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EFFORTS Practice Guide the application in Italy of the regulation on the European Enforcement Order

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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 805/2004 will be referred to as “EEO Reg.”. The European Enforcement Order will be referred to as “EEO”.

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 targeted: 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.

I. Outgoing

When Italy 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 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).

There is no official indication concerning the **competence** to issue or reissue an EEO certification (Art. 6(1) EEO Reg.). Generally, the competence is to be attributed to the "court of origin", pursuant to Art. 6 EEO Reg. Thus, as a general indication, creditors should take into account that the application should be presented before the same court to which belongs the judge that decided the original claim to be certified as EEO.

Creditors should also note that, according to the limited case law on the matter, the EEO certification should not be **issued by** the clerk of the court but by the judge her/himself ([1]).

[1] *Tribunale* of Milano, 23.04.2008, ord., in *EFFORTS Report on Italian case-law*, §(III)(A)(3), reasoning that the issuance of such certification is not an administrative matter but it implies the exercise of a judicial power; See also CJEU, 16 June 2016, in Case C 511/14, *Pebros Servizi*, as well as CJEU, 4 September 2019, in Case C 347/18, *Salvoni*.

Also, there is no official indication concerning the **procedure** for the (re-)issuance of an EEO. Thus, on one hand, debtors should be aware that there is a certain degree of uncertainty concerning their summoning to a hearing before issuance of the certification, and the rules on service of the application and/or of the certification. On the other hand, creditors should also be aware that there is no indication on the time to make the request (before or after the proceedings on the merits) and that there is a certain degree of uncertainty relating to the remedies applicable in case of refusal to issue the certification.

According to the limited case law on the matter, on one hand, it has been stated the **appeal against the refusal** to certify a judgment as an EEO should be lodged with the appellate court, and not with the district court, under Art. 739 It c.p.c.: this indirectly confirms the possibility to appeal the refusal ([2]). However, on the other hand, it has also been stated that no remedy is available against the refusal to certify a judgment as an EEO, neither with the district court nor with the appellate court ([3]).

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. **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).

[2] *Tribunale* of Novara, 23.05.2012, in EFFORTS Report on Italian case-law, §(III)(A)(12), dismissing an appeal lodged with the district court, and not with the appellate court, under the same Art. 739 It c.p.c.

[3] *Corte d'appello* of Bologna, 16.12.2015, in EFFORTS Report on Italian case-law, §(III)(A)(16), reasoning that the issuance of an EEO certification does not constitute a judicial decision but only a statement of enforceability in the European judicial area and assuming that a creditor may file as many requests as s/he wishes.

c. **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).

Under Italian civil procedural rules, the general procedures for filing pecuniary claims are the *ordinary civil proceedings* (Arts. 163 ff. It c.p.c.) and the *expedite ordinary proceedings* (Arts. 702 bis ff. c.p.c.).

Apart from the ordinary rules for civil proceedings, creditors may avail themselves of the procedure to obtain a **summary order "*decreto ingiuntivo*"** (Arts. 633 ff. It c.p.c.). This is an alternative procedure for creditors that need to promptly enforce, *inter alia*, a pecuniary claim with written proof. Such procedure is *ex parte* and the creditor shall present the court with proof *in writing* of the merits of the pecuniary claim. If the claim appears to be founded, based on the documents produced by the creditor, the judge shall issue the summary order for payment. After its issuance, the order shall be served on the debtor within sixty (60) days (or ninety (90) days if the debtor has residence outside Italy) and the debtor has then forty (40) days (fifty (50) if the debtor has residence in another EU State or sixty (60) it the debtor has residence in other States) to lodge a claim for opposition to the order. If such opposition is lodged, then the court will judge on the claim with the expedite or ordinary civil proceedings. The summary order for payment may also be issued as provisionally enforceable in case the creditor presents highly reliable types of proof in writing (e.g., an authentic instrument or a document signed by the debtor her/himself proving the credit) or in case there is the risk of a serious harm in delaying the enforcement (Art. 642 It c.p.c.).

However, creditors who wish to avail themselves of the procedure to obtain a summary order should also be aware that the certification of such order as EEO is a matter that presents **uncertain issues**. Amongst others, it should be mentioned that service of the summary order on the debtor, under Italian procedural law, does not automatically comply with the rules set forth in Arts. 13 ff. EEO Reg. on minimum standards of service and information to be provided to the debtor (see §(I)(A)(2)(g)(ii) below): therefore, the EEO could be withdrawn on the ground that it was wrongly granted, having regard to the requirements laid down in the EEO Reg. (Art. 10(1)(b) EEO Reg.),

as happened with considerable frequency ([4]). Also, it should be mentioned that, according to case-law, the summary order shall not be certified as an EEO when the debtor files an opposition, even if it was granted provisional enforceability ([5]).

It should also be mentioned that an order for payment may be issued by the court during ordinary civil proceedings at the request of the creditor under **Art. 186 *ter*** It c.p.c., if the requirements for a summary order for payment are met. In such a case, certification as EEO may occur if the order under Article 186 *ter* It c.p.c. was made against a defendant in default who fails to enter an appearance within twenty days of service.

Concerning **claims for an unspecified sum of money**, the creditor may claim the so-called *condanna generica* (order for payment for an unspecified sum) (Art. 278 It c.p.c.), during ordinary civil proceedings. Such is a judgment of the court that declares that the pecuniary claim is due but there is no indication on the amount yet, as it shall be later determined by the court. The practical advantage of such judgment is twofold: on one hand, it is a title to put a lien on the debtor's assets (see *BI bis Reg. PG*, §(II)(B)); on the other hand, declaring the victory of the creditor it could be taken into account by the debtor for a settlement offer. Creditors should note that such a judgment does not meet the requirements to be certified as an EEO because it is not enforceable and, in any case, because it only declares the existence of a claim having to do with the payment of a sum of money which, however, is not specified.

Enforceability of judgments ([6]). The general rule under Art. 282 It c.p.c. states that judgments of first instance that order performance are provisionally enforceable by the time they are issued, i.e. before they acquire the stability of *res judicata*. Provisionally enforceable judgments are subject to ordinary remedies. The provisional enforceability of a judgment may be suspended upon motion of a party in case a challenge is filed against it.

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[4] See, for instance, *Corte d'appello* of Bologna, 13.01.2016, in *EFFORTS Report on Italian case-law*, §(III)(A)(17), confirming the withdrawal of an EEO wrongly granted on a summary order for payment because it was served on the defendant without mentioning the competent court for the opposition and without the communication of the need for the defendant to be represented by a lawyer in the opposition proceedings. Similarly, *Tribunale* of Mantova, 24.09.2009, in *EFFORTS Report on Italian case-law*, §(III)(A)(6) and *Tribunale* of Modena, 14.12.2010, in *EFFORTS Report on Italian case-law*, §(III)(A)(9).

[5] See *Tribunale* of Prato, 30.11.2011, in *EFFORTS Report on Italian case-law*, §(III)(A)(10) and *Tribunale* of Mantova, 10.07.2015, in *EFFORTS Report on Italian case-law*, §(III)(A)(15).

[6] In general, for other information on the enforceability or provisional enforceability of judgments see the *BI bis Reg. PG*, §(I)(2 *ter*).

In civil proceedings, as a general principle, when the court decides on the claim, it adjudicates also the **costs of the proceedings**, according to the rules laid down in Arts. 88 ff. It c.p.c. Civil proceedings end without the order on costs in case of extinction of the procedure for lack of appropriate action of the parties: in such case, the costs are born by each of the parties that has anticipated them (Art. 310 It. c.p.c.). The parties may challenge the decision on costs with the ordinary remedies against judgments and orders of the court. For example, the decision on costs issued in a judgment of the first instance district court may be appealed before the competent appellate court, by itself or together with the merits of the case.

d. **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).

In case the creditor chose to avail her/himself of the procedure to obtain a summary order of payment “*decreto ingiuntivo*”, the debtor should be aware that in order to contest the claim s/he must **file an opposition** within forty (40) days from service of the summary order (or the longer term of fifty or sixty days when the debtor’s residence is, respectively, in other EU State or in another State). Belated opposition is admissible, under Art. 650 It c.p.c., if the debtor proves that service of the summary order was irregular or that s/he was not aware of the order under reasons of unforeseeable accident or force majeure.

More in general, when the claim is filed in ordinary (or expedite) civil proceedings, the debtor should be aware that in order to contest the claim s/he should **appear before the court** and state her/his “contestation” in one of the acts for the defendant’s defence (considering that, except in exceptional cases, the representation of a lawyer is normally required): the first act would be the writ of defence and appearance, to be filed not later than twenty (20) days before the first hearing of the parties (Art. 167 It c.p.c.); in the alternative, the defendant could raise an objection during the first hearing (Art. 183 It c.p.c.), or in the first motion after the first hearing under Art. 183 co. 6 It

c.p.c. (to be filed within thirty (30) days after the hearing) ([7]). If the debtor chooses to default her/his appearance, another chance to contest the claim is given by way of challenging the final judgment with ordinary appeals or another applicable remedy. However, debtors should be aware that the judgment of first instance may have been certified as EEO in the meanwhile.

e. **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).

In theory, this situation could occur in specific cases: (i) when the debtor exercises her/his right to renounce to the opposition to a summary order, or both of the parties do not appear in court for two consecutive hearings, and the opposition proceedings, initiated by the same debtor, is terminated (Art. 653 It c.p.c.); (ii) when the debtor, after having appeared before the court and contested the claim in her/his statement of defence, fails to appear to the hearing where s/he is compelled to swear on the merits of the case under penalty of the crime of false statements before the court (Art. 239 It c.p.c.); (iii) other forms of failure to appear before the court after filing an opposition to the summary order. Therefore, debtors should be aware that their failure to promote the opposition proceedings against a summary order for payment or their failure to

[7] It must be noted that, since the reform of the civil process is pending under the law no. 201/2021, this structure of the ordinary civil proceedings may be changed. As for the current structure, debtors should be aware that Italian ordinary civil proceedings are built so that consequent deadlines apply to the means of defence of the defendant under penalty of forfeiture. For example, the first deadline (the writ of appearance and defence, to be lodged no later than twenty (20) days before the first hearing) is the (first and) last moment in which the debtor may object to the territorial competence of the court. Also, the first hearing of the parties is the last moment in which the plaintiff may file a motion for the joinder of third parties or to file a counterclaim against the defendant as a consequence of her/his statement of defence. If the parties do not abide by these deadlines, they forfeit these means of defence.

appear for the hearing for swearing on the merits of the case may determine the claim to be considered uncontested under letter (c) of Art. 3(1) EEO Reg.

f. **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 ([8]). The 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) ([9]).

It could be said that, even without an official indication on this regard, the forms of service that comply with the rules laid down in Arts. 13 ff. EEO Reg. should be the following: (i) service in the hands of the defendant (Art. 139 It c.p.c.); (ii) service with notice to the defendant of the registering of the document at the competent desk of the townhall ("*casa comunale*") (Art. 140 It c.p.c.); (iii) postal service (Art. 8 law no. 890/1982 and Art. 3 law no. 53/94); (iv) service via electronic certified email (Art. 149 *bis* It c.p.c. and Art. 3-bis law no. 53/94).

As for **service in the hands of the debtor**, Art. 139 It c.p.c. states that the bailiff shall search the debtor at her/his premises, i.e. at her/his personal address or at her/his business premise. In case the bailiff does not find the debtor at these premises, s/he may serve the documents in the hands of another qualified person: a relative or a

[8] 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).

[9] *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).

house attendant, or a co-worker or employee. If these persons cannot be found or deny receiving the document, the bailiff may serve the document in the hands of the janitor or a neighbour who accepts to receive it. In case the document is served in the hands of the janitor or of a neighbour, they shall sign a receipt and the bailiff must send notice to the debtor via postal service. With that being said, if compared with Arts. 13 and 14, 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 and where it states that service may be effected in the hands of the janitor or a neighbour.

In the event that none of the persons appointed by Art. 139 It c.p.c. as receivers is found at the debtor's premises, the bailiff may proceed with service **registering the document at the competent desk of the townhall** and not only sending the debtor notice via postal service (registered letter) of such occurrence but also posting a notice on the door of one of the debtor's premises (house or office) (Art. 140 It c.p.c.). The template of the notice via postal service indicates on the envelope that the content refers to "judicial acts", so that the debtor knows that it is a court document. In that regard, service under Art. 140 It c.p.c. should comply with Art. 14(1)(d) EEO Reg.

As for the **postal service**, it would be the postal officer, upon request of the bailiff, to deliver the document to the debtor at her/his premises or other persons indicated by the law (relatives living in the household or persons employed there or the doorman of the building) (Art. 7 l. no. 890/1982) and, in the event that such persons do not receive the document, to deposit the court document at the nearest competent postal office sending notice via registered letter of such occurrence (Art. 8 law no. 890/1982). The lawyer of the party with power of attorney can also request the postal officer to serve the document (Art. 3 l. no. 53/94).

As for service via **certified electronic email**, Art. 149 *bis* co. 2 It c.p.c. states that such form of service is admissible only if the receiver has a certified electronic email address which results from public registers or it is otherwise accessible by the public administration. The bailiff proceeds with the service. The lawyer of the party with power of attorney is also authorized to serve documents by certified electronic email (art. 3-bis law no. 53/94).

As to other **forms of service, which *do not* comply** with the minimum standards, Art. 143 It c.p.c. states that when the address of the defendant is unknown (in all the places previously mentioned), 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. 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.

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).

As already noted in §(II)(A)(2)(a-d) above, if the creditor wishes to avail her/himself of the procedure to obtain a **summary order for payment ("*decreto ingiuntivo*")**, s/he should be aware that the EEO could be withdrawn on the ground that it was wrongly granted, having regard to the requirements laid down in the EEO Reg. (Art. 10(1)(b) EEO Reg.), and in particular due information about the procedural steps necessary to contest the claim (Art. 17 EEO Reg.). It is not clear whether the creditor could include such information in a document attached to the summary order when it is served on the debtor, as prescribed by the law, sixty (60) days from its issuance.

More in general, with regard to **ordinary civil proceedings**, the document instituting the proceedings is the writ of summons, whose contents are generally defined in Art. 163 It c.p.c. as follows: (1) information regarding the court before which the claim is lodged; (2) information regarding the parties and their representatives; (3) definition of the object of the claim (so to say, *what is pursued*); (4) presentation of the elements of fact and statement of the reasons for the claim (so to say, *factual and juridical background*); (5) specific indication of the means of proof that the claimant wishes to avail her/himself of and of the written means of proof (documents) that the claimant submits; (6) information regarding the registered attorney and the power of attorney; (7) indication of the date of the hearing of the parties and invitation to the defendant to appear before the court and lodge her/his statement of defense at least twenty (20) days before such hearing, under penalty of forfeiture of certain motions and objections.

Such being the content of the act instituting the proceedings, doubts as to the *information due under Art. 16 EEO Reg.* could arise only in relation to letters (b) and (c), as long as the creditor does not have the express duty to state the amount of the

claim and the interest rate under penalty of nullity of the writ of summons: thus, creditors should be *advised to include such information* in the act instituting the proceedings; if not, there could be a risk that the final decision is not certified as EEO.

As to the *information due under Art. 17 EEO Reg.*, both the contents of letters (a) and (b) should be deemed to be included in a writ of summons under Art. 163 It c.p.c., also considering that, as to the "consequences of an absence of objection or default of appearance" it is customary practice to include, in the writs, the indication that the default of the debtor's appearance would cause the debtor to be declared as "non appeared" ("*contumace*") and a decision on the merits could be issued in her/his absence. However, it should be noted that in general there is not an explicit information relating to the costs of the court proceedings, which follow the general principles laid down in Arts. 88 ff. It c.p.c. (the general principle of the allocation of costs on the losing party and the exceptions relating to, amongst others: the unjustified refusal to sign a pre-trial settlement or a court settlement; the filing of motions or objections utterly inconsequent; the novelty of the issues of law that the court had to decide on).

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).

Concerning **service of judgments**, two different cases should be addressed separately. First, a judgment could be served on the debtor (i.e., on the losing party) after its issuance in order to set the time limit for the lodging of ordinary appeals. In this case, the judgment would be served on the debtor personally, under Arts. 139 ff. It c.p.c., only in the event that the debtor failed to appear in the proceedings; however, in general, such service is effected to the debtor's lawyer that represented the debtor in the proceedings (Art. 170 It c.p.c.). Second, a final judgment could be served on the debtor for the purposes of an incoming enforcement (together or before the writ of execution) (on this procedure see the *Annex on Enforcement* and the *BI bis Reg. PG*). The latter service would be effected on the debtor personally under the general rules already dealt with in §(I)(A)(2)(g)(i) above. It is not clear if cure of non-compliance under Art. 18 EEO Reg. includes service on a debtor representative under Art. 15 EEO

Reg.: if that is the case, service of the judgment on the debtor's representative lawyer under Art. 170 It c.p.c. could be deemed sufficient to cure the non-compliance under letter (a) of Art. 18 EEO Reg. If not, only service on the debtor personally should serve the purposes of Art. 18.

As to the **other requisites** for curing the non-compliance, letter (b) concerns review of the judgment and the relating information. As for the review, judgments of the district court of first instance are usually subject to appeals to the competent appellate court, which is a means of full review both on the procedural issues and on the merits, both on points of law and on facts. However, it should be noted that, in general, the debtor is not automatically "informed in or together with the judgment about the procedural requirements for such a challenge", mostly because the normal means of service on the debtor are those of Art. 170 It c.p.c., i.e. service on the debtor's representative lawyer. Creditors should evaluate the possibility to attach such information when serving the judgment on the debtor on a separate document attached to the copy of the judgment.

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).

According to the Italian Government's Communication under Art. 30 EEO Reg., the procedure for review referred to in Art. 19 EEO Reg. consists of the ordinary and extraordinary remedies against judgments. However, lacking any specific information on the situations mentioned in Art. 19(1)(a) and 19(1)(b) EEO Reg., the following may be noted.

As for the review under Art. 19(1)(a), "service was not effected in sufficient time to enable him to arrange for his defence", Art. 327 It c.p.c. comes into play: if service of the document that instituted proceedings is null, a party may challenge the judgment rendered in default of her/his appearance, even after the expiration of the deadline to lodge such means of review. However, it should also be noted that no specific provision is dedicated to the service that albeit being regular did not grant the defendant sufficient time for her/his defence: in fact, such case would fall under the general rules, and the losing party may challenge the judgment *within* the deadline normally applicable. Therefore, debtors should pay attention to the cases in which service of the document instituting the proceedings is null or merely irregular, as this

consequently changes the deadline for filing the complaint for a review of the judgment.

As for Art. 19(1)(b), there is a general principle on the extension of final legal deadlines, that allows to supersede the deadline for objections if the party was prevented from raising them by reason of force majeure or due to extraordinary circumstances (Art. 153 It c.p.c.). Such postponement requires a court order, and the party requesting it must show the reasons why it could not meet the deadline. Said principle should also be applicable to the deadline for challenge of judgments, thus debtors should be able to challenge a judgment even after deadline under Art. 153 It c.p.c. and creditors should be able to argue such is a remedy in accordance with Art. 19(1)(b) EEO Reg.

However, creditors should note that these possibilities are not officially stated in relation to Art. 19 EEO Reg. and thus certification as EEO in respect of Art. 19 would be granted more easily if the document instituting proceedings is served on the debtor in a sufficient time to enable defence and without the need to extend the deadline for reasons of force majeure or extraordinary circumstances.

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).

As already mentioned in §(I)(A)(1) above, according to the limited case law on the matter, on one hand, the appeal against the refusal to certify a judgment as an EEO should be lodged with the appellate court, and not with the district court, under Art. 739 It c.p.c., thus confirming the possibility to appeal the refusal ([10]). However, on the

[10] *Tribunale* of Novara, 23.05.2012, in *EFFORTS Report on Italian case-law*, §(III)(A)(12), dismissing an appeal lodged with the district court, and not with the appellate court, under the same Art. 739 It c.p.c.

other hand, it has been stated that no remedy is available against the refusal to certify a judgment as an EEO, neither with the district court nor with the appellate court ([11]).

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).

According to the communication of the Italian Government pursuant to Art. 30 EEO Reg., the procedural rules for the rectification are the same of the **rectification of judgments** according to national law, regulated by Arts. 287 ff. It c.p.c.

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

In general, the motion to obtain a rectification of a judgment is not subject to any court fees. This has been clarified also by the Ministry of Justice, in a memorandum ([12]) which stated that the procedure to obtain a rectification of errors of content or calculus in judgments and judicial decisions, under Arts. 287 ff. It c.p.c., is not subject to any of the usual court fees (the fixed court fee "*contributo unificato*" and the accompanying fee "*importo forfettario*" under Art. 30 d.P.R. no. 115/2002), as it is a progression of

[11] *Corte d'appello* of Bologna, 16.12.2015, in *EFFORTS Report on Italian case-law*, §(III)(A)(16), reasoning that the issuance of an EEO certification does not constitute a judicial decision but only a statement of enforceability in the European judicial area and assuming that a creditor may file as many requests as s/he wishes.

[12] Offices of the Ministry of Justice, memorandum no. 73657.U/2018, available here (last visit 24.06.2022). The original text is in Italian; the following is a translation of the authors of the present guide.

the same original procedure (i.e., it does not constitute an autonomous procedure). This has been stated also in jurisprudence ([13]).

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).

The Italian Government's communication under Art. 30 EEO Reg. indicates the "*procedimento camerale*" under Arts. 737 ff. It c.p.c. as the applicable procedure.

In brief, the *procedimento camerale* (literally "proceedings in chambers") is a simplified proceeding. The proceedings are introduced by a motion to be submitted to the court and follow a simplified structure. In particular, the Italian Government's communication under Art. 30 EEO Reg. specifies that the hearing of the parties is not mandatory.

According to the limited case-law, the challenge against the decision on the withdrawal of an EEO under Art. 739 It c.p.c. should be filed before the competent appellate court (*Corte d'appello*) ([14]), thus excluding that the competence lies with the district court (*Tribunale*).

There are not official indications on the time-limit to present the request for withdrawal.

For the procedures of the so-called "*volontaria giurisdizione*", under Arts. 737 ff. It c.p.c., the fixed registry fee is determined in Euro 98.00, notwithstanding the value of the matter ([15]).

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

[13] See, for example, Cass. civ., 22.06.2020, no. 12184: "In proceedings for the correction of material errors under arts. 287 and 391 bis of the Code of Civil Procedure, no ruling on the costs of proceedings is allowed, as these are administrative proceedings without a losing party in the proper sense" (*editor's non-official translation*).

[14] See *Corte d'appello* of Turin, 23.02.2012, in in *EFFORTS Report on Italian case-law*, §(III)(A)(11).

[15] Art. 13 lett. (b) d.P.R. no. 115/2002.

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).

As already mentioned in §(I)(A)(1) above, lacking any official indication on the applicable procedure to make an EEO request for certification, there is also material uncertainty on the procedure to ask for a certificate indicating the lack or limitation of enforceability.

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).

Following what has been noted in the previous sub-paragraph (d), there is also material uncertainty on the procedure to ask for an EEO replacement certificate.

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).

According to the Italian Government's Communication under Art. 30 EEO Reg., the procedure for review referred to in Art. 19 EEO Reg. consists, of the ordinary and extraordinary remedies against judgments. However, lacking any specific information on the situations mentioned in Art. 19(1)(a) and 19(1)(b) EEO Reg., the following may be noted.

As for the review under Art. 19(1)(a), "service was not effected in sufficient time to enable him to arrange for his defence", Art. 327 It c.p.c. comes into play: if service of the document that instituted proceedings is null, a party may challenge the judgment rendered in default of her/his appearance, even after the expiration of the deadline to

lodge such means of review ([16]). However, it should also be noted that no specific provision is dedicated to the service that albeit being regular did not grant the defendant sufficient time for her/his defence: in fact, such case would fall under the general rules, and the losing party may challenge the judgment *within* the deadline normally applicable. Therefore, debtors should pay attention to the cases in which service of the document instituting the proceedings is null or merely irregular, as this consequently changes the deadline for filing the complaint for a review of the judgment.

As for Art. 19(1)(b), there is a general principle on the extension of final legal deadlines, that allows to supersede the deadline for objections if the party was prevented from raising them by reason of force majeure or due to extraordinary circumstances (Art. 153 It c.p.c.). The said principle should also be applicable to the deadline for challenge of judgments, thus debtors should be able to challenge a judgment even after deadline under Art. 153 It c.p.c.

In official implementing acts, it is not mentioned that debtors must act promptly, and which is the applicable deadline.

[16] It should also be noted that, according to case law, "for the purposes of the admissibility of a belated appeal, in the event of (...) the invalidity of the notification of the document instituting the proceedings (...) it is [the appellant] who has the burden of proving not only the cause of such invalidity, but also that he did not have knowledge of the proceedings as a result of that defect", Cass. civ., 30.09.2015, no. 19574 (*editor's non-official translation*).

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).

According to Art. 8 of the law no. 122/2016, the authority competent to issue the EEO certificate is the same authority that issued the authentic instrument ([17]). For example, if the authentic instrument is drawn up by a notary, the request shall be presented to the same notary. No other official indications are given on the time to make such request or on the costs or on the procedural rules.

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. **The authentic instrument is enforceable.** The authentic instrument to be certified as a European Enforcement Order must be enforceable (EC PG IV.3.2).
c. **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).

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[17] It should be clarified that such competence derives from the law and thus supersedes the indication given by the Italian Government in the Communication under Art. 30 EEO Reg., that indicates the district court ("*tribunale*") as the competent authority for such certification. Indeed, Art. 8 of the law no. 122/2016 clearly states that the authority that issued the authentic instrument is "competent for issuing *any* document, statement or certificate" relating to a European Enforcement Order for authentic instruments.

In Italy, titles for enforcement are authentic instruments *stricto sensu* and instruments whose signatures have been authenticated or certified by a public authority ("*scritture private authenticate*"). Both give the right to proceed with the enforcement of the payments due under each instrument. However, there is a substantial difference, as the instruments with authenticated signatures may only be enforced for the payment of a sum of money, while authentic instruments may be enforced also for the right to obtain certain movable or immovable goods. An authentic instrument is entirely certified, with regard to its content, by the public authority while an instrument with the authenticated signature is only certified as having been signed by certain parties at a certain date. Thus, it would be difficult to include the latter (instruments with authenticated signature) in the notion of authentic instruments under the EEO Reg.

As for the **authentic instruments *stricto sensu***, the main one used in practice is the authentic instrument drafted by a notary, mainly for the sale of immovable goods (i.e., houses, offices, etc.). Such instrument may be enforced, as already noted, for the forced execution of the obligations contained therein. According to Art. 1475 It c.c., the costs incurred for the drafting of the *contract of sale* are born by the buyer; thus, the costs of the authentic instrument, such as the fee of the notary, are borne by the buyer and only a different agreement between the parties may deviate from said rule.

Conditions for the enforceability ([18]).

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).

Differently from what has been reported under §(I)(A)(3)(a) above on the refusal to certify a judgment as an EEO, there is no case law on the refusal to certify an authentic instrument as EEO. Thus, also in light of the lack of official indications on such regard, creditors could try to pursue the enforcement of the authentic instrument under the Brussels regime, or reiterate their request for certification.

[18] For the conditions for the enforceability of an authentic instrument please see the *BI bis Reg. PG*, §(I)(B)(1 *bis*).

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).

Apart from the information that has been reported above in §(I)(A)(3)(a) concerning the rectification of EEO relating to judgments, there are no official information on the procedure of rectification concerning authentic instruments. It should be noted that the procedure indicated for judgments, the procedure for rectification under Arts. 287 ff. It c.p.c., should be only applicable to judgments and it would be difficult to infer that the same procedure is applicable to an EEO regarding an authentic instrument.

On the other hand, Notarial Law No. 89 of February 16, 1913, in Article 59-bis (introduced by Legislative Decree No. 110 of July 2, 2010) provides that the notary has the power to rectify a public deed or a notarized private contract, containing material errors or omissions relating to data pre-existing at the time of its drafting. In practice, the case may be represented, for example, by a computational error in the indication of the sum constituting the claim, or an error concerning the debtor's or creditor's data (name, multiple names, date of birth etc.), which can be easily remedied by the notary in possession of the exact data, even in the absence of the parties.

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 line with what has been reported under the previous §(I)(B)(3)(b), there is no official information regarding the withdrawal of an EEO regarding an authentic instrument and it would be difficult to indicate a solution on the basis of the rules applicable to judgments.

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).

Following the comments in the previous §(I)(B)(3)(b) and (c), and following the indications given under §(I)(B)(1), it could be stated that the debtor should apply to the same authority that issued the instrument for a certificate indicating the lack or limitation of enforceability. However, there is no official information on the applicable procedure, costs or other relevant issues.

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).

According to the Italian Government's communication under Art. 30 EEO Reg., the procedures for review under Art. 19 EEO Reg. are the ordinary remedies against judgments (Arts. 323 ff. It c.p.c.). However, such remedies are not applicable to authentic instruments as such.

It could be stated, generally, that authentic instruments are defined as a document drawn up by a notary or other public authority authorised to make it official (literally "*give it public faith*") in the place where the instrument is formed. Following this, the authentic instrument constitutes full proof, up to a claim of forgery, of the source of the document from the public official who drew it up, as well as of the declarations of the parties and the other facts that the public official certifies as having taken place in her/his presence. Therefore, under Italian law in order to challenge an authentic instrument one must file a **claim of forgery**. However, the parties should note that there is no official indication on the relevance of claims of forgery for the purposes of Art. 19 EEO Reg.

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).

> As already stated for judgments under §(I)(A)(1), there is no official indication concerning the competent authority to present a request for certification of a court settlement. However, according to the notion of court settlement that will be addressed below in the following paragraph, §(C)(2), it could be stated that the request should be presented to the same court/judge that issued the court settlement.

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. **The court settlement is enforceable.** The court settlement to be certified as a European Enforcement Order must be enforceable (EC PG V.3.2).
c. **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).

> In general, in ordinary civil proceedings, a court settlement may be issued according to Art. 185 and Art. 185-*bis* It c.p.c. ([19]).

[19] These have been dealt with in the *BI bis Reg. PG*, §(I)(B)(Court settlements)(1)

Parties should note that there are other instruments for reaching a settlement relating to a pecuniary claim that do not necessarily involve the intervention of the court. These are (i) the *mediation procedure* (d.lgs. no. 28/2010) and (ii) the *aided by lawyers negotiation* (d.l. no. 132/2014, law no. 162/2014). Both may be optioned by the parties to civil proceedings but in certain cases they are mandatory, under penalty of inadmissibility of the claim. However, parties should note that in both cases the court does not normally intervene in the settlement procedure. As for the *mediation procedure*, the agreement between the parties signed by the parties and their lawyers and attached to the record drafted by the mediator and such is the enforcement title. As for the *aided by lawyers negotiation*, the agreement between the parties is drafted by the lawyers who assisted them in the negotiation and such is the enforcement title. Therefore, parties should note that these should not be certified as "court settlements". As for *mediation* the agreement has to be approved by *Tribunale* in order to be an enforceable title when the parties are non represented by lawyers in the mediation procedure.

As for the previously mentioned court settlement in the strict sense, under Arts. 185 and 185-*bis* It c.p.c., the judge drafts the minutes of the agreement reached between the parties and such is the enforcement title. According to jurisprudence, such minutes contain the settlement contract concluded between the parties and, apart from the fact that it has the effect to be directly enforceable like a judgment or an authentic instrument, it should be treated as a contract and its contents interpreted accordingly ([20]). When the parties reach a settlement agreement on the merits of the dispute they can also reach an agreement on the allocation of the costs of the proceedings.

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).

Similarly to what has been already stated above in §(I)(B)(3)(a), there is no case law on the refusal to certify a court settlement as EEO. Thus, also in light of the lack of

[20] Amongst others see Cass. civ., 26.02.2014, no. 4564, stating that "The minutes of judicial conciliation, which are substantially a contractual agreement, even if drawn up with the intervention of the court to settle a pending dispute, must be interpreted in the light of Arts. 1362 ff. It c.c. (…)".

official indications on such regard, creditors could try to pursue the enforcement of the court settlement under the Brussels regime, or reiterate their request for certification.

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).

Similarly to what has been stated above in §(I)(B)(3)(b), there is no official indication on the request for rectification of a certificate relating to a court settlement and it is not possible to infer that the same procedure applicable to judgments (Arts. 287 ff. It c.p.c.) is applicable also to court settlements, even if, differently from the rectification concerning an authentic instrument, such could be the appropriate procedure.

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).

As already stated in the previous paragraphs, there are no official indications on the procedure for the withdrawal of a EEO wrongly granted in relation to a court settlement and it would be difficult to infer that the same procedure is applicable to the withdrawal of EEOs relating to judgments, i.e. the ruling in chambers under Arts. 737 ff. It c.p.c., is also applicable to EEOs relating to court settlements.

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).

There are no official indications on the authority competent to *issue* the certificate; however, following general principles the request should be filed before the same court that issued the court settlement and the same should be valid for the certificate indicating the lack or limitation of enforceability (i.e., the request should be filed before the court that limits or revokes enforceability of the settlement). As there is uncertainty on the office, procedure and costs applicable to the issuance of the certificate under Art. 6(1) EEO Reg., the same should be noted for the issuance of the certificate under Art. 6(2).

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).

The law does not regulate directly the remedies against a court settlement, and it could be generally stated that, as such, it is not subject to the same remedies for challenging judicial decisions. However, the court settlement should be qualified as a settlement contract between the parties ([21]) and, as a consequence, it is subject to the same remedies that the parties may activate against a settlement contract. Thus, a debtor who wishes to challenge the settlement s/he has agreed by before the court, could try file a complaint against the validity and the equity of the contract. However, following general principles of contract law and procedural law, and according to the limited case-law on the matter, it could be stated that filing a claim against a contract does not per se suspend its enforceability ([22]). It should also be noted that settlement contracts are subject to specific remedies, under Arts. 1965 ff. It c.c., that may not necessarily correspond to the general remedies available against any type of contract under Arts. 1418 ff. It c.c.

[21] See §(I)(C)(2) above.

[22] For a decision stating the same rule, that the filing of a claim against a judicial settlement does not automatically suspend its enforceability, see *Tribunale* of Milan, 02.12.2008, in *Immobili & Proprietà*, 2009, issue 4, p. 254.

II. Incoming

When Italy 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).

Enforcement of titles certified as EEOs follows the general rules for enforcement. The rules on the identification of the competent court and authority for the enforcement are dealt with in the *Annex on Enforcement*, in §2-*bis*.

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).

In the Communication of the Italian Government under Art. 30 EEO Reg. it is stated that the official language for the purposes of Art. 20 lett. c) EEO Reg. is Italian.

However, more than one language may be considered the official language of civil proceedings under Italian law, in certain districts (German, French) ([23]). Thus, the parties may avail themselves of one of the official languages of the proceedings, if the conditions are met.

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).

In line with what has been reported in the *Annex on Enforcement*, in §4, in Italy the burden to object on irregularities of the procedure is generally placed on the person against whom enforcement is sought, who may raise an objection within twenty (20) days from the irregular act with an opposition on form under Art. 617 It c.p.c. Thus, debtors should be aware that they have to activate within a strict deadline if they acknowledge an irregularity in the procedure or in the documents necessary for the enforcement. The creditor has the right to take part to the procedure to decide on the opposition and each party may challenge the decision on the opposition with a plea to the *Corte di Cassazione*.

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).

[23] Please refer to the *BI bis Reg. PG*, in §(II)(1-*bis*).

Foreign titles certified as EEOs are subject to the same grounds for refusal, stay or limitation of enforcement of any other national or foreign title upon which enforcement is sought in Italy. Thus, debtors should be aware that the 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 writ of execution (Art. 480 It c.p.c.), which occurs before the first act of enforcement. ([24])

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.): which are the grounds for refusal of enforcement of an authentic instrument or of a court settlement at a national level? How and when does the debtor apply for such refusal and which is the applicable procedure?

Any party who wishes to file a claim for refusal of enforcement of a court settlement or of an authentic instrument should note that, under Italian procedural law, there is no distinction on the applicability of the ***means of opposition*** (opposition to enforcement and opposition on form) relating to the type of enforcement title (judgment or authentic instrument or court settlement or other).

However, on the other hand, ***grounds for refusal*** vary depending on the title for the enforcement, in particular depending on the judicial nature or not of the title. In fact, non-judicial titles do not incur in the same preclusion deriving from the *res judicata* that pertains judicial titles. As a consequence, more objections may be raised by means of an opposition to enforcement in proceedings for the enforcement of non-judicial titles, as those concerning the merits of the right for which the creditor is seeking enforcement and those concerning the formal validity of the title (for other details on the grounds for refusal see the *Annex on Enforcement*).

[24] 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*).

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): how and when does the debtor apply to the court or other competent authority for stay or limitation of enforcement? Which is the applicable procedure? Are there any procedural steps or conditions to be mentioned in particular? Which national measures may the court grant for the stay or limitation of the enforcement (*please compare with the list in Art. 23 EEO Reg., second indent*)?

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

One possible interpretation would be to state that the remedies under Art. 23 EEO Reg. are directly applicable in each national system and, thus, need not be adapted to the Italian legal system. As a consequence, only the issue relating to the procedure to obtain such remedies should be addressed. In that case, it could be stated that under general principles of civil enforcement law (Arts. 485 ff. It c.p.c.), the debtor could petition the court on such matter and the judge of the enforcement shall decide on the remedy after the hearing of the parties. However, debtors should note that this opinion is only theoretical ([25]) and there is no case law on this matter, nor any further official indication.

[25] 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.