

Scope of Application of EU Law in the Judicial Procedures of Debt Collection in Civil and Commercial Matters

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Subject

- European Enforcement Order for uncontested claims, the European Order for payment procedure, the European Small Claims Procedure, and in particular the Brussels I regulation

Problems

- Recognition and Enforceability
- Service in Enforcement Matters to a Creditor
- Interim Measures
- Grounds of Refusal
- Access to Information for Enforcement Purposes in the Cross-Border Context
- Service on Information in Enforcement Matters to a Creditor
- Access to Information by Harmonization of National laws

Comparison Between Civil- and Public Law Areas

- Nordic convention regarding the enforcement of maintenance claims from 1962 and the Nordic convention on recognition and the enforcement of judgments in civil matters from 1977
- Recovery directives (Council Directives 2008/55/EC of 26 May 2008 and 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures)

1. Automatic Recognition and Enforceability

- The regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- Nordic conventions from 1962 and 1977
- New social security regulation, the Insolvency regulation, and the new Recovery directive

2. Brussels I Regulation

- Brussels I regulation provides for exequatur proceedings
- European Council's reform programmes, including the recent Stockholm Programme, mention the abolishment of exequatur proceedings
- Instead, an introduction of posting of security by the creditor, decided upon by the regulated enforcement agent, related to enforcement proceedings of opposed claims may be contemplated

3. Service in Enforcement Matters to a Creditor

- An introduction of a possibility for a private creditor to file an application for enforcement under the Brussels I regulation and the more recent regulations in commercial matters, by the use of a multilingual officially approved form, to the competent authorities of enforcement in the Member State of origin of the title of execution, instead of filing it directly to the corresponding authorities of actual enforcement in another Member State
- The Member State of origin should then be obliged to transfer the application to the competent body of actual enforcement in the other Member State

4. Service in Enforcement Matters to a Creditor

- The regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- The Nordic convention from 1962

5. Service in Enforcement Matters to a Creditor

- Remain to be discussed: to what extent and proportion private creditors, respectively the Member States, should pay for the services made available under such a possible service obligation under the four regulations in commercial matters, i.e. what possible fees creditors should pay, or not pay, to their national regulated enforcement agents ?

6. Grounds of Refusal

- The grounds of refusal in the four regulations of concern here in commercial matters are recommended to be maintained as they are needed to protect the interests safeguarded by the European Convention on Human Rights, on which EU law frequently rely
- Another factor, which also motivates a maintenance of a specific ground of refusal, public policy, is that the national laws of the Member States will under a predictable time be likely to remain different and only to some extent be harmonized by EU law

7. Interim Measures

- New Recovery directive, an example of automatic recognition and enforceability of a decision of precautionary measures
- Brussels I regulation, a change to automatic recognition on a decision given in an ex parte proceeding should be considered, subject to sufficient guarantees
- A sufficient guarantee may be an introduction of a requirement for the assumed private creditor of posting security at a sufficiently high level to compensate his private counter party if he finally loses the dispute

8. Access to Information for Enforcement Purposes

- No EU regulation, which provides possibilities for an international exchange of information in enforcement matters by means of communication between the regulated enforcement agents in the Member States of the EU for the benefit of the contractual and commercial creditor

9. Access to Information for Enforcement Purposes

- The regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
- The Recovery directive
- A private creditor should have the right to file an application, related to a specific matter, in the Member State of origin of his title of execution, for a following exchange of information for enforcement purposes with another Member State
- Remain to be discussed: how to finance the increased costs for the needed work

10. Access to Information by Harmonization of National Law

- Efficient access to information in the cross border context requires a sufficiently high level of access to national information
- National laws should meet a reasonable goal for an efficient and up-to-date access of information to enforcement organs for enforcement purposes of judgments related to civil law claims

Thank you for your attention !

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