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RECHTSANWÄLTE

Hamburg - Germany

THE ENFORCEMENT OF FOREIGN JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS IN GERMANY

Principles of Enforcement

- Recognition required
 - * for immediate legal effects in Germany in general
 - * as a precondition for the enforcement of such judgements on the German territory in particular.
- Recognition is governed by different provisions
 - * multi- or bilateral treaties
 - * subsidiary: German Code of Civil Procedure

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Pattern of Recognition

Pattern for recognition is similar in international and national provisions,
i.e. recognition is refused if:

- no legal enforcement of the judgment in “origin state”
- no jurisdiction of “origin state” by international legal standards
- defendant was uninformed of legal proceedings

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Pattern of Recognition

- judgement irreconcilable to an earlier recognisable judgement
- recognition is manifestly contrary to public policy (ordre public) in "target state" (Germany)
- no reciprocity regarding enforcement between "target state" (Germany) and origin state

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Enforcement in the EU

- Regulation EC No 44/2001 of 22 December 2000 on the Jurisdiction and the Recognition and Enforcement of Judgements in Civil and Commercial Matters applicable in all EU-member states (except Denmark)
- Recognition **without** particular proceeding
- Enforcement after application and **simplified procedure** in the target member state.

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EC No 44/2001 ("EC-Brussels I")

Lodging such application for enforcement requires:

- Appointment of a representative *ad litem* (*Zustellungsbevollmächtigter*), Article 40 para. 2.
- Submission of original or executed copy of judgement and a standard form to be submitted by the origin court. Target court may request certified translation

If these preconditions are met the court in the target state issues "**Declaration of Enforcement**" includes "power to proceed to any protective measures"

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EC No 44/2001 ("EC-Brussels I")

Right to appeal (one month/ two months if abroad)

Declaration of enforcement is revoked if:

- breach of the public policy
- Improper service of legal writ upon debtor
- Judgment is irreconcilable to earlier judgment
- Breach of provision for special jurisdictions under EC-Brussels I (for example insurances, consumer contracts, rights in *rem in immovables*, constitution of legal entities, registration of trade marks, patents etc.)

No review of foreign judgement as to its substance (Article 45 para. 2).

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EC No 44/2001 (“EC-Brussels I”)

- After “declaration of enforcement” until determination of an appeal:
“power to proceed to any protective measures”
- After time specified for appeal/determination of appeal:
“enforcement of judgement like judgement of the target member state”.

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EC No 805/2004 (Enforcement of undisputed claims)

21 October 2005:

EC No 805/2004 dated 21 April 2004 on the Introduction of a European Title of Enforcement for Undisputed Claims entered into full effect

- all member states, except for Denmark
- applicable parallel to EC-Brussels I

Judgements, in-court settlement agreements and public deeds of an origin state may be directly enforced in other member states **without** lodging application as under EC-Brussels I

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EC No 805/2004

EC No 85/2004 only applicable if the debtor has not disputed the claim, i.e.:

- explicit acknowledgement of claim by debtor in a court proceeding, a settlement or a public deed
- no objection to the claim by debtor in a court proceeding at any time
- default of debtor (*Säumnis*).

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EC No 805/2004

Requirements for enforcement:

- Completion of confirmation attached as Annex I to the regulation
- Submission of completed form to court of the origin state or other authority as appointed by EU-member state
- Approval of such form

Approved form serves as European title of Enforcement.

Claims against consumers may only be enforced in the state of their residence

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Brussels-/Lugano-Convention

- Denmark: Convention of Brussels on the Jurisdiction and Enforcement of Court Judgments in Civil and Commercial Matters as of 27 September 1968 (**Brussels-Convention**)
- EFTA states: Convention of Lugano on the Jurisdiction and the Enforcement of Court Judgments in Civil and Commercial Matters dated 16 September 1988 (**Lugano-Convention**)

Both conventions are nearly identical to EC-Brussels I.

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German enforcement provisions

- Only if no prevailing international treaties or EU law enforcement of foreign judgements in Germany is governed by the national German provisions set forth in the German Civil Code of Civil Procedure (*Zivilprozeßordnung* - ZPO)
- E.g. for judgments rendered in Africa, America, Asia, Eastern Europe

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German enforcement provisions

- Regular law suit required
- Competent court:
domicile of the creditor or - if no such domicile within Germany - location of estate of the debtor within Germany
- Submission of foreign judgment to competent German court. Court may request submission of a certified translation

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German enforcement provisions

Service of law suit upon the debtor as provided for by German law

- Service in Germany
- If impossible, service abroad

EU: mail

otherwise: many multi- and bilateral treaties
If no treaty: competent foreign authority or the German embassy

However, effecting abroad service may be very time consuming

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German enforcement provisions

- Review by court if recognition of foreign judgment can be granted or must be denied
Reasons for denial: basically as in Pattern of Recognition
- No further review of the foreign judgment by the court, (Sections 722, 723 ZPO)
- Enforcement judgment only after the foreign judgement has become effective based on German ZPO standards
- The **enforcement judgment** may then be enforced like a regular German judgment

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Thank You

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