

European Enforcement Order for uncontested claims

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Background

- ▶ Treaty of Amsterdam: Transfer of judicial co-operation in civil matters from third pillar into the first pillar.
- ▶ Council Regulation (EC) No 44/2001 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters – it does not remove all the obstacles hindering the free movement of judgments.
- ▶ Tampere 1999: European Council called for further reduction of measures required for recognition and enforcement.
- ▶ First step: Automatic recognition without any intermediate proceedings or grounds for refusal of enforcement – for certain specific types of claims.
- ▶ 2000: Abolishing of exequatur for uncontested claims is one of the EU priorities
- ▶ 2002: Proposal for Council regulation creating the European Enforcement Order for uncontested claims

UK, Ireland, DE

- ▶ Protocol to the treaty of Amsterdam: exempted Ireland as well as UK from the application scope of Title IV of EC Treaty
- ▶ But: Protocol allows to the Ireland and UK to **opt-in** to the adoption and application of a particular measure within
 - 1) a three month period from the day the day on which the proposal is presented to the Council,
 - 2) or to accept such a measure any time after it has been adopted.
- ▶ Both Ireland and UK opted-in to this regulation
- ▶ Denmark: Protocol exempts it completely from Provisions of Title IV.

Brussels I. Regulation

- ▶ Structure
- ▶ Enforcement procedure



European Enforcement Order

- ▶ Focuses on the elimination of the intermediate measures which were a pre-requisite for enforcement in EU
- ▶ Entails the abolition of exequatur, i.e. the automatic recognition and enforcement, without any intermediate proceedings or grounds for refusal of enforcement, of judgments handed down in another Member State
- ▶ Allows the free movement of judgments, court settlements or authentic instruments concerning uncontested claims in all the Member States
- ▶ Stipulate the minimum procedural standards which has to be met

Application scope

- ▶ civil and commercial matters
- ▶ judgments, court settlements or authentic instruments – from EU member courts (court of origin) and before EU member court (member state of enforcement).
- ▶ uncontested claims
- ▶ in all Member States with the exception of Denmark
- ▶ from 21 January 2004

Relationship with Regulation (EC) No 44/2001:

- This Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a court settlement or an authentic instrument on an uncontested claim.

Key terms used in the EEO

- ▶ Judgment: any judgment given by a court or tribunal of a Member State, whatever the judgment may be called.
- ▶ Claim: a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment.
- ▶ Uncontested: the debtor has not objected to the claim in the course of court proceedings or has not appeared in court or has expressly agreed that the claim exists and is justified in the course of court proceedings, including by means of a settlement or in an authentic instrument. (Art. 3)
- ▶ Authentic instrument: a document formally drawn up as an authentic instrument or an arrangement relating to maintenance obligations. (Art. 4. 3)
- ▶ Member State of origin: the Member State in which the judgment to be certified as a European enforcement order has been given.
- ▶ Member State of enforcement: the Member State in which enforcement of the judgment certified as a European enforcement order is sought.

EEO: Main Principle

- ▶ **Abolition of exequatur:** judgment is recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.
- ▶ **Requirements for certification as EEO:**
 - judgment in a Member State
 - on an uncontested claim
 - certified as a European Enforcement Order
 - enforceable in the Member State of origin
 - does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001
 - the court proceedings in the Member State of origin met the minimum procedural requirements

What about consumer?

- ▶ a claim is **uncontested** within the meaning of Article 3(1)(b) or (c)
 - The debtor never objected to or
 - the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings
- ▶ it relates to a contract concluded by a person, **the consumer**, for a purpose which can be regarded as being outside his trade or profession; and
- ▶ the **debtor is the consumer**.
- ▶ the judgment was given in the Member State of the **debtor's domicile** within the meaning of Article 59 of Regulation (EC) No 44/2001,

Then: A judgment on an uncontested claim delivered in a Member State could be certified as a European Enforcement Order

Issue of the European Enforcement Order certificate

1. The European Enforcement Order certificate shall be issued using the standard form in Annex I.
 2. The European Enforcement Order certificate shall be issued in the language of the judgment.
- ▶ No appeal shall lie against the issuing of a EEO certificate.
 - ▶ The EEO certificate shall take effect only within the limits of the enforceability of the judgment.
 - ▶ Rectification or withdrawal : Annex VI

Minimum standards

- ▶ The court proceedings in the Member State of origin must meet certain procedural requirements
- ▶ minimum standards with regard to the service of documents (institution of proceedings) to ensure that the rights of the defense are respected. – No hierarchy between the articles or between the means of service
- ▶ Only the document service methods listed in the Regulation are allowed if the judgment is to be certified as a European enforcement order.

- ▶ Furthermore, the document instituting proceedings must give details of (Art. 17):
 - the claim (personal details of parties, amount of the claim, whether or not interest is incurred and for what period, etc.);
 - the procedural arrangements required for contesting the claim (deadline for contesting the claim, address of institution where the claim could be contested, whether it is mandatory to be represented by a lawyer)
 - consequences of failing to object, absence by a court.).

- ▶ The Regulation allows non-compliance with these requirements to be remedied - non-compliance shall be cured and a judgment may be certified as a European Enforcement Order (Art. 18)

Enforcement procedure

- ▶ only certification = fulfilling the form in Annex I.
- ▶ Apply for enforcement
- ▶ NO declaration of enforceability
- ▶ NO appeal against the issuing of EEO certificate
- ▶ The only remedy:
upon application by the debtor the enforcement could be refused by the competent court if the judgment certified as a EEO is irreconcilable with an earlier judgment given in any Member State or in a third country
- ▶ Enforcement
- ▶ certification = fulfilling the form in Annex V. of the Brussels I.
- ▶ Apply for enforcement
- ▶ Declaration of enforceability (Art. 38)
- ▶ Declared enforceable without any review of Art. 34 and 35
- ▶ The decision on the application for a declaration of enforceability may be appealed against by either party
- ▶ Appeal against the declaration of enfor.: The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35.

Common for both:

- ▶ enforcement procedures shall be governed by the law of the Member State of enforcement.
- ▶ a judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement.

Necessary documents EEO

- ▶ The creditor shall be required to provide the competent enforcement authorities with:
 - (a) a copy of the judgment
 - (b) a copy of the European Enforcement Order certificate
 - (c) where necessary, a transcription of the European Enforcement Order certificate
- ▶ No security, bond or deposit shall be required on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Refusal of enforcement - EEO

The only ground:

- ▶ the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:
 - (a) the same cause of action and was between the same parties; **and**
 - (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; **and**
 - (c) the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.
- ▶ Under no circumstances may the judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

Refusal of recognition – Brussels I

1. public policy
 2. default of appearance, the defendant was not served with the document
 3. irreconcilability with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
 4. irreconcilability with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.
- ▶ Moreover:
 - ▶ a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II

Subject to the paragraph 1, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in point 1 of Article 34 may not be applied to the rules relating to jurisdiction.