



University of Maribor

Faculty of Law

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B I A R E

In Theory: Three Systems of Recognition and Enforcement of Foreign judgments

1. Révision au fond;
2. Contrôle limité;
3. Ex lege.

Overcoming the Borders – Free Movement of judgments

- 1. step – **simplification of exequatur** (Brussels Regulation - 44/2001)
- 2. step – **abolition of exequatur:**
 - Brussels IIa -2201/03
 - European Enforcement Order Reg.-805/04
 - European order for payment procedure Reg.-1896/06
 - Small Claims procedure Reg.-861/07
 - Maintenance Reg.-4/2009
- 3. step - Revision of Brussels I Reg. toward **abolition of exequatur in civil and commercial matters 1215/2012**
- B I A R, start date Jan.10th 2015

Characteristics of Summary Procedures Abolishing Exequatur

- Minimum procedural standards
- Standard forms
- “Exequatur like” control in the state of origin
- Omission of reason violation *ordre public and others*

Abolition of Exequatur pro et contra

- Krombach Bamberski case C-7/98 EU
- Court Luxemburg PARIS - The 74-year-old German man was snatched, beaten, tied up, whisked across the border and left outside a French courthouse in the middle of the night.
- Andre Bamberski, father of Kalinka Bamberski, who died mysteriously in 1982, answers questions from journalists on Tuesday outside court in Mulhouse, France



EU Enforcement Order R 805/2004 – Pilot Project

1. Type of matter (civil and commercial matters within Brussels I)

2. Type of the decision or the document (judgments, decrees, authentic instruments)

3. Special requirements:

- uncontested claims
- minimum standards
- pecuniary claims
- the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II (jurisdiction in matters relating to insurance, jurisdiction over consumer contracts, exclusive jurisdiction) of Regulation (EC) No 44/2001 (Brussels I)

Legal Remedies acc. to EEO R

In the Member State of origin

- legal remedies outside the system – demand for rectification or invalidation of the certificate – enabled by the Reg.EEO

In the Member State of enforcement

- if an older decision on ground of an identical claim has already been given in the Member State of enforcement

Back to the state of origin

- Extraordinary legal remedies as renewal of the procedure or invalidation can cause annulment of a decision

In the state of enforcement

- Annulment of a decision in the Member State of origin – reason for suspension or limitation of the enforcement

Next step: Twin regulations

1. European order for payment procedure Reg.-1896/06
 2. Small Claims procedure Reg.-861/07
- Unified procedures, for civil and commercial matters in crossborder cases
 - Direct access to enforcement in all member states
 - Not a substitute to a national summary payment order or small claims procedures but offers the supplementary choice to creditor
 - judgment in small claims procedure is immediately enforceable before res iudicata, no special certificate of enforceability is provided

The Distinction between Unified and National Payment Order Procedure in SLO – Matter of Creditor’s Choice

Only in crossborder cases;

ZPP payment order even without the expressly required by claimant in a lawsuit when the prerequisites enables the issue of payment order

EU only expressly required

The distinction between unified and national procedure is that the national procedure requires the authentic document, the unified procedure does not

Statement under oath that the allegations in the application are correct under the penal responsibility

Electronical manipulation in domestic procedure for enforcement on the ground of an authentic document

The court refuses the proposal in case of prima facie obvious irrelevance same: the notification that the payment order has been issued only upon claimants/creditors allegations

Bare opposition without alleging any reason

30 days 8 days

The claimant can require that the closing of the procedure in case the defendant files an opposition.

Multiple choice in international disputes under 2000€

1. National payment order + certification as EU payment order
2. EU payment order procedure – transnational procedure
3. Small claims national procedure + BI A R facilitated way to invoke grounds against the foreign judgment
4. EU small claims procedure – transnational procedure

BIA R - Jan 10th 2015 – Abolition of Exequatur - what is the point?

- Direct access to enforcement: The creditor in the State of Enforcement (SE) just starts the enforcement **without any exequatur procedure** with the copy of foreign judgment certified as enforceable on the standard form in the State of origin (SO). Res iudicata was even before not required. When the judgment contains measures not known in the (SE) the court adjusts them to the measures but only with effects gained in the SO) – Art.54.
- Enforceable judgment shall on its own include the entitlement to security measures of the SE. Art.40.). In SLO before the preliminary measure only when the judgment had exequatur.

Grounds for Refusal of RE

- Again in the SE no test of judgment regarding its content is permitted
- Other grounds remain the same as before
- Including ORDRE PUBLIC

Invoking Refusal Grounds - Preliminary or Main Question?

- **Incidenter procedure See Art. 36/3 BIA R**
- ? Preamb. BIAR (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.
- **The separate procedure** 1. for recognition or non-recognition of foreign title - by application of the interested party;
- 2. for refusal of enforcement - by application of a debtor.

Separate Procedure – required a prompt decision

- 1. Creditor: 36/2 – claims the decision that there are no refusal grounds for recognition and consequently enforcement too;**
- 2. Every interested party: 45/4 – can claim the refusal of R**
- 3. The debtor: 47/1 – can claim the refusal of E**

The advantage of B IA R is that this new separate procedure will not suspend the enforcement.

Procedural rules – non contentious civil procedure

- Art. 47 BIA R
- 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. Art 75 mentions application for refusal of enforcement only but for recognition Art. 36/2 refers to the same rules for the same separate procedure against foreign judgment: „ Any interested party may, in accordance with the procedure provided for in **Subsection 2 of Section 3 (separate procedure)**, apply for a decision that there are no grounds for **refusal of recognition** as referred to in Article 45.”
- 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 MS addressed**.

SLO: ZMZPP 108/4,5: R every County court (okrožno sodišče)

For refusal of E County court (okrožno sodišče) (ne več okrajno) upon the place of enforcement

Objection - Ugovor: senat of three judges,

Appeal pritožba Supreme Court

Authority

- The authorities in charge for enforcement in civil matters differ very much among member states. Member states have to notify the Commission about the way and the authority competent to decide on the motion to refuse the recognition or to recognise the foreign title in separate procedure.
- Notification of competent court in RS:
Okrožno sodišče

Legal Remedies in separate procedure

- 49/2: Legal remedy against decision on refusal of E
- In RS **ugovor objection**
- 50: further legal remedies – in RS **pritožba appeal to Supreme court**

Consequence of Application for Refusal of Enforcement

- Art. 44
- 1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the MS addressed **may, on the application** of the debtor:
 - (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.

Many open issues

- What are the ways of invoking the refusal grounds against foreign judgment, what are the practical problems of adaptations of foreign judgment and its measures in MS.
- Does the inverse rule which charges the debtor to be active actually improves creditor's position?
- However, the advantage of B IA R is that this new separate procedure will not suspend the enforcement automatically, the question remains what other remedies in member states could be introduced to postpone the enforcement.
- E.g. the grounds for refusal or **of suspension of enforcement** under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in BIA R

Scope of European civil procedure

- All *European regulations on civil procedure* being in force are operating in the Member States immediately when the accession is becoming effective.
- The rules do not have to be transformed into the national law but apply directly
- The issues of international jurisdiction and enforcement of foreign judgments, it placed European institutions alongside the national ones, which continued to govern domestic disputes.
- This results in **duplicative sets of procedural rules** which place a heavy burden on the judges who have to work with them