

THE FREE MOVEMENT OF JUDGMENTS WITHIN THE EUROPEAN UNION: PROCESS OF RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

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Abstrakt

Tento příspěvek se zabývá procesem uznání a výkonu cizích soudních rozhodnutí v rámci evropského justičního prostoru. Zaměřuje se na uznání a výkon ve věcech občanských a obchodních podle úpravy v Nařízení Rady (ES) č. 44/2001, o příslušnosti a uznávání a výkonu soudních rozhodnutí v občanských a obchodních věcech, Nařízení Rady (ES) č. 805/2004, kterým se zavádí evropský exekuční titul pro nesporné nároky a Nařízení Evropského parlamentu a Rady (ES) č. 1896/2006, kterým se zavádí řízení o evropském platebním rozkazu.

Klíčová slova

Cizí soudní rozhodnutí, uznání cizího soudního rozhodnutí, prohlášení vykonatelnosti, výkon cizího soudního rozhodnutí.

Abstract

This contribution deals with the process of recognition and enforcement of foreign judgments within the European Area of Justice. It focuses on such process in civil and commercial matters under the provision of Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I Regulation"), Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims and Regulation (EC) No. 1896/2006 creating a European order for payment procedure.

Key words

Foreign judgment, recognition of foreign judgment, declaration of the enforcement, enforcement of foreign judgment.

INTRODUCTION

The process of recognition and enforcement of foreign judgments belongs to a key issue whether the judgments will have legal effect in other state and will be enforceable on the territory of another state. In case of impossibility to recognize foreign judgment in another state, the court decision loses its legal function and calls for weakness of the branch of law. In the process of recognition and enforcement of foreign judgments is the most important to recognized the decisions and give them the value which is given to the decisions of domestic courts.

This contribution deals with the process in recognition and enforcement of foreign judgments within the European Union. It focuses on such process in civil and commercial matters under

the provisions of Brussels I Regulation¹, Regulation creating a European Enforcement Order for uncontested claims and Regulation creating a European order for payment procedure.

1. COUNCIL REGULATION (EC) NO. 44/2001 ON JURISDICTION AND THE RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

Under Article 65 of the EC Treaty², the European Community is allowed to adopt the measures relating to judicial cooperation in civil and commercial matters. Under the provision it includes “improving and simplifying the recognition and enforcement of decisions in civil and commercial cases“.³

The main aim of European Community, in the area of freedom, security and justice, is to ensure mutual trust in the administration of justice in the European Community judgments and to recognize such judgments in another Member State automatically without any procedure. There is a need of guarantee that the decision published in one Member State is recognized in other Member State without any control. In accordance with the principle of mutual trust, the enforcement of foreign judgment published in another Member State is carried through an effective, rapid and simple mechanism. The result is that “the declaration that a judgment is enforceable should be issued virtually automatically after purely formal checks of the documents supplied, without there being any possibility for the court to raise of its own motion any of the grounds for non-enforcement provided for by this Regulation“.⁴

The recognition and enforcement of foreign judgments is proceeded in three steps:

1. the recognition of foreign judgment,
2. the declaration of the enforcement of the foreign judgment (exequatur),
3. the enforcement of foreign judgment.

¹ Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

² „Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:

(a)improving and simplifying:

- the system for cross-border service of judicial and extrajudicial documents,

- cooperation in the taking of evidence,

- the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;

(b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;

(c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.”

³ Article 65 (a) of Treaty Establishing the European Community.

⁴ Article 17 of Preamble of Council Regulation (EC) No. 44/2001.

1.1 THE RECOGNITION OF FOREIGN JUDGMENTS

According to the article 33 of Brussels I Regulation, the decisions issued by court in one Member State have fundamentally the same effect in another Member State. So far as the definition of judgment, the judgment means any judgment given by court of a Member State and no matter how the judgment is called.⁵

The essential requirement is the fact that the decision falls into scope of the Regulation which covers the competence over the legal relationships under article 1 of the Regulation. It is exclusively applicable to the civil and commercial matters. The revenue, customs and administrative matters are excluded. To other excluded areas belong the status or legal capacity of natural persons, the rights in property arising out of family relations, the area of social security, also bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and finally the arbitration.

The main benefit of the Regulation is the recognition of foreign judgment automatically, without any other proceedings.⁶ The court which recognizes foreign judgment may not review such foreign judgment as to its substance.⁷ Only interested party may interpose an insufficiency for its recognition.

In particular case the court has a duty to refuse the recognition of foreign judgment, especially when the judgment does not fulfill the conditions for recognition. The reasons for non recognition of foreign judgment are following:

- a. the recognition is contrary to public policy in the Member State in which recognition is sought – article 34(1);
- b. the default of appearance – article 34 (2): 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 before court,;
- c. the obstacle of *res iudicata*:
- d. the decision is incompatible with judgment given in a dispute between the same parties in the Member State of recognition – article 34 (3);
- e. the decision is incompatible with judgment given in a dispute in same action and between the same parties in another Member State or in a third State and this judgment fulfils the conditions for its recognition in the Member State where the recognition is addressed – article 34 (4);
- f. the lack of jurisdiction over the dispute – article 35 (1):
 - i. in case of breaking “jurisdiction rules” in matters relating to insurance (article 8), over consumer contracts (article 8) and exclusive jurisdiction (article 22);
 - ii. in case of international jurisdiction based on agreements concluded between Member States before the Regulation has entered into force – article 72.

⁵ Article 32 of Brussels I Regulation: „*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.*“

⁶ Article 33 (1) of Brussels I Regulation: „*A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.*“

⁷ Article 36 of Brussels I Regulation.

1.2 THE DECLARATION OF THE ENFORCEMENT OF THE FOREIGN JUDGMENT (EXEQUATOR)

The declaration of the enforcement of the foreign judgment presents specific process which legalizes whether the foreign judgment contains required formalities.⁸ The foreign judgment shall be enforced in another Member State under the condition that any interested party applies for enforcement and the legal body in another Member State declares the enforceability of such judgment.⁹ The application shall be submitted to the court or another competent authority indicated in the list in Annex II.¹⁰ In the Czech Republic it is the district court where the obliged party is domiciled or where the decision shall be enforced, or at bailiff.

The party seeking for recognition of foreign judgment (“plaintiff”) shall produce the formalities:

- the copy of the judgment which satisfies the conditions necessary to establish its authenticity – article 53 (1);
- the certificate referred to in Article 54 and 58 of the Regulation on judgments and court settlements – Annex V.

As far as the formalities in Article 53 are completed, the court shall declare enforcement of foreign judgment immediately and without any review.¹¹

The declaration of enforceability of foreign judgment shall be served on the party against whom enforcement is sought („obliged party“), accompanied by the judgment.¹² The obliged party may appeal against the decision on enforcement of foreign judgment.¹³ The Regulation specifies the period for an appeal against enforceability of foreign judgment in article 43 (5):

- the general period – one month from the delivery of declaration of enforceability of foreign judgment;
- the peculiar period – two month in case that the obliged party is domiciled in a Member State other than that in which the declaration of enforceability was given.

1.3 THE ENFORCEMENT OF FOREIGN JUDGMENT

The Regulation defines the basic assumptions, which shall be fulfilled in order to allow the enforcement of foreign judgment:

⁸ Kapitán, Z.: Evropský justiční prostor ve věcech civilních. Část VI. Uznání a výkon rozhodnutí podle nařízení Rady (ES) č. 44/2001. Právní fórum, Praha, ASPI, a. s., č. 7, str. 246.

⁹ Article 38 (1) of Brussels I Regulation.

¹⁰ Article 39 (1) of Brussels I Regulation.

¹¹ Article 41 of Brussels I Regulation: „The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.“

¹² Article 42 (2) of Brussels I Regulation.

¹³ Article 43 (1) of Brussels I Regulation.

- the decision must be enforceable in the Member State of issuing,
- the application of any interested party for enforcement of foreign judgment in another Member State,
- the existence of any reason for refusal to recognize foreign judgment.

Basically, after the declaration of the enforcement of the foreign judgment the court issues an order of enforcement of foreign judgment. According to the principle of subsidiarity, the procedure of enforcement of foreign judgment is governed by the rules of domestic legal order.

2. REGULATION (EC) NO. 805/2004 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CREATING A EUROPEAN ENFORCEMENT ORDER FOR UNCONTESTED CLAIMS

The Regulation seeks for mutual trust in the administration of justice in the Member States. The aim of the Regulation creating a European Enforcement Order for uncontested claims is to ensure the principle of mutual recognition of foreign judgments which are certified as a European Enforcement Order in another Member State. There was a need to simplify the process of enforcement of foreign judgments without any intermediate proceedings prior to recognition and enforcement in another Member State.

In accordance with the Regulation, the court is permitted to issue “a European Enforcement Order” under specific conditions. As stated in Preamble of the Regulation “judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought”.¹⁴

European Enforcement Order has an optional function to Brussels I Regulation. It is a choice of the creditor to apply for certification as European Enforcement Order, instead of the process of recognition and enforcement of foreign judgment under Brussels I Regulation.¹⁵ The Regulations states that “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.”¹⁶

The judgment which has been certified as European Enforcement Order is easily and simply recognized and enforced in another Member State without any immediate proceedings, especially without the declaration of enforceability and any possibility of opposing its recognition.¹⁷ Article 5 of Regulation (EC) No. 805/2004 calls for abolition of the declaration of enforceability (known as exequatur).

Because of the abolition of exequatur we may say that the recognition and enforcement of foreign judgments is reduced to only two-step process, instead of three-step process as presented in Brussels I Regulation. It brings the positive advantages for the creditor: simple, speed-up process, without any immediate proceedings.

¹⁴ Article 8 of Preamble of Regulation (EC) No. 805/2004.

¹⁵ Article 20 of the Preamble of Regulation (EC) No. 805/2004.

¹⁶ Article 27 of Regulation (EC) No. 805/2004.

¹⁷ Article 5 of Regulation (EC) No. 805/2004.

The essential requirement is the fact that the enforcement order falls into scope of the Regulation which covers the competence over the legal relationships under article 2 of Regulation (EC) No. 805/2004. This is the same competence as stated in Brussels I Regulation. It is exclusively applicable to the civil and commercial matters. The revenue, customs, administrative matters and the liability of the State for acts and omissions in the exercise of State authority (the only one difference with provision of Brussels I Regulation) are excluded. To other excluded areas belong the status or legal capacity of natural persons, the rights in property arising out of family relations, the area of social security, also bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and finally the arbitration.

European Enforcement Order is exclusively designed for uncontested claims. Article 3 of Regulation includes the definition of claims regarded as uncontested:

- the debtor has expressly agreed to it by admission or concluded before a court in the course of proceedings;
- the debtor has never objected to it in the court proceedings, in compliance with the relevant procedural requirements under the law of origin;
- the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim, provided that such conduct amounts to a tacit admission of the claim or of the facts provided by the creditor under the law of origin;
- the debtor has expressly agreed to it in an authentic instrument.¹⁸

The court dealing with the uncontested claim issues a judgment certified as European Enforcement Order under the conditions specified in article 6 (1) of Regulation:

- the judgment is enforceable in the Member State of origin;
- the judgment is not in conflict with the rules on jurisdiction as laid down in Brussels I Regulation;
- the court proceedings in the place of origin fulfill the minimal requirements set out in article 3 (1) b) or c) in provision of articles 12 – 19 of Regulation (EC) No. 805/2004;
- the judgment was issued by court in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001 and
 - a claim is uncontested within the meaning of Article 3(1)(b) or (c),
 - it relates to a contract concluded by a consumer outside his trade or profession, and
 - the debtor is the consumer.

The enforcement of European Enforcement Order is governed by the law of the Member State of enforcement under the same conditions as domestic judgment of the place of enforcement.¹⁹

The party, the creditor, seeking for enforcement of European Enforcement Order shall provide the formalities under article 20 (2) of Regulation:

¹⁸ Article 3 (1) of Regulation (EC) No. 805/2004.

¹⁹ Article 20 (1) of Regulation (EC) No. 805/2004.

- the copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- the copy of European Enforcement Order certificate (Annex I-III);
- if necessary, a transcription of the European Enforcement Order certificate or a translation into the official language of the Member State of enforcement or into another language that the Member State of enforcement has indicated it can accept.²⁰

The judgment issued by the court in Member State which has been certified as European Enforcement Order is recognized and enforced in another Member State without any immediate proceedings and without obstacles such as the process of declaration of the enforcement of the foreign judgment.

3. REGULATION (EC) NO 1896/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CREATING A EUROPEAN ORDER FOR PAYMENT PROCEDURE

This Regulation belongs to actual European Community instrument because it will be applicable from 12 December 2008. The main aim of the Regulation is to simplify the litigation cases in uncontested pecuniary claims.²¹ The European order for payment procedure is exclusively established for the reason to collect pecuniary claims for a specific amount that have fallen due at the time of submitting the application for a European order for payment.²²

The essential requirement is the fact that the European order for payment procedure falls into scope of the Regulation which covers the competence over the legal relationships under article 2 of Regulation (EC) No. 1896/2006. This is the similar competence as stated in Brussels I Regulation and Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims. It is exclusively applicable to the civil and commercial matters. The revenue, customs, administrative matters and the liability of the State for acts and omissions in the exercise of State authority are excluded. To other excluded areas belong the rights in property arising out of family relations, the area of social security and in comparison with Brussels I Regulation and Regulation (EC) No. 805/2004 additionally are included claims arising from non-contractual obligations.

The creditor shall apply for a European order for payment procedure using the standard form in Annex I.²³ The court where the application for European order for payment was delivered shall determine its jurisdiction in accordance with Brussels I Regulation.²⁴ The court is obliged to examine whether the application fulfills formal requirements and whether the claim is to be founded.²⁵ The court shall reject the application for European order for payment and

²⁰ Article 20 (2) of Regulation (EC) No. 805/2004.

²¹ Article 1(1) of Regulation (EC) No. 1896/2006: *“The purpose of this Regulation is:*

(a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure; and

(b) to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.”

²² Article 4 of Regulation (EC) No. 805/2004.

²³ Article 7(1) of Regulation (EC) No. 805/2004.

²⁴ Article 6 of Regulation (EC) No. 805/2004.

²⁵ Article 8 of Regulation (EC) No. 805/2004.

against such rejection claimant has no right to appeal. However, the rejection does not prevent claimant from pursuing the claim by means of a new application for a European order for payment or other procedure available under the law of Member State.²⁶

So far as the application meets formal requirements, the court issues the European order for payment within 30 days of the application for European order for payment.²⁷ The defendant has two options: to pay the specified amount to the claimant, or to oppose the European order by lodging with the court of origin a statement of opposition within 30 days from the delivery of the order.²⁸

The European order for payment is recognized and enforced in another Member State without the declaration of enforceability and any possibility of opposing its recognition.²⁹ The enforcement of European order for payment is governed by the law of the Member State of enforcement under the same conditions as domestic judgment of the place of enforcement.³⁰

The claimant seeking for enforcement of European order for payment shall provide the formalities under article 21 (2) of Regulation:

- the copy of the European order for payment which satisfies the conditions necessary to establish its authenticity;
- if necessary, a translation into the official language of the Member State of enforcement or into another language that the Member State of enforcement has indicated it can accept.

CONCLUSION

The main aim of European Community is to ensure mutual trust in the administration of justice in the European Community judgments and to recognize such judgments in another Member State automatically without any procedure. There is a need of enforcement of foreign judgments through an effective and simple mechanism.

The current trend in European Community legislation – Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims and Regulation (EC) No. 1896/2006 creating a European order for payment procedure – calls for the judgments which are easily and simply recognized and enforced in another Member State without any immediate proceedings, especially without the declaration of enforceability. The abolition of exequatur results into two-step process of the recognition and enforcement of foreign judgments, instead of three-step process as incorporated into Brussels I Regulation. It brings the positive advantages for the claimant: simple, speed-up process, without any immediate proceedings.

Literatura:

- Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

²⁶ Article 11 of Regulation (EC) No. 805/2004.

²⁷ Article 12 (1) of Regulation (EC) No. 805/2004.

²⁸ Article 12 (3) of Regulation (EC) No. 805/2004.

²⁹ Article 19 of Regulation (EC) No. 805/2004.

³⁰ Article 21 (1) of Regulation (EC) No. 805/2004.

- Regulation (EC) No. 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims.
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