

Characteristics of Austrian Remedies against Enforcement and a General Analysis of their Suitability for Achieving the Objectives of Brussels Ia

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Introduction

- **Council Regulation No 1215/2012**
 - Brussels Ia Regulation = Brussels I Recast
 - big step forward towards the establishment of a genuine European judicial area
 - some issues still unsolved
 - other issues have emerged
 - abolishment of exequatur procedure
 - remedies against enforcement have gained importance

Objectives of Brussels Ia regarding enforcement

- **abolition of exequatur procedure**
 - problem: varying duration of proceedings
 - differences amongst national rules governing recognition and enforcement of judgments
 - mutual trust
 - rendering cross-border litigation less time-consuming and more cost-effective
 - judgements given by the courts of a Member State should be treated as if they had been given in the Member State addressed
- **safeguards**
 - direct enforcement in the Member State addressed must not jeopardise rights of the person against whom enforcement is sought
 - limitation of the enforcement and providing security
 - provisional and protective measures

Austrian Remedies against Enforcement I

- **sources in Austrian law**
 - *Exekutionsordnung* - EO (**Enforcement Code**)
 - *Einführungsgesetz zur Exekutionsordnung* - EGEO (**Introductory Act to the Enforcement Code**)
 - *Zivilprozessordnung* - ZPO (**Code of Civil Procedure**)
 - subsidiarily applicable
- numerous types of remedies in the Enforcement Code
- decisions in Austrian enforcement proceedings = **resolutions**
- remedy against resolutions = **recourse**
 - generally ascending, not suspensive, one-sided
 - interdiction of novation

Austrian Remedies against Enforcement II

- ***Exekutionsklagen* (Enforcement Claims)**
 - if disputes arise which cannot be solved within enforcement proceedings
 - *Oppositionsklage* (§ 35 EO)
 - ***Impugnationsklage* (§ 36 EO)**
 - important remedy against the decision to grant execution
 - *Exszindierungsklage* (§ 37 EO)
- **application for suspending enforcement procedure (§§ 42 – 45 EO)**
 - necessary because remedies against enforcement do in general not have a suspensory effect
- **application for terminating enforcement procedure (§ 39 EO)**
 - when prerequisites for enforcement proceedings turn out to be lacking/cease to exist

Abolishment of Exequatur

- no revolutionary measure
- innovation: impact
- modified control mechanism
- person against whom enforcement is sought can apply for the refusal of enforcement if one of the grounds referred to in Art 45 of the Regulation is thought to be given (Art 46 EuGVVO).



Suitability of Austrian Remedies for achieving B la' s objectives I

- no specific implementing provisions in the Austrian legal system in connection with Brussels Ia
- application of the general (national Austrian) system of remedies in enforcement (?)
- controversial issues regarding the implementation of the new (rsp. newly amended) provisions



Suitability of Austrian Remedies for achieving B Ia' s objectives II

- **Functional competence of court organs**
 - Judges
 - “**Rechtspfleger**” (court organ exercising a wide range of functions ruled in the *RpflG*)
 - issue arising from the (insofar unchanged) wording in § 17 para 3 RpflG
 - judges are responsible for exequatur
 - thus uncertainty regarding the functional competence

Suitability of Austrian Remedies for achieving B Ia' s objectives III

- **Assertion of grounds for refusal**
 - **Recourse**
 - *Neuerungsverbot* (interdiction of novation)
 - **Application for termination of enforcement procedure (*Einstellungsgrund*, § 39 EO)**
 - complies with practice regarding other European legal acts
 - ***Impugnationsklage* (specific enforcement claim, § 36 EO)**
 - additional efforts regarding time and costs

Suitability of Austrian Remedies for achieving B Ia' s objectives IV

- **Joint assertion of grounds for refusal provided by Brussels Ia and national grounds**
 - Art 41 para 2 Brussels I a
 - Recital 30 Brussels I a
 - “to the extent possible and in accordance with the legal system of the Member State addressed”
- **Application for suspending enforcement procedure (Art 44 Brussels I a)**
 - Austria: “*Aufschiebung der Exekution*” (§§ 42 – 45 EO)



Conclusion

- **no paradigm change**
- **“formalistic exequatur”**
- **need for national (Austrian) implementing rules?**
- **task of doctrine and judicial practice**



Thank you for your attention!

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