Recognition and enforcement of foreign judgments – the Brussels I Regulation and the Regulation on a European Enforcement Order for uncontested claims

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Free circulation of judgments within the European Union - the problem and its components

- When, why and how should a foreign judgment be enforced?
- Intermediate measures = *exequatur* procedure
- A declaration of enforceability
Why should a foreign judgment (not) be recognized or enforced in another State?

- Territorial sovereignty
- Member States’ enforcement laws differ, some are strict, others are more lenient

Mutual recognition and mutual trust?

- Two atomic principles!
- The Cassis-case (120/78)
- Arts. 67(4) and 81 of the Treaty on the Functioning of the European Union
What has been accomplished so far under the Brussels I Regulation?

• Automatic recognition (Art. 33)
• Enforcement (Art. 38)
  • Intermediate measures = the *exequatur* procedure
  • What purpose does the *exequatur* procedure serve?

What has been accomplished so far under the Brussels I Regulation?

• First stage of the *exequatur* – just a formal check (Art. 41)
  • The parties and the application
  • The court’s assessment and the decision on enforceability
• The second stage of the *exequatur* – contradictory (Art. 43(2))
  • An example
  • Grounds for refusal (Art. 34, 35 and 45)
  • Costs and time
The European Enforcement Order for uncontested claims

- A new approach!
- An example from the European Consumer Centres Network (ECC Net)

The “EEO-regime”

- Scope of application (Arts. 2 to 4)
- The procedure in the Member State of origin
  - International jurisdiction = Brussels I
  - Court of origin certifies its judgment (Art. 6)
  - Procedural safeguards (Arts. 12 to 19)
The “EEO-regime”

- The procedure in the enforcing Member State
  - “Direct” enforcement (Art. 5)
  - Irreconcilable judgments as a bar to enforcement (Art. 21)

- A brief assessment

The way forward: revision of the Brussels I Regulation
On a quest for free circulation of judgments

• The new Brussels I bis Regulation
  – Abolition of exequatur: does it bring about a real change, or should concerns be raised?
  – Important changes in jurisdictional grounds: can non-EU defendants be sued in the EU, and what has been done to improve the effect of choice-of-court agreements?

The European Commission’s approach to exequatur – a look in the rear-view mirror

• The aim is to abolish exequatur
• European Council multiannual programmes
• Economics and politics!
The Brussels I *bis* Regulation

- New provisions Arts. 36 to 57
- Endorsement (Art. 53)
- Necessary documents and information (Art. 42)
  - Copy of foreign judgment
  - Certificate
  - If necessary, a translation of the documents

Grounds for refusal remain

- The “European” grounds for refusal Arts. 45 and 46
  - Public policy
  - Missing or improper service of process
  - Certain cases of irreconcilable judgments
  - Conflict with mandatory jurisdictional bases
- The national grounds for refusal (Art. 41(2))
Accessing the defences?

• New proceedings in enforcing Member State (Arts. 46 and 47)
• Art. 41(2) – national grounds for refusal in the same proceeding?
• A risk of parallel proceedings?
• Fees levied to process an application?

A brief critical appraisal

• The formula used is a combination of approaches
  – *Exequatur* eliminated
  – Replaced by a certification procedure in the Member State of origin
• An improvement or *status quo*?
International jurisdiction

- Extension of rules of jurisdiction to non-EU defendants?
  - The current regime
  - The proposal of the European Commission
- The outcome

Choice-of-court agreements

- Abusive litigation tactics and the Gasser-case (C-116/02)
- Arts. 25 and 31(2)
- Has the “Italian torpedo” sunk at last?
Thank you for your attention!