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

Project JUST-JCOO-AG-2019-881802

https://efforts.unimi.it

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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# EFFORTS Practice Guide for the enforcement in Italy of judgments, court settlements and authentic instruments under the Reg. (EU) No 1215/2012

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## Summary



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This Practice guide has been updated as of **15 September 2022**.

***List of abbreviations***

"It c.p.c." – Italian Code of Civil Procedure
"It c.c." – Italian Civil Code
"d.P.R." – Regulatory Decree of the President of the Italian Republic
"d.l." – Urgent or Extraordinary Law Decree (adopted by the Government)
"d.lgs." – Delegate Legislative Decree (adopted by the Government)

Laws and other legislative or regulatory acts, such as d.P.R.s, are cited "[*act*] no. [*number*]/[*year of issuance*]".

Regulation (EU) no 1215/2012, Brussels I bis will be referred to as "BI bis Reg.".

# I. Outgoing

When Italy is the Member State of origin

## *A. Outgoing judgments*

When a party wishes to invoke a judgment or seeks its enforcement in another Member State, s/he shall produce certain documents, depending on each specific case, that shall be obtained in the Member State of origin, according to the applicable procedures and rules: (1) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (2) the certificate issued pursuant to Art. 53, either in the standard version or with mandatory information (see Art. 42(1)(b) and Art. 42(2)(b)-(c) BI bis Reg.); (3) a translation or a transliteration of the contents of the certificate or a translation of the judgment.

1. **How and when to obtain a copy of the judgment which satisfies the conditions necessary to establish its authenticity. *See Art. 37(1)(a) and Art. 42(1)(a)-(1)(b) BI bis Reg***.

In Italy, it is possible to request a copy of any judicial act, document or order. The request should be filed at the competent desk of the judicial office before which the act is lodged (for the localization, see the Ministry's website Map). In general, the right to obtain a copy belongs to the parties to the proceedings to which the act belongs and to anyone else who is interested.

Copies may be of different types.
(i) *Plain*: they are requested for the sole purpose of knowing the content of the document. Copies obtained in this way have no legal value, lacking the certification of conformity with the original.
(ii) *Authentic*: they are certified as being in conformity with the original and therefore have the same legal value as the original document.
(iii) *Enforceable* ([1]): for judgments and other measures of the judicial authority that are final or provisionally enforceable. They are endorsed with the so-called "enforcement formula". They may be requested only by the party in whose favour the order was

[1] Pursuant to art. 1 par. 12 lit. a) of Law no. 206/2021 on the reform of the civil process, it is provided that the legislative provisions referring to the enforcement formula and the delivery in a form of execution are repealed; in order to be valid as an enforcement title, judgments and other judicial measures, as well as authentic instruments, it is sufficient that they are made in a certified copy conforming to the original. This provision has been implemented in the draft legislative decree No. 407/2022 transmitted to the Chamber of Deputies on 2 August 2022, in Art. 3 co. 34.

pronounced (the winning party) or by her/his successors. No more than one enforceable copy of the same document may be issued to the same party.

Plain copies are subject to copy fees (Art. 267 d.P.R. no. 115/2002). Certified copies are subject to copy fees and, in addition, to certification fees (Art. 268 d.p.r. no. 115/2002). Amounts are listed in the Annex to the d.P.R. 115/2002 (here the table published by the *Tribunale* of Milan) and, as of June 2022 ([2]), they may vary from 1.00 to 23.00 Euros for copy fees (plus 9.00 Euros for every other 100 pages) plus approximately 10.00 Euros for certification fees. Payment of such fees is made by means of a tax stamp ("*marca da bollo*") applied on the request or on the original.

However, it should be noted that, in civil proceedings, copies of judgments and court orders may also be downloaded from the online court file and certified as conforming to the original by the lawyer with power of attorney who downloaded the copy ([3]). Such certification is regulated by Art. 16-bis of Law Decree no. 172/2012 and consists of a declaration of conformity of the copy with the computerised original under the responsibility of the lawyer, who is considered a public authority in this respect (Art. 16-undecies of Law Decree no. 172/2012). This declaration of conformity is exempt from copying and certification fees.

[2] According to Art. 274 d.p.r. 115/2002, the measure of the amounts of the copy fee and the certificate fee is adjusted every three years by executive decree of the Ministry of Justice, in agreement with the Ministry of Economy and Finance.

[3] The formalities relating to the authentication of judgments are governed by the law of the Member State of origin. As regards, in particular, the certification of authenticity carried out by the lawyer pursuant to Article 16-bis of Law Decree No. 172/2012 when Italy is the Member State of origin, this method of authentication has been explicitly mentioned among the appropriate ones by leading scholars: " Art 37(1)(a) requires the interested party to produce 'a copy of the judgment which satisfies the conditions necessary to establish its authenticity'. The provision must be understood to refer to the conditions provided for in the legal order of the country of origin. Normally, a copy of a judgment is legally considered to be authentic if it bears a seal or stamp issued by the particular authority designated to this effect by the law of the State of origin. However, where less formal means of authentication are provided for in that State, these are sufficient to establish the authenticity of the judgment for the purposes of Art 37 in all Member States, regardless of whether, in the Member State addressed, authentication is subject to more rigorous standards. *Thus, for example, the electronic copy of an Italian judgment authenticated by the lawyer of one of the parties in the way prescribed by Art 16bis of the Italian Decree-Law No 179/2012, should be deemed to satisfy the conditions necessary to establish its authenticity in all other Member States, including in those Member States where only court clerks have the power to issue certified true copies of judicial decisions*.", DICKINSON-LEIN, The Brussels I Regulation Recast, Oxford, 2015, p. 393 (*emphasis added*).

*Please note that acts of the judicial authority are also subject to a registry tax. The clerk is responsible for the application for registration to the competent territorial office, which taxes the act and displays the amount on the Revenue Authority's website. The parties can access this information using the online service for calculation of amounts for the taxation of judicial acts, available on the Revenue Authority's website, and print out the completed payment form to make such payment. As a general rule, subject to exceptions, the parties are jointly liable for such payment.*

2. **How and when to ask for the certificate issued pursuant to Article 53. *See Art. 37(1)(b) and Art. 42(1)(b)-(2)(b) BI bis Reg***. The certificate attached in the Annex I, concerning a judgment in civil and commercial matters, contains the indication of the court of origin (name, address, and other relevant information), of the parties (identification of the claimant and of the defendant) and information regarding the judgment (date and reference number, whether the judgment was rendered in absentia, information about the service of the document instituting the proceedings on the defendant, operative part of the judgment, information about the type of obligation - monetary or otherwise - contained in the judgment, judgment ordering an interim/provisional measure, information about the costs and interest applicable).

There is no official information on the national authority competent to issue the certificate under Art. 53 BI bis Reg. in Italy. The certificate should be issued by the same court to which belongs the judge that issued the judgment; however, there is no official information concerning the desk or office and the forms to file such request. Equally, there is no official information concerning applicable taxes or court fees.

However, it can be reported that as a matter of praxis the *Tribunale* of Milan accepts applications for a BI bis certification at the desk of the clerk of the court competent for national summary orders "*decreto ingiuntivo*", and no taxes or court fees are charged. Also, it can be reported that as a matter of praxis at the *Tribunale* of Naples the request shall be presented to the same judge that issued the judgment to be certified, i.e. to the relevant clerk.

2 *bis*. **Specific information for the enforcement**. For the purposes of enforcement in a Member State of a judgment given in another Member State, the certificate shall certify that the judgment is enforceable and contain an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest. Furthermore, when the judgment orders a provisional, including protective, measure the

certificate shall contain a description of the measure and certify that the court has jurisdiction as to the substance of the matter and that the judgment is enforceable in the Member State of origin.

**Arts. 2(a) and 42(2)(c): provisional measure ordered without the defendant being summoned to appear**. When a provisional, including protective, measure was ordered without the defendant being summoned to appear, the creditor shall provide the competent authority of the Member State addressed also with proof of service of the judgment.

There is no official information on the procedure to request a rectification in case the certificate under Art. 53 BI bis Reg. does not contain specific information needed for the enforcement. Probably, the parties shall submit the request for rectification to the same office/desk under the procedure of Art. 53 BI bis (see §(2) above).

Generally, parties may file a request for rectification of material or calculation errors of the court following the procedure set forth by Arts. 287 ff. It c.p.c. However, the inclusion of the request for rectification of incomplete or erroneous certificates under Art. 53 BI bis Reg. in the scope of application of such procedure under Arts. 287 is not officially referred to in implementation acts (firstly, the communication of the Italian government). In all likelihood, also in this case, the parties will be invited to submit the request for rectification to the same judicial office, according to the procedure of Art. 53 BI bis.).

Under Italian law, a provisional measure is ordered without the defendant being summoned to appear only in exceptional cases, as opposed to the standard procedure for issuing provisional measures, which dictates that the motion of the claimant is served on the defendant for her/his appearance. According to Art. 669 *sexies* It c.p.c., the judge may issue the provisional measure without the defendant being summoned to appear only in the event that her/his summoning may "undermine the implementation of the measure". In such cases, the judge issues the provisional measure with a decree attaching to it the date of the hearing of the parties (which shall take place no later than fifteen (15) days from the issuance of the measure) and the order to serve the decree on the defendant. It is the creditor who bears the duty to serve the provisional measure on the defendant no later than eight (8) days after its issuance. Proof of such service depends on the rules on service followed in each case.

2 *ter*. **Enforceability of the judgment**. A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

**Art. 44(2): suspension of the enforceability**. The competent authority in the Member State addressed shall, on 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.

**Art. 51(1): ordinary appeal against an enforceable judgment**. The court of the Member State addressed to which an application for refusal of enforcement is submitted may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired.

As a general premise, under Italian procedural law, creditors have different options, procedurally speaking, to obtain an enforceable decision, depending on the right that is being demanded and on the conditions set for each different procedure. Notwithstanding the foregoing, a judgment of the court is enforceable when it contains an order to perform an obligation (declaratory judgments, which contain the bare assessment of the rights and obligations of the parties, or constitutive judgments, which modify the substantive legal reality, do not in themselves pose this necessity and, therefore, it is more correct to speak of effectiveness tout court than of enforceability, with the clarification that this effectiveness becomes apparent only when the judgment becomes final) ([4]).

Under such premise, it should also be pointed out that the conditions for the enforceability of the decision may vary depending on the specific procedure that is being followed. Thus, the following considers the ordinary procedure for a judgment containing an order to perform a certain obligation (payment of a sum of money, delivery of certain goods, etc.).

[4] Notwithstanding the fact that declaratory or constitutive judgments are not enforceable, the ruling of the court regarding costs of the proceedings, even if referring to such judgements, shall be qualified as a payment order and, as such, is provisionally enforceable as all the other orders of the court to perform a certain obligation. Therefore, costs of the proceedings are immediately recoverable by the creditor as the ruling (order to pay costs) is automatically provisionally enforceable from the moment in which the judgment is issued.
In the event that a constitutive judgement also contains, in addition to the principal measure that ascertains and orders the legal modification sought, subordinate measures that are condemning in nature, the latter will as a rule be considered provisionally enforceable, even though the principal constitutive measure will become effective only when it has become res judicata; exceptions to this general rule are those condemning measures that are linked to the principal constitutive measure by a contractual link that cannot be altered by the recognition of the provisional enforceability of the subordinate condemning measure; see Cass. civ., sez. un., 22/02/2010, n. 4059, in *Rivista di diritto processuale*, 2011, p. 171).

The general rule under Art. 282 It c.p.c. states that judgments that order performance are provisionally enforceable by the time they are issued, i.e. before they acquire the stability of *res judicata* ([5]).

Provisionally enforceable judgments are subject to ordinary remedies ([6]), i.e. appeals (Arts. 339 ff. It c.p.c.), the plea to the *Corte di Cassazione* (*ricorso per cassazione*) (Arts. 360 ff. It c.p.c.), the motion for a revision of the judgment (*revocazione ordinaria*) (Arts. 395 ff. It c.p.c.) and the motion for a ruling of the *Corte di Cassazione* on the competence to hear the claim (*regolamento di competenza*) (Arts. 42 ff. It c.p.c.). The time limits for each appeal may vary, but are generally 30 or 60 days in the case of service of the judgment at the request of a party or 6 months from publication (i.e., from filing with the court registry) in the case of failure by the prevailing party to serve the judgment on the losing party ([7]).

The provisional enforceability of a judgment may be suspended upon motion of a party in case a challenge is filed against it. The provisional enforceability of a judgment of first instance may be suspended by the appellate court, if it finds that there are serious and compelling grounds, only upon application of the losing party and does not originate from the challenge itself ([8]). Similarly, the filing of the plea to the *Corte di*

[5] This means that, under Italian procedural law, the creditor may proceed with forced execution on the basis of a first instance or even second instance judgment, notwithstanding the pendency of the time limit for ordinary appeal. It is no coincidence that jurisprudence has affirmed (see Cass. civ. 30.11.2012, no. 21385 and Cass. civ. 16.11.2021, no. 34539, both in CED Cassazione) that the debtor may spontaneously comply with the (only) provisionally enforceable judgment without implying an act of implicit renunciation of the right to appeal against the judgment. Indeed, such spontaneous performance is justified by the debtor's interest in avoiding enforcement and cannot therefore be qualified as an act of (implicit) acceptance of the content of the judgment.

[6] Other than the ordinary appeals, judgments are subject to extraordinary remedies, i.e. the extraordinary motion for a revision of the judgment (*revocazione straordinaria*) (Arts. 395 ff. It c.p.c.), in cases of fraudolent behaviour of the parties or of the judge, evidentiary fraud or documents concealed, and the extraordinary motion for opposition of third parties (*opposizione di terzo ordinaria e revocatoria*) (Arts. 404 It c.p.c.).

[7] There are some exceptions to this general rule: e.g., in the case of a judgment that orders performance issued pursuant to Art. 702-ter It c.p.c. at the end of summary ordinary proceedings, the time limit for appeal is 30 days from the date of communication by the clerk of the court or, if earlier, from the date of service at the party's request.

[8] The power of the appellate court to stay the enforceability of a judgment is exercised, upon motion of any party, “where there are compelling grounds, including the possibility of the insolvency of one of the parties” (Art. 283 It. c.p.c.). Stay of the enforceability may regard the judgment as a whole or its parts and may be subject to the deposit of a security. If the motion of

*Cassazione* does not automatically suspend the provisional enforceability of the judgment; in such cases (Art. 373 It c.p.c.) the same court that issued the judgment, upon motion of a party, has the power to suspend the enforcement or alternatively order the deposit of a security, if it finds that the enforcement may cause serious and irrecoverable danger to the debtor ([9]). The procedure for the suspension of the enforcement pending a motion for the revision of the judgment (*revocazione ordinaria*) mirrors the one laid down in Art. 373, with the exception that, in this case, the competent court is the same court that hears the motion (Art. 401 It c.p.c.). In summary, judgments with orders to perform are provisionally enforceable unless a motion to stay their enforceability is filed together with a challenge/remedy against such judgment. The procedure and the conditions to grant such measure vary depending on the court competent to receive the plea or the motion.

2 *quater*. **Art. 55: judgment ordering payment of a penalty**. A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Under Italian procedural law, the payment of a penalty as a way to compel performance of a court order is applicable to decisions that order performance other than monetary claims (i.e., obligations to deliver or release certain goods and personal ([10]) or fungible obligations to do or avoid doing something). In such cases, according to Art. 614 *bis* It c.p.c. the court may, upon request of the creditor, determine an amount of money due for each subsequent non-performance or violation of the order, or delay in the performance, unless it is unfair.

the party to stay the enforceability is inadmissible or manifestly unfounded, the court may issue a penalty order from 250.00 to 10,000.00 Euros; such order may be later waived with the judgment that rules on the appeals.

[9] The party must file a motion to the competent court. An hearing is scheduled by the court with a decree, and such decree must be served on the other party. In exceptional cases, the court may grant immediate suspension with the same decree, subject to further scrutiny at the following hearing.

[10] These are the obligations to perform that relate to doing something or abstaining from doing something, which may be performed only by the debtor her/himself. They are the typical orders assisted by a penalty, as it would be the only way to compel performance. While other obligations to do or destroy something (also known as “fungible obligations to do or abstain from doing something”) may also be enforced asking a third party to perform at the expense of the debtor.

The factors that the judge should take into account in determining the amount of payment are listed in the second comma of Art. 614 *bis* It c.p.c.: the value of the claim, the nature of the performance, the damages (actual or expected) and "any other relevant circumstance".

In general, creditors should be aware, as of 30 June 2022, that (i) the request for a penalty order shall be filed to the court together with the original claim, as the judge of the enforcement proceedings does not have the power to issue such measures afterwards, and that (ii) the contents of the measure are hardly predictable, as the rule contained in Art. 614 *bis* refers to a variety of factors to be taken into account and has been introduced only in 2009. However, it must be noted that the law for the reform of the civil process, no. 206/2021, in Art. 1 co. 12 lett. o) states that the reform shall, firstly, set the criteria for determining the amount as well as the duration of the measures and, secondly, also confer on the judge of the enforcement the power to order such measures when the enforcement title is different from a judgment that orders performance or when the measure has not been requested to the judge that issued that judgment. This provision has been implemented in the draft legislative decree No. 407/2022 transmitted to the Chamber of Deputies on 2 August 2022, in Art. 3 co. 44.

3. **How and when to obtain a translation or a transliteration of the contents of the certificate or a translation of the judgment.** ***See Art. 37(2) and 42(3)-(4) BI bis Reg***.

**Translation or transliteration of the contents of the certificate.** The court or authority before which the judgment is invoked or the competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Art. 57, a translation or a transliteration of the contents of the certificate ([11]).

**Translation of the judgment.** The court or authority before which the judgment is invoked may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation. In addition, the competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation. ([12])

[11] Please note that the translation or the transliteration of the certificate issued pursuant to Art. 53 shall be into the official language of the Member State addressed under Art. 57(1) as well as any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept under Art. 57(2) BI bis Reg.
[12] Note that it is not specified whether the translation should be requested in the home Member State or in the requested Member State: both options should be allowed.

Apart from the general rules and practices that will be dealt with just below, there are no official indications concerning the "how and when" to obtain a translation of the certificate or of the judgment for the purposes of cross-border claim enforcement under the BI bis Reg.

In Italy, an official translation for judicial purposes is obtained through the sworn translation of an expert, known as "*asseverazione*" (asseveration or affidavit). Affidavits of the translation of a document are required in all cases where an official and sworn statement by the translator is needed that the translated text corresponds to the original text. The translator takes responsibility for the translated text by signing an oath. The translator must be different from the interested party and her/his relatives or kins. S/he may be either a person entered in the registers of the Court and the Chamber of Commerce or a non-registered person. S/he must appear in person at the competent office desk with a valid identification document to take the oath.

According to Art. 1 co. 1 of the Annex A, Part I of the d.P.R. no. 624/1972 ("Stamp Tax Regulation") a 16,00 Euros tax is due for every four pages of the translated document, unless the law declares that certain acts are exempt. This tax is paid by way of a tax stamp.

Other costs vary depending on the fee due to the expert translator that performs the translation.

For other information you may visit the website of the *Tribunale* of Turin and of the *Tribunale* of Verona, which have a dedicated page.

## *B. Outgoing authentic instruments and court settlements*

### Authentic instruments

When a party seeks the enforcement of an authentic instrument in another Member State, s/he shall produce (1) an enforceable authentic instrument that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. **How and when to obtain an authentic instrument which satisfies the conditions necessary to establish its authenticity.**

1 *bis*. **Enforceability of the authentic instrument**. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 58).

**Art. 44(2): suspension of the enforceability**. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the authentic instrument is suspended in the Member State of origin.

The notion of "authentic instrument" is established in Arts. 2699-2700 It c.c., which state that an authentic instrument is a document drawn up by a notary or other public authority authorised to make it official (literally "*give it public faith*") in the place where the instrument is formed. The authentic instrument constitutes full proof, up to a claim of forgery, of the source of the document from the public official who drew it up, as well as of the declarations of the parties and the other facts that the public official certifies as having taken place in her/his presence.

Pursuant to Art. 474 co. 2 no. 3 It c.p.c, the instruments drawn up by a notary public or by another public authority that, by provision of law, has the power to attribute public faith to the document drawn up, are enforceable when their content contemplates and documents a specific obligation to perform a certain obligation (payment of a sum of money, delivery of movable property, release of immovable property). For example, under Italian law, a loan contract concluded before a notary is, under the conditions laid down by statute, an enforceable public deed, i.e. it is an enforceable title in respect of the obligation to repay the borrowed sum contained therein. It should be noted that

according to the prevalent opinion ([13]), under Italian law, such instruments do not grant the right to enforce an obligation to do or abstain from doing something, even if such obligation is not strictly personal (also known as "fungible obligations to do or abstain from doing something" that may be performed by a third party under the condition that the debtor bears the related costs).

All the titles for the enforcement, including authentic instruments, shall be endorsed with the so-called "enforcement formula" ([14]). This formality consists in the application of the formula displayed under Art. 475 It c.p.c. Such endorsement shall be requested to the same public authority which issued the authentic instrument. It is forbidden to endorse with this formula more than one copy of the enforcement title without just cause (Art. 476 It c.p.c.). Therefore, a valid authentic instrument endorsed with the enforcement formula is a valid enforceable title.

When an authentic instrument is brought up as a title for the enforcement, the defendant may petition the court for the suspension of the enforcement proceedings, according to the general rules (please see the Annex on Enforcement). Prior to the commencement of the enforcement, the debtor may apply for the suspension of the enforceability of the authentic instrument by filing an objection to a writ of execution (i.e. an objection to the enforcement before the first act of enforcement).

2. **How and when to ask for the certificate issued pursuant to Article 60 for authentic instruments**.

According to Art. 8 of the law no. 122/2016, the authority competent to issue the certificate under Art. 60 BI bis is the same authority that issued the authentic instrument ([15]). For example, if the authentic instrument is drawn up by a notary, the

[13] See BOVE, Il titolo esecutivo, in (BALENA-) BOVE, *Le riforme più recenti del processo civile*, Bari, 2006, p. 130. For further indications on the issue, see E. FABIANI-L. PICCOLO, *Atto pubblico ed esecuzione forzata in forma specifica degli obblighi di fare e non fare*, Studio 46/2021 of Consiglio Nazionale del Notariato, p. 20 ff. in www.notariato.it.

[14] However, such formality shall be removed by the reform of the civil process, also regarding authentic instruments. See footnote no. 1.

[15] Parties should take into account that the index of said rule refers to the certification of the "European enforcement order" (literally "*titolo esecutivo europeo*"). However, such wording should not be considered as ascribing to the rule a scope limited to the EEO certification. Rather, relevance could be given to the wording of the rule itself, which states that such authority is competent for "any certificate, extract and attestation" concerning an authentic instrument for the purposes of its cross-border enforcement within the EU.

request shall be presented to the same notary. No other official indications are given on the time to make such request or on the costs or on the procedural rules.

## Court settlements

When a party seeks the enforcement of a court settlement in another Member State, s/he shall produce (1) an enforceable court settlement that satisfies the conditions necessary to establish its authenticity in the Member State of origin and (2) the certificate issued under Art. 60.

1. **How and when to obtain a court settlement which satisfies the conditions necessary to establish its authenticity.**

> 1 *bis*. **Enforceability of the court settlement**. A court settlement which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required (Art. 59).
>
> **Art. 44(2): suspension of the enforceability**. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the court settlement is suspended in the Member State of origin.

It should be stated as a premise that the parties may reach a settlement even without the involvement of the court, within the context of the ADR mechanisms ([16]). Thus, the parties to a settlement concerning a claim in civil and commercial matters should first consider that only *court* settlements would be enforceable abroad under the BI bis Reg.

Considering the general rules for ordinary civil proceedings ([17]), Art. 185 It c.p.c. states that the judge may, under motion of both parties, summon the parties personally for their hearing and propose a settlement of the claim. If the parties reach a settlement agreement, the court drafts official minutes of the agreement and such is an enforceable title. The judge may also, without the summoning of the parties, according to Art. 185 *bis* It c.p.c., present a settlement suggestion that takes into account the nature and the value of the claim and the complexity of the issues to be decided in the final judgment. The parties may take or refuse to take such settlement offer but they cannot object the appointment of the judge for her/his removal on the basis of her/his offer.

[16] Two main ADR mechanisms exist for claims concerning civil and commercial matters, which are (i) the *mediation procedure* and (ii) the *lawyers-aided negotiation*. Both may be optioned by the parties to civil proceedings but in certain cases they are mandatory, under penalty of inadmissibility of the claim.

[17] Each procedure for civil claims may regulate differently the settlement procedure.

When a court settlement is brought up as a title for the enforcement, the defendant may petition the court for the suspension of the enforcement proceedings, according to the general rules (*please see the Annex on Enforcement*). Prior to the commencement of the enforcement, the debtor may apply for the suspension of the enforceability of the court settlement by filing an objection to a writ of execution (i.e. an objection to the enforcement before the first act of enforcement).

2. **How and when to ask for the certificate issued pursuant to Article 60 for court settlements**.

There is no official information on the national authority competent to issue the certificate under Art. 60 BI bis Reg. in Italy. Equally, there is no official information on applicable taxes or fees.

According to §(I)(A)(2) above with respect to the request for certification under Art. 53 BI bis, the practice of each court is different. Since the request for certification of a court settlement is a request that, like the request under Art. 53 BI bis, relates to a judicial document, the applicant could consider the same practice for one and the other request to be applicable, except that there is no official guidance and no certainty as to the procedure to be followed.

## II. Incoming

When Italy is the Member State addressed

When a party wishes to invoke a judgment in the Member State addressed or seeks its enforcement, s/he shall invoke it before the courts of the Member State addressed or follow the procedure for the enforcement of judgments of the Member State addressed. The procedure for the enforcement of claims in Italy is dealt with in the Annex for Enforcement. In addition to national rules, the Regulation provides that enforcement must be preceded by (1) service of the judgment and of the certificate. Furthermore, the creditor may avail her/himself of: (2) the right to apply for a decision that there are no grounds for refusal of recognition as referred to in Art. 45; (3) the power to proceed to any protective measures which exist under Italian law; (4) the request for adaptation of a measure or an order which is not known under Italian law. On the other hand, the person against whom enforcement is sought (or, in case of the refusal of recognition, any interested party) may fight the recognition or the enforcement of the judgment issued in another Member State, either filing a claim for opposition to enforcement under national rules (which also will be dealt with in the Annex "Enforcement procedure") or (5) filing a claim for refusal of recognition or enforcement, also with the power to apply for the measures under Art. 44(1). The person against whom enforcement is sought may also (6) apply for the suspension of the enforcement proceedings pursuant to the grounds of suspension provided for by national law (to the extent that they are not incompatible with the Regulation, see Art. 41(2)) or in cases where the enforceability of the judgment has been suspended in the Member State of origin in accordance with Art. 44(2) BI bis Reg.

1. **Service of the judgment and the certificate prior to the enforcement**. Alongside the conditions and the procedural steps applicable under the law of the Member State addressed, the Regulation requires the creditor to take a number of steps before proceeding with the enforcement. First, the certificate issued pursuant to Art. 53 BI bis Reg. shall be served on the person against whom the enforcement is sought prior to the first enforcement measure (Art. 43(1)). The certificate should be served on that person within a reasonable time before the first enforcement measure (Whereas (32)). *(On how to perform service please see the following indent)*.

> Generally, service of the certificate and of the judgment before the enforcement takes place could be classified as cross-border service, i.e., "service from one Member State to another Member State", according to the definition given by the Service Regulation ([18]), applicable from 1 July 2022. However, in case the person against whom recognition or enforcement is sought is domiciled in the Member

[18] Whereas (6) of the 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).

State of enforcement, such service could be out of the scope of application of the Service Regulation and therefore national rules on service could be applicable.

Enforcement proceedings in Italy are preceded by service of the enforcement title and of the writ of execution ("*precetto*"), which is an act drafted by the creditor that contains a request to the debtor to perform the obligation resulting from the enforcement order with a warning that, failing this, enforcement will be carried out. The deadline for such performance cannot be lower than ten (10) days. Then, if the request is not followed by spontaneous performance, the creditor may officially start the enforcement proceedings carrying out the first act of the enforcement, which varies from one procedure to the other.

With that being said, it can be clarified that, technically speaking, the first act of the enforcement is not the writ of execution, served on the debtor; such writ, in fact, is merely anticipating the incoming beginning of the execution. Nonetheless, from the moment the writ of execution is served, the debtor may file an opposition to the enforcement (which technically takes the form of an opposition to the writ, under Art. 615 co. 1 It c.p.c., but has a comparable object), challenging the right of the creditor to proceed with the enforcement, which is being threatened by virtue of the writ of execution.

Afterwards, failing spontaneous compliance, the first act of the enforcement would be, depending on the type of enforcement procedure (which depends, in turn, on the nature of the obligation to be enforced):

(i) the *pignoramento* (foreclosure or enforcement seizure), consisting of a restriction placed on the goods of the debtor, performed by the enforcement agent ([19]), for the enforcement of an *obligation to pay a sum of money*;
(ii) the act of access of the enforcement agent, without further warning, into the debtor's premises for the research of *movable goods to be forcefully delivered to the creditor* (Art. 606 It c.p.c.);
(iii) the service of the notice of the enforcement agent to the debtor for the *release of an immovable good* (Art. 608 It c.p.c.);
(iv) the lodging of the creditor's motion before the judge of the execution for establishing the procedure for the enforcement of an *obligation to do or abstain from doing something* (Art. 612 It c.p.c.).

[19] Depending on the type of goods (movable, immovable, certain movable or credits) the forms in which the *pignoramento* is carried out vary.

With that being said, the issue at stake concerns the service of the decision and of the certificate prior to the enforcement under the BI bis Reg. There are no official rules relating specifically to service of the certificate and of the decision under the BI bis Reg. However, according to Art. 479 It c.p.c., service of the writ must be performed together with (or at least not before than) the service of the title upon which the enforcement is based (i.e., the judgment, the authentic instrument, or another enforcement title). Therefore, it could be said that service of the certificate, together with the decision, authentic instrument or court settlement, must occur at least when the writ is served (and even before, if the creditor decides so), and such service (of the writ) takes place at least ten (10) days prior from the first act of the enforcement.

The ten (10) days mandatory period that elapses from the service of the writ to the first act of the enforcement may be shortened only upon specific authorization of the judge under Art. 482 It c.p.c., considering that the delay may jeopardize the enforcement. If the judge authorizes a shorter deadline for the enforcement, the authorization decree must be served on the debtor together with the writ.

In the event that the law applicable to the service of the certificate and of the decision is Italian law, Art. 479 It c.p.c. states that such service shall be effectuated according to general rules (Arts. 137 ff. It c.p.c.) and it shall be performed on the debtor personally, notwithstanding previous representation by a lawyer. Also, according to Art. 480 It c.p.c. the writ must be served on the debtor personally, following general rules on service.

1 *bis*. **Language**. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, s/he may request a translation *of the judgment* ([20]) if the judgment is not written in or accompanied by a translation into the official language of the Member State in which s/he is domiciled or a language that s/he understands (Art. 43(2)).

Where such translation is requested, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought (Art. 43(2)). *Please refer to section (3) below*.

[20] *Creditors should be aware that translation of the certificate, unlike the translation of the judgment, is not strictly required at this stage of the enforcement but may be requested just afterwards by the enforcement authorities, according to Art. 42(3)*.

In general, according to Art. 122 It c.p.c., civil proceedings take place in Italian. It is established also that when a party is personally heard and such party speaks another language, the judge may appoint an interpreter.

However, other languages are accepted as official languages of the proceedings in certain districts:

(i) Art. 1 lett. b) and c) of the d.P.R. no. 574/1988 establishes that German is equivalent to Italian, as official language of the proceedings, in the district of Bolzano (thereby including first instance proceedings as well as appellate proceedings);
(ii) Art. 38 of the Constitutional Law no. 4/1948 states that in the Aosta district French is equivalent to Italian (also regarding the language of court proceedings).

Therefore, when it comes to the translation of the judgment in an official language of the domicile of the debtor, Italian, German and French shall be taken into account (with the obvious note that a translation into Italian would always suffice relating to the official language translation option under Art. 43(2) BI bis Reg.). However, considering the right to request a translation in a language that the debtor understands, it must be noted that other languages are recognized in the Italian territory. For example, under Art. 3 of the Constitutional Law no. 1/1963, Slovenian linguistic groups in the Fruli-Venezia Giulia region are safeguarded and the law recognizes equal rights to all, notwithstanding the different language affinities.

Please note that regarding Art. 57(2), the language accepted for the translation of the forms is Italian, according to the Government's Communication under Art. 75 BI bis Reg. ([21]).

1 *ter*. **Art. 41(3): authorized representative in the Member State addressed**.

The writ of execution (Art. 480 It c.p.c.), which – as already seen in §(II)(1) – precedes the actual enforcement proceedings, may be served on the debtor by the creditor personally. The creditor has the right, but is not obliged to, be assisted by a lawyer. However, s/he takes responsibility for any irregularity in the writ and its service. In particular, the writ is void if it does not contain the indication of the parties, of the date in which the title for the enforcement has been served (if such service occurred before the service of the writ) or the transliteration of the title when this formality is required by the law (Art. 480 co. 2 It c.p.c.). Other irregularities may include, under Italian law,

[21] For the contents of such document please visit the e-justice Portal here.

forexample the lack of a warning that the debtor may conclude a settlement agreement with the creditors. Also, the creditor that decides to proceed personally should take into account that the writ of execution expires if the first act of the enforcement proceedings does not take place within ninety (90) days from service of the writ (Art. 481 It c.p.c.).

In conclusion, it must be noted that an authorized representative is not strictly requested but, as already noted, the party needs to *choose a domicile* within the court district (Art. 480 co. 3 It c.p.c.) ([22]), which could make it substantially a requisite – so to say – even before the enforcement procedure has effectively begun.

On the contrary, from the first act of the enforcement proceedings the creditor shall be represented by a lawyer. This is a consequence of the general rules of civil procedure (Art. 87 It c.p.c.) and it applies irrespective of the creditor's nationality. This rule does not apply to the debtor, which needs not be represented by a lawyer, unless s/he wishes to interact with the procedure and lodge, for example, an opposition to the enforcement or contest irregularities of the acts of the enforcement ([23]).

2. **Protective measures**. An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Lacking any official indication on the protective measures under Art. 40 BI bis Reg., it could be stated that the following three may be asked by the creditor: (i) a lien; (ii) a conservative seizure; (iii) an enforcement seizure.

(i) Any judgment that orders performance (which, under Italian law, is opposed to declaratory judgments and constitutive judgments) carries with it the right to put a lien

[22] It should be noted, inter alia, that the failure to indicate domicile in this way has consequences for the competent court for opposition to the writ (Art. 480 co. 3 second part It c.p.c.).
[23] It should be noted, however, that as a matter of practice there are some cases in which the exercise of powers of defence by the debtor without the assistance of a lawyer is admitted, such as in the case of the request for the exercise of ex officio powers by the enforcement judge without lodging an opposition (e.g. as to the unseizability under Art. 545 It c.p.c. of the sums or the eligibility of a document to effectively constitute an enforcement title).

on the debtor's properties (Art. 2818 It c.c.) ([24]). Such lien is effectuated putting a notice on the goods registered in the registry of the Revenue Authority ([25]). It is sufficient that the judgment is issued (in other words, not final); however, if the judgment is overturned on appeals, the creditor has the duty to annul the lien under penalty of damages. The lien has the effect to put a right on the noticed goods in favour of the creditor, who shall satisfy its monetary claim on such goods even if they are sold to third parties and shall be preferred to other creditors for the allocation of the proceeds of the enforcement proceedings (Art. 2808 It c.c.).

(ii) A creditor may request a seizure of the debtor's assets in the form of a provisional measure under Arts. 670-671 It c.p.c. Such measure is attached to certain assets of the debtor in view of the enforcement of an obligation to deliver or release certain goods (Art. 670 It c.p.c.) or of an obligation to pay a sum of money (the latter is also known as "conservative seizure") (Art. 671 It c.p.c.). The procedure for the seizure of the debtor's assets follows the general rules for provisional measures (Arts. 669 *bis* ff. It c.p.c.). It should also be mentioned that the creditor has the duty to enforce the seizure within thirty (30) days from the issuance of the measure under penalty of its default. The creditor should also file a claim on the merits within sixty (60) days from the issuance of the seizure again under penalty of default of the measure.

In case the seizure is of the type "conservative seizure" (Art. 671 It c.p.c.) (in view of the enforcement of an obligation to pay a sum of money), the law states that, under certain conditions, the creditor has the right to directly mutate it into an enforcement seizure (*pignoramento*) without prior service of the writ of execution and of the enforcement title. Such mutation may occur, for example, after the creditor obtains a favourable judgment on the merits ordering performance.

(iii) In general, however, the creditor needs not a provisional seizure to proceed with the enforcement seizure (or foreclosure) but only a valid enforcement title.

The *pignoramento* (foreclosure or enforcement seizure) is a typical protective measure for the enforcement as it attaches the debtor's assets in view of their forced selling and subsequent settlement of the debt by allocation of the proceeds. The debtor usually loses the power to use the attached goods, unless the creditor agrees for her/him to become the custodian (Art. 521 It c.p.c.); any use of the attached goods

[24] The right to put a lien derives from: (i) judgments that order performance; (ii) by provision of the law; (iii) an agreement between the parties. As for the right to put a lien granted by provision of the law, it should be mentioned for example that a contract of sale of immovable goods gives the creditor such right (Art. 2834 It c.c.).
[25] It should also be noted that in the districts of Trento, Bolzano, Gorizia, Trieste there is no registry for immovable goods. Please visit the dedicated page on the Revenue Authority's website.

by the custodian may be authorised by the judge, either to prevent the deterioration of the goods or for productive purposes. Once attached, it is prohibited to dispose of the goods (in any form: sale, donate, etc.) as well as destroy or deteriorate them. At the conditions prescribed by the law (Arts. 2913 ff. c.c.) the seizure has effects also vis-à-vis third parties that may have acquired or received the attached goods. Therefore, the disposal of seized goods does not prevent the course of the enforcement proceedings, also in the event that the goods are sold to third parties.

The *pignoramento* is the first act of the enforcement proceedings when the creditor is seeking enforcement of an obligation to pay a sum of money. The *pignoramento* consists of an act carried out by the enforcement agent and it takes place differently depending on the different types of goods to be attached (movable or immovable or other goods).

3. **Adaptation**. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests (Art. 54). How, and by whom, the adaptation is to be carried out should be determined by each Member State (Whereas (28)).

There is no official information on the competent authority for the adaptation procedure under Art. 54 BI bis Reg.

However, it could be suggested that (i) the creditor adapts the foreign order or measure in the writ of execution or (ii) s/he files a motion to the court for the adaptation of the foreign order or measure.

If (i) the creditor adapts the foreign order or measure in the writ of execution, such adaptation may be challenged by the debtor with the opposition to enforcement under Art. 615 co. 1 It c.p.c. If (ii) the creditor chooses to petition the court, lacking an official information on such regard, the applicable procedure could be the one under Arts. 612 It c.p.c. This is the procedure for the enforcement of an obligation to do or abstain from doing something, in which the judge of the enforcement adjusts the obligation to be enforced and establishes the procedure to be followed.

In both cases (i) and (ii) the right of the parties to challenge the adaptation would be upheld, with a slight difference. In fact, under the first (i) option, the debtor would have

the right to file an opposition to enforcement under Art. 615 It c.p.c. and subsequently appeal the decision of first instance and file a plea to the *Corte di Cassazione* as a remedy against the decision of the appellate court. On the contrary, under the second (ii) option, the debtor would have the right to file a formal opposition: in this case, the decision of the court would only be subject to the plea to the *Corte di Cassazione* and not to ordinary appeal, with the result that the debtor "loses" a chance to fight the adaptation of the foreign order or measure.

4. **Claim for refusal of recognition or enforcement**. On the application of the party against whom enforcement is sought (or, in case of refusal of recognition, of any interested party), the recognition or the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist. The party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the Italian legal system, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present (Whereas (30)).

**Procedure**. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted (Art. 47(1)).

The official information ([26]) on the competent court to receive the application for refusal of recognition and of enforcement states that the competent court is the *tribunale*, i.e. the district court generally competent for first instance claims (Art. 9 It c.p.c.). However, it is not indicated which is the district court territorially competent to receive the claim. Debtors should consider two options for determining the territorially competent court: general rules of competence (Arts. 18 ff. It c.p.c.) or the rules of competence dedicated to the enforcement proceedings (Arts. 26 ff. It c.p.c.). There is not an official indication on such alternative.

The claim for refusal may be lodged in two different ways: as an ordinary claim or as an opposition to enforcement. Generally, if it takes the form of an ordinary claim, it is lodged before the competent court under Art. 163 It c.p.c. or under Art. 702 *bis* It c.p.c.

[26] See the contents of the Italian Government's communication to the Commission on the e-justice Portal here.

(so-called "expedite ordinary proceedings") ([27]); there is not an official indication on such alternative yet, however debtors should consider that the pending reform of the civil process shall regulate this matter so that the expedite ordinary proceedings apply ([28]). The preference for the expedite procedure would be also in line with the principle set forth under Art. 48 BI bis Reg., that the application for refusal shall be decided "without delay".

Also, as already mentioned, the claim for refusal of enforcement may be lodged as an opposition to enforcement, under Art. 615 It c.p.c. Such opposition is available to the debtor from the service of the writ of execution on and grounds for opposition include also national grounds (for a brief evaluation of national grounds for refusal see §4-*quater* below; for a general overview of the opposition to enforcement see the Annex on Enforcement).

The claim for refusal would be subject, as any other ordinary claim, to the standard registry fee, which comprises all the fees for civil claims. Payment of the standard registry fee can be settled using the applicable form ([29]) at: (i) post offices; (ii) banks; (iii) tobacconists and collection agents. The amount of the standard registry fee depends on the value of the claim; for first instance proceedings it varies from 43.00

[27] The procedure regulated by Arts. 702 *bis* It c.p.c. is an alternative to the ordinary civil proceeding to bring a civil claim before the courts, when certain requirements are met. Such proceedings are simplified and aim to achieve the final judgement faster if compared to ordinary civil proceedings. The main features may be summarized as follows. After the pleading is filed, the court sets 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 timely appearance of the defendant which must occur not later than 10 days before the date of the hearing. If the defendant files the answer belatedly, s/he automatically waives the right to any counterclaim, request for third party joinder and/or 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. 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 appellate court may also be challenged by complaint to the *Corte di cassazione* within 60 days from service of the judgment or 6 months from its issuance. For all the other elements, said proceedings follow the general rules of civil procedural law.

[28] Art. 1 co. 14 lett. e) no. 1) of the law no. 206/2021 for the reform of the civil process. This provision has been implemented in the draft legislative decree No. 407/2022 transmitted to the Chamber of Deputies on 2 August 2022, in Art. 24.

[29] For downloading the applicable form please visit the dedicated page on the website of the Revenue Authority.

to 1,686.00 Euros ([30]). The duty to pay the standard registry fee is initially placed upon the party that presents the claim (Art. 14 d.P.R. no. 115/2002).

4 *bis*. **Authorised representative in the Member State addressed**. The party seeking the refusal of a judgment given in another Member State shall not be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

The party seeking refusal needs to be represented by a lawyer, irrespective of her/his nationality. In fact, according to the general rules of civil procedure (Art. 87 It c.p.c.), the parties that bring a claim before district courts need to be represented by a registered attorney. Exemptions would regard claims that fall within the competence of the *giudice di pace*; however, such exemptions would not be applicable in these cases as the claim for refusal falls exclusively within the competence of the *tribunale* irrespective of the value of the claim or the matter under discussion.

4 *ter*. **Grounds for refusal**. National grounds for refusal of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)) ([31]).

Under Italian procedural law grounds for refusal that may be raised by the debtor are distinguished between (i) grounds for refusal of enforcement and (ii) grounds for a opposition on form based on irregularities of the acts of the procedure (see the Annex on Enforcement).

[30] The amount of the standard registry fee should be determined following the rules laid down in Art. 13 of the d.P.R. no. 115/2002.

[31] For guidance see, amongst others: "This means that domestic grounds relating to, for example, the disproportionality of enforcement means, prohibitions on seizing certain (primary) goods or abuse of rights, or indeed set-off, may generally be allowed. However, for example disputes on the service of documents or a violation of jurisdiction rules beyond those set out in the Regulation, or a re-examination of the facts or the applicable law are not allowed.", X. KRAMER, *Cross-border enforcement and the Brussels I-bis Regulation: towards a new balance between mutual trust and national control over fundamental rights*, in *Netherlands International Law Review*, 2013, p. 360.

(i) The grounds for refusal of enforcement under Art. 615 It c.p.c. are the grounds for refusal related to the existence of the right of the creditor to seek the enforcement and to the attachability of certain assets. Such grounds may be already raised from the moment of service of the writ of execution (Art. 615 co. 1 It c.p.c.) (thus, even before the enforcement proceedings have begun) until the enforcement proceedings are terminated ([32]).

Since the grounds are not explicitly listed by the law ([33]), it can be said that an opposition based on the non-existence of the right to seek the enforcement may regard, for example: the fact that the enforcement title or its enforceability has been revoked; the violations of the subjective limitations relating to the enforceability of the title; the groundlessness of the right for which enforcement is being sought (because, for example, the debt has been settled in the meanwhile); the nature of the enforcement title, for example in relation to the type of enforcement proceedings that have been initiated ([34]). In case the enforcement title is a judgment, such grounds for refusal may be raised only to the extent that they are not covered by the *res judicata* effect. For example, the settlement of a debt occurred pending the proceedings on the merits shall not be raised as a valid ground for refusal of the subsequent enforcement of the judgment that ordered payment of the same debt, notwithstanding the fact that the settlement of such debt has or has not been raised as an objection by the debtor during such proceedings ([35]).

On the other hand, (ii) the grounds for the opposition on form (or formal opposition) relate to irregularities concerning acts of the procedure (Art. 617 it c.p.c.). Symmetrically to the opposition on substance under Art. 615 It c.p.c., the grounds for the opposition on form are not listed under Art. 617 It c.p.c., which only states that grounds relate to the formal regularity of the enforcement title, of the writ of execution, of their service and of any other act of the enforcement procedure. Such is, for example, the lack of one of the elements prescribed for the writ of execution under Art. 480 It c.p.c. Any other irregularity, even if not giving raise to nullity, which does

[32] It should be noted that in enforcement by expropriation this moment normally falls at the time when the assignment or sale of the assets is ordered (Art. 615 co. 2 It c.p.c.).
[33] Art. 615 It c.p.c. only states that such opposition regards "the right of the applicant to proceed to enforcement" and the attachability of certain assets.
[34] Under Italian civil procedural law not all the enforcement titles allow the creditor to seek enforcement of the delivery or release of certain goods or the enforcement of an obligation to do or abstain from doing something.
[35] That is a consequence of the general rule of Italian procedural law on issue estoppel relating to *res judicata* according to which any objection that has been or could have been raised during the proceedings cannot be raised afterwards, notwithstanding the fact that the court did not decide on such issue.

not fall under the scope of the opposition to enforcement (Art. 615 It c.p.c.), shall be a valid ground for the formal opposition.

4 *quater*. **Appeal**. The decision on the application for refusal may be appealed against by either party. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged. The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

The decision of the district court (*tribunale*) of first instance may be appealed before the competent appellate court (*corte d'appello*) and the appeals decision may be challenged before the supreme court (*Corte di Cassazione*).

The appeals consist of an open review of the first instance decision. The party who seeks review shall specify the grounds under which the decision is to be reviewed, being they on the merits or procedure. On the contrary, the plea to the *Corte di Cassazione* shall only cover the matters listed under Art. 360 It c.p.c.: (1) competence for jurisdiction (either international or national); (2) competence for venue; (3) false application or violation of substantive law or of collective labour agreements; (4) nullity of the final decision or of acts of the procedure (i.e., breach of procedural rules); (5) lack of reasoning on a point of the factual background that was essential to solve the dispute and was discussed during the proceedings.

Both the appeals and the plea to the *Corte di Cassazione* are subject to the registry fee (please see under §4-"*procedure*" for other indications on such regard).

4 *quinquies*. **Measures under Art. 44(1) BI bis Reg**.

Lacking any official indication on the competent authority and on the adaptation of such measures to national law, parties should be aware that it is not clear how they could file an application under Art. 44(1) BI bis Reg. and specifically which are the measures that the court has the power to issue.

Starting from letter (c) of Art. 44(1), the power of the court to suspend the enforcement proceedings is connected with the claim for refusal. When the refusal of recognition takes the form of an opposition to enforcement (*see §4 for the two forms to introduce a claim for refusal, as an opposition to enforcement or as an ordinary claim*), the power of the judge of the enforcement to suspend the enforcement proceedings is connected to the lodging of such opposition to enforcement under Art. 615 It c.p.c. However, debtors should consider that it is not clear how the court shall exercise this power in the event that the claim for refusal is lodged as an ordinary and autonomous claim (*see §4 for the two forms to introduce a claim for refusal, as an opposition to enforcement or as an ordinary claim*), and as a consequence they may prefer to lodge their claim for refusal in the form of an opposition to enforcement.

Regarding letter (a) of Art. 44(1), the parties should consider that, since it is not officially stated which are the protective measures to which the enforcement may be limited, and since the enforcement seizure ("*pignoramento*") (*as already stated in §2 above*), which is the first act of the enforcement, is a protective measure, such could be the translation of the "protective measures" to which the enforcement is limited under letter (a) of Art. 44(1) BI bis Reg. As a consequence, creditors should be aware that the enforcement procedure could be limited to the protective effects of the enforcement seizure. Also, debtors should be aware that once the goods are put under the enforcement seizure no act of disposal is allowed.

Also, creditors should note that it is not clear how the judge should exercise the power to place a security on the debtor, under letter (b) of Art. 44(1), since under Italian procedural law there is not a general rule on the power of the judge of the enforcement to make enforcement conditional on the provision of a security ([36]). Generally, it could be stated that, in order to ask the judge to make enforcement conditional on the provision of a security, creditors shall present a motion to the enforcement judge, under general rules of civil procedural enforcement law (Art. 486 It c.p.c.).

5. **Claim for a decision that there are no grounds for refusal of recognition**. According to Art. 36(2), the application for a decision that there are no grounds for refusal of recognition as referred to in Art. 45 is presented in accordance with the procedure provided for in Subsection 2 of Section 3 of the Regulation.

[36] The general rule on security within the context of enforcement is Art. 478 It c.p.c., which only states that when the enforceability of the title is made conditional on the provision of a security, the enforcement may not start if such is not deposited. However, such rule does not govern the power of the judge of the enforcement to make the enforcement conditional on the provision of a security and the criteria to determine such security.

The claim for a decision that there are no grounds for refusal of recognition follows, in general, the rules for the claim for refusal of recognition, except that it may only be filed as an ordinary claim, and not as an opposition to enforcement, as the latter remedy is available only to the party against whom enforcement is sought.

6. **Suspension of the enforcement**. National grounds of suspension of enforcement shall also apply in so far as they are not incompatible with the grounds referred to in Art. 45 (Art. 41(2)).

6 *bis*. **Enforceability suspended in the Member State of origin**.

Suspension of the enforcement proceedings takes places under four circumstances: (i) by provision of the law ([37]); (ii) by order of the court before which the enforcement title is challenged; (iii) by order of the judge of the enforcement; (iv) under motion of all the creditors ([38]).

Considering the suspension ordered by the judge, (ii) and (iii), the power to suspend the enforcement proceedings is placed partially on the judge of the enforcement and partially on the judge of the merits.

As for (ii) the judge of the merits, it is the judge before which a challenge against the enforcement title is lodged. Such case would concern, first and foremost, any appeal or other challenge brought against a judgment, such as ordinary appeals and the plea to the *Corte di Cassazione*. Considering, by way of example, these two challenges, Art. 283 It c.p.c. states that the appellate court, before which the appeal is brought, has the power to suspend the enforceability of the title, under serious and compelling reasons (including the possibility of the insolvency of the debtor), and Art. 373 It c.p.c. states that, when the judgment is being challenged before the supreme court, the court that issued the judgment has the power to suspend the enforceability of the judgment when such enforcement could cause a serious and irreparable harm. In both cases the court suspends the enforceability of the judgment which, in turn, if the enforcement

[37] For example, Art. 54 *ter* d.l. no. 58/2020 established the suspension for six (6) months of all the enforcement proceedings concerning immovable goods qualified as the main place of residence of the debtor, to limit the negative effects of the COVID—19 pandemic.
[38] Art. 624 *bis* It c.p.c. states that the judge of the enforcement may, under motion of all the creditors that possess an enforcement title, after having heard the debtor, suspend the enforcement proceedings up to twenty-four (24) months.

proceedings are already pending, entails the suspension of the enforcement. Such suspension is granted only upon motion of the interested party.

Also, the power to suspend the enforcement proceedings is assigned (iii) to the judge of the enforcement. Under Arts. 618 and 624 It c.p.c., the judge of the enforcement has the power to suspend the enforcement proceedings when one of the oppositions to the enforcement is filed (opposition to enforcement, formal opposition and third party opposition). The judge may order the suspension of the proceedings after having heard the parties or, in case there is urgency, even before, scheduling the hearing of the parties (Art. 625 It c.p.c.). The interested party may object to the decision of the judge to suspend or not the enforcement by filing a complaint under Art. 669 *terdecies* It c.p.c. (Art. 624 co. 2 It c.p.c.).

The latter should also be the applicable procedure in the event that the enforceability of the title has been suspended in the Member State of origin, according to Art. 44(2) BI bis Reg. Indeed, lacking any official information on this regard, it could be suggested that the interested party shall inform the judge of the enforcement of such circumstance and the judge of the enforcement shall in turn exercise its power to suspend the enforcement proceedings ([39]).

When the enforcement proceedings are suspended, no act of the procedure may take place. The enforcement proceedings may resume their course upon the motion of one of the parties, that shall be filed within the deadline set by the judge or within six (6) months from the moment in which the decision on the merits of the opposition becomes final, under penalty of termination of the enforcement proceedings (Art. 627 It c.p.c.). The decision of the judge to resume the course of the proceedings may be challenged under Art. 630 It c.p.c.

7. **Measures for the indirect enforcement (payment orders)**. Art. 55 establishes the rules for recognition of a judgment given in a Member State which orders a payment by

[39] Problems of coordination between the BI bis Reg. and national civil procedural rules may concern at least two issues. First, the power of the judge of the enforcement to suspend the enforcement proceedings is connected to the right of the party to file an opposition to the enforcement (or a formal opposition or a third-party opposition), and Art. 624 co. 3 It c.p.c. states that if the proceedings on the merits of the opposition are not introduced within the deadline under Art. 616, the enforcement proceedings shall be terminated *ex officio*. However, in the case under Art. 44(2) BI bis Reg., the party need not file an opposition but only inform the judge of the enforcement of the suspension of the enforceability in the Member State of origin. Second, it should be clarified if the judge of the enforcement has the power to suspend the enforcement proceedings under her/his discretion or if the suspension of the enforceability of the title in the Member State of origin does not leave the judge with any discretion on such issue.

way of a penalty. However, it does not cover the case in which the incoming judgment has not a payment order attached to it. It may be possible that the competent authorities of the Member State of the enforcement have the power to issue measures of indirect enforcement.

Under Italian civil procedural law, the typical measure of indirect enforcement is the one under Art. 614 *bis* It c.p.c., already described in §I.A.2-*quater*. According to such rule, the judge may order payment of a sum of money for each subsequent material irregularity in the performance. The creditor should be aware that, pending the reform of the civil process ([40]), as already noted, the judge of the enforcement does not have the power to issue such measures, as this power is assigned to the judge of the merits.

[40] Law no. 206/2021 for the reform of the civil process. See the draft legislative decree No. 407/2022 transmitted to the Chamber of Deputies on 2 August 2022