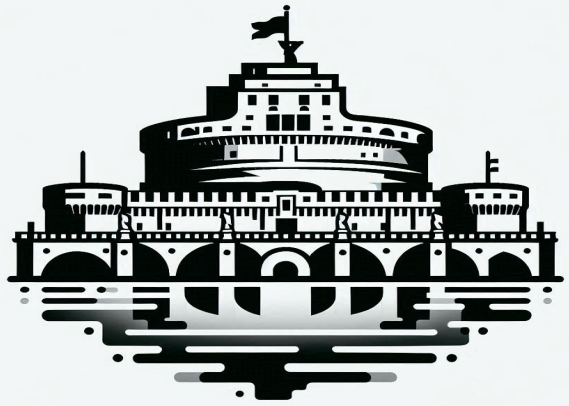


RECOGNITION OF FOREIGN POWERS OF ATTORNEY



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A Power of Attorney (PoA) is a crucial legal instrument that allows an individual (the principal) to delegate decision-making authority to another person (the attorney). When dealing with cross-border matters—such as property transactions, financial management, or medical decisions—having a Power of Attorney that is recognised in multiple jurisdictions can be invaluable. While it is possible for a foreign PoA to be recognised in another country, this recognition is not automatic and depends on the legal systems involved, their respective formalities, and international treaties.

Five Key Challenges in Recognising Foreign Powers of Attorney

The recognition of a foreign PoA often encounters several obstacles, including:

1. **Differences in Legal Formalities** – Each country has its own requirements for a valid PoA, including signature formalities, witnessing requirements, and registration. A document valid in one jurisdiction may not automatically meet the criteria of another.
2. **Notarisation and Apostille Requirements** – Many jurisdictions require a foreign PoA to be notarised and legalised via an Apostille under the 1961 Hague Convention to be recognised. However, between Italy and Ireland, an Apostille is not required due to **Regulation (EU) 2016/1191**, which removes legalisation and Apostille requirements for certain public documents exchanged between EU Member States.
3. **Substantive Law Conflicts** – Certain powers that can be granted in one country may not be legally enforceable in another due to differing civil law and common law principles.
4. **Language Barriers and Translation Requirements** – A PoA drafted in English for use in Italy (or vice versa) may need to be translated and certified to ensure its legal effectiveness.
5. **Judicial Scrutiny and Bureaucratic Delays** – Authorities in the receiving country may require court validation or administrative approval, leading to significant delays in urgent matters such as financial transactions or medical decisions.

RECOGNITION PROCESS

Recognition of an English Power of Attorney in Italy

For a PoA issued in England to be recognised in Italy, the following steps must typically be followed:

- **Notarisation and Apostille** – The PoA must be signed before a notary public or a solicitor authorised to provide notarial services in England and legalised with an Apostille under the Hague Convention.
- **Certified Translation** – The document must be officially translated into Italian by a certified translator.
- **Compatibility Check with Italian Law** – If the PoA includes provisions that do not align with Italian law, certain powers may be restricted or require judicial validation.
- **Registration with the Notary or Public Authorities** – If the PoA is to be used for real estate transactions, it must be presented before an Italian notary and registered with the relevant authorities.

Recognition of an Irish Power of Attorney in Italy

The recognition process for an Irish PoA in Italy is simpler than for an English PoA due to **Regulation (EU) 2016/1191**, which removes the requirement for an Apostille between EU Member States:

- **Notarisation** – The PoA must be notarised in Ireland, but no Apostille is required for use in Italy.
- **Translation and Certification** – The document must be translated into Italian by a certified professional.
- **Legal Compatibility Check** – Italian authorities will verify whether the powers granted align with Italian civil law.
- **Registration with Authorities** – As with English PoAs, if the document is to be used for real estate or corporate matters, it must be registered with a notary in Italy.

Recognition of an Italian Power of Attorney in England

For an Italian PoA to be recognised in England, the process involves:

- **Notarisation and Apostille in Italy** – The PoA must be signed before an Italian notary and legalised with an Apostille.
- **Certified English Translation** – Since English authorities require documents to be in English, a certified translation is necessary.
- **Legal Compatibility Assessment** – The scope of powers must align with English legal principles. For example, some Italian PoAs may include provisions that require judicial oversight in England.
- **Use of a Deed in Certain Transactions** – Some transactions in England require a PoA to be executed as a deed, meaning an additional English legal formality may be required.

Recognition of an Italian Power of Attorney in Ireland

The process for recognising an Italian PoA in Ireland is simplified by **Regulation (EU) 2016/1191**, meaning no Apostille is required:

- **Notarisation** – The PoA must be notarised by an Italian notary, but no Apostille is needed for use in Ireland.
- **Certified Translation into English** – Irish authorities require documents to be in English.
- **Review of Legal Authority** – Some powers granted in an Italian PoA may not be enforceable in Ireland and may require modification or judicial approval.

- **Use in Legal and Financial Institutions** – Irish banks or public offices may impose additional verification requirements, such as in-person identity checks.

Conclusion

While it is possible for a foreign Power of Attorney to be recognised between England, Ireland, and Italy, several challenges must be addressed, including formal legal requirements, authentication procedures, and potential incompatibilities in substantive law. However, the process is significantly easier between Ireland and Italy due to **Regulation (EU) 2016/1191**, which removes the requirement for an Apostille for certain public documents exchanged within the EU.

To ensure smooth recognition and use of a PoA in a foreign jurisdiction, individuals should:

- Obtain professional legal advice in both jurisdictions before drafting a PoA.
- Ensure proper notarisation and Apostille authentication where required. In England and Wales, this can be done by a **notary public** or a **solicitor authorised to provide notarial services**.
- Use certified translations where necessary.
- Confirm the legal validity of the granted powers in the receiving country.
- Plan ahead to avoid bureaucratic delays, especially for time-sensitive transactions.

By proactively addressing these issues, individuals can facilitate the cross-border recognition of their PoAs, ensuring that their legal, financial, and personal matters can be managed effectively across jurisdictions.