

information international august 2017

4. Compulsory Enforcement of Court Decisions in Germany – an Outline

Conflicts are an unavoidable part of international trade and of the exchange of goods and services. To ensure a smooth and reliable international trade the international trade community is in need for rules and procedures to settle conflicts and to protect each international trader's rights. Furthermore there have to be tools to enforce the results of any dispute resolution process, including but not limited to decisions of national courts. This article briefly describes the recognition and enforcement of judgements in commercial cases in Germany and the European Union.

Within the EU a common approach on the recognition and enforcement of cross-border court decisions exists (with the exception of Denmark). It is accomplished by the so called Brussels Regime. This regime has been established by the Brussels I Regulation which came into force in the year 2001. The Regime has been recasted with effect as of 2015. A main feature of the recast of the Brussels Regime is that court decisions from member states of the EU can now be enforced without any further measures. It is no longer necessary to receive a declaration of enforceability from the domestic court where the judgement shall be executed (formerly known as exequatur proceeding). Depending on the case and competent court the exequatur proceeding lasted from several weeks to more than half a year. With the abolishment of this requirement a judgement creditor can now start to enforce court decisions much faster and without delay and costs for an exequatur. A judgement debtor is still entitled to raise objections against an enforcement of a court decision from a member state of the EU, the options, however, are very limited. It is only possible if the judgement is manifestly contrary to public policy (ordre public) or if it has been rendered by violating the defendant's right to be heard or if it is irreconcilable with earlier decisions given between the parties.

If a court decision in a cross-border dispute is from a national court outside the EU, then different rules apply depending on where the judgement has been rendered. If the decision was made by a court of the states of Iceland, Norway, Liechtenstein or Denmark, there are treaties in place providing similar rules like the EU rules. The latest recast of the Brussel Regime, however, has not yet been implemented in these treaties, meaning that for a recognition and an enforcement of a judgement from Iceland, Norway, Liechtenstein or Denmark an exequatur is currently still necessary.

If the title that is subject to an enforcement is from another country, the domestic rules of the German civil procedure apply, for example when a US-judgement shall be executed in Germany. Although in this case the recognition is given automatically (if no exceptions apply according to German law) such recognized judgements have to be declared enforceable. Such declaration will be made by a court in Germany after the judgement creditor has applied for this. In such court procedure the judgement debtor has the possibility to raise objections against the recognition of the court decisions by asserting that one or more of the following circumstances are given: (i) The courts of the state to which the foreign court belongs do not have jurisdiction according to German law, (ii) a violation of the right to be heard or to defend occurred, (iii) the decision is incompatible with other decisions, (iv) the decision violates the public policy (ordre public) or (v) the reciprocity has not been granted.

The judgment must be valid, final and not subject to appeal if it shall be declared enforceable. When a judgement claimant applies for a declaration of enforceability it must provide a certified copy of the

judgment to the court which has – depending on the country of origin – either be legalized by a German diplomatic or consular agency or to bear an apostille; furthermore it is advisable to also attach a certified translation of the relevant passages of the judgement.

The legal framework in Germany and the EU provide efficient means and tools when the enforcement of a court decision becomes necessary. Due to the complex demands of each procedure, it is in any event advisable to carefully organize the enforcement and to safeguard professional legal support if necessary.

Dr. Markus R. Ackermann

+49 6221 4340210

Markus.Ackermann@adjuga.com

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