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UNIVERSITÄT
HEIDELBERG
ZUKUNFT
SEIT 1386



VRIJE
UNIVERSITEIT
BRUSSEL

Dipartimento di Studi Internazionali, Giuridici e Storico - Politici
Via Conservatorio, n°7- CAP 20122 Milano, Italy
Tel +39-02-50321058– Fax +39-02-50321050
Sito web: <http://www.dilhps.unimi.it>

Template for the EFFORTS Practice Guide for outgoing or incoming judgments, court settlements and authentic instruments certified as European Enforcement Orders

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I. Introduction

Building upon the contents of the *Practice Guide for the Application of the Regulation on the European Enforcement Order of the Commission* ([here](#)), the *EFFORTS Practice Guide* seeks to supplement operators and end-users with clear practical instructions on how to proceed with the European Enforcement Order Regulation (Reg. (EC) No 805/2004) at a national level.

According to the general scope of the EFFORTS Project, the *EFFORTS Practice Guide for outgoing and incoming titles* covers the Member States addressed: Belgium, Croatia, France, Germany, Italy, Lithuania and Luxembourg.

The Guide is structured so that issues relating to outgoing and incoming titles are dealt with separately. *Outgoing* titles are the ones for which certification is sought in the Member State of origin: the interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how and when to ask for a European Enforcement Order, whether the requirements for the certification are met and which are the possible remedies/defences for the parties.

Incoming titles are the ones, certified as EEOs in another Member State, that must be enforced in the Member State addressed: according to the general principle of mutual

recognition in judicial cooperation in civil matters within the European Union, the same conditions apply as for national titles, plus additional remedies specifically drafted for the European Enforcement Order (Arts. 20 ff. EEO Reg.). The interplay between European and national civil procedural rules makes it difficult for operators and end-users to verify how, when and under which conditions they may proceed with enforcement and the procedures and the conditions to ask for refusal of enforcement or for stay/limitation of the enforcement proceedings.

II. Outgoing

When Germany is the Member State of origin

The procedure and the requirements to obtain an EEO certification vary depending on the title to be certified. The following paragraphs will address in turn the certification of judgments that are yet to be given/that have already been issued (A), authentic instruments (B), and court settlements (C).

A. EEO for judgements

Depending on whether the judgment has yet to be given or has already been given, the creditor may take certain steps in order to ensure its certification of as EEO. The Commission Practice Guide distinguishes between these two possibilities, and provides the creditor with separate step-by-step instructions for the certification of judgments as EEOs. In the present document, however, the requirements for the certification of existing and future judgments are dealt with together, leaving it then to the creditor to follow the different practical instructions (see Chapter II and III of the Commission Practice Guide) for an already given judgment or one that has not been given yet.

1. How and when to ask for the European Enforcement Order. A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits (EC PG II.3.1 and III.2.1)

The request must be made in accordance with the national law of the court seized (EC PG II.3.2 and III.2.2):

The request may be made at any time when or after proceedings have been initiated (EC PG II.3.3) or at any time after the judgement was given (EC PG III.2.3):

Under German law, EEOs are issued or re-issued by the same authorities which are competent to issue the enforceable legal title in the first place (§ 1079 Civil Procedure Code (*Zivilprozessordnung*), hereinafter: ZPO). Usually, these are the courts of first instance. Only if the dispute is pending with a higher court, the respective court is also competent to issue the certificate. Functionally, the judicial officer is competent (§ 20 (1) No. 11 Judicial Officer Act (*Rechtspflegergesetz*), hereinafter: RPfIG).

In most cases, legal representation will be mandatory when applying for an EEO in Germany. However, as proceedings conducted by the local court (*Amtsgericht*) are

generally exempt from mandatory representation, the same applies to the issuance of an EEO by these courts.

The creditor is charged with EUR 22 for the issuance of an EEO (No. 23805 KV Court and Notary Fees Act (*Gesetz über Kosten der freiwilligen Gerichtsbarkeit für Gerichte und Notare*, hereinafter: GNotKG).

Once the application is filed, the EEO is issued and re-issued without a hearing of the debtor (§ 1080 (1) ZPO). Subsequently, the execution of the EEO-certificate is served to the debtor *ex officio* (§ 1080 (1) ZPO) and in accordance with the rules of the European Service Regulation. The creditor receives an informal notification.

There are no time limits regarding the time between the filing of the application and the issuance of the certificate, however, this will usually take only a few days or weeks, depending on the state and the court responsible.

2. The decision of certification. In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I. In doing so, the court must check a number of items (see [EC PG II.4.1 and ff.](#)). Amongst those, some relate to rules of national civil procedural law.

- a. **Judgement relating to a pecuniary claim.** A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (Art. 4(1) EEO Reg.) (EC PG II.1.3 and III.1.3). The claim which is the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (EC PG II.1.1, III.1.1 and III.3.1.2) or for which the due date is indicated in the judgment:
- b. **(follows):** (*Creditors should be advised that such claims may not be certified as EEOs. (Creditors should be advised that such documents may not be certified as EEOs, unless they fall under one of the other two categories of the Reg. (EC) No 805/2004 “authentic instrument” or “court settlement”*)
- c. **The judgment is enforceable.** The judgment to be certified as a European Enforcement Order must be enforceable. However, a certificate may also be issued when the judgment is provisionally enforceable (EC PG II.4.3 and III.3.3):
- d. **Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover not only the specific sum of money object of the claim, but also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically

objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (EC PG II.4.1.2): (If so, creditors should be advised that “an enforceable decision on the amount of costs related to court proceedings, contained in a judgment which does not relate to an uncontested claim, cannot be certified as a European Enforcement Order”) (1).

Any judgement (*Urteil*) or decision (*Beschluss*) may be certified. There are no implementation rules as to what constitutes a judgement under Art. 4 (1) EEO Reg. As this is a question of European and not national law, it has therefore to be determined by European courts.

German law allows for claims of unspecified sums of money only in exceptional circumstances and subject to specific requirements.

Under German law, there are no pecuniary judgements providing for the payment of an unspecified sum. All judgements are in principle immediately (and at least provisionally) enforceable. If a judgement is only provisionally enforceable, additional security is usually required.

Usually, a ruling on the payment of costs may not be admissibly contested unless an appeal is filed against the decision taken on the merits of the case (§ 99 (1) ZPO). However, if the main action has been dealt with and terminated by a sentence that is based on an acknowledgment, a complaint subject to a time limit may be lodged against the ruling on the payment of costs (§ 99 (2) ZPO). However, a ruling on the assessment of costs (*Kostenfestsetzungsbeschluss*) (which only determines the amount of costs for the dispute and not who has to bear them) is a separate court decision that may be contested separately by filing a complaint (*sofortige Beschwerde*).

- e. The claim has remained uncontested under Art. 3(1)(b) EEO Reg.** A claim is considered to be uncontested in the situations listed under Art. 3 EEO Reg. Amongst others, the claim is considered uncontested when the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of court proceedings (Art. 3(1)(b) EEO Reg.) (EC PG II.4.2.2 and III.3.2.2):

¹ CJEU, 14 December 2017, in case C-66/17, *Chudaś v. DA Deutsche Allgemeine Versicherung*.

A debtor may contest a claim by arguing either orally or in writing against it during the course of the proceeding. Any contestation made before the initiation of proceedings is insufficient. If legal representation is required, only statements made by a lawyer can amount to a contestation. It is however not necessary for a contestation to provide any form of evidence or legal argumentation.

- f. The claim has become uncontested under Art. 3(1)(c) EEO Reg. after an initial objection.** A claim is also considered uncontested when the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (Art. 3(1)(c) EEO Reg.); this situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit admission of the claim or of the facts under the law of the Member State of origin (EC PG II.4.2.3 and III.3.2.3):

Important cases include the debtor's unexcused absence from an oral hearing after having contested the claim previously in writing or in a previous oral hearing. The same situation occurs if the debtor does not appear in front of the court of second instance after a disputed decision of the court of first instance.

- g. Additional checks in case the debtor has not expressly agreed to the claim.** If the debtor has not expressly agreed to the claim, i.e. in the situations under Arts. 3(1)(b) and 3(1)(c) EEO Reg., the court must check additional items. Some of them relate to rules of national civil procedural law.
- i. **Service of the document instituting the proceedings.** The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the Regulation ⁽²⁾. The

² If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters or Regulation (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).

methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service with proof of receipt by the debtor or the debtor's representative (Art. 13) or service without proof of receipt by the debtor or the debtor's representative (Art. 14) (EC PG II.2.2 III.3.5.2.1) ⁽³⁾: (*Creditors should be advised that procedures with such forms of service may lead to a refusal of the EEO certification*)

As clearly laid down by the regulation, fictitious service is not permitted. Under German law, this includes the fiction that two weeks after it has been mailed, the document shall be deemed served (§ 184 (2) ZPO) and service by publication (§ 185 ZPO).

- ii. **Mandatory information.** A creditor wishing to obtain a European Enforcement Order certificate should ensure that some procedural requirements are complied with. In particular, the document instituting the proceedings on the merits must be served on the debtor and must contain specified information for the attention of the debtor: due information about the claim (Art. 16) and due information about the procedural steps necessary to contest the claim (Art. 17). The information due under Art. 17 may be contained in the document instituting the proceedings or in an accompanying document and it may also be contained in any subsequent summons to a court hearing (EC PG II.2.1 and III.3.5.2.2):

Generally, all information is already included in the general documents served to the defendant under the existing provisions of German civil procedure law. However, an exception exists regarding rulings on the assessment of costs (*Kostenfestsetzungsbeschlüsse*), which lack the information necessary under Art. 17 EEOR. Therefore, it is usually impossible to certify such rulings as an EEO.

In order to still make these kinds of rulings certifiable, the creditor may either request the court to attach the necessary information or transmit them to the debtor himself.

³ *Cure of non-compliance*: if the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that s/he has personally received the document to be served in sufficient time to arrange for his defence (Art. 18(2) EEO Reg.) (EC PG II.4.5.2.1 and III.3.5.2.1.2).

- iii. **Cure of non-compliance.** If the European Enforcement Order is refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 due to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the requirements under Art. 18(1) EEO Reg. are met (EC PG II.5.1.1, III.3.5.2.2.2 and III.4.1.1):

For the possible forms of service under national law, see above. In most cases, the court is legally required to provide information on the available legal remedies (§ 232 ZPO). In cases not enlisted in § 232 ZPO, a cure of non-compliance according to Art. 18 (1) EEOR is impossible.

- iv. **Review in exceptional cases.** The Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where the conditions under Art. 19 EEO Reg. are met (EC PG II.4.5.2.3 and III.3.5.2.3):

Under German law, the debtor has the option to either apply for procedural restoration of the *status quo ante* (*Wiedereinsetzung in den vorigen Stand*) (§ 233 ZPO) or to file a protest (*Einspruch*) (§§ 700 (1), 338 ZPO). The latter is only possible in case of a default judgment or enforcement order.

The debtor may apply for procedural restoration of the *status quo ante* in the event that the failure to act before the expiration of the statutory period cannot be attributed to his fault (§ 233 ZPO). The application has to be filed at the court which was competent for the original procedure within a time period of two weeks (§ 234 (1) ZPO). The time period starts as soon as the debtor is capable, i.e. is no longer hindered, to take the appropriate procedural action (§ 234 (2) ZPO). However, the application can be filed and the procedure can be completed no later than one year after the statutory period has passed (§§ 234 (3), 236 (2) ZPO).

The application for a protest (*Einspruch*) is permitted against a default judgment or enforcement order even if the default or lack of defence in the main proceedings (§§ 700 (1), 338 ZPO) can be attributed to the debtor's fault. It has to be filed within a time period of two weeks. The time period commences as soon as the debtor is either served

the default judgement or the enforcement order (§ 339 (1) ZPO). Only if the debtor is served abroad, the time period is twice as long and amounts to one month (§ 339 (2) ZPO). In case of a successful filing for protest, the proceedings are restored to the *status quo ante*. If the protest has been successfully filed against an enforcement order, the main proceedings commence (§ 700 (3) ZPO).

3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the judgement in another Member State under the Brussels regime (Reg. (EU) No 1215/2012) (EC PG II.5.1.2 and 4.1.2):

The creditor may apply to the local court (*Amtsgericht*) for refusal, stay, or limitation of enforcement based on the grounds provided in Art. 21 and 23 EEOR (§ 1084 (1) ZPO). When it comes to local jurisdiction, either the local court at the place of enforcement (§ 764 (2) ZPO) or the local court at the debtor's place of residence (§§ 828 (2), 12, 13 ZPO) is competent. In case the debtor does not have a residence within Germany, the local jurisdiction lies with every local court where assets of the debtor are situated (§§ 828 (2), 23 ZPO). If these rules lead to more than one competent court, the debtor may choose freely between the competent courts (§ 35 ZPO). The functional competence lies with the judge.

The decision on the application for a refusal of enforcement as to the application pursuant to Art. 21 EEOR is delivered by court order (§ 1084 (2) ZPO). Following the general procedural requirements under German law, the creditor has a right to be heard and is therefore entitled to explain his point of view to the court. Nonetheless, full oral proceedings are merely optional (§ 128 (4) ZPO). Before deciding on the request for refusal, the court can make temporary arrangements by means of an interim order (§§ 1084 (2), 769 (1) ZPO).

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant or the debtor may apply to the court having delivered the certificate requesting a rectification of the

certificate (Art. 10(1)(a) EEO Reg.) (EC PG II.5.2.1.1, II.5.1.3, III.4.1.3 and III.4.2.1.1):

In case the EEO contains a substantive error leading to a discrepancy between judgement and certificate, the application for the certificate's rectification has to be filed with the court responsible for the original certificate (§ 1081 (2) ZPO). An application for rectification of a certificate issued by another authority than a court must be submitted to this very authority, which will then forward it to the local court (*Amtsgericht*) at the district in which the authority is seated.

If the request for rectification is dismissed, the applicant may, as a remedy, have the decision reviewed by the judicial officer within a time period of two weeks (§§ 1081 (3), 319 (3) ZPO in conjunction with § 11 (2) RPflG).

In the event that rectification is granted, it will be noted on the EEO-certificate (§§ 1081 (3), 319 (2) ZPO).

The application form may be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

c. If the European Enforcement Order was clearly wrongly granted. If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having delivered the certificate requesting that the European Enforcement Order certificate may be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG II.5.2.1.2 and III.4.2.1.2):

An application for withdrawal must be filed with the same court or authority which has issued the EEO in the first place (§ 1081 (2) ZPO). In case the EEO the issuing authority is not a court, it will forward the application to the local court (*Amtsgericht*) at the district in which the authority is seated.

The application form may be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

It is important to note that German law provides for strict limitation periods regarding the application for withdrawals. Generally, an application for withdrawal has to be filed within one month (§ 1081 (2) ZPO). The limitation period is only extended to two

months if the EEO-certificate is served abroad (§ 1081 (2) ZPO). In both cases, the time limit commences when the EEO is served. However, it shall not commence before the enforcement title itself, e.g. the judgment, has been served accordingly.

Furthermore, the debtor's request has to set out the grounds which support the conclusion that the EEO was obviously granted wrongly (§ 1081 (2) ZPO). The court decides on the application without previous oral hearings (§§ 1081 (2), 319 (2) ZPO). If the application for withdrawal is successful, it will be noted on the EEO-certificate (§§ 1081 (3), 319 (2) ZPO).

In the event that the application for withdrawal is denied, the debtor may appeal to have the decision reviewed by the judicial officer within a time period of two weeks (§§ 1081 (3), 319 (3) ZPO in conjunction with § 11 (2) RPflG). However, the creditor may appeal again to regional court (*Landgericht*) in case the withdrawal is granted (§§ 1081 (3), 319 (3), 567 ZPO, § 11 (1) RPflG).

- d. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited.** If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the judgment was delivered, the debtor may apply to the court of origin for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG II.5.2.1.3 and III.4.2.1.3):

If the debtor provides a certificate indicating the lack or limitation of enforceability pursuant to Art. 6 (2) EEO Reg., German courts and enforcement authorities will immediately cease enforcement to the extent indicated on the certificate (§ 1085 in conjunction with §§ 775, 776 ZPO).

- e. Appeal against the judgment.** The debtor may challenge the judgment certified as EEO on the merits in accordance with the national procedural law of the Member State where the judgment was issued. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG II.5.2.1.4 and III.4.2.1.4):

Under German law, replacement certificates are issued by the same authorities which are competent to issue the enforceable legal title in the first place (§ 1079 No. 2 ZPO). If the appeal is still pending, this is the court of appeal. However, in case the appellate procedure has already been completed, the competence again lies with the court of first instance (§ 1079 No. 2 in conjunction with § 724 (2) ZPO).

- f. Review in exceptional cases.** The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued under the circumstances set forth in Art. 19 EEO Reg. In applying for this special review, the debtor must act promptly (EC PG II.5.2.1.5 and III.4.1.2.5):

See above.

B. EEO for authentic instruments

1. How and when to ask for the European Enforcement Order. The European Enforcement order certificate must be requested from the competent authorities in the Member State where the instrument was drawn up. In some Member States, the competent authority to deliver the certificate is the notary who has drawn up the act or a representative organization. In other Member States, the competent authority is a court (EC PG IV.2.1):

The European Enforcement Order may be asked at the time when the authentic instrument is being drafted or any time thereafter (EC PG IV.2.2):

In case the legal title is neither a judgement nor a court settlement, but an authentic instrument, the competent authority is the notary or public authority which also issues the original authentic instrument. Besides the functional difference, the general rules as described above for court rulings apply.

2. The decision of certification. In order to issue a European Enforcement Order, the competent authority shall fill in the standard form included in Annex III to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG IV.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

- a. Authentic instrument relating to a pecuniary claim.** An authentic instrument is defined under Art. 4(3) EEO Reg. (EC PG IV.1.3). The claim which is the subject of the authentic instrument must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the authentic instrument (EC PG IV.1.1 and IV.3.1.2):
- b. (follows):** *(Creditors should be advised that such authentic instruments may not be certified as EEOs). (Creditors should be advised that such documents may not be certified as EEOs, unless they fall under one of the other two categories of the Reg. (EC) No 805/2004 “judgment” or “court settlement”)*
- c. The authentic instrument is enforceable.** The authentic instrument to be certified as a European Enforcement Order must be enforceable (EC PG IV.3.2):
- d. Costs of the procedure.** The European Enforcement Order certificate may cover also the amount of costs related to the drafting of the instrument which are included in the instrument (EC PG IV.3.1.2):

German law recognizes notarial deeds (§ 794 (1) No. 5 ZPO) as well as declarations of enforceability by a notary (§ 796c ZPO) as authentic instruments, which are immediately enforceable. Other certificates or signature attestations (§§ 39, 40 *Beurkundungsgesetz*, BeurkG) do not constitute such instruments.

3. Possible remedies/defences for the parties

- a. **If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the authentic instrument under the Brussels regime (EC PG IV.4.1.1):

If the application for issuance or re-issuance of an EEO is dismissed, the rules regarding the contestation of the decision to issue a court certificate of enforceability (*Vollstreckungsklausel*) apply *mutatis mutandis* (§ 1080 (2) ZPO). Accordingly, the creditor can appeal to the competent higher court by means of a complaint: Where the decision has been rendered by the local court, the appeal will be decided by the regional court. If the rendering court is the regional court, the higher regional court (*Oberlandesgericht*) will be the competent appellate court.

In case the application is rejected by a notary or a youth welfare officer, the creditor can appeal to the regional court at the district in which rejecting authority is seated pursuant to § 54 BeurkG.

- b. **If the European Enforcement Order contains an error.** If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the competent authority in the Member State of origin requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG IV.4.1.2 and IV.4.2.1.1):

In case the EEO contains a substantive error leading to a discrepancy between judgement and certificate, the application for the certificate's rectification has to be filed with the court responsible for the original certificate (§ 1081 (2) ZPO). An application for rectification of a certificate issued by another authority than a court

must be submitted to this very authority, which will then forward it to the local court (*Amtsgericht*) at the district in which the authority is seated.

If the request for rectification is dismissed, the applicant may, as a remedy, have the decision reviewed by the judicial officer within a time period of two weeks (§§ 1081 (3), 319 (3) ZPO in conjunction with § 11 (2) RPfIG).

In the event that rectification is granted, it will be noted on the EEO-certificate (§§ 1081 (3), 319 (2) ZPO).

The application form may be found here https://e-justice.europa.eu/dynform_get_empty_pdf_action (in German).

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the competent authority in the Member State of origin requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG IV.4.2.1.2):

In case the issuing authority is not a court, it will forward the application for withdrawal of a clearly wrongly granted EEO to the local court (*Amtsgericht*) at the district in which the authority is seated. The court will then proceed as described above.

- d. If the authentic instrument has ceased to be enforceable or its enforceability had been suspended or limited.** If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the instrument was drafted, the debtor may apply to the competent authority indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG IV.4.2.1.3):

The application for a substitute certificate has to be filed with the same authority which issued the enforceable legal title in the first place (§ 1079 (2) ZPO). It will then proceed as described above.

e. Challenge of authentic instruments. Under Art. 23 EEO Reg., one of the conditions for stay or limitation of enforcement of an authentic instrument in the Member State addressed is that the debtor challenged an authentic instrument certified as a European Enforcement Order, including an application for review under Art. 19, or applied for rectification or withdrawal (EC PG IV.4.2.2.1):

There is no difference to the challenge of a court ruling as described above.

C. EEO for court settlements

1. **How and when to ask for the European Enforcement Order.** A request for a European Enforcement Order must be addressed to the court which approved the court settlement or before which it was concluded (EC PG V.2.1 and V.2.2):

The European Enforcement Order may be asked at any time during the court proceedings or after the approval or conclusion of the court settlement (EC PG V.2.3):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

2. **The decision of certification.** In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex II to the EEO Reg. In doing so, the competent authority must check a number of items (see the EC PG V.3.1 ff.). Amongst those, some relate to rules of national civil procedural law.

- a. **Court settlement for a pecuniary claim.** A European Enforcement Order may be requested with respect to court settlements, i.e. a settlement which has been approved by a court or concluded before a court in the course of proceedings (Art. 3(1) and Art. 24 EEO Reg) (EC PG V.1.3). The claim which is the subject of the settlement must be a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the settlement (EC PG V.1.1 and V.3.1.2):
- b. **(follows):** *(Creditors should be advised that such settlements may not be certified as EEOs). (Creditors should be advised that such settlements may not be certified as EEOs, unless they fall under one of the other two categories of the Reg. (EC) No 805/2004 “judgment” or “authentic instrument”)*
- c. **The court settlement is enforceable.** The court settlement to be certified as a European Enforcement Order must be enforceable (EC PG V.3.2):
- d. **Sums covered by the EEO certificate: costs of the proceedings.** The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the court settlement (EC PG V.3.1.2):

From a procedural point of view, a court settlement requires certain formalities, such as an appropriate protocol drawn up by the court, the reading of such protocol to the parties, its approval by the parties and the judge’s signature (§§ 160 (3), 162, 163 ZPO).

Alternatively, the parties may submit a written settlement agreement to the court or the court itself may provide the parties with a written proposal for a settlement, which the parties may subsequently accept (§ 278 (6) ZPO). Further, a settlement agreement is only possible if all material requirements are met necessary to conclude a valid contract under German law.

A court settlement is immediately enforceable (§ 794 (1) ZPO). It cannot cover an unspecified sum.

3. Possible remedies/defences for the parties

- a. If the European Enforcement Order is refused.** The claimant has two options: either appeal the refusal to grant a European Enforcement Order, if such possibility exists under national law, or pursue the enforcement of the court settlements under the Brussels regime (EC PG V.4.1.1):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

- b. If the European Enforcement Order contains an error.** If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having approved the settlement or before which the settlement was concluded requesting a rectification of the certificate (Art. 10(1)(a) EEO Reg.) (EC PG V.4.1.2 and V.4.2.1.1):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

- c. If the European Enforcement Order was clearly wrongly granted.** If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting that the European Enforcement Order certificate be withdrawn (Art. 10(1)(b) EEO Reg.) (EC PG V.4.2.1.2):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

- d. If the court settlement has ceased to be enforceable or its enforceability had been suspended or limited.** If the settlement has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where it was approved or concluded, the debtor may apply to the court having approved the settlement or before which the settlement was concluded for a certificate indicating the lack or limitation of enforceability (Art. 6(2) EEO Reg.) (EC PG V.4.2.1.3):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

- e. Appeal against the court settlement.** The debtor may challenge the court settlement on the merits in accordance with the national procedural laws of the Member States. If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (Art. 6(3) EEO Reg.) (EC PG V.4.2.1.4):

Regarding the EEOR, there is no differences between court settlements and other court rulings under German law. Therefore, see the answer provided above.

III. Incoming

When Germany is the Member State of enforcement

According to Art. 20(1) EEO Reg., “[a] judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement” (see also Art. 24(3) and Art. 25(3) EEO Reg. for court settlements and authentic instruments). Thus, the procedure for the enforcement of the EEO mirrors the procedure for the enforcement of any other national title. Additionally, Reg. (EC) No 805/2004 establishes specific remedies or defences for the parties.

A. Enforcement of the EEO for the creditor

Once the claimant has obtained a judgment, authentic instrument or court settlement certified as a European Enforcement Order, s/he may apply for enforcement in the Member State of enforcement. The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a national judgment, court settlement or authentic instrument.

1. Competent court or authority. The claimant must apply for enforcement with the court or authority competent for the enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order in the Member State of enforcement (EC PG VI.1):

An EEO can be enforced pursuant to the national enforcement rules without any further certificate of enforceability (§ 1082 ZPO). The competent court for enforcement proceedings is usually the local court at the seat of the debtor (§ 828 (2) ZPO) or the court, which would be competent for the proceedings according to the rules of national law.

2. Documents to be produced by the claimant. In order to request in a Member State enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order the claimant shall produce the documents listed in Art. 20 EEO Reg. (EC PG VI.2):

An EEO can be enforced pursuant to the national enforcement rules without any further certificate of enforceability (§ 1082 ZPO). Pursuant to Art. 20 EEO Reg., this requires a copy of the judgment, a copy of the EEO-certificate and in some cases a transcription of the European Enforcement Order certificate or a German translation.

- 3. Enforcement authorities.** The enforcement authorities must check whether the claimant produces the necessary documents for enforcement. If the necessary documents are produced, the judgment, authentic instrument or court settlement certified as a European Enforcement Order shall be enforced under the same conditions as a judgment, authentic instrument or court settlement handed down in the Member State of enforcement (EC PG VI.3):

The court competent for enforcement procedure will check the documents necessary before allowing the actual enforcement. If enforcement is denied the applicant may file for a reminder (*Vollstreckungserinnerung*) (§ 766 ZPO) or a complaint (*sofortige Beschwerde*) (§§ 793, 567 ZPO).

B. Possible remedies/defences for the debtor

- 1. Refusal of enforcement of a judgment.** The debtor has the possibility to apply for a refusal of enforcement of a judgment (Art. 21 EEO Reg.) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country (EC PG II.5.2.2.1 and III.4.2.2.1):
- 2. Limitations on enforcement.** The competent enforcement authorities may refuse, limit or stay enforcement according to the provisions of Chapter IV of the EEO Reg. Without prejudice to the above, the grounds for refusal or suspension of enforcement under national law continue to apply (EC PG VI.4):

The creditor may apply to the local court (*Amtsgericht*) for refusal of enforcement based on the grounds provided in Art. 21 (§ 1084 (1) ZPO). When it comes to local jurisdiction, either the local court at the place of enforcement (§ 764 (2) ZPO) or the local court at the debtor's place of residence (§§ 828 (2), 12, 13 ZPO) is competent. In case the debtor does not have a residence within Germany, the local jurisdiction lies

with every local court where assets of the debtor are situated (§§ 828 (2), 23 ZPO). If these rules lead to more than one competent court, the debtor may choose freely between the competent courts (§ 35 ZPO). The functional competence lies with the judge.

The decision on the application for a refusal of enforcement as to the application pursuant to Art. 21 EEOR is delivered by court order (§ 1084 (2) ZPO). Following the general procedural requirements under German law, the creditor has a right to be heard and is therefore entitled to explain his point of view to the court. Nonetheless, full oral proceedings are merely optional (§ 128 (4) ZPO). Before deciding on the request for refusal, the court can make temporary arrangements by means of an interim order (§§ 1084 (2), 769 (1) ZPO).

- 3. Refusal of enforcement of a court settlement or an authentic instrument.** Art. 24(3) and Art. 25(3) explicitly exclude the applicability of Art. 21(1) EEO Reg. to authentic instruments and court settlements; only Art. 21(2) (prohibition of a review of the title on its merits) is applicable (EC PG IV.4.2.2 and V.4.2.2). This does not automatically exclude the applicability of national grounds for the refusal of enforcement of an authentic instrument or a court settlement (arg. ex Art. 20(1) EEO Reg.):

Under German law, there is no difference to the refusal of a court ruling as described above.

- 4. Stay or limitation of enforcement of a judgment, court settlement or authentic instrument.** The debtor may apply for a stay or limitation of enforcement of a judgement, authentic instrument or court settlement under Art. 23 EEO Reg. (EC PG II.5.2.2.2, III.4.2.2.2, IV.4.2.2.1 and V.4.2.2.1):

The creditor may apply to the local court (*Amtsgericht*) for stay or limitation of enforcement based on the grounds provided in 23 EEOR (§ 1084 (1) ZPO). When it comes to local jurisdiction, either the local court at the place of enforcement (§ 764 (2) ZPO) or the local court at the debtor's place of residence (§§ 828 (2), 12, 13 ZPO) is competent. In case the debtor does not have a residence within Germany, the local

jurisdiction lies with every local court where assets of the debtor are situated (§§ 828 (2), 23 ZPO). If these rules lead to more than one competent court, the debtor may choose freely between the competent courts (§ 35 ZPO). The functional competence lies with the judge.

Applications regarding the suspension or limitation of enforcement pursuant to Art. 23 EEOR shall be decided by the court by way of an order after hearing the creditor. These orders are not open to appeal (§ 707 (2) ZPO). With a decision on the merits in the Member State of origin, the interim measures lose their effect in Germany