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EFFORTS Policy recommendations for the implementation in Italy of the regulations (EU) No 1215/2012, (EC) No 805/2004, (EC) No 1896/2006, (EC) No 871/2007, (EU) No 655/2014

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Content summary

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The document has been updated to **10 October 2022**.

1. ***Introduction***

The publication of effective tools for practitioners and policy-makers in order to promote the use of the legal instruments of the EFFORTS regulations in Italy is one of the main objectives of the EFFORTS Project. Among the practical-operational tools, the elaboration of national policy recommendations of the EFFORTS regulations was envisaged. These documents, addressed to national legislators, are aimed at identifying possible proposals for amendments and/or new implementing provisions of the EFFORTS regulations. This document concerns Italian legislation. It is the result of work carried out by the research group of the University of Milan, coordinated by Prof. Francesca C. Villata, which availed itself of the support of the Italian National working group, in order to re-elaborate the data and information collected during the Project at national level (through the drafting of reports on case law and implementing rules, the considerations gathered during the Italian National exchange seminar on 22 October 2021, and the drafting of the EFFORTS Practical Guides addressed to operators in practice).

This document constitutes a working document in a concise format aimed at indicating to the Italian legislator possible amendments, clarifications, new rules to be introduced both in the form of legislative acts and at the regulatory level, and possibly also through clarifying circulars, selecting each time the most appropriate instrument with respect to the set purpose.

2. ***General clarifications (Reg. (EU) No 1215/2012, Reg. (EC) No 805/2004, Reg. (EC) No 1896/2006, Reg. (EC) No 861/2007 and Reg. (EU) No 655/2014)***

a) Languages. In the Government's communications (see, for example, the communication under Art. 75 BI bis Reg. and the communication under Art. 30 EEO Reg.) it is sometimes stated that the accepted language for applications/claims/requests and for the submission of documents is "Italian". However, the case law of the Court of Justice, albeit with reference to criminal proceedings, has clarified that Art. 6 of the Treaty precludes national legislation which grants nationals of a given language, other than the main language of the Member State concerned, who reside in the territory of a given local authority, the right to have criminal proceedings conducted in their own language, without guaranteeing the same right to nationals of other Member States, of the same language, who move around and reside in that territory (Judgment of the Court, 24 November 1998, Case C-274/96, Bickel and Franz). This principle has potential repercussions on proceedings concerning the recognition and enforcement in Italy of titles coming from other Member States in civil and commercial matters, since in Italy languages other than Italian are also

recognised as languages of the proceedings, under certain conditions and in certain areas ([1]).

⇒ *Clarify whether applications and documents required for the recognition and enforcement in Italy of titles issued by other Member States may be submitted in a language other than Italian, where that language (German, French) is used in civil proceedings in the districts concerned.*

b) Electronic filing. In government communications (see e.g. the communication under Art. 29 of the EOP Regulation) it is sometimes stated that the accepted forms of communication (and sometimes service) are postal services and paper filing. However, this indication should be interpreted as permitting the use of the postal service as a means of communication, and not as excluding likewise other means of communication of a electronic nature, if the conditions are met. This was clarified, inter alia, precisely on the subject of the European order for payment, in the amended point 8.1) of the Memorandum of 23 October 2015 Ministry of Justice, Department for Justice Affairs, Directorate General for Civil Justice ([2]).

⇒ *Confirm that the indication of the postal service and the paper filing of procedural documents as forms of communication indicated in the Government Communications is not intended to exclude other forms of communication by electronic means where the conditions are met, but rather to ensure that the parties are guaranteed the right to use the paper forms of communication (paper filing and postal service communications)*

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[1] In some districts, other languages are accepted as official languages of proceedings:
(i) Article 1(b) and (c) of Presidential Decree No 574/1988 provides that German is equivalent to Italian as the official language of proceedings in the Bolzano district (thus including both first instance and appeal proceedings);
(ii) Article 38 of Constitutional Law No 4/1948 provides that French is equivalent to Italian in the district of Aosta (also as regards the language of court proceedings).
It should be noted that other languages are recognised in the Italian territory. For example, under Article 3 of Constitutional Law No 1/1963, the Slovenian language groups in the Friuli-Venezia Giulia region are protected and the law recognises equal rights for all, despite their different linguistic affiliations.

[2] Which stated that: "*Diverso dal procedimento monitorio di cui agli artt. 633 ss. del codice di procedura civile, è quello relativo al procedimento europeo di ingiunzione di pagamento. A tale proposito si rammenta che l'art. 7, § 5, del regolamento (CE) n. 1896/2006 espressamente dispone che "la domanda è presentata su supporto cartaceo o tramite qualsiasi altro mezzo di comunicazione, anche elettronico, accettato dallo Stato membro d'origine e di cui dispone il giudice d'origine". L'Italia, peraltro, ha dichiarato a suo tempo, ai sensi dell'art. 29 del citato regolamento, che "il mezzo di comunicazione accettato ai fini dell'ingiunzione (…) è il supporto cartaceo".*
La previsione della facoltà di deposito cartaceo dell'istanza è, peraltro, necessaria al fine di garantire anche a soggetti stranieri, privi di difensore, la possibilità di presentare la domanda di ingiunzione, come previsto dall'art. 24 del regolamento. Le cancellerie, dunque, accetteranno il deposito, su supporto cartaceo, della modulistica relativa alle domande di ingiunzione europea di pagamento".

where the regulations provide for the right to stand trial without technical representation (and this, it should be noted, also in the event of special provisions in connection with the COVID-19 pandemic).

c) **Court Settlement (valid for the Brussels Ia Regulation and the European Enforcement Order Regulation)**. This recommendation concerns mediation agreements concluded pursuant to Legislative Decree No 28 of 4 March 2010. Article 12 para. 1 of the decree provides for two types of agreement: the first case is where "all parties to the mediation are assisted by a lawyer", while in all other cases not all of them (or none of them) are assisted by a lawyer. For the purposes of enforceability in the national territory, the rule provides that, in the first case, 'the agreement that has been signed by the parties and the lawyers themselves constitutes an enforceable title for compulsory expropriation', whereas in all other cases 'the agreement attached to the minutes is approved, at the request of a party, by decree of the president of the court, after ascertaining its formal regularity and compliance with mandatory rules and public order'. On the other hand, for the purposes of circulation in the European judicial area, Regulation (EU) No. 1215/2012 provides that the settlement must be "approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings" (Art. 2 lit. b). This provision of the regulation corresponds only to the approved agreement referred to in the second sentence of para. 1 of Art. 12 of legislative decree no. 28/2010, whereas the agreement referred to in the first sentence (the one reached "where all the parties taking part in the mediation have been assisted by a lawyer") is not, at present, eligible to be the subject of certification pursuant to Art. 60 of regulation (EU) no. 1215/2012 ([3]) and to circulate in the European judicial area.

   ⇒ *If desired, provide for the possibility that the mediation agreement referred to in the first sentence of Article 12(1) of Legislative Decree No 28/2010, in the event that all the parties have been assisted by a lawyer, may be ratified, at the request of one of the parties, by a court, in order to enable it to circulate in the European judicial area, without prejudice to its enforceability in the national territory, for which compliance with the requirements of Article 12 as currently formulated is sufficient.*

[3] As it can be inferred from the aforementioned Art. 2 of Reg. (EU) No. 1215/2012, the choice of the European legislator, in civil and commercial matters (as opposed to matrimonial matters, parental responsibility and international child abduction; see on this point Reg. (EU) No. 2019/1111, Recital (14): " *This Regulation should not allow free circulation of mere private agreements. However, agreements which are neither a decision nor an authentic instrument, but have been registered by a public authority competent to do so, should circulate. Such public authorities might include notaries registering agreements, even where they are exercising a liberal profession*") is to disallow the free circulation of settlement agreements that have not been approved by a court or concluded before a court.

3. ***Reg. (EU) No 1215/2012 "Brussels I bis"***

a) **Authentic copies**. For the purpose of the circulation in the European Judicial Area of judgments issued in Italy (as the Member State of origin) the judgment must be certified (see Arts. 37(1)(a) and 42(1)(a)-(1)(b) Reg.) The request for a certified copy should be submitted, as usual, to the competent registry/office of the court that issued the judgment. In addition to this, it would be necessary to clarify whether the copy certified by the lawyer (as provided for by Law Decree No. 172/2012) constitutes an authentic copy for the purposes of the circulation of the judgment in the European judicial area ([4]).

⇒ *Clarify whether the lawyer's certified copy constitutes an "authentic copy" for the purpose of circulation of the decision in the European judicial area*.

b) **Certificate for judgments (Art. 53 Reg. BI bis)**. For the purposes of certification under Art. 53 BI bis Reg., it is not established which authority is competent to issue the certificate. As pointed out in the EFFORTS Practice Guide for the application in Italy of the Brussels I bis Regulation, it should be noted that, at the level of practice, in some judicial offices the request is submitted to a specific registry (office for injunctions) while in others to the same judge who issued the order. It appears that no costs are charged and it is not specified in which language the request should be submitted or in which languages the certificate can be requested. It is not clear what procedure applies to the application for certification, whether the debtor is informed and whether it is possible to apply for an amendment or rectification of the certificate.

⇒ *Establish a procedure (competent body, procedure, costs, etc.) for issuing the certificate pursuant to Article 53 of Regulation (EU) No 1215/2012*.

c) **Certificate for authentic instruments (Art. 60 Reg. BI bis)**. For the certification of authentic instruments, the legislative framework is Article 8 of Law No. 122/2016, which provides that "The authority that has formed the authentic instrument is competent to issue any attestation, extract and certificate required for the enforcement of the instrument itself in the Member States of the European Union". The heading of this provision reads 'Provisions on the European Enforcement Order'. However, the nomenclature 'European Enforcement Order', in Union law, is not used indistinctly, but specifically with regard to Regulation

[4] In doctrine see DICKINSON-LEIN, The Brussels I Regulation Recast, Oxford, 2015, p. 393: "where less formal means of authentication are provided for in that State, these are sufficient to establish the authenticity of the judgment for the purposes of Art 37 in all Member States, regardless of whether, in the Member State addressed, authentication is subject to more rigorous standards. Thus, for example, the electronic copy of an Italian judgment authenticated by the lawyer of one of the parties in the way prescribed by Art 16bis of the Italian Decree-Law No 179/2012, should be deemed to satisfy the conditions necessary to establish its authenticity in all other Member States, including in those Member States where only court clerks have the power to issue certified true copies of judicial decisions".

(EC) No 805/2004, whereas the scope of Article 8 l. 122/2016 seems to be broader ([5]). It would therefore be desirable to amend the heading of the provision to clarify what is already implicit in the text, namely that it applies not only to the 'European Enforcement Order' in the strict sense but also to other requests for certification.

⇒ *Modify the heading of Article 8 of Law No. 122/2016 or in any case clarify that the scope of the rule is not limited to the European Enforcement Order under Regulation (EC) No. 805/2004.*

d) Certificate for court settlements (Art. 60 BI bis Reg.). The certificate for court settlements is not regulated, and it could be assumed that the same procedure that applies for judgments is applicable (although, as noted above, it is not, at present, expressly regulated).

⇒ *Establish a procedure (competent body, procedure, costs, etc.) for issuing the certificate for court settlements pursuant to Article 60 of Regulation (EU) No 1215/2012*.

e) Adaptation of an unknown measure or order (Art. 54 BI bis Reg.). The adaptation of a measure unknown to the law of the Member State addressed is an instrument provided for by the BI bis Reg. which, from a procedural point of view, requires implementation at national level by the Member States, in particular as regards the determination of how, and by whom, the adaptation is to be carried out ([6]). The rule provides that "any party may challenge the adaptation of the measure or order before a court" (para. 2). It is therefore necessary to clarify how the creditor may request or proceed with the adaptation of an unknown measure in order to have it enforced or recognised in Italy. Different hypotheses have been put forward in doctrine. First of all, the party competent to proceed with the adaptation could be identified as the creditor ([7]), either because he is given the power to specify the manner in which the unknown measure is to be enforced in the notice of execution, or because the creditor himself proceeds to request the competent authority to enforce a certain measure under national law on the basis of an unknown measure ([8]). Alternatively, the

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[5] On this point see GIUGLIANO, *Le «opposizioni» all'esecuzione della decisione straniera nel regolamento (UE) 1215/2012*, doctoral thesis, 2019, p. 4, n. 9, stating that: "*Con la locuzione 'titolo esecutivo europeo', usata in senso ampio, si intende un prodotto giudiziale la cui idoneità a fondare un'esecuzione forzata nello Stato d'origine è sufficiente affinché esso sia idoneo a circolare ed essere utilizzato come titolo esecutivo altresì in un diverso Stato membro. (…) In senso stretto, invece, l'espressione si riferisce al Regolamento n. 805/2004, che ha istituito un titolo esecutivo europeo per i crediti non contestati (…)*".

[6] Recital (28).

[7] BIAVATI, *L'esecutorietà delle decisioni nell'Unione europea alla luce del reg. UE n. 1215/2012*, in CAPPONI (a cura di), *Il processo esecutivo. Liber amicorum Romano Vaccarella*, Torino, 2014, p. 197.

[8] È il caso questo, ad esempio, della richiesta di iscrizione di un sequestro conservativo immobiliare sulla base di una *freezing injunction*, come nel caso deciso dalla Corte d'appello di Napoli, con decreto in data 15 ottobre 2021 (inedito).

request for adaptation would have to be submitted to the execution judge, who would proceed with the adaptation at the request of the party, pursuant to Art. 612 Code of Civil Procedure ([9]). Finally, but it does not appear that this hypothesis has already been put forward in doctrine, it would be the enforcement authority that would adapt the unknown measure ([10]).This multiplicity of persons competent to proceed with the adaptation is reflected, for example, in the German implementing legislation, which provides, in §1114 ZPO, for different remedies against the adaptation depending on the authority competent to proceed (whether the execution judge, the bailiff, the land registrar), thus confirming that, in theory, there could be more than one authority in charge of the adaptation, depending on the needs and types of enforcement proceedings or the unknown measure to be adapted. For instance, for the adaptation of measures with monetary content the creditor could take care of the adaptation in the notice of execution whereas in the case of unknown measures that need to be transcribed as an attachment, it would be the land registrar who would proceed with the adaptation. What is important on a procedural level is that the legislator takes care not only to clarify which are the authorities in charge of the adaptation (recital (28) Reg. BI bis) but above all to clarify which is the judicial authority before which the adaptation can be challenged (art. 54(2) Reg. BI bis), depending on the authority in charge of the adaptation.

⇒ *Establish the procedures and persons competent to adapt an unknown measure to Italian law pursuant to Art. 54 BI bis and determine the court before which the adaptation may be challenged (Art. 54(2)).*

f) Refusal of recognition or enforcement. The regulation provides (i) that any interested party may apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45' (art. 36(2)), (ii) that any interested party may apply for refusal of recognition 'only if one or more of the grounds for refusal provided for in this Regulation are present' (recital 30), and (iii) that any interested party may apply for refusal of enforcement where one of the grounds referred to in Article 45 is found to exist' (art. 46), also being able to invoke ' in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law' (Recital (30)). At present, these actions are governed by Article 30-bis of Legislative Decree No. 150 of 1 December 2011, which provides that "proceedings for the refusal of recognition or enforcement and for ascertaining the absence of grounds for refusal of recognition of immediately enforceable judgments issued by the courts of the Member States in accordance with Union law" are conducted "under the summary ordinary proceedings referred to in Articles 281-decies et seq. of the

[9] SILVESTRI, *Recasting Brussels I*: *il nuovo regolamento n. 1215 del 2012*, in *Rivista trimestrale di diritto e procedura civile*, 2013, p. 690.

[10] As in the case mentioned in footnote 8 above, in which it would be the Conservatore dei Registri Immobiliari, at the creditor's request, to adapt the freezing injunction by transcribing an attachment under Italian law on the debtor's assets.

Code of Civil Procedure" ([11]). **(a)** As to the competent judicial office, it should be possible to conclude that the district court "*tribunale*" has jurisdiction, which is the judicial authority indicated as competent in the communication of the Italian Government made pursuant to Article 75 of Reg. BI bis ([12]). **(b)** As far as territorial jurisdiction is concerned, on the other hand, in the silence of the law, the criteria of venue established generally in the Code of Civil Procedure (Arts. 18 et seq.) should theoretically apply. **(c)** The question also arises as to whether it can be confirmed that the grounds of refusal provided for in the Regulation can also be relied upon in opposition to enforcement, or whether they can only be the subject of an autonomous claim of refusal ([13]). **(d)** Finally, it seems appropriate to clarify which provisions are applicable in the event that an application for refusal and an opposition to enforcement against the same enforcement title are pending at the same time ([14]).

⇒ *Clarify, with regard to the refusal of recognition or enforcement, whether the grounds for refusal provided for in the regulation may also be relied on in opposition to enforcement (in addition to the grounds provided for by national law) and what rules are applicable in the case of simultaneous lodging of several claims (refusal and opposition) against the same incoming title*.

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[11] In accordance with what had been suggested in doctrine regarding the correct implementation of Article 48 of the regulation, which states: "The court shall decide on the application for refusal of enforcement without delay". See SALERNO, *Giurisdizione ed efficacia delle decisioni straniere nel regolamento (UE) n. 1215/2012 (rifusione)*, Cedam, 2015, pp. 384 e 390 and CARBONE-TUO, *Il nuovo spazio giudiziario europeo in materia civile e commerciale. Il regolamento UE n. 1215/2012*, Giappichelli, 2016, pp. 342-343.

[12] In fact, unlike Law no. 206 of 26 November 2021, the reference to the Court of Appeal has been eliminated in the decree reforming the civil process: paragraph 6 of the new Article 30-bis of Legislative Decree 150/2011 enacted by Article 24 para. 1 lett. c) of Legislative Decree no. 149 of 10 October 2022 does not contain a reference to the previous paragraph 4 of the same Article 30-bis.

[13] Comparing art. 1 para. 14 lit. e) of Law no. 206 of 26 November 2021 and art. 24 para. 1 lit. c) of Legislative Decree no. 149 of 10 October 2022, one difference can be found: the phrase "without prejudice to the proceedings referred to in Article 615 et seq. of the Code of Civil Procedure" has been removed. It is not clear whether this change is to be understood as a confirmation of the original option or as a reconsideration.

[14] As in the case decided by Cass. 14019/2022, which stated that "*le due cause, di cui una in primo grado e l'altra in grado di appello, pendenti quindi davanti a giudici diversi non hanno lo stesso oggetto: una riguarda il riconoscimento nel nostro ordinamento della sentenza straniera che accerta il credito mentre l'altra è un procedimento di opposizione all'esecuzione della medesima sentenza e pertanto, considerata la necessità di prevenire un eventuale contrasto di giudicato, appare ragionevole il provvedimento di sospensione del giudizio in attesa della pronuncia della Corte di Appello, tanto più che il giudice sebbene abbia fatto riferimento all'art. 295 c.p.c., nel senso di intravedere un chiaro rapporto di pregiudizialità fra i due giudizi, ha in realtà citato anche l'art. 337 c.p.c. e in relazione a questa norma ha disposto la sospensione del processo come emerge chiaramente dalla sia pure sintetica motivazione*".

g) **Measures under Art. 44(1)**. Article 44(1) provides that, upon application by a party, where 'refusal of enforcement' is sought, the court of the Member State in which enforcement is sought may take a number of measures: (a) limit the enforcement proceedings to protective measures; (b) make enforcement conditional on the provision of such security as it shall determine; or (c) suspend, either wholly or in part, the enforcement proceedings. With regard to the implementation of these measures in Italian law, some doubts may exist: with reference to the measure limiting the proceedings referred to in subparagraph (a), it should be clarified (i) whether it is the foreclosure and (ii) how this measure should be understood with reference to enforcement proceedings other than expropriation; with reference to the measure referred to in (b), the manner and criteria by which the guarantee is to be determined should be clarified; with reference to the suspensive measure referred to in subparagraph (c), it should be clarified how that suspensive power is to be exercised in the event that the refusal of enforcement is requested in an independent manner, and it is therefore necessary to apply to the enforcement court for a stay of execution, even though such a suspensive application is not necessarily accompanied by an actual opposition to enforcement.

⇒ *Determine the procedures and criteria for the implementation in Italy of the measures provided for in Art. 44(1) Reg. BI bis (limitation of proceedings to protective measures, subordination of proceedings to a security, stay of proceedings) in the event that the refusal of enforcement is sought.*

4. ***Reg. (EC) No 805/2004 "EEO"***

a) **EEO certificate for decisions (Art. 6(1))**. For the purposes of certifying a judgment as a European Enforcement Order, there are no indications as to: the competent authority, the applicable procedure (including any appeal stage), costs, the language of the proceedings. The case law has dealt with (i) the question of the identification of the type of competent body, stating that the certification is a jurisdictional activity reserved to the judge and cannot be carried out by the clerk of the court ([15]) and (ii) the question of the appeal against the refusal to certify, with contrasting solutions, partly in the sense of the admissibility of the appeal, to be brought before the competent court of appeal pursuant to Article 739 of the Code of Civil Procedure ([16]), and partly in the sense of the

[15] *Tribunale* of Milan, 23.04.2008, ord., in *EFFORTS Report on Italian case-law*, §(III)(A)(3), reasoning that the granting of such certification is not a matter of an administrative nature, but involves the exercise of judicial power; see also Court of Justice, 16 June 2016, in Case C 511/14, Pebros Servizi, as well as Court of Justice, 4 September 2019, in Case C 347/18, Salvoni.

[16] *Tribunale* of Novara, 23.05.2012, in *EFFORTS Report on Italian case-law*, §(III)(A)(12), rejecting an appeal brought to the ordinary court and not to the court of appeal, pursuant to Art. 739 c.p.c.

inadmissibility of such an appeal, given the possibility to resubmit the application for certification indiscriminately ([17]). Doctrine has argued, in particular, on the question of whether the certification procedure is unilateral or not ([18]).

⇒ *Provide for the procedure (competent body, procedure, costs, power of appeal, etc.) for the certification of a decision under Art. 6 EEO Reg.*

b) Certificate proving non-enforceability or limitation of enforceability (Art. 6(2)) and substitute certificate in case of appeal (Art. 6(3)). The same applies to the certificate indicating non-enforceability or suspension of enforceability, and the replacement certificate in the event of an appeal.

⇒ *Provide for the procedure (competent body, procedure, costs, power of appeal, etc.) for certification proving non-enforceability or limitation of enforceability under Art. 6(2) EEO Reg. and for substitute certification in case of appeal (Art. 6(3)).*

c) EEO certificate for court settlements (Art. 24). The same applies to the certificate concerning court settlements approved by the court or concluded before the court in the course of court proceedings.

⇒ *Provide for the procedure (competent body, procedure, costs, power of appeal, etc.) for the certification of court settlements under Art. 24 EEO Reg..*

d) EEO certificate for authentic instruments (Art. 25). Article 8 of Law No. 122/2016 (which provides that the authority that drew up the authentic instrument is competent to issue any attestation, extract and certificate required for the enforcement of the instrument itself in the member states of the European Union), regulates the competence to issue the attestation but does not deal with specifying the applicable costs and any procedural rules, e.g. with reference to the unilateral nature of the certification procedure. Only as regards the rectification of any errors, an applicable rule has been identified in Article 59-bis of the Notary Law No. 89 of 16 February 1913.

⇒ *Regulate in more detail the procedure for certification as a European Enforcement Order of authentic instruments (Art. 25 EEO Reg.), in particular with reference to costs and whether the procedure is unilateral or not.*

e) Minimum standards for uncontested claims: information to the debtor about the procedural steps necessary to contest the claim (Art. 17). It has been found to occur quite frequently in practice ([19]) that the European

[17] *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 certificate does not constitute a judicial decision but only a declaration of enforceability in the European judicial area and admitting that a creditor may subsequently submit as many requests as he deems necessary.

[18] See FARINA, *Titoli esecutivi europei ed esecuzione forzata in Italia*, Aracne, 2012, p. 164, footnote 266.

[19] See, for instance, *Corte d'appello* of Bologna, 13.01.2016, in *EFFORTS Report on Italian case-law*, §(III)(A)(17), upholding the revocation of an EEO wrongly granted on an order for payment

Enforcement Order certificate relating to a national order for payment has been revoked pursuant to Art. 10(1)(b) EEO Reg. on the ground that the debtor had not been provided with the minimum necessary information pursuant to Art. 17 EEO Reg. The additional information that should be provided is (i) the name and address of the institution to which, as the case may be, a reply is to be given or before which an appearance is requested; (ii) whether there is an obligation to be represented by a lawyer; and (iii) the responsibility for the costs associated with the court proceedings. In this sense, Art. 641 of the Code of Civil Procedure could be amended, with the addition, after the words "with the express warning that within the same term opposition may be made in accordance with the following articles" and before the words "and that, in the absence of opposition, enforcement will be levied", of the phrase: "at the judicial office and address indicated in the decree, if provided for by having designated a legally exercising attorney pursuant to Article 82, with the possible bearing of the costs of the relative proceedings in accordance with Articles 91 et seq.".

⇒ *Amend the rules governing the national order for payment so as to provide that the debtor must be provided with the minimum information concerning the procedural steps necessary to contest the claim provided for in Article 17 EEO Reg.*

f) **Measures under Art. 23**. Art. 23 provides that, in the event that the debtor has challenged a judgment certified as an EEO or applied for its revocation, the court of the requested Member State may, upon application by a party, "(a) limit the enforcement proceedings to protective measures; or (b) make enforcement conditional on the provision of such security as it shall determine; or (c) under exceptional circumstances, stay the enforcement proceedings". As to the transposition of these measures into Italian law, there are some doubts: with reference to the measure limiting the proceedings referred to in subparagraph

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because it was served on the defendant without mentioning the court having jurisdiction over the opposition and without indicating 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). Recently see *Tribunale* of Velletri, 11.06.2022, which upheld the debtor's application for revocation of the EEO certificate obtained by the creditor in relation to an injunction that had become final on the ground that it had not been opposed, by reason of the fact that in the present case the debtor had been given «*la sola indicazione del termine di giorni 40 dalla notifica del decreto "per fare opposizione", mentre alcunché è stato specificato nell'ambito del decreto stesso in ordine alle avvertenze imposte dalla normativa regolamentare, in particolare con riferimento all'"indirizzo" dell'istituzione alla quale la contestazione andava proposta (requisito, del resto, significativamente distinto, come detto, dal "nome" dell'istituzione e dunque, nella specie, dalla chiara menzione dell'ufficio giudiziario che ha provveduto alla concessione del provvedimento d'ingiunzione ed al quale, evidentemente, la stessa andava presentata), ovvero riguardo alla necessità dell'ingiunto di avvalersi di una difesa tecnica, o ancora in ordine alle conseguenze della mancata presentazione dell'opposizione e, dunque, alla definitiva esecutività del provvedimento non opposto*».

(a), it would need to be clarified (i) whether it is the foreclosure and (ii) how it should be implemented if such measure is requested prior to the foreclosure; with reference to subparagraph (b), it would need to be clarified how and the basis on which the security should be determined; with respect to the suspensive measure referred to in subparagraph (c), on the other hand, it should be clarified whether the suspensive power may also be exercised before the commencement of enforcement, in the form of a power to suspend the enforceability of the title in Italy.

It should also be noted that it is not clear how the debtor can activate the procedure for the issuance of the measures provided for in Article 23 EEO Reg. In doctrine ([20]) it has been argued that the debtor may file an application with the enforcement judge and that the judge will decide on the remedy by order after hearing the parties. Alternatively, the appropriate forum could be opposition pursuant to Art. 615 Code of Civil Procedure, in which the challenge to the right to proceed to enforcement would be on the ground that the debtor has applied for the revocation of the EEO or has challenged a decision certified as EEO. In practice, there is an appreciable difference between the two options due to the fact that the one that relies on the opposition procedure provides the parties with more possibilities to challenge the decision on the measure.

⇒ *Determine the procedures and criteria for the implementation in Italy of the measures foreseen by Art. 23 EEO Reg. (limitation of the procedure to interim measures, subordination of the procedure to a guarantee, suspension of the procedure in exceptional circumstances) in the event that the decision certified as an EEO is challenged or a request for rectification or withdrawal of the EEO is submitted.*

5. ***Reg. (EC) No 1896/2006 "EOP"***

a) Consequences of refusal of the court's proposal (Art. 10(3)). Pursuant to the EOP Regulation, if the requirements for a European order for payment are met for only part of the claim, the court informs the plaintiff accordingly. The latter is invited, by means of Form C, to accept or refuse a proposal for a European order for payment concerning the amount specified by the court and is informed about the consequences of its decision. If the claimant accepts the court's proposal, the court will issue a European order for payment for the part of the application accepted by the claimant. The consequences for the remaining part of the initial application are governed by national law. As regards Italian law, it should be noted only that the jurisprudence of the supreme courts has clarified that the partial rejection of an application for a domestic payment order does not entail

[20] 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.

the effect of res judicata ([21]). However, it would have to be clarified whether these rules also apply to an application for a European order for payment or whether the consequences under Art. 10 EOP Reg. are different from those foreseen for the partial rejection of an application under Art. 633 ff. c.p.c.

⇒ *Determining the consequences of refusing the judge's proposal under Art. 10(3) EOP Reg.*

b) Effects of filing an opposition (Art. 17). According to Article 17, if the opposition is lodged within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin by applying the rules of ordinary civil procedure. In the absence of official guidance on the applicable procedure, the Court of Cassation (see Cass. SU 2840/2019) ([22]) has ruled that the court must set a time limit for the claimant to initiate ordinary proceedings, according to the applicable national procedural rules. Failure to respect the time limit results in the extinction of the entire trial and the EOP loses any effect.

⇒ *Determination of the procedure applicable to a procedure for opposition to a European order for payment under Article 17 EOP Reg. and to the possible changes of procedure if the plaintiff has brought the case under an incorrect procedure.*

c) Measures under Art. 23. Similarly to what has already been pointed out with regard to the EEO Reg. (see above in this document §4.f), it is unclear what content and procedure should be followed for the issuance of measures under

[21] See, among others, Cass. civ., sez. un., 01.03.2006, n. 4510.

[22] It follows the relevant part of the ruling: "*4.8. Ritengono le Sezioni Unite (…) che, ai fini dell'ordinamento italiano, la disciplina della prosecuzione debba essere individuata considerando che, come si è già sopra rimarcato, il Regolamento sostanzialmente affida al giudice dell'IPE il compito di notiziare dell'opposizione il creditore e quindi di disporre la prosecuzione. (…) Ne segue che il giudice italiano che ha emesso l'IPE deve limitarsi, unitamente all'avviso al creditore della proposizione dell'opposizione all'IPE, ad invitare il creditore ad esercitare l'azione secondo quella che sarà suo onere individuare come procedura civile ordinaria di tutela della situazione giuridica soggettiva posta a fondamento dell'IPE. Poiché l'esercizio dell'azione con le regole della procedura civile ordinaria serve a proseguire la tutela giurisdizionale introdotta con la domanda di IPE l'esistenza del potere del giudice giustifica l'assegnazione di un termine entro il quale quell'esercizio deve avvenire, perché altrimenti la lite pendente resterebbe tale indefinitamente, mentre la logica del Regolamento è che, se il creditore lo abbia chiesto, di fronte a quella che viene definita interruzione del procedimento di ingiunzione Europea e, quindi, della tutela giurisdizionale con esso esercitato, debba seguire con le forme ordinarie e tale prosecuzione non può restare possibile sine die. (…) La mancata osservanza del termine che il giudice dell'IPE è autorizzato a fissare - il cui referente normativo, dovendosi ritenere che sia lo stesso Regolamento autorizzi a fissarlo, può nel diritto italiano essere rinvenuto nel secondo inciso dell'art. 307 c.p.c., comma 3, per cui il giudice dell'IPE lo stabilirà come ivi indicato - comporterà, secondo il diritto italiano, l'estinzione del processo nella sua interezza e, quindi, il venir meno della pendenza della lite ricollegata alla proposizione della domanda di IPE*".

Art. 23 EOP Reg. in the event that the defendant has requested a review under Art. 20 EOP Reg.

⇒ *Determine the criteria and the procedure for the implementation in Italy of the measures envisaged by Article 23 EOP Reg. (limitation of the proceedings to precautionary measures, subordination of the proceedings to a guarantee, suspension of the proceedings in exceptional circumstances).*

d) Failure to serve in accordance with minimum standards. In Cases C-119/13 and C- 120/13 ([23]), the EUCJ ruled that the procedures provided for in Articles 16 to 20 of the Regulation are not applicable where it appears that a European order for payment was not served in compliance with the minimum standards laid down in Articles 13 to 15 of the Regulation. It is therefore unclear which procedure the defendant has to follow to contest a service that does not comply with the minimum standards. It is therefore not clear what procedure the defendant has to follow to challenge a service that does not comply with the minimum standards. At the level of practice, as far as Italy is concerned, one could opt for an analogical application of the review procedure. In fact, for review under Article 20 of the Regulation, the Italian Government's Communication indicates the procedure under Article 650 c.p.c.: this remedy is available, under Italian law, not only in exceptional cases of force majeure or unforeseeable circumstances, but also in the event of irregularities in the service of the order for payment. Therefore, even in the absence of official guidance or case law in this regard, the same review procedure could be applicable in the event of an irregular notification in breach of Article 13 et seq. of the EOP Regulation. However, clarification at legislative or informational level (updating of the notice or ministerial memoranda) might be appropriate.

⇒ *Clarifying which procedure is applicable when it appears that a European order for payment has not been served in accordance with the minimum standards laid down in Articles 13 to 15 of the Regulation*.

e) Revocation of the declaration of enforceability. Where the court has declared the European order for payment enforceable using standard form G reproduced in Annex VII and the defendant has lodged a statement of opposition in due time but it has arrived at its destination beyond the "time limit" deemed "adequate" by the court (art. 18 EOP Reg.) or where the defendant has applied for a review (art. 20 EOP Reg.) and this has been deemed justified and the decree declared null and void, the issued form G has to be revoked. To this end, it is not clear which procedure the Italian court should follow. As things stand, it could be considered that in the case of timely opposition received after the expiry of the time limit, the court would revoke the Form G previously issued in opposition; whereas in the case of a successful application for review, one could apply by

[23] Court of Justice, 4 September 2014, C-119/13 e C-120/13, Eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy, and Raiffeisenbank St. Georgen reg. Gen. mbH v Tetyana Bonchyk.

analogy what happens in the case of late opposition to a domestic injunction, given that this is the procedure indicated in the declaration of the Italian Government.

⇒ *Clarify whether the procedure to be followed for the revocation of Form G by which the court declared the European order for payment enforceable is the one that is commonly applicable also to domestic orders for payment with revocation of the declaration in the event of timely or late opposition, depending on whether it is subsequently found that the statement of opposition had been filed in time but arrived at after the time limit deemed appropriate (Art. 18 EOP Reg.) or whether the order is declared null and void on account of a successful review pursuant to Art. 20 EOP Reg.*

6. Reg. (EU) 655/2014 "EAPO "

a) ***Request for information under Art. 14 EAPO Regulation*** Where a request for information pursuant to Art. 14 is addressed by the court where the application for an account preservation order is lodged to an information authority without competence in the Member State of enforcement, the latter may not proceed.

⇒ *It could be introduced an* ex officio *transmission to the competent information authority of the request for information pursuant to Article 14 EAPO Regulation in the event that it has been erroneously addressed to an authority with no territorial competence, by providing that that authority shall forward it ex officio to the president of the tribunal of the place where the debtor has its domicile, residence or seat.*

b) Request for modification and revocation and court fee ("contributo unificato"). Article 13, paragraph 6-*quinquies* of D.P.R. no. 115/2002 provides that the proceedings for the amendment or revocation of the seizure order due to a change of circumstances referred to in Article 35 Reg. are subject to the payment of the court fee for registering the file case.

⇒ *It seems appropriate to clarify whether such proceedings, by virtue of the reference to the proceedings made by Article 1 of Legislative Decree no. 152/2020, are governed by Article 669-decies of the Code of Civil Procedure relating to the revocation/amendment of domestic provisional orders, taking into account that the latter procedure does not provide the registration of a new case file.*

c) Creditor already having an enforceable title and conversion of attachment into garnishment. The reference to national procedural law, to the extent not provided for by the Regulation, implies that the attachment order is converted into an attachment at the moment the creditor obtains an enforceable judgment

(art. 686 of the Code of Civil Procedure). The EAPO may also be granted in favour of the creditor who already has an enforceable title. The conversion of the attachment into an garnishment is not regulated by national procedural law, which regulates only the case where the judgement follows the enforcement of the attachment.

⇒ *It seems useful to regulate the conversion of the attachment into garnishment in the case of a creditor who already has an enforceable title, in particular by identifying the moment of conversion.*

d) **Contestation of the bank's declaration.** National procedural law provides that the creditor may challenge the bank's declaration by requesting a ascertainment of the third party's obligation pursuant to Art. 549 of the Code of Civil Procedure. The Regulation does not contemplate the case where the creditor want to challenge the declaration of the bank. The question therefore arises whether the third party's declaration can also be challenged in the contest of the EAPO Reg.. In the national attachment procedure, Article 678 of the Code of Civil Procedure provides that the third party debtor be summoned before the tribunale of the third party's domicile of residence to make the declaration, to which the creditor may submit, in the event of a dispute, a request to ascertain the third party's obligation. Under the procedure governed by the Rugulation the declaration is made upon service of the attachment order alone, without any prior summons of the bank to appear before to any court.

⇒ *It should be clarified whether the judgment as to the third party's obligation under Article 549 of the Code of Civil Procedure applies in the case where the creditor intends to challenge the bank's declaration, and if so, it should be introduced a discipline regulating how such a proceedings against the bank is instituted with the necessary participation of the debtor.*

e) **Remedies of the debtor against the attachment order under Article 33 EAPO Reg**. Article 6 of Legislative Decree no. 152/2020 provides that the court that issued the attachment order is competent for the proceedings under Article 33 of the Regulation, without regulating also the procedure applicable.

⇒ *It should be identified the procedure applicable to the remedy offered to the debtor by Art. 33 Reg. EAPO, if necessary clarifying which rules of the uniform protective proceedings under Art. 669-bis ff..*

f) **Rejection of appeals and doubling of the court fee ("contributo unificato").** Article 13, paragraph 1-*quater* of D.P.R. no. 115/2002 provides for the doubling the court fee in the event of rejection of appeals, on the applicability of which the question has been raised by a part of the legal doctrine[24].

[24] M. STELLA, *Festina lente. L'adeguamento italiano al sequestro europeo di conto corrente*, in *Corriere giur.* 2021, 160.

⇒ *It could be clarified whether this provision also applies in the event of a rejection of appeals under the EAPO Reg.*

7. Reg. (EC) 861/07 "ESCP "

a) **Claim not falling within the scope of the Regulation.** Article 4(3) ESCP Reg. provides that "Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted". The ways of the transition from the procedure under ESCP Reg. to the procedure governed by national procedural law are not regulated. Therefore, it has been suggested in doctrine the analogical application of Art. 427 of the Code of Civil Procedure, which regulates the change from the special labour procedure to the ordinary one[25] . There are, however, other provisions regulating in other contexts the institution of the change of proceedings, which could be applied by analogy (see, e.g., Art. 4 of Legislative Decree no. 150/11).

⇒ *It seems appropriate to introduce a specific rule on the change of procedure in the event that the plaintiff does not withdraw the claim brought under the Regulation and the proceedings is to be continued under national procedural law.*

b) **Counterclaim not arising from the same contract or facts on which the main claim is based.** Pursuant to Art. 5(6) ESCP Reg. the defendant may bring a counterclaim. Recital (16) provides that "The concept of 'counterclaim' should be interpreted within the meaning of Article 6(3) of Regulation (EC) No 44/2001 as arising from the same contract or facts on which the original claim was based"[26] . The question that arises is as to how a counterclaim that is not based on the same fact or contract as the principal claim should be treated, since it has been suggested that it should either be declared inadmissible[27] or, according to another opinion, separated from the principal claim and dealt with according to

[25] A. FRASSINETTI*, Le regole procedimentali del Regolamento (CE) sulle controversie di modesta entità*, in *Riv. dir. proc.,* 2021, 973.

[26] Opinions converge in the sense of considering that the counter-claim the defendant may bring is the one arising from the contract or fact on which the main claim is based: see, for all, E. D'ALESSANDRO, *Il procedimento europeo per le controversie di modesta entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni,* in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milan, 2021, 114 f.

[27] A. FRASSINETTI, *Le regole procedimentali del Regolamento (CE) sulle controversie di modesta entità*, in *Riv. dir. proc.,* 2021, 978.

the procedure provided for by the *lex fori*[28], or, alternatively, it could be suggested that both claims, principal and counterclaim, should be regulated by national law.

⇒ *It seems appropriate to introduce rules governing the counterclaims which fall outside the scope of the Regulation, because they are not based on the contract or fact underlying the main claim.*

c) Referral to first instance by the appellate court. The national rules on appeal provide that, in certain cases (see Art. 354 of the Codice of Civil Procedure), the appeal is merely rescinded and the appellate court remands the case to the first instance. In this scenario, the parties has to resume the proceedings. According to the national procedural rules, the resumption takes place by means of a notice to be served on the other party pursuant to Art. 125 of the Code of Civil Procedure, in which the date of the hearing must also be indicated. These rule must be coordinated with Article 5 of the ESCP Reg., which provides that the proceedings "shall be in writing" and that a hearing shall be fixed by the court only if necessary or, at the request of one of the parties, only if it is not manifestly unnecessary.

⇒ *It is appropriate to introduce rules on the modalities for the resumption of the proceedings following a referral to first instance by the appellate court (e.g., it may be assumed that the resumption is effected by the filing of claim form A, pursuant to Art. 4 ESCP Reg., and its subsequent service on the defendant pursuant to Art. 5 ESCP Reg.).*

d) Outcome of the judgment in the review procedure. Art. 18 Reg. ESCP provides that a defendant who has not appeared is entitled to apply for a review of the judgment rendered in the European Small Claims Procedure before the competent court of the Member State where the judgment was rendered, if (a) the defendant was not served with the claim form, or, in the event of an oral hearing, was not summoned to that hearing, in sufficient time and in such a way as to enable him to arrange for his defence; or (b) the defendant was prevented from contesting the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, unless the defendant failed to challenge the judgment when it was possible for him to do so. The Italian communication under art. 25(h) Reg. provides that "as regards the procedure, the rules governing appeals (art. 323 ff. c.p.c.) apply". It follows that the application for review must be made through the appeal.

The question arises as to what the outcome of the review procedure should be, considering that (*i)* in the case of a lack of service of the application initiating proceedings it should be considered that the appellate court should limit itself to

[28] E. D'ALESSANDRO, *Il procedimento europeo per le controversie di modesta entità. Caratteri generali e ambito di applicazione, riconoscimento ed esecuzione delle decisioni,* in F.C. Villata (ed.), *La giurisprudenza italiana sui regolamenti europei in materia di recupero transnazionale dei crediti*, Milan, 2021, 115.

annulling the challenged judgment[29], *(ii)* in the case of a lack of service of the application initiating proceedings that the appellate court should refer the case back to the first instance pursuant to Art. 354 of the Code of Civil Procedure and *(iii)* in the other cases of re-examination the court should decide on the merits according to general principles.

⇒ *It could be regulated the outcome of the review proceedings (Art. 18 ESCP Reg.) by clarifying whether, is the conditions are met, the court should proceed to examine the merits of the application or whether it should limit itself to setting aside the judgment or whether it should refer the case back to the first instance court or whether the outcome of the review proceedings should be different, depending on the grounds the application for review is based.*

e) Issue of Standard Form D by the court. Art. 20(2) ESCP Reg. provides that "At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost". The way the application is lodged and the aforementioned certificate is issued are not regulated. It could be assumed that they are the same as those provided for the submission of the application initiating the proceeding (i.e. by postal services or other means of communication, e.g. fax or e-mail) and that the certificate is also issued by sending it to the applicant by court.

⇒ *It should be regulated the way in which the application is to be submitted and how the certificate referred to in Art. 20(2) of ESCP Reg. is to be issued (including the relevant time).*

[29] On the merely rescindable outcome of the appeal in the event of failure to serve the writ of summons: see, *ex multis,* Cass., 28 April 2021, no. 11219.