



Exequatur of foreign commercial arbitral awards in Romania

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Abstract: This article provides a detailed analysis of the procedure of recognition and enforcement (exequatur) of foreign commercial arbitral awards in Romania. In Section I, the analysis starts with the determination of the conditions for the recognition and enforcement of a foreign arbitral award in Romania, based on the applicable legislation, i.e. the 1958 New York Convention and Art. 1124-1133 of the Code of Civil Procedure. Then, on the basis of the theoretical benchmarks, each of the conditions for the exequatur of foreign arbitral awards are briefly analyzed, with emphasis on the practical application of the legal conditions, with reference to doctrinal and case law benchmarks. Section II presents a pragmatic analysis of the steps necessary for the recognition and enforcement of a foreign arbitral award in Romania, from the perspective of the person initiating the exequatur procedure. Finally, in Section III, brief conclusions on the specifics of the exequatur procedure of foreign commercial arbitration awards in Romania are presented.



I. Conditions for Exequatur of foreign arbitral awards in Romania

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards from 1958 established a very lean and efficient¹ procedure for the recognition and enforcement of arbitral awards in a state other than the state where the award is to be enforced.

The New York Convention was ratified by Romania in 1961 and currently the national procedural law on recognition and enforcement of foreign arbitral awards is established in Art. 1124-1133 Romanian Civil Procedure Code (RCPC). These articles are a faithful transposition of the system put in place by the New York Convention:

- **Relevant provisions of the New York Convention:**

Art. I.1 New York Convention

This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

Art. V New York Convention

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

¹ M. Voicu, *Convenția pentru recunoașterea și executarea sentințelor arbitrale străine – New York, 10.06.1958 – 60 de ani de la adoptare*, available at: <https://www.juridice.ro/essentials/2371/conventia-pentru-recunoasterea-si-executarea-sentințelor-arbitrale-straine-new-york-10-06-1958-60-de-ani-de-la-adoptare>.



(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

- **Transposition of the New York Convention in the Romanian Civil Procedure Code:**

Art. 1124 RCPC

Foreign arbitral awards are any domestic or international arbitration awards rendered in a foreign state and which are not considered national judgments in Romania.

Art. 1125 RCPC

Any arbitral award of the provisions of Article 1.124 shall be recognized and may be enforced in Romania if the dispute forming its subject-matter can be resolved arbitrarily in Romania and if the judgment does not contain provisions contrary to the public policy of Romanian private international law.

Art. 1129 RCPC

The recognition or enforcement of the foreign arbitral award shall be rejected by the tribunal if the party against whom the award is invoked proves the existence of one of the following circumstances:

(a) the parties did not have the capacity to conclude the arbitration agreement under the law applicable to them, determined in accordance with the law of the state where the award was given;

(b) the arbitration agreement was not valid under the law to which the parties submitted it or, in the absence of establishing it, under the law of the state in which the arbitral award was given;



- (c) the party against whom the award is invoked has not been duly informed of the appointment of arbitrators or of the arbitral proceedings, or has been unable to build its own defense in the arbitral proceedings;*
- (d) the constitution of the arbitral tribunal or the arbitral proceedings did not comply with the parties' convention or, in the absence of their agreement, with the law of the place where the arbitration took place;*
- (e) the award concerns a dispute not provided for in the arbitration agreement or outside the limits fixed by it, or contains provisions which exceed the terms of the arbitration agreement. However, if the provisions of the award concerning matters subject to arbitration can be separated from those concerning matters not subject to arbitration, the former may be recognized and declared enforceable;*
- (f) the arbitral award has not yet become binding on the parties or has been annulled or suspended by a competent authority of the state in which or according to the law in which it was rendered.*

From the provisions above we can discern the following conditions for the recognition and enforcement of a foreign arbitral award in Romania:

- The arbitral award must be a foreign arbitral award according to Art. 1124 RCPC;
- The subject matter of the dispute must be capable of settlement by arbitration in Romania;
- The arbitral award must be final and binding;
- The award must not contain provisions contrary to the public policy of Romanian International Law;
- The award must be given by an arbitral tribunal agreed and constituted according to the parties' convention.

Additional to the specific conditions above, the party who requests the exequatur (creditor-plaintiff) must prove the general condition of legal interest that any legal endeavour must have under Romanian Civil Procedure.

1. Specific conditions for exequatur of commercial arbitral awards

1.1. The arbitral award must be a foreign arbitral award

For an arbitral award to be considered foreign, it must meet two cumulative conditions²:

a. The award is given in a foreign state

This condition is purely geographic and it refers to all arbitral awards given outside the territory of Romania. Therefore, an arbitral award given in Romania, even if one or both

² S-Al. Stanescu in V.M. Ciobanu, M. Nicolae (coord.), *Noul Cod de procedura civila comentat si adnotat, Vol. II*, Universul Juridic, Bucharest, 2016, pp. 1767-1768.



parties are foreigners, will not be considered a foreign arbitral award. The consequence is that all arbitral awards given in Romania are considered national arbitral awards and are directly recognised and enforceable in Romania (as per art. 615 RCPC³) and don't have to follow the exequatur procedure described in the present article.

b. The award is not considered a national award in Romania

This condition is analysed alongside the geographical condition above. There can be cases in which Romanian parties choose the seat of arbitration in a foreign country. Therefore, the exequatur judge must determine, on a case-by-case basis, whether there are other foreign elements regarding the arbitral process (e.g. use of foreign procedural rules, foreign arbitrators etc.).

If there are no foreign elements other than the seat of the arbitration (the geographical condition), then the arbitral award will be considered a national award and will not be subject to the exequatur procedure. On the other hand, if there are other foreign elements other than the seat of arbitration, the arbitral award will be considered a foreign award and will follow the exequatur procedure in order to be recognised and enforced in Romania.

1.2. The subject matter of the dispute must be capable of settlement by arbitration

The arbitrability condition refers to the fact that the subject matter of the dispute that was settled by the arbitral award must fall under the subject matters that can be settled by arbitration in Romania.

Art. 542 RCPC lists the strict exceptions of disputes that cannot be settled by arbitration in Romania:

- Disputes regarding civil status;
- Disputes regarding peoples' capacity;
- Disputes regarding succession debates;
- Disputes regarding family relations;
- Disputes regarding rights that parties are not allowed to dispose of.

Other than these exceptions, all other disputes may be settled by arbitration in Romania. Generally, all commercial matters are arbitrable, therefore arbitral awards given in commercial international arbitrations can be recognised and enforced in Romania.

³ Art. 615 RCPC: *The arbitral award constitutes an enforceable title and is enforced just like a court decision. The provisions of Article 603 (3) shall remain applicable.*



1.3. The award must be final and binding

To be final and binding, an arbitral award cannot be challenged by any of the parties according to the procedural rules that governed the arbitration.

In practice, most commercial international arbitration organisations (e.g. ICC Paris) provide very discouraging procedures for the annulment of the arbitral awards given under their jurisdiction. Therefore, in most cases it will be easy to prove that the parties simply did not follow the procedures for challenging the arbitral award in the given term.

1.4. The award must not contain provisions contrary to the public policy of Romanian International Law

According to legal doctrine regarding the New York Convention:

“Although courts define public policy differently, the case law shows that they refuse to recognise an award on the basis of public policy only when there has been a deviation from the core values of their legal system⁴.”

This is true for Romanian exequaturs too. In practice, most commercial arbitrations follow universally accepted rules for arbitration that Romania recognizes and has transposed in its own legislation. Therefore, it would be quite difficult for a party to prove in an exequatur proceeding regarding a commercial arbitral award that the award violated the public policy of Romanian international law.

1.5. The award must be given by an arbitral tribunal agreed and constituted according to the parties' convention

This condition refers to the composition and constitution of the arbitral tribunal that rendered the arbitral award.

The arbitral tribunal must be agreed according to the parties' convention: if the parties established in the arbitral convention a certain procedure to be followed for the naming of the arbitrators or choosing the seat of the arbitration, that procedure should have been followed.

The arbitral tribunal must be constituted according to the parties' convention: this condition refers to the number of arbitrators that the parties established in the arbitral convention.

Any breach of these conditions can be a ground for denial of recognition and enforcement of the arbitral award in Romania.

⁴ E. Gaillard, B. Siino, *Enforcement under the New York Convention*, Global Arbitration Review, 17.05.2023, available at: <https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/3rd-edition/article/enforcement-under-the-new-york-convention>



2. General condition of legal interest of the request for exequatur

Besides the special conditions analysed above, the practice has proved that certain problems can arise regarding the general condition of legal interest. Legal interest is a general requirement for any procedural endeavour and must be proved by the party who wants its request for exequatur granted.

According to art. 33 RCPC, legal interest must be⁵:

- Determined or specific – a concrete practical use, related to the case;
- Legitimate – in accordance with the law;
- Practical – the practical use sought by the plaintiff;
- Personal – the plaintiff is the one that seeks the practical use;
- Born and present – if the plaintiff did not sue, he would be exposed to a risk.

2.1. Determined or specific legal interest for recognition and enforcement of an award

The creditor-plaintiff in an exequatur process (the party who wants the arbitral award recognised) must firstly prove that the debtor-defendant (the party against whom the arbitral award was given) refused to comply with the arbitral award.

In such a case, the plaintiff has a determined legal interest to request the recognition of the award in Romania, for this award to fall under the judicial protection of the Romanian state of law against the defendant who refutes the arbitral award.

A specific situation encountered in our experience regarded a plaintiff who proved his determined legal interest for recognition of the award by showing that he was involved in a parallel judicial proceeding against the same defendant, in which the defendant claimed rights in relation to the rights established by the same arbitral award. The plaintiff had the legal interest for recognition of the award in order to duly oppose the rights established by the award in the parallel process.

2.2. Legitimate legal interest for recognition and enforcement of an award

To prove that interest is legitimate, the creditor-plaintiff in an exequatur proceeding must show that recognition and enforcement of the foreign arbitral award does not contradict any legal provision.

⁵ V.M. Ciobanu, Tr.C. Briciu, C.C. Dinu, *Drept procesual civil: curs de bază pentru licență, seminare și examene*, Universul Juridic, București, 2023, p. 146.



In most cases, the courts decide that interest is legitimate because the creditor-plaintiff seeks to legally put into force the rights established in his favour by the foreign arbitral award.

Romanian case law shows that the preliminary analysis of the procedural condition of legitimate interest does not mean analysing if the request for exequatur is founded on its merits, but only analysing if the rights established by the arbitral award are recognised by Romanian law⁶.

2.3. Practical legal interest for recognition and enforcement of an award

The practical use sought by the creditor-plaintiff in an exequatur is the exequatur itself, i.e. the recognition and enforcement of a final and binding arbitral award. The practical facet of the exequatur resides in the enforcement of the award – the plaintiff seeks to enforce the rights established by the foreign arbitral tribunal on Romanian territory.

2.4. Personal legal interest for recognition and enforcement of an award

The creditor-plaintiff must be the person that was awarded the rights he seeks to recognise and enforce from the arbitral award.

2.5. Born and present legal interest for recognition and enforcement of an award

For this condition to be met, the creditor-plaintiff must prove that the rights established by the arbitral award are in danger of being lost if the exequatur procedure is not followed. This condition is intertwined with the debtor-defendant's refusal to willingly execute the arbitral award. If the debtor-defendant refuses to execute the arbitral award, then the creditor-plaintiff must use the coercive force of the state in order to enforce the award and this can only be done by following the exequatur procedure.

II. What are the steps of an exequatur procedure?

1. Necessary documents

According to Art. 1128 RCPC the creditor-plaintiff must attach to the request for exequatur the following documents:

- The arbitral award that is to be recognised and enforced, in original or in copy;
- A certified translation of the arbitral award, if the document is not written in Romanian;
- The arbitral convention between the parties;

⁶ Decision no. 1100/2017 of 19.06.2017, Bucharest Court of Appeal.



- A certified translation of the arbitral convention between the parties.

These documents are the bare requirements for the Romanian court to be able to determine if the arbitral award meets all the conditions for recognition and enforcement.

The documents must be filed in two copies each, one for the court and one to be communicated to the debtor-defendant.

2. The interdiction to analyse the merits of the arbitral award

According to Art. 1133 RCPC, the exequatur judge cannot examine the arbitral award on the merits of the dispute. The role of the exequatur judge is to simply analyse if the conditions for exequatur are met, regardless of what the arbitral tribunal rendered.

In practice, some parties could tend to use the exequatur proceedings in order to challenge some aspects on the merits of the arbitral tribunal that they are not satisfied with. This tendency must be swiftly opposed by the exequatur court.

3. Can the exequatur award be challenged?

Yes, the party not satisfied with the decision of the exequatur court can file an appeal in 30 days since the moment of the communication of the decision.

4. How long can an exequatur process take?

From our experience and depending on the circumstances of the case, an exequatur of a foreign commercial award in Romania can take from 6 months up to a year.

III. Conclusions

Exequatur proceedings of commercial international arbitral awards can prove to be tricky, depending on the financial state of the party the arbitral award is to be enforced against.

Still, Romanian and EU legislation and CJEU case law provide some very powerful mechanisms that can help a creditor recover its rights established by arbitral award.

Besides these tricky situations, the New York Convention and its transposition in Romanian Civil Procedure Code provide a very swift and efficient procedure for the exequatur of foreign arbitral awards.

In any case, the dissatisfied party has a second chance by appealing against the exequatur procedure and having its arguments heard by a higher court.