



Heidelberg Conference 2013: Workshop: EU Maintenance Regulation – The Devil's in the details, 7 march 2013 – Katharina Hilbig-Lugani, Göttingen/Regensburg
Aspirations and reality: The right to apply for a review under Art. 19 of the EU Maintenance Regulation

Synopsis of relevant provisions

Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Article 19 Right to apply for a review

1. A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the decision before the competent court of that Member State where:

(a) he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or

(b) he was prevented from contesting the maintenance claim by reason of force majeure or due to extraordinary circumstances without any fault on his part; unless he failed to challenge the decision when it was possible for him to do so.

2. The time limit for applying for a review shall run from the day the defendant was effectively acquainted with the contents of the decision and was able to react, at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The defendant shall react promptly, in any event within 45 days. No extension may be granted on account of distance.

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

Article 19 Minimum standards for review in exceptional cases

1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

(a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and
(ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part;

or
(b) 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,

provided in either case that he acts promptly.

Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure

Article 18 Minimum standards for review of the judgment

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:

(a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and
(ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part, or

(b) the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

Article 20 Review in exceptional cases

1. After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:

(a) (i) the order for payment was served by one of the methods provided for in Article 14, and
(ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part, or

(b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

**COM (2010) 748 final: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)
Article 45**

1. A defendant who did not enter an appearance in the Member State of origin shall have the right to apply for a review of the judgment before the competent court of that Member State where:

(a) he was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence; or

(b) he was prevented from contesting the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part;

unless he failed to challenge the judgment when it was possible for him to do so.

2. The application shall be submitted using the form set out in Annex II.

3. The application may be submitted directly to the court in the Member State of origin which is competent for the review pursuant to this Article. The application may also be submitted to the competent court of the Member State of enforcement which will without undue delay transfer the application to the competent court in the Member State of origin using the means of communication as notified pursuant to Article 87 point b.

4. The application for a review shall be made promptly, in any event within 45 days from the day the defendant was effectively acquainted with the contents of the judgment and was able to react. Where the defendant applies for a review in the context of enforcement proceedings, the time period shall run at the latest from the date of the first enforcement measure having the effect of making his property non-disposable in whole or in part. The application shall be deemed to be made when it is received by either of the courts referred to in paragraph 3.

2. After expiry of the time limit laid down in



If the court decides that a review is justified for one of the reasons laid down in paragraph 1, the decision shall be null and void. However, the creditor shall not lose the benefits of the interruption of prescription or limitation periods, or the right to claim retroactive maintenance acquired in the initial proceedings.

If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

If the court decides that a review is justified on one of the grounds laid down in paragraph 1, the judgment shall be null and void. However, the party who obtained the judgment before the court of origin shall not lose the benefits of the interruption of prescription or limitation periods acquired in the initial proceedings.



Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Article 34

A judgment shall not be recognised: ...

2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

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

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused: ...

(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;