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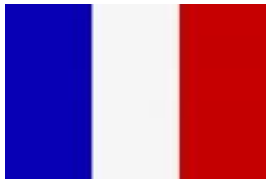
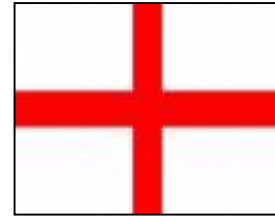
The Real Legal Weapons: Interim Measures in Civil and Criminal Cases

General Report on Civil Measures

Sandra De Vito Bieri

Budapest, 27 August 2009

14 Countries



Powers

Injunctions

Recovery of property

Preservation of property

Security of evidence



Prohibition

Security for costs

Powers



France: Order to provisionally pay a debt



Switzerland: Measures aiming at the payment of a sum due only granted in exceptional circumstances

Multinational Effect of Interim Measures

- The Rule:
 - Civil law countries: no multinational effect; national measures bound by principle of territoriality
 - Common law countries: Worldwide effect of e.g. anti-suits injunctions or Mareva Injunctions
- Some exceptions:



France: Freezing of bank accounts opened in foreign branches of French bank

Stolzberg Case, Cour de Cassation, 2em chambre civile, 30 January 2002



Belgium: Measures which resort no effect in Belgium, but only abroad

Enforcement of foreign *inter partes* interim orders

- Rule: (summary) enforcement proceedings in almost all countries reported
 - public policy test
 - jurisdiction of the foreign court

→ **NO DIRECT APPLICATION**

- Interim orders issued in EU Member States and Norway, Iceland, Switzerland: Principle of mutual trust
 - automatic recognition
 - enforcement can be refused only on a limited set of grounds
 - efficient and rapid procedure

EC Regulation No.
44/2001 of 22 December
2000

Lugano Convention of
1988, to be replaced by
new Convention of 30
October 2007

Enforcement of foreign *inter partes* interim orders



← Russia: Enforcement only of final judgments



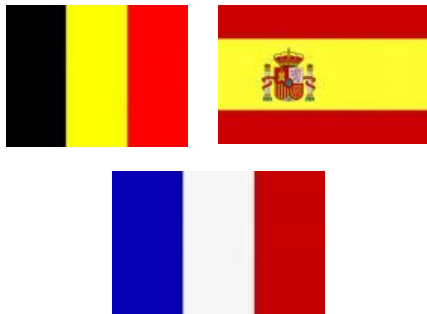
← Switzerland: Enforcement only of final judgments outside of the scope of the Lugano Convention

Enforcement of foreign *ex parte* interim orders

- Rule: NOT enforceable in the majority of countries reported
- Enforceable in:



Argentina



Belgium, Spain and France:
enforceable outside the scope of
the Brussels I Regulation

Interim Measures in Arbitration

- Rule:
 - Arbitral Tribunals have jurisdiction to decide on interim measures
 - Assistance of state courts for enforcing interim orders of arbitral tribunals in almost all countries reported
- NO jurisdiction have tribunals in Italy, Latvia and Spain
- England: arbitral tribunals have jurisdiction only if the parties so agreed
- Argentina: question not yet answered, but promoter of arbitration who take the view that arbitral tribunals have jurisdiction
- Emergency Arbitration on Interim Measures

SCC Rules on Emergency Arbitrator

Art. 37 ICDR

ICC Rules Pre-Arbitral Referee Procedure

Effectiveness

**obtain
evidence**

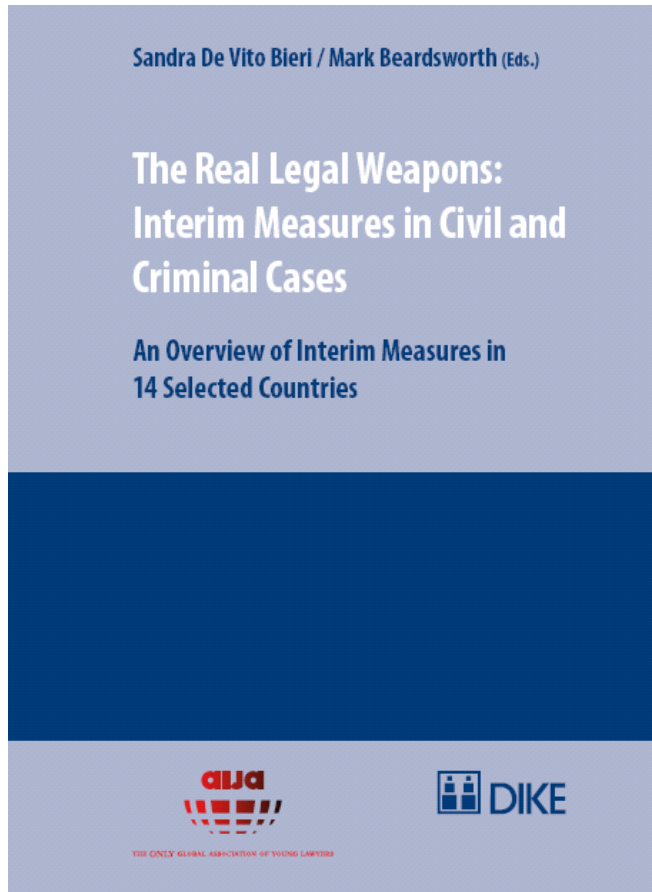
**pressure on
defendant to
participate**

**force
settlement**

**secure enforcement of
final judgment**



Publication



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- Commercial Litigation
 - Competent Courts
 - Time Restrictions
 - Proceedings and Costs
 - Requests
 - Enforcement proceedings, Duration
 - Notification
 - Direct application
 - Interim Measures in Arbitration
- Interim Measures in Criminal Cases

ROHNER
RECHTSANWÄLTE

-
- Sandra De Vito Bieri

 - Seestrasse 131
 - P.O. Box 2053
 - 8027 Zurich
 - Switzerland

 - Phone: +41 44 281 10 00
 - Fax: +41 44 281 00 00
 - sandra.devito@rohnerlaw.ch