

## BRUSSELS I (RECAST) – RECOGNITION OF EU JUDGMENTS IN BULGARIA

**Regulation (EU) No 1215/2012** of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) entered into force throughout the European Union on 10 January 2015. The new Regulation simplifies the recognition and enforcement by each European Member State of judgments made in another Member State. It also provides enhanced rules on exclusive jurisdiction clauses, related proceedings and the exclusion of arbitration from the scope of the Regulation.

### Changes introduced by the Regulation

#### Simplified procedures

A simplified exequatur (recognition and enforcement) procedure for judgments delivered by courts in another Member State is provided, thereby allowing a claimant simply to present (i) a true copy of the original judgment and (ii) a certificate of enforcement by the court of origin in a standard form.

#### Choice of jurisdiction in agreements

The scope of jurisdiction clauses is expanded, allowing non-domiciled EU parties to agree on the exclusive jurisdiction of a Member State court to resolve disputes. In Article 25, para 5 the Regulation provides that the validity of the exclusive jurisdiction clause (choice-of-jurisdiction agreement) shall be governed by the law of the Member State designated by the parties as the competent dispute resolution jurisdiction. The new Regulation also stipulates the principle of separability between the jurisdiction clause and the remaining part of the agreement which protects the validity of the jurisdiction clause in case the agreement is considered null and void. It remains to be seen how courts will apply the governing law rules to hybrid jurisdiction clauses where one or both parties have an option to choose between several jurisdictions.

#### New rules regarding related actions (lis pendens)

Choice of jurisdiction will also be recognised even in the case of a claim already filed in another EU Member State (Article 31 of the Regulation). If the court designated in the choice-of-jurisdiction agreement establishes a jurisdiction, the court that has been first approached should stay and subsequently decline the proceedings, thus thwarting strategic attempts by parties to prolong proceedings filing in multiple jurisdictions.

Unlike Regulation 44/2001, the Brussels I Regulation (recast) stipulates specific rules for

related actions which involve courts of Third States (non EU countries). Articles 33 and 34 of the new Regulation provide a discretionary power for courts to stay proceedings on grounds of an existing related action that is pending before the court of a Third State.

Arbitration clauses and hearings remain outside of the scope of the Regulation. When approached with an action in a matter in respect of which an arbitration agreement has been signed, national courts are entitled to decide whether (i) to refer the parties to arbitration, (ii) to stay or dismiss the proceedings, or (iii) to examine whether the arbitration agreement is valid under national law. Even if the parties tactically have obtained an order from a court in one Member State that an arbitration agreement is invalid, under the Regulation such an order will not be recognised in another Member State. EU Member State court judgments on the substance of a matter that is subject of an arbitration agreement, and which the same courts have determined to be invalid, shall be recognised and enforced according to the Regulation. However, this rule shall not prejudice the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

### Amendments to the Bulgarian Civil Procedure Code

On 30 December 2014 the Bulgarian Parliament proposed a bill to amend Chapter 57, Section II of the Civil Procedure Code ("CPC") with a view to aligning the Bulgarian legislation with the new Regulation rules.

In accordance with the new exequatur rules, under the Regulation the bill envisages that Bulgarian courts would no longer be required to issue a writ of enforcement to enforce a judgment of a Member State court in Bulgaria. Instead, Bulgarian enforcement officers would be authorised to initiate enforcement proceedings solely on the basis of (i) a true copy of the judgment of the court of a member state and (ii) a standard form certificate of enforcement issued by the court of origin.

The bill further provides that the enforcement measures envisaged in the judgment would be applied in Bulgaria as per the instructions of the respective Member State court, using the procedures existing under Bulgarian law. If such enforcement measures could not be applied using the existing procedures, the enforcement officers would be entitled to decide on a substituting enforcement measure available under Bulgarian law. Both the debtor and the creditor would be entitled to appeal the decision of the enforcement to apply a substituting measure.

The enforcement officer would be responsible for serving the copy of the judgment and the certificate of enforcement to the debtor along with a request for voluntary performance of the obligations of the debtor under the judgment. The bill does not provide for a specific term within which the debtor would be entitled to perform voluntarily.

The debtor would be entitled to submit an application for refusal of enforcement within one month as of the date the debtor has been served with the judgment and the

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certificate of enforcement. The grounds for refusing execution that the court shall consider in such cases are set out in Article 45 of the new Regulation.

The bill was approved by the Parliamentary Legal Matters Commission and sent to the Parliament on 21 January 2015. It is expected to be adopted by the Parliament and promulgated in the State Gazette in the following months. Nevertheless, the provisions of the Regulation are directly applicable in Bulgaria as of 10 January 2015.

## About Wolf Theiss

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