgment debtor’s rights of defense having been safeguarded. An inquisitorial process of examination may be conducted.</p>

	<p>As an example of recent case law in which we acted, the Sofia Court of Appeal (SCA) in its Judgment No 795 of 1 June 2022 in Case 1791 of 2021, provides guidance on the standard of assessment applicable to default judgments against a defendant who <i>was able</i> to defend herself. Although the case concerned enforcement of an EU judgment under the Judgments Regulation, the principles of due process were of general application.</p> <p>The SCA held that service of the court documents relating to issue of the proceedings may not be required where effective compliance with the right of defense is observed overall (referring also to EU case law such as cases C-70/15, C-283/05, EU:C:2006:787). The Bulgarian court requested to enforce must refuse to enforce an <i>ex parte</i> foreign judgment if the non-appearing defendant was not properly summoned and this breached her rights of defense, unless the defendant subsequently successfully challenged this judgment before the jurisdiction of origin.</p> <p>Therefore, when the defendant can still exercise a right to an ordinary appeal, this is equivalent to an effective exercise of the right of defense. If the defendant did not exercise such a right when it was possible to, recognition of a default judgment against them cannot be refused.</p>
d.	<p><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></p>
	<p>The foreign state</p> <p>Bulgarian law does not make express provision for situations where a litigant cannot find legal representation or chooses not to be represented. In this regard, the respective state will not be treated differently from any other party and such a litigant in person would not be in either a worse or a better position to a legally represented party.</p> <p>The Bulgarian state</p> <p>Regarding the Bulgarian state itself, the relevant part of it may be served at the address of its main office. The relevant address can be found at https://reports.bulstat.bg/bulstat-ireports/report.jsf?x_rpt=rpt1. The state body is presumed legally represented by the respective authority provided in the respective statute for its constitution. For example, pursuant to s 31(1) CPC, the Bulgarian state is represented by the Minister of Finance on civil and commercial proceedings, unless otherwise provided.</p>
6.	<p>What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?</p>
	<p>Foreign states' assets</p> <p>As stated above and as stated in Question 3, enforcement against foreign states' assets is feasible broadly, as long as these assets do not enjoy the immunity under the 1961 Vienna Convention).</p> <p>Foreign state-owned entities</p> <p>Unless the foreign entity can be said to be related to the performance of the functions of the diplomatic mission, there is freedom in Bulgarian law to enforce against an asset of a state-</p>

owned entity where that entity is not separately personified. If the entity is a separate person, under its national law of organization, Bulgarian law will prevent enforcement of an obligation owed by the foreign state in respect of the property of the entity.

Bulgarian state assets

Please see our answer to Q2 as to the state itself.

For these purposes the Bulgarian state includes state bodies, departments and parts such as the President, the Council of Ministers, courts, prosecutors' offices, regional inspectorates and any other institution funded from the state budget enjoy the *sui generis* immunity from enforcement of monetary obligations under s 519(1) CPC.

However, an exception to this relates to Bulgarian state-owned corporations. Their debts are enforceable against in the usual way as they have a separate personality **and** a commercial nature.