



Momentum

Litigation and Arbitration

March 16, 2015

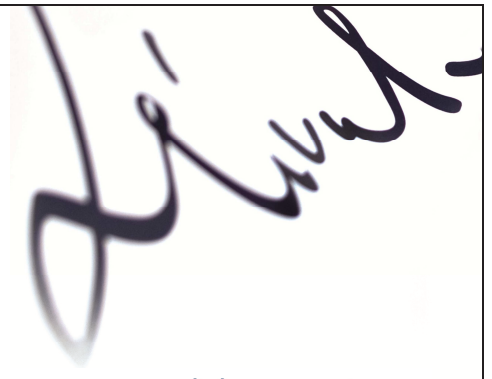
REGULATION (EU) NO 1215/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND THE ABOLITION OF THE EXEQUATUR

According to recital (26) of Regulation (EU) no. 1215/2012 of the European Parliament and of the Council of December 12, 2012, on jurisdiction and on recognition and enforcement of judgments in civil and commercial matters, *«mutual trust in the administration of Justice in the Union justifies the principle that judgments given in a Member State are recognized in all other Member States without the need for any specific procedure. In addition, the goal of making the least time consuming and costly cross-border litigation justifies the elimination of the requirement of a declaration of enforceability for the execution in the requested Member State. Thus, decisions given by the courts of the Member States shall be treated as if it were a judgment given in the Member State in which recognition is sought»* (emphasis added).

The above-identified Regulation – that applies from January 10, 2015¹ - has recast the Regulation (EC) No 44/2001, on the same subject. The abolition of *exequatur* – referred to in recital (26) - is one of the most important changes to the previous version, which we will refer to herein.

In the previous version of the Regulation, for a judgment given in a Member State to be enforced in another Member State, it should be subject to an intermediate procedure in order to be recognized as enforceable.

¹ With the exception of Articles 75 and 76.



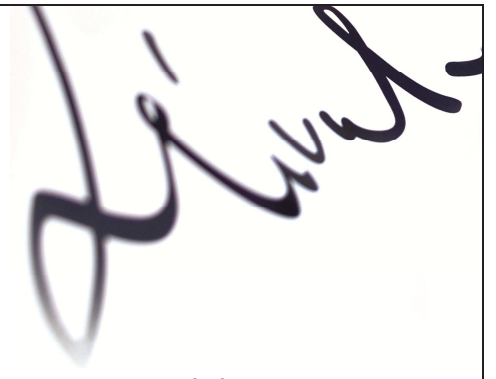
However, after the Amsterdam Treaty and the Presidency Conclusions of the Tampere European Council in 1999, on the creation of an area of freedom, security and justice, with great emphasis on free movement of judgments and the abolition of *exequatur*, pointed out again in the Hague Program, adopted by the European Council in November 2004, this issue has been discussed, and was even included in previous regulations².

Consequently, because of the need to i) increase the effectiveness of justice within the European Union in disputes with connection to more than one Member State, deepening European integration and ii) reduce costs by reducing progressively the barriers created by the coexistence of different legal systems, the *exequatur* was abolished in the most relevant legislative instrument of the European Union in the matter of recognition of judgments in civil and commercial matters.

Currently, according to Article 39 of the Regulation, *«a judgment given in a Member State which is enforceable therein can be enforced in another Member State without requiring any declaration of enforceability»*. Meaning that, the recognition takes place regardless of any formalities, in opposition to what had been happening before.

Whereas the recognition became automatic, the Regulation doesn't enshrine any procedure for this purpose. However, it allows the filing of action to *«require a decision to declare that there is no reason to refuse recognition»* or an action to declare that the decision cannot be recognized in the same Member State, in virtue of being i) contrary to public order, ii) issued with

² Regulations No 2201/2003, 805/2004, 1896/2006, 861/2007 and 4/2009.



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irregularities in the notification of the proceedings (except if the defendant did not appeal, being such appeal if that was possible), iii) incompatible with another judgment, concerning the same parties in the Member State in which recognition is sought, or with an earlier decision given in another Member State or third country, which gathers the conditions to be recognized in the requested Member State, among other reasons (cf. Articles 36 and 45 of the Regulation).

With these same grounds the defendant may request the refusal of enforcement of the decision, within the enforcement procedure, decision than can equally be appealed against (cfr. Artical 46 of the Regulation). These grounds for refusal are almost coincident with the Regulation 44/2001.

To sum up, even though this intermediate proceeding ceases to exist, if there are grounds to refuse the recognition of the decision, they can still be invoked, which safeguards the position of the defendant whose rights of defence are not affected. At the same time, it tends to reduce the delays of the enforcement of judgments and its inherent costs, for which such a measure can only be welcomed.

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