## Pravna sredstva v čezmejni izvršbi

Rechtsbehelfe in der grenzüberschreitenden Vollstreckung

Legal Remedies in Cross-Border Enforcement

Dr. Andrej Ekart, LL.M.

Maribor, 18. November 2011

## <u>Cross-border enforcement in EU in Civil matters</u> <u>– legal sources</u>

- Brussels I Regulation 44/2001
- European Enforcement Order– Reg. 805/2004
- European Enforcement Order- Reg. 1896/2006
- EU Small Claims Procedure Reg. 861/20607
- Proposal for new Brussels I Regulation
- As to procedural issues subsidiary applies lex fori

## CROSS-BORDER ENFORCEMENT ACCORDING TO BRUSSELS I REGULATION

State of origin		State of enforcement	
1.	2.	3.	4.
Enforceable title	Certificate of enforceability (Art. 45)	Declaration of enforceability (exequatur) (Art. 38 et seq)	Exekution of judgment

<u>Brussels I Reg. – legal remedies</u>			
STATE OF ENFORCEMENT			
1. Against enforceable title – exequatur:			
<ul> <li>Public policy – ordre public</li> </ul>			
<ul> <li>Default judgments – right to be heard</li> </ul>			
<ul> <li>Particular jurisdictions</li> </ul>			
<ul> <li>Irreconcilability of judgments</li> </ul>			
<ul> <li>2. Legal remedies of domestic law (Art. 22/5 Brussels I)</li> </ul>			

### CONNECTION BETWEEN LEGAL REMEDIES

#### **STATE OF ORIGIN**

•Legal remedy against judgment → → →

•Annulment or change of enforceable title  $\rightarrow \rightarrow$ 

•Stay of exequatur proceedings (Art. 46)

STATE OF ENFORCEMENT

•refusal or revocation or repeal of a declaration of enforceability (§ 27 AVAG, § 84c EO); stay of execution (ZIZ)

### LEGAL REMEDIES AGAINST THE CERTIFICATE OF ENFORCEABILITY

#### STATE OF ORIGIN

 Rectification or withdrawal of certificate of enforceability
 → → →

#### STATE OF ENFORCEMENT

 Refusal or repeal of exequatur

#### or

Stay of enforcement

### PAYMENT OF A DEBT OR SET OFF -INCONSISTENT CASE LAW IN MEMBER STATES!

#### STATE OF ORIGIN

 Negative declaratory action(subsequentl y motion to stay the execution in state of enforcement?)

#### STATE OF ENFORCEMENT

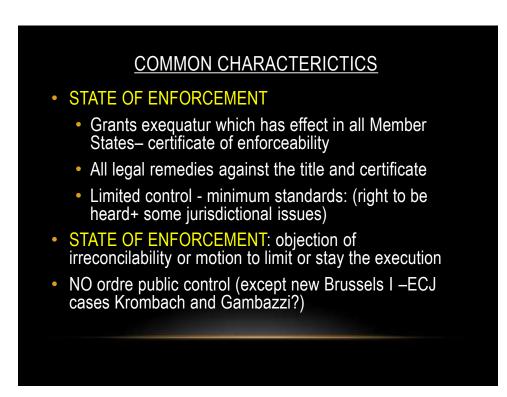
- •Objection in exequatur proceedings (§ 12 AVAG)?
- •Only undisputed objections (BGH 14.3.2007 – XII ZB 174/04, AG Kokott)?
- •NOT in exequatur, with legal remedies of domestic law: C-139/10 (Art 22 Brussels I?)

## ABOLITION OF EXEQUATUR – EUROPEAN ENFORCEABLE TITLES

- Brussels IIa Reg return of children
- European Enforcement Order- Reg. 805/2004
- European Enforcement Order- Reg. 1896/2006
- EU Small Claims Procedure Reg. 861/20607
- EU Maintainance Reg 4/2009
- Proposal for new Brussels I Regulation

### EUROPEAN ENFORCEMENT ORDER – MODEL PROJECT OF ABOLITION OF EXEQUTUR

STATE OF ORIGIN		STATE OF ENFORCEMENT
1. Enforceable title	2. Certification as European enforcement order	3. Execution of judgment



### **ABOLITION OF EXEQUATUR – LEGAL REMEDIES**

#### STATE OF ORIGIN

### Against judgment

- Rectification or withdrawal of certificate
- Certificate of ceased enforceability
- Substitute certificate

#### STATE OF ENFORCEMENT

- Refusal of enforcement irreconcilability
- motion to limit or stay the execution
- Lodging of certificate of ceased enforceability
- Legal remedies of domestic execution law (Art 22/5 Bruss.)

#### EXEQUATUR AS PROTECTION OF DEBTOR – PROTECTION OF BASIC HUMAN RIGHTS?

- Procedural ordre public appeal to ECHR? Problem: Slovenian Civil Procedure Code does not provide for reopening of proceeding in such case
- Stay of execution and preliminary ruling of ECJ?
- Effective protection of procedural ordre public in state of enforcement according to new Brussels I Reg.

### PAYMENT OF DEBT OR SET OFF

- Art 22/2 Reg 1896/2006: "Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount..."
- International jurisdiction: Art. 22/5 Brussels I Reg.
- Objection of set off against court settlement certified as EEO: OGH 14.12.2010, 3Ob231/10g
- Germany: motion to stay the execution or Vollstreckungsgegenklage (§ 1086 ZPO)

# <u>OUTLOOK</u>

- Plenty of EU civil procedure regulations
- Inconsistency of regulations
- Implementation in Slovenia: minimalistic approach
- Unharmonised rules of execution law

Hvala za Vašo pozornost! Danke für Ihre Aufmerksamkeit!

Thank you for your attention!

andrej.ekart@sodisce.si