

BR I recast – Open issues regarding the application for refusal of enforcement in Slovenia

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- 1. Application for refusal of enforcement (Art. 46/1): adversarial or unilateral (*ex parte*) procedure?
- 2. Adaptation under Art. 54: Who? How?

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1. Application for refusal of enforcement: procedural rules

- Recital (30)
A party challenging the enforcement of a judgment given in another Member State should, **to the extent possible** and in accordance with the legal system of the Member State addressed, **be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law** and within the time-limits laid down in that law.
- Article 47
1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.
2. **The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.**

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- No doubt: special procedure → jurisdiction of district courts
(enforcement: local courts)
- Question: adversarial or *ex parte* procedure?

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Application for refusal of enforcement

	Brussels I (2000)	Brussels I recast
1st stage	Application for declaration of enforceability – District court (only formal requirements) <i>EX PARTE PROCEDURE</i>	(Art. 46) Application for refusal of enforcement – District court (grounds for refusal) ??
2nd stage	Appeal – District court (grounds for refusal) <i>ADVERSARIAL PROCEDURE</i>	(Art. 49) Appeal – District court (grounds for refusal) <i>ADVERSARIAL PROCEDURE</i>
3rd stage	(Further) appeal – Supreme Court (grounds for refusal)	(Art. 50) (Further) appeal – Supreme Court (grounds for refusal)

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ADAPTATION?

- Article 54

1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, **to the extent possible, be adapted to a measure or an order known in the law of that Member State** which has equivalent effects attached to it and which pursues similar aims and interests.
Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.
2. Any party **may challenge the adaptation** of the measure or order before a court.

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- So called: "functional equivalence".
- Which court/organ should proceed?
- How should be proceeded?

- No provision in Slovenian law
- Local court within the enforcement proceedings?
- District court/special organ in special proceedings? (pro/contra)

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CONCLUSION

- 1st issue:
 - Necessary regulation in Slovenian law;
 - Modification of Slovenia's notifications concerning jurisdiction?
- 2nd issue:
 - Necessary regulation in Slovenian law (with emphasis on the uniform case-law)

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