



Ensuring an adequate protection of debtors, in particular consumers, in cross-border enforcement

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It is not nice being the debtor in cross-border enforcement

- I. Being a *debtor* in enforcement proceedings
- II. Being a debtor in a *cross-border* setting
 - a) Declaratory proceedings abroad, enforcement at home
 - b) Declaratory proceedings at home, enforcement abroad
 - c) Declaratory and enforcement proceedings abroad
- III. Being a consumer-debtor: weak²

Overcoming difficulties

I. Protection to the debtor for finding him/herself in enforcement proceedings: a matter of (procedural) national legislation

But, if debtor-consumer, also EU legislation and ECJ case-law (mandatory nature of EU protective rules)

II. Protection to the debtor for finding him/herself in cross-border setting: a matter *primarily* of EU legislation, but also of national (procedural legislation).

Double approach of EU legislation:

- a) Ensuring fairness of declaratory proceedings, with an impact on enforcement
- b) Offering remedies to be used in enforcement

Ensuring fairness of declaratory proceedings (current situation)

1. Rules on jurisdiction

Especially, rules ensuring development of declaratory proceedings in the MS where the consumer is domiciled (Brussels I bis – EEO – EOP – ESCP?)

2. Rules on first service on the defendant/debtor

- Service Regulation + Brussels I bis (refusal of enforcement)
- EEO and EOP: inadmissibility of service without personal acknowledge of receipt if domicile not known (ESCP?) + rules on information to be given to the defendant/debtor.
- CJEU case law: non enforceability of judgments rendered after fictitious service of the claim

3. Rules on review of final decisions

[4. Consumers: *ex officio* application of consumer law by the courts in declaratory proceedings as compensation for exclusion of *révision au fond*?]

Remedies inside enforcement (current situation)

Underlying policy: burden to react in the State of origin

I. “Preemptive” remedies (enabling better defence in State of origin and/or in State of enforcement)

- Prior service of the certificate and of the judgment (Brussels I bis)
- Translation of the judgment (Brussels I bis)
- Translation of the certificate (ESCP)

II. Reactive remedies: challenging enforcement

1. Grounds to refuse enforcement

- “Long” list in Brussels I bis
- “Short” list in EEO, EOP and ESCP

2. Stay of enforcement in the event of an application for refusal of enforcement

- Only possible under Brussels I bis (44.1), not under EEO, EOP or ESCP (national law?)

3. Coordinating challenges in enforcement State and challenges in State of origin Brussels I bis

- Ordinary appeals in State of origin impact on enforcement (Brussels I bis, 51 and 44.2; EEO, 23; ESCP, 23)
- Motions to review in State of origin impact on enforcement (Brussels I bis, 44.2; EEO, 23; EOP, 23; ESCP, 23)-

4. Extra protection for consumers?

- CJEU in Salvoni
- Infringement of consumer protective rules as public policy infringements??



Shortcomings

- Common to Brussels I bis, EEO, EOP and ESCP.
- Right of defence inside enforcement proceedings is not ensured in cross-border settings: cross-border element not considered by most national regulations.
- Enforcement not preceded by declaratory proceedings (authentic instruments): safeguards not applicable
- Lack of harmonization of (national) enforcement proceedings → lack of information on foreign systems → reacting against enforcement in a strange environment (language, lawyer, costs)



Potential additional safeguards

Underlying policy: avoid “overprotection” (detrimental to effectiveness), but ensure fairness (including speedness) of enforcement proceedings

Some examples:

- Deadline to react for debtor domiciled abroad
- Information to be submitted to debtor domiciled abroad
- Expand Art. 43 Brussels I bis safeguards to the instruments of the 2nd generation?
- Expand stay of enforcement option in case of challenge of enforcement to the instrumentos of the second generation?
- Additional protection for consumers?



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