



UNIVERSITÀ DEGLI STUDI DI MILANO

DIPARTIMENTO DI STUDI INTERNAZIONALI,
GIURIDICI E STORICO-POLITICI



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EFFORTS Practice Guide for the application in Italy of the Regulation on the European Order for Payment

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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 (EC) no 1896/2006 will be referred to as “EOP Reg.”. The European Order for payment will be referred to as “EOP”.



I. Introduction

The paragraphs below address the implementation of Regulation No 1896/2006 (as amended by Regulation No 2015/2421) creating a European order for payment (hereinafter indicated as “EOP” and “EOP Reg.”) into the national law of Italy. In doing so, it integrates and supplements the European Practice Guide published by the Commission on the [e-Justice Portal](#)⁽¹⁾, which expressly recognizes that questions that are not regulated by the Regulation itself should be governed by national procedural law⁽²⁾.

Following the structure of the European Practice Guide, the present section will address in turn the questions related to the scope of application of the EOP procedure (II), the issues arising in connection with the procedure itself (III), and finally the procedural rules related to the recognition and enforcement in Italy of EOPs rendered in another Member State (0).

II. Scope of application of the EOP procedure

1. Cross-border case. The EOP Regulation applies only in cross-border cases. Art. 3 EOP Reg. defines such a case as one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized (EC PG II.2.2.). In this respect, Art. 3(2) EOP Reg. provides that the domicile should be determined according to Art. 59 and 60 Brussels I Regulation (today Art. 62 and 63 BI bis). According to these provisions, the domicile of physical persons should be determined in accordance with internal law.

Under Italian law, the general domicile is the place where a person has fixed the basis of her/his matters and interests (Art. 43 It c.c.). Such place is unique since it is not possible to have multiple domiciles. The intention to set up a certain place as domicile may also be expressed by *facta concludentia*.

The law also allows the person to choose a special domicile, e.g. the parties of a contract may provide that every notice related to the implementation of the contract has to be made at a certain place. Such a provision must be made in writing (Art. 47 It c.c.).

¹ The European Practice Guide prepared by the Commission is available at: [‘European E-Justice Portal – European Payment Order’](#) accessed 13 April 2022.

² As explained by the Practice Guide of the Commission (EC PG I): “National law is applicable, on a subsidiary basis, to questions which are not regulated in the EOP Regulation”.



III. The EOP procedure

When Italy is the Member State of origin

A. Application for an EOP

1. **Amount claimed.** Pursuant to Article 7 EOP Reg., an application for a EOP shall be made using the annexed standard form A and should state the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs.

a. **Principal.** The EOP procedure is available for the collection of pecuniary claims for a specific amount that have fallen due. Nevertheless, procedural rules of the Member State of origin may regulate certain aspects regarding the amount of money to be claimed.

b. **Calculation of interest.** The EOP Regulation provides that details of the interest rate and the period of time for which interest is demanded should be provided in section 7 of Form A (EC PG III.1.1.), unless statutory interest is automatically added to the principal under the law of the Member State of origin (Art. 7(2)(c) EOP Reg.). Regarding the relevant time period for the calculation of interest, the guidelines for the completion of Form A state that if interest is demanded up to the date of the decision of the court the last date box should be left blank, while the Regulation is silent about whether interest can be claimed after that date (EC PG III.1.1.).

c. **Costs.** The details of any costs due are included in section 9 of Form A. While the main costs envisaged here are court fees, the guidelines for the completion of Form A state that other costs could include the fees of a claimant's representative or pre-litigation costs. In accordance with Art. 25 court fees can include fees and charges paid to the court, the amount of which is fixed in accordance with national law. The guidelines also clarify that if the court fees are not known by the claimant the amount box can be left blank to be completed by the court (EC PG III.1.1.).

Under Italian law, a creditor may avail her/himself of the summary order for monetary claims only if the **sum due is determined** (“*liquida*”). This means that the sum is determined in its amount or that the determination process is based on purely arithmetic calculations and not on other assessments, which involve a margin of discretion ⁽³⁾. This excludes, in principle, to bring a claim for non-contractual liability

³ For example, in the case decided by Cass. civ., 30.03.2022, no. 10230, in *CED Cassazione*, 2022, the summary order for payment ordered payment of the principal amount plus interests “as



for damages whose amount is not determined. However, the rule on the determination of the pecuniary claim object of the request for a summary order could also exclude certain sums pertaining to contractual claims or other obligations. For example, the jurisprudence of the Corte di Cassazione has established that such requisite is lacking with regard to the damages, which are added to the principal amount, that the creditor suffered caused due to currency increase in value over time (Art. 1224 co. 2 It c.c.)⁽⁴⁾. Thus, creditors should consider and evaluate each portion of their claim and verify that it can be classified as “determined” under Italian law. Usually, it is possible to claim interests on the sum due and that is classified as a sum “determined” according to the rules for filing a request for a summary order for payment (Art. 633 It c.p.c.)⁽⁵⁾.

As for the **currency** under which the payment is due, the general rule contained in Art. 1278 It c.c.⁽⁶⁾ gives the debtor the right to opt for a payment in the national currency, notwithstanding the fact that the original debt is in another currency or that the creditor filed a judicial claim⁽⁷⁾ asking for payment in the original foreign currency. Thus, the debtor should consider that an objection could be raised as to the currency and that s/he has the right to pay the debt in Euros.

The **costs** for obtaining a summary order include the fee for the lawyer and the fixed court fee (“*contributo unificato*”). As to the latter, according to Art. 13 co. 3 d.P.R. no. 115/2002, the fee is due in half the amount, which is determined on the basis of the value of the pecuniary claim. In order to pay the fixed registry fee, a further tax in the form of a tax stamp (27.00 Euros) is applied on the form. For a useful reference, amongst others, please visit the [dedicated page](#) on the website of the *Tribunale* of Foggia. Creditors should consider that the lawyers’ fees are borne by the debtor not

they have been claimed”. Following the final order, the creditor determined the total amount (principal plus interests) in the writ of execution (“*atto di precetto*”), making the calculation that was implicit in the judicial order and such was deemed as conforming to the order.

⁴ See Cass. civ., 30.05.1987, no. 4821, in *Giustizia civile – Massimario annotato della Cassazione*, 1987, issue 5, and Cass. civ. 17.05.2001, no. 6757, in *Giustizia civile – Massimario annotato della Cassazione*, 2001, p. 989. These judgments, however, established also that the creditor is not precluded in principle to raise the same claim (damages suffered as a consequence of the currency increase in value over time) in the ordinary proceedings subsequent to the opposition to the summary order, lodged by the debtor.

⁵ The issue whether the creditor is allowed to claim only a part of an overall monetary claim, and reserve the remaining for a future claim has been widely debated. Under the most recent case law of the Corte di Cassazione, this is possibile but, unless the partial claim is duly justified, such a behaviour may be deemed abusive and prevent the party from recovering the litigation costs.

⁶ This rule applies only to obligations governed by Italian substantive law.

⁷ The principle has been applied specifically to national summary orders for payment (“*decreto ingiuntivo*”) by Cass. civ., 06.11.1991, no. 11834, in *Giustizia civile – Massimario annotato della Cassazione*, 1991, issue 11, and no contrary statements have been found in jurisprudence so far.



in their real amount, but in the amount established by the d.m. 55/2014, Code of legal fees, which could be lower than the real amount paid by the creditor for the pre-trial and trial assistance.

An enforceable summary order will be taxed ("*imposta di registro*") up to 3% of the sum granted, unless the claim that is the object of the injunction is subject to the payment of V.A.T. (in which case the registration tax will be due in a fixed amount of the lesser amount of Euro 200.00 due to the principle of alternating VAT/registration tax). Usually some months or even years after the issuing of the summary order, the Revenue service shall indicate to the creditor the amount of the tax, asking for the payment. This tax is not due for summary orders up to € 1.033,00.

2. Cause of action and description of evidence. The EOP Regulation requires the claimant to state the cause of the action – including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded – and to provide the court with a description of evidence supporting the claim (Art. 7(2)(d)(e) EOP Reg.). *The Regulation does not specify the level of detail that an applicant should provide, nor does it prescribe the way that a court should carry out the examination of a claim (EC PG III.1.2.).*

a. General rule. There is no requirement to attach supporting documentation, but applicants are free to do so if they wish. Section 11 allows the applicants to provide additional statements and further information, if necessary (*ibid.*).

b. Consumer contracts. The European Court of Justice has clarified that in cases involving consumer contracts, the competent authority is allowed to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms ⁽⁸⁾.

There are no relevant rules or practices concerning the level of detail that an application should include.

Under Italian procedural law, there is not a general legislative rule on the *ex parte* or *ex officio* nature of the objections that may be raised by the parties. However, it has

⁸ CJEU, 19 December 2019, in cases C-453/18 and C-494/18, *Bondora AS v. Carlos V.C.* and *Bondora AS v. XY*.



been established as a principle in jurisprudence ⁽⁹⁾ that generally objections are raised also *ex officio* unless the law specifically qualifies them as “*ex parte* objections” or objections related to specific types of claims. In case of consumer contracts, the judge can request the applicant to file a copy of the relevant terms and conditions. It is therefore advisable to attach a copy of the consumer contract to the application, in order to avoid delays.

3. Competent courts. The competent courts for the EOP are those that have been designated by the Member States and officially notified to the Commission (EC PG III.1.3). Should the application be sent to a court that is not competent, it is a matter for national law what action that court should take (*ibid.*). Hence, the EOP Regulation does not directly designate the national court competent to deal with applications under the EOP procedure. Indeed, Art. 5 EOP Reg. defines the term “court” as “any authority in a Member State. Similarly, Art. 6 EOP Reg. provides that the jurisdiction for claims made under the EOP procedure is to be established in accordance with the Brussels I Regulation⁽¹⁰⁾, but does not lay out any rules of territorial competence allocating cases among the competent national authorities.

Regarding the courts competent for the EOP procedure, the Communication of the Italian Government under Art. 29 EOP Reg. contains an indication that mirrors the general rules of competence for national summary orders (which are, in turn, the same rules of competence for any other pecuniary claim).

With that being said, the competence for filing a request for a summary order in Italy is allocated partly on the local court “*Giudice di pace*” and partly on the district court “*Tribunale*”, which are the two first instance district courts generally competent for civil claims. Exceptionally, competence lies with the appellate court “*Corte d’appello*”, usually competent for appeals against first instance judgments of the district court, but exceptionally competent for first instance claims.

Within the context of a EOP request, creditors should firstly consider allocation of competence on the basis of the subject matter of the claim. The *Tribunale* is competent

⁹ Recently, amongst others see Cass. civ., 06.05.2020, no. 8525.

¹⁰ Which has today been replaced by the BI bis Regulation (Regulation No 1215/2012). This rule is however subject to one exception. When the case concerns a consumer contract and the consumer is the defendant, the jurisdiction has to be that of the Member State where the defendant is domiciled (EC PG II.4).



for claims relating to contracts in agricultural matters, claims relating to IP rights, claims relating to navigation and maritime matters, certain claims relating to public tenders and claims related to employment contracts. The *Corte d'appello* is competent for claims relating to damages for agreements distorting competition and abuse of a dominant position.

If the claim is not included in one of the above-mentioned matters, the rules on the value of the claim apply. The *Giudice di pace* is competent for claims up to 5,000.00 Euros, with the exception of claims relating to car and navigation accidents whose value is less than 20,000.00 Euros ⁽¹⁾. The *Tribunale* is competent for any other claim.

Once the creditor has identified the competent court (*Giudice di pace/Tribunale/Corte d'appello*), the rules on territorial competence shall apply. The creditor has the option to choose the place where the debtor has her/his residence, domicile or place of abode, according to the general rule under Art. 18 It c.p.c., or another *forum* under the subsidiary rules of competence. For example, when the pecuniary claim relates to a contract or to non-contractual obligations the competent court is the one where the obligation arose.

For requests for summary orders lodged with an incompetent court, the request would be rejected, and the claim may be lodged again to the competent court (Art. 640 co. 3 It c.p.c.).

4. How to submit an application for an EOP. Art. 7(5) EOP Reg. provides that: "The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin". Furthermore, Art. 7(6) EOP Reg. provides that the application shall be signed by the claimant or, where applicable, by his representative, and that where the application is submitted in electronic form in accordance with par. 5, it shall be signed in accordance with Art. 2(2) of Directive 1999/93/EC. However, the last requirement does not apply if the Member State of origin has set up an electronic communications system which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner.

¹¹ Law no. 201/2021. On 2 August 2022 the [draft legislative decree No. 407/2022 has been transmitted to the Chamber of Deputies.](#)



Despite the Italian Government's Communication does not contain any reference to electronic filing and to languages other than Italian, creditors should be advised that the application for an EPO may be filed in paper or electronically ⁽¹²⁾, in Italian and in the other official languages of the proceedings (German, French), if the conditions are met ⁽¹³⁾. Practically speaking, electronic filing has recently been made available, but limited to the registered users of Italian justice IT system, i.e. Italian lawyers and EU lawyers admitted to practice in Italy.

Submission of the claim in paper means a significant deviation from the current practices and development in the electronical management of civil claims ⁽¹⁴⁾. Materially, the creditor shall present the application and the pertinent documents by hand at the office of the clerk of the court competent to receive the request. Such is an activity usually carried out by lawyers and little to no assistance is available to the public, outside of the cases under Italian law in which the claim may be filed without the need to be represented by a registered lawyer. Thus, creditors should be aware that, even if representation by a lawyer is not mandatory (Art. 24 EOP Reg.), assistance from a lawyer may be needed in order to carry out such activities.

5. Appendix to the application. Pursuant to Art. 7(4) EOP Reg., the claimant may indicate to the court whether s/he opposes a transfer to civil proceedings within the meaning of point (a) or point (b) of Art. 17(1) EOP Reg. in the event of opposition by the defendant. Alternatively, the claimant may also indicate which, if any, of the procedures listed in points (a) and (b) of Art. 17(1) EOP Reg. s/he requests to be applied to his claim in the subsequent civil proceedings in the event that the defendant lodges a statement of opposition against the European order for payment. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.

There are no official indications on the procedural rules applicable following the opposition by the debtor. However, lacking official indications, the Grand chamber of

¹² But not yet before *Giudice di pace*.

¹³ For the conditions for the application of other official languages of the proceedings other than Italian, see the *BI bis PG*, §(II)(1-*bis*).

¹⁴ However, it should also be noted that the provision is partially in line with Art. 24 EOP Reg., that allows the parties to follow procedure without the representation by a lawyer. In fact, the possibility to file electronic claims is strictly connected with the assistance of a lawyer, since the electronic portal to submit claims and other documents to the court is accessible only by registered lawyers.



the Corte di Cassazione ⁽¹⁵⁾ ruled that the judge must set a deadline to the applicant to start the ordinary procedure, according to the applicable national procedural rules. Failure to comply with the deadline would result in termination of the proceedings ⁽¹⁶⁾.

B. Conduct of the procedure before the court

1. Examination of the application. Pursuant to Art. 8 EOP Reg., the court seized on an application for an EOP shall examine, as soon as possible and on the basis of the application form, whether the claim falls within the scope of the EOP procedure, whether the application complies with the requirements set out in Art. 7 EOP Reg., and whether the claim appears to be founded. Furthermore, the Regulation makes clear that the examination of an application for an EOP need not be carried out by a judge and, under Art. 8 EOP, may take the form of an automated procedure (EC PG III.1.2).

Lacking any other official indication on such regard, it can be stated that the examination of an application for an EOP in Italy will be carried out by the judge to which the claim is assigned within the competent court. Under Italian law, the clerks of the court are not allowed to make any determination on the merits of a claim. The mechanism of allocation of the claims to each judge depends on the single district court and its organizational rules and structure. When the claim is assigned to a judge, it is the judge her/himself to conduct the proceedings according to the applicable procedure and issuing the procedural and organizational decisions that s/he sees fit. There are no binding deadlines as to the time between the filing of the application and the initial determination of the application by the court.

2. Completion and rectification. If the application for an EOP does not meet the requirements of Art. 7 EOP Reg., i.e., it is incomplete or contains an error, the court which has jurisdiction shall give the claimant the opportunity to complete or rectify the application (see Art. 9 (1) EOP Reg.) using the standard form B as set out in Annex II (EC PG III.5.1.1.). Where the court requests the claimant to complete or rectify the

¹⁵ Cass. civ., sez. un., 31.01.2019, no. 2840.

¹⁶ For a general overview of the jurisprudence on this matter please refer to the *EFFORTS Report on Italian case-law*, pp. 62 ff., available on the [EFFORTS website](#).



application, it shall specify a time limit it deems appropriate in the circumstances. The court may, at its discretion, extend that time limit (EC PG III.2.1.)⁽¹⁷⁾.

There are not official indications or relevant practices on this matter that may be of use for the parties. However, it shall be noted that the Italian Government's Communication under Art. 29 EOP Reg. indicates that communications shall occur only via the postal service. As already noted, unless the filing has been made by a lawyer authorized to operate in the IT system, this could mean that the usual electronic communication systems used by the courts in civil proceedings could be excluded and that the claimant should expect communication or service via the postal services for the purposes of the completion and rectification of the claim under Art. 9(2) EOP Reg.

3. Modification of the application. If the requirements are met for only part of the claim, the court shall inform the claimant to that effect. The claimant shall be invited to accept or refuse a proposal for an EOP for the amount specified by the court and shall be informed of the consequences of his decision, by using form C.

a. Acceptance of the proposal. If the claimant accepts the court's proposal, the court shall issue an EOP for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law (EC PG III.2.1.)⁽¹⁸⁾. In such cases does national law prevent the claimant from filing a new claim/action with respect to the remaining part of the initial claim?

b. Time limits. The claimant shall reply within the time specified by the court (see Art. 9(2) EOP Reg.) using standard form C. If the claimant fails to send his reply within the time limit specified by the court, the court shall reject the application in its entirety. See above §2 "Completion and rectification".

As already noted in §(III)(B)(2) above, the means of communication include paper and electronic means; this would apply also to the modification of the application.

When the claimant receives such communication from the court, s/he has the option to accept or reject the proposal for modification. There is no published case law

¹⁷ See also EC PG III.5.1.1.

¹⁸ See Art. 10 EOP Reg.



concerning the effect of that choice. However, it should be noted that the Corte di Cassazione repeatedly ruled ⁽¹⁹⁾ that there are no res judicata effects in case of partial dismissal of a national order for payment application.

4. Rejection of the application. The court shall reject the application, using form D, if: (i) the requirements set out in Art. 2, 3, 4, 6 and 7 EOP Reg. are not met; or (ii) the claim is clearly unfounded; or (iii) the claimant fails to send his reply (in response to the court's proposal to modify the application) within the time limit specified by the court; or (iv) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Art. 10 EOP Reg. The claimant shall be informed of the grounds for the rejection (EC PG III.2.2.).

As already noted in §(III)(B)(2) above, the means of communication include paper and electronic means; this could apply also to the rejection of the application.

This would be the occasion to remind the applicant that such communication will be received materially at the address s/he has indicated in the application (Art. 7 EOP Reg.).

Such communication would occur according to the rules of postal service. In practice, at the request of the registrar, the postal agent shall deliver the envelope to the addressee's own hands in person or, if the delivery cannot be made in person, shall deliver the envelope to the place indicated on the envelope containing the document to be served to other persons specified by the law (Art. 7 l. No. 890/1982). If delivery to such persons cannot take place, the envelope shall be deposited at the nearest deposit office, and notice of the attempt to serve the envelope and of its deposit shall be given to the addressee, by the postal agent, by notice in a sealed envelope by registered letter with return receipt (Article 8 l. No. 890/1982).

C. Issuing & serving the EOP

1. Completion of Form E. Once the application (Form A) has been lodged and, if necessary, duly modified or rectified at the court's request, the court issues the EOP using form E as set out in Annex V when, if applicable, the relevant court fees have been paid (EC PG III.3.1.)

¹⁹ The leading case is Cass. civ., sez. un., 01.03.2006, no. 4510.



Under Italian procedural law, the same judge is competent to carry out the initial examination of the EOP application and the issuance of the EOP. When a creditor submits the application s/he should take also into account that there are not relevant rules or practices on the timing of the issuance of an EOP after the application is submitted. The creditor should also take into account that the initial payments to be settled when an application is made comprise (1) judicial fees (in the form and amount of the all-inclusive fixed registry fee) (see §(III)(A)(1)(c) above for other details) and could comprise (2) lawyer fees, in the event that the creditor decided to be assisted by a lawyer and that s/he agreed to pay the lawyer in advance.

2. Service of the EOP on the defendant. The EOP has to be served on the defendant in accordance with the national law of the Member State of origin. However, such a method has to meet the requirements set as minimum procedural standards in the Regulation (Art. 13 to 15 EOP Reg.). In general, two types of service are possible: either service with proof of receipt by the debtor (Art. 13 EOP Reg.) or service without proof of receipt by the debtor (Art. 14 EOP Reg.); each of them can be used in relation to the defendant's representative (EC PG III.3.3.). Additionally, Form E reminds the defendant of his rights and options (EC PG III.3.1.). ⁽²⁰⁾

Service of the EOP would occur according to the rules for national summary orders: thus, an authenticated copy the order for payment together with an authenticated copy of the initial application (Art. 643 It c.p.c.) would be **served on the debtor personally**, following general rules for service of documents pertaining to civil proceedings (Arts. 137 ff. It c.p.c.) ⁽²¹⁾.

Certain elements of the rules contained in Arts. 13, 14 and 15 EOP Reg. could exclude **compliance of specific forms of service** carried out under the general rules

²⁰ When answering these questions, please take into account that cross-border service in another Member State shall be governed by the Service Regulation (cf Reg. No 1393/2007 and Reg. No 2020/1784 recast). In this regard, the CJEU has clarified that where service has been carried out in violation of the requirements set out in the Service Regulation, the EOP does not become enforceable and the period in which the defendant may lodge a statement of opposition cannot start to run, so that Art. 20 EOP Reg. cannot apply (CJEU, 6 September 2018, in case C-21/17, *Catlin Europe SE v O.K. Trans Praha spol. s r.o.*).

²¹ For a general overview of these rules of service please refer to the *EFFORTS EEO PG*, §(I)(A)(2)(g)(i).



contained in Arts. 137 ff It c.p.c. ⁽²²⁾. In particular, service under Art. 139 It c.p.c. may not comply with minimum standards where it states that service may be effected at the place of work of the debtor even if s/he is not a self-employed debtor or a legal person ⁽²³⁾ and where it states that service may be effected in the hands of the janitor or of a neighbour ⁽²⁴⁾. Also, Art. 143 It c.p.c. (fictitious service) does not comply with the minimum standards, as it states that when the address of the defendant is unknown, service may be effected by deposit of the document at the competent desk of the townhall of the last known residence of the debtor or, in the event that even such place is unknown, at the competent desk of the townhall where the debtor was born and that, if none of these places is known, service is effected in the hands of the public prosecutor (in all these cases, the document is fictitiously considered as received by the debtor after twenty (20) days from service). Therefore, it is believed that if the defendant's address is unknown, the EOP procedure cannot be used.

Service to registered Italian companies can be made directly to the certified e-mail address listed in the company registry.

D. Opposition (defendants' rights/options)

1. Opposition to the EOP. A defendant can lodge a statement of opposition to the EOP by making use of Form F in accordance with Art. 16 EOP Reg. It is not necessary for the defendant to give reasons for his/her opposition. The statement of opposition should be sent within 30 days of service of the order on the defendant. The period is calculated in accordance with Council Regulation (EC) No 1182/71 determining the rules applicable to periods, dates and time limits (OJ. EC 1971 L 124/1) (EC PG III.4.1.)⁽²⁵⁾. The statement of opposition should be submitted in either paper form or by any other means of communication, including electronic, accepted in the Member State of origin and available to the court of origin. The statement of opposition can also be made by a representative of the defendant (*ibid.*).

²² Similarly to what was already noted there for the service under the EEO Reg., *EFFORTS EEO PG*, §(I)(A)(2)(g)(i).

²³ While Art. 14(1)(b) EOP Reg. states that personal service at the defendant's business premises on persons who are employed by the defendant is allowed "in the case of a self-employed defendant or a legal person".

²⁴ While Art. 14(1)(a) EOP Reg. states that service at the defendant's personal address is allowed "on persons who are living in the same household as the defendant or are employed there".

²⁵ See also EC PG III.5.2.1.



When filing an opposition to an EOP, debtors should consider the following. As for the language of the opposition, it should be drafted **in Italian** ⁽²⁶⁾, or in the other official languages of civil proceedings (**German, French**, in the districts in which such languages are admissible). The application should be filed **by paper**: this conclusion follows the general rules and principles of civil proceedings, where they are organized so that electronic filing of motions and other court documents may only take place via a portal accessible only to registered lawyers.

Nonetheless, it should also be noted that the rules concerning the management of the **COVID—19 pandemic** imposed to lodge documents concerning civil proceedings only via electronic means ⁽²⁷⁾, with limited exceptions: the rule on the paper application contained in the EOP Reg. should, however, prevail.

As to the **template** to be used for the filing of an opposition, according to the limited case law ⁽²⁸⁾, even a written objection without the standard Form F is accepted as valid, provided it clearly states the intention to file an opposition to a specific EOP.

2. Effect of the lodging of a statement of opposition. In accordance with Art. 17(1) EOP Reg. if a defendant submits an admissible statement of opposition the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Under Art. 7(4) EOP Reg. the claimant can make such a request at any time until the EOP is issued (see *supra*, pt. 5). In accordance with Art. 17(2) EOP Reg. the transfer to ordinary civil proceedings is governed by the law of the Member State of origin. Nothing under national law shall prejudice the claimant's position in any subsequent ordinary civil proceedings (EC PG III.4.1.).

As already reported in §(III)(A)(5) above, lacking official indications, the Grand chamber of the Corte di Cassazione ⁽²⁹⁾ ruled that the judge must set a deadline to the

²⁶ According to what has been communicated by the Italian Government under Art. 29 EOP Reg. The contents of the Communication may be found on the e-Justice Portal [here](#).

²⁷ Art. 16 co. 1 D.L. no. 228/2021 established that the rules on the requirement to lodge documents relating to civil proceedings exclusively via electronic means of communication has effect until 31 December 2022, except further postponement.

²⁸ *Tribunale di Mantova*, 25.02.2014, in *EFFORTS Report on Italian case-law*, §(IV)(A)(12).

²⁹ Cass. civ., sez. un., 31.01.2019, no. 2840.



applicant to start the ordinary procedure, according to the applicable national procedural rules. Failure to comply with the deadline would result in termination of the proceedings and the EOP loses its effects ⁽³⁰⁾.

- 3. Enforceability.** If no statement of opposition is lodged within the 30-day period the EOP is declared enforceable, subject to the court allowing sufficient time for the statement of opposition to arrive. (EC PG III.4.1.). The court will use Form G to declare that the EOP is enforceable and will send this to the claimant (*ibid.*). In accordance with Art. 18(2) EOP Reg., the formal requirements for enforceability are governed by the law of the Member State of origin (*ibid.*).

Lacking any official indication on the authority competent to issue the certificate, applicants should consider that such authority may be the same judge that issued the EOP (and thus the request should be lodged to the offices of the clerk of the court of the judge that issued the order).

E. Possible remedies/defences for the parties

1. **Remedies available to the claimant.** See *supra*, pts. (B) 2-4.
2. **Lodging of a statement of opposition.** See *supra*, pts. (D) 1-2.
3. **Review in exceptional cases in the Member State of origin (Art. 20(1) EOP Reg.).** Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin in the following cases:
 - a. The order was served by one of the methods provided for in Art. 14 EOP Reg., i.e. without proof of receipt by the defendant, and service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his or her part.
 - b. The defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly (EC PG III.5.2.2.).

³⁰ For a general overview of the jurisprudence on this matter please refer to the *EFFORTS Report on Italian case-law*, pp. 62 ff., available on the [EFFORTS website](#).



4. Review in the Member State of origin where the European Order for Payment was wrongly issued (Art. 20.2 EOP Reg.). Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin where the order was clearly wrongly issued, having regard to the requirements laid down in the Regulation, or due to other exceptional circumstances (EC PG III.5.2.3.).

The Italian Government's Communication under Art. 29 EOP Reg. states that: (1) the judge competent to hear the review under paragraph (1) of Art. 20 EOP Reg. is the same court that issued the order, according to Art. 650 It c.p.c.; (2) the judge competent to hear the review under paragraph (2) of Art. 20 EOP Reg. is "the same court that has jurisdiction for the order, to be seized in accordance with the rules commonly applicable to it" ⁽³¹⁾. Therefore, in order to lodge an application for review under Art. 20 EOP Reg. debtors should consider the following.

A belated opposition to a summary order for payment under Art. 650 It c.p.c. is lodged to the same court that issued the order by first serving on the creditor and then lodging to the court a writ of summons (with the forms and contents generally applicable for ordinary proceedings) (Art. 163 It c.p.c.), except for disputes to which the labor procedure is applicable; in that case, the opposition shall be brought by means of a complaint ("*ricorso*") directly lodged with the court and later served on the defendant. Generally, there is not a deadline for such belated opposition: the debtor would only have to prove the conditions for such opposition. However, Art. 650 co. 3 It c.p.c. if the creditor proceeds with the enforcement, a belated opposition is only admissible within ten (10) days from the first act of the enforcement ⁽³²⁾. Thus, an application for review under Art. 20(1) EOP Reg. should be lodged by the debtor before the same court to which the judge that issued the order belongs, by way of a writ of summons according to the general rules, with the only indication that a ten (10) day deadline would be applicable in case the debtor becomes aware of the EOP only because of the enforcement proceedings initiated by the creditor against him.

³¹ The original text in Italian is available on the e-Justice Portal [here](#); this is the editors' unofficial translation.

³² The applicability of such deadline also to European summary orders of payment has been confirmed by the Italian supreme court in case Cass. civ., 20.03.2017, no.7075, sez.unite, in *EFFORTS Report on Italian case-law*, §(IV)(A)(21).

As to the moment from which the deadline should be calculated, please consider that the first act of the enforcement is variable. For the identification of such act, please refer to the *EFFORTS Annex on Enforcement*, §(4) or the *EFFORTS BI bis PG*, §(II)(1).



As for the application for review under Art. 20(2) EOP Reg., such would have to be lodged before the same court that issued the order by way of a writ of summons according to the general rules, only that in this case the ten days deadline under Art. 650 It c.p.c. seems not to be applicable (otherwise, it would be difficult to explain why the Government's Communication would make such distinction; however debtors should consider that, in doubt, also this opposition should be filed within ten (10) days from the first act of enforcement).

In both cases the proceedings would take place according to the general rules applicable to ordinary civil proceedings (Arts. 163 ff It c.p.c.) or summary ordinary civil proceedings (Arts. 702-*bis* It c.p.c.).

5. Remedy in case of lack of service of the initial EOP. In cases C-119/13 and C-120/13, the European Court of Justice held that the procedures laid down in Art. 16 to 20 EOP Reg. are not applicable where it appears that a EOP has not been served in a manner consistent with the minimum standards laid down in Art. 13 to 15 EOP Reg.⁽³³⁾.

The review under Art. 650 It c.p.c. for a belated opposition is applicable, under Italian law, not only in exceptional cases concerning reasons of force majeure or extraordinary circumstances, but also in cases concerning irregularities in the service of the summary order for payment: as such, even lacking any official indication or case-law in that regard, the same procedure for review should be applicable in case of irregular service in violation of Arts. 13 ff. EPO Reg.

³³ CJEU, 4 September 2014, in cases C-119/13 and C-120/13, *eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy*, and *Raiffeisenbank St. Georgen reg. Gen. mbH v Tetyana Bonchuk*.



IV. Recognition and enforcement of EOP in other Member States

When Italy is the Member State of enforcement

1. Competent authorities and applicable law. The authorities in the Member State of enforcement cannot review the circumstances or procedures that led to the issuing of the order except in the situations provided for by Arts. 22 and 23 (*see below*). No review as to the substance is allowed in the Member State of enforcement (EC PG IV.1.). The procedure for enforcement is governed by the law of the Member State of enforcement, without prejudice to the provisions of the Regulation (*ibid.*). The claimant must apply for enforcement to the court or authority competent for enforcement in the Member State where enforcement is required (EC PG IV.2.).

The enforcement of a summary order for payment follows the same rules applicable to the enforcement of any other title for the payment of a sum of money ⁽³⁴⁾. Before proceeding with the enforcement the creditor shall serve both the EOP and the notice of execution on the debtor, under the general rules of service (Arts. 139 ff. It c.p.c.). Then, if the debtor has not spontaneously complied with the payment of the debt, the creditor may take the first step of the enforcement (but not before ten (10) days from the service of the notice of execution), which in this case would be the enforcement seizure ("*pignoramento*"). With the seizure the bailiff, upon request of the creditor, places a restriction on certain goods of the debtor (which value should cover the amount of the debt) and the debtor shall not sell, otherwise dispose or deteriorate or even destroy such goods. The *pignoramento* may attach different types of goods of the debtor, including her/his monetary credits towards a third party. From that moment, the enforcement proceedings starts, until the forced selling (or forced assignment to the creditor, in case of request) of the seized goods and the assignment of the sum to the creditor in order to cover the initial debt and the costs of the enforcement procedure.

2. Documents for enforcement. The claimant should provide the competent court or authority with a copy of the order, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity, and a declaration of enforceability (form G) (EC PG IV.2.).

³⁴ For a general and more detailed overview of the initial phase of the enforcement proceedings please refer to the *EFFORTS Annex on Enforcement*, §§(3) and (4) and the *EFFORTS BI bis PG*, §(II)(1).



Creditors should note that copies of court orders under Italian law are simple, authenticated, or enforceable ⁽³⁵⁾. In order to ask an authenticated copy of the summary order creditors have to present a request to the competent desk at same the court where the judge issued the order and prepare to pay the applicable fees and taxes.

3. Languages and translations. The claimant may be required to provide a copy of the EOP in a different language from that used by the court of origin. As a general rule the EOP should be provided in the official language, or one of the official languages, of the Member State of enforcement unless that Member State has indicated that it will accept orders in another official language or languages of the European Union. Details of which languages are accepted by each Member State are available on the European Judicial Atlas. When checking the details a claimant should also bear in mind that in Member States where there is more than one official language it may be necessary to provide a translation into the language specified for a particular part or region of that Member State. Any translation shall be certified by a person qualified to do so in one of the Member States (EC PG V.3.).

For the purposes of enforcing an EOP in Italy a translation in Italian or in one of the other official languages of the proceedings (German, French) may be accepted. Users should consider that German and French are languages of the proceedings only in certain districts ⁽³⁶⁾.

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,

³⁵ Users may find a complete description of the matter in the *EFFORTS BI bis PG*, §(I)(A)(1).

³⁶ Please refer to the *EFFORTS BI bis PG*, in §(II)(1-*bis*).



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.

4. Application for refusal of enforcement under Art. 22 EOP Reg. The defendant has the possibility to apply for a refusal of enforcement if one of the grounds for refusal set out in Art. 22 EOP Reg. apply (see EC PG IV.4.1.). Which is the national authority and the applicable rules and procedures regarding an application for refusal of enforcement? Are there any specific steps or conditions to be mentioned in particular (e.g., is the procedure adversarial, does the procedure require a hearing, does national law require that the parties be represented by a lawyer?)?

EOPs are subject to the same procedure for refusal of enforcement of any other national or foreign title upon which enforcement is sought in Italy⁽³⁷⁾. National grounds for refusal of enforcement should be raised by means of an opposition to enforcement or an opposition on form (Arts. 615 ff. It c.p.c.), and that specific deadlines may be applicable. Such means of opposition are available to the debtor from service of the notice of execution (Art. 480 It c.p.c.), which occurs before the first act of enforcement. As for the grounds for refusal under Art. 22 EOP Reg., the applicable opposition is the opposition to enforcement under Art. 615 It c.p.c., which may be filed from the moment the writ of execution is served (Art. 615 co. 1 c.p.c.) to the termination of the enforcement proceedings. Debtors should be aware that the procedural rules for filing such opposition vary depending on the moment in which it is filed (either before or after the first act of the enforcement) and that assistance from a registered lawyer is compulsory, independently from the nationality or the domicile of the parties.

5. Stay or limitation of enforcement Art. 23 EOP Reg. The defendant may apply for a stay or limitation of enforcement of the EOP (see Art. 23 EOP Reg.) where the defendant has applied for a review within the meaning of Art. 20 EOP Reg. In such cases,

³⁷ For a complete guide on such grounds for refusal and procedures please see the *EFFORTS Annex on Enforcement*, §5 and the *EFFORTS BI bis PG*, §(II)(4-ter).



the competent court in the Member State of enforcement may: (i) limit the enforcement proceedings to protective measures; or (ii) make enforcement conditional on the provision of such security as it shall determine; or (iii) under exceptional circumstances, stay the enforcement proceedings (see EC PG IV.4.2.).

Lacking any official indication on the procedure and the actual remedies available to the debtor under Art. 23 EOP Reg. when the EOP is brought up for enforcement in Italy, debtors should be aware that there is substantial uncertainty on how to obtain such remedies and the measures that the court has the power to issue on that regard.

One possible indication for the parties would be to consider the measures contained in Art. 23 EOP Reg. as directly applicable in Italy, being the only uncertain matter the one regarding the procedure to issue them. The latter uncertainty could be resolved indicating that the debtor could petition the court under Art. 485 It c.p.c. on such matter and the judge of the enforcement shall decide on the remedy after the hearing of the parties issuing an ordonnance. However, users should consider that this possibility has been mentioned only in theory and only with reference to the EEO regulation ⁽³⁸⁾.

³⁸ This solution has been put forward with regard to the EEO by See FARINA, *Rilascio e revoca del certificato TEE*, in VILLATA (A CURA DI), GIUGLIANO-MOLINARO, *La giurisprudenza italiana sui regolamenti europei in materia di recupero transazionale dei crediti*, Wolters Kluwer, 2021, p. 68. Please refer to the *EFFORTS EEO PG*, §(II)(B)(4).