UNIVERSITÀ DEGLI STUDI DI MILANO
DIPARTIMENTO DI STUDI INTERNAZIONALI, GIURIDICI E STORICO-POLITICI

Towards more EFfective enFORcemenT of claimS in civil and commercial matters within the EU EFFORTS

https://efforts.unimi.it

Project JUST-JCOO-AG-2019-881802

With financial support from the Civil Justice Programme of the European Union

In partnership with:

Max Planck Institute LUXEMBOURG for Procedural Law

UNIVERSITÄT HEIDELBERG ZUKUNFT SEIT 1386

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UNIVERSITÀ DEGLI STUDI DI MILANO
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Collection of Italian Implementation Rules

A. Italy

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The drafters thank Judge Giuseppe Fiengo (Court of Naples), Judge Umberto Giacomelli (Court of Belluno) and Prof. Dr. Elena Merlin (Università degli Studi di Milano) for their insightful comments.

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Table of contents

I. General implementation strategy

The general implementation strategy for Italy sees adoption of few implementation rules for the vast majority of the regulations covered by the EFFORTS Project, with the only exception of Reg. (EU) No 655/2014. Implementation rules for the latter have been issued with the Legislative Decree No. 152/2020 and mostly mirror the content of the Italian government's communication pursuant to Art. 50 of said Reg. Another exception, which does not constitute a deviation from the general implementation strategy, was the issuance of Art. 8 of the Law no. 122/2016 regarding competence to issue an EEO certification for authentic instruments (see §III.1 below). However, their user-friendliness is not fully ensured, since the existing implementation rules often make use of the referral technique (i.e., they make reference to other rules of Italian civil procedural law, declared applicable to the EU regulation via the implementation rules), without explicitly addressing how the coordination between EU rules and the relevant national rules that have been referred to should work in practice.

Apart from said exceptions, the general implementation strategy leaves to jurisprudence and practitioners the task to interpret national law in order to identify the relevant procedural rules and/or clarify how to overcome the aforementioned coordination issues. However, due to limited case-law, it is mainly doctrine to propose solutions for the implementation strategy, basing its work mostly on the Italian government's various communications relating to the regulations. Therefore, in several cases rules and accepted practices under Italian civil procedural law are applied also to foreign judgments and other acts to be enforced under the Regulations covered by the EFFORTS Project by virtue of direct application or adapted, adjusted and analogical application when necessary.

For the purpose of the present report, it may be useful to recall that, when addressing jurisdictional competence within the Italian civil procedural law system, relevant courts are: *Giudice di pace*, *Tribunale*, *Corte d'appello*, *Corte di Cassazione*.

Giudice di pace. The *Giudice di pace* is a first-instance judicial body composed of honorary judges, i.e. non-professional judges. The offices of the *Giudice di pace* are located throughout the territory mostly mirroring the offices of the *Tribunale*: one office for each district, grouped into regional districts according to the territorial competence of the *Corte d'appello*.

Tribunale. The *Tribunale* is a first-instance judicial body composed of professional judges competent to hear all the claims that do not fall within the competence of the *Giudice di pace*. The *Tribunale* is also competent to receive appeals against first-instance judgments of the *Giudice di pace*. It can be said that practically the vast majority of the civil claims are submitted to the competent *Tribunale* ([1]).

Corte d'appello. The *Corte d'appello* is the court competent for appeals against the decisions of the *Tribunale* and, in some cases, court competent to hear first-instance claims in particular matters. At a territorial level, there is more than one *Corte d'appello* compared to the number of the *Regioni* (29 courts – and thus 29 regional districts for civil jurisdiction – for 20 regions) ([2]).

Corte di Cassazione. Following the French model, the Italian *Corte di Cassazione* is the court competent to receive challenges on the interpretation or application of the law by the judges of first or second instance. To appear before the *Corte di Cassazione*, counsels have to be registered in a special record; registration is received after passing an exam that lawyers may apply for only after some years of professional experience in lower courts.

[1] In the Italian language "*Tribunale*" is also used as a general term to refer to the place where justice is provided, i.e. the courts. See the Treccani dictionary at the following address (last visited 30.3.2021): https://www.treccani.it/vocabolario/tribunale.

[2] The general criterion is to have more or less one *Corte d'appello* for each region, with the exception of the following. (A)(i) Lombardia, (ii) Calabria, (iii) Puglia and (iv) Sicilia have more than one, respectively (i) Milano and Brescia; (ii) Salerno, Catanzaro and Reggio Calabria; (iii) Bari and Lecce; (iv) Palermo, Messina, Caltanissetta and Catania. (B) Valle d'Aosta has none and lies within the competence of the *Corte d'appello* of Torino. Some information may be found at (last visited on 12.02.2021): https://www.giustizia.it/resources/cms/documents/cortiappello_20indicatori_31dic2013.pdf.

II. Brussels I bis Regulation

1. Competent court or authority and procedure for issuance of certificates (outgoing)

cf. Art. 53 and 60

There are no specific implementation rules and no information in the communication of the Italian government under Art. 75 of the Reg. (EU) No 1215/2012 [hereinafter "Reg."].

According to the limited case-law on this matter, the certificate under Art. 53 Reg. has not an administrative nature and as such is not issuable by the court clerk (but rather directly by the judge) ([3]). The certificate should be issued by the same court to which belongs the judge that issued the judgment to be enforced in another Member State. There is no provision relating to fees or other costs for such certificates. Since there is no indication on the mentioned communication, it could be hypothetically assumed that also the certificate under Art. 60 Reg. regarding (i) *an agreement between the parties recorded in the court settlement* is issued by the same court that issued the court settlement.

On the other hand, no official indication from legislative or administrative instruments may be reported on the authority competent to issue the certificate for (ii) *authentic instruments* (acts not directly related to court proceedings) under Art. 60 Reg.

2. Competent court or authority and procedure for the enforcement of foreign titles (incoming)

cf. Art. 44 (2), 45 (4), 47 (1), 54 (2)

In general

[3] Tribunale di Milano, 23.04.2008, in *Foro it.*, 2009, p. 936. Even if the decision was issued under the EC/2001/44 Regulation, the principle is in line with the jurisprudence of the CJEU (see for example CJEU, 16 June 2016, Case C-511/14, Pebros Servizi Srl v. Aston Martin Lagonda Ltd, on the judicial nature of the EEO certificate or, recently, CJEU, 4 September 2019, Case C-347/18, Salvoni, §31: "the procedure for the issue of a certificate under Article 53 of Regulation No 1215/2012 is judicial in nature").

Generally speaking, according to Art. 41(1) Reg. the enforcement of a judgment (within the meaning set out in Art. 2 (a) Reg.) shall be governed by the law of the Member State addressed, thus in Italy, in principle, by Book Three of the Code of Civil Procedure (Arts. 474 ff. c.p.c.), where two main categories of enforcement proceedings are provided. (1) Forced expropriation (Arts. 483 ff. c.p.c.), which is the enforcement procedure for obtaining the compulsory execution of a pecuniary claim. (2) Other enforcement procedures, which apply to the enforcement of obligations (2.a) to deliver or release a specific object (Arts. 605 ff. c.p.c.), (2.b) to do or destroy something (Arts. 612 ff. c.p.c.) or (2.c) indirect enforcement by means of payment of a sum of money for any delay or nonobservance of the duty to do or not to do something (*astreintes*) (Art. 614 *bis* c.p.c.) ([4]). The enforcement of foreign titles under the Reg. follows one or the other type of enforcement proceedings depending on the content of the obligation to be performed ([5]).

In order to proceed with forced execution, the creditor must serve the debtor personally with (i) the enforcement title ([6]) (observing the prescribed formalities, but without the need to collect the execution formula provided for by Art. 475 c.p.c.) ([7]), together with (ii) the certificate (Art. 53 Reg.). Together or after the service of the title and of the certificate, a (iii) writ or order of payment ("*precetto*") (Art. 480 c.p.c.) shall be served to the debtor too ([8]). The writ is a document in which the creditor specifies the object of the obligation to be performed and sets a deadline (a time-limit that cannot normally be less than ten days from the service of the writ itself), containing a warning that failure to comply will result in forced execution. The writ must be served to the debtor personally, notwithstanding previous correspondence

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[4] It should be clarified that Art. 614 *bis* c.p.c. provides that in the judgement on the merits of the case the party may ask the court to grant a sum of money for any delay or non-observance of a duty to do or not to do something. Thus, the rule is rather a rule on the power of the court than a rule on enforcement *per se*.

[5] With regards to the *adaptation issue* see *infra* in this paragraph.

[6] Service of the enforcement title itself, together with the eventual certificates, is compulsory in the Italian legal system, notwithstanding previous services or notifications (for example, to impose a stricter deadline for challenge).

[7] With regards to the execution under the Brussels I *bis* Regulation, the majority of the doctrine and of the jurisprudence excludes that the judgment is to be endorsed with the execution formula (Art. 475 c.p.c.), as the certificate set forth in Annex I issued according to Art. 53 Reg. is sufficient to determine enforceability of the decision issued by another Member State. See *inter alia* CARBONE, TUO, *Il nuovo spazio giudiziario europeo in materia civile e commerciale. Il regolamento UE n. 1215/2012*, Giappichelli, 2016, p. 335 – fn. 28.

[8] Service of the certificate under Art. 53 Reg. may occur before but not later than the service of the writ, according to CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, pp. 335-336 – fn. 29.

with or service to her/his lawyer (Art. 479 c.p.c.) ([9]). Service follows the general rules of the c.p.c. ([10]), unless, of course, Reg. (EU) No 1784/2020 ([11]) or Reg. (EC) No 1393/2007 ([12]) apply.

The intervention of the court is only necessary in the event that the debtor fails to comply with the deadline for execution laid down in the writ. Competence for enforcement proceedings lies with the *Tribunale* (Art. 9 c.p.c.) ([13]) ([14]). At territorial level, competence is governed by Arts. 26 ff. c.p.c. As far as enforcement by expropriation is concerned (that is for the enforcement monetary claims), competence lies with the judge of the place where the assets are located (Art. 26 co. 1 c.p.c.) and, if it concerns cars (or equivalent goods) or credits (with a third-party debtor of the principal debtor), with the judge of the place where the

[9] Even if not mandatory, it is important for the creditor to declare, in the writ, her/his legal residence within the Italian territory, in order to avoid application of Art. 480 co. 3 c.p.c. According to the latter, when said declaration is missing, oppositions to the writ in order to contest the right to proceed with enforcement or its validity will be filed before the court of the district in which the writ has been served, derogating from the general rules of territorial competence. See CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, pp. 337-338 – fn. 32-33. However, the doctrine has pointed out that, since the writ must be served to the debtor in person, and since such service may occur outside the Italian borders, there is a problem of coordination for all the cases in which the Italian courts have jurisdiction for the enforcement of the judgement (this is the case, for example, for non-movable goods, such as houses) but the creditor has not declared her/his residence according to Art. 480 co. 3 *and* the debtor has neither legal residence nor domicile or place of abode in Italy. See FARINA, *Titoli esecutivi europei ed esecuzione forzata in Italia*, Aracne, 2012, pp. 267 – fn. 472 and 277-279. Said doctrine concludes that the gap must be filled via the application of Art. 27 c.p.c. The latter conclusion is maintained concerning the ESCP Reg. (see *infra*); however, *mutatis mutandis*, it is applicable also to enforcement under the Reg. (EU) No 1215/2012 and the EEO Reg. A rule similar to Art. 480 co. 3 is contained in Art. 492 co. 2 c.p.c. for the declaration of legal residence of the debtor; see fn. 17.

[10] For a general overview see below, §III.4 under the EEO Reg.

[11] Reg. (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), *O.J.*, No L 405 of 2.12.2020, p. 40 ff.

[12] Reg. (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, O.J., No L 324 of 10.12.2007, p. 79 ff.

[13] The *Tribunale* is a civil court generally competent for first-instance proceedings or challenge of *Giudice di pace*'s first instance judgements. It is composed of professional judges, selected by public competitive exam, and it is distributed in the Italian territory by districts, incorporated into "regional districts" according to the competence of the *Corte d'appello*. For a description of both *Giudice di pace* and *Corte d'appello* composition, competence and territorial distribution see below in text and footnotes.

[14] It is worth mentioning that, as of 31.10.2025, according to Art. 15 *bis* c.p.c., the Giudice di Pace will be competent for expropriation proceedings having as an object movable goods. See fn. 126 below for references to the reform and its entry into force.

debtor has her/his seat (legal residence or domicile or place of abode) (Arts. 26 co. 2 and 26 *bis* c.p.c.) ([15]). Otherwise, the proper venue for execution over obligations to do or not to do something shall be that of the place where the obligation should be fulfilled (Art. 26 co. 3 c.p.c.).

If the debtor does not comply with the writ within the deadline, the creditor may proceed and start enforcement proceedings. The first act of the enforcement proceedings must be carried out within 90 days from the service of the writ ([16]). Thus, the creditor has an 80- (or less)-days window to officially commence enforcement proceedings.

The first act of the proceedings, which sets the effective commencement of the enforcement procedure (also in relation to the Whereas no. 32, to Art. 43(1) Reg. and to the other relevant provisions of the Reg.), varies from one type of forced execution to the other.

With regard to the forced expropriation (Arts. 483 ff. c.p.c.), the first act of the procedure is the foreclosure/attachment/distraint (the so-called "*pignoramento*", translation varies) (Art. 492 c.p.c.) ([17]). The *foreclosure* is an official order given by the court bailiff to the debtor, upon the creditor's request, that seizes the debtor's ability to dispose of her/his property to the advantage of the creditor, in view of the possibility to forcibly sell the foreclosed property and satisfy the creditor's right to obtain a certain sum of money. In some cases, the *foreclosure*

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[15] In the event that the debtor has her/his seat abroad but the third-party debtor has her/his seat in Italy, and thus the forced execution of the credit must involve the Italian courts, there is a lack of discipline with regard to the territorial competence within the Italian courts before which the claim for enforcement proceedings must be brought.

[16] Although there is not a specific measure dedicated to the enforcement of judgments under the Reg., the 10-days deadline could be adjusted in light of the fact that the debtor may have venue outside the Italian territory, in light of the Whereas No 32 of the Reg. See on this point CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 336 – fn. 30.

[17] Even if not mandatory, it is important for the debtor to declare to the court clerk, after receipt of the foreclosure, her/his legal residence within the Italian territory, in order to avoid application of Art. 492 co. 2 c.p.c. According to the latter, when said declaration is missing, subsequent service of court documents or communications of the court will be effective with mere deposit at the offices of the court clerk. A similar rule is contained in Art. 480 co. 3 c.p.c. for the declaration of legal residence of the creditor; see fn. 9.

is a written act; in case the *foreclosure* sizes a credit to payment of a sum of money, it must be served to both the debtor and her/his debtor ([18]).

In the event that the debtor disposes of her/his property against the order contained in the *foreclosure*, the civil code provides that the new owner of the foreclosed properties cannot object to the creditor's right to proceed to forced selling and satisfaction over the proceeds (Arts. 2913 ff. c.c.) ([19]).

With regards to the other enforcement procedures, the first act of the proceedings varies from one to the other. Firstly, to commence proceedings for the enforcement of obligations to deliver or release a specific object (Arts. 605 ff. c.p.c.), the creditor should solicit the court bailiff, in case of movable objects, to search the properties at the debtor's venues (Art. 606 c.p.c.) or, in case of real estate property, to serve the debtor with a notice of release (Art. 608 c.p.c.). According to the general rule set forth in Art. 513 c.p.c., the court bailiff may request assistance by the police, in case it is necessary to overcome the debtor's or third's resistance, or it is necessary to dismiss people or remove things disturbing the performance of the procedure.

Secondly, to commence proceedings to force the debtor to do or destroy something (Arts. 612 ff. c.p.c.), the creditor shall request by complaint to the court to determine the modalities of the execution.

Lastly, the proceedings for the enforcement of a non-fungible duty to do or not do something follow the rules of the forced expropriation proceedings. In fact, the rule set forth in Art. 614 *bis* c.p.c. establishes that the court should condemn the debtor to pay a sum of money for any breach or next nonobservance or for any delay in the execution of the decision.

Oppositions to enforcement and suspension of enforcement proceedings

[18] It is worth mentioning that, according to Arts. 543 ff. c.p.c., if the third-party-debtor pays her/his debt to the debtor, and both already received service of the *foreclosure*, such payment is not satisfactory and the debt is still in its place.
[19] In case the *foreclosure* seizes immovable goods or registered moveable goods, in order to produce the effect *inter alia*, it is necessary to register the *foreclosure* in the relevant registry (so-called *trascrizione*) (Art. 2693 c.c.).

Even though said types of enforcement proceedings vary one from another, the law sets some rules common to all the different procedures.

(A) In particular, Arts. 615 ff. c.p.c. regulate the oppositions that the debtor or third parties can file against the execution proceedings. The oppositions are of three types: (i) the opposition to the execution proceedings (Art. 615 c.p.c.); (ii) the opposition to execution acts (Art. 617 c.p.c.); and (iii) the opposition from the third party (Art. 619 c.p.c.) ([20]).

The first two oppositions [*(i) and (ii)*] differ as for the applicable procedure and, most importantly, as for the grounds for opposition. The (i) opposition to the execution could be based on grounds that relate both to the possibility itself to proceed with the enforcement proceedings (for example, because the creditor is lacking a proper enforcement order or because the debt has been paid) or to the possibility to foreclose certain types of goods or properties (for example, there are limits to foreclosure of payrolls or goods for minimal acceptable self-sustenance) (Arts. 514 ff. c.p.c.). The (ii) opposition to single execution acts could be based on grounds that relate to respect of procedural formalities that relate to single acts of the proceedings (for example, because the 10-days limit to the deadline set forth in the writ has not been respected by the creditor or some of the acts are null or void).

These two types of oppositions are decided differently ([21]). In particular, the opposition to the execution (Art. 615 c.p.c.) causes proceedings on the merits of the right of the creditor

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[20] This is the least relevant for the purposes of this document. Briefly, the third party that may challenge the proceedings by complaint to the competent judge is: (a) the true owner of the seized objects which are to be forcibly sold; or (b), in general, a third party that, even not being a real party to the enforcement proceedings, could be unlawfully damaged if the execution proceedings comes to an end (such as the third party that constituted a lien over the seized goods to guarantee the credit of another party, unrelated to the execution proceedings). Such third party should act promptly, before the judge proceeds with forced sale; after that deadline, the third party may exercise its rights over the sum obtained for the sale, if any.
However, it should be noted that, according to the doctrine [CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 341], third parties may not contest the judgement or the certificate under Art. 45 Reg. Thus, the remedy under Art. 619 c.p.c. is the only remedy for third parties to challenge the enforcement of any judgment under the Reg. Of course, remedies under the law of the Member State of origin are not excluded.

[21] Since the government's communication under Art. 75 indicates the *Tribunale* as the competent court, it is generally excluded the competence of the *Giudice di pace* (which, in a similar 'merely' national case, would hear the opposition under Art. 615 c.p.c. if value is lower than 5,000.00 Euros or in other circumstances, according to the rules that govern its competence). Therefore, the opposition against the enforcement of a foreign

to proceed with enforcement (for example in the event that the debtor sustains to have paid a certain sum of money and the creditor is still trying to proceed to enforcement) ([22]) ([23]). Said proceedings, according to the doctrine, when relating to enforcements of judgments according to the Reg., may be decided with the application of the expedite ordinary proceedings set forth by Arts. 702 *bis* ff. c.p.c. ([24]). Opposition under Art. 615 c.p.c. must be filed under penalty of forfeiture before the so-called hearing for the decision on the assignment (in case of enforcement proceedings relating to expropriation of a credit to a payment of a sum of money) or authorization of sale (in case of enforcement proceedings relating to property rights over goods). The decision is subject to ordinary appeals (challenge before the *Corte d'appello* and later challenge before the *Corte di Cassazione*).

On the other hand, the opposition under Art. 617 c.p.c. must be filed under penalty of forfeiture no later than 20 days from the vitiated procedural document and, after the hearing for urgent measures that cannot be delayed, the procedure follows the rules for ordinary civil proceedings ([25]). However, the final decision, contrary to the proceedings under Art. 615 c.p.c., is not subject to challenge before the *Corte d'appello*, but the party may file a complaint before the *Corte di Cassazione* with limited grounds for challenge (Art. 360 c.p.c.).

(A *bis*) It is important to focus the attention on the opposition set forth by Art. 615 c.p.c. and the grounds to file the complaint accordingly. In fact, under such proceedings, a party may challenge the right of the creditor to proceed with enforcement both under (i) the

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judgment under the Reg. should always be presented to the competent *Tribunale*. On the other hand, the *Giudice di pace* is never competent for an opposition under Art. 617 c.p.c., which is decided by the *Tribunale*, also in merely national cases.

[22] Other grounds for opposition under Art. 615 c.p.c. include: the enforcement title was null or invalid; the judicial enforcement title has been reformed or replaced; the enforceability of the enforcement title has been *revoked* (this case is different from the case in which the enforceability of the enforcement title has been *suspended* by the judge of the appeals); the limitation on subjective effects of the enforcement title preclude an enforcement claim against such debtor; such type of enforcement title is not suitable for that specific type of enforcement proceedings; and others.

[23] It is important to clarify that the objections that a debtor may raise with the opposition on the merits under Art. 615 c.p.c. must not be precluded by the *res judicata* effect, meaning that they may not be raised under Art. 615 c.p.c. if the debtor knew or ought to have known their existence during the civil proceedings that were concluded with the judicial decision that constitute the enforcement title.

[24] See SALERNO, *Giurisdizione ed efficacia delle decisioni straniere nel regolamento (UE) n. 1215/2012 (rifusione)*, Cedam, 2015, pp. 384-385.

[25] Competent to receive such opposition is always the *Tribunale*. See fn. 21.

grounds set forth by Art. 45 Reg. and under (ii) ordinary (national) grounds of opposition to enforcement proceedings. The former include *ordre public*, the case in which the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed, and the other grounds laid down in Art. 45 Reg. The latter include (not only grounds for challenge under Art. 45 Reg., but also) any other objection to the right of the creditor to proceed with enforcement (e.g. challenge may be grounded because the debt has already been paid or because the goods were attached by the foreclosure – *pignoramento* – in violation of national rules on the object of the foreclosure). According to the Whereas n. 30 of the Reg., both the grounds for opposition should be admissible under Art. 615 c.p.c. ([26]).

Also, it should be noted that a party may contest the right to proceed with the enforcement under Art. 45 Reg. by means of an ordinary proceeding on the merits before the service of the writ – which should be regulated by Arts. 702 *bis* ff. c.p.c. ([27]). In this case, however, it is unclear if the party may raise objections only based on Art. 45 Reg. itself or – hypothetically – also the same "ordinary (national)" objections that s/he could have raised under Art. 615 c.p.c. by means of opposition. Notwithstanding, it is safe to conclude that if the complaint under Art. 45 Reg. is brought *before the service of the writ*, and thus before any claim under Art. 615 c.p.c. could even be raised ([28]), the grounds for the claim are limited to those listed in Art. 45 Reg., and there is no opportunity to extend the object of such proceedings to grounds that could have possibly be raised under Art. 615 c.p.c.

To conclude, the objects of the two proceedings may be visualized as two concentric circles, where the circle "Art. 615 c.p.c." is bigger and comprehends not only the circle "Art. 45 Reg." but also the grounds for opposition laid down in the national law.

(B) Also, with regard to all kinds of enforcement proceedings, Arts. 623 ff. c.p.c. regulate the suspension of enforcement proceedings. According to Art. 623 c.p.c., it can be stated

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[26] *Contra* CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, pp. 349-350. The authors specify also that, when a party presents a complaint under Art. 45 Reg. to the competent court, the judge of the enforcement proceedings must render the coordination measures and suspend proceedings under Art. 615 c.p.c.

[27] This proceeding will be dealt with in the second bullet point of the §*Specific rules regarding the EU/2012/1215 Regulation* below.

[28] According to Art. 615 c.p.c., the challenge may be presented not before than the service of the writ. Although it should also be specified that, as already clarified, enforcement proceedings start after the *pignoramento*. This is in line with the principle laid down in Art. 46 Reg., which drafts a line between before and after the moment in which enforcement is sought.

that normally suspension of the enforcement proceedings is ordered by the judge that is competent to receive the appeal to the judgment (for example, if the enforcement order is a judicial decision of first instance, the *Corte d'appello* would decide on the issue of the suspension of the enforceability of the decision constituting the enforcement order) (Art. 283 c.p.c.). If suspension is not ordered by another judge (or it cannot be derived directly by the law, in some particular cases), the judge of the enforcement proceedings may suspend enforcement if opposition to the proceedings (Art. 615 c.p.c.) or to single acts (Art. 617 c.p.c.) is put in complaint (Art. 624 c.p.c.) or if all the creditors entitled to proceed formulate such request to suspend (Art. 624 *bis* c.p.c.).

Specific rules regarding the Regulation (EU) No 1215/2012

Dealing specifically with Art. 44(2), 45(4), 47(1) and 54(2) Reg., it can be stated as follows.

- Art. **44(2)** Reg. provides that the judge of the Member State addressed shall, upon the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

  There are no implementing rules regarding Art. 44(2) Reg. In theory, it should be clarified if the stay of the enforcement proceedings derived from the suspension of the enforceability of the judgement is put in motion with the procedure set forth in Art. 486 c.p.c. (by means of a mere motion, i.e. "*istanza*") or with the procedure under Art. 624 c.p.c. (filing a complaint, i.e. "*ricorso*"), which is connected to the oppositions under Arts. 615 ff. c.p.c. The main difference between these two alternatives lays not on a mere procedural level, but rather on the fact that in the second case (application of Arts. 615-624) there is an ordinary proceeding in place, where the judge on the merits has a more pervasive power to evaluate the relevant elements.

  In general, the law considers two different ways to suspend enforcement proceedings: suspension declared by the judge of the enforcement proceedings itself and by the judge before which the enforcement title is challenged. When the judge competent to exercise the power to stay procedure is the judge before which the enforcement *title* is challenged (such as, for example, in the case regulated by Arts. 283, 373, 401 and 407 c.p.c.), the decision to suspend is then merely *communicated* to the judge of the enforcement proceedings in the forms

of Art. 486 c.p.c. (with a simple motion, i.e. "*istanza*") ([29]). In the other cases, it is the judge of the enforcement proceedings that stays procedure, when established by the law ([30]), evaluating the preconditions and exercising itself the power to suspend.

To conclude, having regard to the fact that in the case under Art. 44(2) Reg. the decision to suspend the enforceability of the judgement (i) may not include the power to suspend the enforcement proceedings ([31]) and (ii), in any case, needs itself to be recognized under the rules of the Reg., an opposition to enforcement under Art. 615 c.p.c. could seem the proper way to suspend the enforcement proceedings when the enforceability of the title is suspended in the Member State of origin. On the contrary, in a non-crossborder case, the preferred solution would be that it is not under an opposition that the enforcement proceedings are suspended, but such effect should be merely communicated to the judge of the execution proceedings by means of Art. 486 c.p.c. (and any act in violation of such effect is challenged with an opposition under Art. 617 c.p.c.).

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[29] Art. 486 c.p.c. states that, when the procedural law does not indicate otherwise, claims, motions and requests are presented to the judge of the execution proceedings in person at the hearing or else by a mere motion. For an application of said principle see Cass. civ., 16 January 2006, no. 709 in which the *Corte di Cassazione* states that when the power to stay the enforcement proceedings is exercised by the judge before which the enforcement title is challenged, the party need not file an opposition to enforcement via Arts. 615 ff. c.p.c. (i.e., to ask the judge of the enforcement proceedings to exercise itself the power to stay under Art. 624 c.p.c.), but merely communicate the suspension to the judge of the enforcement proceedings.

[30] Amongst the cases in which the judge of the enforcement proceedings may stay procedure, the following are worth mentioning. (i) According to Art. 624 c.p.c., the judge may suspend the proceeding when (a) a challenge under Art. 615 or Art. 617 c.p.c. is brought before the court and (b) there are "serious reasons" to declare suspension. (ii) Also, according to Art. 624 *bis* c.p.c., the judge may suspend the proceeding when (a) all the qualified creditors file a motion asking for suspension, (b) after having heard the debtor on this possibility. (iii) Lastly, when the sum derived from the forced sale must be distributed amongst the creditors and there are doubts regarding such distribution, the judge may suspend the enforcement proceedings in order to solve the disputes between the creditors (Art. 512 c.p.c.).

[31] In other words, a conceptual but also practical distinction is made between the suspension of the enforceability of the title and the suspension of the enforcement proceedings once initiated: the latter is dependent on the former, but they remain different. Thus, the power to suspend the enforceability of the title is not identical to the power to suspend the enforcement proceedings, even if the suspension of the enforceability of the title should generally lead to the suspension of the enforcement proceedings. "Should" is the proper conclusion, if one considers also that the power to suspend the enforceability of the title may have been exercised unlawfully: in cases as the ones under Art. 44(2) Reg., a question may be raised regarding the possibility of the judge of the enforcement proceedings to refuse recognition of the suspension decision of the Member State of origin. If such is the case, the procedure that most fits to such cases is the opposition under Art. 615 c.p.c. On the other hand, a mere *communication* would automatically preclude such control.

Albeit the issue is not directly addressed by Italian doctrine and jurisprudence, it is worth arguing that, under Art. 44(2) Reg. the party that intends to rely on the decision to suspend the enforceability of the title of the Member State of origin should produce a certificate under Art. 53 Reg. ([32]).

- The application for refusal of recognition set forth in Art. **45(4)** Reg. and the application for refusal of enforcement set forth in Art. **47(1)** Reg. must be presented to the *Tribunale*, according to the communication of the Italian government under Art. 75 Reg. From the communication it is not possible to define which is the competent *Tribunale* territorially ([33]) and the form of the proceedings. As to the latter, according to the limited case-law on the matter ([34]), the proceedings should be regulated by Arts. 702 *bis* ff. c.p.c. ([35]).

  However, a distinction is made between a claim for refusal of recognition and a claim for refusal of enforcement. The first (refusal of recognition, under Art. 45 Reg.) aims to a declaratory judgement (as pointed out, proceedings should take the forms of the expedite

[32] A similar conclusion has been expressed in Cass. civ., 20 June 2018, no. 16290 on the different issue of the recognition of the decision that, upon the challenge of the party, has reformed (and replaced) the judicial enforcement title on the basis of which the enforcement proceedings were started.
[33] It could be stated that, since these proceedings are substantially comparable to the ones under Art. 615 c.p.c., the competence of the court could be derived from the same rules that govern territorial competence for said opposition (which relates, in turn, to the competence for enforcement proceedings under Art. 27 c.p.c., with the only exception laid down in Art. 480 co. 3 c.p.c.). Otherwise, general rules for competence of the court laid down in Arts. 18 ff. c.p.c. shall apply.
[34] See Tribunale di Milano, 10.09.2019, on *DeJure*.
[35] Applicability of the expedite ordinary proceedings regulated by Arts. 702 *bis* ff. c.p.c. derives from the principle set forth in Art. 48 Reg. See, *inter alia*, SALERNO, *Giurisdizione ed efficacia delle decisioni*, cit. fn. 24, pp. 384 and 390 and CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 342-343.

proceedings under Art. 702 *bis* ff. c.p.c.) ([36])([37]) and the complaint, according to part of the doctrine, may be presented not only after the certificate under Art. 53 Reg. has been served, but also – previously – after any simple non-judicial request for execution of the judgment has been presented to the debtor ([38]) or even before, if the party has a qualified juridical interest to such claim ([39]).

The second (refusal of enforcement, under Art. 47 Reg.) *usually* takes the form of an opposition to enforcement under Art. 615 c.p.c., to be decided ([40]) with preference for the expedite proceedings under Arts. 702 *bis* ff. c.p.c. However, no precise and clear argument may be raised against the possibility to initiate also an *ordinary declaratory* proceeding on the refusal of enforcement (which, again, should take the forms of the expedite proceedings under Arts. 702 *bis* ff. c.p.c.). Regarding the refusal of enforcement, there would be two main differences between ordinary declaratory proceedings and opposition under Art. 615 c.p.c. Firstly, opposition under Art. 615 c.p.c. may be filed only after service of the writ, whilst ordinary proceedings should also be allowed previously, precisely after service of the decision with the certificate under Art. 53 Reg. Secondly, it is debatable whether national grounds of

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[36] After the complaint is presented, the court establishes by decree the date for appearance of the parties and the complaint, together with the decree, must be served, upon request of the claimant, by the bailiff to the defendant at least 30 days before the date of the hearing. The defendant must file an entry for appearance not later than 10 days before the date of the hearing. If the defendant files the answer belatedly, automatically waives the right to any counterclaim, request for third party joinder and procedural or merits objections that cannot be raised by the judge *ex officio*. Proceedings according to Arts. 702 *bis* ff. c.p.c. are simplified and mostly written with regard to the procedure, and the final decision takes the form of an ordonnance. Also, the court decides with a single judge composition. The final decision may be challenged by appeal within 30 days from its communication to the parties by the court clerk or service by one of the parties to the other(s). The decision by the *Corte d'appello* may also be challenged by complaint to the Corte di Cassazione. For all the other elements, said proceedings follow the general rules of civil procedural law. For a general overview see SALERNO, *Giurisdizione ed efficacia delle decisioni*, cit. fn. 24, pp. 390-394.

[37] According to the general rules, the party filing the complaint must declare legal residence in the district of the competent court; see SALERNO, *Giurisdizione ed efficacia delle decisioni*, cit. fn. 24, p. 391.

[38] This is the opinion expressed by CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 342.

[39] According to the general rule, valid for all civil claims, under Art. 100 c.p.c., according to which the party that files a claim to the court must have a qualified juridical interest in doing so. In this case the interest would lie in the mere fact that the party is subject to a non-favorable decision issued abroad. See also Art. 45 Reg., that reads "on the application of *any interested party* (…)", while Art. 46 Reg. reads "On the application of the person against whom *enforcement is sought* (…)".

[40] See fn. 35.

refusal of enforcement, which could be raised under Art. 615 c.p.c., may also be raised in ordinary proceedings filed previous to the service of the writ ([41]).

To sum up, the difference between proceedings for an ordinary declaratory judgement under, on one hand, Art. 45 Reg. and, on the other hand, Art. 47 Reg. may be summarized as follows. (i) Only proceedings for refusal of enforcement may benefit from the measures listed in Art. 44(1) Reg. ([42]) (ii) Albeit it is debatable, in proceedings for refusal of enforcement it could be possible for the applicant to raise not only grounds for refusal listed in the Reg. but also ordinary national grounds for refusal of enforcement. (iii) According to a part of the doctrine, proceedings for refusal of recognition (and not those for refusal of enforcement) may be filed also before the service of the certificate *ex* Art. 53 Reg.

- With regards to the *adaptation of judicial measures or orders unknown to the addressed Member State* issue (Art. **54** Reg.), there are no implementation rules or indications in the government's communication under Art. 75 Reg. In particular, there are no implementation rules or indications relating to the challenge mechanism according to Art. **54(2)** Reg.

  The issue of adaptation may arise during the enforcement proceedings or before said proceedings have legally begun ([43]).

  Before the proceedings have commenced, the *adaptation issue* may be brought before the same judge that is competent to receive claims under Art. 45 Reg. (see *supra*) ([44]).

  As to the enforcement proceedings, in general, according to the doctrine, the *adaptation issue* may be solved in different ways.

  (1) Firstly, it could be the creditor her/himself to adapt the measure or the order directly in the writ ("*precetto*") that should be notified to the debtor before commencing the enforcement

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[41] On this point, see letter (A *bis*) in the previous *§Oppositions to enforcement and suspension of enforcement proceedings* above.
[42] See, however, Art. 38 Reg. on the power to suspend the proceedings.
[43] For the purposes of this paragraph, please consider that in the time frame that goes from the service of the writ to the legal commencement of the enforcement proceedings, according to Arts. 615 co. 1 and 617 co. 1 c.p.c., the debtor may file the same oppositions that s/he could have filed after the *foreclosure*.
[44] According to CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 339.

proceedings (Art. 480 c.p.c.) ([45]). In this event, the debtor could challenge the content of the writ proposing the challenge to the enforcement proceedings according to Art. 615 co. 1 c.p.c. (challenge is filed by complaint, summoning the creditor to appear before the judge competent for the enforcement proceedings).

(2) Secondly, the procedure set forth in Art. 612 c.p.c. could be applied by analogy ([46]). It regulates the case of enforcement of an obligation to do or destroy something. In fact, the complaint filed according to Art. 612 c.p.c. gives the judge the power to establish, with a certain degree of *discretion*, the *rightful-most suitable way* to proceed for enforcement. Thus, this kind of proceedings are those which could be in line with the need to *adapt* the measure or the order and define the course of the proceedings. The judge decides the issue with an ordonnance ([47]) ([48]).

In both cases (1) and (2), the right of the party to challenge the adaptation would be satisfied, in accordance with Art. 54(2) Reg.

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[45] This is the view given by BIAVATI, *L'esecutorietà delle decisioni nell'Unione europea alla luce del reg. UE n. 1215/2012*, in CAPPONI (a cura di), *Il processo esecutivo. Liber amicorum Romano Vaccarella*, Giappichelli, 2014, p. 197. Albeit this conclusion is coherent in the event, different from the *adaptation issue,* for example, that the creditor must "update" the sum due by virtue of interests, it is more difficult to conclude that the same procedure may be appropriate for *adaptation* under Art. 54 Reg.

[46] This is the opinion given by SILVESTRI, *Recasting Brussels I: il nuovo regolamento n. 1215 del 2012*, in *Rivista trimestrale di diritto e procedura civile*, 2013, p. 690 and CARBONE, TUO, *Il nuovo spazio giudiziario europeo*, cit. fn. 7, p. 339.

[47] Challenge of said ordonnance is doubtfully exercised via Art. 615 c.p.c. or via Art. 617 c.p.c. On this issue see BOVE, *Sul regime dell'ordinanza pronunciata ai sensi dell'art. 612 c.p.c.*, available at https://www.cortediCassazione.it/Cassazione-resources/resources/cms/documents/Dialogo_27_3_2017_In_prof_Bove_ord_612.pdf (last visited 31.03.2021).

[48] All things considered, it is important to underline that choosing the option of Art. 615 c.p.c. or the option of Art. 617 c.p.c. implicates that the party has more or less instances to bring her/his claim to the court. In fact, if challenge follows the procedure under Art. 615 c.p.c., the following decision is then subject to appeals before the *Corte d'appello* and then the decision of the *Corte d'appello* is subject to challenge before the *Corte di Cassazione*. While the decision of the judge under Art. 617 c.p.c., which takes the form of an ordonnance, is subject to direct challenge to the *Corte di Cassazione* but it does not involve appeals before the *Corte d'appello*, resulting in one less instance. The same reasoning is valid also for those who would option for adaptation with the writ (*supra*, no. 1) and also for challenge via Art. 617 c.p.c.

3. Other implementation rules

cf. preliminary remarks

According to the Italian government's communication under Art. 75 Reg.:

- The court competent to receive applications under Art. 47 Reg. is the *Tribunale*.
- The court competent to receive appeals under Art. 49(2) Reg. is the competent *Corte d'appello*.
- Language for the certification must be Italian.
- Rules on jurisdiction of the Italian courts according to Art. 5(2) and 6(2) Reg. are Art. 3 and 4 of the Law no 218/1995.

4. Critical assessment

The implementation strategy for the Reg. (EU) No 1215/2012 adopted by the Italian parliament reflects the general implementation strategy. Thus, there are not specific implementation rules dedicated to enforcement of judgments issued in other Member States under the Reg.

Following the general implementation strategy, it has been possible to describe how the enforcement of a foreign judgment under the Reg. works, according to the rules for enforcement of national judgments. The principle of equivalence of judgments under the Reg. and national judgments allows to consider their enforcement equally regulated by the law. However, specific issues remain unclear with specific regard to issuance of the certification (outgoing) and to enforcement of foreign judgments (incoming). It follows a brief summary of the most critical ones.

- In order to obtain the certification pursuant to Art. 53 Reg., for outgoing judgments, it should be clarified which is the applicable procedure in case the request is filed separately from the original claim (i.e. after the judgment has been issued) and which is the competent judicial body or office in that event ([49]). Further clarifications are needed also relating to certificates under Art. 60 Reg. for authentic instruments and court settlements.

[49] See fn. 51 on the EEO certification.

- Since Art. 480 c.p.c. sets a 10-days deadline for spontaneous compliance with the judgment after service of the writ, a longer deadline may be provided for the cases in which service of the writ is carried out abroad ([50]).
- Since the issue of adaptation provided for by Art. 54 Reg. is not directly regulated by the law and, theoretically, it is possible to solve it in different ways, it could be necessary to define the accepted procedure to adapt a foreign judgment under the scope of the Reg.
- In case a party files a claim for opposition to recognition or enforcement of the judgment, it should be clarified (i) which is the court competent to receive the complaint (Arts. 702 *bis* ff. c.p.c.) and (ii) if also the claim for refusal of *enforcement* may be filed before the service of the certificate. Also, (iii) it should be clarified if in proceedings for refusal of enforcement it is possible for the applicant to raise not only grounds for refusal listed in the Reg. but also ordinary national grounds for refusal of enforcement.
- Since the issue is not directly regulated by the law, it should be clarified if the procedure to exercise the power to suspend under Art. 44(2) Reg. is put in motion under the procedure set forth in Art. 486 c.p.c. (by means of a mere brief) or under the procedure set forth in Arts. 623 ff. c.p.c., and in particular under Art. 624 c.p.c. (filing a complaint).

[50] For cases in which the Italian courts are competent for the enforcement proceedings but, at the same time, the debtor may have neither legal residence nor domicile or place of abode in Italy.

III. European Enforcement Order Regulation (EEOR)

1. Competent authority for (re-)issuance and suspension of the EEO (outgoing)

issuing: cf. Art. 6 (1), 9 (1), 24 (1), 25 (1); suspending: cf. Art. 6 (2); reissuing: cf. Art. 6 (3); specialization or concentration?

Issuance

There is no specific rule dedicated to the competence to issue or reissue an EEO certification (Art. 6(1) of the Regulation (EC) No 805/2004 [hereinafter "EEO Reg."]) under the Italian law and no specific relevance was given to this matter in the government's communication pursuant to Art. 30 EEO Reg. Generally, the competence is to be attributed to the "court of origin", pursuant to Art. 6 EEO Reg. Thus, the application should be presented before the *same court to which belongs the judge that decided the original claim* ([51]).

According to the limited case-law on this matter ([52]), the certification is of a judicial nature, and not of an administrative one. Therefore, the application should be brought before the court and the certification should be issued by the judge, and not by the clerk of the court.

Suspension

With regard to the non-enforceability/suspension certificate (Art. 6(2) EEO Reg.), there is no provision specifically indicating the competent office. Generally, it could be said that the

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[51] Part of the doctrine (SPACCAPELO, *Il titolo esecutivo europeo*, in *Vincre* (a cura di), *Appunti di diritto dell'esecuzione civile. Il titolo esecutivo europeo e le esecuzioni speciali*, Cedam, 2012) has pointed out that it should be the same *court*, and not the same *judge*, the competent body to issue the EEO Certification. This conclusion is based on the fact that the principle of mutual trust between the Member States, underlying the abolition of the exequatur set forth in the EEO Reg., requires a minimal grade of impartiality of the body required to verify the conditions to issue the EEO Certification. Those minimal standards would not be met if the competent body is the same judge that issued the judgement to be certified as an EEO.
However, it could be pointed out that when the request for an EEO certification is attached to the writ of summons or to the complaint to commence civil proceedings, it will be the same judge that issues the decision to issue, at the same time, said certification. This event is in line with the provisions of the EEO Reg. and the same judge is better suited to ascertain the respect of the rules and standards for certification highlighted in the EEO Reg. in relation with the proceedings s/he directed.
[52] See fn. 3 above and the national and European jurisprudence mentioned therein.

court competent to issue the non-enforceability/suspension certificate is the same court competent to issue the EEO certificate in the first place.

However, it should be noted that, according to Italian procedural law, there is a case in which the court competent to *suspend the enforceability of the judgment* is not the same court that *issued the judgment alongside with the EEO certificate* ([53]). Thus, in these specific cases, it should be clarified if the court competent to issue the non-enforceability/suspension certificate (Art. 6(2) EEO Reg.) is the court that issued the EEO certification (Art. 6(1) EEO Reg.) or the court competent to suspend the enforceability of the underlying judgment ([54]).

Court settlements and authentic instruments

(A) As it concerns court settlements, there is no specific implementation rule dedicated to the court competent to issue the EEO certificate. According to Art. 24(1) EEO Reg., the court competent to issue the EEO certificate is the same court to which belongs the judge that issued or certified the settlement.

(B) Regarding authentic instruments, the communication by the government indicates that the competent authority is the *Tribunale*. However, Art. 8 of the Law no. 122/2016 states that the competence is attributed to the same authority that issued the authentic instrument in the first place ([55]). Therefore, the latter is the relevant implementation rule on the matter (Art. 8 l. 122/2016), that supersedes precedent government communications.

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[53] That is the case according to Art. 283 c.p.c. Said rule governs the appeal against a first-instance proceedings judgment by the "*Tribunale*" or the "*Giudice di pace*" (both first-instance courts). The court competent for the appeal proceedings may, under certain circumstances, suspend the enforceability of the challenged judgment. In this scenario, the court that issued the EEO certificate (same court that issued the challenged judgement) is different from the court competent to decide on the enforceability suspension matter.

[54] In other words, it could be necessary to define if, according to Art. 6(2) EEO Reg., the court competent to render the non-enforceability certificate is the court that issued the EEO certificate according to Art. 6(1) (in this scenario, the court of first instance), or the court that is competent to decide on the suspension of the enforceability of the judgment previously certified as an EEO (in this scenario, the court competent for appeals).

[55] L. 7 luglio 2016, n. 122, Art. 8 – Disposizioni in materia di titolo esecutivo europeo: "1. L'autorità che ha formato l'atto pubblico è competente al rilascio di ogni attestato, estratto e certificato richiesto per l'esecuzione forzata dell'atto stesso negli Stati membri dell'Unione europea. 2. In ogni caso in cui l'autorità che ha formato

2. Procedural rules on (re-)issuance and suspension of the EEO

e.g. hearing of the debtor, service to the debtor, remedies for the creditor in case of refusal

Issuance

There are no specific implementation rules on the procedural aspects to request an EEO certification.

(i) According to part of the doctrine ([56]), one solution to the lack of a specific regulation could be to apply by analogy the same procedural rules indicated by the Italian government ([57]) for the withdrawal of the EEO certification ([58]), i.e. the "*procedimento camerale*" (Arts. 737 ff. c.p.c.) (literally "proceedings in chambers").

In brief, the *procedimento camerale* is a simplified proceeding for expedite decisions on simplified objects. It is discussed the jurisdictional or administrative nature of the procedure. Even if in certain cases the jurisdictional nature of the proceedings is not disputed, the final decision (given in the form of a decree) does not properly have a *res judicata* effect similar to an ordinary judgment; however, it is final unless further circumstances emerge. The proceedings are introduced by a complaint to be submitted to the court.

(ii) Even if there is not a specific provision on the service of the notice to the defendant, it is commonly accepted that, when these proceedings are of a judicial nature, the defendant should have a real and solid possibility to exercise its fundamental *right to be heard* and served with the documents in a timely manner. However, with specific regard to the EEO certificate, if the *procedimento camerale* is the applicable one, it should be mentioned that doctrine is divided

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l'atto pubblico sia stata soppressa o sostituita, provvede l'autorità nominata in sua vece o che sia tenuta alla conservazione dei suoi atti e al rilascio delle loro copie, estratti e certificati". Available at (last visit 17.3.2020): https://www.normattiva.it/atto/caricaDettaglioAtto?atto.dataPubblicazioneGazzetta=2016-07-08&atto.codiceRedazionale=16G00134&atto.articolo.numero=0&qId=e08a4eed-641c-461e-b07a-8395e46e92c6&tabID=0.720966180196057&title=lbl.dettaglioAtto.

[56] See fn. 59 below.

[57] In the communication given under Art. 30 Reg.
See https://e-justice.europa.eu/content_european_enforcement_order-376-it-en.do?member=1.

[58] See §III.3 below.

on a specific issue, regarding the necessity of the participation of the debtor to the procedure for the emission of the certificate ([59]).

(iii) Indeed, following the possibility to avoid guaranteeing the debtor's right to be heard, another part of the doctrine expresses the opinion that the proceedings for the EEO certification are not regulated by the *procedimento camerale*, but should be regulated mirroring the proceedings for the certification under Art. 53 Reg. (EU) No 1215/2012 ([60]) ([61]).

Suspension

With regards to the procedure for suspension of an EEO certificate for outgoing judgments, procedure varies depending on the type of judgment certified as an EEO. For ordinary judgments, for example, as already stated, procedure for suspension of enforceability varies. If the judgment of first instance is subject to appeal, the court competent to receive the appeal is also competent to suspend the enforceability of the judgment (Art. 283 c.p.c.).

3. Procedural rules on rectification or withdrawal of the EEO

cf. Art. 10 (2)

Rectification

According to the communication of the government pursuant to Art. 30 EEO Reg., the procedural rules for the rectification are the same of the rectification of judgments according to national law, regulated by Arts. 287 ff. c.p.c. In brief, the request for rectification must be

[59] The various opinions expressed by the doctrine are displayed by FARINA, *Titoli esecutivi europei*, cit. fn. 9, pp. 163-164 – fn. 266. In favour of the applicability of the right to be heard of the debtor in the procedure for the issuance of the EEO certification: SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, p. 10. The latter author takes the reasoning even further, stating that the *procedimento camerale* would also allow the requesting party to have an instrument to challenge the decision to refuse the issuance of the EEO certification, namely challenge under Art. 739 c.p.c. (see *ibidem*, p. 16).

[60] This is the opinion of FARINA, *Titoli esecutivi europei*, cit. fn. 9, p. 161. The view was expressed on the Reg. (EC) No 44/2001 but deemed applicable also to the Reg. (EU) No 1215/2012.

[61] See §II.1 above.

brought before the *same judge* ([62]) that issued the EEO certificate in the first place. The request must be made in the form of a complaint. If the claimant and the defendant agree regarding the terms of the rectification, they may submit a conjunct complaint and the judge decides accordingly issuing a decree (Art. 288 co. 1 c.p.c.). If only one party files a complaint for rectification, the claimant must then serve the defendant with the request and the notice of the hearing. The judge decides on the complaint by ordonnance, which shall be noted on the original document of the rectified decision. There is not a rule on the time-limit to present the request for rectifications.

Withdrawal

With regards to the withdrawal of the EEO certification, the government's communication indicates the "*procedimento camerale*" under Arts. 737 ff. c.p.c. ([63]). In particular, the government's communication specifies that the hearing of the parties is not mandatory ([64]). Even if there are no explicit provisions on the matter, the competence for the withdrawal should be of the same court to which belongs the judge that issued the EEO certification in the first place ([65]). There is not a rule on the time-limit to present the request for withdrawal.

According to part of the doctrine, it would be acceptable to grant withdrawal of the EEO certification in case the request is made by the debtor that has already presented opposition to the payment injunction/injunctive decree (Arts. 633 ff. c.p.c.) ([66]), because in that case the

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[62] In this case, following the general rules on rectification of judgements set forth in the c.p.c., not only there is not an impartiality issue – regarding the fact that the competence lies not just with the same court but specifically with the same judge that issued the decision in the first place –, but this solution guarantees also an higher degree of efficacy – as the judge already knows the decision issued and s/he is best suitable for its rectification.
[63] Please refer to §III.2 above for a general overview of this procedure.
[64] This begs the question about the respect of defendant's right to be heard (for example, it could be the creditor having an interest for the EEO certification to stay in place); hypothetically, its position on the withdrawal issue may be heard with a mere exchange of briefs. D'ALESSANDRO, *Prime applicazioni giurisprudenziali del regolamento n. 805 del 21 aprile 2004 che istituisce il titolo esecutivo europeo per i crediti non contestati, con particolare riferimento alla possibilità di proporre opposizione* ex *art. 615 c.p.c. qualora lo Stato richiesto dell'esecuzione sia l'Italia*, in *Judicium*, 2010, §3 is of the opinion that the debtor has a right to be heard in such proceedings.
[65] Or even the same judge, according to D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §3. SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, p. 13 does not agree with the possibility to allocate competence on the same judge; it should rather be the same court.
[66] According to SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, p. 13. See also fn. 71.

"uncontested" requirement of the claim (Art. 3(1) EEO Reg.) for an EEO certificate to be issued would not be met.

4. Rules on service

cf. Art. 13, 14, 15, e.g. standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

Service according to rules of civil procedure in general

Follows a brief general overview on the rules on service (Arts. 137 ff. c.p.c.). In general, service may be made (i) by hand delivery (Arts. 138 ff. c.p.c.), (ii) by postal service (Art. 149 c.p.c.) and (iii) by certified email address (Art. 149 *bis* c.p.c.). Service, unless where otherwise provided by the relevant provisions, is accomplished by the court bailiff, upon request by the party (usually the claimant), by the public prosecutor or the court clerk (Art. 137 co. 1 c.p.c.).

(i) Service in the hands of the addressee is regulated by Arts. 138 ff. c.p.c. Typically, the addressee is searched at her/his domicile or anywhere else within the district of competence of the court bailiff or, subordinate to failure of such procedure, at her/his legal residence or at the office where s/he is employed or carries out her/his business. Practically, the party requesting the service is required to provide the bailiff with an address where the addressee is supposed to be found ([67]). If the addressee is not found in one of said places, the copy of the document is delivered to a member of the addressee's family or to other persons related to the abovementioned venues. If it is not possible to find the addressee (or other persons as specified by the law) or s/he refuses to receive service, the bailiff (1) deposits a copy of the document at the competent municipal office, (2) posts a notice of this procedure in a closed and sealed envelope on the door of the house or of the other mentioned venues and (3) informs the addressee of said formalities via registered mail.

(ii) Postal service is maybe the most used in practice and may be implemented upon request of the party or, in case service must be made outside the regional competence of the court bailiff, by the court bailiff her/himself. Postal service is always admissible with the intervention of the court bailiff. This procedure is regulated by law no. 890/1982. In brief,

[67] See Whereas No 19 of the Reg. (EU) No 1784/2020.

the bailiff uses the postal means to serve the document at the legal residence or domicile or place of abode of the defendant. If the addressee is "untraceable" at the selected venue (or similar, such as s/he refuses to accept service), the mail carrier (1) deposits a notice of attempted service in the mailbox, (2) deposits the document at the competent postal office to be collected by the party and (3) gives notice of the service attempt via registered mail. Service is considered effective after ten days later than the aforementioned registered mail is received or earlier, if the document is collected directly by the defendant at the postal office.

(iii) Service with electronic means is admissible if the defendant has a certified email address collected in the dedicated public registers (Art. 149 *bis* c.p.c.) ([68]).

Exclusion of national forms of service

Arts. 13 and 14 EEO Reg. establish certain minimum-standard-rules in relation to service of documents, for the purposes of an EEO certification. The possibilities of service provided for in these rules fall into two types: service by hand and service by mail. In both cases, the formalities required for service are of a lesser degree (in terms of minimum-rules) than those required by an ordinary service procedure according to Italian law. Service according to the Italian civil procedural law ([69]) respects the minimum-rules of service laid down in Art. 13 and 14 EEO Reg., according to the doctrine ([70]). In fact, Arts. 139 ff. c.p.c. regulate service of documents in a way that notice is always given to the defendant at her/his place of residence, place of living, place of business, and similar venues. The only cases in which the Italian legal system accepts a *presumption of service* to be legally binding on the defendant are those relating to the *impossibility* to find an eligible venue connected to the defendant for service. In those cases, indeed, Art. 143 c.p.c. provides that service is made by deposit at the city hall office of the last legal residence of the defendant or, in case that place is unknown, by delivery of the document to the competent Public Prosecutor. Service is effective after 20 days from said formalities (Art. 143 co. 3 c.p.c.). In light of the above, and in light of the whereas no. 13 of the EEO Reg., the only cases in which doubts may arise as to the respect

[68] It is worth noting that legal entities (and other categories, such as barristers) have an obligation to register a certified email address.
[69] See the previous paragraph for a general overview.
[70] See FARINA, *Titoli esecutivi europei*, cit. fn. 9, pp. 183 ff.

of the minimum-standard-rules of service set forth in the EEO Reg. are those in which service is effective by presumption, according to Art. 143 c.p.c.

Costs

Costs for service by hand delivery include standard fees for travel allowance of the court bailiff and may go from 8 Euros to 40 Euros (depending on various factors, like the fact that service is extra-territorial). Costs for service by postal office (which however normally include intervention of the court bailiff) include approximately 3 Euros for fees related to the court bailiff and actual costs that vary from 9.50 Euros to 12.95 Euros.

5. Possibilities for review under Art. 19 (1) and (2)

According to the Italian government's communication, the re-examination procedure referred to in Art. 19 EEO Reg. consists, under the Italian law, of a challenge (Arts. 323 ff. c.p.c.: appeal to the *Corte d'appello*, request for a new trial – "*revocazione ordinaria*" – under Art. 395 c.p.c. and complaint to the *Corte di cassazione*). Thus, the possibilities for review under Art. 19 EEO Reg. should be consolidated with the Italian rules on challenge of judgments.

Grounds for review: irregular service (Art. 19(1)(a) EEO Reg.)

With regards to the grounds for review, Art. 19(1)(a) EEO Reg. establishes that challenge must be guaranteed in the case that "service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part".

Under the Italian civil procedural law, three cases may be mentioned.

(i) "Null" service. Definition of a "null" service is provided by Art. 160 c.p.c.: in general, service is "null" if there is an unbearable uncertainty in relation to the person receiving service or the day when the document was served. In case of a "null" service, according to Art. 327 co. 2 c.p.c., a party may challenge the judgment rendered in default of her/his appearance if service was "null", and challenge is possible even after the *res judicata* is formally perfect (Art. 324 c.p.c.).

(ii) "Irregular" service. If service lacks formalities prescribed by the law but those formalities are not so that the service may be qualified as "null", service is "irregular" and the judgment may be challenged by the party in default, but the ordinary deadlines for challenge apply.

(iii) It is possible to assume that under Art. 19(1)(a) EEO Reg. a service that is "regular" (neither "null" nor "irregular") according to Italian law, would however be such that it does not enable the defendant to arrange her/his defence in a timely manner (intended as a minimum standard). However, there is no case law on this assumption.

(follows): defendant was prevented to raise objections (Art. 19(1)(b) EEO Reg.)

According to Art. 19(1)(b) EEO Reg. challenge must be granted if "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". According to Italian civil procedural law, there is a general principle on the extension of final legal deadlines, that allows to supersede the deadline for objections if the party was prevented from raising them by reason of force majeure or due to extraordinary circumstances (Art. 153 c.p.c.). Said principle should also be applicable to the deadline for challenge of judgments.

When the EEO certificate is granted for a payment injunction (Arts. 633 ff. c.p.c.), there is a specific provision that allows late challenge of the injunctive decree if the party proves that s/he had not been timely informed of the decree because of a fortuitous or force majeure event (Art. 650 c.p.c.) ([71]).

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 21, 23, e.g. remedies and hearings, specialization or concentration?

Since there are not specific implementing rules on the issue of refusal or suspension or limitation of the enforcement of EEO judgments, the applicable rules are the general rules on opposition to enforcement proceedings (Arts. 615 ff. c.p.c.) ([72]) and the general rules on suspension of enforcement proceedings (Arts. 623 ff. c.p.c.) ([73]).

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[71] According to the limited case-law on this matter, if the injunctive decree is opposed it may no longer be considered eligible for an EEO certification, which must be revoked. See Tribunale di Milano, 30 novembre 2007, in *Foro it.*, 2009, vol. 3, p. 936. See also D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §3.
[72] For a general overview of these opposition mechanisms see §*Oppositions to enforcement and suspension of enforcement proceedings* under §II.2 above.
[73] D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §5. For a brief description see *supra* §II.2.

Refusal

According to part of the doctrine ([74]), it should be possible not only to file opposition under Art. 617 c.p.c., but also under Art. 615 c.p.c. The latter remedy would therefore be concurrent with the remedies of withdrawal and issuance of non-enforceability certificate laid down in the EEO Reg.

Suspension

(i) Grounds for suspension. Alongside with the grounds for suspension set forth in Art. 23 EEO Reg., suspension of the EEO may be granted on grounds of national procedural law, namely the fact that the party filed an opposition (under Art. 615 or Art. 617 c.p.c.) ([75]).

According to part of the doctrine ([76]), Art. 23(a) EEO Reg. does not apply to enforcement under Italian law. In case the creditor needs precautionary and/or urgent protective measures (such as a conservative seizure of the debtor's property goods or other adequate urgency measures) s/he may file a complaint under Arts. 669 *bis* ff. c.p.c. and claim the measure adequate to the case ([77]). Another solution could be to interpret Art. 23(a) EEO Reg. in a

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[74] This is the view expressed by D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §3. Grounds for refusal, according to national law, could be, for example, non-existence of the right to proceed with enforcement of the judgement due to the supervened non-existence of the substantive right (for example, the debt has been paid after the issuance of the EEO certification but before the commencement of the enforcement proceedings). In favor for the general admissibility of the oppositions under Arts. 615 and 617 c.p.c., as long as they don't interfere with the grounds for withdrawal directly regulated by the EEO Reg., also SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, pp. 19-21.

[75] This opinion is presented by CAPONI, *Titolo esecutivo europeo: esordio nella prassi*, in *Il foro italiano*, 2009, p. 938.

[76] For the various opinions expressed in doctrine see D'ALESSANDRO, *Il titolo esecutivo europeo nel Sistema del regolamento n. 1215/212*, in *Rivista di diritto processuale*, 2013, §5.

[77] Italian civil procedural law provides for different types of precautionary measures and different procedures to obtain them according to the specific needs of the claimant. The general rules of procedure are contained in Arts. 669 *bis* ff. c.p.c. According to those rules, the claim shall be filed by complaint and then served to the debtor alongside with (1) notice of the day of the hearing and (2) an eventual decree already containing the precautionary order (this is the case for extremely urgent measures, to be issued *inaudita altera parte*). The decision on the complaint should take the form of an ordonnance that can be questioned before the same judge that issued it or challenged within a 15 days deadline to the competent court (Arts. 669 *decies* and *terdecies* c.p.c.). Proceedings for precautionary measures are characterized by lesser procedural formalities, oral discussion and conciseness.

way that the creditor may proceed with enforcement procedure and foreclose (*foreclosure*) ([78]) the debtor's property but then stop right afterwards and the proceedings be suspended.

(ii) Procedure. Part of the doctrine states that the stay or limitation according to Art. 23 EEO Reg. shall not be pursued with the procedure for stay under Arts. 623 ff. c.p.c., which do not contain provisions similar to those of Art. 23, but rather with the general procedure set forth in Arts. 486-487 c.p.c. (motion – "*istanza*" – to the court, decision by ordonnance and challenge via Art. 617 c.p.c.) ([79]). Stay and limitation pursuant to Arts. 623 ff. c.p.c. would also be applicable, as an additional remedy, varying the grounds for the request.

(iii) It is worth noting that according to Italian doctrine stay of the EEO and suspension of the enforcement proceedings may be successfully requested by the debtor under Arts. 623 ff. c.p.c. even if s/he did not file an application for declaration of non-enforceability of the EEO due to suspension of the enforceability of the underlying judgment under Art. 6(2) EEO Reg. before the competent court of the issuing Member State. However, when the debtor obtains a non-enforceability certificate of the EEO according to Art. 6(2) EEO Reg., s/he shall file a complaint (Art. 486 c.p.c.) and the judge of the execution proceedings orders the stay of such proceedings consequently.

Enforcement proceedings: service of the enforcement title

Even though Art. 15 EEO Reg. permits service to the debtor's representatives, according to Art. 489 c.p.c. the documents that precede the beginning of enforcement proceedings (enforcement title, EEO certification and the writ) must be served to the debtor *personally* ([80]). That is to say that service is possible at the conditions set forth in Arts. 137 ff. c.p.c. (for example, the document may be collected at the debtor's legal residence by one of her/his relatives) but not to the representatives of the debtor *at their premises*.

(follows:) exclusion of the issuance of the execution formula

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[78] Please refer to §II.2 for a description of the *pignoramento*.
[79] This is the position of SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, p. 18.
[80] See, *inter alia*, SPACCAPELO, *Il titolo esecutivo europeo*, cit. fn. 51, p. 15.

It should also be noted that, according to the doctrine, similarly to what has been previously stated for enforcement of judgments under the Reg. EU/2012/1215, it is not necessary to place on the title the executive formula under Art. 475 c.p.c. ([81]).

7. Costs for the issuance of an EEO

if any, please provide the relation to comparable costs of national enforcement orders

There are no specific indications for the cost of an issuance of an EEO certification and there are no comparable certifications in the Italian civil procedural law.

For example, the accepted practice in the Court of Milan is that no costs for the issuance of an EEO certification are charged to the applicant; the reason is that those costs are deemed to be included in the fixed registry fee that the plaintiffs pay for every civil claim.

More in general, certifications issued by the court (such as criminal records office and similar) have a 3.87 Euros fee. As another example, for the purposes of the enforcement proceedings, an official copy of the title empowering to levy execution endorsed with the execution formula (Art. 475 c.p.c.) costs approximately from 11.63 to 87.21 Euros (and sometimes more) according to the number of pages composing the title empowering to levy execution.

8. Other implementation rules

cf. preliminary remarks

[*none*]

9. Critical assessment

The implementation strategy for the EC/2004/805 Regulation adopted by the Italian parliament reflects the general implementation strategy. Thus, there are close to none ([82])

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[81] See, *inter alia*, D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §2 and FARINA, *Titoli esecutivi europei*, cit. fn. 9, p. 271. The latter, p. 272, takes the argument even further, stating that it is not even necessary to place the executive formula if that is the rule in the law of the Member State in which the EEO was issued.
[82] With the exception of Art. 8 l. 122/2016. See §*Court settlements and authentic instruments* under §III.1 above.

specific implementation rules dedicated to enforcement of judgments issued in other Member States under the EEO Reg ([83]).

Following the general implementation strategy, it has been possible to describe rules on the issuance and challenge and/or review of an EEO judgment and/or certification and how the enforcement of a foreign judgment under the EEO Reg. works, according to the rules for enforcement of national judgments. However, certain issues remain unclear with specific regard to outgoing or incoming judgments with an EEO certification. It follows a brief summary of the most critical ones.

- The procedure and the competent body for issuance of an EEO certification (Art. 6(1) EEO Reg.) or of a non-enforceability certificate (Art. 6(2) EEO Reg.) remains unclear. In particular, it is not clear if the debtor has a right to take part in the procedure for the issuance of said certification or if it may be issued without the debtor's participation in the proceedings.
- It should be clarified if all the grounds for stay or suspension under Art. 23 EEO Reg. may be applicable under the Italian law and what is the applicable procedure.
- It should be clarified if the opposition under Art. 615 c.p.c. is admissible as a remedy for incoming EEO instruments or if the opportunities for withdrawal, refusal, stay and limitations laid down in the EEO Reg. exclude the application of national remedies of such nature.

[83] The need for carefully tailored implementing rules has been pointed out by VILLATA, in VILLATA, D'ALESSANDRO, SANDRINI, MOLINARO, GIUGLIANO, *Italy*, in VON HEIN, KRUGER (eds.), *Informed Choices in Cross-Border Enforcement. The European State of the Art and Future Perspectives*, Intersentia, 2021, p. 259.

IV. European Payment Order Regulation (EPOR)

1. National distribution of competences under Art. 6

specialization or concentration?

According to the communication of the government rendered pursuant to Art. 29 of the Reg. (EC) No 1896/2006 [hereinafter "EPO Reg."], the competent courts shall be the following.

The *Giudice di pace* for disputes up to:

1. 5,000.00 Euros, as a general rule;
2. 20,000.00 Euros in case of disputes relating to compensation for damages caused by the circulation of vehicles and vessel, for the hypothesis referred to in Art. 2, par. 2, lett. d), sub. i) EPO Reg.

The *Giudice di pace* shall have competence, irrespective of the dispute's value, for actions involving relations between owners or holders of immovable property used as civil dwelling in terms of emissions of smoke or heat, noise, shaking and similar wobbling movement, that exceed normal tolerability, pursuant to Art. 7, par. 3, n. 3, c.p.c., for the assumptions referable to Art. 2, par. 2, lett. d), sub. i), EPO Reg.

The *Giudice di pace* has also competence for actions concerning the interests or accessories for late payment of social security or welfare services.

The *Tribunale* or the *Corte d'appello* acting as a judge at only one instance, shall have competence in the other cases and in any case of exclusive competence provided for by Italian legislation.

Specifically, in matters not excluded by Art. 2 of the text, the *Tribunale* has competence in case of:

1. actions in the field of agricultural contracts (in this case the specialized agrarian sections of the *Tribunale* are competent, pursuant to Art. 9, Law 14.02.1990 no. 29);
2. actions relating to patents and trademarks (in this case the specialized sections in enterprise matters of the *Tribunale* are competent, pursuant to Arts. 1 ff. of the Legislative Decree 27.06.2003 No 168 in their most recent formulation);

3. actions in the field of Maritime law, namely for damages caused by ship collision; damages caused by ships in the execution of anchoring or mooring operations and any other maneuver in ports or other staging points; damages caused by the use of loading and unloading mechanisms and the handling of port goods; damages caused by vessels to fishing nets and gears; allowances and fees for assistance, rescue and recovery; reimbursement of expenses and premiums for the discovery of wrecks, pursuant to Art. 589 of the Navigation code;
4. cases and proceedings relating to project contracts for constructions, services or supplies of EU relevance to which one of the companies referred to in the amended Art. 3 of the Legislative Decree 27.06.2003 No 168 is a party, or when one of these companies takes part in the consortium or temporary grouping to which the contracts have been entrusted, where in any event the ordinary court has jurisdiction (even than the specialized sections in enterprise matters of the ordinary court are competent pursuant to Art. 3 of the Legislative Decree 27.06.2003 No 168).

In addition, the *Corte d'appello* has competence, in matters not excluded by Art. 2 of the text, as a single judge for claims for compensation for damages relating to competition-restricting agreements and abuse of dominant position (Art. 33, par. 2, of Law 10.10.1990 No 287).

To these indications it should be added that the Italian Code of administrative procedure has introduced the possibility of issuing a payment order also for the administrative judge in cases of exclusive jurisdiction. In view of this and respecting the principle of equivalence, it can be said that the competence to issue a European payment order should be extended to the administrative judge as well.

2. Sanctions under Art. 7 (3)

There are no specific implementation rules and no information in the communication of the Italian government under Art. 29 of the Regulation.

Therefore, from Italian doctrine, two reconstructions have been proposed.

According to the first one ([84]), the application must be accompanied by a substitutive declaration of certification (so-called self-certification) pursuant to Art. 47, Presidential

[84] CAMPEIS, DE PAULI, *Le regole europee ed internazionali del processo civile italiano*, Padova, 2009, p. 440.

Decree 28.12.2000 No 445. In such case, the false declaration is punished pursuant to Art. 483 of the Italian penal code.

On the other hand, the second option ([85]), which is the prevailing one, argues that the sanction to be imposed on the claimant must be determined pursuant to Art. 96 c.p.c. (precisely, in accordance with the 3rd paragraph) and is relevant only in the ordinary judgment following the opposition.

Briefly, the Italian civil liability system is typically compensatory and it has the purpose of restoring the patrimonial sphere through the award of a sum of money to the damaged party. Art. 96 third paragraph c.p.c. allows the judge to grant punitive damages in case of clearly ungrounded judicial actions. However, in the practice, the cases when this occurs are few and far between.

Within this framework, Art. 96 c.p.c. configures an assumption of aggravated liability (literally *responsabilità aggravata per temerarietà della lite*) which, broadly speaking, constitutes a provision intended to discourage the unreasonable use of the jurisdiction and its abuse. Precisely, Art. 96 c.p.c., first paragraph, c.p.c. sets out the discipline for those cases where the judge, upon request by a party, may condemn the opposing party to compensate the other party for the damages suffered as a consequence of such conduct. In contrast with the first paragraph, the conduct under the second paragraph is more severe and sanctioned on the basis of the *ordinary* negligence (so-called non-gross negligence). Ultimately, the third paragraph ([86]), contrary to the previous paragraphs, represents, as recently confirmed by the Italian Constitutional Court ([87]), an instrument of a *punitive* nature, operable *ex officio* by the court regardless of any allegation of evidence of the damage caused by the behavior of the losing party.

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[85] PORCELLI, in BIAVATI (a cura di), *Reg. CE n. 1896/2006 del Parlamento europeo e del Consiglio che istituisce un procedimento europeo d'ingiunzione di pagamento*, in *Nuove leggi civili commentate*, 2010, p. 419-420; C. GRAZIOSI, *Alcuni tratti pratici dell'ingiunzione di pagamento europea*, in *Riv. trim. dir. e proc. civ.*, 2011, p. 232-234; LUPOI, *Dei crediti non contestati e procedimenti di ingiunzione: le ultime tappe dell'armonizzazione processuale in Europa*, in *Riv. trim. dir. e proc. civ.*, 2008, p. 196.

[86] The third paragraph has been added to Art. 96 c.p.c. by Law No. 69/2009: «In any event, when the judge decides on the expenses pursuant to Art. 91 c.p.c. he, also *sua sponte*, may condemn the losing party, in favor of the opposing party, an amount of money determined *ex equo et bono*».

[87] Corte Costituzionale, 23.06.2016, n. 152.

Lastly, it is worth noting that this interpretation is in line with the content of Art. 88 c.p.c. (*Duty of loyalty and probity*) that does not involve a general duty to tell the truth but rather a prohibition to behave in such a way as to disturb the regular course of the trial.

3. Means of communication

cf. Art. 7 (5), (6) and Art. 16 (4), (5); please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

According to the Italian government's communication, the means of communication accepted for the purposes of the European payment order procedure referred to in the EPO Reg. are the postal services (as a result, only procedural documents and annexes lodged in paper format are admitted) and the proper and accepted language is Italian.

4. Rules on service and verification by courts pursuant to Art. 12 (5)

cf. Art. 13, 14, 15, e.g. standard forms, competent service person, exclusion of national forms of service (cf. Art. 14(2), CJEU, C-292/10)

Art. 13 of the EPO Reg. lists the forms of service to which the absolute certainty of receipt can be attributed. This guarantee derives from the signature of the receipt by the addressee or from the fact that the person legally entrusted with the service certifies that s/he has delivered the document. This type of service, in Italy, takes place in accordance with Art. 149 c.p.c. ([88]) and Law 20.11.1982 No 890 ([89]).

On the other side, Art. 14 EPO Reg. lists as admissible means of service which offer only the verisimilitude and not the delivery assurance. The use of this means is subject to the following two conditions. Firstly, the defendant's address must be known with any certainty. Secondly, service on a different person from the defendant (such as a cohabitant or employee) is considered to have taken place only if (and only when) the defendant has actually received it and not, therefore, in the event of refusal or absence. These methods

[88] For a general overview on rules on service please refer to the description above in §III.4.
[89] Law 20.11.1982 No. 890, regarding *Notification of acts by post and communications by post connected with the notification of judicial acts*, in G.U. No. 334 of 4.12.1982.

correspond, in Italian law, to the rules on service pursuant to Art. 140 c.p.c. or, if by means of the postal service, pursuant to Art. 8, par. 2 ff., Law 890/1982.

For this purpose, it can be said that the activities to be accomplished for the service under Art. 140 c.p.c. are the following: «*i*) the deposit of the copy of the deed to serve with the city hall of the municipality where the service should be accomplished; *ii*) the bill-sticking of the notice of service in a closed and sealed envelope, on the door of the house or office or company of the addressee; and *iii*) the notice of the deposit to the addressee, by way of registered mail with return receipt» ([90]). With the result that, if even just one of the abovementioned activities is not accomplished, the service is null.

Ultimately, a clarification should be made regarding the addressee of the service, which, as a general rule, coincides with the debtor. Additionally, the EPO Reg. allows service to be carried out, alternatively, towards a representative of the debtor who is specified as being either his legal or organic representative. In this sense, the domiciliary agent (so-called *domiciliatario*) should fall within the provision of the legal representative as well. That is because the *domiciliatario* is usually the lawyer of the party, named to the purposes of that specific proceeding. It is also assumed that this choice is optional with respect to service on the party personally. In any case, however, when it comes to persons declared incapable, the choice in favor of the representative is imposed under penalty of invalidity of the deed.

5. Rules on opposition to and review of the EPO (outgoing)

cf. Art. 16, 17, 20 (cf. CJEU, C-324/12)

Rules on opposition to the European Payment Order

As a preliminary step, it is necessary to clarify that, in Italy, no provisions have been introduced to indicate what happens when an opposition to the European payment order is lodged.

[90] For the translation and description of this Article, please refer to GROSSI, PAGNI, *Commentary on the Italian Code of Civil Procedure*, 2010, p. 175.

At this stage, Italian doctrine ([91]) and jurisprudence ([92]) have therefore attempted to remedy this situation of uncertainty by questioning, first of all, whether or not it is possible to apply, by analogy, Art. 645 c.p.c. concerning the opposition proceeding to a domestic injunction.

The exclusion of this option is argued on the basis of the following two reasons:

i. the request for a European payment order (referred to in Form A), differently from the request for an injunction, does not contain a statement of the reasons upon which the request is based;
ii. the opposition to the European payment order in Form F does not contain a statement of the reasons for opposing the injunction pursuant to Art. 645 c.p.c. and therefore cannot be treated as the writ of summons in opposition to the domestic injunction.

Another difference with domestic law is that the writ of payment is null and void by the time the opposition is lodged, whereas in domestic law it remains in force and can be declared provisionally enforceable as per Art. 648 c.p.c.

Based on these arguments, a number of different reconstructions have been presented.

According to the first one ([93]), in response to the lodging of opposition to a European payment order, the reinstatement of the action technique should be used. Precisely, the judge should issue a ruling whereby, having acknowledged the intervening opposition, he should invite the creditor to request the reinstatement of the action in the form of Art. 125 disp. att. c.p.c. After that the claimant and the defendant could make the additions made necessary by the passage to the Italian procedure, respectively in the writ of summons and in the responding statement.

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[91] CARRATTA, *Il nuovo procedimento ingiuntivo europeo fra luci ed ombre*, in CARRATTA (a cura di), *Verso il procedimento ingiuntivo europeo,* 2007, p. 26-27; LUPOI, *Dei crediti non contestati*, cit. 85, p. 171 ss; PORCELLI, *Reg. CE n. 1896/2006*, cit. fn. 85, p. 443.
[92] Tribunale di Firenze, decreto 25 settembre 2009; Tribunale di Milano 28 ottobre 2010; Tribunale di Bologna, as illustrated by D'ALESSANDRO, *Il procedimento monitorio europeo con particolare riferimento alla fase di opposizione ex art. 17 Reg. n. 1896/2006,* in *Judicium*, 2010, p. 9-11.
[93] PORCELLI, *Reg. CE n. 1896/2006*, cit. fn. 85, p. 445.

Assuming an application, by analogy, of Art. 616 c.p.c., a different reconstruction ([94]), on the other hand, states that the judge who has issued the European payment order, in the same measure in which informs the creditor of the proposed opposition, should set a deadline for the establishment of a judgment on the merits, having observed the terms for summon to appear as per Art. 163 *bis* c.p.c.

Ultimately, a further thesis ([95]) proposes to draw inspiration from the arrangements for transition from the Presidential phase ([96]) to that of full jurisdiction provided for separation and divorce proceedings. Consequently, the judge before whom the opposition has been lodged will set a date for the first judicial hearing pursuant to Art. 183 c.p.c., allowing the creditor an additional term for the integration of the original request and the debtor a further term to appear before the court.

Another step in this direction is marked by a clarification recently made from the Italian case law ([97]). In fact, from this point of view, according to two recent rulings of the Italian Supreme Court, the continuation of the proceedings after an opposition has been filed as per Art. 17 EOP Reg., is directly governed by the Regulation through reference to the national provisions that apply to ordinary proceedings. In this regard, given the lack of national implementing rules governing the ordinary civil proceedings triggered by the opposition, the Supreme Court clarifies that: *i*) the judge who issued the order shall inform the claimant of the opposition, setting a term for the claimant to bring the action under the ordinary procedural rules; *ii*) the claimant may choose, among the ordinary civil proceedings, those that better suit the claim for which he resorted to the European payment order procedure.

(follows): review of the European Payment Order

As far as the review is concerned, according to the communication issued by the Italian government, the judge responsible for the review as per Art. 20 (1) EPO Reg. is the same

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[94] LUPOI, *Dei crediti non contestati*, cit. 85, p. 171 ss.
[95] CARRATTA, *Il nuovo procedimento ingiuntivo europeo*, cit. fn. 91, p. 26-27.
[96] According to Italian Law, judicial separations consist of two stages. More in detail, the first step involves the President of the Court and is aimed at an attempt of conciliation between the spouses. The second stage, instead, involves the Investigating Judge, and its outcome is a separation or divorce judgment issued by a panel of three judges, which is subject to appeal.
[97] Cassazione Civile, Sezioni Unite, 31.01.2019, n. 2840; Cassazione Civile, Sezioni Unite, 31.01.2019, n. 2841. Cp MOLINARO, in VILLATA, D'ALESSANDRO, SANDRINI, MOLINARO, GIUGLIANO, *Italy* cit. fn. 64, p. 260.

judge that issued the injunction, pursuant to Art. 650 c.p.c. ([98]). Consequently, the reference in this part to the late challenge is clear. In addition, this kind of reference has been illustrated in a case handed down by the *Corte di cassazione* in 2017 ([99]). In its recent ruling, the Italian Supreme Court has clarified that, as far as the European payment order is concerned, the time limit for the submission of the review, in cases referred to in Art. 20(1) of the EPO Reg., is identified in those inferable from Art. 650 c.p.c., intended as the provision governing the relevant procedure in Italy. Consequently, the time limit should be identified in the term previewed from the Italian law for the timely opposition to the domestic injunctive decree, if the enforcement has not begun; or, on the other hand, as the final term set forth in the third paragraph of the aforementioned Art. 650 c.p.c., when the enforcement has begun.

In addition, the judge that has jurisdiction under Art. 20(2) EPO Reg. is the same judge that has jurisdiction over the injunction, to be brought under the rules commonly applicable thereto. In this case, therefore, the practicable solution is that one of the summon to appear.

6. Competent authority and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g. remedies and hearings, specialization or concentration?

Given the absence of specific rules, Italian doctrine considers that the request for refusal of enforcement should be proposed pursuant to Art. 615 c.p.c., if based on the first two paragraphs of Art. 22 EPO Reg. ([100]). Whereas, if the request is based on the formal regularity of the writ and the order of payment ("*precetto*"), it must be lodged pursuant to Art. 617 c.p.c. ([101]). In line with this, there should be no particular problems in admitting also the applicability of the third-party challenge as per Arts. 619 ff. c.p.c., which concern cases strictly related to the enforcement procedure that, therefore, are not expressly covered by the EPO Reg.

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[98] Please refer to in §IV.7 below.
[99] Corte di Cassazione, Sezioni Unite, 20.03.2017, n. 7075.
[100] CARRATTA, *Il nuovo procedimento ingiuntivo europeo*, cit. fn. 91, p. 36; LUPOI, in BIAVATI (a cura di), *Reg. CE n. 1896/2006 del Parlamento europeo e del Consiglio che istituisce un procedimento europeo d'ingiunzione di pagamento*, in *Le nuove leggi civili commentate*, 2010, p. 461; ROMANO, *Il procedimento europeo di ingiunzione di pagamento*, Giuffré, 2009, p. 209-210.
[101] For a general overview of Art. 615 c.p.c. and Art. 617 c.p.c. please refer to the description above in §II.2.

The lack of specific rules should also be extended to the assumptions of limitation or suspension of enforcement. In this sense, it is possible to report two alternatives that have emerged to address the regulatory gap.

The first one clarifies that, in these cases, reference should be made to the interim and precautionary measures pursuant to Arts. 669 *bis* ff. c.p.c. ([102]).

However, according to the second option ([103]), which is the prevailing one, reference should be made to the challenge to the enforcement proceedings according to Art. 615 c.p.c. ([104]).

7. Remedies under national law in cases such as CJEU, C-119/13 and C-120/13

cf. also Art. 19 (2) EEOR

As far as Italian law is concerned, according to the communication of the government pursuant to Art. 29 EPO Reg., as mentioned above, the judge responsible for the review as per Art. 20 (1), EPO Reg. is the same judge that issued the injunction, pursuant to Art. 650 c.p.c. ([105]); whereas the judge that has jurisdiction under Art. 20 (2) EPO Reg. is the same judge that has jurisdiction over the injunction, to be brought under the rules commonly applicable thereto.

As a preliminary step, it is necessary to clarify that the first point refers to the late challenge as per Art. 650 c.p.c., that, in this sense, provides as follows: «The party to whom the order of payment is addressed, may challenge (...) the decree also after that the time limit fixed by the decree has expired (...) if he proves that he had not been timely informed of the decree because the service was not regular or because of fortuitous or force majeure event (...)». So, to sum up, this is a provision which is clearly in favor of the debtor, as it lays down all the necessary precautions to prevent a measure rendered *inaudita altera parte* from unjustly acquiring final enforceability. Precisely, late challenge is only admissible if the debtor has not had timely knowledge of the injunction due to: *i*) irregularity of service; *ii*) fortuitous event;

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[102] LUPOI, *Reg. CE n. 1896/2006*, cit. fn. 100, p. 462. For a general overview please refer to: https://e-justice.europa.eu/content_interim_and_precautionary_measures-78-it-maximizeMS_EJN-en.do?member=1.
[103] FARINA, *Titoli esecutivi europei*, cit. fn. 9, p. 298 ff; ROMANO, *Il procedimento europeo di ingiunzione*, cit. fn. 100, p. 190.
[104] For a brief description see *supra* §II.2.
[105] Please refer to in §IV.7 below.

iii) force majeure event. As a matter of fact, the first assumption is the one that often occurs in practice. In this sense, jurisprudence ([106]) has recently clarified that for the purposes of the admissibility of late challenge, it is not sufficient to provide proof that the service of the injunction is irregular, but it is necessary for the debtor to provide proof that, precisely because of the aforementioned irregularity, he/she did not become promptly aware of the decree and, therefore, found himself in the position of not being able to act promptly in order to propose the challenge within the term of forty days from the service provided for by Art. 645 c.p.c.

At this point, however, according to an Italian scholar ([107]), it is worth noting that the review of the European payment order corresponds, as far as the Italian law is concerned, in some ways to the late challenge, as mentioned above, and in other ways to the challenges as per Art. 656 c.p.c. (precisely to the extraordinary motion for new trial, so-called *revocazione straordinaria*). In this specific case, reference is made to the assumption outlined in the second part of Art. 20 EPO Reg.

Precisely, Art. 656 c.p.c. specifies that «the order for payment, enforceable pursuant to Art. 647, may be challenged by claim for new trial in cases under Art. 395, n. 1, 2, 5 and 6, and by the third-party's challenge, in cases under Art. 404, second paragraph».

Starting from the analysis of Art. 395 c.p.c., the grounds for claim for new trial are: *i*) malice, that is, malice of a party to the damage of the opposing party, pursuant to n. 1; *ii*) false evidence, that is, evidence which is false and upon which the judgment is based, pursuant to n. 2; *iii*) conflict between the judgment and another judgment with *res judicata* effects on the parties, as per n. 5; *iv*) fraud by the judge, consisting in the breach of the duty to be impartial, pursuant to n. 6. The time limit to file a motion for new trial is 30 days, running from the service of the judgment in the assumptions described in Art. 395, n. 5, c.p.c. Whereas, in the other assumptions the time limit runs from the time when: the malice has been found out

[106] Corte di Cassazione, 23 September 2020, no. 19938.
[107] BARRECA, *Il decreto ingiuntivo europeo*, in *Rivista dell'esecuzione forzata*, 2010, § 9, n. 34.

(n. 1); the interested party has been informed of the relevant document (n. 2); the conviction of the judge has become final and binding upon the parties (n. 6) ([108]).

Ultimately, pursuant to Art. 404 c.p.c. a third party may challenge a judgment which affects his rights when those rights are incompatible with the challenged judgment, and he was not party to the proceeding that ended with the challenged judgment which affects his rights. Once it has been ascertained this, Art. 404, par. 2, c.p.c. states that «The assignees and the creditors of one of the parties may challenge the judgment, when this was the effect of fraud or collusion to their damages» ([109]).

8. Costs for the issuance of the EPO

if any, please provide the relation to comparable costs in the national legal order

In terms of costs for the issuance of the EPO, the Italian Ministry of Justice, on 1 September 2010, has introduced some implementing rules. In detail, the following paragraph sets out the complete text of the circular note – since it is particularly difficult to find the full content - DAG02/09/10/2010.0113135.U, which specifies the costs due for the procedure.

«With reference to the registration in the General Registry of the Proceedings it is considered that the national code provision, that obliges the claimant to prepare and register the action in the General Registry for the Proceedings, for the purposes of entering of appearance (Art. 165 c.p.c.) does not apply, given that it has been entirely replaced by the abovementioned forms specifically provided for by the Regulation for the introduction of the writ of summary proceeding.

Service of documents, as referred to in Article 12 (5) of the Regulation, shall be understood as being conducted upon request by the parties. However, some scholars underlined that the rule should rather be interpreted as imposing *ex officio* service of process.

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[108] For the translation and description of this Article, please refer to GROSSI, PAGNI, *Commentary on the Italian Code of Civil Procedure*, cit. fn. 90, pp. 316-317.
[109] For the translation and description of these Articles, please refer to GROSSI, PAGNI, *Commentary on the Italian Code of Civil Procedure*, cit., p. 417, 419, 316-317, 320.

The Registry, shall, on the other hand, inform the claimant of the decision granting or refusing the query with the warning, in case of issuance of the European payment order, that the document must be served on the defendant by the party.

With reference to the costs of the procedure, Art. 25 (2) of the Regulation, provides that these are established in accordance with national legislation, therefore on this point reference should be made to the *Consolidated Act on the Expenses for Civil Proceedings* [literally *Testo Unico delle spese di giustizia,* hereinafter also the *Consolidated Act*] Presidential Decree of 30.05.2002, No. 115, with the exceptions indicated below.

With reference to the rules governing the determination of the fixed registry fee [literally "*Contributo Unificato*" ([110])], the provision contained in Art. 13 (6) does not apply since the standard form of the application for an injunction does not provide for the party to make a declaration of value.

Therefore, the judicial office will have to verify the correct payment of the amount, pursuant to Art. 248 of the aforementioned *Consolidated Act*, deriving from the comparison between the value of the case and the corresponding tax bracket of Article 13.

The amount of the judicial taxes shall be determined according to the provisions of Art. 13 (3) of the *Consolidated Act* on national orders for payment which are applicable also to this procedure.

The partial exemption of expenses governed by Art. 46 of the Law 21.11.1991 No 374, is also applicable to cases within the jurisdiction of the *Giudice di pace*.

In the event of omitted or insufficient payment, the court's clerk will enter the credit on the 3SO register and activate the procedure provided for the collection of the fixed registry fee as per Title VII of the *Consolidated Act*.

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[110] The *fixed registry fee* is a standard payment for implementing a trial and is required before the case is filled. Specifically, it has to be paid by the party who enters the case, lodges the initial appeal or, in enforcement proceedings, submits an application for assignment or sale. The amount to be paid for the *fixed regsitry fee* generally depends on the value of the proceeding (e.g. the amount requested in the claim).

The form of the request for payment including the explanation of the methods of payment from abroad is also attached.

With reference to this point, it should be clarified that the standard form of the application for injunction provides, at point 5, that the payment of court fees, to be understood as procedural expenses due to the State for the procedure, may be made by bank transfer, credit card and withdrawal from the claimant's bank account.

The guide to the filling of the form makes the use of the various payment methods contingent upon acceptance by the State

Given that EU legislation is deemed to prevail on the provisions of article 192 of the *Consolidated Act*, which governs procedures that may only be used in Italy, bank transfers have been identified as the method of payment from abroad.

The receipt of payment must be attached to the procedural documents, in case of voluntary payment prior to the registration of the case, or to the file of the debt collection office, in cases of collection pursuant to Art. 248 of the *Consolidated Act*.

Offices are required to check that the reason for payment is correctly filled in: in case of voluntary payment prior to registration, the reason for payment must indicate: "Judicial Office – data of the party other than the party making the payment". On the other hand, in case of a request for payment, the reason for payment must correspond to that specified in the form attached, i.e. "Judicial Office Fee. Cred. N. _____/_____*".

As is well known, and as also reported by some offices, by the time of tax roll is due, in addition to the fixed registry fee also the amount of 8 euros as a flat fee payment by individuals to the Exchequer for services upon request.

This amount is also due for the proceedings concerned but, in the event of non-payment, Art. 285 of the *Consolidated Act*, which requires the clerk to refuse to register the case, does not apply.

This procedural rule, in fact, is incompatible with the criteria indicated in the Regulation concerned, consequently shall not apply and, therefore, in the event of non-payment, the office will proceed to collect the amount due in the same way as for non-payment of the fixed registry fee.

The European payment order is subject to registration tax in the same way as the order for payment proceedings under Italian law.

There is nothing to prevent the party from benefiting of legal aid, as provided for in the standard application form, in point 5».

9. Other implementation rules

cf. preliminary remarks

[*None*]

10. Critical assessment

The implementation strategy for the EC/2006/1896 Regulation adopted by the Italian parliament reflects the general implementation strategy. Thus, there are not specific implementation rules dedicated to enforcement of judgments issued in other Member States under the EPO Reg.

Following the general implementation strategy, it has been possible to describe how the enforcement of a foreign judgment under the EPO Reg. works, according to the rules for enforcement of national judgments.

The principle of equivalence of judgments under the Regulation and national judgments allows to consider their enforcement equally regulated by the law. However, specific issues still remain unclear. It follows a brief summary of the most critical ones.

- The indications contained in the government's communication are undoubtedly a useful reference. However, it is appropriate to specify that the content of the communication does not provide clarification on all the practical aspects of the enforcement procedure and, even more crucial, its provisions are not binding. As a matter of fact, the use of the applicable rules of the Italian code of civil procedure is wide.
- There are no specific implementation rules regarding the sanctions provided for by Art. 7 EPO Reg.

- The most critical aspect concerns the rules on opposition to and review of outgoing EPOs, with reference to which, despite the various reconstructions put forward in doctrine and jurisprudence, doubts still remain.
- It is necessary to note that there are no specific rules concerning the limitation or suspension of the enforcement procedure.

V. European Small Claims Procedure Regulation (ESCPR)

1. Competent court

cf. Art. 4 (1) and Art. 20 (2): local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

General competence

As for the competent court to receive the small claim request to the court (Art. 4(1) Reg. (EC) No 861/2007 [hereinafter "ESCP Reg."]), no implementation rule has been provided. The competence to decide on claims whose value does not exceed 5,000 euros ([111]), in the Italian legal system, lies upon the *Giudice di pace* (Art. 7 c.p.c.) ([112]). Thus, the *Giudice di pace*, according to the government's communication, receives the claims under the scope of the ESCP Reg. unless they are attributed *ratione materiae* to the jurisdiction of the *Tribunale* ([113]) or the *Corte d'appello*. For the purposes of the ESCP Reg., competence lies with the *Tribunale* for claims relating to: (1) sums due for lease or rent payments; (2) agricultural related contracts; (3) company law, banking, finance and brokerage, payments under public construction projects; (4) intellectual property rights ([114]); (5) maritime law. For the purposes of the ESCP Reg., competence lies with the *Corte d'appello* for claims relating to antitrust and competition law.

On a territorial level, jurisdiction is generally established according to the criterion of the defendant's defence (*forum rei*). In fact, Art. 18 c.p.c. establishes that, except for other provisions, it is competent the court of the place where the defendant has her/his legal residence or domicile or place of abode and, if these are unknown, where s/he resides. If the defendant is a legal entity, competence lies with the court of the place where the company

111 According to Art. 10 co. 2 c.p.c. interests are considered part of the claim for the purposes of the competence of the court. However, Art. 2 ESCP Reg. clearly states the opposite; thus, in cases under the scope of the ESCP Reg., the latter rule applies.
112 See description below in text.
113 In general, *Tribunale* has jurisdiction *ratione materiae* to hear claims relating to the status and legal capacity of individuals, honorary rights, forgery claims, taxes and fees (when not falling within the jurisdiction of the tax court) (Art. 9 c.p.c.).
114 As a way of example, see the decision by Tribunale di Milano, 30.5.2016, in *Leggi d'Italia* on a copyright infringement lawsuit.

(or other type of legal entity) has its legal headquarters or main offices or, if there is a legal representative authorized to stand trial, a "branch" or "offices". Other criteria have been provided for as "optional" and "exclusive" (say, non-optional) criteria, depending on the specific case. The most important *optional forum* is provided for cases relating to obligations, according to which it is competent the judge of the place where the obligation arose (i.e. the place where the contract was concluded or where the tort happened) or the judge of the place where the obligation is to be performed. Thus, for example the claimant may commence proceedings before the judge of the *forum rei* or the judge of the obligation (Arts. 18-30 *bis* c.p.c.).

Giudice di pace: general outline and procedure specific for ESC

For a general overview of the *Giudice di pace* see the Glossary at the beginning of this Report.

The usual procedure applicable for claims before the *Giudice di pace* ([115]) must be consolidated with the provisions of the ESCP Reg. In particular, (i) the commencement of the proceedings (as well as the entire proceedings) follows a written structure (Art. 4 ESCP Reg.), and not an oral one (as possible under the ordinary civil procedural rules for proceedings before the *Giudice di pace*) (Art. 316 co. 2 c.p.c.).

(ii) After informing the claimant that the claim falls out of the scope of the ESCP Reg. and refusal to withdraw according to Art. 4(3), the judge shall schedule the hearing pursuant to Art. 320 c.p.c. ([116]) and order the claimant to serve such notice together with a writ of summons to the defendant. From that point on, the same procedure set forth in Arts. 320 ff. c.p.c. applies. The same applies if the judge considers necessary, or the parties request, to hold a hearing (Art. 5 ESCP Reg.) or in any case it is necessary to modify the procedure from the one set forth in the ESCP Reg. to the usual one for proceedings before the *Giudice di pace*

[115] See §V.3 below.
[116] Since the usual procedure set forth in Arts. 316 ff. c.p.c. for claims before the *Giudice di pace* establishes that it is the claimant, and not the judge, to schedule the hearing (in the writ of summons), there is a lack of discipline regarding the form of the decision of the judge according to Art. 4(3) ESCP Reg. and Art. 320 c.p.c. Usually the judge schedules hearing via *decree* (in those cases in which the claimant files a complaint, and not a writ of summons, and the court fixes the hearing). However, in cases of proceedings mutation the judge issues an *ordonnance* (that is the case, for example, according to Arts. 426-427 c.p.c. on the mutation from the usual proceedings to the labor ones and vice versa). On this point see BINA, *Il procedimento europeo per le controversie di modesta entità (Reg. CE n. 861/2007)*, in *Rivista di diritto processuale*, 2008, pp. 1638-1639.

(for example, if an objection as to the scope of the ESCP Reg. is made by the defendant) ([117]).

(iii) Rules on taking of evidence before the *Giudice di pace* refer to the general rules on taking of evidence before the *Tribunale* (Art. 311 c.p.c.). These rules must be adapted according to the principles set forth in Art. 9 ESCP Reg., thus the proceedings should indicatively follow a written structure. Accordingly, the judge should use, for example, the written witness procedure regulated by Art. 257 *bis* c.p.c. and Art. 103 *bis* disp. att. ([118]) c.p.c. instead of the oral one, generally applicable (Arts. 244 ff. c.p.c.).

ESC Certification

As for the competent court to receive the small claim certification request (Art. 20(2) ESCP Reg.), no implementation rule has been provided. In general, it should be competent the same court to which belongs the judge that issued the judgment to be certified as such. There is no provision relating to fees or other costs for such certificates.

2. Means of communication

cf. Art. 4 (1), 8, 13; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

File a claim

[117] If the defendant files a counterclaim outside of the scope, being the ESCP Reg. silent on this matter, Arts. 36 and 40 c.p.c. apply. Accordingly, the counterclaim should also be decided following the ESCP Reg. procedure (Art. 40 co. 3 c.p.c.). However, in some cases, following the rule set forth in Art. 40 co. 4 c.p.c., the principal claim should theoretically follow the special procedure of the counterclaim and thus shifted from the ESCP Reg. procedure to another special procedure under Italian civil procedural law. Since that is not possible, part of the doctrine states that, in general, in case of a counterclaim out of the scope of the ESCP Reg., the court should separate the two claims and the separated counterclaim may be decided by the competent court.

[118] "Disposizioni di attuazione" are the implementing provisions to the code of civil procedure, similar to the *Einführungsgesetz zur Zivilprozessordnung* (EGZPO) of the German code of civil procedure or the *Annexes du code de procédure civile relative à son application* of the French code of civil procedure. The *disposizioni di attuazione* ("disp. att.") may be found at the end of edited versions of the c.p.c.

The writ including the standard form of the ESCP Reg. may be sent to the court by postal service or hand-delivered to the court clerk, but not via other means of communication, pursuant to the Italian Government's communication.

The possibility to use electronic means to file a claim before the *Giudice di pace* in the Italian civil procedure system is not implemented for all the offices ([119]); however, it is possible to use electronic means to interact with the *Giudice di pace* in some districts, amongst those it can be mentioned: Bari, Bologna, Milano, Venezia, and others ([120]). It should be mentioned, however, that the Italian Government's communication on the ESCP Reg. refers only to postal service as a possible way of communication. Thus, for the purposes of the ESCP Reg., only postal service (and, of course, hand-delivery) should be acceptable, unless further official notice is given.

Hearings

No specific technological electronic means for hearings are available outside of the COVID-19 pandemic.

Service and communications

(A) Pursuant to Art. 13 ESCP Reg. service of documents should be made by postal service or through electronic means ([121]). For the purposes of said rule, the Italian civil procedural law regulates service of documents as follows.

(i) Postal service is always admissible with the intervention of the court bailiff. This procedure is regulated by Law No. 890/1982. In brief, the bailiff uses the postal means to serve the document at the legal residence or domicile or place of abode of the defendant. If the addressee is "untraceable" at the selected venue (or similar, such as s/he refuses to accept

[119] See the government's Project on the Extension of the e-Civil Process to the offices of the *Giudice di pace* (last visit 16.02.2021): http://www.pongovernance1420.gov.it/it/progetto/estensione-del-processo-civile-telematico-ai-giudici-di-pace/.

[120] For more information see (last visited on 12.02.2021): http://www.pongovernance1420.gov.it/it/progetto/estensione-del-processo-civile-telematico-ai-giudici-di-pace/ and https://gdp.giustizia.it/sigp/index.php?menu=guida&pagina=guida.

[121] Electronic means of service via certified email (Art. 149 *bis* c.p.c.) have already been described in §III.4 above. See also footnote 68.

service), the mail carrier (1) deposits a notice of attempted service in the mailbox, (2) deposits the document at the competent postal office to be collected by the party and (3) gives notice of the service attempt via registered mail. Service is considered effective after ten days later than the aforementioned registered mail is received or earlier, if the document is collected directly by the defendant at the postal office.

(ii) Although electronic means of service are effective under the Italian code of civil procedure, they are not acceptable for proceedings before the *Giudice di pace*. Therefore, according to the Italian government's communication on the ESCP Reg. the only means of communication and service accepted are those by postal services.

(B) Even if Art. 136 c.p.c. provides the general possibility to use both fax/telefax *and* electronic means of communication between the court clerk and the parties' lawyers, since the Italian Government's Project on the Extension of e-Civil Process ([122]) is still under implementation, at the moment communications between the court clerk of the *Giudice di pace* and lawyers may occur *only* via fax/telefax. If the competent court is the *Tribunale* or the *Corte d'appello*, communications may occur also via certified e-mail address.

Measures adopted under the COVID-19 pandemic for remote hearings

In light of the COVID-19 pandemic and in light of the imperative to limit physical contact in courts and in the related buildings and offices, from March 2020 on the Italian Government has adopted urgent measures to regulate civil proceedings accordingly.

The provisions contained in the urgent decrees approved in March and October 2020 ([123]) draw a scenario in which general indications are provided for all the districts but each district should adopt binding guidelines that best fit with the particularities of the offices involved.

Generally speaking – and the rules have been implemented also with regards to the *Giudice di pace* – the civil courts should follow a written procedural form unless oral hearings are

[122] See fn. 119.
[123] Art. 83 of the D.L. 17 March 2020, No 18, available at (last visit 18.3.2020): https://www.gazzettaufficiale.it/eli/id/2020/03/17/20G00034/sg.
and Art. 23 of the D.L. 28 October 2020, No 137, available at (last visit 18.3.2020): https://www.gazzettaufficiale.it/eli/id/2020/10/28/20G00166/sg.

"essential". Oral hearings may be held in person only if individuals different from the parties and their counsels (e.g. witnesses) were involved ([124]). Oral hearings may be held via remote means if counsels alongside with the parties were involved. When only counsels were involved, oral hearings had to be transformed in a written form, with the exchange of briefs.

Further rules have been adopted as to the participation of the judge via remote means, allowing the judge to participate from places different than the offices of the court.

3. Procedure for claims outside the scope of the ESCPR

cf. Art. 4 (3)

Competence

In case the claim falls out of the scope of the ESCP Reg., but its value is still below 5,000 Euros, the claim must be brought before the *Giudice di pace*. However, in some cases, even if the claim value is below 5,000 Euros, the claim could be attributed to the jurisdiction *ratione materiae* of the *Tribunale* (Art. 9 c.p.c.) ([125]). The *Tribunale* is also generally competent for all the other claims over 5,000 Euros of value (*idem*), unless competence *ratione materiae* is attributed to the *Corte d'appello*.

It is worth mentioning that the criteria for the competence of the *Giudice di pace* regarding the value of the claims will be changed as of 31.10.2025 ([126]): afterwards, the *Giudice di pace* will be generally competent for claims that have a value below 30,000 Euros and, with regards to

[124] In some cases the hearings for the vow of the expert witnesses appointed by the court were allowed as only-written hearings. See, for example, the official guidelines of the Court of Torino – Offices of the *Giudice di pace*, §2.2 – p. 3, available at (last visit 18.3.2020): https://www.giudicedipace.torino.it/allegatinews/A_31494.pdf However, cross-examination of the expert witnesses appointed by the court may be held orally, by remote means, according for example to the official guidelines of the Court of Varese – Offices of the *Giudice di pace*, p. 3, available at (last visit 18.3.2020): https://www.tribunale.varese.it/files/File/documenti/decreto%2064%20%20-2020%20linee%20guida%20sino%20al%2031.1.2021.pdf.

[125] For a brief list of such matters see *supra* §1.

[126] See Arts. 27 and 28 Legislative Decree 13 July 2017 No 116 at https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2017;116 (last visited on 12.02.2021). See Art. 32 co. 3 for the date of entry into force of Art. 27.

car accidents and similar, below 50,000 Euros, unless competence lies *ratione materiae* with the *Tribunale*.

Procedural rules

When the competence lies with the *Giudice di pace*, for claims outside of the scope of the ESCP Reg., default rules of procedure apply (Arts. 316 ff. c.p.c.). The claim is presented by written means of a summons to appear at a fixed hearing. The request can also be made verbally; in this case, the *Giudice di pace* arranges for the minutes to be served, by the claimant, to the defendant, with a summons to appear at a fixed hearing (Art. 316 c.p.c.). The claim must contain, in addition to the indication of the judge and the parties, a statement of the facts and an indication of the object. Between the day of service and the day of appearance there must be 45 days (Art. 318 c.p.c.).

In the first hearing, the *Giudice di pace* freely questions the parties and attempts conciliation; if conciliation succeeds, minutes are drawn up. If conciliation does not succeed, the *Giudice di pace* invites the parties to definitively specify the facts that form the basis of each party's claims, defenses and exceptions, to produce documents and request the means of proof to be taken. When made necessary, the *Giudice di pace* sets a new hearing for one time for further production and requests for evidence. The documents produced by the parties may be included in the office file and kept there until the judgment has been defined.

Claims before the *Giudice di pace* should be filed with legal assistance from a registered counsel, unless their value is below 1,100.00 Euros; in that case, the parties may stay in proceedings personally (Art. 82 c.p.c.). However, in some exceptional cases, the *Giudice di pace* may admit *pro se* representation of persons (Art. 82 co. 2 c.p.c.) ([127]).

When competence lies with the *Tribunale* or the *Corte d'appello*, the applicable procedure is the usual one set forth in Arts. 163 ff. c.p.c. or the expedite trial regulated by Arts. 702 *bis* ff. c.p.c., already mentioned in this Report.

[127] According to D'ALESSANDRO, *Prime applicazioni giurisprudenziali*, cit. fn. 64, §4, for claims under the scope of ESCP Reg. legal assistance is not mandatory, notwithstanding provisions of the *lex fori*.

4. Costs and distribution of costs

cf. Art. 15a and 16: if any, please provide the relation to comparable costs in the national legal order; distribution of costs in cases where one party is only partly successful/not wholly successful (cf. CJEU, C-554/17)

Identification of costs

There is not a provision for costs dedicated specifically to small claims procedures under the ESCP Reg.

In general, when parties present a claim before the court, they shall bear in mind the following costs.

(A) Fees for a claim of the value under 5,000 Euros: from 43.00 to 98.00 Euros for the first instance, from 64.50 to 147.00 Euros for appeals and from 86.00 to 196.00 Euros for proceedings before the *Corte di cassazione.*

(B) Another fixed registry fee of 27.00 Euros ([128]).

(C) Variable legal costs, that constitute the element with a major impact on the total of costs.

(D) Service costs. (i) Costs for service by hand delivery include standard fees for travel allowance of the court bailiff and may go from 8 Euros to 40 Euros (depending on various factors, like the fact that service is extra-territorial). (i) Costs for service by postal office (which however normally include intervention of the court bailiff) include approximately 3 Euros for fees related to the court bailiff and actual costs that vary from 9.50 Euros to 12.95 Euros.

Who bears costs?

[128] For a brief description see fn. 110. It is worth to clarify that fees for claims and the fixed registry fee are also applicable to any eventual counterclaim.

The costs of the proceedings under the scope of the ESCP Reg. follow the general principles that they are paid in advance by each party respectively ([129]) and later charged to the losing party (principle of the *victus victori*) with the final judgment ([130]).

As general principles relating to expenses there are also that of (i) "*soccombenza reciproca*", which occurs when both parties lose, and that relating to (ii) unnecessary or disproportionate costs. (i) As far as "*soccombenza reciproca*" is concerned, Art. 92 co. 2 c.p.c. provides that the judge may, in such cases, partially or completely set off the costs between the parties. (ii) Art. 92 co. 1 c.p.c. provides also that the general principle of the losing party may be disregarded, and the costs placed on the successful party, if costs are deemed to be unnecessary or disproportionate with regard to the value or the nature of the claim (similarly to the rule set forth in Art. 16 ESCP Reg.: "the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim").

Payment methods

Fees for the claim and fixed registry fees may be qualified as "taxes" under the Italian law. Taxes must be paid following strict procedures set forth by the Government Income Revenue Authority (Agenzia delle Entrate) ([131]).

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[129] On this issue and its relationship with the general principles of the ESCP Reg. see CAGLIOTI, *Procedimento europeo per le controversie di modesta entità. Regolamento CE 861/2007: Criticità relative alla trasmissione della domanda in formato telematico, notifiche e comunicazione atti e mutamento di rito*, in *Filodiritto*, 2015, pp. 3-4.

[130] The only case in which a decision on the expenses is lacking is the *extinguishment of the proceedings*, since "the expenses of the proceeding which has extinguished shall be borne by the parties that advanced them" (Art. 310 c.p.c.).

[131] However, since payment of these fees may be upon a party not acquainted with the Italian fiscal system, some indicate that payment may be made through bank transfer at the following coordinates (SWIFT MT 103 procedure): BIC: BITAITRRENT // Beneficiary: "Bilancio dello Stato" // IBAN: IT 04 O 01000 03245 350008332100 // Reason: Fiscal code/social security identification number of the taxpayer – Tax code 941T for the fee for the claim (*fixed registry fee*) and tax code 943T for 27.00 Euro registry fee – Court – Proceedings – Identification of the parties – Month/Year of the claim. Since this is not a commonly accepted practice, the claimant must verify with the court clerk before proceeding with such method. For information provided by the Court of Genova see (last visit 16.02.2020): https://www.ufficigiudiziarigenova.it/comefare.aspx?cfp_id_scheda=1776.

5. Competent court and procedure for refusal, or stay or limitation of enforcement (incoming)

cf. Art. 22, 23, e.g. remedies and hearings, specialization or concentration?

Since there are not specific provisions on the issue of refusal or suspension or limitation of the enforcement of small claims judgments, the applicable rules are the general rule on challenge to enforcement proceedings (Arts. 615 ff. c.p.c.) and the general rule on suspension of enforcement proceedings (Arts. 623 ff. c.p.c.) ([132]). Single issues of interpretation may be pointed out as follows.

- Part of the doctrine ([133]) states that the stay or limitation according to Art. 23 ESCP Reg. shall not be pursued with the procedure for stay under Arts. 623 ff. c.p.c., which do not contain provisions similar to those of Art. 23 ESCP Reg., but rather with the general procedure set forth in Arts. 486-487 c.p.c. (motion – "*istanza*" – to the court, decision by ordonnance and challenge via Art. 617 c.p.c.). Stay and limitation pursuant to Arts. 623 ff. c.p.c. would also be applicable, with different the grounds for the request than the ones applicable under Art. 23 ESCP Reg.
- It is worth mentioning that, even if Art. 21 ESCP Reg. allows the creditor not to have an authorized representative or a postal address in Italy to proceed for levy execution, the lack of a declaration of residence or election of legal domicile in the writ (or in subsequent acts of the procedure) determines a shift in the competence of the court. According to said principle, (i) Art. 480 co. 3 c.p.c. provides that challenges to enforcement proceedings (Arts. 615 ff. c.p.c.) will be filed before the court in whose district the writ has been served. Also, (ii) Art. 489 c.p.c. provides that communications and services to the creditor will be made with deposit in the registry at the court competent for execution proceedings. Therefore, to avoid such changes in procedure, the creditor shall indicate residence or elect domicile in Italy for the purposes of enforcement proceedings.

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[132] For a description of said rules and of the enforcement proceedings under Italian civil procedural law see *supra* §II.2.
[133] This position was expressed with regard to Art. 23 of the EEO Reg., identical to Art. 23 ESCP Reg. See fn. 79.

- According to part of the doctrine ([134]), Art. 23(a) ESCP Reg. does not apply to enforcement under Italian law. In fact, in case the creditor needs precautionary and/or urgent protective measures (such as a conservative seizure of the debtor's property goods or other adequate urgency measures), s/he may file a complaint under Arts. 669 *bis* ff. c.p.c. and request the measure adequate to the case ([135]). Another solution could be to interpret Art. 23(a) ESCP Reg. in a way that the creditor may proceed with enforcement and foreclose (*foreclosure*) ([136]) the debtor's property but then stop right afterwards and the proceedings be suspended.
- As already stated with regards to Reg. (EU) No 1215/2012 and the EEO Reg., the decision to be enforced in accordance with the ESCP Reg. must not be placed with the execution formula according to Art. 475 c.p.c. ([137]).

6. Other implementation rules

cf. preliminary remarks

[*None*]

7. Critical assessment

The implementation strategy for the EC/2007/861 Regulation adopted by the Italian parliament reflects the general implementation strategy. Thus, there are not specific implementation rules dedicated to enforcement of judgments issued in other Member States under the ESCP Reg.

Following the general implementation strategy, it has been possible to describe rules on the procedure to obtain an ESC judgment and how the enforcement of a foreign judgment under the ESCP Reg. works, according to the rules for enforcement of national judgments.

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[134] This position was expressed with regard to Art. 23 of the EEO Reg., identical to Art. 23 ESCP Reg. See footnote 76.
[135] See footnote 77 in §III.6 for a general overview of provisional measures under Italian civil procedural law.
[136] Please refer to §II.2 above for a general overview of the enforcement proceedings under Italian civil procedural law and a brief description of the *pignoramento*
[137] See fn. 81.

However, certain issues remain unclear with specific regard to outgoing or incoming judgments. It follows a brief summary of the most critical ones.

- No implementation rule has been provided as for the competent court, judge or office and the applicable procedure to obtain an ESC certificate under Art. 20(2) ESCP Reg., especially for the case in which the motion to obtain a certificate is not filed together with the claim but later, after the judgment has been issued.
- Even though the ESCP Reg. outlines a generally written procedure, rules regarding proceedings before the *Giudice di pace* under Italian civil procedural law follow the opposite principle, being essentially oral. Accordingly, for example, in light of the rules set forth in Art. 9 ESCP Reg., the court should use the written testimony procedure regulated by Art. 257 *bis* c.p.c. and Art. 103 *bis* disp. att. c.p.c., but no implementation rule or indication has been provided on that regard.
- The possibility to use electronic means to file a claim before the *Giudice di pace* in the Italian civil procedure system is not implemented for all the offices. Thus, the applicable procedure under Italian civil procedural law is not entirely complying with the rules for communication laid down in the ESCP Reg.
- Critical issues for the enforcement of incoming judgments under the ESCP Reg. mirror those regarding the previously analyzed EU and EC regulations. In particular, it is not clear whether Art. 23(a) ESCP Reg. has any applicability under Italian civil procedural law or rather if a party may seek to obtain a provisional measure that fits to her/his needs according to those available under Arts. 669 *bis* ff. c.p.c.

VI. European Account Preservation Order Regulation (EAPOR)

1. Competent court

cf. Art. 6, 10: local jurisdiction, jurisdiction ratione materiae, specialization or concentration?

Art. 2 (*Credit resulting from the authentic act*) of Legislative Decree 152/2020 ([138]) expressly provides that the judicial authority competent to issue a European account preservation order is the *Tribunale* of the district in which the authentic act was drawn up, presided over by a single judge.

A similar provision is established in the communication of the Italian government pursuant to Art. 50 of the Reg. (EU) No 655/2014 [hereinafter "EAPO Reg."].

In this respect, it must be noted that both the Legislative Decree 152/2020 and the government's communication contain an indication only with regard to authentic acts. As a consequence, the rules on ordinary jurisdiction as per Arts. 669 *ter* and 669 *quater* c.p.c. should be considered applicable with respect to the other cases not relating to credits resulting from authentic acts.

Precisely, Art. 669 *ter* c.p.c. involves cases where the motion for precautionary measure is filed before a proceeding on the merits is commenced and, in that sense, determines that the complaint shall be filed before the judge that would be competent to hear the merits of the case. In addition, when the competent judge on the merits of the case is the *Giudice di pace*, the claim shall be filed before the *Tribunale*.

On the other hand, Art. 669 *quater* c.p.c. expressly provides that «where there is a proceeding pending on the merits of the case, the motion for precautionary measure shall be filed before the judge of the same proceeding». Furthermore, if the proceeding is pending before the *Giudice di pace*, the motion shall be filed before the *Tribunale*.

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[138] Legislative Decree No 152 of 26.10.2020, published in G.U. No 285 of 16.11.2020, in force from 01.12.2020, concerning the *adaptation of national legislation to the provisions of Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15.05.2014, establishing a procedure for the European Account Preservation Order in order to facilitate cross-border debt recovery in civil and commercial matters*.

It is noteworthy, however, that the Italian code of civil procedure does not mention the case in which the preservation order is requested after a final judgment has been issued (the so-called post-*res judicata*). Possible solutions are: (*i*) competence lies with the judge competent to hear the merits of the case (Arts. 18 ff. c.p.c.) or (*ii*) competence lies with the judge that actually decided the claim on its merits (Art. 669 *quater* c.p.c.) ([139]) or, as an additional alternative, it can be said that (*iii*) competence lies with the judge competent to receive enforcement claims (Art. 26 *bis* c.p.c.).

2. National provisions on the taking of evidence pursuant to Art. 9

Since there are no specific provisions on the taking of evidence pursuant to Art. 9 EAPO Reg., reference should be made to Art. 1 of Legislative Decree 152/2020, according to which the rules contained in Book III and IV, Title I, Chapter III, of the Italian code of civil procedure shall apply as far as they are consistent with the EAPO Reg.

Thus, more in general, reference can be made to Art. 669 *sexies* c.p.c. (*Proceeding*) ([140]) on the basis of which «After hearing the parties, omitting any formality which is not necessary to comply with the principle of parties' right to be heard, the judge proceeds in the way he deems more proper to the accomplishment of the evidentiary activities necessary in relation to the conditions and the ends of the decision requested and, by order, he grants or denies the motion (..)». The second paragraph of said article concerns the specific possibility that the measure is issued without the participation of the debtor (*inaudita altera parte*) and, in this sense, establishes that «When summoning the opposing party might prejudice the execution of the granted precautionary measure, the judge decides by *ex parte* motivated decree

[139] Practically the two options differ in a way that the competence of the judge that actually decided the case on the merits may derive (*i*) from the fact that in some cases more than one court are theoretically competent to receive the claim or (*ii*) from a (belated or) rejected motion to establish incompetence of the court, without any further challenge on the issue.

[140] It is worth noting that said procedure in all its parts is not necessarily applicable to the EAPO and consistent with the provisions of the EAPO Reg. That is to say that the procedure set forth in Art. 669 *sexies* c.p.c. is intended to be applicable to complaints for domestic provisional measures but its applicability to claims for EAPO is not certain. For example, it could be contested that the debtor has a right to be summoned for a hearing after 15 days from issuance of the EAPO (as it would happen for an identical domestic provisional measure, according to said rule).

collecting, where necessary, brief information» ([141]). In this event, the possibility for the parties to have equal opportunities to act and defend themselves in the same proceeding, is guaranteed by the provision that the judge, with the same decree that grants the provisional measure, schedules a hearing for the appearance of both parties not later than 15 days from the issuance of the measure itself. At the hearing, the judge confirms, amends or revokes the decisions previously adopted by decree.

In both cases, the taking of evidence follows a less-formal structure than the one that takes place in ordinary proceedings. The provision states that the judge proceeds for the taking of evidence "in the way s/he deems appropriate": thus, discretionary powers are granted to the court with regards both to the procedure for the taking of evidence and for the categories of admissible pieces of evidence. Also, when in ordinary civil proceedings in principle the parties have a right to submit admissible and relevant evidence to the court, in proceedings for provisional measures the judge has a duty to admit only pieces of evidence that are indispensable to decide on the matter, in light of the summary and expedite nature of said proceedings. For example, the judge may receive information directly from the parties or may hear persons without using the procedure to examine witnesses, or s/he may admit documents which are contested as "false" by one of the parties without the need to move forward with the proceedings for the official and final verification of allegedly false documents.

3. Procedure for and means of providing security under Art. 12

There are no specific indications regarding the provisions of Art. 12 EAPO Reg.

Thus, it is necessary to refer to the general measure under Art. 669 *undecies* c.p.c. (*Bail*) provided for all precautionary measures ([142]).

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[141] For the translation and description of this Article, please refer to GROSSI, PAGNI, *Commentary on the Italian Code of Civil Procedure*, cit., p. 426.

[142] It is worth noting that said procedure in all its parts is not necessarily applicable to the EAPO and consistent with the provisions of the EAPO Reg. See fn. 140. For example, it is not uncontested that the bail must be imposed only in conjunction with (i.e. at the same time) the EAPO, as it happens for domestic provisional measures.

According to said rule, generally speaking, the judge may charge the claimant with a bail proportional to the damages that the claimant may have to pay in case its claim will later be declared without grounds. It is considered, in principle, that the bail has the nature and function of a counter-precautionary measure. The imposition of the bail, the determination of the amount and the rules for the submission are under the discretion of the judge, to be exercised with the diligence. More in detail, the discretion of the judge concerns the *an*, the *quantum* and the *quomodo* of the provision. In this regard, the general rule of Art. 119 c.p.c. applies, so that the measure should establish the object (by way of example, it may consist of money, public debt titles, personal or real guarantee rights), the way of providing it and the deadline for compliance. It is also worth noting that, the essential premise for the imposition of the bail is its release in conjunction with the granting, confirmation or modification of the precautionary measure.

4. Liability of the creditor under national law

cf. Art. 13 (3), (4)

There are no specific indications for the liability of the creditor under national law.

Therefore, in such cases, according to part of the Italian doctrine ([143]), the abuse of the European account preservation order should be sanctioned with the condemnation to pay the expenses and the damages deriving from the proceeding pursuant to Art. 96 c.p.c. ([144]) (*Aggravated liability*).

By way of example, this would be the applicable sanction in case of submission of multiple European account preservation order complaints before different courts by the same creditor against the same debtor for the same claim (or credit).

In particular, reference should be made to the second paragraph of Art. 96 c.p.c., which sanctions such hazardous initiatives due to *ordinary* ([145]) negligence. In more detail, with regard

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143 TEDOLDI, *L'ordinanza europea di sequestro conservativo sui conti bancari ai sensi del regolamento (UE) 655/2014*, in *Esecuzione forzata*, 2017, p. 3.
144 For a brief description see *supra* §IV.2.
145 And not *gross* negligence, as in the first paragraph of the same article, dedicated to liability of hazardous *claims on the merits*. Gross negligence would require a higher degree of awareness of the lack of grounds of the claim presented to the court.

to the subjective criterion, in order to integrate the responsibility, the lack of ordinary diligence is commonly understood as non-gross negligence, namely the reasonable foreseeability, common to ordinary persons, of the subsequent ascertainment of the non-existence of the right.

As far as the objective criterion is concerned, the request for the creditor's liability is grounded only in the event that the creditor resulted the losing party on the merits of the case. However, on this last point, it is necessary to clarify that this provision, in fact, seems to be inconsistent with Art. 13 EAPO Reg., which does not assume that liability of the creditor is grounded only in case her/his claim is rejected by the court. As a result, it can be said, in general terms, that the rule should apply insofar as it is compatible or, otherwise said, this second part of the rule should be misapplied.

5. Competent authority and methods to obtain account information

cf. Art. 14 (1), (5)

According to Art. 3 of Legislative Decree 152/2020 the authority designated as competent to obtain account information is the president of the *Tribunale* of the district in which the legal residence or domicile of the debtor is located, or the registered office of the debtor in the case of a legal person.

If the debtor has no residence, domicile or place of abode in Italy or, if a legal person, is not established in Italy, the competent authority is the president of the *Tribunale* of Rome.

In addition, Art. 3, par. 2, specifies that the president of the *Tribunale* orders the search for information by the electronic means referred to in Art. 492 *bis*, par. 2, c.p.c. Secondly, in accordance with Art. 3, par. 3, when the technological facilities – necessary to allow direct access by the bailiff to the databases referred to in Art. 492 *bis* c.p.c. and to those identified in the list referred to in Art. 155 *quater*, par. 1, disp. att. c.p.c. – are not working, the bailiff obtains the information contained therein from the respective operators.

These provisions are confirmed in the government's communication rendered pursuant to Art. 50 EAPO Reg.

Specifically, as far as the methods of obtaining account information are concerned, the government's communication specifies that, according to Italian law, the information

authority may have access to information held in public archives in order to obtain information on bank accounts.

6. Means of communication

cf. Art. 17 (5), 29, 36; please bear in mind the Report on the digitalization of enforcement procedures (D3.17)

There are no specific provisions in the Legislative Decree 152/2020 concerning the means of communication. Consequently, at this stage, Italian judges are not provided with specific indications regarding the mechanisms to be adopted.

In this respect, the government's communication rendered pursuant to Art. 50 EAPO Reg. indicates the authorities designated as competent to receive, transmit and serve the European Account Preservation Order and other documents without providing any indication of the means that can be used.

Precisely, according to the government's communication, the receipt, transmission and notification or service of documents is the prerogative of:

a) the bailiff of the *Tribunale* in the circumstances described in Article 23(5) of the Regulation;
b) the registry of the *Tribunale* that issued the preservation order in the circumstances covered by Articles 10(2), 23(3) ([146]) and (6), 25(3) and 36(5) of the Regulation;
c) the registry of the court responsible for enforcement in the case provided for in Article 27(2) of the Regulation;
d) the registry of the *Tribunale* of the place where the debtor is domiciled in the circumstances provided for in Article 28(3) of the Regulation.

[146] With regard to this, it should also be pointed out that Art. 5 of Legislative Decree 152/2020 specifies that the transmission of the documents referred to in Art. 23, par. 3, of the EAPO Regulation shall be carried out by the creditor.

If the preservation order was issued in another Member State in the circumstances referred to in articles 10(2), 23(3), 23(6) or 25(3), the competent authority is the *Tribunale* responsible for enforcing the preservation order ([147]).

7. Appeals and remedies

cf. Art. 21, 33-35, 37-39

According to Art. 4 of Legislative Decree 152/2020 the appeal against a refusal to issue the Preservation Order pursuant to Art. 21 EAPO Reg. is proposed by appeal to the *Tribunale* that decides as panel of judges, with the clarification that the judge who issued the contested measure cannot be part of the panel.

On the other hand, Art. 6 of Legislative Decree 152/2020 specifies that for the proceedings referred to in Art. 33 EAPO Reg., the judge who issued the European account preservation order has competence.

Art. 7 of Legislative Decree 152/2020 further clarifies that for the proceedings referred to in Art. 34 EAPO Reg., the competent court is the *Tribunale* of the place where the third-party debtor has his residence or registered office.

Similar considerations can also be found in the government's communication, according to which an appeal to the *Tribunale*, sitting as a bench, is authorized against a judgment under articles 33, 34 and 35 of the EAPO Reg. The time limit for appeal is fifteen days and starts with the court's issuing of the order, or the communication or serving thereof, if earlier.

Art. 8 of Legislative Decree 152/2020 makes clear that the procedure referred to in Art. 37 EAPO Reg. is governed by the provisions of Art. 669 *terdecies* c.p.c. and the complaint is submitted with the appropriate form in Annex IX of the Commission Implementing Regulation (EU) 2016/1826.

[147] The *Tribunale* of the third party's place of residence (as per Art. 678 c.p.c.).

Lastly, it's worth specifying that, pursuant to Art. 9 of the Legislative Decree 152/2020, in proceedings referred to in Chapter 4 of EAPO Reg. professional representation is mandatory.

8. Enforcement procedure

cf. Art. 23-25, 27-28

The features of the enforcement procedure of the European account preservation order can be traced only in Art. 5 of Legislative Decree 152/2020.

To better clarify, pursuant to Art. 5 of Legislative Decree 152/2020, the European account preservation order is enforced in accordance with the rules laid down in Art. 678 c.p.c. for third-party seizure. Enforcement according to said procedure should begin after the service to the debtor pursuant to Art. 28 EAPO Reg. The government's communication further indicates that only translations into Italian are accepted. Furthermore, Art. 5 clarifies that: *i*) the transmission of the documents is carried out by the creditor; *ii*) Art. 156 disp. att. c.p.c. ([148]) does not apply to the European account preservation order after obtaining a judicial decision or after concluding a judicial settlement in a Member State of the European Union.

As previously remarked, the aforementioned rule concerning the enforcement procedure is the only relevant provision that can be found in the Legislative Decree 152/2020.

Art. 678 c.p.c. contains an explicit reference to Art. 669 *duodecies* c.p.c. entitled *Implementation* (literally *Attuazione*, meaning *enforcement*) which provides that the «(..)execution of precautionary measures having as their object sums of money takes place, to the possible extent, pursuant to Art. 491 and followings (..)». On its part, Art. 491 c.p.c. (*Beginning of the expropriation*) states that the enforcement procedure begins with the *foreclosure* ([149]).

[148] According to Art. 156 disp. att. c.p.c. (*Enforcement of seized assets*), the creditor may obtain conversion of the seizure in a *foreclosure*. Said rule provides that the creditor, after obtaining the judgement in accordance with the provisions laid down in Art. 686 c.p.c. must deposit a copy of the judgment in the Registry of the court competent for the enforcement within the mandatory date of sixty days starting from the communication, and must therefore proceed with the service as per Art. 498 c.p.c.
[149] For a brief description see §II.1 above.

9. Liability of the bank under national law

cf. Art. 26

There are no specific provisions in the Legislative Decree 152/2020 concerning the bank's liability under national law.

Consequently, by way of interpretation, it may be said the third-party debtor who makes a false or inaccurate declaration is liable on the basis of the general rule on non-contractual liability (*Responsabilità aquiliana*) pursuant to Art. 2043 Italian Civil Code ([150]).

This being said, it must be stressed that in the light of the qualification of the bank as third-party debtor, it appears possible to resort to an analogical application of Art. 546 c.p.c. (*Third party obligation*) as well. In fact, as a custodian of the assets object of the *foreclosure* (attachment order), the third party should abstain from disposing of said assets in the absence of authorization by the judge, under penalty of criminal nature.

10. Fees and costs of courts, authorities, and banks

cf. Art. 42, 43, 44

Art. 10 (Fixed registry fee for disputes under Regulation (EU) No 655/2014) of Legislative Decree 152/2020 indicates that:

«1. The following paragraph shall be added after paragraph 6 *quater* of Art. 13 of the *Consolidated Act* pursuant to Presidential Decree 30.05.2002 no. 115:

- 6 *quinques*. For disputes referred to in Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15.05.2014 establishing a procedure for a European Account Preservation Order in order to facilitate cross-border debt recovery in civil and commercial matters, the following shall apply:

[150] Art. 2043 c.c.: «Any act committed either with intent or with fault causing an unjustified injury to another person obliges the person who has committed the act to compensate damages».

a) the amounts set out in Art. 13(1)(b) and (1 *bis*) for proceedings under Art. 21 and 37 of Reg. (EU) No 655/2014;

b) the amounts set out in Art. 13(3) for proceedings under Art. 8, 33 and 35 of Reg. (EU) No 655/2014;

c) the amounts set out in Art. 13(1) for proceedings under Art. 34 of Reg. (EU) No 655/2014;

d) the amounts set out in Art. 13, (1 *quinquies*) for proceedings under Art. 14 of Reg. (EU) No 655/2014».

Generally speaking, the above-mentioned Art. 10 of Legislative Decree 152/2020 introduces par. 6 *quarter* to Art. 13 of the *Consolidated Act*, in order to identify the Fixed registry fee due for the initiation of one of the proceedings referred to in the EAPO Reg.

Precisely, par. 6 *quater* provides:

- the amount of 98 euros, increased by half in accordance with par. 1 *bis* of Art. 13 *Consolidated Act*, for the appeal against a refusal to issue the Preservation Order (Art. 21 EAPO Reg.) and appeals provided for by Art. 37 EAPO Reg.;

- reduction by half of the amounts provided for in par. 1 of Art. 13 *Consolidated Act* (ranging from 43 to 1.686 euros depending on the value of the Preservation order), for the application for a Preservation Order (Art. 8 EAPO Reg.), for the remedies of the debtor against the Preservation Order (Art. 33 EAPO Reg.) and for other remedies available to the debtor and the creditor (Art. 35 EAPO Reg.);

- the same amounts provided for by par. 1 of Art. 13 *Consolidated Act*, for the remedies of the debtor against enforcement of the Preservation Order (Art. 34 EAPO Reg.) ranging from 43 to 1.686 euros depending on the value of the Preservation Order;

- the amounts provided for in par. 1 *quinquies* of Art. 13 *Consolidated Act* for the request for the obtaining of account information equal to 43 euros.

Within this framework, however, it should be pointed out that art. 10 of the *Consolidated Act* contains a number of provisions regarding exemptions of several matters that the Legislative Decree 152/2020 together with the government's communication rendered pursuant to Art.

50 EAPO Reg. do not expressly mention. However, it could be stated that, even in absence of any indication on the matter, according to the provision laid down in Art. 42 EAPO Reg. these exemptions may be applicable also to claims under the EAPO Reg.

In addition, among other fees that may need to be considered in practice are the fees and costs of banks, authorities and courts referred to in the government's communication.

Specifically, according to the government's communication, as far as the fees, if charged by the banks, for the implementation of equivalent national orders or for providing account information, and information on the party liable to pay those fees are concerned: as a general rule, the custodian of assets subject to a preservation order, i.e. a bank in the case of a bank account, is authorized to ask for compensation for safekeeping and conserving the assets; the compensation is established according to the rates in force or those usually applied, together with reimbursement of documented costs essential to the conservation assets. These costs include the costs incurred in notifying the declaration referred to in Article 25 of the Regulation.

The party responsible for payment (provisionally) is the applicant. It is for the court to identify the party ultimately responsible for payment.

The provision of information on accounts pursuant to Article 14 does not justify the charging of fees by banks.

Banks are required by law to update the archives which, in Italy, are consulted to obtain information on bank accounts pursuant to Article 14 of the Regulation.

With reference to the scale of fees or other set of rules setting out the applicable fees charged by any authority or other body involved in the processing or enforcement of the Preservation Order, the government's communication specifies that, without prejudice to the court fees due pursuant to Article 42 of Regulation (EU) No 655/2014, the processing and enforcement of a preservation order applied for in Italy entails the payment of charges for the extraction of copies of judicial proceedings and of fees payable to officers of the court for the serving of documents.

The charges for copies are established on the basis of the table in Annex 7 to Presidential Decree No 115 of 30 May 2012 – 'Consolidated legal provisions and regulation on legal costs'.

With regard to fees payable for the serving of documents, a distinction should be drawn according to whether the documents are served by the officer of the court directly to the recipient or whether they are served by post. In the first case, a travel allowance must be paid to the officer of the court pursuant to Article 27 of the abovementioned consolidated provisions, calculated in accordance with Article 35 thereof and taking into account the benchmarks updated annually by decree of the Ministry of Justice. In the second case, instead of an allowance, delivery costs must be reimbursed. In both cases – i.e. personal notification of the recipient and postal notification – a fee provided for in Article 27 of the consolidated provisions, and calculated on the basis of Article 34, is also due. Where the notification is urgent, both the fee and the allowance are increased in accordance with Article 36 of the consolidated provisions.

Ultimately, as far as the Court fees are concerned:

a) The court fees for obtaining a preservation order vary depending on the value of the claim and the instance of the court proceedings according to when the preservation order was requested:
    a. for claims up to EUR 1100 the costs are as follows: EUR 21.50 if the court proceedings are at first instance; EUR 32.25 if the court proceedings go to appeal; EUR 43 in the case of appeal in cassation;
    b. for claims between EUR 1100 and EUR 5200 the costs are as follows: EUR 49 if the court proceedings are at first instance; EUR 73.50 if the court proceedings go to appeal; EUR 98 in the case of appeal in cassation;
    c. for claims between EUR 5200 and EUR 26000 the costs are as follows: EUR 118.50 if the court proceedings are at first instance; EUR 177.75 if the court proceedings go to appeal; EUR 237 in the case of appeal in cassation;
    d. for claims between EUR 26000 and EUR 52000 the costs are as follows: EUR 259 if the court proceedings are at first instance; EUR 388.50 if the court proceedings go to appeal; EUR 518 in the case of appeal in cassation;
    e. for claims between EUR 52000 and EUR 260000 the costs are as follows: EUR 379.50 if the court proceedings are at first instance; EUR 569.25 if the court proceedings go to appeal; EUR 759 in the case of appeal in cassation;
    f. for claims between EUR 260000 and EUR 520000 the costs are as follows; EUR 607 if the court proceedings are at first instance; EUR 910.50 if the court proceedings go to appeal; EUR 1214 in the case of appeal in cassation;

g. for claims over EUR 520000 the costs are as follows: EUR 843 if the court proceedings are at first instance; EUR 1264.50 if the court proceedings go to appeal; EUR 1686 in the case of appeal in cassation;
h. for claims of undetermined value the costs are as follows: EUR 259 if the court are at first instance; EUR 388.50 if the court proceedings go to appeal; EUR 518 in the case of appeal in cassation;

However, for cases within the exclusive jurisdiction of the justice of the peace under Article 7 of the Code of Civil Procedure the costs shall be: EUR 118.50 if the court proceedings are at first instance; EUR 177.75 if the court proceedings go to appeal; EUR 237 in the case of appeal in cassation.

In addition to the costs referred to above, if the order is requested before the start of court proceedings on the merits of the case, a flat-rate advance of EURO 27 for the costs of notification is payable for each procedure.

b) The court fees for an appeal against a preservation order are EURO 147 in all cases.

In addition of these costs, if the order is requested before the start of the main court proceedings, a flat-rate advance of EURO 27 for the costs of notification is payable for each procedure.

The costs are to be paid at the start of proceedings, when the appeal is lodged.

11. Other implementation rules

cf. preliminary remarks

Art. 2 (3) EAPO Reg. specifies that the Regulation does not apply to bank accounts which are immune from seizure under the law of the Member State in which the account is maintained. In this sense, a clarification should be made with regard to the Italian State. In fact, when it comes to exemption, the system distinguishes between regimes of absolute and relative seizure.

Inter alia, Art. 545 c.p.c. identifies certain types of credits that cannot be seized, listing among the credits that cannot be absolutely seized respectively: charitable or subsistence allowances to persons classed as poor; payments for maternity, sickness or funeral costs owed by insurance funds, social security bodies and charitable institutions; credits arising from

disability pensions. Pursuant to the same article, the following credits are relatively unseizable: maintenance payments, salaries, wages and other allowances owed by individuals for work or employment relationships; credits for taxes owed to the State, provinces and municipalities, up to a fifth of these sums may be attached; sums owed for pensions, allowances that serve as pensions or other retirement benefits. Lastly, as long as the sums are credited to a bank or post office account in the name of the debtor, even indemnities relating to private or public employment relationships and social security benefits by way of pensions or retirement allowances are relatively unseizable. In any event, it should be pointed out that the regimes of absolute and relative seizure are considered as exceptional by the law, as a result they are compulsory and cannot be interpreted by analogy.

Given that premise, the communication of the government rendered pursuant to Art. 50 EAPO Reg. clarifies further the rules applicable to amounts exempt from seizure.

Particularly, exempt from seizure, pursuant to the combined provisions of Articles 545 and 671 ([151]) of the Code of Civil Procedure, are:

a) maintenance payments, unless for purposes of maintenance, but only with the authorization of the president of the *Tribunale* or a judge delegated by them and only for a share to be determined by the *Tribunale* order;
b) charitable or subsistence allowances to persons classed as poor and payments for maternity, sickness or funeral costs owed by insurance funds, social security bodies and charitable institutions;
c) the sums owed by private persons by way of wages, salaries or other payments related to the employment relationship, including those owed for redundancy, may be attached for maintenance payments to the extent authorized by the president of the *Tribunale* or by a judge delegated by them; up to a fifth of these sums may be attached; simultaneous

[151] Art. 671 c.p.c. (*Conservative seizure*) on the basis of which «After motion by the creditor who has justified fear to lose the security of his credit, the judge may authorize the conservative seizure (..) of debtor's movables or immovables or of the sums due to the debtor, to the same limits within the applicable law provisions allow their attachment (..)». In this regard, the motion for conservative seizure should indicate: *i*) the creditor's right, which should appear as existent *prima facie* (*fumus boni iuris*); *ii*) the risk that would not be able to obtain the payment of his credit if the assets, which should be seized, are damaged or sold by the debtor during the time necessary to file and complete an ordinary action that should end by a condemnation judgment (*periculum in mora*).

seizures resulting from a combination of the grounds cited previously may not account for more than half of these sums;

d) an annuity, if constituted free of charge where there is provision that it should not be subject to *foreclosure* or seizure beyond the limit of the essential needs of the creditor;
e) the sums payable by an insurer to the policyholder or beneficiary of an insurance, subject, with respect to the premiums paid, to the provisions on the revision of acts detrimental to creditors and to the collation, charging and reduction gifts;
f) sums owed for pensions, allowances that serve as pensions or other retirement benefits, with the stipulation that of these sums no more than an amount corresponding to the maximum amount of the monthly social allowance, plus one half, may be attached and that the share in excess of that amount may be attached within the limits laid down in points (c) and (d);
g) special funds for welfare and assistance set up by the entrepreneur, including without employee contributions, where these concern payments made by the entrepreneur's creditors or worker.

There is also provision that sums due by way of wages, salaries and other payments related to employment or work, including those for redundancy and for pensions, and allowances that serve as pensions or other retirement benefits, may, when credited to a bank or post office account in the name of the debtor, be subject to the *foreclosure* for an amount in excess of three times the social allowance, where the crediting of the account takes place before the *foreclosure*; where the crediting takes place on or after the date of the *foreclosure*, these sums may be subject to the *foreclosure* within the limits laid down in paragraphs (3), (4), (5) and (7) and in the special provisions of the Law.

In all cases, it is up to the debtor to show that the claim is exempt from preservation.

The indications included in the government's communication specify similarly the extent to which joint and nominee accounts can be preserved. For this purpose, joint accounts and nominee accounts with more than one accountholder may be subject to a preservation order only in proportion to the share of the debtor. The shares of the account holders are presumed to be equal, unless there is proof to the contrary.

Lastly, the government's communication indicates that there is no ranking of national orders.

12. Critical assessment

The implementation strategy for the Reg. (EU) No 655/2014 differs from the general implementation strategy. In fact, this is the only case in which a specific instrument has been adopted with the clear intention of reconciling European legislation with national provisions.

However, specific issues still remain unclear.

First of all, Legislative Decree 152/2020 seems to recall comprehensively the provisions contained in the government's communication rendered pursuant to Art. 50 EAPO Reg. As a matter of fact, the provisions contained therein appear more a restatement of what already exists rather than an instrument of remedy of regulatory gaps.

Secondly, the general provision included in Art. 1 of the same Legislative Decree expressly provides that the rules laid down in Book III and IV, Title I, Chapter III, of the Italian code of civil procedure shall apply as far as they are compatible. In this sense, the general reference to the c.p.c. leaves a certain number of issues of implementation open and unresolved, similarly to the other regulations, as already pointed out.

As a result, even with this new instrument, the use of the rules applicable by analogy is wide, with all the consequences that derive from it on a practical level, first and foremost legal uncertainty.

VII. Summary and overall assessment

The general implementation strategy of not issuing implementing rules has been followed for the vast majority of the regulations covered by the EFFORTS project. This leaves the implementation work to practitioners; instruments to develop an implementation practice involve the (limited) case-law, the government's communications and – mostly – application of rules of civil procedural law by way of direct application, adapted/adjusted application or, in limited cases, analogy. It is also worth noting that in the only case in which the Italian legislator decided to issue implementation rules (with the Legislative Decree no. 152/2020, relating to the Reg. (EU) No 655/2014), they substantially mirror the content of the government's communication, with the result of changing the configuration of the implementation strategy but not its substance. The result, in fact, was to leave proposals for implementation to practitioners, in the same way it is for the other regulations hereby analysed.

Although a lot has been made, some issues remain unclear, mostly pertaining to the procedure to obtain certain effects (such as the various certificates for outgoing judgments) and issues of coordination between national and EU law (such as the possibility to use domestic instruments, for example oppositions to enforcement, to raise objections with the foundations laid down in the regulations, for example under Art. 47 Reg. (EU) No 1215/2012). Furthermore, the doctrine may be able to assemble proposals for a general implementation strategy, but its work is inherently uncertain in nature, for (i) there is not a general consensus on all the issues involved and (ii) under Italian civil procedural law it is also not possible to directly quote doctrine in civil proceedings, making it more difficult to use proposals for implementation formulated by the doctrine.

B. Annex: Implementation Rules and Translations

It follows a non-official translation of the implementing rules carried out by Dr. Michele Casi and Denisa Docaj.

For a translation of the other rules of Italian civil procedural law relevant for the purposes of the regulations covered by the EFFORTS Project reference can be made to the *Commentary on the Italian Code of Civil Procedure*, ed. Oxford University Press, by GROSSI and PAGNI, 2010.

L. 7 luglio 2016, n. 122, Art. 8	(*non-official translation*)
Disposizioni in materia di titolo esecutivo europeo	**Rules on the European enforcement order**
1. L'autorità che ha formato l'atto pubblico è competente al rilascio di ogni attestato, estratto e certificato richiesto per l'esecuzione forzata dell'atto stesso negli Stati membri dell'Unione europea.	1. The authority that issued the authentic instrument is competent to issue the certificates and abstracts necessary to proceed with enforcement of the authentic instrument in another Member State.
2. In ogni caso in cui l'autorità che ha formato l'atto pubblico sia stata soppressa o sostituita, provvede l'autorità nominata in sua vece o che sia tenuta alla conservazione dei suoi atti e al rilascio delle loro copie, estratti e certificati.	2. In any case, if the authority that issued the authentic instrument has been deleted or replaced, for the purposes of §1 it is competent the authority nominated as replacement or the authority that is competent to preserve acts or furnish copies of the acts of the deleted/replaced authority.

D. Lgs. No. 152/2020	(*non-official translation*)
Art. 1 **Disposizioni generali** 1. Ai procedimenti previsti dal regolamento (UE) n. 655/2014 del Parlamento europeo e del Consiglio, del 15 maggio 2014, che istituisce una procedura per l'ordinanza europea di sequestro conservativo su conti bancari al fine di facilitare il recupero transfrontaliero dei crediti in materia civile e commerciale, di seguito «regolamento», e dal relativo regolamento di esecuzione (UE) n. 2016/1823 della Commissione, del 10 ottobre 2016, di seguito «regolamento di esecuzione», si applicano le disposizioni per l'adeguamento della normativa nazionale di cui al presente decreto. Ai medesimi procedimenti si applicano altresì, in quanto compatibili con le disposizioni del predetto regolamento e del regolamento di esecuzione, le norme contenute nel libro III e nel libro IV, titolo I, capo III, del codice di procedura civile.	Art. 1 **General provisions** 1. Implementing rules contained in the present decree are applicable to the civil proceedings under Reg. (EU) No 655/2014 of the European parliament and of the Council, of 15 May 2014, establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, hereinafter "regulation", and the connected Commission implementing regulation (EU) No 1823/2016, of 10 October 2016, hereinafter "implementing regulation". To the same proceedings, they are also applicable, when compatible, rules contained in the Third Book and in the Fourth Book, First Title, Third Chapter of the Code of civil procedure.
Art. 2 **Credito risultante da atto pubblico** 1. Per la domanda di ordinanza europea di sequestro conservativo su conti bancari fondata su un credito risultante da atto	Art. 2 **Pecuniary right deriving from an authentic instrument** 1. For the application to obtain a European Account Preservation Order after the

pubblico è competente il giudice del luogo in cui l'atto pubblico è stato formato.	creditor has obtained an authentic instrument which requires the debtor to pay the creditor's claim, competence lies with the court of the place in which the authentic instrument was issued.
Art. 3 **Ricerca delle informazioni sui conti bancari** 1. Per l'acquisizione delle informazioni sui conti bancari di cui all'articolo 14 del regolamento è competente, quale autorità di informazione, il presidente del tribunale del luogo in cui il debitore ha la residenza, il domicilio, la dimora o la sede. Per le attività di ricerca delle informazioni di cui al presente articolo, quando il debitore non ha la residenza, il domicilio, la dimora o la sede in Italia, è competente il presidente del Tribunale di Roma. 2. Il presidente tribunale dispone la ricerca delle informazioni con le modalità telematiche di cui all'articolo 492-bis, secondo comma, primo e secondo periodo, del codice di procedura civile. 3. Quando le strutture tecnologiche, necessarie a consentire l'accesso diretto da parte dell'ufficiale giudiziario alle banche dati di cui all'articolo 492-bis del codice di procedura civile e a quelle individuate nell'elenco di cui all'articolo 155-quater,	Art. 3 **Obtaining information about bank accounts** 1. For the purposes of obtaining information about bank accounts under Art. 14 of the regulation competence lies, as designated information authority, with the president of the court of the place in which the debtor has her/his legal residence or domicile or place of abode or seat. For the purposes of obtaining information according to the present rule, when the debtor does not have her/his legal residence or domicile or place of abode or seat on Italy, competent lies with the president of the Court of Rome. 2. The president of the court orders that information is obtained through the telematics procedures set forth in Art. 492 *bis*, second paragraph, first and second sentences, of the code of civil procedure. 3. When the technological infrastructures enabling the court bailiff to access directly the databases mentioned in Art. 492 *bis* of the code of civil procedure and those

primo comma, delle disposizioni per l'attuazione del codice di procedura civile e disposizioni transitorie, non sono funzionanti, l'ufficiale giudiziario ottiene dai rispettivi gestori le informazioni nelle stesse contenute.	mentioned in the list contained in Art. 155 *quarter*, first paragraph, of the *disposizioni di attuazione* ([152]) of the code of civil procedure, are not functioning, the court bailiff obtains such information from the respective managing authorities of such databases.
Art. 4 **Ricorso avverso il provvedimento negativo** 1. L'impugnazione di cui all'art. 21 del regolamento avente ad oggetto la pronuncia del giudice singolo, che respinge in tutto o in parte la richiesta di sequestro conservativo di conti bancari, si propone con ricorso al tribunale in composizione collegiale. Del collegio non può fare parte il giudice che ha emanato il provvedimento impugnato.	Art. 4 **Appeal against a refusal to issue the Preservation Order** 1. Appeal under Art. 21 of the regulation against a decision of the judge rejecting, wholly or in part, the application for a Preservation Order, is filed via complaint ("*ricorso*") before the court sitting in a bench of three judges ("*composizione collegiale*"). The judge that issued the challenged decision is prevented to seat in such bench.
Art. 5 **Esecuzione** 1. L'ordinanza europea di sequestro conservativo su conti bancari, attuata in conformità alle disposizioni del capo 3 del regolamento, si esegue secondo le norme previste dall'articolo 678 del codice di	Art. 5 **Enforcement** 1. Enforcement of a European Account Preservation Order according to chapter 3 of the regulation is carried out under the rules set forth in Art. 678 of the code of civil

[152] Please refer to fn. 118 for a general translation and definition.

procedura civile per il pignoramento presso terzi successivamente alla notificazione o comunicazione al debitore di cui all'articolo 28 del regolamento. 2. La trasmissione degli atti di cui all'articolo 23, paragrafo 3, secondo comma, del regolamento è effettuata dal creditore. 3. Al creditore, che si è avvalso dell'ordinanza europea di sequestro dopo aver ottenuto una decisione giudiziaria o aver concluso una transazione giudiziaria in uno Stato membro dell'Unione, non si applica l'articolo 156, primo comma, delle disposizioni per l'attuazione del codice di procedura civile e disposizioni transitorie.	procedure for the *foreclosure* ([153]) of a third party's right after the service or communication under Art. 28 of the regulation. 2. Transmission of the acts according to Art. 3 §3 second align of the regulation is carried out by the creditor. 3. Art. 156 of the *disposizioni di attuazione* of the code of civil procedure does not apply to the creditor that took advantage of a European Account Preservation Order after obtaining in a Member State a judgment or court settlement.
Art. 6 **Ricorso avverso l'ordinanza europea di sequestro** 1. Per il procedimento di cui all'articolo 33 del regolamento è competente il giudice che ha emesso l'ordinanza europea di sequestro conservativo su conti bancari.	Art. 6 **Challenge against the European Account Preservation Order** 1. For the procedure under Art. 33 of the regulation competence lies with the court that issued the European Account Preservation Order.
Art. 7	Art. 7

[153] Please refer to §II.2 for a general translation and definition.

Opposizione all'esecuzione dell'ordinanza europea di sequestro 1. Per il procedimento di cui all'articolo 34 del regolamento è competente il tribunale del luogo in cui il terzo debitore ha la residenza o la sede.	**Opposition to the enforcement of the European Account Preservation Order** 1. For the procedure under Art. 34 of the regulation competence lies with the court in which the third party debtor has its legal residence or seat.
Art. 8 **Impugnazioni** 1. Il procedimento di cui all'articolo 37 del regolamento è disciplinato dalle disposizioni di cui all'articolo 669-*terdecies* del codice di procedura civile e il reclamo è presentato con l'apposito modulo di cui all'allegato IX del regolamento di esecuzione.	Art. 8 **Challenges** 1. The procedure under Art. 37 of the regulations is regulated by articles 669-*terdecies* and following of the code of civil procedure and the appeal shall be submitted using the appeal form contained in the annex IX of the implementing regulation.
Art. 9 **Rappresentanza legale** 1. Nei procedimenti di cui al capo 4 del regolamento le parti stanno in giudizio con l'assistenza di un difensore.	Art. 9 **Court representation** 1. In the proceedings provided for by chapter 4 of the regulation parties may appear in court with a registered counsel's assistance.
Art. 10	Art. 10

Contributo unificato per le controversie previste dal regolamento (UE) n. 655/2014	**Fixed registry fee ([154]) for claims under the Regulation (EU) No 655/2014**
1. Dopo il comma 6-quater dell'articolo 13 del testo unico delle disposizioni legislative e regolamentari in materia di spese di giustizia, di cui al decreto del Presidente della Repubblica 30 maggio 2002, n. 115, è aggiunto il seguente:	1. After paragraph 6 *quarter* of article 13 of the Consolidated Act on Legal Expenses for Court Proceedings, contained in the Presidential Decree No.115 of 20 May 2022, it is added the following paragraph:
«6-quinquies. Per le controversie di cui al regolamento (UE) n. 655/2014 del Parlamento europeo e del Consiglio, del 15 maggio 2014, che istituisce una procedura per l'ordinanza europea di sequestro conservativo su conti bancari al fine di facilitare il recupero transfrontaliero dei crediti in materia civile e commerciale, si applicano:	"6 *quinquies*. For claims under the Reg. (EU) No 655/2014 of the European parliament and of the Council, of 15 May 2014, establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters:
a) gli importi stabiliti dall'articolo 13, commi 1, lettera b), e 1-bis, per i procedimenti previsti dagli articoli 21 e 37 del regolamento (UE) n. 655/2014;	a) the sums set forth in article 13, paragraph 1, letter b), and 1 *bis*, are applicable for the procedures under Arts. 21 and 37 of the Reg. (EU) No 655/2014;
b) gli importi stabiliti dall'articolo 13, comma 3, per i procedimenti previsti dagli articoli 8, 33 e 35 del regolamento (UE) n. 655/2014;	b) the sums set forth in article 13, paragraph 3, are applicable for the procedures under Arts. 8, 33 and 35 of the Reg. (EU) No 655/2014;
c) gli importi stabiliti dall'articolo 13, comma 1, per i procedimenti previsti	c) the sums set forth in article 13, paragraph 1, are applicable for the procedures under Art. 34 of the Reg. (EU) 655/2014;

[154] Please refer to fn. 110 for a general translation and definition.

dall'articolo 34 del regolamento (UE) n. 655/2014; d) gli importi stabiliti dall'articolo 13, comma 1-quinquies, per i procedimenti previsti dall'articolo 14 del regolamento (UE) n. 655/2014.»	d) the sums set forth in article 13 paragraph 1 *quinquies* are applicable for the procedures under Art. 14 of the Reg. (EU) No 655/2014."