

**The possible effects of the debtor's application for refusal of enforcement under the Brussels *Ibis* – suspension of enforcement, making it conditional on the provision of security or limiting it to protective measures**

Prof. Dr. Aleš Galič  
University of Ljubljana

## Before the Recast

- no enforcement before the exequatur is obtained;
- The creditor can only proceed to protective measures

## After the Recast

- Exequatur abolished; immediate enforceability
- Application for refusal of enforcement
- **Impact on the proceedings concerned with enforcement?**

# *Article 44 (1)*

1. In the event of an application for refusal of enforcement, the court in the MS addressed may, on the application of the person against whom enforcement is sought:
  - (a) limit the enforcement proceedings to protective measures;
  - (b) make enforcement conditional on the provision of such security as it shall determine; or
  - (c) suspend, either wholly or in part, the enforcement proceedings.

- Which court?
  - the court where the application for refusal of enforcement was filed; **or**
  - the court concerned with jurisdiction.

*Article 75*

the MS shall communicate to the Commission:

- (a) the courts to which the application for refusal of enforcement is to be submitted pursuant to **Article 47(1)**;
- (b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to **Article 49(2)**;
- (c) the courts with which any further appeal is to be lodged pursuant to **Article 50**; and
- (d) the languages accepted for translations ....

# No automatic applicability

- Full discretion of the court?
- Conditions as provided for for the comparable instruments in national law (e.g. suspension, security, partial limitation of enforcement, periculum&probability for protective measures)?
- Euroautonomously determined conditions?

# Hierarchy of measures?

Is the court bound by the relief sought?

- No hierarchy or the priority for the least intrusive measure (presumably but not necessarily: security)
- If the court is not willing to grant the remedy sought (e.g. suspension), but would grant another one (e.g. security), can it do so on its own motion?

# Provisional measures

- The claimant may move for the enforcement, however the court will order the modification (restriction) of enforcement into provisional measures

(e.g. ordering that the garnishment of accounts shall be restricted to freezing of the account or that a compulsory lien shall be imposed but the property will not be sold yet)

**PROBLEM:** certain national laws (e.g. Slovenian) don't explicitly regulate the "restriction" of enforcement into provisional measure (limiting it to the

**Or:**

The motion for enforcement shall be rejected; the claimant must file a motion for protective measures

# The content of the provisional measure in case of ....

- Judgment for payment (does the claimant obtain a compulsory lien?; in Slovenia, začasna odredba: NO, predhodna odredba: YES)?
- Injunction: e.g. if the debtor is ordered to refrain from doing something, to perform a specific service or to hand over an asset (Specific performance);



# Suspension

- Conditions? (e.g. can it be made conditional on the debtor's providing of security?)
- Time (until the final resolution of the debtor's application for refusal of enforcement?)

# What is left to the national law?

*Article 47(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.

Problem: Art. 44 does not specifically concern procedure for refusal of enforcement

*Other effects on proceedings concerned with  
enforcement:  
Article 43*

1. the certificate ...shall be served ...prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served ....
2. Where the person against whom enforcement is sought is domiciled ....., he may request a translation .....if the judgment is not written in or accompanied by a translation into either of the following languages:
  - (a) a language which he understands; or
  - (b) the official language of the Member State in which he is domiciled .....

**Where a translation of the judgment is requested ....., no measures of enforcement may be taken other than protective measures .....**

....shall not apply if the judgment has already been served ...in one of the languages ...

3. . shall not apply to ....protective measure(s) ....

## Art. 44(2)

- The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, **suspend the enforcement proceedings** where the enforceability of the judgment is suspended in the Member State of origin.