

# EXECUTION OF CROSS-BORDER VERDICTS



Mr. L.M. Schelstraete

Active in the fields of company law and equine law. Within the equine law practice, Luc Schelstraete provides services to Dutch yet often also foreign equine businesses, riders, horse owners and equine authorities.

As of 1 January 2015, the execution of a sentence from an European Union member state in another member state will become simpler and quicker.

## CASE STUDY

This subject is best explained through a case study. Imagine a Dutch client starting legal action in The Netherlands against a German horse dealer. The Dutch client bought a horse that in retrospect suffered from an injury. The client wishes to keep the horse, but demands compensation from the German horse dealer for the excessive sales price. The Dutch judge rules in favour of the Dutch client and awards damages to be paid by the German horse dealer in the amount of €10.000,-. With a positive verdict in hand, many clients think they have reached the finish line of a legal struggle. Unfortunately, the opposite is often true. In order to actually receive the damages of €10.000,- many steps still have to be taken. Exactly what the Dutch client is required to do and how the European Union intends to simplify and speed up this process, will be explained in more detail below.

## EXECUTION: NOT A STRAIGHTFORWARD AFFAIR

In the equestrian world, many horses change ownership each day. In these

business transactions, one or both parties are often foreign. As soon as a positive Dutch verdict is reached, the winning party can proceed to the execution of this verdict. This execution is not always a straightforward affair, and even less so when the challenged party resides abroad. In such a case, there are additional legal steps to be taken.

## CURRENT PROCEDURE

The current procedure to proceed to execution within the EU will be replaced by a simplified version per 10 January 2015. After receiving a positive verdict, for example including the awarding of damages, the question is often raised how the damages can be claimed when the indicted party resides in another member state and has their assets there. Such damages may occur when for instance one party paid too high a price for a horse that in hindsight represented a considerably lower value than the amount it was sold for, for example due to the presence of stable vices. In addition, it also occurs that new owners are suddenly confronted with unexpected veterinary costs due to a hidden defect that was not mentioned in the sales process.

Compensation in damages may also occur between owners and trainers of a horse, for instance when a trainer charges expenses that are too high or were never made. Situations where one party was disadvantaged by the other party are plenty. Since 2002, most European Union member states refer to Order (EG) 44/2001 in international civil and business affairs. This Order is also known as the EEX-order or Brussels I Order. The goal of the Brussels I Order amongst others is to enable a swift and simple procedure in the recognition and execution of member state verdicts. The procedure dictated by the Brussels I Order in short is as follows. If a party wishes to execute a Dutch verdict with damages awarded in Germany for example (e.g. claiming the awarded damages through for instance the seizure of monetary assets with a

banking institution), than the party according to the Brussels I order would need to apply for a certificate stating the verdict is liable to execution in The Netherlands. With this certificate in hand they would then need to report to a German court and file a request to declare the Dutch verdict liable for execution in Germany as well. This is called the exequatur procedure. After leaf has been granted for the execution by the German judge, the execution of the Dutch verdict can commence.

## TIME IS NOT ON YOUR SIDE

Despite the fact the Brussels I Order aims to simplify and speed up procedures, in practice this is not very evident, since there are still two procedures to follow to execute verdicts from one member state in another member state. This takes up time and – a lot of - extra costs. In practice, it often turns out awarded damages cannot be claimed at all because the challenged party has moved their assets (such as monetary funds in banking institutions) to unknown locations in the time required to execute all the procedures mentioned above, preventing them from being seized. This is of course a very disappointing course of events especially when the legal battle already took several years and has cost a significant amount of money.

## NEW PROCEDURES AS OF 10 JANUARY 2015

Collaboration began at European level about simpler and swifter procedures. This was materialized in Order (EU) 1215/2012 of the European Parliament and Council, dated 12 December 2012, regarding the legal jurisdiction, recognition and execution of verdicts in civil and business affairs. This Order is also called the Brussels I Bis Order, and applies to legal orders dated on or after 10 January 2015. The procedure dictated by the Brussels I Bis Order in short is as follows. If a party wishes to execute a Dutch verdict with damages awarded in

Germany, they would still need to apply at a Dutch court for a certificate stating the verdict is liable to execution in The Netherlands. However, they would not have to go to a German court to file a request to have the Dutch verdict declared liable for execution in Germany. After receiving the certificate from the Dutch judge, the verdict can immediately be executed in Germany.

## LEGITIMATE IMPROVEMENT

This new procedure enables the execution of a verdict to proceed much simpler and quicker. A lot of time and money can be saved with this new procedure. The challenged party will have to take action themselves to prevent an execution, and this party may refer to the German court with the request to refuse the execution of the Dutch verdict. Hopefully this will have the effect that more 'foreign' debtors will eventually fulfil the Court's decision. Of course it remains to be seen how this new procedure will develop in practice, but at first glance it seems a legitimate improvement on the 'old' exequatur procedure. ■

This article is written by mr. V. Zitman and mr. L.M. Schelstraete of European Equine Lawyers.

If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us by e-mail via [info@europeanequinelawyers.com](mailto:info@europeanequinelawyers.com) or telephone on +31-(0)135114420.

