FREE MOVEMENT OF JUDGMENTS ON CIVIL AND COMMERCIAL MATTERS IN THE EUROPEAN UNION

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Summary

Every citizen - consumer – who purchases merchandise or services personally, via electronic commerce or commercial company and who, due to the contemporaneous communication and transaction methods happens to enter in commercial relations with other merchants from Europe, will need at some point adequate knowledge in case a dispute arises between him and his partner. To be more specific - which will be the competent court to examine the matter, what rules will this court apply, but most importantly – if the judgment is in his favour and the defendant's place of residence is in another member-state – how can this judgment be effectively enforced. Moreover – we see recurrent cases where during a dispute on a purely national basis between entities of the same member-state, envisioning a possible unfavourable case outcome, one of the parties moves its assets to another member-state during the process. At the end of the court proceedings, the creditor faces a number of difficulties pertaining to the effective judgment enforcement. These circumstances gradually directed the European Union to the idea of establishing a common European legal space, in which every citizen of a member-state can calmly exercise his rights and freedoms with no concern as to possible complications, and that in his contacts with partners or merchants from other member-states he can rely upon effective, anticipated and speedy European administration of justice. In this aspect, the most important legal acts are: Regulation №44/2001 on jurisdiction, recognition and enforcement of judgments and Regulation №805/2004 creating an European Enforcement Order for uncontested claims.

Keywords: *consumer, merchants, commercial relations.*

Sumar

Libera circulaţie a hotărârilor în materie civilă şi comercială în ţările Uniunii Europene

Fiecare cetățean-consumator, care a cumpărat un bun sau un serviciu personal prin intermediul comerțului electronic și care, datorită comunicării contemporane și a metodelor de tranzacții, se întâmplă să se implice în relații comerciale reciproce cu parteneri din Europa va avea nevoie, la un moment dat, de cunoștințe adecvate, în cazul în care apare un conflict între el și partenerul său. Mai exact: care va fi instanța competentă să examineze disputa, ce reguli se vor aplica de către această instanță si, cel mai important, dacă hotărârea de judecată este în favoarea lui, iar locul de reşedinţă al pârâtului este într-un alt stat membru, cum poate fi pusă în aplicare efectiv o astfel de hotărâre.

Mai mult, au devenit periodice cazurile în care litigiul este între entități din cadrul unui și aceluiași stat membru, iar în timpul procesului, care prevede un posibil rezultat nefavorabil, una dintre părțile aflate în litigiu își mișcă activele sale la un alt stat membru. La sfârșitul procedurilor judiciare, creditorul se confruntă cu o serie de dificultăți ce țin de aplicarea eficientă a hotărârii de judecată. Aceste circumstanțe au direcționat treptat Uniunea Europeană la ideea stabilirii unui spațiu juridic european comun, în care fiecare cetățean al unui stat-membru se poate folosi calm de drepturile și libertățile sale, fără motiv de îngrijorare privind posibile complicații, și că, în contactele sale cu parteneri sau comercianți din alte state-membre, se poate baza pe o administrare a justiției europene eficace și rapidă. În acest sens, cele mai importante acte juridice sunt Regulamentul nr. 44/2001 - privind competența, recunoașterea și executarea hotărârilor judecătorești și Regulamentul nr. 805/2004 - privind crearea unui titlu executoriu european pentru creanțele necontestate.

Cuvinte-cheie: *consumator, comerciant, relații comerciale.*

In the 20th and the 21st century the globalization of the social and economic relations and the huge development of electronic devices, as well as the freedom of movement of goods, services, capital and persons in the European Union gradually led to an increase in the movement of citizens, international commercial relations and obligations, including the relations between physical persons and legal entities located on the territory of the European Union. The matrimonies between citizens of different nationality keep increasing daily, as well as the use of services and goods produced in other countries. As an expected result numerous disputes between the different economic entities on the territory of the European Union originate. The existence of cross-border international element complicates the task of judicial authorities in each member-state on the resolution of legal disputes additionally, and issues pertaining to the access to justice and specifics of the judicial process as a whole become more recurring. None of us

will challenge the fact that a major part of the European citizens travel within the European Union either for pleasure or for performing a commercial activity and entrance into contractual arrangements. Moreover, a large part of them get married or become parents from their factual cohabitations. Every citizen – consumer – who purchased merchandise or services personally, via electronic commerce or commercial company, and who, due to the contemporaneous communication and transaction methods happens to enter in commercial relations with other merchants from Europe, at some point will need adequate knowledge to apply in case a dispute arises between him and his partner, and more specifically, which court will be competent to examine it, what rules will this court apply, **but most importantly – if the judgment is in his favor and the defendant's place of residence is in another member-state – how this judgment can be effectively enforced.** And more – it has become more recurrent where in cases where the dispute is on a purely national basis between entities in one and the same member-state, during the process, envisioning a possible unfavorable case outcome, one of the parties in the dispute moves the assets to another member-state. At the end of the court proceedings, the creditor faces a number of difficulties pertaining to the effective judgment enforcement. All this inevitably makes the economic entities more prudent, hence gradually increases the insolvency and bankruptcy that eventually leads to the restriction of free movement. These circumstances gradually directed the European Union to the idea of establishing a common European legal space, in which every citizen of a member-state can calmly exercise his rights and freedoms with no concern as to possible complications, and that in his contacts with partners or merchants from other member-states he can rely upon effective, anticipated and speedy European administration of justice.

International jurisdiction in accordance with regulation №44/2001

The Brussels Convention on jurisdiction, recognition and enforcement of judgments from 27.09.1968 and Regulation №44/2001 in force from 1.03.2002 that replaced it, are by necessity based upon the confidence, with which the contracting countries mutually behave towards their legal systems and judicial institutions. It is the mutual confidence that allowed the establishment of compulsory regime of jurisdiction that all courts on the territory of the European Union must apply, hence it is possible for these countries to reject the application of their national norms with regard to the recognition and enforcement of foreign judgments in the name of simplified mechanism for the achievement of this goal.

The scope of the Regulation is limited to certain areas of law, designated in art.1 (1), and namely – regarding cases, referring to "civil and commercial matters". The Regulation does not apply to procedures, concerning disputes between governmental bodies and physical persons or legal entities, such as the litigation of all types of administrative acts, and more specifically tax and customs disputes. Outside the scope of application of the Regulation fall as well the areas connected to the legal capacity and ability of physical persons, family law, legacy and inheritance /art.1 (2)(a)/, disputes on the insolvency of merchants /art.1 (2)(b)/ that are subject to another Council Regulation - 1346/2000, social security /art.1 (2) (c)/and arbitration disputes /art.1 (2)(d)/.

Determining the international jurisdiction

Regulation 44/2001 is based on several fundamental rules, determining the **exclusive, major and special international jurisdiction.**

There are certain cases, dominated by the principle of public policy and this explains the wish of all legislative bodies, not only those of the member-states but also the European Union, to provide, in such cases, the jurisdiction to specific courts. The Court is also obliged to watch ex officio for the existence or lack of prerequisites for exclusive jurisdiction. The norm of art.22 shall apply regardless of the permanent residence of the parties (even when both parties are residents in non-member countries). It cannot be declared void by an agreement on the selection of a court. Should there be a referral to another court; the latter declares that it has no jurisdiction on its own decree /art.25/.

Major jurisdiction: the residence of the defendant

The main requirement for applying Regulation 44/2001 is that the residence of the defendant is in a member-state, a fact that on its part leads to the establishment of the principal norm, determining the jurisdiction in art.2. The adopted approach is conform to the principle *actor sequitor forum rei*, set on the basis of many member-states,

originating from the assumption that there isn't a more appropriate court to review the dispute and to best respond to the property interests of the defendant, besides the one located at the defendant's place of residence. The defendant can be sued in the member-states courts at its place of residence, unless the subject of the dispute falls within the exclusive jurisdiction.

Special or elective jurisdiction

In determining this jurisdiction, the claimants are those who are entitled to chose whether to file their claim under the general jurisdiction at the state of domicile of the defendant /art.2 from the Regulation/ or in any of the other courts of competence according to the norms of art.5, 6 and 7 of the Regulation.

The special or elective jurisdiction is determined by art.5 and 6 from the Regulation and in the narrow sense of word provides the right of choice to the claimant to decide whether to file the claim before the courts at the place of domicile of the defendant or before any of the jurisdictions, designated in art.5 and 6. This also represents a special jurisdiction, based on the scope and subject of dispute, in view of the jurisdiction as determined by the Regulation in compliance with the substance of the case in an attempt to have as designated the court, which is geographically the closest /principle of vicinity - art.5 (1) and (3)/or the one, which will be able to administer the proceedings in the best possible way / art.6 (1) – principle of rationalization of the procedures/.

With regard to the second type of jurisdiction, alternative or specific, based on the essential feature of the dispute, this jurisdiction is applicable to disputes, originated from insurance contracts /art. 8-14/, certain types of consumer contracts /art. 15-17/ and individual labor contracts /art. 17-21/. In these cases of contractual relations, the consumer, the worker or the insured is the weaker party, and the regulations give advantage as to the choice of jurisdiction especially to this party. The obligatory character of the norms, determining the jurisdiction on disputes, related to insurance and consumer contracts, is also enhanced during the phase of the judgment recognition and enforcement, as far as art. 35(1) from the Regulation envisions the possibility to revoke the recognition of a judgment, when the court has examined such a dispute and issued its judicial act in breach of the jurisdiction, determined in the respective sections of the Regulation.

Contractual Relations

The contract is the main tool for the free movement of goods and services in the international commerce. As a consequence from contract-related disputes, in which the claimant is entitled to choose the court of competence to examine the case, the jurisdiction is determined following the special rule, set in art. 5(1) from the Regulation: "competent to review the dispute is the court at the location of performance of the obligation in question". Art. 5(1) of the Regulation is also applicable to cases, in which in substance is disputed the existence or the lack of contract between the parties, based on the assertion that the contract is deficient.[1].When there is not an obligation assumed in free will by any one of the parties in dispute, art. 5(1) of the Regulation cannot apply and thus the jurisdiction cannot be determined. In such cases, the European Court recurs to the metaphor "contractual chains", in an attempt to emphasize that should there be no contractual relation between the buyer of a good and its producer, it wouldn't be possible for the producer to foresee in which court exactly the buyer can be sued in result of incurred damages[2]. This is why the Court of Justice of the European Union (the Court) states[3], that the interpretation of the term "contract" shall be made independently, in comparison with the objectives and ideas of the Convention /the Regulation)/.

For the sake of interpretation of art.5 (1) of the Regulation, the term "obligations" refers to: *„every obligation that originates from the contractual relation /in this case, a contract for exclusive commercial representative/ or from the contractual obligations that shape the base of legal procedures"*. In this sense, the jurisdiction is given to the court located at the place of enforcement of the contractual obligation itself, where the claimant has based his claim.

There are also additional difficulties, connected to the interpretation of the term "place of en-

[1] Judgment from 4 March 1982 on the case Effer vs Kanter

[2] Judgment from 17 June 1992, Handte vs TMCS-C-26/91

[3] Judgment from 22 March 1983, on case C-34/82, Peters/ZNAV

forcement of the obligation in question". When in the Regulation one refers to "place of enforcement of the obligation in question" referring to a sales contract of goods, the place will be determined as the location where "**the goods were delivered or where they should have been delivered**" - art. 5(1)(b), first proposal. The place of enforcement in a contract, related to the provision of service is the place, where**" the goods were delivered or where they should have been delivered**" - art. 5(1)(b), last proposal.

Jurisdiction in case of tort

In the cases of claiming an indemnification of damages, regardless of whether caused by delict or quasi-delict, the Regulation sets elective special jurisdiction provided to the claimant, and the competent court by domicile is " the court for the place where the harmful event occurred or may occur"/art. 5(3)/. The Court of Justice of the European Communities has ruled that in the cases of civil breach or delict, the jurisdiction refers to **„all cases, in which is sought to determine the liability of the defendant and which are not related to the term "contract", interpreted in compliance with the goals and spirit of art. 5(1) of the Regulation"**[4].

Starting from the basis of this type of jurisdiction incorporated in the norm of art. 5(3), the interpretation of the term "the court for the place where the harmful event occurred or may occur" has created numerous difficulties.

This can refer to the place, where the harm originated, as well to the place, where the harm can be observed with bare eye, by giving an opportunity to the claimant to file a claim against the defendant at both places[5].

Jurisdiction in case of indemnifications

According to art.31 from the Regulation, the courts have jurisdiction to undertake provisional and protective measures in compliance with their own legislation.[6] In cases falling in the scope of the Convention (the Regulation), these measures are set to preserve the factual or legal situation, in a way to protect the rights whose recognition was claimed elsewhere by the court, having jurisdiction over the substance of the matter. The court, which has jurisdiction over the case itself, has also the jurisdiction to decree provisional and protective measures, with no additional conditions. If the court doesn't have jurisdiction over a case,"the decree of provisional or protective measures based on (art. 31) is conditional with regards to and *inter alia*, the existence of actual connection between the subject of decree and the territorial jurisdiction of the contracting country at the location of the court, before which the imposition of measures was claimed".[7]

Recognition and enforecement of foreign judgments, according to regulation /eu/ 44/2001

One of the prerequisites to achieve the objective to „facilitate the free movement of judgments" within the European legal space, is the simplification of formalities, required for the recognition and enforcement of judgments.

1. For the purposes of this Regulation, "**judgment**" means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court - Art.32
2. **Regarding the origin of the judgment –** two conditions are necessary. First, it has to be made by a quasi judicial body. The Court of Justice of the European Union decreed that in view of the administration of justice, the court shall assume its judgment as decreed in accordance with the objectives and interpretation of the Regulation.[8] Second, the quasi judicial body shall exercise its function on the territory of the member-state.
3. **The scope of the decision** shall fall within the scope of material applicability as per art.1 of the Regulation /"civil and commercial matters"/.

[4] Judgment on Case C189/87, from 27 September 1988 - Kalfelis

[5] Judgment from 30 November1976, on case C-21/76 - Mines de Potasse d'Alsace

[6] Judgment of the Court from 26 March 1992, on case C-261/90, Mario Reichert, Hans-Heinz Reichert and Ingeborg Kockler v Dresdner Bank AG

[7] Judgment of the Court from 17 November 1998, C-391/95 Van Uden Maritime BV, trading as Van Uden Africa Line v Kommanditgesellschaft in Firma Deco-Line and Another

[8] [8]Judgment from 02 June1994 on Case C-414/92 - Solo Kleinmotoren vs Bosch

4. In view of the nature of judgments, the latter are recognized regardless of whether decreed in ordinary process /disputable jurisdiction/ or represent court settlement, approved by the court. Neither is it necessary for the judgment to have entered into effect in the country of origin in order to be recognized, but of course, in a country, in which it is claimed to be recognized, it cannot incur bigger legal consequences than those in the country of origin.

Last, but not least, art.57 and art.58 of the Regulation foresee special norms for the recognition of authentic documents /for example, property deeds/.

Conditions for recognition and enforcement; grounds for rejection

The Regulation introduces the principle of automatic recognition of judgments, given by any court in a member-state. If the purpose is the enforcement of judgment or its recognition in principle /without exception on the territory of the member-state, via some form of exequatur/ or its ad-hoc recognition/ limited to specific parts of it/, in any case shall exist a declaration certifying the accuracy of the foreign judgment. In the first case, where a recognition in principle of the judgment is sought, /declaration of enforceability/, the Regulation foresees that the defendant could file a complaint against the recognition or enforcement of the judgment that was already given, if he considers that the terms of art.34 from the Regulation are present. If ad-hoc recognition of the judgment is sought, it is not necessary to conduct any procedure, as the body before which such a request was made, would make a verification of these terms.

First, it shall be noted that, **under no circumstances may a foreign judgment be reviewed as to its substance** /art.36 - regarding the recognition; art.45 – regarding the enforcement/.

The main principle is the ban to review a jurisdiction according to art. 35(3) of the Regulation, with regards to the judgments, given by a court in a member-state. The exceptions are the following:

The judge to whom was referred the request for judgment recognition as per art.35 from the Regulation, should consider whether the court that gave the judgment had met the jurisdiction norms in the cases on insurance, consumer and individual labor contracts. In such cases, should these protective and special grounds are not respected, the judge who has been addressed with a request for judgment recognition, would pronounce a rejection for this, regardless of whether the same had been pronounced by a court in a member-state or a court in a non EU member-state, on the ground that the court, which had given the judgment hadn't had the jurisdiction to do it.

The refusal to recognize a judgment given by a member-state court shall always be conforming to the terms, set in art.34 of the Regulation. The first ground for refusal to recognize a judgment is its contradiction with the public policy of the member-state, in which the recognition was claimed. The contradiction should not originate from the very content of the judgment, but from the specific consequence from such recognition in a member-state, where it is claimed at the moment of submission of such a request. In one of its judgments[9], the Court of Justice of the European Communities designated that this ground should be applied as an exception. Likewise, the interpretation of the term"public /social/ policy" should not be referred to the application of specific normative regulation on the particular case. For this reason, the Court of Justice of the European Union[10] rules out that the ground for refusal „breach of the public policy" cannot be directed towards the effectiveness of the decision, because the court of origin has based its jurisdiction on the nationality of the harmed / claimant/, and not on the domicile of the defendant.

The second major ground for rejection to recognize the judgment is the breach of the right for protection, listed in art. 34(2) of the Regulation. It is limited to the cases, in which the judgment was given in default of appearance of the defendant – under two conditions: if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense. The second condition for the application of the norm is if the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.

The third and fourth grounds for rejection to recognize the judgment are described in art. 34(3) and (4) of the Regulation and both refer to

[9] Judgment on Case C-145/86 from 04 February1988 - Hoffmann vs.Krieg

[10] Judgment on Case C-7/98 from 28 March 2000 - Krombach vs.Bamberski

the lack of reconciliation between different judgments that were given. Art. 34(4) of he Regulation stipulates a ground for rejection of a judgment if is irreconcilable 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.

Check of the validity or the grounds to confirm the recognition terms

Art. 33 from the Regulation foresees that a judgment given in a Member State shall be recognized in the other Member States without any special procedure being required. In the cases where the recognition is requested in an incidental manner in the course of pending procedures when a party wishes to enjoy the consequences of the judgment, given in a different process and submits it to the court with the request to be taken in consideration in pronouncing its verdict, or to admit the existence of a judgment in force, the jury before which the proceedings are pending, is the body responsible for the conducting of external check of the conditions for the recognition of judgment. In the cases where the recognition is expressly requested, the party, which has requested it shall undergo the special procedure, set out in the Regulation for the issuance of a „declaration of the enforceability of the judgment"/writ of execution/. Hence the procedure for the recognition in principle of the judgment and the one on the issuance a declaration of the enforceability of the judgment is one and the same in both cases.

First, only **the party that seeks recognition and enforcement of the foreign judgment** has the **procedural right, legal capacity and ability** to initiate such a procedure. Second, the procedure for the recognition and enforcement of judgment, envisioned in the Regulation is statutory for two reasons. First, due to the fact that as a natural consequence from the recognition of the judgment, the party who received a positive resolution of its claim in a member-state, cannot initiate a new procedure in another member-state in order to collect its claim via judgment enforcement procedure, but has to submit a request for the recognition and enforcement of the judgment.[11] The second reason is that the country that in principle seeks enforcement of the judgment, which falls into the field of application of the Regulation, shall refer to the procedures envisioned in the Regulation instead to those, instituted in the country that pronounced the judgment.

Art.39 through 56 of the Regulation determine the special procedure for the issuance of a declaration of the enforceability of the decision/a writ of execution/ and the possibility of the parties to appeal the court judgment on this matter.

Each interested party may request the recognition and enforcement of foreign judgment, given by a court in a member-state. The competent courts or bodies, before which the applications shall be submitted, are specifically designated in Annex II to the Regulation. In Annex III are designated the competent courts, before which a complaint may be filed against the judgment for the issuance of a declaration of enforceability in accordance with art.43(2) of the Regulation, while Annex V determines the courts, competent to consider the complaints against the judgment of the court under art. 43(2) /art.44//.

The first phase if this procedure is closed, the defending party does not go through hearing, as it is considered that if this party becomes aware of the procedure at this stage, he could take measures to make the enforcement impossible in the country where it's claimed /for example, to dispose of his property in this country/. The judge shall pronounce his statement for recognition or enforcement /if the judgment itself is enforceable in its country of origin / of the judgment timely and with no delay, abiding by the formalities, designated in.53/, and namely, to make a verification of the submitted copy of the judgment and the certificate under art 54/ and without observing its enforcement within the terms of art.34 и 35 of the Regulation. The application and the conditions for its submission are established in the domestic law of the country, in which recognition and enforcement of the judgment is sought. It shall contain as attachments the documents, designated in art.53 – a certified copy of the judgment and a certificate for compliance with the standard form, published in Annex V to the Regulation. The judge may ask the party to provide him with a certified translated copy of the above-mentioned documents, but not their certification.

[11] Judgment on Case C-42/76 from 30 November 1976 - Wolf vs.Cox

The second phase of the procedure refers to the possible appeal of the court's statement and by nature this phase is competitive, hence open. The right of appeal is allowed with regard to both the court statement recognizing the judgment and the one issuing the declaration of enforcement, including the cases of rejection thereof. **The presence or failure of grounds for the recognition or enforcement of the judgment according to art.34 and 35 is also subject to consideration**. The court before which is submitted the appeal under art. 43 or art. 44, at the request of the party, against whom enforcement is sought, may suspend the procedure, if in the country of origin of the judgment is submitted an ordinary complaint or if the term for its submission has not yet elapsed. The court may, as well, put as a prerequisite for the enforcement, the provision of such a guarantee, whose amount it determines. If the appeal is against decision, which allows the enforcement of foreign judgment, the term for its submission is within one month from the receipt of the declaration for enforceability, should this party be domiciled in a member-state or a third country. If the party against whom enforcement is sought is domiciled in a member-state different from the one, in which the declaration of enforceability is given, the time for appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance. If the recognition and enforcement of the judgment is being revoked, the Regulation does not incorporate a time period for the submission of the complaint against it, hence the same shall be determined in accordance with the domestic law of the country, in which the recognition and enforcement is revoked. The judgment that is given in relation with the appeal may be disputed only via the process of appeal, designated in Annex IV and only on the grounds listed in art.34 и 35 of the Regulation. In other words the Regulation also foresees a peculiar instance control on the judgment, given by the court, examining the complaint against the court statement, which recognizes the judgment, and the one, with which is issued a declaration of enforceability, including the cases of rejection thereof.

In the proceedings of recognition and enforcement of judgments it is recommended to use temporary and collateral measures whose application may be ruled upon request of the applicant: "when a judgment must be recognized in accordance with this Regulation (art. 47(1)), nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required". **After the recognition of the judgment via the exequatur, it will be enforced upon the application of the interested party and by meeting the relevant internal procedural norms in a way, identical with the one that would have been used, should the judgment had been given by a court in a member-state, in which its enforcement is sought.**

***Regulation №805/2004 of the European Parliament* and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims**

Within the European Union the reasonable duration and the value of standard civil proceedings are inappropriate for legal disputes of international nature, especially when it becomes obvious that there is no dispute between the parties. The difficulties that the creditors face within the Union refer not only to the lack of knowledge about the legal system in the respective member-state and the fundamental need to consult with a lawyer, but also to the procedure that requires additional funds for translation and the necessary time period to service papers and exchange information between the different member-states. These circumstances are concomitant with the ordinary civil proceedings regardless of whether the claim will be contested or not. Therefore the debtors in cross-border cases who refuse to pay, put the creditors in an unfavorable financial situation, related to the accumulation of liabilities, insolvency and sometime, bankruptcy.

The fundamental Community instruments in the area of the enforcement of judgments are directed towards the resolution of these problems - Regulation №805/2004 creating a European enforcement order for uncontested claims; Regulation №1896/2006 creating a European Order for Payment Procedure.

Regulation 805/2004 attempts to abolish all additional mechanisms of control over the judgments, given in a member-state, as a prerequisite for their enforcement in another member-state/ abolishment of the exequatur/ in the cases where the creditors receive additional order for pecuniary claim that has not been contested by the

debtor. In this regard, art. 5 of the Regulation designates that: „A judgment which has been certified as a European Enforcement Order in the member-state of origin shall be recognized and enforced in the other member-states without the need for a declaration of enforceability and without any possibility of opposing its recognition".

1. The procedure seeks to make useless the need of interim measures before stepping into the enforcement, in another member-state, of the judgments, given on all types of claims, related to pecuniary claims for accurately designated and executable amount, when the debtor/defendant has not appeared in court on his own will and a notification for that and the consequences from his behavior have been duly serviced to him via the methods designated in the Regulation. By substance, this represents a considerable step forward in comparison with Regulation 44/2001, in which is possible /art.45/ to bring motives for the failure of enforcing the judgment on the grounds of the norms in art.34 and 35 in the procedure of appeal.

The Regulation is applicable to the similar areas as ones to which apply Brussels I, i.e., civil and commercial matters as per art. 2, regardless of the type of judicial body that has given the judgment /therefore, also covers certain judgments of labor courts on specific cases/. The Regulation has been applied in its totality since 21.10.2005.

The types of judgments that can be identified as European Enforcement Order are multiple and depend on the procedural law of each member-state. Despite that, the judgment shall be given by a competent body in the view of determining the incontestable character of the claim that falls within the scope of the Regulation.

The Regulation does not specify the kind and type of judgments that may be identified as European Enforcement Order. The Regulation also omits to designate the specific courts /only first instance and/or appellate and cassation courts/ may issue a certificate for European Enforcement Order. The only requirement is that they are"courts" in their essence, regardless of their name that supposes that after the envisioning of the scope of the case falls within the field of application of the Regulation, all courts, which form the sphere of the judiciary (judicial power) in the respective member-state, may issue similar certificates for European Enforcement Order, regardless of whether the jury is composed of one judge or of mixed composition.

The judgment shall be given between the parties and shall refer to an uncontested pecuniary claim. This aims at providing a description of all elements that allow the courts to determine whether the judgment may be subject to certification, art.4 from the Regulation provides a legal definition of the term "claim – a claim for payment", which is executable or whose refund date has been determined in a judgment, court agreement or authentic instrument. The monetary amount shall be designated exactly, which supposes the obligation to be in cash and executable.

Finally, art.3 of the Regulation sets the requirements that shall be met by the claim to remain uncontested.

First, the claim is uncontested when the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of judicial proceedings;

Second, when the debtor has never objected to it, in compliance with the relevant procedural requirements in the law of the member-state of origin, in the course of the judicial proceedings,

Third, if 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, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the member-state of origin.

Forth, the claim is uncontested, if the debtor has expressly agreed to it in an authentic instrument.

The information that shall accompany the notice for commencing the proceedings /art.16 and art.17/ is an essential part of the Regulation because, in order we can speak about uncontested claim, it is important to dispose with the evidence that the debtor was provided with due information about the claim, as well as information on the defendant, allowing him to undertake respective measures in response of the claim. Only then it will be possible to consider the passive behavior of the debtor, such as "acceptance" or "contention" with regards to the claim. The information provided to the debtor refers not only to the claim itself, but also to the procedural possibility for its contention /in written form – via written response to the claim application or orally on the date of the court hearing /.

V. Enforcement of judgment, certified as european enforcement order

The Regulation does not create rules for the enforcement of the above-mentioned certificates for European Enforcement Order and stipulates that 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 /art.20/. This means that the procedure will be initiated and conducted in a way set by the domestic legislation of a member-state, in the case of the specific requirement to attach to the application for initiating enforcement, the documents, designated in art. 20 of the Regulation, as follow:

a) a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity;
b) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
c) where necessary, /but not obligatory/ a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the member-state of enforcement or, if there are several official languages in that member-state, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that member-state, or into another language that the member-state of enforcement has indicated it can accept. The translation shall be certified by a person qualified to do so in one of the member-states. The enforcement procedure envisions the participation of the respective court at the domicile of the debtor that in closed hearing estimates the validity the documents presented, their translation and issues a ruling with the characteristics of a judgment under the general appeal procedure. It is good in this case that the right to appeal originates from the date of service of the summons for voluntary debt repayment by the respective enforcement agent, that supposes an already constituted enforcement procedure, in which the enforcement agent has undertaken actions to secure the effective enforcement. Likewise it shall be noted that the appeal against the judgment does not suspend the enforcement.

***2.* Grounds for the refusal of enforcement / art. 21/. Possibilities for judgment review by the judicial body in the state of enforcement**

The Regulation does not interfere with the operational independence of the enforcing bodies in the respective member-state, as defined in its domestic legislation. The national legislation and the certificate for European Enforcement Order are the ones, based on which the enforcement is conducted. Art.21 of the Regulation designates the grounds for refusal of enforcement that are based on the procedure, described in the document. These grounds are additional to the national ones. More specifically, the Regulation introduces as grounds for refusal /but only upon application by the debtor/ the motive that the judgment certified as a European Enforcement Order (**excluding here the European Enforcement Orders, based on court settlement or authentic document**/ is irreconcilable with an earlier judgment given in any member-state /but without reviewing the judgment as to its substance/ or in a third country, when:

a) the earlier judgment involved the same cause of action and was between the same parties /exist both objective and subjective limits of the effect of the judgment/; and
d) 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.