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European enforcement order

Germany



Germany

FINDING COMPETENT COURTS/AUTHORITIES

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1. Procedures for rectification and withdrawal (Art. 10(2))

A Law implementing Regulation (EC) No 805/2004 creating a European enforcement order for uncontested claims (the European Enforcement Order Implementing Law) has added the following provisions to the Code of Civil Procedure (ZPO):

'Section 1081

Rectification and withdrawal

(1) An application under Article 10(1) of Regulation (EC) No 805/2004 for the rectification or withdrawal of a court certificate shall be made to the court that issued the certificate. That court shall rule on the application. An application for the rectification or withdrawal of a notarial or administrative certificate shall be made to the body that issued the certificate. The notary or administrative authority shall forthwith transmit the application for a decision by the district court within whose jurisdiction they are based.

(2) The debtor may lodge an application for withdrawal within a time limit of one month. If the certificate is to be served abroad, the time limit shall be two months. This is a statutory time limit which shall begin to run when the certificate is served but in any event not before the service of the order to which the certificate relates. The application for withdrawal shall state the grounds why the order was clearly wrongly granted.

(3) Section 319(2) and (3) shall apply mutatis mutandis to rectification and withdrawal.'

Section 319(2) and (3) ZPO reads as follows:

'Section 319

Rectification of judgments

(1) ...

(2) The decision embodying a rectification shall be recorded on the judgment and on copies of the judgment. If the resolution declaring the correction is made in the form specified in Section 130b, it is to be saved in a separate electronic document. The document is to be inseparably attached to the judgment.

(3) No appeal shall lie against an order refusing an application for rectification; a complaint may be lodged

forthwith against an order embodying a rectification.’

2. Procedures for review (Art.19 (1))

Under the current German rules on civil procedure, a debtor is entitled, as a general rule and not only in the exceptional cases referred to in Article 19(1) of Regulation (EC) No 805/2004, to apply for a review of the decision given on grounds of his failure to raise an objection or his failure to appear (cf. Article 19(2) of Regulation (EC) No 805/2004).

(a) Judgments by default and enforcement orders

Under Section 338 ZPO the debtor can apply to have the judgment by default set aside. The same remedy applies to an order issued in payment order proceedings (cf. Section 700 ZPO read in conjunction with Section 338 ZPO). The application is filed by lodging a notice of objection with the trial court. The time limit for lodging the notice of objection is two weeks. This is a statutory time limit which begins to run from the service of the decision. If the application is admissible, the proceedings will return to the stage at which they were prior to the default. The admissibility of the application is not affected by the reasons why the debtor failed to challenge the claim or to appear at the court hearing.

If, in the cases referred to in Article 19(1)(a) of Regulation (EC) No 805/2004, there has been not only a failure of due service of the document instituting the proceedings or an equivalent document or the summons to a court hearing, but the defects in service of the judgment subsist, for example because the service in both cases was effected at an address at which the debtor had not resided for a long time, the position is as follows: if it cannot be proved that the judgment by default or the enforcement order was duly served, or if such service is vitiated by breach of the essential rules governing service, then the two-week time limit for the application will begin to run only from the time when the debtor actually received the judgment by default or the enforcement order. In addition, the debtor continues to have the right to apply to have the judgment set aside.

In the cases referred to in Article 19(1)(b) of Regulation (EC) No 805/2004, i.e. where there is no irregularity of service but the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, the position is as follows: if the obstacle is removed in good time before expiry of the time limit for the application to have the judgment set aside, the debtor can rely on the normal remedy, i.e. lodge the application (see above). If, for example, the debtor were prevented from appearing in court because of a road-traffic accident, he would usually be able, within the time limit of two weeks from service of the judgment, either to lodge an application himself or to appoint an agent to do so on his behalf. If the obstacle persists after the expiry of the time limit for lodging the application, Section 233 ZPO allows the debtor to seek to apply to have the proceedings returned to their prior stage. These provisions are not restricted to cases of force majeure, rather they allow the party to apply to have the proceedings returned to their prior stage whenever, through no fault of his own, he has been prevented from complying with a statutory time limit (or other particular time limits). The application to have the proceedings returned to their prior stage must be lodged within the time limit of two weeks beginning from the date on which the obstacle is removed. No application can be lodged more than one year after the end of the missed time limit. The application will be decided by the court with jurisdiction to hear the application to have the judgment set aside (i.e. the trial court), which must also be lodged within a two-week time limit.

If the debtor has lodged an admissible application to have the judgment set aside but fails to appear at the next hearing, he will have no further remedy against the judgment by default rejecting his application (cf. Section 345 ZPO). However, the debtor has the right, to a limited extent, to lodge an appeal. Under Section 514(2) ZPO in such cases he can rely in support of his appeal on the fact that his failure to appear was not due to negligence. The general restrictions on the admissibility of appeals (cf. Section 511(2) ZPO) do not apply. The appeal is lodged by lodging a notice of appeal with the appeals court. The time limit for lodging appeals is one month; this is a statutory time limit which begins to run when judgment in complete form is served and at the latest five months after judgment has been pronounced. Since this constitutes a statutory time limit, the debtor can apply to have the proceedings returned to their prior stage under Section 233 ZPO if he was not able to meet the time limit for appeals through no fault of his own (see above).

(b) Judgments in accordance with the state of the pleadings

If the debtor fails to appear at the oral proceedings and the court does not deliver a judgment by default but

rather, at the creditor's request, delivers a judgment in accordance with the state of the pleadings (cf. Section 331a(2) ZPO), an appeal will lie against that judgment. Under Section 511 ZPO the appeal will lie if the value of the claim exceeds EUR 600 or the court of first instance has granted leave to appeal in the judgment on grounds of fundamental importance (Section 511(4) ZPO). Regarding the formal requirements for the appeal and the right to have the proceedings returned to their prior stage, reference is made to the statements set out above.

3. Accepted languages (Article 20(2)(c))

The European Enforcement Order Implementing Law has added the following provisions to the ZPO:

'Section 1083

Translation

If the creditor is required to provide a translation under Article 20(2)(c) of Regulation (EC) No 805/2004, it shall be drawn up in German and certified by a person qualified to do so in one of the Member States.'

4. Authorities designated for the purpose of certifying authentic instruments (Art. 25)

In Germany authentic instruments for the purposes of Article 25(1) of Regulation (EC) No 805/2004 are enforceable instruments drawn up by notaries and youth welfare offices. In a new Section 1079 to be added to the ZPO, the European Enforcement Order Implementing Law confers authority for the issue of the European enforcement order certificate for the purposes of Article 25(1) of Regulation (EC) No 805/2004 on the office responsible for issuing an enforceable copy (cf. Section 724 ZPO). These provisions read as follows:

'Section 1079

Competence

Certificates under:

1. Article 9(1), Article 24(1), Article 25(1) and
2. Article 6(2) and (3) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (OJ L 143, p. 15) may be issued by the courts, authorities or notaries which are responsible for issuing an enforceable copy.'

Under Section 797(2) ZPO an enforceable copy (and thus a European enforcement order certificate) of a notarial instrument is to be issued by the notary holding the instrument; if the instrument is held by an authority, that authority will be competent. The usual situation is that the instrument is held by the notary who authenticated it.

Under Section 60(3)(1) of Volume VIII (Welfare of children and young persons) of the Social Welfare Code, the Youth Welfare Office which is responsible for authenticating undertakings is competent to issue an enforceable copy of a youth welfare instrument. The outcome is that the Youth Welfare Office that issued the authentic instrument is competent to issue the European enforcement order certificate. The European Enforcement Order Implementing Law has introduced a clarification through a revision of Section 60(3)(1) of Volume VIII of the Social Welfare Code.

It follows from the situation regarding competence to issue enforceable copies that in Germany all notaries and all youth welfare offices can as a rule issue European enforcement order certificates. Since in Germany there are some 8 000 notaries and hundreds of youth welfare offices, it does not seem appropriate to compile a list of them for publication in the Official Journal. Moreover, the cost of keeping such a list updated would be disproportionate. For now, the German Government will refrain from transmitting the list and instead notify the regulatory arrangements set out in Section 1079 ZPO in conjunction with Section 797(2) ZPO or Section 60(3)(1) of Volume VIII of the Social Welfare Code for publication in the Official Journal. This information allows the creditor to locate the competent authority for the purposes of Article 25 of Regulation (EC) No 805/2004 without difficulty. Moreover, in the vast majority of cases the competent authority will be the authority that issued the authentic instrument, as explained above.

■ Last update: 08/07/2024

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