

ENFORCEMENT BRUSSELS I recast

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Abolition of Exequatur

Exequatur = an intermediate court procedure that aims to declare a foreign judgment enforceable before the actual enforcement.

Abolition of exequatur has been on agenda of the EU since the 1999 Tampere European Council.

Requirement of exequatur cannot be found in EU Civil Justice Regulations since 2004 (small claims, enforcement order, order for payment).

2010 Commission proposal to amend 2001 Brussels I Regulation.

Exequatur partially abolished (e.g. not in collective redress)

Proposal Commission not followed: 2012 Brussels I Regulation abolishes exequatur *in all cases*.

Art. 39: A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Why exequatur abolished?

Purposes exequatur:

- To authorize enforcement authorities to act (= title import)
- To instruct the enforcement authorities how to act (= title supplementation and title transformation)
- To review the foreign judgment

These purposes are achieved through other means under the Brussels regime.

Also: under the 2001 Brussels I Regulation exequatur appeared to be a formality in 93% of cases or more.

Delays due to exequatur

- Between one-third and two-thirds of Member States render the exequatur decision within less than 30 days following the submission of the application
- One to five percent of the exequatur decisions are appealed.
- Between one-third and two-thirds of the Member States render the appeal decision in less than six months.

Benefits of abolition of exequatur

- Reduction of costs
- Cross-border trade strengthened
- More extensive use of the internal market promoted.
- Free movement/circulation of judgments enhanced.
- Access to justice enhanced
- Mutual trust strengthened.

Recognition & Exequatur

Abolition exequatur only brings changes as regards enforcement, NOT as regards recognition.

The Mechanisms for recognizing a judgment have remained unchanged under the 2012 Brussels I Regulation (Art. 36)

Where not enforcement but only recognition is sought, NO application for recognition is necessary (even though such application is possible).

Similarities 2001 and 2012 Regulations

National law of the enforcement state governs protective measures and enforcement

Regulations set framework and contain a number of procedural rules and requirements.

Copy of judgment and Certificate needed for enforcement (Art. 42)

Similarities 2001 and 2012 Regulations

- Scope ex officio examination competent court or authority:
 - Local and subject matter competence
 - Judgment and Certificate
 - Decision = judgment
 - Civil or commercial matter
 - Enforceability in state of origin
 - (Other requirements under national law)
- Requirements met? Judgment enforceable

Similarities 2001 and 2012 Regulations

Grounds for review of foreign judgment (two levels of appeal; Arts. 49 and 50)

- Violation of procedural and substantive public policy
- Insufficient service of the documents initiating the procedure in case of default judgments
- Incompatibility with other judgments
- Violation of certain provisions on jurisdiction
- Plus grounds available under national law.

Similarities 2001 and 2012 Regulations

In review procedure, national law determines

(1) what court is competent

(2) what time-limit judgment-debtor must respect for filing application

(3) what procedure applies

Differences between 2001 and 2012 Regulations

2001 Brussels I

- Exequatur is needed for enforcement.
- The court or authority in the MS where enforcement is sought grants exequatur ex parte and without reviewing possible grounds for refusing recognition and enforcement.
- Judgment-debtor may appeal against exequatur.
- Only in case of appeal grounds for refusing recognition and enforcement are examined.
- Enforcement is only possible if there is (1) no appeal or (2) if appeal is dismissed (grace period).
- In grace period no enforcement measures possible.

Differences between 2001 and 2012 Regulations

2012 Brussels I Regulation

- Direct application for enforcement (as if foreign judgment is given in enforcement state).
- No enforcement measures possible before judgment-debtor informed of the request for enforcement (certificate and judgment served in reasonable time before first enforcement measure) (Art. 43)
- Judgment-debtor may apply to court for refusal of enforcement.
- Enforcement is immediately possible (no grace period) unless judgment-debtor applies for refusal.
- Enforcement measures NOT automatically excluded if judgment-debtor applies for refusal of enforcement.

Differences between 2001 and 2012 Regulations

- Content of application
- Requirements for enforcement
- Protective measures
 - 2001: surprise effect of exequatur (ex parte): protective measures when exequatur granted
 - 2012: Available (1) as soon as judgment is enforceable in the state of origin and (2) without need to serve judgment and certificate prior to such measures (ex parte).

Differences between 2001 and 2012 Regulations

Contents Certificate

- 2001 Certificate NOT detailed
- 2012 Certificate provides detailed information about content of judgment
 - Monetary judgment:
 - Subject-matter of case
 - Identity debtor and creditor
 - Currency
 - Principal amount
 - Due at once, installments or regularly
 - Interest
 - Other than monetary judgment
 - Short description of subject-matter and the court's ruling
 - Competence and procedure for adapting the foreign decision: national law.

Differences between 2001 and 2012 Regulations

- Certificate compulsory?
- Judgment-debtor entitled to translation? (Art. 43(2))
- Postal address (Art. 47)
- Authorized representative (Art. 47)

SUMMARY