

Workshop: EU Maintenance Regulation - The Devil's in the
details:

Aspirations and reality: The right to apply for a review under Art. 19 of the EU Maintenance Regulation

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I. Introduction

- Ambiguous importance of the right to apply for a review (art. 19 reg. 4/2009) for the abolition of exequatur and controls pursuant to the drafting history
- Central importance of the right to apply for a review (art. 19 reg. 4/2009) for the protection of the debtor regarding procedural mistakes in the original proceedings due to
 - Absence of controls within the exequatur proceedings (cf. art. 34 no. 1, 2 reg. 4/2001)
 - Absence of controls within the enforcement proceedings (cf. art. 46, 45 (1) (a), (b) reg. 1215/2012)

I. Introduction (*cont.*)

- Absence of minimum procedural standards for the procedure in the member state of origin (cf. art. 6, 12 ff. reg. 805/2004, art. 13 f. reg. 861/2007, art. 16 f. 1896/2006)
- The relevance of art. 19 differs strongly depending on the national procedural background
- Art. 19 reg. 4/2009 has several predecessors and a deceased cousin, all of which are insightful for art. 19's understanding
- See annexed illustrations

II. Procedural mistakes covered by art. 19

- Only violations of the right to be heard in the initial phase of the proceeding
- What about other mistakes and mistakes in a later phase of the proceeding?
- Comparison:
 - No control foreseen by reg. 805/2004, 861/2007, 1896/2006
 - Control possible via art. 34 no. 1 reg. 44/2001, art. 45 (1) (a) reg. 1215/2012, art. 40 lit. a reg. 650/2012, art. 22 lit. a reg. 2001/2003
- „Necessary“ consequence of the abolition of the public policy exception

III. Need for interpretation of central terms

1. Well-known terms with certain margins of interpretation

- Debtor „was not served with the document instituting the proceedings ... in sufficient time and in such a way as to enable him to arrange for his defence“ (art. 19 (1) (a))
predecessors referring merely to timeliness: e.g. art. 19 (1)(a)(ii) reg. 805/2004, art. 20 (1)(a)(ii) reg. 1896/2006, art. 18 (1) (b) reg. 861/2007
- Debtor prevented from contesting the maintenance claim by reason of „force majeure or due to extraordinary circumstances“ without any fault on his part (art. 19 (1) lit. b)
predecessors: e.g. art. 19 (1) lit. b reg. 805/2004, art. 20 (1) reg. 1896/2006, art. 18 (1) (b) reg. 861/2007

III. Need for interpretation ... (cont.)

- Defendant may not have „failed to challenge the decision when it was possible for him to do so” (art. 19 (1))
no predecessor in art. 19 reg. 805/2004, art. 20 reg. 1896/2006, art. 18 reg. 861/2007
parallel provisions in art. 34 no. 2 reg. 44/2001 and art. 45 no. 1 (b) reg. 1215/2012
- 2. **New: Defendant has to apply for a review „promptly, in any event within 45 days“, art. 19 (2) 2**
- Predecessors without maximum time limit: e.g. art. 19 (1) reg. 805/2004, art. 20 (1) reg. 1896/2006, art. 18 (1) reg. 861/2007

III. Need for interpretation ... (cont.)

- german: „unverzüglich“, french: „sans tarder“, spanish: „con prontitud“, italian: „tempestivamente“, swedish: „utan dröjsmål“
- no extension possible on account of distance (art. 19 (2) 3) on account of other reasons?
- is geographical distance of debtor to court relevant when interpreting „promptly“?

See art. 32 (5) reg. 4/2009 (30 v 45 days) and art. 43 (5) reg. 4/2001 (1 month v 2 months) (no time limits prescribed in reg. 1215/2012)

IV. Margins for member states instituting art. 19-procedures

1. Competent court

- no detailed instructions by the regulation
- does the proceeding go into a higher instance or not?
differing practice by member states
- court having issued the original decision
 - i.a. Czech Republic, Greece, Spain, Ireland, Italy, Lithuania, Luxemburg, Hungary, Netherlands, Poland, Portugal, Finland
- higher court
 - i.a. Bulgaria, France, Latvia, Sweden
- mixed approach depending on whether a lit. a-scenario or a lit. b-scenario is given

Austria

IV. Margins ... (*cont.*)

2. Procedure

- integration into/assimilation to existing review procedure
differing practice by member states
- embedded in provisions on judgments given by default
Germany, Estonia
- embedded in provisions on appeal or review
Spain, France, Austria^{Alt. 1}, Romania^{Alt. 1}
- embedded in provisions on retrial (*Wiederaufnahmeverfahren*)
Hungary, Slovenia^{Alt. 1}, Finland
- embedded in provisions on relief (*Wiedereinsetzung in den
vorigen Stand*)
Austria^{Alt. 2}, Slovenia^{Alt. 2}

IV. Margins ... (*cont.*)

- embedded in provisions on action for annulment
(*Nichtigkeitsklage*)

Romania^{Alt. 1}

- independent new type or undetermined type of proceeding
i.a. Bulgaria, Czech Republic, Greece, Cyprus, Latvia, Luxemburg,
Netherlands, Poland, Sweden

- no specific european standards

Information duties regarding art. 19 procedure? Extensions of deadline for
art. 19-applications? Deadlines for submissions? Formalities of the
application? Maximum duration of procedure? Appeal possible?

national procedures subject to the principles of equivalence
and efficiency

- practical obstacles despite communications under art. 71

IV. Margins ... (*cont.*)

3. Legal consequences of a successful application for review

- unclear terminology of the regulation, better: action for annulment

"Right to apply for a review" -- "If ... a review is justified ... the decision shall be null and void."

"Recht auf Nachprüfung" -- "[Ist] ... eine Nachprüfung ... gerechtfertigt ... , so wird die Entscheidung für nichtig erklärt."

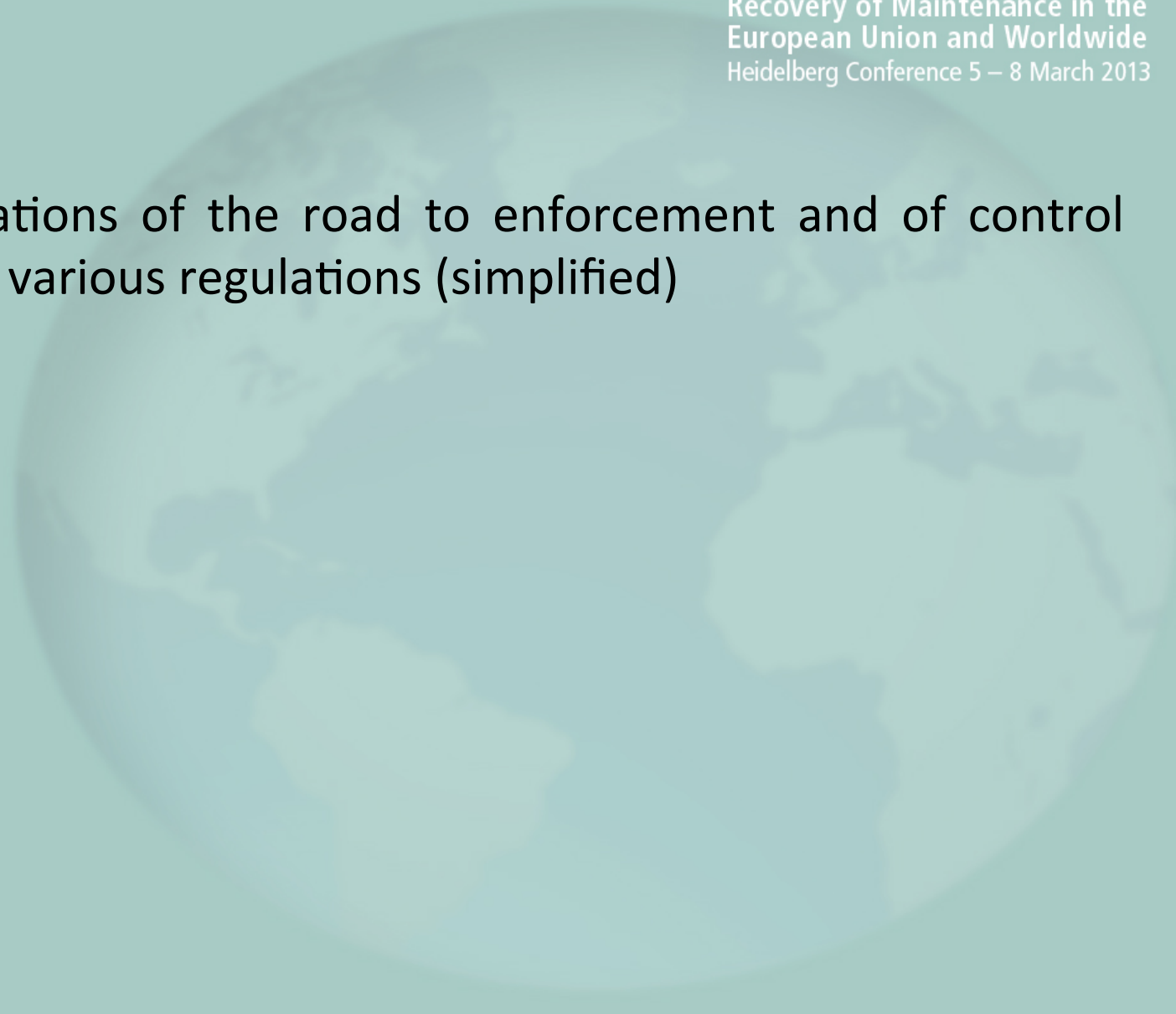
- do the provisions on judgments given by default give the courts the necessary freedom to review the decision?

V. Conclusions

- See Handout

Annex:

Graphic illustrations of the road to enforcement and of control mechanisms in various regulations (simplified)



EuGVVO 2001 = reg. 44/2001

Faculty of Maintenance in the
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Heidelberg Conference 5 – 8 March 2013

**Vollstreckungs-
mitgliedstaat**

Exequaturverfahren,
Art. 38, 41 EuGVVO
Prüfung: Art. 53-55 EuGVVO

Exequatur-
entscheidung,
Art. 41, 42

Rechtsbehelf
Art. 43 EuGVVO
Prüfung: Art. 34, 35 EuGVVO

RB gg RB-Entscheidung
Art. 44 EuGVVO
Prüfung: Art. 34, 35 EuGVVO

Zwangsvollstreckungsverfahren

Mitgliedstaatliche RBe der ZVS (?)

Erkenntnis-
verfahren i.e.S.

Entscheidung

Ursprungsmitgliedstaat

Erkenntnisverfahren

Zwangsvollstreckung

EuVTVO = reg. 805/2004

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Heidelberg Conference 5 – 8 March 2013

Vollstreckungsmitgliedstaat

Ursprungsmitgliedstaat

Erkenntnisverfahren i.e.S.
Mindest-Vss. Art. 12 ff. EuVTVO

Entscheidung

Bestätigung als EVT
Prüfung: Art. 6
EuVTVO

Nachprüfungsantrag
Art. 19
EuVTVO

Bestätigung
als EVT

Erkenntnisverfahren

Zwangsvollstreckungsverfahren

Zwangsvollstreckung

Verweigerung
der ZVS
Art. 21 EuVTVO

Aussetzung oder
Beschränkung
der ZVS
Art. 23 EuVTVO

Mitglied-
staatliche RBe
der ZVS (?)

EuBagVO = reg. 861/2007

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Ursprungsmitgliedstaat

Europäisches Bagatellverfahren
Art. 4 ff. EuBagVO

Urteil
Art. 7 II
EuBagVO

MSliche Rbe
Art. 17 I EuBagVO

Bestätigungsverfahren
ohne Prüfung

Nichtigkeitsantrag
Art. 18 EuBagVO

Bestätigtes Urteil
(Urteil + Formblatt D)
Art. 20 II EuBagVO

Vollstreckungsmitgliedstaat

Erkenntnisverfahren

Zwangsvollstreckungsverfahren

Zwangsvollstreckung

Verweigerung der ZVS
Art. 22 EuBagVO

Aussetzung o. Beschränkung der ZVS
Art. 23 EuBagVO

MSliche RBe der ZVS
Art. 21 I EuBagVO

EuMahnVO = reg. 1896/2006

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Ursprungsmitgliedstaat

Vollstreckungsmitgliedstaat

Europäisches Mahnverfahren
Art. 2 ff. EuMahnVO

Europäischer Zahlungsbefehl
Art. 12 EuMahnVO

Einspruch
Art. 16 f. EuMahnVO

Vollstreckbarerklärung d EZB

Vollstreckbarer EZB
Art. 18 EuMahnVO

ao Nichtigkeitsantrag
Art. 20 EuMahnVO

Erkenntnisverfahren

Zwangsvollstreckungsverfahren

Zwangsvollstreckung

Verweigerung der ZVS
Art. 22 EuMahnVO

Aussetzung o. Beschränkung der ZVS
Art. 23 EuMahnVO

Mitgliedstaatliche RBe der ZVS (?)

EuUntVO (member state bound by Hague Protocol)

Ursprungsmitgliedstaat

Erkenntnisverfahren
i.e.S.

Entscheidung

Nachprüfungsantrag
Art. 19 EuUntVO

Erkenntnisverfahren

Zwangsvollstreckung

Vollstreckungsmitgliedstaat

Zwangsvollstreckungsverfahren

MSliche RBe der
ZVS
Art. 21 I
EuUntVO

Verweigerung
der ZVS
Art. 21 II
EuUntVO

Aussetzung der
ZVS
Art. 21 III
EuUntVO