

Execution of judgments of Polish courts in Western European countries; specific example: Germany

Dr Wolfgang Schirp

The economic relationships between Poland and its neighbour states in the west have in the past often been inhibited by shortcomings in the legal system. One of the most important problems has been the difficulty of arranging for the execution of court judgments in the neighbour states. Until 1999, it was nearly impossible to arrange for the execution of the judgment of a Polish court in Germany (it was quite the same thing the other way around).

1) The legal basis since 2000

Since the year 2000, things have dramatically improved. The first dramatic change was marked by Poland's accession to the Lugano convention. The Lugano convention, which was first stipulated in the year 1988 among the European community and the EFTA states (back then Finland, Island, Norway, Austria, Sweden, Switzerland), greatly facilitates the execution of legal titles. Poland acceded to this convention on February 1st, 2000. This date marked the first real possibility of executing Polish judgments in the other partner states to the treaty. The second dramatic change, of course, comes with Poland's accession to the EU. Within the EU, the former European convention on the execution of legal titles has been replaced by EU regulation 44/2001 dd. December 22nd, 2000, which came into effect in all Member States on March 1st, 2002. This regulation is now valid also for Poland.

The rules laid down in the Lugano convention and in EU regulation 44/2001 are almost 100% identical and will be outlined in the following pages.

2) The golden rule: judgments coming from one Member State are recognized in all other Member States

It is as simple as that: all judgments emanating in a proper way from the courts of one member state are recognized in all other member states. There is no "revision au fond", no

looking into the specific details of the relevant judgments, no questioning of their correctness. A Polish judgment in Germany – and hopefully, a German judgment in Poland – is accepted the way they are and are not scrutinized in any way except for the most obvious mistakes.

3) Art. 38 EU regulation 44/2001 and Lugano convention: only an execution clause has to be added by the courts of the country where the execution shall take place

When you want to execute a Polish judgment in Germany, you do not need to bring new legal action against the defendant. All you need is an **execution clause** on the Polish legal title.

To obtain this execution clause, you place a formal request with the Landgericht in the area where the debtor lives or where the execution shall take place. Responsible for the handling of these requests is the president of the chamber of the Landgericht, which has been selected for these matters by the Landgericht's internal "Geschäftsverteilungsplan" (plan of distribution of cases).

To the request, you shall attach the following documentation:

- one original of the judgment you want to have executed with its translation by a formally accredited translator,
- if it is not a judgment by a formal Polish court but some other type of legal title, you will have to provide documentation that the relevant body is entitled to make this kind of decisions.

The president of the Landgericht's chamber will then look if the formalities have been properly fulfilled. If this is the case, he will put the execution clause on the judgment. He will not look into the merits of the case, he will not even check the "ordre public" impediments – that we will discuss later– at this point in time.

The president of the Landgericht's chamber will not hear the debtor before taking his decision. This is expressly stated in Art. 41 of both the Lugano convention and EU directive 44/2001.

Once you have the execution clause on your legal title, you are entitled to bring all kinds of legal executory measures against the debtor, from sending the "Gerichtsvollzieher" to seize mobile assets to the seizure of bank accounts, real estate and whatever other goods the debtor may possess.

The process is quick – in the cases known to the author between 2 weeks and 4 weeks – and it is much cheaper than bringing legal action, usually just between € 500,- and € 2.000,-, of course depending on the specifics of the case.

4) How can the debtor defend himself?

Once the execution clause has been put on the legal title, title and clause will be formally served to the debtor. This will be the first moment when he becomes aware that the creditor is coming after him in his own home country.

The debtor is now entitled under Art. 43 of both the Lugano convention and EU directive 44/2001 to invoke the higher court (in Germany the “Oberlandesgericht”). He can try to convince the Oberlandesgericht that the execution clause should not have been given.

The delay for invoking the higher court is one month after the debtor has been formally served with title and clause. If the debtor does not live in the country where the execution shall take place (for example: Polish judgment to be executed in Germany into the German assets of someone who lives in France), the delay is two months.

The higher court, in Germany the “Oberlandesgericht”, will, like the “Landgericht” before, not look into the specifics of the Polish judgment. The “Oberlandesgericht” will only verify if the proceedings under the Lugano convention and EU regulation 44/2001 have been properly handled and if one of the “ordre public” reasons forbids the execution of the title in Germany. The range of these “ordre public” reasons, which mark the very extreme where German courts feel they cannot help in the execution of titles from other countries, is very limited:

- very grave deviation from the German understanding of what proper application of the law is. Example, concerning not Poland but the USA: US judgments providing for ridiculously high “punitive damages” are not executed in Germany because they supposedly constitute such a very grave deviation. With respect to Poland, I know of no occasion where such a grave deviation has ever been indicated,
- lack of proper formal serving to the defendant when the Polish court reached his decision. If, for example, the German debtor says that he never heard of the Polish proceedings against him and the Polish party cannot prove otherwise, the execution of the title will not be possible, the Oberlandesgericht will stop it. This can – and does! – have grave practical implications. The Polish party bringing action should pay great attention to all questions of formal serving,

- conflict between the Polish judgment, which execution is sought, and another judgment between the same parties before a German court. Example: Polish party brought action against the German partner before a German court, and lost; later Polish party brought action against the German partner before a Polish court in the same matter, and won; now the execution of the second title in Germany will be impossible because of the conflict with the prior German judgment.

It is very rare that such “ordre public” problems prevent the execution of a Polish judgment in Germany.

5) Summary and practical consequences

Judgments of Polish courts are executed in Germany (and the other states of the EU). The same thing holds true, hopefully, the other way around. This means that you do not have to worry as much about the execution – and let such worries influence your choice of court! – like you did in former times.

The procedure to obtain the execution clause is much, much simpler than earlier ways of execution ever were. You just place a request with the Landgericht. In practice, you will receive a decision within 2 weeks, at the latest in 4 weeks.

The debtor’s possibilities to block the execution are very limited. At first, he is not even heard. Once he is heard, he can only argue that the proceedings under the EU regulation 44/2001 or the Lugano convention were not properly done or that it is one of the rare cases where “ordre public” problems prohibit the execution of the title in Germany.

Wolfgang Schirp, advocate

Schirp, Schmidt-Morsbach, Cannawurf & Perpelitz