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Research

"Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States"

(No. TM 2012/04/EK)

Research is conducted in accordance with the request of the Ministry of Justice of the Republic of Latvia and it is co-supported by the European Commission special programme "Civil Law" project "Improvement of civil cooperation: European Union level procedures in civil matters and possibilities provided by Evidence Taking Regulation and Service Regulation"

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RESEARCH IN GENERAL

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Introduction

This Research is conducted in accordance with the Agreement No. 1-6/1/24-p of 21 March 2012 **Research "Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States"** (No. TM 2012/04/EK) (further — Research) between the Ministry of Justice of the Republic of Latvia and Law Office of Inga Kačevska.

The Research was conducted by researchers of the Baltic States: in Latvia — *Doc. Dr. iur.* **Inga Kačevska**, *Dr. iur.* **Baiba Rudevska**, in Lithuania — *Prof. Dr. iur.* **Vytautas Mizaras**, *Dr. iur.* **Aurimas Brazdeikis** and in Estonia — *Dr. iur. cand.* **Maarja Torga** (further — Researchers).

The Ministry of Justice and the European Commission do not take any responsibility for the content of the Research.

Aim of the Research

The aim of the Research is to evaluate and analyse the practical application of European Union regulations in Latvia, Lithuania, and Estonia (further all Regulations — *Regulations*):

- **Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims** (further — *Regulation 805/2004*),[1]
- **Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure** (further — Regulation 861/2007),[2]
- **Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure** (further — *Regulation 1896/2006*).[3]

The aim of the Research and analysis is to reach the prevention of obstacles for practical application of the referred to Regulations in Latvia, Lithuania, and Estonia, as well as to provide guidelines for lawyers to facilitate and ensure as qualitative

[1] Regulation (EC) No 805/2004 of the European Parliament and of the Council (21 April 2004) creating a European Enforcement Order for uncontested claims. L 143, Official Journal of the European Union, 30.04.2004, p. 15-62.
[2] Regulation (EC) No 861/2007 of the European Parliament and of the Council (11 July 2007) establishing a European Small Claims Procedure. L 199, Official Journal of the European Union, 31.07.2007, p. 1-22.
[3] Regulation (EC) No 1896/2006 of the European Parliament and of the Council (12 December 2006) creating a European order for payment procedure. L 399, Official Journal of the European Union, 30.12.2006, p. 1-32.

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application of the referred to Regulations in the future in all three Baltic States — Latvia, Lithuania, and Estonia — as it is possible.

Task of the Research

In order to achieve the aims of the Research, scholars have put forward several tasks of the Study, including the provision of comments about Regulations, assessment of the introduction of Regulations within the legal systems of Latvia, Lithuania, and Estonia, statistics of the application of Regulations in Latvia, Lithuania, and Estonia, as well as the practice of the application of Regulations in Latvia, Lithuania, and Estonia.

The Research also explores the use aspects of the European Judicial Atlas in Civil Matters (hereinafter — *Atlas*) that include overall evaluation of the use of Atlas in terms of the application of Regulations in Latvia, Lithuania, and Estonia, including the evaluation provided by the representatives of legal professions regarding practical application of the Atlas.

Research methodology

Researchers have used both legal interpretation methods (historical, teleological, systematic, autonomous and comparative methods) as well as sociological research method.

Research structure

The Research is composed of three parts. Each part includes a review on the experience of each Baltic State — Latvia, Lithuania, and Estonia — in terms of the application of Regulations.

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General insight into the application of Regulations[4]

1) Articles 61 and 65 of the 2 October 1997 Treaty of Amsterdam (in force from 1 May 1999) broadened possibilities for the development of the European Union (hereinafter — *EU*) international civil proceedings. On 15-16 October 1999 *Tampere Meeting*, cancellation of the interim between the announcement of a judgment in one Member State and recognition and enforcement thereof in another Member State for the purpose of recognising them in the entire EU territory automatically and without any formalities (recognition declining basis, exequatur interim process, etc.) was mentioned as the main step.[5]

2) Slightly later — on 30 November 2000 — the EU Commission and the Council adopted the Joint Programme of Measures *regarding the implementation of the principle of mutual recognition in civil and commercial matters* (hereinafter — Joint Programme of Measures).[6] The document specified the action measures of the Community in the referred to field more clearly. Reduction of the interim procedures and strengthening of the legal consequences of recognition in the country of recognition (see Council Regulation (EC) No 44/2001 (22 December 2000) as an example) regarding jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was intended as the first step of Recitals 16 and 17 of the preamble (hereinafter —Brussels I Regulation [7]).

3) The Joint Programme of Measures also specifies the reduction of reasons for the refusal of recognition, including the cancellation of the control of the public order (*ordre public*). However, the cancellation of this type of control is planned to be replaced in separate cases by the introduction of the joint "minimum procedural standard"[8] that in EU secondary regulatory enactments would be autonomously defined, thus, common for all Member States. Complete cancellation of interim is intended already as the next an final step (Recitals 8, 9, and 18 of the preamble to Regulation 805/2004 may be mentioned as an example). Cancellation of the *ordre public* control in separate cases is intended to be replaced with the already mentioned minimum procedural standards (see Regulation 805/2004, p. 12-19; Recital 9 of the preamble to Regulation 1896/2006).

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[4] The following source has been used in Clauses 11 -18 of the study: Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : Latvijas Universitāte, 2012., p.77.-81. Available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[5] Schlussfolgerungen des Vorsitzes, Europäischer Rat Tampere, 15. und 16. Oktober, 1999, S. 6 [not available in Latvian].

[6] Projet de programme des mesures sur la mise en œuvre du principe de reconnaissance mutuelle des décisions en matière civile et commerciale. JO C 12, 15.01.2001, p. 1-9 [not available in Latvian].

[7] Council Regulation (EC) No 44/2001 (22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. L 12, Official Journal of the European Union, 16.01.2001, p. 1-23.

[8] *Ibid*., p. 5, 6.

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4) The Joint Programme of Measures provides for three stages. **First stage** — introduction of introduction of the European Enforcement Orders in uncontested monetary claims (the latter has been done adopting Regulation 805/2004); simplification of small-scale claim matters (the latter has been done adopting Regulation 861/2007); cancellation of exequatur in matters on the levy of provisions (the latter has been done adopting Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (further — *Regulation 4/2009*[9]). **Stage two** — review of Brussels I Regulation, thus, broadening the cancellation of exequatur process, as well as strengthening legal consequences of judgments by one Member State in other Member States (for instance, by introducing temporary enforcement, application of temporary measures). **Stage three** — cancellation of the exequatur process in all categories of civil matters referred to in Brussels I Regulation.

5) On 4-5 October 2004, the European Council adopted a continuation for Tampere programme — *The Hague Programme: strengthening freedom, security and justice in the European Union* (further — *The Hague Programme*),[10] that also reflects the aims for the activity of judicial authorities in civil matters. The following have been mentioned as the main measures in the field of the recognition and enforcement of court judgments: 1) continuation of mutual recognition of court judgments; 2) reaching of significant increase in mutual trust of courts; 3) full completion of the mutual recognition programme adopted in 2000 by 2011. The following has been specified as some of the main projects to be completed: 1) introduction of the European Order for Payment procedure (further — EOPP) (the latter has been done by adopting Regulation 1896/2006 in 2006); 2) introduction of a procedure for small claims (the latter has been done by adopting Regulation 861/2007 in 2007).

6) On 10 May 2005, the European Commission adopted the report *The Hague Programme: Ten priorities for the next five years* addressed to the Council and the Parliament to be able to introduce The Hague Programme.[11] Aims and priorities of The Hague Programme are turned into a specific action plan in the respective policy document where one of the most important priorities is as follows:

> *Guaranteeing an effective European area of justice for all Guarantee an European area of justice by ensuring an effective access to justice for all and the enforcement of judgments. Approximation will be pursued, in particular through the adoption of rules ensuring a high degree of protection of persons, with a view to building mutual trust and strengthening mutual recognition, which remains the cornerstone of judicial cooperation.*[12]

7) The principle of mutual recognition has been mentioned repeatedly in the report of the Commission "*Implementation of The Hague Programme: Further*

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[9] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. L 7, Official Journal of the European Union, 10.01.2009, p. 1-79.

[10] The Hague Programme: strengthening freedom, security and justice in the European Union. L 53, Official Journal of the European Union, 03.03.2005, p. 1-14.

[11] The report of the Commission "The Hague Programme: Ten priorities for the next five years" to the Council and the Parliament. COM(2005) 184 final. Brussels, 10 May 2005.

[12] Ibid, p. 6, 10.

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Action"[13] adopted on 28 June 2006 as the cornerstone of the EU policy, noting that "mutual recognition is based on mutual trust in legal and judicial systems". In order to achieve the latter, the Commission intends to propose within the respective document the development of the required legal enactments for the purpose of completing the cancellation of the exequatur process for judgments in civil and commercial matters, as well as to prepare and submit Green Papers on improving the efficiency of the enforcement of judgments. After 28 June 2006, the Commission published two Green Papers: 1) Green paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts[14]; 2) Green Paper on efficient enforcement of judgments in the European Union: transparency of debtors assets.[15]

8) *Multi-annual programme 2010-2014 regarding the area of freedom, security and justice* (**Stockholm Programme**) was adopted that also accents that the cancellation of the permission procedure for the recognition and enforcement of foreign court judgments should not be hurried up in the review of Brussels I Regulation, and that a research must be conducted regarding practical enforcement of many innovative legal enactments existent in the field of civil law for the purpose of an even further simplification and codification thereof.[16]

9) As it may be observed, the EU is purposefully advancing towards the aim — cancellation of all possible control methods, replacing them with common "minimum procedural standards" and without restrictions to ensure the fifth freedom — free court judgment movement.

10) Thus from 2000, documents of the "first generation" rights,[17] regulating jurisdiction and the recognition of judgments in civil and commercial matters,[18] family matters,[19] as well as issues on insolvency,[20] issue of court and out-of-court

[13] Ibid, p. 26, 27.

[14] Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts. COM(2006) 618 final.

[15] Green Paper on efficient enforcement of judgments in the European Union: transparency of debtors assets. COM(2008) 128 final.

[16] Multi-annual programme 2010-2014 regarding the area of freedom, security and justice (Stockholm Programme) (2010/C 285 E/02). L 285, Official Journal of the European Union, 21.10.2010, p. 12-35.

[17] See Report on the Application of Regulation Brussels I in the Member States. Study JLS/C4/2005/03, p. 27-28.

[18] Council Regulation (EC) No 44/2001 (22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. L 12, Official Journal of the European Union, 16.01.2001, p. 1-23.

[19] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. L 338, Official Journal of the European Union, 23.12.2003, p. 1-29. (in English). Special edition in Latvian, 2004, Chapter 19, Volume 6, p. 243-271.

[20] Council Regulation (EC) No 1346/2000 (29 May 2000) on insolvency proceedings. L 160, Official Journal of the European Union, 30.06.2000, p. 1-18 (in English). Special edition in Latvian, 2004, Chapter 19, Volume 1, p. 191-208.

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documents[21] and taking of evidence in cross-border civil and commercial matters were adopted in the EU.[22]

11) The Joint Programme of Measures of 30 November 2000 [23] should be noted as the most important EU institution planning document in the field of civil proceedings so far, specifying the reduction of a refusal for recognition, including the cancellation of the control of the public order (*ordre public*) in the Member State of judgment enforcement. However, the cancellation of this control is planned to be replaced in separate cases by the introduction of the joint "minimum procedural standard"[24] that in EU secondary regulatory enactments would be autonomously defined, thus, common for all Member States. The respective minimum procedural standards have been included in Regulations 805/2004, 1896/2006, and 861/2007.

12) Therefore documents of the "second generation" rights are being adopted in the EU judicial space since 2004, reflecting the principle of mutual trust, principle of mutual recognition of EU Member State courts, as well as accessibility to courts in EU space.[25] Both Regulations 805/2004 and 1896/2006, as well as Regulation 861/2007 may be regarded as documents of this generation.

13) Documents of the "first generation" and "second generation" do not unify national procedural rights, but sooner create separate EU level procedures. Regulations may be regarded as EU secondary legal enactments and therefore they are directly applicable in EU Member States. Regulations prevail over the national rights therefore in case regulations provide for a different legal regulation than the national legal enactments, norms of the regulations are applied (see also Section 5, Paragraph three of CPL).

14) As specified in the Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, if EU legislator had desired to unify the national rights and to give an opportunity for the formation of a national system, it would have been done with the help of directives.[26] Accordingly these EU level procedural provisions are compatible with similar methods envisaged in the national rights. However, as established in the present Research, EU lawmaker has only partly created an autonomous EU level system, because in several cases the norms of Regulations refer to the national rights that accordingly do not create a single application practice in all EU Member States.

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[21] Regulation (EC) No 1393/2007 of the European Parliament and of the Council(13 November 2007) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. L 324, Official Journal of the European Union, 10.12.2007, p. 79-86.

[22] Council Regulation (EC) No 1206/2001 (28 May 2001) on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. L 174, Official Journal of the European Union, 27.06.2001, p. 1-24.

[23] Projet de programme des mesures sur la mise en œuvre du principe de reconnaissance mutuelle des décisions en matière civile et commerciale (2001/C12/01). Journal officiel C 12, 15.01.2001, p. 1-9 (*not available in Latvian*).

[24] *Ibid*., p. 5, 6.

[25] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. L 7, Official Journal of the European Union, 10.01.2009, p. 1-79.

[26] Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, Brussels, 20.12.2002 COM (2002) 746 final, p.7.

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15) **Similarities and differences of Regulations.** Regulations examined in the present Research have many similar and different elements that have been described further on.

16) **Aim.** In accordance with Article 38 of Brussels I Regulation, a foreign judgment is *enforceable* if a court of another Member State grants an approval for enforcement, i.e., an exequatur (registration — in the United Kingdom). In accordance with Article 33 (1) of the referred to Regulation, a judgment given in an EU Member State shall be *recognised* in the other EU Member States without any special procedure being required (exceptions when the recognition process is being applied have been specified in Article 33 (2) and (3) of Brussels I Regulation).

17) Meanwhile recognition and exequatur processes are cancelled in Regulation 805/2004, Regulation 1896/2006, and Regulation 861/2007.[27]

18) Regulation 805/2004, for instance, specifies that the basis for the cancellation of the recognition and exequatur process is a principle of mutual trust,[28] principle of mutual recognition[29] of the Member States, as well as strict observance of detailed minimum procedural standards defined in Articles 13-17 to the Regulation. Thereby not only court judgments, but also court settlements and authentic instruments may be approved as the European Enforcement Order (further — EEO).

19) The aim of Regulations 1896/2006 and 861/2007 are the creation of a single, fast and efficient EEO procedure for recovery of uncontested financial claims in the EU[30] and European small claims procedure. Both of the referred to EU level procedures are optional in relation to the national equivalent procedures of the Member States.[31] Introduction of the respective procedures should promote: 1) simplification, acceleration and reduction of litigation expenses in cross-border matters for the recovery of uncontested financial claims;[32] 2) facilitation of access to EU Member State legal systems in small claim matters, acceleration of the recovery of sums claimed in small claims, simplification and acceleration of legal proceedings in small claims at the same time reducing litigation expenses.[33]

20) **Scope of application.** As one may observe from the comparative table, all three Regulations are applied in civil and commercial matters. These notions should be interpreted in accordance with Brussels I Regulation; however, the field of material application differs in each of the examined Regulation, for instance, in relation to court of arbitration and consumers. Besides Regulation 861/2007 has been supplemented with additional fields that have been withdrawn from the field of material application of the present Regulation (for instance, labour rights) thereby narrowing the understanding of the notation "civil and commercial matters".

21) Table:

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[27] See: Recitals 8 and 9 of the Preamble to Regulation 805/2004; Recital 9 of the Preamble to Regulation 1896/2006 and Recitals 8 and 30 of the Preamble to Regulation 861/2007.

[28] See: Recital 18 of the Preamble to Regulation 805/2004 and Recital 27 of the Preamble to Regulation 1896/2006.

[29] See: Recital 4 of the Preamble to Regulation 805/2004.

[30] See: Recital 29 of the Preamble to Regulation 1896/2006.

[31] See: Recital 10 of the Preamble to Regulation 1896/2006 and Recital 8 of the Preamble to Regulation 861/2007.

[32] See: Recital 9 of the Preamble to Regulation 1896/2006.

[33] See: Recitals 7, 8 and 25 of the Preamble to Regulation 861/2007.

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Brussels I Regulation Article 1	**Regulation 805/2004** Article 2	**Regulation 1896/2006** Article 2	**Regulation 861/2007** Article 2
Regulation is applied for civil and commercial matters irrespective of the type of court authority			
Regulation is not broadened in respect of			
matters concerning revenue, customs or administrative issues	tax, customs or administrative matters or	tax, customs or administrative matters	tax, customs or administrative matters, as well as
	the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").	the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").	the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").
Regulation does not apply to			
a) the status or legal capacity of natural persons	a) the status or legal capacity of natural persons		a) status or legal capacity of natural persons
rights in property arising out of a matrimonial relationship	rights in property arising out of a matrimonial relationship,	a) rights in property arising out of a matrimonial relationship,	b) rights in property arising out of a matrimonial relationship
			maintenance obligations
wills and succession	wills and succession	wills and succession	wills and succession
b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions or analogous proceedings	b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,	b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions or analogous proceedings	c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings,
c) social security	c) social security	c) social security	d) social security
d) arbitration	d) arbitration		e) arbitration
		d) claims arising from non-contractual obligations, unless i) they have been the subject of an agreement between the parties or there has been an admission of debt, or ii) they relate to liquidated debts arising from joint ownership of property.	
			f) employment law
			g) tenancies of immovable property, with the exception of actions on monetary claims
			h) violations of privacy and of rights relating to personality, including defamation.

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22) At the same time one must observe that Regulation 1896/2006[34] and Regulation 861/2007[35] simplify the international civil proceedings in EU Member States therefore they are applied only in cross-border civil cases. In accordance with Article 3 of Regulation 1896/2006 and Article 3 of Regulation 861/2007, cross-border civil case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized. The domicile must be determined in accordance with Articles 59 and 60 of Brussels I Regulation, but none of these Regulations define the notation "domicile of a natural person" therefore in such case the national norms of Private International Law of Member States regarding determination of the domicile of a natural person would have to be applied.[36] It must be admitted that the national civil procedural laws of Member States differ and therefore it is not possible to apply these Regulations autonomously in all cases and to unify their application practice in the entire EU. In cases concerning the understanding of autonomous notions existent in the Regulations, one must use judicature of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) (further: CJEU) in order to create an autonomous regime for the interpretation of Regulations.

23) Meanwhile Regulation 805/2004 does not clearly specify that it should be applied in cross-border cases therefore it may be applied also in national cases if the judgment (court settlements and authentic instruments) enforcement must be executed in another EU Member States (except for Denmark).

24) If Regulation 861/2007 is applicable for small monetary and non-monetary claims that may be also contested claims, Regulation 805/2004 and Regulation 1896/2006 may be applied only for uncontested claims[37] for financial claims.[38] In accordance with Regulation 861/2007, the court transfers to national proceedings in cases when a counterclaim and claims that are not monetary claims exceeds EUR 2000.[39] However, transition from the Regulation procedure to national proceedings is not regulated neither in the Regulation, nor in the Civil Procedure Law of Latvia (further — CPL) even though such process is foreseen in other EU Member States (see, for instance, Section 1099 of the Code of the Civil Procedure of Germany [40]).

[34] See Recitals 9 and 10 of the Preamble to the Regulation.
[35] See Recital 8 of the Preamble to the Regulation.
[36] See also Article 26 of Regulation 1896/2006 and Article 19 of Regulation 861/2007.
[37] Article 3 (1) of Regulation 805/2004, Article 1 (1) (a) of Regulation 1896/2006.
[38] Article 4 (2) of Regulation 805/2004, Article 1 (1) (a) of Regulation 1896/2006.
[39] Article 5 (5) and (6) of Regulation 861/2007.
[40] Zivilprozessordnung (ZPO). Available at: www.gesetze-im-internet.de. "(1) Eine Widerklage, die nicht den Vorschriften der Verordnung (EG) Nr. 861/2007 entspricht, ist außer im Fall des Artikels 5 Abs. 7 Satz 1 der Verordnung (EG) Nr. 861/2007 als unzulässig abzuweisen. (2) Im Fall des Artikels 5 Abs. 7 Satz 1 der Verordnung (EG) Nr. 861/2007 wird das Verfahren über die Klage und die Widerklage ohne Anwendung der Vorschriften der Verordnung (EG) Nr. 861/2007 fortgeführt. Das Verfahren wird in der Lage übernommen, in der es sich zur Zeit der Erhebung der Widerklage befunden hat."

25) Table:

Regulation 805/2004	**Regulation 1896/2006**	**Regulation 861/2007**
-	Cross-border cases	Cross-border cases
Claims for the payment of a specific sum of money	Financial claims	Monetary claim and other claim (not exceeding EUR 2000)
Uncontested claims	Uncontested claims	Uncontested and contested claims

26) As analysed in the present Research, in order to apply the Regulations it must be clarified the application scope thereof, including also issues about geographic and temporal application.

Regulation 805/2004	**Regulation 1896/2006**	**Regulation 861/2007**
Geographic application		
Applied in EU Member States, except for Denmark	Applied in EU Member States, except for Denmark	Applied in EU Member States, except for Denmark
Regulation comes into force		
21 January 2005	31 December 2006	1 August 2007
Applied from		
Articles 30-32 of the Regulation are applicable from 21 January 2005 Other norms — from 21 October 2005	Articles 28, 29, 30, 31 of the Regulation are applicable from 12 June 2008 Other norms — from 12 December 2008	Article 25 of the Regulation is applicable from 1 January 2008 Other norms — from 1 January 2009
Applied for		
judgments, court settlements and authentic instruments drafted or registered after 21 January 2005		

27) Thus, choosing which of the Regulations to be applied in a specific case, one must first of all evaluate whether it is applicable for the category and goal of the specific case. For instance, following the scheme below one may evaluate which process should be selected.

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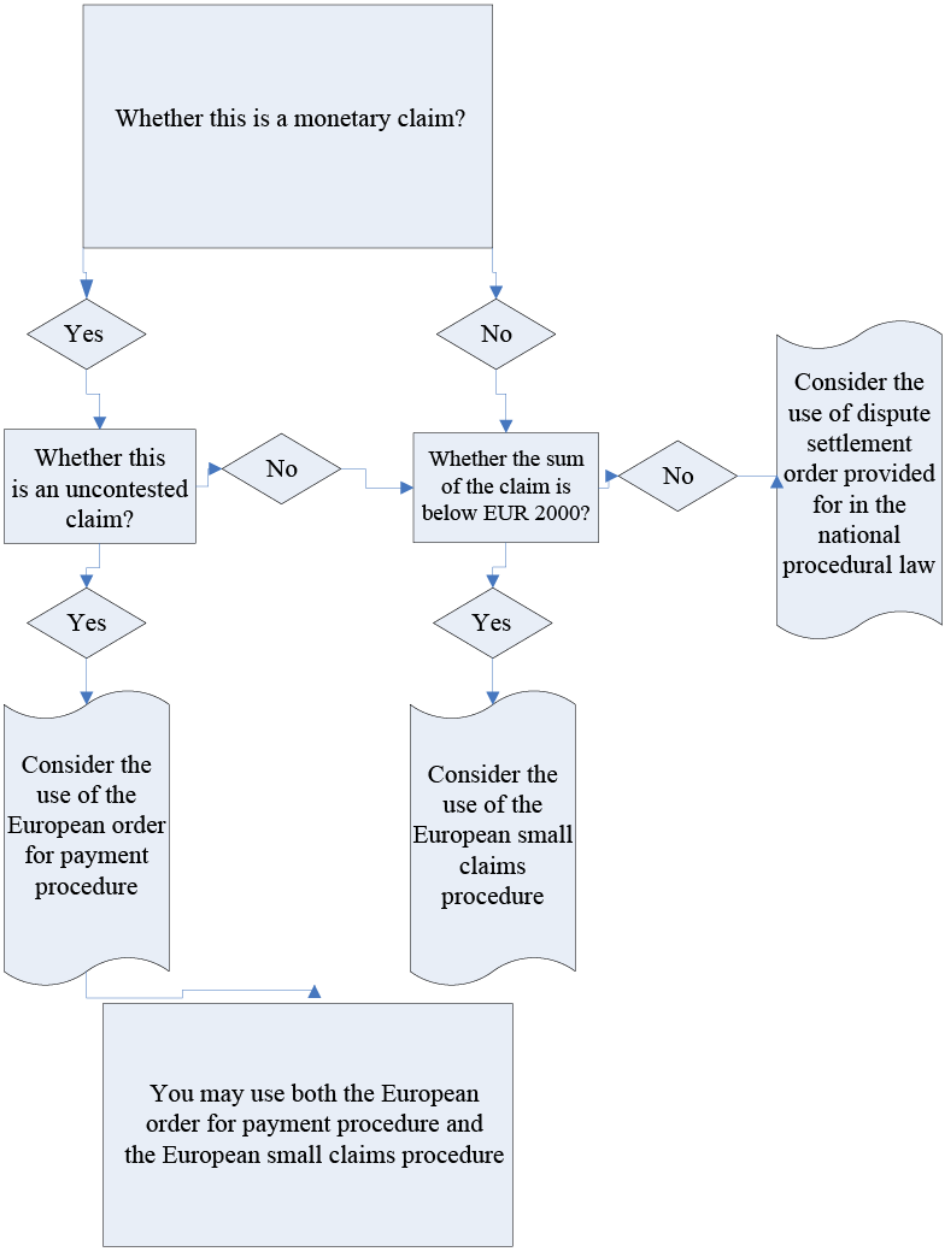

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CHAPTER 1: LATVIA

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1. Regulation 805/2004

1.1. Introduction

1. In order to facilitate cross-border legal proceedings in EU space, the European Enforcement Order (*further — EEO*) is being created with Regulation 805/2004 for uncontested claims. In accordance with Article 1 of the Regulation, EEO was introduced to ensure free circulation of judgments, court settlements and authentic instruments in all Member States, cancelling the procedure of the recognition and enforcement of a foreign court judgment. Thus, a judgment, court settlement or authentic instrument that has been produced in accordance with national law of one EU Member State may be approved as EEO that will enable free enforcement of the respective document in the entire territory of the EU (except for Denmark).

2. Such a process may be used by a claimant if in accordance with the definition of the Regulation the defendant has not contested the monetary claim and the claimant has not had a chance to enforce this judgment, court settlement or authentic instrument in another EU Member State.

3. This part of the Research will examine each article of the Regulation and the application practice thereof in Latvia will be analysed. Special attention must be paid to provisions regarding the scope and requirements of the Regulation that have been put forward for the approval of documents as EEO. One of the most important issues within the context of the present Regulation is minimum procedural standards for uncontested claims that have been analysed in the present Research.

4. Forms of the Regulation are available here: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_information_lv.htm. In addition to the present Research one may use the practical methodological means regarding the application of the Regulation as EEO: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lv.pdf.

1.2. Scope of material application

5. Article 2 (1) of Regulation 805/2004 states that the Regulation shall apply in **civil and commercial matters**, whatever the nature of the court or tribunal. The Regulation itself does not provide a definition for the notion "civil and commercial matters"; however, in accordance with the CJEU practice it should be interpreted autonomously in all Member States in accordance with the purpose, system and general principles of the

Regulation,[41] because understanding about these terms differs in the legal systems of Member States.[42]

6. The same notions are used in Article 1 of Brussels I Regulation that in the course of time the CJEU has filled with content and meaning. Furthermore, irrespective of the fact that Regulation 805/2004 (contrary to, for instance, Regulation 1896/2006) does not have a reference to Brussels I Regulation, the latter shall be used as terms of references .[43] To put it in other words, it serves as a sample for the interpretation of parallel legal enactments, including for the interpretation of the notion "civil and commercial matters" referred to in Regulation 805/2004. One must add that in separate cases the scope of Regulation 805/2004 (as well as of other Regulations covered in the present research) may slightly differ therefore special attention must be paid to the articles of Regulations regarding the application fields thereof.

7. In order to determine whether it is a civil or commercial claim, nature or subject matter of legal relations must be evaluated. *Inter alia* such cases, for instance, will be purchase-sales contracts of goods, service provision contracts, including contracts on freight transportation[44] and insurance transactions. Such agreements have been mentioned in Brussels I Regulation. Furthermore, the scope of Regulation 805/2004 includes not only contractual, but also non-contractual relations, for instance, claims between natural persons arising from damages caused by illegal use of property rights,[45] or cases applying to a harm or prohibited action, as well as issues in respect of civil claims in criminal proceedings (Article 5 (3) and (4) of Brussels I Regulation).

8. Also disputes in relation to **employment contracts** shall be within the scope of the present Regulation. Example:

An employee residing in Latvia concluded an employment contract with a French company. After a one-year-long co-operation, the employer reached agreement with the employee regarding the termination of legal labour relations, as well as regarding the payment of compensation in the amount of two monthly salaries. The French company did not pay the compensation within the specified term and no longer responds the phone calls of the employee. Based on Article 19 (2) (a) of Brussels I Regulation, the employee sued the employer at a Latvian court (at a court of the

[41] See the Opinion of ECJ Advocate General *Ruiz-Jarabo Colomer* of 8 November 2006 on the case *Lechouritou u.c. v Dimosio tis Omospondiakis Dimokratias tis Germanias:* C-292/05, ECR, 2006, p. I-01519, para. 23 et seq.

[42] Report on the Convention on the Association of the Kingdom of Denmark, Ireland, and the United Kingdom of Great Britain and Northern Ireland to the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters and to the Protocol on its interpretation by the Court of Justice, by Professor P. Schlosser [1978] OJ 1979 C 59, p. 71, para 23.

[43] Report on the Application of Regulation Brussels I in the Member States, by B. Hess, T. Pfeiffer, P. Schlosser [2007] Study JLD/C4/2005/03, para 66.

[44] 28 April 2009 ECJ judgment in case: C-533/08 *TNT Express Nederland BV v AXA Versicherung AG* ECR, 2010, p. I-04107, para 35.

[45] 28 April 2009 ECJ judgment in case: C- 420/07 *Apostolides v Orams*, ECR, 2009, p. I-3571, para 45.

Member State where the employee was permanently working). The court applied the Labour Law of Latvia[46] *in accordance with Article 8 (2) of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (further: Rome I Regulation)*[47] *, because as the parties had not made a choice in respect of legal enactments applicable for the individual employment contract, the contract is regulated by legal enactments of the state in which the employee is permanently working. The defendant was not present in the court sitting. Latvian court established it had international jurisdiction in the respective case, and that Regulation 805/2004 shall be applied in this case. The judgment was in favour of the employee. The employee addressed the Latvian court with a request to approve it as EEO to be enforced in France.*

9. The scope of Regulation 805/2004 is narrower than that of Brussels I Regulation in issues related with **consumers**. In accordance with Article 6 (1) (d) of Regulation 805/2004 (which has been formulated quite awkwardly and not very understandable):

> *A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a EEO if [..] (d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001 (Brussels I Regulation), in cases where*
> *- a claim is uncontested within the meaning of Article 3(1)(b) or (c); and*
> *- it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and*
> *- the debtor is the consumer.*

10. The following conclusion arises from the aforementioned: **First**, only such judgments may be approved as EEO in consumer matters that have been delivered in matters regarding *passively* uncontested claims (see Article 3 (1) (b) and (c) of the Regulation). **Second**, only the state court of the debtor-consumer domicile has international jurisdiction or jurisdiction to deliver a judgment (and to approve it later on as EEO as well). For comparison, in separate matters defined in Article 17 of Brussels I Regulation not only the state court of the debtor-consumer domicile may have jurisdiction. Thereby Regulation 805/2004 has narrowed international jurisdiction of courts in consumer matters. **Third**, Regulation 805/2004 applies only to matters relating to a contract concluded by the consumer for a purpose which can be regarded as being outside his trade or profession (an identical formulation may be found also in Article 15 (1) of Brussels I Regulation).

11. Article 2 (1) of Regulation 805/2004 specifies that it is applied independently from the type of court authority (see sub-section "Notion of document to be approved as EEO" of the Research § 46 and further). For instance, EEO approval may be requested

[46] Labour Law of 20 June 2001: Law of the Republic of Latvia. Latvian Herald, No. 105, 06.07.2001.

[47] Regulation (EC) No 593/2008 of the European Parliament and of the Council (17 June 2008) on the law applicable to contractual obligations (Rome I). L 177, Official Journal of the European Union, 04.07.2008, p. 6-16.

for a judgment that satisfies a claim regarding compensation of damages in criminal proceedings and is reviewed in the criminal court. Further on it is not essential whether the judgment regarding what the EEO is submitted has been delivered at the court of first instance or the supreme court.

12. Article 1 (1) of Regulation 805/2004 specifies that the scope of the Regulation does not include matters affecting **tax, customs** or **administrative matters**. The Regulation shall be applicable for relations of private law, whereas there is an element of public law in tax, customs or administrative matters that is used by one of the parties — legal person of public law.[48]

13. Contrary to Brussels I Regulation, one more exception has been included in addition in Regulation 805/2004, thus, Regulation 805/2004 shall not be applied in matters regarding the liability of the State for acts and omissions in the exercise of State authority (***acta iure imperii***). Such an exception was included to sub-divide private and public law.[49] At present the CJEU has clearly specified that such issues are not within the scope of Brussels I Regulation,[50] therefore both Brussels I Regulation and Regulation 805/2004 shall not be applied for disputes related with actions of the legal persons of the public law, for instance, in matters regarding compensation of such damages that have occurred from activities of armed forces within the scope of military operations,[51] regarding levy of definite and mandatory payment for equipment and services from the subject of the private law in favour of the legal person of the public law[52] or other disputes in which the State exercises its authority.[53]

14. However, if the State does not exercise State authority and acts as a natural person, the Regulations shall be applicable. For instance, if the State has concluded a private contract[54] or there exist non-contractual, but private relations. The CJEU has

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[48] 15 May 2003 ECJ judgment in the case: C-266/01 *Préservatrice foncière TIARD SA v Staat der Nederlanden* ECR, 2003, p. I-04867, paras. 37-44.

[49] Hess, B., Pfeiffer, T., Schlosser, P. The Brussels I-Regulation (EC) No 44/2001.The Heidelberg Report on the Application of Regulation Brussels I in 25 Member States (Study JLS/C/2005/03). München: Verlag C.ck, 2008, p. 34.

[50] Magnus, U., Mankowski, P. (ed), European Commentaries on Private International Law Brussels I. Regulation (2nd edn, SELP 2012) p. 54. See also the Opinion of CJEU Advocate general *Trstenjak V.* of 28 November 2012 on the case *Land Berlin v. Ellen Mirjam Sapir, Michael J.Busse et al*: C-645/11, available at www.curia.eu.

[51] See 15 February 2007 ECJ judgment in the case: C-292/05 *Lechouritou u.c. v Dimosio tis Omospondiakis Dimokratias tis Germanias* ECR, 2006, p. I-01519, para. 46. Notions "civil matters" and "commercial matters" included in Brussels I Regulation are interpreted systematically with Regulation 805/2004 and Regulation 1896/2006.

[52] 14 October 1976 ECJ judgment in case: C-29/76 *LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol* ECR, 1976, p. 1541.

[53] See also 16 December 1980 ECJ judgment in the case: C-814/79 *Netherlands v. Ruffer* ECR, 1980, p. 3807.

[54] See 14 November 2002 ECJ judgment in the case: C-271/00 *Gemeenter Steenbergen v Luc Baten* ECR, 2012, p. I-10489; 15 May 2003 ECJ judgment in the case: C-266/01 *Préservatrice foncière TIARD SA v Staat der Nederlanden* ECR, 2003, p. I-04867.

determined that, for instance, negligence of a teacher at a State school due to whom death of a pupil has incurred during an excursion shall be regarded as a civil relation.[55]

15. Furthermore, Paragraph 2 of the Article subject to review clearly determines that Regulation 805/2004 does not apply to several category matters of civil and commercial nature that also matches with those specified in Brussels I Regulation (for instance, arbitration, bankruptcy proceedings). This is due to the fact that the regulation of these proceedings excluded from the scope differs in the national law of Member States; furthermore, separate fields have already been adjusted to international conventions[56] or other EU legal enactments.[57]

16. Regulation 805/2004 shall not be applicable in proceedings regarding **the status or legal capacity of natural persons** (Article 2 (2) (a)). The respective issues are regulated in each State in accordance with its national legal norms. Frequently the latter is related with public registers, but almost never — with property claims. Thereby such issues, which affect the birth or death of a person, issues related with the name and surname, minors, adoption, etc., are outside the scope of the Regulation.

17. Article 2 (2) (a) of Regulation 805/2004 also determines that the Regulation shall not be applicable to **rights in property arising out of a matrimonial relationship.** The notion "rights in property arising out of a matrimonial relationship" includes any action with property among spouses. The latter may be a decision on satisfying the claim (for instance, seizure of property) against any of the spouses in case of a divorce. Therefore such a case shall not be within the scope of the Regulation.[58] Furthermore, issues on family law, including jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility are excluded from the application fields of the Regulation.[59]

18. Since 18 June 2011 when Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations[60] came into force, also judgments in **matters relating to maintenance obligations** cannot be approved as EEO.

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[55] 21 April 1993 ECJ judgment in the case: C–172/91 *Volker Sonntag v. Weidmann* ECR 1993, p. I–01963.

[56] For instance, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards [1958] 330 UNTS 38.

[57] Council Regulation (EC) No 1346/2000 (29 May 2000) on insolvency proceedings. L 160, Official Journal of the European Union, 30.06.2000, p. 1-18. (in English). Special edition in Latvian, 2004, Chapter 19, Volume 1, p. 191-208.

[58] 27 March 1979 ECJ judgment in the case: C-143/78 *Jacques de Cavel v Loiuse de Cavel* ECR, 1979, p. I-01055, para 1- 2.

[59] Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. L 338, Official Journal of the European Union, 23.12.2003, p. 1-29 (in English). Special edition in Latvian, 2004, Chapter 19, Volume 6, p. 243-271.

[60] Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. L 7, Official Journal of the European Union, 10.01.2009, p. 1-79.

In accordance with Article 68 (2) of Regulation 4/2009, this Regulation shall replace Regulation 805/2004, except with regard to EEO on maintenance obligations, issued in a Member State to which the Hague Protocol of 23 November 2007 on legal enactments applicable to maintenance obligations (further — 2007 Hague Protocol) is not binding.[61] Among EU Member States Denmark and the United Kingdom have not joined the referred to Hague Protocol.[62] As **Denmark** does not participate in Regulation 805/2004, it shall not be applied with Denmark in matters relation to maintenance obligations. At this point the following question arises: which regulatory enactment of the EU shall be applicable in the future in matters relating to maintenance obligations between Denmark and other EU Member States? At first it might seem that Brussels I Regulation would apply, because the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[63] (further — *Agreement with Denmark*) was signed in Brussels on 19 October 2005 that came into force in all EU Member States as of 1 July 2007.[64] However, the situation is not that simple. Thus, Article 3 (2) of Agreement with Denmark determines: "If amendments of the regulation [*Brussels I Regulation is meant — author's note*] are adopted, Denmark notifies the Commission regarding the decision to either implement the content of the amendments or not. The statement shall be provided at the time when amendments are adopted or within a period of 30 days from the day of the adoption thereof." According to Article 68 (1) of Regulation 4/2009, the respective Regulation introduces amendments to Brussels I Regulation, thus, excluding maintenance obligations from the field of material application and transferring them to Regulation 4/2009. <u>The latter means that Regulation 4/2009 shall be applied for maintenance obligations also in respect of Denmark insofar as it amends Brussels I Regulation.</u>[65]

19. According to the aforementioned information, the situation referred to in Article 68 (2) of Regulation 4/2009 shall apply only to the **United Kingdom**, which means that EEO in cases regarding maintenance obligations issued in the United Kingdom will have to be accepted for enforcement also in the future in Latvia (Lithuania and Estonia).

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[61] Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations, available at: *http://www.hcch.net/index_en.php?act=conventions.text&cid=133*. European Union Member States, except for Denmark and the United Kingdom, have joined the referred to protocol. Also Serbia has joined the protocol. The protocol had not come into force at the moment the present Research was elaborated.

[62] See Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations (2009/941/EC). Official Journal L 331, 16.12.2009, p. 17-18, paras. 11, 12.

[63] Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. L 299, Official Journal of the European Union, 16.11.2005, p. 62.

[64] Information on the day the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters came into force. L 94, Official Journal of the European Union, 04.04.2007, p. 70.

[65] See the statement of the Commission "Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters". L 149, Official Journal of the European Union, 12.06.2009, p. 80.

Whereas Latvia (Lithuania and Estonia) cannot approve judgments of its courts as EEO so that they would be submitted to the United Kingdom for enforcement. Thus, Latvia (Lithuania and Estonia) will send the form specified in Appendix I of Article 20 (1) (b) of Regulation 4/2009 to the United Kingdom for the execution of maintenance obligations in matters.

20. Article 2 (2) (a) of Regulation 805/2004 determines that the Regulation shall not be applicable also in issues **covering wills and succession.** Therefore issues on the division of inheritance, inheritance claims and wills, including the validity or interpretation of a will, have been excluded from the field of material application of the Regulation. However, disputes among persons who are not hEEOs, but, for instance, administrators of a heritage, a trust, an authorised person or debtor, shall be within the scope of Regulation 805/2004.[66] Regulation (EU) No 650/2012 of the European Parliament and of the Council (4 July 2012) on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession shall be applicable from 17 August 2015.[67]

21. Regulation 805/2004 shall not be applicable also for **bankruptcies** and **procedures related to an insolvent company or the liquidation of other legal persons, court orders, settlement agreements and similar procedures** (see Article 2 (2) (b) of the Regulations). Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings determines bankruptcy and insolvency cross-border issues in the EU legal space.[68] The latter applies to issues on collective insolvency proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator (see Article 1 of Regulation 1346/2000). Cases provided for in Article 25 (1) of Regulation 1346/2000 for which Regulation 805/2004 shall be applied through a reference to 27 September 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters[69] (further: *Brussels Convention*) (thus — the reference currently applies also to Brussels I Regulation).[70] This regards exequatur or

[66] Report on the Application of Regulation Brussels I in the Member States, by B., Hess, T., Pfeiffer, P., Schlosser [2007] Study JLD/C4/2005/03, para 52.

[67] Regulation (EU) No 650/2012 of the European Parliament and of the Council (4 July 2012) on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. L 201, Official Journal of the European Union, 27.07.2012, p. 107-134.

[68] Council Regulation (EC) No 1346/2000 (29 May 2000) on insolvency proceedings. L 160, Official Journal of the European Union, 30.06.2000, p. 1-18 (in English). Special edition in Latvian, 2004, Chapter 19, Volume 1, p. 191-208.

[69] 27 September 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. L 27, Official Journal of the European Union, 26.01.1998, p. 1-33.

[70] See Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010, Art. 2 EG-VollstrTitelVO (Pabst S.) S. 37

enforcement permit proceedings of judgments in insolvency matters. Regulation 805/2004 shall be applicable also for insolvency administrator asset proceedings.[71]

22. Regulation 805/2004, however, shall not apply to **settlement agreements and similar proceedings in insolvency matters** (Article 2 (2) (b)). Article 25 of Regulation 1346/2000 shall be applied instead. However, as explained further in the Research, the Regulation shall be applicable to settlements (see 238. § and further) that have been approved by court or that have been concluded during legal proceedings and authentic instruments in accordance with Article 24 and Article 25 of the Regulation.

23. Article 2 (2) (c) of Regulation determines that it is not applicable also in **social security** matters. In case *Gemeente Steenbergen v Luc Baten*[72] the CJEU indicated that also this term should be interpreted irrespectively from the national law and in accordance with Regulation on social security,[73] therefore issues related with illness, maternity, disability, age, unemployment, etc. benefits are not within the scope of Regulation 805/2004.[74] Even though it will not be possible to use the respective Regulation in claims between the legal persons of public law and recipients of the benefit; however, it shall be applicable in claims against third persons responsible for causing damages.[75]

24. Article 2 (2) (d) of the Regulation specifies that the Regulation does not apply to **arbitration**. At the moment no regulation in the EU directly regulates arbitration law,[76] because the respective field is covered by international conventions. Thus, all EU Member States have joined the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (further: *New York Convention*).[77] Several

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[71] *Ibid.*

[72] See 14 November 2002 ECJ judgment in the case: C-271/00 *Gemeenter Steenbergen v. Luc Baten* ECR, 2012, p. I-10489

[73] Now — Council Regulation (EC) No 883/2004 of the European Parliament and of the Council (29 April 2004) on the coordination of social security systems, L 200, Official Journal of the European Union, 30.04.2004, p. 72-116.

[74] See: Article 3 (1) of Regulation 883/2004 defines the fields to which the present regulation applies to:

> *1. This Regulation shall apply to all legislation concerning the following branches of social security: (a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old-age benefits; (e) survivors' benefits; (f) benefits in respect of accidents at work and occupational diseases; (g) death grants; (h) unemployment benefits; (i) pre-retirement benefits; (j) family benefits.*

[75] Report on the Application of Regulation Brussels I in the Member States, by B., Hess, T., Pfeiffer, P., Schlosser [2007] Study JLD/C4/2005/03, para 60.

[76] In 1966 there was an attempt to unify arbitration law by developing the European Convention Providing a Uniform law on Arbitration ***. CETS No. 056***, 1966). The referred to convention was drafted by the Council of Europe with an aim to unify the national arbitration law in Europe in order to make arbitration in the region effective. Annex of the convention had to be incorporated within the national law of Member States even though they were free to regulate those issues that were not regulated by the convention. However, the convention did not gain the desired responsiveness (only Austria and Belgium joined the convention) and it still has not come into force.

[77] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. *330 UNTS 38*, 1968. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards: International Agreement of the Republic of Latvia [1958] Latvian Herald, No. 2815, 2003.

European countries have joined also the European Convention on International Commercial Arbitration[78] (Estonia and Lithuania have not joined the respective convention). Thereby EU procedural law does not regulate and cannot be applicable to settlement of international disputes at the court of arbitration.

25. The CJEU in its judicature has specified that the term "court of arbitration" should be perceived not only as the process of arbitration, but also proceedings related to arbitration at the courts of countries,[79] therefore nit will not be possible to approve neither the judgment of the court of arbitration, nor the decision of the court in relation to the proceedings of arbitration, including the decision regarding the issue of a court order as EEO.

26. However, from the available Latvian court practice one may conclude that requests on the issue of EEO for the judgments of the court of arbitration [80] or requests on the approval of the EEO decision as forced enforcement of the judgment of the permanent court of arbitration are frequently received by Latvian courts.[81] For instance, the court of first instance in one case specified the approval of a decision regarding the issue of a court order for forced enforcement of a judgment by the court of arbitration as EEO, based on Section 132, Paragraph five of CPL that determines that a judge shall refuse to accept a statement of claim if a dispute between the same parties, regarding the same subject-matter, and on the same basis, a court judgment or decision has come into lawful effect.[82] Thus, the court believed that the decision regarding the issue of a court order and decision regarding the approval of the respective decision as EEO is a dispute between the same parties, regarding the same subject-matter and on the same basis. Such substantiation should not be regarded as correct. **First**, with such decisions the dispute is not being reviewed by its nature. **Second**, as it has been already stated, a decision on forced enforcement of a judgment of the court of arbitration may not be approved as EEO. Unfortunately, also regional court has not observed the exception defined by Regulation 805/2004, but has specified that the Regulation does not limit the rights of the claimant for a repeated request on the issue of the EEO approval.[83] Thereby regional court not only equalised the EEO to the court order traceable in the national law, but also referred to Article 6 of the Regulation that determines minimum procedural claims for the approval of a judgment as EEO. According to the respective Regulation, a

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[78] European Convention on International Commercial Arbitration. *484 U.N.T.S. 364*, 1961). On 9 July 2012, 31 Member States in accordance with the United Nations Treaty Collection: *http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&lang=en* (accessed 9 July 2012).

[79] 10 February 2009 ECJ judgment in case: C-185/07 *Allianz SpA v. Tanakers Inc*. ECR 2009, p. I-00663.

[80] 13 November 2007 decision of Riga City Vidzeme Suburb Court in case No. 3-10-706/6-2007 [not published]; 17 January 2008 decision of Riga City Central District Court in case No. 3.12-109/6 [not published], 8 September 2010 decision of Riga City Vidzeme Suburb Court in case No. 3-12/3031/12-2008 [not published].

[81] 28 November 2011 decision of Jelgava Court in case No. 3-12/0735 [not published].

[82] 29 January 2009 decision of Riga City Vidzeme Suburb Court in case No. 3-12/031 [not published].

[83] 12 September 2011 decision of Riga Regional Court in case No. 3-12/031 [not published].

court judgment related to the proceedings of the court of arbitration shall not be regarded as a judgment within the meaning of Article 6, because Article 2 (2) includes an exception in respect of courts of arbitration.

27. Requests to approve as EEO a decision to secure a claim before bringing the claim to the court of arbitration have been encountered in the Latvian court practice as well.[84] The court has rejected such a request of the claimant on the basis of Article 3 of Regulation 805/2004, indicating that a decision to secure a claim before bringing the claim to the court cannot be regarded as an "uncontested" claim. In addition it must be noted that approval of such decisions as EEO is not within the scope of the Regulation. The latter may be enforced in accordance with Brussels I Regulation, taking into account the judicature of the CJEU.[85]

28. Therefore once again it must be accented that **Regulation 805/2004 is not applicable in arbitration-related matters.** Willing to acknowledge and enforce a judgment outside Latvia, the interested party must use the mechanism of the New York Convention. However, if the party, similar as in the referred to case, has submitted a request for approval of the judgment of the court of arbitration as EEO, the judge shall take a motivated decision regarding the refusal to issue EEO in accordance with Section 541.[1] , Paragraph six of CPL.

29. The question whether the case is within the material application scope of the Regulation is very crucial; however, as it may be concluded from the practice of Latvian courts, courts in their decisions do not assess this issue in particular.

1.3. Scope of geographical application

30. Regulation 805/2004 is applicable in all EU Member States,[86] **except for Denmark** (see Article 2 (3) of the Regulation, as well as Recital 25 to the Regulation). The latter means that the decision (court settlement or authentic instruments) approved as EEO must be adopted in any of EU Member States (except for Denmark). Accordingly such EEO shall be enforceable only in any of the EU Member States (except for Denmark).

31. In accordance with Recital 24 to Regulation 805/2004, it shall be applicable also in the United Kingdom and Ireland. In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, attached to the Treaty on the European Union and Treaty establishing the European Community, the **United Kingdom** and

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[84] 10 November 2009 decision of Riga City Central District Court in case No. 3012/2278/1, 2009 [not published].

[85] See 17 November 1998 ECJ judgment in the case: C-391/95 *Van Uden Maritime v. Kommanditgesellschaft in Firma Deco-Line and Others* ECR, 1998, p. I-07091.

[86] In Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, the United Kingdom of Great Britain and Northern Ireland.

Ireland have announced their desire to participate in the adoption and application of the respective Regulation.

32. Speaking about the field of geographical application of Regulation 805/2004, separate conditions on the **overseas lands and territories** of Member States (France, Spain, Portugal, Finland, and the United Kingdom) should be taken into account as well. In accordance with Article 355 of the Treaty on the Functioning of the European Union[87] (further — *TFEU*), the Regulation **shall be applicable in the following territories**:

33. Overseas departments of **France** — Guadeloupe, Martinique, Guiana, Réunion, Saint Barthélemy, and Saint Martin;

33.1. The Canary Islands within the composition of **Spain** (in accordance with Article 349 of TFEU);

33.2. The Azores (**Portugal**) and MadEEOa (**Portugal**);

33.3. The Aland Islands (**Finland**), in accordance with Protocol No. 2 in the act on accession conditions of the Republic of Austria, Republic of Finland and Kingdom of Sweden;

33.4. In territories of Europe if any of the Member States is responsible for the external affairs thereof, for instance, in Gibraltar.

34. Meanwhile the Regulation **shall not be applicable** in the following territories (see Article 355 (2) (5) of TFEU):

34.1. French Polynesia, New Caledonia and adjacent territories, Southern and the Antarctic Region territories of France, Wallis and Futuna, Saint Pierre and Miquelon, Mayotte (**France**);

34.2. The Antilles and Aruba (**the Netherlands**);

34.3. The Channel Islands, Anguilla, the Isle of Man, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena Island and adjacent territories, Jersey, the British Antarctic Territory, the British Indian Ocean Territory, the Turks and Caicos Islands, the British Virgin Islands, the Bermud Islands, the United Kingdom Sovereign Base Areas of Akrotiri, and Dhekelia in Cyprus (see Article 355 (2) and Article 355 (5-d) (b) and (c) of TFEU, as well as Appendix II[88]).

1.4. Application on time

1.4.1. *Enactment*

35. Latvian version of Article 33 of Regulation 805/2004 states the following:

[87] Consolidated version of the Treaty on the European Union. L 83, Official Journal of the European Union, 30.03.2010, p. 47.

[88] Annex II to the Treaty on the Functioning of the European Union. L 83, Official Journal of the European Union, 30.03.2010, p. 334.

*This Regulation comes into force on 21 January **2004**. It shall be applied from 21 October 2005, except for Articles 30, 31 and 32 that shall be applicable as of 21 January 2005.*

36. Apparently the text of the Regulation only in English was taken as the basis for the text of the Latvian version. The latter explains the error in the Latvian text of the Regulation in relation to the year of the coming into force of the Regulation (actually the Regulation came into force on 21 January **2005**). It must be admitted that this error has been already corrected in the English text[89]. The official version of the Latvian text should be corrected accordingly as well.

37. Irrespective of the coming into force of the Regulation on 21 January 2005, the EU legislature has postponed the application thereof, differentiating it according to the respective articles of the Regulation: 1) Norms of the Regulation (except for Articles 30, 31 and 32) shall be applicable from 21 October 2005. 2) Articles 30, 31 and 32 of the Regulation shall be applicable earlier — from 21 January 2005.

38. Legal norms (Articles 30-32) applicable starting from 21 January 2005. Article 30 of the Regulation defines the obligation of Member States to submit to the European Commission information on the procedures for rectification and withdrawal referred to in Article 10 (2) and for review referred to in Article 19 (1); the languages accepted pursuant to Article 20 (2) (c); the lists of the authorities referred to in Article 25. Thus, such legal norm has been addressed in particular to the **Member States**.

39. Article 31 of the Regulation defines the obligation of the European Commission to make amendments to the standard forms in the Appendixes of the Regulation. Thus, such legal norm has been addressed in particular to the **European Commission**.

40. Finally, **Article 32** of the Regulation defines the Committee that shall assist the European Commission.

41. Consequently one may conclude that the referred to legal norms are applicable earlier than the others with the purpose of preparing the Regulation for its practical application in Member States. Similar arguments have been expressed also by the CHEU in its judgment of 17 November 2011 in the case *Homawoo vs. GMF Assurances:*

> *[..] it is open to the legislature to separate the date for the entry into force from that of the application of the act that it adopts, by delaying the second in relation to the first. Such a procedure may in particular, once the act has entered into force and is therefore part of the legal order of the European Union, enable the Member States or European Union institutions to perform, on the basis of that act, the prior obligations which are necessary for its subsequent full application to all persons concerned.*[90]

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[89] See Corrigendum to Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested Claims (OJ L 143, 30.04.2004.). *Official Journal* L 97, 15.04.2005. p. 64.

[90] See 17 November 2011 ECJ judgment in the case: C-412/10 *Homawoo vs. GMF Assurances SA*, ECR [2011], p. 00000, para. 24.

42. **Legal norms applicable starting from 21 October 2005.** All the other legal norms are applicable starting from 21 October 2005. The latter means that creditors may start **submitting** to the courts of Member States **applications** for the approval of judgments, court settlements and authentic instruments as EEO starting from 21 October 2005.

1.4.2. Transitional provisions

43. In accordance with **Article 26** of the Regulation

> *This Regulation shall apply only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the entry into force of this Regulation.*

44. It is not fully clear from the referred to legal norm how it should be interpreted together with Article 33 of the Regulation. In other words, the Regulation came into force on 21 January 2005, but from the respective date, as it was clarified before, only Articles 30, 31 and 32 of the Regulation are applicable.

45. As a result of systematic interpretation of Articles 26 and 33 one must conclude that the Regulation shall be applicable to such judgments, court settlements and authentic instruments that are related to or have been registered as authentic instruments **after 21 January 2005** (the day of the coming into force).[91] For instance, if the judgment at a Latvian court has been delivered after 21 January 2005 (the day of the coming into force), but before 21 October 2005 (application day), the Regulation shall be applicable for such judgment and it will be possible to approve it as EEO.

[91] See Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010, Art. 26 EG-VollstrTitelVO (Pabst S.), S. 196, 197.

1.5. Documents to be approved as the European Enforcement Order (EEO)

1.5.1. Notion of an executive document to be approved as EEO

46. In accordance with the first sentence of Article 3 (1) and Article 3 (2) of Regulation 805.2004

> *This Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims. [..] This Regulation shall also apply to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders.*

47. See the notion "uncontested claim" in the second sentence of Article 3 (1) of Regulation 805/2004; notion "claim" — Article 4 (2) of the Regulation. See the analysis of the referred to legal norms in sub-section of the research "Notion of uncontested claim" (81. § and further).

48. Article 4 (1) of Regulation 805/2004 explains the notion "**judgment**" as any decision adopted in a court of a Member State irrespective of the title of the decision. It can be a decree, order, decision or court order, as well as a decision adopted by a court secretary regarding expense or cost determination.

49. According to the referred to legal norms, the following may be approved as EEO:

49.1. court judgments (including decrees, orders, decisions or court orders, as well as decisions adopted by a court secretary regarding expense or cost determination);

49.2. court settlement;

49.3. authentic instruments;

49.4. decisions adopted after contesting of such judgments, court settlements or authentic instruments that have been approved as European Enforcement Orders.

1.5.1.1. Court judgments

50. Notion "court". As it has been stated already before, definition of the notion "court" includes any decision adopted at a court of a Member State irrespective of the title of the decision. It should be noted here that a decision must be adopted in any of the **courts** of the Member State. Regulation 805/2004 does not provide a legal definition of the notion "court", therefore the same interpretation applied in Brussels I Regulation should be used here as well, thus, also in accordance with Article 32 of Brussels I Regulation:

For the purposes of this Regulation, "judgment" means any judgment given by a ***court*** *or tribunal 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.*

51. Several clearer or less clear criteria by which it is possible to determine whether the respective court is a "court" within the meaning of Brussels I Regulation and therefore also within the meaning of Regulation 805/2004 have been elaborated within international civil proceedings. These criteria are as follows:[92]

51.1. The court must be independent from other state institutions and must be a part of the state court system. Also the CJEU has determined in the case *Solokleinmotoren v. Boch* that the decision must be adopted within a court institution of a Member State that has authoritative decision-making rights in disputes between parties.[93]

51.2. Legal proceedings at this court must take place in accordance with the inter partes principle and by observing defence rights of the parties. However, it must be added here that the respective criteria was softened by the CJEU in the case *Maersk Olie*, determining that even if the decision had been adopted during the procedure that is not an inter partes procedure, separate decisions (in the specific case — a court order issued by the Dutch court by which the amount of the sum for the limitation of a vessel owner's liability is determined in interim procedure) may be regarded as "judgments" within the meaning of Brussels I Regulation if they may be subject to debate in accordance with the inter partes principle.[94]

51.3. Special cases may be determined in the respective international or EU legal enactment in which the specific administrative institution within the meaning of these regulatory enactments shall be regarded as "court", Article 4 (7) of Regulation 805/2004 describes the following situation: in Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*), the expression "court" includes the Swedish enforcement service (*kronofogdemyndighet*).[95] According to authors, the understanding of the expression "court" defined in

[92] Gaudemet-Tallon, H.. Compétence et exécution des jugements en Europe. 4e édition. Paris: L.G.D.J., 2010, p. 375-377; Gothot, P., Holleaux, D. La Convention de Bruxelles du 27 Septembre 1968. Paris: Jupiter, 1985, p. 131.

[93] The judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case of 2 June 1994: C-414/92 *Solokleinmotoren v. Boch*, ECR [1994], p. I-02237, para. 17.

[94] The judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case of 14 October 2004: *Maersk Olie*, ECR [2004], p. I-09657, para. 50.

[95] A similar situation may be observed also in Article 62 of Brussels I Regulation according to which "in Sweden, in summary proceedings concerning orders to pay (*betalningsföreläggande*) and assistance (*handräckning*), the expression "court" includes the "Swedish enforcement service" (*kronofogdemyndighet*)."

Article 4 (7) cannot be broadened. The latter also arises from the opinion of CJEU Advocate General *E. Sharpstone* of 13 September 2012 on the case *Radziejewski*, specifying that Brussles I Regulation [and therefore also Regulation 805/2004 — author's note] must not be applied on decision regarding debt deletion issued by the Swedish enforcement service (*kronofogdemyndighet*) in accordance with the Swedish law "On Deletion of Debts".[96] Furthermore, the Swedish enforcement service (*kronofogdemyndighet*) is an administrative institution, which, except for the cases included in Article 62 of Brussels I Regulation [and therefore also in Article 4 (7) of Regulation 805/2004 — author's note], is not a "court" neither within the meaning of Brussels I Regulation, nor Regulation 805/2004.[97]

52. **Notion "judgment".** After it is clarified that the decision has been adopted at a "court" within the meaning of Regulation 805/2004, one must still make sure that it is a "judgment" within the meaning of Article 4 (1) of Regulation 805/2004.

53. The title of "judgment" has no importance; it may be referred to as a "decree", "decision, "order", "writ of execution", etc. This is due to the fact that a "judgment" of one and the same content may be referred to differently in various EU Member States. It is important to note that the notion "judgment" shall be interpreted **autonomously**, not in accordance with national legal enactments of the Member States. [98] Due to the reason that Article 4 (1) of Regulation 805/2004 is identical with Article 32 of Brussels I Regulation, the same interpretation shall be applied to the first one as for the second one.

54. Unfortunately, **imprecise legal terminology** is used in the Latvian version of Regulation 805/2004 that in separate cases may lead to wrong interpretation and application of Article 4 (1) of the Regulation. For comparison, German and French versions speak about a "judgment", not "decree" [99] (German — *Entscheidung*; French — – *décision*). Accordingly the listing of the other documents in the Latvian version should be as follows: "[..] including a *decree, order, decision* or *writ of execution*, as well as the *determination of costs or expenses* by an officer of the court."[100]

55. The notion "decree" also includes separate types of enforcement orders. Taking into account the CJEU judicature (see case *Klomps v. Michel*, 166/80), **decisions** by the judges of the Land Register departments of the Latvian regional (city) courts **regarding**

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[96] The opinion of CJEU Advocate General *E. Sharpstone* of 13 September 2012 on the case: C-461/11 *Radziejewski*, para. 40. Available at: eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CC0461:LV:HTML.

[97] Ibid, para. 41.

[98] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg : Sellier, 2004, S. 22; Bittmann, D.-C. Das Gemeinschaftsgeschmacksmuster im Europäischen Zivilprozessrecht. *Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)*, Heft 5 (September/Oktober), 2012, S. 415.

[99] Apparently the Latvian version of Regulation 805/2004 was based only on the text in English.

[100] For comparison see: German: "[..] wie Urteil, Beschluss, Zahlungsbefehl oder Vollstreckungsbescheid, einschlieβlich des Kostenfestsetzungsbeschlusses eines Gerichtsbediensteten"; French: "[..] telle qu'arrêt, jugement, ordonnance ou mandat d'exécution, ainsi que la fixation par le greffier du montant des frais du procès."

compulsory execution of obligations (Section 406.[9] of CPL) within the meaning of Regulation 805/2004 shall be regarded as a "judgment" and may be approved as EEO if the minimum procedural standards have been observed. Section 406.[6], Paragraph one of CPL observes the respective minimum procedural standards (it complies with minimum procedural standards included in Article 13 (1) (a) and (c) of Regulation 805/2004). In addition it must be noted that the process for the execution of obligations provided for in Chapter 50.[1] of CPL ("Compulsory Execution of Obligations in Accordance with Warning Procedures") may be applied only if the place of residence or location of the debtor is situated in Latvia (See Section 406.[1], Paragraph two, Clause 3 and Section 406.[2], Paragraph two of CPL). Therefore a necessity to approve a decision regarding compulsory execution of obligations as EEO will occur only if the property of such debtor (who is residing or is located in Latvia) subject to recovery is situated in any other EU Member State (except for Denmark) or already after the adoption of the court decision the person has departed for any of EU Member States (except for Denmark).

56. A "judgment" must not obligatory be in force; enforceability thereof is most important. More detailed information is available in sub-section "Judgment enforceability" (see 116. § and further).

57. Also **default judgments** are part of the notion "judgment",[101] if only the minimum procedural standards have been observed in the adoption thereof. According to Article 3 (1) (b) of the Regulation, the Regulation shall be applicable also in respect of default judgments existing within the system of the Common Law. This type of default judgments is peculiar due to the fact that it is substantiated with the absence of the debtor and it does not include any additional explanations regarding the validity of the claim.[102] So far in jurisprudence it was specified that such default judgments could not be part of the scope of Article 32 of Brussels I Regulation, because if the debtor does not show up, arguments of the filer are accepted at the court automatically[103] without court reviewing them as to the substance of the matter. However, the CJEU in its 6 September 2012 judgment in case *Trade Agency* basically allowed the application of the mechanism of Brussels I Regulation for such default judgments, establishing that Article 34 (1) of Brussels I Regulation in the country of enforcement may not bee applied so that, based on the violation of *ordre public*, the enforcement of such default judgment by which the case has been reviewed as to the substance of the matter and that does not include neither the claim subject, nor substantiation evaluation and does not include any judgment

[101] Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 192, 193; D'Avout, L. La circulation automatique des titres exécutoires imposée par le règlement 805/2004 du 21 avril 2004. Revue critique du droit international privé. 2006, n° 1 (janvier-mars), p. 22; Stein, A. Der Europäische Vollstreckungstitel für unbestrittene Forderungen tritt in Kraft – Aufruf zu einer nüchternen Betrachtung. *IPRax*, 2004, Heft 3, S. 187.

[102] Opinion of Advocate General Advocate *J. Kokott* on 26 April 2012 case: C- 619/10 *Trade Agency v. Seramico Investments*, paragraph 63. Available at: www.europa.eu.

[103] Gaudemet-Tallon H., Compétence et exécution des jugements en Europe. 4e édition. Paris: L.G.D.J., 2010, p. 376.

motivation would be refused. The only exception is permissible only if upon the evaluation of the proceedings in general and taking into account the respective circumstances, the court of the enforcing state believes that such default judgment apparently and exceedingly violates the rights of the defendant to fair review of the matter.[104]

58. The default judgment of Latvian courts provided for in Chapter 22.[1] of CPL [105] is also within the scope of Article 4 (1) of Regulation 805/2004 under the condition that it conforms with the criteria set forth in Article 6 of the Regulation. Here it should be taken into account that the Latvian court cannot deliver a default judgment in cases in which the place of residence or location of the defendant is not in the Republic of Latvia. However, if the place of residence or location of the defendant (whose moveable property is located in another EU Member State) is in Latvia, the court may deliver such judgment and later on approve it as EEO. It must be noted that the notion "default judgment" existent in the Regulation is broader than Chapter 22.[1]of CPL, and it includes also such judgments that are delivered in cases that have not been attended by the defendant after repeated postponement of the court sittings (see Section 210 of CPL).

1.5.1.2. Orders on costs related to court proceedings

59. Orders incorporated within judgment. In accordance with Article 7 of Regulation 805/2004:

> *Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard to the costs unless the debtor has 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.*

60. The latter deals with such cases in which the issue on the recovery of costs related to court proceedings has been decided within the judgment itself. Section 193, Paragraph six of CPL establishes that a judge shall indicate in the operative part of the judgment also by whom, and to what extent, court costs shall be paid. Thus, judgments on uncontested pecuniary claims may be approved as EEO also in relation to the recovery of costs related to court proceedings. It should be taken into account that the main proceedings (regarding what a judgment has been delivered, including costs related to

[104] 6 September 2012 ECJ judgment in the case: C-619/10 *Trade Agency v. Seramico Investments*, ECR [2012], p. 00000, para. 62.

[105] In accordance with Section 208.[1]of CPL, a **default judgment** is a judgment, which is rendered, upon the request of the plaintiff, by first instance court in a matter where the defendant has failed to provide explanations regarding the claim and has failed to attend pursuant to the court summons without notifying the reason for the failure to attend.

court proceedings) must be within the material scope of Regulation 805/2004 (see Article 2 of the Regulation).[106]

61. According to Article 7 of Regulation 805/2004, the main action (which is within the material scope of the Regulation) may be also contested or may be outside the scope of a pecuniary claim; however, if the debtor has not contested it in particular in the part of costs related to court proceedings, the judgment in part regarding costs related to court proceedings may be approved as EEO.[107] The latter also arises further on from Article 8 of Regulation 805/2004 according to what "If only parts of the judgment meet the requirements of this Regulation, a partial European Enforcement Order certificate shall be issued for those parts". As a matter of fact the judge, who takes a decision regarding the issue of EEO, must consider the following (must examine separately the fact of appeal of main action and costs related to court proceedings):

61.1. whether the main action regarding the recovery of monetary means has been contested or not;

61.2. whether costs related to court proceedings in particular have been contested or not; or

61.3. whether both elements have been contested.

62. Based on the results of the examination, further action of the judge shall be as follows:

No.	Main action within judgment regarding a sum of money	Issue regarding costs related to court proceedings incorporated within the judgment	Result
1.	Contested	Contested	EEO may not be issued (Article 3 (1), Article 6 and Article 7 of the Regulation).
2.	Contested	Uncontested	EEO regarding the judgment may be issued only in the part regarding costs related to court proceedings (Article 7 and Article 8 of the Regulation).
3.	Uncontested	Contested	EEO regarding the judgment may be issued only in the part regarding the main action, not costs related to court proceedings (Article 7 and Article 8 of the Regulation).
4.	Uncontested	Uncontested	EEO regarding the entire judgment may be issued (thus, both in the part regarding the main action and the part regarding costs related to court proceedings). (Article 7 of the Regulation).

[106] Rauscher T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht Kommentar. München: Sellier, 2010, S. 94 (Art. 7 EG-VollstrTitel, Pabst S.).

[107] *Ibid.*, (Art. 7 EG-VollstrTitel, Pabst S.), S. 94, 95.

63. Form of contesting costs related to court proceedings. The debtor must specifically contest the issue regarding costs related to court proceedings. The term and procedural form of such appeal is determined by the legal enactments of the State of origin of the judgment (see Article 7 of Regulation 805/2004). If this form or terms are not observed, the issue regarding costs related to court proceedings shall be regarded as uncontested within the meaning of Article 3 and Article 7 of Regulation 805/2004.[108] The notion "contest specifically" means that the debtor in its written explanations or during a court sitting must specifically indicate that he contests the obligation to cover costs related to court proceedings (even if the main action is entirely or partly acknowledged by him). If the debtor in his explanations has contested the entire claim (thus, entire non-recognition of the claim of the creditor), without separately referring to costs related to court proceedings, the respective appeal shall apply also to the issue regarding costs related to court proceedings. And vice versa, if the debtor has not contested the main action, the issue on costs related to court proceedings must be regarded as uncontested. According to authors, the phrase "objection to his obligation to bear such costs" used in Article 7 of Regulation 805/2004 should be applied not only to the obligation to settle or not to settle costs related to court proceedings, but also in relation to the amount of these costs (calculation). Such conclusion arises from autonomic explanation of the types of "uncontested claims" provided in Article 3 (1) and Article 4 (2) of the Regulation in relation to the payment of a definite sum of money; however, according to analogy it should be applicable also in relation to issues regarding costs related to court proceedings and the amount of the sum thereof. Section 148, Paragraph two of the Latvian CPL, however, does not directly envisage the necessity for a defendant to *obligatory* indicate in his explanations whether he agrees or not with the amount of cots related to court proceedings specified in the claim application. However, the latter does not prohibit him from drawing the attention of the court towards that in his explanations provided in written form. The same applies to the phase of the adjudication of a civil case in which the defendant has a possibility to provide his explanations during a court sitting. As a result the court, upon the delivery of a judgment, follows the proof examined during the court sitting (also in relation to costs related to court proceedings), as well as Section 193, Paragraph six of CPL (which establishes that the court shall also set out by whom, and to what extent, court costs shall be paid in the operative part of the judgment) and Section 41 and/or Section 44 of CPL.

64. A partial EEO approval is possible in several situations:[109]

64.1. if not all claims resolved in the judgment are pecuniary claims;

64.2. if not all claims resolved in the judgment are uncontested;

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[108] *Ibid.*, (Art. 7 EG-VollstrTitel, Pabst S.), S. 95; Riedel, E. Europäischer Vollstreckungstitel für unbestrittene Forderungen. Köln: Deubner Verlag, 2005, S. 6.

[109] *Ibid.*, (Art. 8 EG-VollstrTitel, Pabst S.), S. 99.

64.3. if not all claims resolved in the judgment are within the material scope of *ratione materiae* of Regulation 805/2004; or

64.4. if not all claims resolved in the judgment conform to the other claims set forth in Regulation 805/2004.

65. If only a partial EEO approval may be issued for the judgment, the collector, who requests the issue of EEO, should specify in its request (Section 541.[1], Paragraph one of CPL) regarding what parts of the judgment issue of EEO is requested.[110] Section 541.[1], Paragraph one of CPL, however, does not clearly specify that the collector may submit a request to the court regarding partial issue of EEO; nevertheless, the latter arises from systematic interpretation of Article 8 of the Regulation and the referred to CPL norm.

66. **Separate decisions.** Additional judgments regarding recognition of costs related to court proceedings may be approved as EEO if all the other preconditions set forth in Regulation 805/2004 (for instance, a debtor has not contested the amount of costs, minimum procedural standards have been observed, etc.) have been observed. Legal proceedings during which such an additional judgment regarding costs related to court proceedings has been adopted must be independent, thus, separate from the process of the main proceedings review (see Section 201, Paragraph three of CPL).[111] Thus, there are two basic regulations: **first**, a separate process during which the issue on costs related to court proceedings is being reviewed, and **second**, a separate decision during which the issue on costs related to court proceedings is decided. Such decision (additional judgment) must be also within the material scope of Regulation 805/2004 (see Article 2 of the Regulation).[112] Therefore also objections of the debtor in the process regarding additional judgment must apply only to costs related to court proceedings (not the main proceedings). If the debtor has not submitted such objections specifically about costs related to court proceedings in accordance with CPL, an additional judgment regarding the recovery of costs related to court proceedings shall be regarded as uncontested within the meaning of Article 3 (1) of Regulation 805/2004 and shall be approved as EEO (if minimum procedural standards have been observed when the debtor has not participated in the process of the review of the issue of additional judgment).[113]

1.5.1.3. Court settlements

67. In accordance with Article 24 of Regulation 805/2004:

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[110] *Ibid*., (Art. 8 EG-VollstrTitel, Pabst S.), S. 100.

[111] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010, Art. 7 EG-VollstrTitel (Pabst S.), S. 97.

[112] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg: Sellier, 2004, S. 22.

[113] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (Juillet-Août-Septembre), p. 646.

A settlement concerning a claim within the meaning of Article 4 (2) which has been approved by a court or concluded before a court in the course of proceedings and is enforceable in the Member State in which it was approved or concluded shall, upon application to the court that approved it or before which it was concluded, be certified as a European Enforcement Order using the standard form in Appendix II.

68. In accordance with the referred to legal norm, as well as Article 3 (1) of the Regulation, not only judgments, but also court settlements may be approved as The notion of court settlement has not been defined autonomously in Regulation 805/2004 therefore the same apprehension as applied for settlements in Article 58 of Brussels I Regulation should be applicable for autonomous interpretation thereof.[114] The present judicature of the CJEU regarding interpretation of Article 58 of Brussels I Regulation should be taken into account in this case. In case *Solo Kleinmotoren* the CJEU established that the most characteristic features of a court settlement are as follows: **first**, in the case of a settlement the court does not administer justice, thus, it does not settle the dispute among parties as to the substance if the matter. **Second**, a settlement has the nature of an agreement, because the content thereof depends on the will of the parties.[115]

69. In order to approve a court settlement as EEO in accordance with Article 24 of Regulation 805/2004, it must comply with the following criteria:

69.1. it must be approved at a court or concluded at a court in the process of proceedings;

69.2. it must apply to a claim within the meaning of Article 4 (2) of the Regulation, thus, it 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 court settlement;[116]

69.3. the claim to which the court settlement applies to must be uncontested within the meaning of Article 3 (1) (a) of the Regulation, thus, the debtor must have expressly agreed to the claim;

69.4. the claim must be within the material scope of Regulation 805/2004 (see Article 2 of the Regulation);

69.5. the claim must be enforceable.

70. The following is not necessary for the approval of a court settlement as EEO:

70.1. observance of minimum procedural standards (the latter arises from Article 12 (1) of the Regulation);

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[114] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg: Sellier, 2004, S. 22; Wagner R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel.. *IPRax*, 2005, Heft 3, S. 192.

[115] 2 June 1994 ECJ judgment in the case: C-414/92 *Solo Kleinmotoren*, ECR [1994], p. I-02237, paras. 17, 18.

[116] Riedel, E. Europäischer Vollstreckungstitel für unbestrittene Forderungen. Köln: Deubner Verlag, 2005, S. 5.

70.2. observance of the requirements defined in Article 6 (1) of the Regulation (agreements concluded with customers among them); see Article 24 (3) of the Regulation;

70.3. The procedures for the approval of a court settlement defined in Chapter 27 of the Latvian CPL conforms to the requirements of Regulation 805/2004, thus, the court adopts a decision by which it approves the court settlement and terminated legal proceedings in the case (Section 228, Paragraph two of CPL), and such court settlement approved by a court decision shall be enforceable by observing the enforcement conditions of court judgments (Section 228, Paragraph three of CPL), thus, by issuing a writ of execution (Section 540, Paragraph one of CPL) or by approving such decision immediately as EEO (Section 541.[1], Paragraph one of CPL) by writing out the form appended in Appendix II of Regulation 805/2004.

1.5.1.4. *Authentic instruments*

71. In accordance with Article 25 of Regulation 805/2004, authentic instruments may be approved as EEO:

> *An authentic instrument concerning a claim within the meaning of Article 4 (2) which is enforceable in one Member State shall, upon application to the authority designated by the Member State of origin, be certified as a European Enforcement Order, using the standard form in Appendix III.*

72. An autonomous explanation for the notion "authentic instrument" has been provided in Article 4 (3) of the Regulation (as well as Article 25 (1)): **"Authentic instrument" is:**

72.1. a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which

72.1.1. relates to the signature and the content of the instrument; and

72.1.2. has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;

or

72.2. an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them."

72.3. is enforceable in the Member State of origin (see Article 25 (1) of Regulation).

73. This autonomous definition is based on the present judicature of the CJEU regarding the explanation of Article 57 of Brussels I Regulation, thus, judgment in the

case *Unibank*[117].[118] Three cumulative criteria were defined by the CJEU in the referred to case:

73.1. a public authority has determined the authenticity of the document (instrument);

73.2. authenticity of the document (instrument) applies not only in the signature, but also on the content of the document; and

73.3. the document (instrument) must be enforceable in the State of origin thereof.[119]

74. There are institutions in Latvia that are entitled to issue authentic instruments within the meaning of Article 4 (3) of the Regulation (for instance, sworn notaries, Orphan's Court, consults of Latvia abroad); however, these authentic instruments lack enforceability (see Article 25 (1) of the Regulation). The latter means that the court judgment may be enforced in general or handed over for compulsory execution. Enforceability is a component of the obligation of a court judgment adopted by a public authority institution that is manifested in the ability to address compulsory execution institutions to achieve compulsory execution of specific adjustments included in the court judgment.[120] Neither a notarial deed,[121] nor documents certified by Orphan's Courts,[122] nor also the notarial deeds drawn up by the consuls of Latvia[123] may be immediately submitted for compulsory execution in Latvia. Therefore **they do not possess enforceability**. For instance, notarial deeds may be executed by initiating the process of undisputed compulsory execution of obligations provided for in Chapter 50 of CPL (see Section 400, Paragraph one of the Latvian CPL) or compulsory execution of obligations in accordance with warning procedures regulated by Section CPL 50.[1] of CPL (see Section 406.[1], Paragraph one of the Latvian CPL).[124] However, in such cases enforceability will be in cases mentioned for decisions of Latvian courts (see Section 540, Paragraph four of CPL).

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[117] 17 June 1999 ECJ judgment in the case: C-260/97 *Unibank v. Flemming G. Christensen*, ECR [1999], p. I-03715, paras. 15, 17, 18.

[118] Callé, P. L'acte authentique établi à l'étranger: Validité et exécution en France. *Revue critique de droit international privé*. 2005, n° 94 (3) (juillet-septembre), p. 398.

[119] 17 June 1999 ECJ judgment in the case: C-260/97 *Unibank v. Flemming G. Christensen*, ECR [1999], p. I-03715, paras. 15, 17, 18.

[120] Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris: L.G.D.J., 2005, p. 142, 143. See the following source regarding the enforceability notion in Latvian: Rudevska, B. Ko iesākt ar Anglijas tiesas izdotu aktīvu iesaldēšanas rīkojumu. Jurista Vārds No. 42, 2011. 18. oktobris, 10.-11. lpp.

[121] Notariate Law: Law of the Republic of Latvia, Latvian Herald, No. 48, 09.07.1993 (see Division D: Sections 82-107) .

[122] Law On Gardianship Councils: Law of the Republic of Latvia, Latvian Herald, No. 107, 07.07.2006 (see Section 61).

[123] Consular Rules: Law of the Republic of Latvia, Latvian Herald, No. 72, 18.06.1994 (see Section 14).

[124] The latter has been specified also here: Damane, L. Notarial deed as a security of property and non-property rights. Promotion Thesis. Riga: University of Latvia, 2011. p. 115-116. Available at: https://luis.lanet.lv/pls/pub/luj.fprnt?l=1&fn=F-2050448075/LindaDamane2012.pdf

75. In accordance with Article 30 (1) (c) of Regulation 805/2004, Member States had to notify the European Commission regarding the lists of the authorities referred to in Article 25. It must be noted that in accordance with a statement issued by Latvia, so far such institutions that would be entitled to issue authentic instruments in accordance with Article 25 of Regulation 805/2004 have not been set up in Latvia.[125]

76. However, a draft law "Amendments to the Notariate Law", which is planned to be supplemented with a new Division D[1] "Notarial Deeds with Power of Authentic Instruments" is being reviewed at the second reading the *Saeima* during the elaboration of the present Research.[126] Division 107.[3] will be included in the referred to chapter and it would read as follows:

> *At the request of any interested party in relation to notarial deeds specified in Section 107.[1] of the present law,[127] a sworn notary shall issue a certificate referred to in Article 57 (4) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (further — Regulation 44/2001) (Appendix VI to Regulation 44/2001). At the request of a creditor, a sworn notary shall write out a European Enforcement Order in relation to notarial deeds specified in Section 107.[1] of the present law in accordance with Section 25 (1) and (3) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (further — Regulation 805/2004) (Appendix II to Regulation 805/2004). The standard form referred to in Article 6 (2) of Regulation 805/2004 (Appendix IV of Regulation 805/2004) and the standard form referred to in Article 6 (3) of Regulation 805/2004 (Appendix V to Regulation 805/2004) shall be written out by a sworn notary at the request of any interested person. A sworn notary, who has drawn up notarial deeds referred to in Section 107.[1] of the present law, at the request of any*

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[125] The statement of Latvia is available at:ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm

[126] Draft law "Amendments to the Notariate Law". Draft law for the second reading No. 332/p. 11. Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/37D16519E5357087C2257A52003235AE?OpenDocument.

[127] The following has been specified as notarial deeds in Section 107.[1] of the draft law "Amendments to the Notariate Law":

> *Cash loan agreements drawn up in the form of a notarial deed, the execution of which does not depend upon the occurrence of previously provable conditions, shall be executed according to the court judgment enforcement order specified in the Civil Procedure Law. Upon drawing up notarial deeds referred to in Paragraph one of the present Section, a sworn notary in addition to the actions specified in Section 87.[1] of the present law also explains to the participants of the notarial deed that in case of non-execution such notarial deeds have the power of an execution document, makes a corresponding entry in the notarial deed and includes a note in the title of the deed that such notarial deed is being executed according to the court judgment enforcement order specified in the Civil Procedure Law. The amount, per cent and contract fine of the liability, if such has been applied, enforcement term and order of the liability and the fact that both parties realise that the notarial deed has the power of an execution document in case of non-execution are specified in the notarial deed. In such notarial deeds contract fine is specified in per cent and it cannot exceed the lawful per cent volume referred to in Section 1765, Paragraph one of the Civil Law.*

interested party may correct errors within the European Enforcement Order or recall the European Enforcement Order on the bases of Article 10 of Regulation 805/2004. The standard form referred to in Article 10 (3) of Regulation 805/2004 (Appendix VI to Regulation 805/2004) shall be used upon the issue of the request regarding the correction or recalling of the European Enforcement Order.

77. The Abstract of the referred to draft law specifies:

allocation of power to an execution document for separate notarial deeds may be substantiated also with the fact that such order exists in other countries. For instance, according to Council Regulation (EC) No 44/2001of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (further — Regulation 44/2001), enforceable notarial deeds exist in European Union Member States (see Article 57 of Regulation 44/2001). Furthermore, according to Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (further — Regulation 805/2004), enforceable notarial deeds exist in the European Union. Prescribing mandatory norms, Regulation 805/2004 provides for a free circulation of specific type judgments, court settlements and notarial deeds in all European Union Member States, refusing from the necessity to initiate intermediate court proceedings of the judgment, court settlement or notarial deed in the enforcement Member State that is related to the recognition or announcement of enforceability if such separate type notarial deeds drawn up in Latvia that have been granted the power of an execution document in Latvia conform to the requirements of Regulation 805/2004 and the understanding of the respective Regulation on uncontested claims, it will be easier to achieve the enforceability of such notarial deeds in another European Union Member State. The draft law envisages that in relation to such notarial deeds at the request of the creditor, a sworn notary writes out the European Enforcement Order (Appendix III to Regulation 805/2004). Such European Enforcement Order does not require intermediate court proceedings that would be manifested as recognition or announcement of enforceability to reach the enforcement of such European Enforcement Order in another European Union Member State, which is not the Member State having issued the European Enforcement Order. The European Enforcement Order at once may be submitted to competent enforcement institutions of other European Union Member States (similar as sworn court bailiffs in Latvia) to reach enforcement in this state. However, Regulation 805/2004 is related to specific guarantees to the person against whom the enforcement has been directed, therefore the draft law establishes that the standard form referred to in Article 6 (2) of Regulation 805/2004 (Appendix IV to Regulation 805/2004) and Article 6 (3) of Regulation 805/2004 (Appendix V to Regulation 805/2004) is written out by a sworn notary at the request of the interested person. Issuance of the standard form referred to in Article 6 (2) of Regulation 805/2004 is related to the fact that the notarial deed regarding what the European Enforcement Order has been issued most no longer be executed, because enforcement in the State of origin of such notarial deed has been suspended or is limited. Issuance of the standard form referred to in Article 6 (3) of Regulation 805/2004 is related to the fact that the notarial deed that was

approved as the European Enforcement Order has been contested in the state it was issued. In the case of Latvia, the term "appeal" of Regulation 805/2004 in respect of notarial deeds should be understood as "counterfeit claim". Furthermore, there may be errors in the European Enforcement Order, therefore the draft law establishes that a sworn notary, who has drawn up notarial deeds regarding what the European Enforcement Order has been issued, at the request of the interested party may correct the errors in the European Enforcement Order or recall the European Enforcement Order on the basis of Article 10 of Regulation 805/2004. Upon the submission of the request on the correction or recalling of the European Enforcement Order, the standard form referred to in Article 10 (3) of Regulation 805/2004 (Appendix VI to Regulation 805/2004) shall be used. Regulation 805/2004 also provides for minimum standards for review in exceptional cases (Article 19 of Regulation 805/2004), but due to the reason that the review of judgments provided for in Regulation 805/2004 is related to the fact that the defendant was not informed about legal proceedings or could not defend himself, or also to contest the judgment, such minimum standards for review according to analogy shall be applicable to notarial deeds, because notarial deeds are drawn up in the presence of parties.[128]

78. Thus, none of the court institutions or persons pertaining to the court system **in Latvia** for the time being — at the moment of the submission of the Research — cannot write out the standard form provided in Appendix III referred to in Section 25 of the Regulation. Regardless of the fact that there have been cases in the Latvian court practice when the court of the first instance has approved invoices written out by Latvian lawyers as EEO.[129] In both cases the issue has been reviewed by one and the same court, as well as one and the same judge; furthermore, the law office is also one and the same. Both of these EEO were intended for delivery to Germany for enforcement. Riga City Vidzeme Suburb Court substantiated its decision with the following arguments:

78.1. a lawyer's invoice is an execution document in accordance with Section 539, Paragraph two, Clause 3 and Section 540, Paragraph six of CPL, and is enforceable according to the court judgment enforcement order. In accordance with the definitions of Regulation 805/2004, the latter may be regarded as an authentic document that is enforceable in the State of origin, observing the procedures defined for the enforcement of judgments;

78.2. a lawyer's invoice was sent to the debtor to Germany, observing the minimum procedural standards defined in Article 14 of the Regulation.

[128] See the Abstract of the draft law "Amendments to the Notariate Law". Draft law for the second reading No. 332/p. 11. Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/37D16519E5357087C2257A52003235AE?OpenDocument.

[129] 5 February 2010 decision of Riga City Vidzeme District Court in civil case No. C30385610 [not published]; 31 August 2010 decision of Riga City Vidzeme District Court in civil case No. C30589310[not published].

79. As one may see, the arguments on which both court decisions are based on do not conform to the requirements of Regulation 805/2004, because even though the invoice written out by the sworn lawyer is a document subject to enforceability it does not posses the other characteristics of an authentic instrument (see Article 4 (3) of the Regulation). Furthermore, Latvia in its statement to the European Commission announced that such institutions that would have the right to issue authentic instruments in accordance with Article 25 of Regulation 805/2004 have not been established in Latvia. Thus, the court did not have the right to approve the invoice written out by the lawyer as EEO. What regards minimum procedural standards, in the case of authentic instruments (similar as in the case of court settlements) norms on minimum procedural standards are not applicable (see Article 25 (3) of Regulation 805/2004, which does not include a reference to the application of Chapter III of the Regulation, and Article 12 (1) of Regulation 805/2004). At the same time the court has not verified whether the written out invoice is within the material scope of the Regulation, thus, whether it has been written out for services in the categories of civil matters referred to in Article 2 of Regulation 805/2004. However, the latter would not have a decisive impact in the case of a lack of the definition of the authentic instrument.

80. For comparison: A notary is entitled to approve authentic instruments as EEO in **Lithuania**, whereas in **Estonia** — Tallinn City Court (*Tallinna Linnakohus*).[130] Information regarding all EU Member States and procedures existing therein in respect of authentic instruments is available at the European Judicial Atlas in Civil Matters: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_lv.htm#rc_eeo_communications4.

1.5.2. Notion of an uncontested claim

81. Recital 5 of the preamble to Regulation 805/2004 states that the concept of "uncontested claims" should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument. One should observe that the term "uncontested claim" must be interpreted autonomously from the national law.

82. Article 4 (2) of the Regulation defines "**claim**"; (English — *claim*; German — *Forderung*; French — *créance*), a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument. The claim includes information about the parties, substantiation of the claim and sum. The claim must be expressed in cash in euro or in the currency of any of the Member States, and both the basic debt and interest may be included therein. The

[130] Statements of Lithuania and Estonia are available at the European Judicial Atlas in Civil Matters: www.ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm.

payment term must have set in or it may be clearly defined in the future. The date must be respectively indicated in row 5.1.2 of Appendix I.

83. The notion "**uncontested**" claim is the basis of the philosophy of this Regulation and it should be interpreted autonomously. In order to determine whether the claim is uncontested, it is important to find out the attitude of the defendant (activity or passiveness) and his actions in respect of the debt. Article 3 (1) of the Regulation enables to find it out in detail.

84. Article 3 (1) of the Regulation provides for cases in **debtor's activity** situations:

84.1. **a)** the sub-clause specifies that the claim will be regarded as uncontested if the debtor has clearly admitted it or has agreed to it and the respective agreement has been secured at a court or by a settlement reached as a result of legal proceedings. For instance, in accordance with Section 148, Paragraph two, Clause 1 of CPL, in the explanation in written form the defendant shall state whether he or she admits the claim fully or in a part thereof. As long as the review of the case as to the substance of the matter has not been finished, it is possible to acknowledge the claim (See Section 164, Paragraph seven of CPL).

84.2. Meanwhile sub-clause **d)** of the referred to clause specifies that an uncontested claim will be also in the case of the debtor has expressly agreed to it in an authentic instrument.

85. In the referred to cases, in which the debtor has been actively participating in the proceedings and has acknowledged his debt, it is quite easy to encounter the existence of an uncontested claim, because it has been included in the document certified either by a court or, for instance, a notary.

86. The case becomes more complicated if **the debtor has been passive**, as it is provided for in sub-clauses b) and c) of the referred to article. Furthermore, applying these sub-clauses, it should be assessed in accordance with Article 12 of the Regulation whether the minimum procedural standards have been observed.

86.1. Thus, in accordance with sub-clause **b)**, a claim shall be regarded uncontested if the debtor has never debtor has never objected to it in the course of the court proceedings.

86.2. Meanwhile sub-clause **c)** determines that a claim shall be regarded as uncontested if 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.

87. Thus, within the understanding of sub-clause **b)**, such claim shall be regarded as uncontested during the review of which the debtor has not used its right to defend himself, thus, has not participated in the review of the matter, even though has received a

notice; has not provided his objections or explanations regarding the claim[131] as a result of what the claim was reviewed without the presence of the defendant or a default judgment has been delivered. The form in which the claim must be executed is determined by national law (*lex fori*).[132] For instance, according to Section 148, Paragraph two of CPL, the defendant must specify in the explanation whether he acknowledges the claim or not. In case the claim is not acknowledged, the defendant shall specify his objections to the claim and their substation. The defendant in his explanations at a court hearing may also contested the claim, indicating that he does not recognise it (see Section 165 and Section 166 of CPL).

88. Sub-clause b) under discussion determines that the passiveness of this debtor must be evaluated in accordance with the procedural norms of the country where the judgment is being delivered. Nevertheless, "default of appearance" and "default judgment" are only technical terms that may be referred to differently in Member States, therefore it is crucial to interpret them within the context of EU law, using the CJEU practice that provides some guidelines and strengthens autonomous use of the respective term. Thus, the defendant must be informed about the initiated legal proceedings and he must have a chance of defending himself. For instance, if it is established that a representative has submitted explanations to a court, based on what it could be decided whether the defendant knew about proceedings and he had a sufficient period of time to prepare his position,[133] but if this representative has come on behalf of the defendant, being properly authorised to do it, it should be regarded that the defendant has participated in the review of the matter.[134]

89. These CJEU guidelines partly correspond with the norms defined in the Latvian CPL regarding default judgments;[135] however, in accordance with Section 208.[1], Paragraph three, Clause 2, a default judgment may not be delivered in matters in which the place of residence or location of the defendant is outside the Republic of Latvia. Taking into account this exception, as well as the position of the CJEU regarding autonomous interpretation of this term, it could be established that norms defined in CPL

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[131] See Recital 6 to the Preamble of the Regulation, determining that the fact no objections have been received from the debtor can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

[132] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010. Art. 3 EG-VollstrTitelVO (Pabst S.) S. 47

[133] 21 April 1993 ECJ judgment in the case: C–172/91 *Volker Sonntag v. Weidmann* ECR 1993, p. I–01963., para. 27.

[134] 10 October 1996 ECJ judgment in the case: C-78/95 *Bernardus Hendrikman and Maria Feyen v Magenta Druck & Verlag GmbH* ECR, 1996, p. I-04943, para. 18.

[135] Section 208.[1] of CPL states:

> *(1) A default judgment is a judgment, which is rendered, upon the request of the plaintiff, by first instance court in a matter where the defendant has failed to provide explanations regarding the claim and has failed to attend pursuant to the court summons without notifying the reason for the failure to attend. (2) A default judgment shall be rendered by the court on the basis of the explanations by the plaintiff and the materials in the matter if the court recognises such as sufficient for settling of the dispute.*

would not still be applicable for the interpretation of this term. Especially due to the reason that the Court of Justice of the European Union interprets "default judgment" broader than the national law, attributing it also to *ex parte* proceedings. Furthermore, within the context of Regulation 805/2004, due to the reason that upon the delivery of such judgement minimum procedural standards and requirements of an uncontested claim will not be observed, it will not be possible to approve such judgments as EEO in Latvia.

90. For instance, in one case the court of Latvia established that in accordance with Section 56, Paragraph five of CPL an application of a claim has been delivered to the address of the defendant, but it together with a writ of summons with a request to come to a court hearing has been returned to the court with an indication that the addressee has not requested these documents at the post office and the storage term of these dispatches has ended. The claimant, on the basis of Section 59, Paragraph one of CPL, has invited the defendant to a court hearing with a publication placed in the Latvian Herald. The defendant was not present in the court hearing. Meanwhile the claimant has submitted an application regarding the issue of EEO, because he has established that the defendant has changed the declared place of residence from Latvia to another EU Member State. The court has specified that the defendant in this case has not been informed about the claim and the person did not have a chance to contest the claim.[136] Thus, if a defendant has been invited to a court with a publication in the Latvian Herald, it may not be regarded that the claim has become uncontested. Thus, in such case a court decision in respect of the debtor cannot be approved as EEO.

91. Thus, the persons applying Article 3 (1) (b) of Regulation 805/2004 must evaluate whether the defendant had a chance to express objections and provide explanations towards the claim and therefore being heard out at court proceedings before the adoption of the judgment. If the defendant does not use this possibility, it is his own responsibility.[137] Furthermore, it should be taken into account that the aim of rendering a default judgment is to ensure fast, efficient and cheaper course of the initiated proceedings in order to exact the uncontested claims for the purpose of ensuring a correct process of legal proceedings.[138]

92. Meanwhile Article 3 (1) (c) of the Regulation defines one more case when a claim shall be regarded as uncontested — "if 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."

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[136] 10 November 2011 judgment of Civil Division of Kurzeme Regional Court in case No. C40114410 [not published].

[137] The opinion of CJEU Advocate General *Kokott J.* of 26 April 2012 on the case *Trade Agency*: C-619/10. Available at: www.europa.eu.

[138] 6 September 2012 ECJ judgment in the case: C-619/10 *Trade Agency Ltd v. Seramico Investments Ltd.* Available at: www.europa.eu.

93. According to Article 3 (1) (c) of the Regulation, also such claims are regarded as uncontested claims that have been contested by the debtor initially, but has not come to court hearing in the course of court proceedings (or has not been represented therein). The latter means that absence in court hearing within the meaning of Regulation 805/2004 turns the initially contested claim into an uncontested claim. Within the context of the Regulation there are no crucial reasons why the defendant (debtor) has not been present at the court hearing.[139]

94. It must be added here that *default of appearance* in accordance with the national law (*lex fori*) of the country of the court must be regarded as tacit admission of the claim. Default of appearance of the defendant (debtor) at a court hearing during civil proceedings in Latvia is not regarded as recognition of the claim. The situation referred to in Article 3 (1) (c) of the Regulation will not allow a Latvian judge to render a default judgment provided for in Chapter 22.[1] of CPL. This is due to the reason that Section 208.[1], Paragraph one of CPL clearly states: "A default judgment is a judgment, which is rendered, upon the request of the plaintiff, by first instance court in a matter where *the defendant has failed to provide explanations regarding the claim* and has failed to attend pursuant to the court summons without notifying the reason for the failure to attend." In this case it is being requested that the defendant would have **never** provided explanations regarding the claim **and** would not have appeared upon the request of the court, without notifying the reason for the failure to appear. Therefore Section 208.[1], Paragraph one of CPL shall apply to the situations referred to in Article 3 (1) (b) of the Regulation.

95. The national law defines preconditions when and in accordance with what provisions the debtor in the case of default of appearance has tacitly recognised the claim. *Taciturnity* is interpreted differently within the legal systems of various EU Member States. For instance, in **Italy** taciturnity is the recognition of a claim, which consequently means that a creditor may use the chance and sue the debtor in the country where taciturnity has the respective meaning.[140] However, posterior taciturnity in other Member States usually is not regarded as a type of claim recognition. Also in Latvia taciturnity of the defendant by not attending the court hearing is not regarded as the recognition of a claim (especially if initially the defendant has actively contested the claim).

96. **Contested claim.** If the court established that the debtor has made objections during court proceedings, it may not be regarded that the claim is uncontested. For

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[139] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010. Art. 3 EG-VollstrTitelVO (Pabst S.), S. 49, 50.

[140] Biavati, P. Some remarks about the European Regulations creating an Enforcement Order for uncontested claims. Available at: http://www.google.lv/url?sa=t&rct=j&q=yet%2C%20in%20the%20third%20place%2C%20one%20must%20admit%20that%20the%20eeo%20regulation%20gives%20a%20powerful%20indication%2C%20in%20favour%20of%20the%20effects%20of%20the%20behaviour%20of%20conscious%20silence%20before%20the%20courts&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.studiobiavati.it%2Findex_file%2FBiavati%2520volume%2520Kerameus.doc&ei=hUhQUObKI-qO4gSLs4GwBw&usg=AFQjCNFwNlqsdgm00dM5B8Km6E90aaj7KA&cad=rja.

instance, in a case at a court in Latvia, the defendant provided explanations regarding the claim application, where he also indicated that he did not recognise the claim and that it was unreasonable.[141] The court adopted a decision to refuse the issue of EEO, observing the requirements of the Regulation. However, if the defendant participates in a court hearing and recognises the claim, it shall be regarded as an uncontested claim.

97. It should be added that in order to fully determine whether the claim is uncontested, Article 3 of the Regulation should be examined together with Chapter II, mainly Article 6 thereof, which defines the requirements for the approval of a judgment as EEO. If the court establishes that the claim in uncontested, the creditor may use other technical means at the disposal thereof, for instance, Brussels I Regulation, in order to recognise a claim as executed in respect of the defendant.

98. Meanwhile in another case the court established that the debtor had recognised the claim partly; however, declined the application of the claimant regarding EEO, because the court regarded it as contested claim.[142] In accordance with Article 8 of Regulation 805/2004, if only parts of the judgment meet the requirements of this Regulation, a partial European Enforcement Order certificate shall be issued for those parts. Thus, the judge could have issued the EEO in the uncontested part.

1.6. Concept of the Member States of origin and enforcement and their understanding

99. Article 4 (4) and (5) of Regulation 805/2004 provide definitions of the terms "Member State of origin" and "Member State of enforcement".

100. **Member State of origin** (English — Member State of origin; German — *Ursprungsmitgliedstaat*; French — *état membre d'origine*) is a Member State in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered, and is to be certified as a European Enforcement Order. If in a Member State the court has jurisdiction to deliver a judgment and approve a court settlement that later on may be approved as EEO, it will become the Member State of origin of the respective documents. The same applies to registered authentic instruments — if a competent institution of a Member State has the right to issue authentic instruments and to approve them as EEO, their origin is in the respective Member State.

101. However, several conditions should be observed here that may be illustrated with the following example. A Latvian Limited Liability Company submitted a claim to a Latvian court against an Estonian Joint Stock Company regarding securing of a claim and issue of EEO for the enforcement of securing of a claim in the territory of the Republic of Estonia. The court agreed in the application part regarding securing of a claim, but

[141] 9 December 2010 decision of Jūrmala City Court in case No. C17132509 [not published].
[142] 15 May 2012 decision of Jūrmala City Court in case No. C17098009 [not published].

refused to substantially issue the EEO.[143] Issue of the EEO is to be requested at the Member State of origin of the decision; however, only regarding uncontested financial claims. Even though the notion "judgment" within the understanding of the Regulation may be also a decision regarding securing of a claim; however, they shall not correspond to the criteria of the Regulation in Latvia in respect of "minimum procedural standards" and "uncontested claim". This is due to the fact that such decisions in accordance with Chapter 19 of CPL have been adopted without the presence of a defendant for the purpose of reaching a surprise element. Mechanism of Brussels I Regulation should be applied in the respective case to reach enforcement of the decision in another Member State.

102. Member State of enforcement (English — *Member State of enforcement*; German — *Vollstreckungsmitgliedstaat*, French — *état membre d'exécution*) is a Member State in which enforcement of the judgment, court settlement or authentic instrument certified as a European Enforcement Order is sought. It must be added that in accordance with Article 20 of Regulation 805/2004 the creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement, for instance, a bailiff, with EEO for enforcement.

103. Both definitions have a particular emphasis on the notion "Member State", which reminds about the geographical scope of the Regulation — the respective Regulation shall apply only to EU Member States, except for Denmark (Article 2 (3) of the Regulation).

[143] 7 March 2011 decision of Riga City Vidzeme District Court in case No. C30528011 [not published].

1.7. Preconditions for the approval of a judgment as EEO

1.7.1. Notion of an application/request regarding EEO enforcement

1.7.1.1. Court competence

104. Article 6 (1) (b) of Regulation 805/2004 defines that a judgment in the matter regarding uncontested claim may be certified as EEO if the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001. The referred to Section 3 of Brussels I Regulation determines jurisdiction in matters relating to insurance, whereas Section 6 — exclusive jurisdiction. Thus, the judge upon the receipt of a request regarding the issue of EEO must verify whether the judgment does not conflict with the rules on jurisdiction as laid down in Brussels I Regulation.

105. Only the main aspects of sections 3 and 6 of Brussels I Regulation have been specified in the present Research, therefore greater attention must be paid to these issues in matters relating to insurance and exclusive jurisdiction.

106. The purpose of Section 3 of Brussels I Regulation is to protect the weaker side or the policyholder or separate third persons (insured, policyholder or the suffered party) and to regulate this specific and complicated field. The notion **"matters relating to insurance"** includes various types of insurance — both private and major risk insurance and reinsurance. Nevertheless, matters relating to state social insurance have been excluded both from the scope of Brussels I Regulation[144] and Regulation 805/2004[145]. Furthermore, it is being considered that Section 3 of Brussels I Regulation shall not apply to disputes between insurers.[146]

107. Article 9 (1) (a) of Brussels I Regulation defines the principle of *forum rei* in matters relating to insurance, thus, an insurer domiciled in a Member State may be sued in the courts of the Member State where he is domiciled, or(a) in the courts of the Member State where he is domiciled,[147] whereas Article 9 (1) (b) specifies an exception — *forum actoris* — according to which an insurer domiciled in a Member State may be sued a policyholder, the insured or a beneficiary. Also Article 10 provides for an additional jurisdiction in matters relating to liability insurance or insurance of immovable property (*ex delicto* or *ex contractu*). In the referred to cases the insurer may be sued in the courts for the place where the harmful event occurred.

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[144] See Article 1 (2) (c).

[145] See Article 2 (2) (c).

[146] Magnus, U., Mankowski, P. (ed), European Commentaries on Private International Law Brussels I. Regulation (2nd edn, SELP 2012) p. 336.

[147] Also in the case if the insurer represents any of the third countries, but his affiliate or agency is located in an EU Member State, it shall be regarded that his domicile is in the respective country if insurance has been concluded by this affiliate or agency. See Article 9 (2) of Brussels I Regulation.

108. Meanwhile an insurer, irrespective of his domicile, may initiate legal proceedings only in the court of his Member State where the domicile of the policyholder, insured or beneficiary is located in accordance with Article 12 of Brussels I Regulation. Thus only the principle of *forum rei* is provided for in the specific case.

109. Section 6 of Brussels I Regulation determines **exclusive jurisdiction** irrespective of the domicile. Exclusive jurisdiction cannot be cancelled upon the agreement of the parties or provisions of special jurisdiction. If the subject-matter of the dispute is located in the third country (non-EU territory) and if the person does not have a domicile in any of EU Member States, jurisdiction shall be determined in accordance with the national law according to Article 4 (1) of Brussels I Regulation.

110. Article 22 (1) (1) of Brussels I Regulation determines that in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated shall have exclusive jurisdiction. However, proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months are an exception. In this case the tenant must be a natural person and the respective tenancy relations must not be related with the commercial activity of the tenant, but should be equal to consumer relations. The landlord may be both a natural and legal person, whereas the tenant and the landlord must be domiciled in the same EU Member State.

111. Article 22 (2) of Brussels I Regulation defines exclusive jurisdiction for the court in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs. The respective matters shall be reviewed in the court of the Member State in which the company, legal person or association has its seat. In this case autonomous interpretation of the domicile of the legal person defined in Article 60 of Brussels I Regulation shall not be applied, because the second sentence of the referred to legal norm defines: "in order to determine that seat, the court shall apply its rules of private international law". Thus, the court must apply the norms of the private international law of its country.

112. Meanwhile proceedings which have as their object the validity of entries in public registers may be initiated in the courts of the Member State in which the register is kept (Article 22 (3) of Brussels I Regulation). The purpose of the respective norm is not to allow the court of one Member State to interfere in the arrangement of public registers, for instance, Land Book, Register of Enterprises, etc., conducted by another Member State.

113. In conformity with Article 22 (4) of Brussels I Regulation, exclusive jurisdiction has been defined in respect of the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered. The courts of the Member State in which the deposit or registration has been applied for, has taken place or is under

the terms of a Community instrument or an international convention deemed to have taken place shall have jurisdiction in the respective cases. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State.

114. The final paragraph of Article 22 of Brussels I Regulation defines that in proceedings concerned with the enforcement of judgments, the jurisdiction is for the courts of the Member State in which the judgment has been or is to be enforced. The principle of public international law is incorporated within the respective norm providing for that the court has jurisdiction to enforce its judgments only within the territory of its State.

115. It may be concluded that a judgment may be certified as EEO only if initiating legal proceedings *inter alia* provisions of the jurisdiction in respect of insurance and exclusive jurisdiction have been observed. If the judgment conflicts with the provisions concerning jurisdiction defined in sections 3 and 6 of Brussels I Regulation, the latter may not be certified as EEO.

1.7.1.2. Enforceability of judgment

116. In accordance with Article 11 of Regulation 805/2004, the EEO certificate shall take effect only within the limits of the enforceability of the judgment. What should be understood with the notion "enforceability of judgment" within the meaning of EEO?

117. Enforceability is a component of the obligation of a court judgment adopted by a public authority institution that is manifested in the ability to address compulsory execution institutions to achieve compulsory execution of specific adjustments included in the court judgment.[148] In civil proceedings enforceability is explained as a feature of a court judgment, but not as the legal effects of the judgment.[149] The feature of a judgment differs from legal effects with the fact that the judgment possesses *ex lege* or automatically in accordance with the norm of specific civil proceedings; whereas the judgment possesses legal effects in relation to intellectual action of the judge in delivering a judgment (it is the internal content of the judgment).[150]

118. The notion **"enforceability"** may include the following features:

118.1. **First**, the judgment as to the substance and content is in the form it may be submitted for enforcement at compulsory execution institutions. Compulsory

[148] Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris: L.G.D.J., 2005, p. 143.

[149] Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga : Tiesu namu aģentūra, 2006, p.305.; Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris: L.G.D.J., 2005, p. 32, 41, 64, 142.

[150] Bureau, D., Muir Watt, H. Droit international privé. Tome I. Partie générale. Paris: PUF, 2007, p. 237.

enforcement procedure may be applied for the judgment in such case. The latter shall be judgments in imposition or enforcement claims.[151]

118.2. **Second**, the judgment has not been enforced or has been partly enforced (for instance, Section 638, Paragraph two, Clause 4 and Paragraph three, Clause 3 of the Latvian CPL; Article 4 (1) and Article 11 of Regulation 805/2004).

118.3. **Third**, in accordance with the rights of the State of origin of the judgment, the judgment has reached a stage in which it may be handed over for compulsory enforcement (for instance, it has come into legal effect[152]). However, in separate cases the law may provide for that a judgment that has not yet come into force is handed over for enforcement.[153]

119. It should be taken into account that a foreign court judgment in the State of origin thereof must not be both the status of *res iudicata* (resolved case) and enforceability. It is enough that the judgment is enforceable in the State of origin thereof (even though it has not yet come into legal effect or has obtained the status of *res iudicata*).[154] Regulation 805/2004 autonomously allows also the enforcement of judgments that have not yet come into force (Article 6 (2) and Article 23 of Regulation 805/2004) that includes also temporary enforcement judgments within the scope of enforceable judgments.

120. Thus, such judgments possess enforceability that:

120.1. have come into legal effect in the State of origin thereof (**final enforceability**);

120.2. have been proclaimed as judgments to be enforced immediately before the coming into legal effect thereof (**temporary enforceability**, which later on may be subject to reversal of execution of a judgment; see Section 634 of the Latvian CPL).

1.7.1.3. Domicile of debtor

121. Article 6 (1) (d) of Regulation 805/2004 sets forth an additional condition for the certification of a judgment as EEO, thus, the judgment must be given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where

121.1. - a claim is uncontested within the meaning of Article 3(1)(b) or (c);

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[151] Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga : Tiesu namu aģentūra, 2006, 305.-307. lpp.

[152] See, for instance, Section 204 and Section 538 of the CPL, as well as Section 637, Paragraph two, Clause 2 of the CPL, and Section 638, paragraph three, Clause 1 of the CPL.

[153] See, for instance, Section 204, Section 205, and Section 538 of the Latvian CPL.

[154] Nygh, P., Pocar, F. Report of the Special Commission. The Hague Preliminary Draft Convention on Jurisdiction and Judgments. Padova: CEDAM, 2005, p. 298.

121.2. - it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and

121.3. - the debtor is the consumer.

122. The respective norm is applied **if it has been established that the claim is passively uncontested and in respect of the consumer. It must be verified here whether the judgment has been given in the Member State that is the domicile of the debtor.** Thus, it will be possible to certify as EEO judgments that have been given in the court of the State in which the consumer — debtor is domiciled.

123. **First**, within this context it is important to find out how the notion **"debtor's domicile"** is interpreted. The referred to norm has indication to Article 59 (1) of Brussels I Regulation, which defines: "in order to determine whether a party is domiciled in the Member State whose courts are seized of a matter, the court shall apply its internal law". Article 59 (2) defines that if a party is not domiciled in the Member State whose courts are seized of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

124. **Domicile of a natural person** is not an autonomous notion within the scope of Regulation 805/2004 and Brussels I Regulation. This is due to the reason that the court of the Member State to which the application has been submitted must interpret the respective notion in accordance with its national law. However, in the future it is necessary to unify the understanding of the respective term, including the use of the CJEU practice, because understanding of the respective notion differs greatly in the Member States. Furthermore, it must be observed that neither Brussels I Regulation, nor Regulation 805/2004 includes a reference to the notion "usual place of residence", which as an attraction factor is being used in private international law even more frequently.

125. In Latvia, upon determining the domicile of a natural person, Section 7 of the Civil Law (further — CL) must be applied, according to which the place of residence (domicile) is that place where a person is voluntarily dwelling with the express or implied intent to permanently live or work there. One person may have several places of residence. Temporary residence does not create legal effects of a place of residence and shall be discussed based on the intention, not the length thereof. The respective legal norm should be applicable to determine which state is the domicile of the natural person from the point of view of the Latvian international private law.

126. Also the Declaration of Place of Residence Law[155] defines the notion "place of residence";[156] however, this norm by its legal nature and purpose is more appropriate to

[155] Declaration of Place of Residence Law of 20 June 2002: Law of the Republic of Latvia. Latvian Herald, No. 104, 10.07.2002.

[156] Section 3, Paragraph one of the law prescribes:

> *A place of residence is any place (with an address) connected with immovable property freely selected by a person, in which the person has voluntarily settled with an intention to reside there expressed directly or implicitly, in which he or she has a lawful basis to reside and which has been recognised by him or her as a place where he or she is reachable in terms of legal relations with the State or local government.*

solve the internal situations of Latvia, thus, to determine specifically in what address the person has a place of residence in the territory of Latvia. Also the Population Register Law[157] does not provide a specific answer for how to determine the existence or non-existence of a person's domicile in the territory of a state, except for the case if national of Latvia resides outside Latvia longer than a period of six consecutive months — in this case it may be considered that the domicile of the person is in the respective foreign state and under the condition this person has notified the address of the place of residence abroad to the Office of Citizenship and Migration Affairs (Section 6, Paragraph five). As long as the national of Latvia has not notified this address, it shall be regarded that his domicile is not outside Latvia.[158]

127. In a case in Latvia, the creditor — legal person — submitted an application regarding the issue of EEO, because information that the debtor is located in another EU Member State was at the disposal thereof.[159] The court refused the issue of EEO, because it established that the debtor had declared its place of residence in Latvia and therefore the case referred to in Article 6 (1) (d) of Regulation 805/2004 has set in. However, Article 6 (1) (c) of the Regulation that orders the court to verify the minimum procedural standards has not been observed. Thus, all documents relating to legal proceedings in the respective case were delivered to the declared place of residence in Latvia; however, they were not issued there. Therefore the debtor was informed about the court hearing with the help of a publication in the Latvian Herald in conformity with Section 59 of the CPL. As it has been already stated in the present Research, such notification does not conform to the minimum procedural standards specified in the Regulation. If the defendant had received court documents, irrespective of his residing in another Member State, it would be regarded that his domicile is in the State of origin and that the respective norm of the Regulation is applicable.

128. If the party is domiciled in another Member State, the court must evaluate it, applying the national law of the other Member State. Meanwhile both Regulations do not provide an answer towards how to determine the domicile of a person who does not have a domicile in the EU. In this case the norms of the private international law of the court of the state shall be applied.

129. Within the context of the present paragraph it should be assessed whether the claim is passively uncontested in accordance with Article 3 (1) (b) or (c), thus, whether the debtor has never contested the claim, in compliance with the relevant procedural

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[157] Population Register Law of 27 August 1998: Law of the Republic of Latvia. Latvian Herald, No. 261, 10.09.1998. Section 6, Paragraph five of the law prescribes:

> *If the place of residence of a person is in a foreign state, the obligation of the declaration of the place of residence shall be regarded as fulfilled if the person declaring the place of residence has provided information regarding the place of residence according to the procedures prescribed by the Population Register Law.*

[158] Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds Nr. 24/25, 2009. gada 16. jūnijs.

[159] 21 November 2011 decision of Daugavpils Court in case No. C12144611 [not published].

requirements under the law of the Member State of origin, in the course of the court proceedings; or 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. Cases in which the uncontested claim has been expressed in a court settlement or authentic instrument (Article 3 (1) (a) and Article 3 (1) (d) respectively) must not be evaluated here. See the respective part of the Research in respect of the relevant sub-paragraphs.

130. The second sentence of Article 6 (1) (d) of Regulation 805/2004 defines another case when it should be verified whether the judgment has been announced in a Member State, which is the domicile of the debtor — if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession. The respective formulation may be found also in Article 15 (1) of Brussels I Regulation. In this particular case attention should be drawn to the interpretation of the notions "contract" and "consumer".

131. The notion **"contract"** is being widely analysed within the CJEU practice[160] and is subject to strict interpretation. The contract must be concluded for the private needs of the consumer and it cannot be related to entrepreneurship of the person. For instance, if it has been established that the contract has double nature, thus, an element, which is related to the profession of the natural person, as well as an element related to the personal needs of the consumer are encountered, it should be still regarded that this is a contract relating to the trade or profession of the person, unless the natural person proves that professional use is so insignificant, it is trivial within the overall context of the respective activity; the fact that non-professional aspect is bigger does not have a significant meaning in this case.[161]

132. The notion **"consumer"** has been unified in the EU law. Brussels I Regulation, Rome I Regulation (Article 6) and ECJ judicature must be taken into account in the interpretation thereof.[162] Understanding of the notion of a consumer is important especially when determining international jurisdiction.

133. A consumer may be also a claimant. Thus, Sentence three of Article 6 (1) (d) of Regulation 805/2004 defines that a judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if the debtor is the consumer. Based on the clumsy formulation of the respective paragraph, it may be concluded that an uncontested claim may arise not only from contractual (as in the previous sentence), but also from non-

[160] See 11 July 2002 ECJ judgment in the case: C-96/00 *Rudolf Gabriel* ECR, 2002, p. I-6367; 25 January 2005 ECJ judgment in the case: C-27/02 *Petra Engler v. Janus Versand GmbH* ECR, 2005, p. I-481; 114 May 2005 ECJ judgment in the case: C-180/06 *Renata Ilsinger v. Martin Dreschers* ECR, 2009, p. I-3961.
[161] 20 January 2005 ECJ judgment in case: C-464/01 *Johann Gruber v. Bay Wa Ag* ECR, 2005, p. I-439.
[162] See 21 June 1978 ECJ judgment in the case: C150/77 *Societe Bertrand v. Paul Ott KG* ECR, 1978, p. 1431; 19 January 1993 ECJ judgment in the case: 89/91 *Shearson Lehman, Inc. V. TVB Treuhandgesellschaft für Vermögensverwaltung und Beteiligungen mbH* ECR, 1993, p. I – 139, and others.

contractual relations. However, if a debtor is a consumer, the judgment may be approved as EEO only if the domicile of the consumer has been in the Member State of origin of the judgment.

134. Thus it may be concluded that Regulation 805/2004 narrows the jurisdiction provisions in respect of consumers, thus, **international competition** or **jurisdiction to deliver a judgment (and also to later on to certify it as EEO) is only within the authority of the court of the state of domicile of the debtor — consumer.** For instance, Brussels I Regulation provides for a possibility for the consumer to bring proceedings against the defendant not only in its state of domicile, but also in the state, which is the domicile of the defendant (Article 16 (1)).

1.7.1.4. Minimum procedural standards for uncontested claims

135. Notion of minimum procedural standards. Explanation of minimum procedural standards is included in Preamble 12 to Regulation 805/2004. In the recital, according to which **minimum procedural standards** ensure the notification of the debtor regarding proceedings brought against him and indicate he must actively participate in the proceedings to contest the claim, as well as notifies about the consequences of failure to participate therein. Furthermore, these standards provide for the term and type of the notification of the debtor that consequently are being regarded as *a priori* sufficient factors for him to be able to take care of his defence. The latter suggests that legal proceedings conducted in a Member State must correspond to minimum procedural standards defined in the present Regulation. Otherwise the judgment on an uncontested claim cannot be certified as EEO.

136. The minimum procedural standards defined in the Regulation are peculiar with the fact that from one side they are to be regarded as an aggregate of autonomously defined

[163] document delivery claim, but from the other side, they do not form unified and directly applicable EU level document submission procedural norms. Consequently legal scientists believe that minimum procedural standards only autonomously show specific frameworks for the types of document submission that as if sufficiently should protect the interests of the debtor.[164] At the same time it can be concluded that the norms of the Regulation do not provide for and require coordination of civil procedural legal norms of Member States with the requirements of the Regulation.[165] However, it will not be

[163] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München: Sellier, 2004, S. 42.

[164] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010, Art. 13 EG-VollstrTitelVO (Pabst S.), S. 126.

[165] See also the following source in respect of Regulation 805/2004: Giebel, Ch. M. Fünf Jahre Europäischer Vollstreckungstitel in der deutschen Gerichtspraxis – Zwischenbilanz und fortbestehender Klärungsbedarf. *IPRax*, Heft 6, 2011 (November/Dezember), S. 532.

possible to get along without the harmonisation of the national civil procedural norms,[166] because they *de facto* cannot conflict with the minimum procedural standards.[167] Legal scientists even refer to minimum procedural standards as extraordinary and peculiar directive that has been transposed into the Regulation.[168]

137. For instance, Regulation 805/2004 is peculiar with the fact that it directly and clearly does not demand the observation of minimum procedural standards in the process of reviewing the main proceedings. The latter only determines that at the moment when a judge decides on the approval of a judgment as EEO (in cases when the debtor has been passive), the judge must ascertain that minimum procedural standards have been observed in proceedings that have already taken place (*post processum*). Therefore any claimant, a representative thereof or also a judge[169] must be careful and even farseeing by previously foreseeing whether after the delivery of a judgment there might arise the necessity regarding the approval thereof as EEO. If such an assumption has been made already at the beginning (or at least such possibility is not excluded), one should make sure that minimum procedural standards were observed in the main proceedings. It is not easy to ensure the latter, because Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (further: *Service Regulation*) must be applied in respect of the judge, as well as the claimant and a representative thereof (if the

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[166] D'Avout, L. La circulation automatique des titres exécutiores imposée par le règlement 805/2004 du 21 avril 2004. *Revue critique de droit international privé*. Paris: Dalloz, 2006, n° 95 (1), p. 34; Stadler, A. Das Europäische Zivilprozessrecht – Wie viel Beschleunigung verträgt Europa ? *IPRax*, Heft 1, 2004 (Januar/Februar), S. 4.

[167] See Article 12 (5) of Regulation 1896/2006: "The court shall ensure that the EOPP is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15."

[168] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées. *Journal du droit international*. 2005, juillet-août-septembre, p. 650.

[169] It could be objected that a judge does not care about this. However, it must be taken into account that not in all cases the claimant will have legal education or be a person whose capacities would allow using the services of a qualified lawyer. Therefore it should not be correct to claim that only the claimant must take care of the observance of minimum procedural standards in proceedings. The first sentence of Article 92 of the Constitution should be mentioned as an additional argument "everyone can protect his/her rights and legal interests in a fair court". The same is provided for in Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. It should be reminded that the right to a fair court also includes the right to the enforcement of the court judgment. Otherwise the right to a fair court would lose thEEO sense; it would be only illusory. Therefore the enforcement of a judgment adopted by a court set up by law must be regarded as an integral part of court proceedings within the meaning of the referred to Article 6 of the Convention [see the following ECJ cases: 19 March 1997 ECJ judgment in the case No. 18357/91 *Hornsby v. Greece*, ECHR 1997-II, § 40; 7 May 2002 ECJ judgment in the case No. 59498/00 *Burdov v. Russia*, ECHR 2002-III, § 34; 28 July 1999 ECJ judgment in case No. 22774/93 *Immobiliare Saffi v. Italy*, ECHR 1999-V, § 74]. More detailed information about the respective rights within the context of civil proceedings: Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga: LU, 2012, p. 27-28, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

debtor lives in another Member State) together with the norms of the Latvian CPL, and it must be viewed within the context of Articles 13-17 of Regulation 805/2004[170] [171]. It must be admitted that it is a complicated task and requires good knowledge in the field of international civil proceedings to be able to go through various legal norms to remain within the limits of minimum procedural standards.

138. According to the text of the Regulation[172] it is visible that cross-border matters may have various combinations.[173] Among them — also such situations in which the creditor and the debtor live in one and the same Member State (for instance, in Latvia), legal proceedings take place in the same state (Latvia), but the property of the debtor or a part of it is located in another Member State (for instance, Estonia).

139. Theoretical substantiation for the necessity of minimum procedural standards. Minimum procedural standards as an experimental novelty in the EU international civil proceedings was elaborated due to the reason that the Member State of enforcement is significantly deprived of the right to decide about the recognition and enforcement of a judgment delivered by another Member State,[174] applying the reasons for non-recognition or an enforcement refusal. Instead control (that is usually performed by the court of the Member State of enforcement) is transferred to the Member State of origin; in this case it is the verification of the notification fact of the debtor. As it is know, the latter is one of the reasons in the proceedings of the recognition and enforcement of judgments of foreign courts for the Member State of enforcement to receive a refusal regarding the recognition and/or enforcement of such foreign court judgment in the territory of its state (see, for instance, Article 34 (2) of Brussels I Regulation)[175]). Only one control option is left to the Member State of enforcement in European enforcement proceedings — incompatibility control of two judgments (see Article 21 of

[170] Of course, the Service Regulation is mainly applied specifically by the judge, but the involvement of the claimant is not excluded in separate cases as well (See Article 15 of the Service Regulation and Section 656, Paragraph three of CPL).

[171] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. L 324, Official Journal of the European Union, 10.12.2007, p. 79-86.

[172] See Article 4 (4) and (5) of Regulation 805/2004; Article 3 of Regulation 1896/2006 and Article 3 of Regulation 861/2007.

[173] See the following source in respect of the combinations of cross-border matters in Regulation 1896/2006: Rudevska, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi. Jurista Vārds, 2009, 16. jūnijs, Nr. 24/25, . 36.

[174] Incompatibility control, which is *non bis in idem* in the international civil proceedings, is the only type of control that may be legally conducted by the Member State of enforcement. See Article 21 of Regulation 805/2004, Article 22 of Regulation 1896/2006 and Article 22 of Regulation 861/2007.

[175] In accordance with Article 34 (2) of Brussels I Regulation: "A judgment shall not be recognised where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so."

Regulation 805/2004; Article 22 of Regulation 1896/2006 and Article 22 of Regulation 861/2007).

140. If looking from the point of view of the theory of international civil proceedings, both the incompatibility control method of judgments and debtor's notification control method in the course of time have separated from *ordre public* control method and specifically from the procedural *ordre public* control[176]. It is essential to note that *ordre public* specifically means *ordre public* of the **Member State of enforcement** (not the Member State of origin). Therefore *a priori* it may be established that the court of the Member State of origin of the European Enforcement Order (EEO) will be entrusted with an obligation to control whether the type of the delivery of a judgment corresponds to the procedural *ordre public* of the Member State of enforcement that most importantly includes the conformity of the delivery of the judgment with Article 6, Paragraph one of the Convention for the Protection of Human Rights and Fundamental Freedoms (further: *EConvHR*)[177]. Such transfer of control seems to be an absurdity. However, to avoid this, a new content must be provided to the notion "procedural *ordre public*" existing within the European enforcement proceedings, thus, from one side the content is very narrow in respect of the guaranteed procedural fundamental rights in civil proceedings defined in Article 6, Paragraph one of EConvHR (because only incompatibility control of judgments and debtor's notification fact regarding legal proceedings control remain).

141. From the other side, the relevant narrow control has been now divided between two EU Member States: the court of the Member State of origin controls the debtor's notification fact, whereas the Member State of enforcement — existence or non-existence of the judgment incompatibility fact. If no questions arise in respect of the competence of the court of the Member State of enforcement, questions arise in respect of the Member State of origin. The main and most important is the question about how far the competence of the Member State of origin may go in terms of controlling its activities regarding the notification of the defendant and the conformity of these activities to the procedural *ordre public* of the Member State of enforcement. It seems that this competence in the best case may cover only the level that is common for all EU Member States in respect of the types and procedures for the notification of the debtor.

142. Taking into account the aforementioned, the following explanation could be provided for the notion of minimum procedural standards: **minimum procedural standards** are the mandatory aggregate of procedural basic standards included in EU regulations that determines only **how and about what** the debtor must be informed so that a judgment delivered by the court of the Member State in uncontested financial

[176] More detailed information about public policy (*ordre public*) control in international civil proceedings is available in the following source: Rudevska, B. Publiskās kārtības (*ordre public*) jēdziens starptautiskajā civilprocesā: klasiskā izpratne. Grām.: Tiesību aktu realizācijas problēmas. LU 69. konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2011, p. 126.-136.

[177] Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950: International treaty of the Republic of Latvia. *Latvian Herald*, No. 143/144, 13.06.1997 (Convention is in force in Latvia since 27 June 1997).

claims could be approved as EEO in case action of the debtor in proceedings has been passive.[178]

143. Types of minimum procedural standards and field of application. Only for passively uncontested claims (Article 12). It is important to accent that for the certification of a judgment as EEO minimum procedural standards do not apply to all types of the delivery of a judgment referred to in Regulation 805/2004, but only to such judgments that have been delivered in proceedings in which the debtor has not been present or has been represented (default judgments), as well as proceedings in which the debtor has never actively objected to the financial claim in court proceedings (See Article 3 (1) (b) and (c), as well as Article 12 of Regulation 805/2004).

144. Only for separate types of documents: regarding commencement of legal proceedings or similar document and/or notice (Article 13, Article 14 (1), Article 16 and Article 17). Types of minimum procedural standards have been specified in Articles 13 and 14 of Regulation 805/2004. All standards are related to the issue of documents to the debtor or a representative thereof.[179] What these *documents to be issued*? Articles 16 and 17 of Regulation 805/2004 specify the following as documents to be issued:

144.1. documents regarding document instituting the proceedings, the equivalent document of proceedings or equivalent documents, and

144.2. summons to a court hearings.

145. The notion **"document instituting the proceedings or the equivalent document"** used in Regulation 805/2004 should be perceived the same way as it is being understood in the Service Regulation, thus, it is a document or documents timely issue of which to the debtor enables the use of the rights in proceedings taking place in the consignor Member State. The respective document must *specifically define* at least the subject and substantiation of the claim, as well as an invitation to arrive at the court hearing or, depending on the nature of the proceedings, must provide a possibility to bring proceedings to court. Meanwhile documents that have the function of a proof and that are not necessary for the understanding of the subject and substantiation of the claim are not an integral part of the document instituting the proceedings.[180]

146. Minimum procedural standards have been defined in Articles 16 and 17 of Regulation 805/2004 for the **content** of the document by which proceedings are instituted (these requirements apply only to cases in which the debtor has been passive and has not contested the claim within the understanding of Article 3 (1) (b) and (c) of the

[178] Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Latvijas Universitāte, 2012, p. 113, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[179] See Article 15 of Regulation 805/2004, Article 15 of Regulation 1896/2006 and Articles 10 and 19 of Regulation 861/2007.

[180] The judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case C-14/07 *Weiss*, ECR [2008], p. I-03367, § 73 of 8 May 2008.

Regulation). Thus, this document must ensure sufficient notification of the debtor *regarding the claim* and therefore must include the following information:

146.1. the names and the addresses of the parties;

146.2. the amount of the claim;

146.3. a statement of the reason for the claim; and

146.4. if interest on the claim is sought, the interest rate and the period for which interest is sought unless statutory interest is automatically added to the principal under the law of the Member State of origin;

146.5. the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing, as applicable, the name and the address of the institution to which to respond or before which to appear, as applicable, and whether it is mandatory to be represented by a lawyer;

146.6. the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

147. As it may be observed, the enumeration does not include the subject of the claim, but it does not mean that this information must not be included in the document. Norms of the Latvian CPL regarding the content of the claim application fully includes the scope of information required in minimum procedural standards (see Section 128, Paragraph one, two and three of CPL). Meanwhile in relation to the explanation of the rules and consequences of proceedings to the defendant, Section 20 of CPL together with Section 5, Paragraphs one and three of CPL allow the judge to decide in the stage of the preparing the civil case for proceedings about the fact that the the referred to information would be specified for the debtor in the documents to be delivered in relation to instituting the proceedings,

148. What regards on the information to be obligatory specified in the summons to a court hearing, it has been specified in Article 17 of Regulation 805/2004, thus:

148.1. the date and time of court hearing;

148.2. the name and the address of the institution (court);

148.3. the consequences of an absence.

149. These requirements are provided or also in Section 55 of the Latvian CPL.

150. Unfortunately, Regulation 805/2004 does not give any information regarding the fact in what **language** the document regarding the instituting of proceedings, summons to court hearings and warnings must be drafted. In jurisprudence it is being specified that in such case the rights of the Member State that issues the document should be applied and in situations of cross-border matters, Article 8 of the Service Regulation must be

considered.[181] However, the latter will help only in case if the documents have been delivered to the debtor with a confirmation regarding the receipt (Article 13 of the Regulation) and thereby already initially he could have refused from receiving documents drafted in a language he does not understand (Article 8 of the Service Regulation). But if court documents have been delivered without a conformation regarding the receipt (Article 14 of the Regulation), the debtor formally has a possibility to refuse from receiving documents in a foreign language by sending these documents back to the court of the Member State that sent the documents within a time period of *one week* (see Article 8 (1) of the Service Regulation and Section 664, Paragraph two of CPL). However, the situation is not as simple as it seems.

151. **First**, the latter is related with the specific language in which the documents must be translated in. According to Article (8) (1) (a) and (b) of the Service Regulation, the defendant may refuse from the receipt of the documents if they are not accompanied by a translation into, either of the following languages:(a) a language which the addressee understands; or (b) the official language of the Member State addressed. The court must assess the notion "a language which the addressee understands" in each specific case, but it is clear that the addressee (defendant) determines himself which language is understandable to him. In the case of legal persons, the respective legal norm (Article 8) shall be interpreted in favour of Article 8 (1) (b).[182]

152. **Second**, the problem is related with the understanding of the notion "document to be served" used in Article 8 of the Service Regulation. The CJEU in the case Weiss determined that the notion "document to be served" used in Article 8 (1) of the Service Regulation (in case this is the document by which proceedings are instituted) must be interpreted as such that characterises documents timely serving of which to the defendant enables the use of the rights in the ongoing proceedings. Such document must specifically define at least the subject and substantiation of the claim, as well as summons to a court hearing. Within the understanding of the Regulation, documents that only have the function of a proof and that are not necessary for the understanding of the subject and substantiation of the claim are not an integral part of the document instituting the proceedings.[183] However, within the understanding of Regulation 805/2004, minimum procedural standards include not only the referred to information regarding the nature of the claim and court hearing, **but also** consequences that may be caused in case objections are not expressed or absence (see Article 17 (b) of Regulation 805/2004).

153. **Third**, Article 8 of the Service Regulation determines both the defendant (addressee) may refuse from the receipt of such documents within one week if they have been drawn up in a language the addressee does not understand. If documents are served

[181] Pabst, S. Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. Rauscher, T. (Hrsg.). München: Sellier, 2010, S. 146 (Art. 17).

[182] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010. Art. 8 EG-ZustVO (Heiderhoff B.), S. 626, 627.

[183] 8 May 2008 ECJ judgment in the case C-14/07 *Weiss*, ECR [2008], p. I- 03367, para. 73.

to the defendant (addressee) without an approval regarding the receipt thereof (for instance, by serving them to a person residing in one household or leaving the documents in the letter-box of the defendant; see Article 14 of Regulation 805/2004), it is not clear starting from what moment the period of one week should be counted — either from the moment when the document was left in the letter-box or from the moment when the addressee took it out of the letter-box. It is only clear that only the moment when the document is left in the letter-box or handed over to a person residing in the household is being legally recorded, However, actually the moment when the defendant (addressee) has received a document (has taken it out of the letter-box after a three-week business trip; has received it from the person living in the same household after a two-week absence in a seminar) is not being recorded anywhere. Thus, it turns out that the one-week term is being regarded from the first mentioned date (see Section 56.[2], Paragraph two and Section 664, Paragraph two of CPL); the contrary must be proved by the defendant (addressee) itself.

154. Due to the reason that court documents have not been served to the debtor in a language which he understands, Articles 18 and 19 of Regulation 805/2004 do not provide for a possibility to certify a default judgment as EEO. The only aspect to which the debtor might refer to is "the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part" defined in Article 19 (1) (b) of the Regulation. The latter depends on what content is being inserted by the judge in the general clause "force majeure".

155. What are the ways how the referred to documents may be served to the defendant to observe minimum procedural standards?

1.7.1.5. Service with proof of receipt by the debtor

156. This type of delivery cannot be used if the address of the debtor is not known (see Article 13 of Regulation 805/2004).

157. **Personal service and types thereof** (Article 13 (1) (a) and (b)). Personal service means the delivery of documents to the addressee in person.[184] Such service may be attested:

157.1. acknowledgement of receipt, specifying the date of receipt and signature of the defendant; or

157.2. a document signed by competent persons having conducted the service (English — *competent person*; German — *zuständige Person*; French — *personne compétente*), specifying that the defendant has received the document or has refused to receive it without any legal justification (English — *legal*

[184] See Article 13 (1) (a) and (b) of Regulation 805/2004; Article 13 (1) (a) and (b) of Regulation 1896/2006, and Article 13 (2) of Regulation 861/2007.

justification; German — *unberechtigt*; French — *motif légitime*), specifying the date of service. Due to the reason that the referred to situation calls for the competent person to record the fact that the debtor has refused to receive the documents without *legal justification* in case of a refusal, this official cannot be a post employee in Latvia (who does not have the right and competence to record the legal side of the reason for a refusal). Therefore the notion "competent person" in Latvia should be interpreted as a sworn bailiff,[185] sworn notary[186] or court authority in the premises of the court.[187] It must be noted that in accordance with Section 57, Paragraph one of CPL "If an addressee refuses to accept the judicial documents, *the person serving the documents* shall make a relevant note in the document, specifying also *reasons for refusal*, date and time thereof". Article 13 (1) (b) of the Regulation is more exacting than Section 57, Paragraph one of CPL:

	Article 13 (1) (b) of Regulation 805/2004	**Section 57, Paragraph one of CPL**
Person serving the documents	**Competent person** (in Latvia — sworn bailiff, sworn notary, court authority in the premises of the court).	**Person serving the documents** [in Latvia — messenger, sworn bailiff, sworn notary, court authority in the premises of the court, post employee, participant to the matter (with an agreement of the judge].
Reason for a refusal to accept a document	**Refusal with legal justification** (for instance, Article 8 of the Service Regulation).	**Refusal**

158. Both methods of the service of documents (specified in Article 13 (1) (a) and (b) of the Regulation) have a very high degree of credibility and correspond to delivery with a messenger provided for in Section 56 of CPL (Section 56, Paragraph seven) or the option defined in Section 74, Paragraph one, Clause 1 of the Law On Bailiffs to deliver court documents with the help of a sworn bailiff, or by serving the documents to the addressee in person in exchange of a signature (Section 56 of CPL), or by serving documents with the help of a sworn notary (Sections 135 and 136 of the Notariate Law). Such **date** shall be considered as the date of the service when the addressee (debtor) in person has accepted the documents (Section 56.[1], Paragraph one of CPL). The latter corresponds with the moment of cross-border service of documents in Latvia (see Section 56.[2], Paragraph two of CPL). *If it was not possible to serve the documents*, the following order shall be in force as of 1 January 2013: 1) If it was not possible to serve documents

[185] Law On Bailiffs: Law of the Republic of Latvia. Latvian Herald, No. 165, 13.11.2002 (effective from 01.01.2003); see Section 74, Paragraph one, Clause 1 and Paragraph two of the law. See also: Procedures by which a Sworn Bailiff upon a Request of Interested Persons Delivers Summons to a Court Hearing and Other Documents: Cabinet Regulation No. 444 of 26 June 2012. Latvian Herald, No. 102, 29.06.2012 (effective from 30.06.2012; issued in accordance with Section 74, Paragraph two of the Law On Bailiffs).
[186] Notariate Law: Law of the Republic of Latvia. Latvian Herald, No. 48, 09.07.1993 (effective from 01.09.1993). See Sections 135-139 of the law.
[187] Section 56, Paragraph three of CPL.

to the person, **whose declared place of residence is in Latvia**, the fact that court documents have been delivered to the declared place of residence of the natural person, additional address specified in the declaration, address for communication specified by the natural person or legal address of a legal person and a note regarding the delivery of a dispatch is received from the post office, or the documents have been sent back does not influence the document notification fact. **Presumption that documents have been served on the seventh day from the day of their dispatch if documents are delivered via a postal dispatch or the third day from the day of their dispatch if documents are delivered via an electronic mail**, may be refuted by the addressee, specifying objective circumstances that irrespectively of his will have become obstacles for the receipt of documents at the specified address[188] (see the new Section 56.[1], Paragraph two of CPL that will come into force on 01.01.2013).[189] 2) If it was not possible to serve the documents to the person, **whose place of residence is in another EU Member State**: if court documents have been delivered to the person according to the procedures prescribed in Section 56.[2], paragraph one of CPL and a proof for failure to serve them has been received, the court shall assess reasons for failure to serve the documents and the impact of the failure to serve the documents on legal proceedings shall be determined in accordance with the provisions of the present law. After the assessment of reasons for the failure to serve the documents may deliver the documents repeatedly or use another method for the service of the documents. If there is a failure to serve the documents repeatedly, Section 59 of CPL shall be applied — a defendant (debtor) shall be summoned to the court through publication in the newspaper Latvian Herald (see the new Section 56.[2], Paragraph 2.[1]and Section 59, Paragraph one of CPL that will come into force on 01.01.2013). Thus, if court documents are not served to a person declared in Latvia, the legal fiction provided for in the new Section 56.[1], Paragraph two of CPL will not allow certification of the judgment delivered in the case as EEO later one (see Recital 13 of Preamble to Regulation 805/2004).

159. Regulation 805/2004 in addition envisages that the notification of the debtor regarding a court hearing may be conducted also orally in the previous court hearing, in which the same claim was reviewed, by accordingly entering the summons in the protocol of the court hearing. Section 211 of CPL provides for analogous procedures.

160. Postal service. Postal service[190] is attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor (not another

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[188] See Rudevska, B., Jonikāns, V. Deklarētās dzīvesvietas princips Civilprocesa likumā: vai tiešām risinājums regarding the introduction of the principle of delacred place of residence in CPL and problems related to it. Jurista Vārds, 2012. gada 4. septembris, Nr. 36, p. 4.-12.

[189] See: draft law No. 66/Lp11 "Amendments to the Civil Procedure Law". Adopted in the third reading at the Saeima on 29.11.2012 (expected to come into force on 01.01.2013). Available at: http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=%28[Title]=*Civilprocesa*%29&SearchMax=0&SearchOrder=4.

[190] See Article 13 (1) (c) of Regulation 805/2004; Article 13 (1) (c) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

person). Such service of court documents corresponds to the procedures defined in Section 56, Paragraph one of CPL — delivery by registered mail with notification of receipt (under the condition that the debtor himself has provided a signature) — considering the seventh day from the day of sending the document as the date of receipt (see Section 56.[1], Paragraph three of CPL). However, if the document must be sent from Latvia to another Member State, the seven-day period shall not be applicable. In such case the Latvian court must follow the procedures defined in Article 9 of the Service Regulation by combining it with Section 56.[2], Paragraph two of CPL or — with the new Section 56.[2], Paragraph 2.[1]of CPL from 1 January 2013. It should be reminded that in accordance with Section 56.[2], Paragraph two of CPL "If judicial documents have been delivered to a person in accordance with the procedures specified in Paragraph one of this Section, it shall be considered that the person has been notified regarding the time and place of procedural action or regarding the content of the relevant document[191] only in such case, if the confirmation regarding service of the document has been received. Documents shall be considered as served on the *date* indicated in the confirmation regarding service of documents."

161. Service by electronic means. According to Article 13 (1) (d) of the Regulation, service by electronic means[192] is service by fax or e-mail. Postal service is attested by attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor. Such method of the service of documents only partly corresponds to Section 56, Paragraph six of the Latvian CPL, because the Regulation requires that such service of documents would be attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor. In this case minimum procedural standards do not require acknowledgements regarding receipt would be also in the form of an e-mail. The latter may be sent back by the debtor also via mail or fax.[193]

1.7.1.6. Service without proof of receipt by the debtor

162. This method of the service of documents may be used only of the address of the debtor is definitely known.[194] According to the latter, a default judgment against a debtor whose address is not known may not be certified as EEO.[195] The same also applies to summons to a court hearing with a publication in the official edition Latvian Herald

[191] It must be reminded that Article 17 of Regulation 805/2004 clearly states that a debtor must be notified also about procedural order and consequences of contesting a claim that may arise if the debtor does not express his objections or does not arrive at the court hearing.

[192] See Article 13 (1) (e) of Regulation 805/2004; Article 13 (1) (e) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

[193] Pabst, S. Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. Rauscher, T. (Hrsg.). München: Sellier, 2010, S. 130 (Art. 13).

[194] See Article 14 (2) of Regulation 805/2004; Article 14 (2) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

[195] 15 March 2012 ECJ judgement in the case: C-292/10 *Visser*, ECR [2012], p. 00000, §§ 62, 63, 64.

provided for in Section 59 of CPL[196] — such order of summoning a debtor will not allow the Latvian court to later on certify a default judgment delivered in the case (against a person living in Latvia) as EEO. Latvian court system acts correctly and does not certify as EEO such judgments in the main proceedings of which the debtor was notified with a publication in the official edition Latvian Herald.[197] So far in six cases the issue of EEO in Latvia was refused due to this reason.[198] What are the receipt methods of service without proof?

163. Personal service shall mean the following.[199]

163.1. Personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there (**natural persons**). Acknowledgement of receipt must be signed by a person who has received the document. The respective procedure corresponds to Section 56, Paragraph eight of CPL.

163.2. In the case of a **self-employed debtor** (for instance, individual merchant) or a **legal person** — personal service at the debtor's business premises on persons who are employed by the debtor. Also in this case the acknowledgement of receipt must be signed by a person who has received the document. This procedure more or less corresponds to Section 56, Paragraph eight of the Latvian CPL with the only exception that minimum procedural standards require the service of documents *not* simply at the work place of the natural person, but in the premises of the company of the debtor — legal or self-employed person — by serving the documents to any of the employees thereof. Therefore Section 56, Paragraph six of CPL must be taken into account here as well.

163.3. Leaving the document in the letter-box of the debtor (both natural and legal persons), The referred to procedure does not correspond to the simple postal dispatch referred to in Section 56, Paragraph two of the Latvian CPL. It is necessary that a person who has left the court document in the letter-box to certify the service with a signed document, specifying the method of delivery and date.

164. Postal service. Postal service shall mean the following:[200]

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[196] See Recital 13 of the Preamble to Regulation 805/2004. "[..] any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient for the certification of a judgment as EEO."

[197] See, for instance, 21 November 2011 decision of Daugavpils Court in case No. C12144611 [not published]; 24 November 2011 decision of Talsi Regional Court in case No. C36087210 [not published], 4 October 2011 decision of Ventspils Court in case No. C40114410 [not published]; 10 November 2011 decision of Kurzeme Regional Court in case No. C40114410 [not published].

[198] See: 21 November 2011 decision of Daugavpils Court in case No. C12144611 [not published]; 24 November 2011 decision of Talsi Regional Court in case No. C36087210 [not published], 4 October 2011 decision of Ventspils Court in case No. C40114410 [not published]; 18 February 2011 decision of Riga Regional Court in case No.C33324809 [not published]; 20 August 2010 decision of Kuldīga Regional Court in case No.C19070309 [not published]; and 10 August 2010 decision of Jūrmala City Court in case No. C17128609 [not published].

[199] See Article 14 (1) (a) (b) and (c) of Regulation 805/2004; Article 14 (1) (a) (b) and (c) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

164.1. Delivering a document at a post establishment or to competent state authorities, and leaving a written notice in the letter-box of the debtor regarding documents in the referred to establishments *if the respective written notice clearly states the type of the document as a court document or the notice as conducted service regarding legal consequences, as well as the fact that time deduction has been started in relation to the term. Thus, sent by registered mail.*[201] However, Latvian national regulatory enactments do not provide for the fact that the notice left by a post employee should include also information about the type of the document as a court document or the notice as conducted service regarding legal consequences, as well as the fact that time deduction has been started in relation to the term.

164.2. Postal service without the proof specified in Article 14 (3) of Regulation 805/2004 if the address of the debtor is in the Member State of origin. The respective procedure corresponds to ordinary dispatch referred to in Section 56, Paragraph two of the Latvian CPL that, however, is not allowed in Latvia in the case of the issue of **summons to a court hearing** (see Section 56, Paragraph one of CPL).

165. Service by electronic means. Service by electronic means[202] without proof means attestation by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance. Section 56, Paragraph 6^1 of the Latvian CPL does not provide for such attestation of service.

166. Some common rules. In the case of a **personal** service without proof of receipt, as well as delivering the document to a **post**, the competent person, who has delivered the document, must sign a document in which the following has been specified:

166.1. the method of service used;

166.2. the date of service; and

166.3. where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor.[203]

167. A summary of minimum procedural standards may be depicted in the following scheme:[204]

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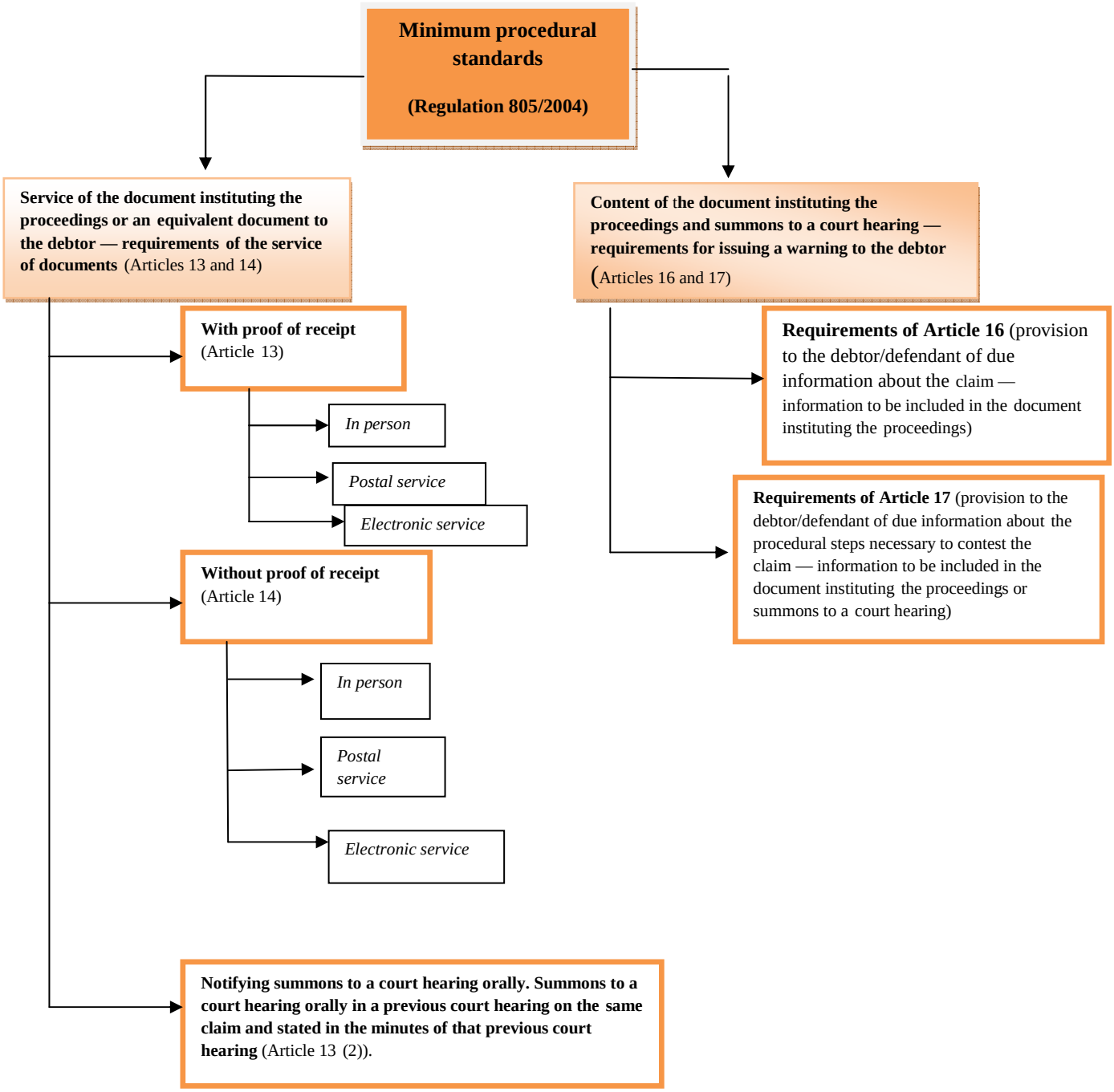
[200] See Article 14 (1) (d) and (e) of Regulation 805/2004; Article 14 (1) (d) and (e) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

[201] See Rudevska, B., Jonikāns, V. Deklarētās dzīvesvietas princips Civilprocesa likumā: vai tiešām risinājums regarding problems of dispatches sent by registered mail. Jurista Vārds, Nr. 36, 04.09.2012, p. 9.

[202] See Article 14 (1) (f) of Regulation 805/2004; Article 14 (1) (f) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

[203] See Article 14 (3) (a) of Regulation 805/2004; Article 14 (3) (a) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

[204] Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Latvijas Universitāte, 2012, p.169., available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.


Minimum procedural standards
(Regulation 805/2004)
Service of the document instituting the proceedings or an equivalent document to the debtor — requirements of the service of documents (Articles 13 and 14)
Content of the document instituting the proceedings and summons to a court hearing — requirements for issuing a warning to the debtor (Articles 16 and 17)
With proof of receipt (Article 13)
In person
Postal service
Electronic service
Without proof of receipt (Article 14)
In person
Postal service
Electronic service
Requirements of Article 16 (provision to the debtor/defendant of due information about the claim — information to be included in the document instituting the proceedings)
Requirements of Article 17 (provision to the debtor/defendant of due information about the procedural steps necessary to contest the claim — information to be included in the document instituting the proceedings or summons to a court hearing)
Notifying summons to a court hearing orally. Summons to a court hearing orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing (Article 13 (2)).

1.7.1.7. Minimum procedural standards and the rights of the defence of debtor

168. Minimum procedural standards referred to in Regulation 805/2004 do not have any mutual **hierarchy**. Thus, neither between Articles 13 and 14 (between service with proof of receipt and service without proof or receipt), nor between the service methods referred to in these both service groups (for instance, between service methods referred to in Article 14 (1) (b) and Article 14 (1) (c)). In practice the latter means that the judge may freely choose to issue a court document not by applying complete exactitude first of all (Article 13), but only high credibility (Article 14) service method. Of course, it influences the right of the debtor to be duly informed about the initiation of proceedings and to prepare for his defence.[205] It may be said that the Service Regulation solves this problem (see Recital 21 of the Preamble to Regulation 805/2004 and Article 28 of the Regulation) and therefore there are no problems and there should not occur such. Nevertheless, it should be taken into account that the Service Regulation is not a component of the minimum procedural standards and it is more appropriate in particular for the recognition and enforcement procedures of a judgment, as well as further inspections of the service of documents carried out therein in the Member State of enforcement. All of the referred to inspections are replaced in particular by minimum procedural standards in Regulation 805/2004. Therefore the Service Regulation must be applied through minimum procedural standards not vice versa — minimum procedural standards defined in Regulation 805/2004 must be applied through the Service Regulation. It is important to understand the latter. Therefore hierarchy of the methods of minimum procedural standardsshould be solved within the scope of Regulation 805/2004 (and not the Service Regulation).

169. Further on the authors shall review the issue that is not clearly specified in minimum procedural standards, thus, **timeliness** of the service of the court documents. As specified already before, minimum procedural standards is an experimental novelty, replacing the usual control of debtor's notification fact in the Member State of enforcement. In accordance with Article 34 (2) of Brussels I Regulation: "Where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document **in sufficient time** and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so." According to the latter:

169.1. the debtor must be notified about the document instituting the proceedings or an equivalent document **in sufficient time**, and;

[205] Rudevska, B. Quality of Legal Regulation of Minimum Procedural Standards in European Procedures of Enforcement of Decisions: a Critical Analysis. In: *The Quality of Legal Acts and its Importance in Contemporary Legal Space*. International Scientific Conference 4-5 October, 2012. Riga: University of Latvia Press, 2012, p. 630.

169.2. the notification of the debtor must take place **according to specific procedures** with the purpose to ensure his rights to defence.[206]

170. In the case of Brussels I Regulation, notification of the defendant a**ccording to specific procedures** arises from the Service Regulation or the Hague Convention of 15 November 1965 *regarding a judicial or extrajudicial document for service abroad in civil or commercial matters.*[207] (see Article 26 of the Brussels I Regulation).

171. Timeliness in the service of court documents is also crucial in terms of the notification of the debtor. Articles 13 and 14 of Regulation 805/2004 do not include an indicated to the requirement of timeliness in terms of the service of court documents. However, the latter does not mean that this crucial element must not be observed by courts. Internal systematic interpretation of the norms of the Regulation helps here, thus, considering Articles 13 and 14 of Regulation 805/2004 together with Article 19 (1) (a) (ii), according to which "Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:[..] ii) **service was not effected in sufficient time** to enable him to arrange for his defence, without any fault on his part" [208]

172. The timeliness criterion so far both in jurisprudence and the CJEU judicature has been explained in particular within the context of Article 34 (2) of Brussels I Regulation. However, according to the authors, this explanation can be used also in the field of minimum procedural standards. The issue of timeliness in jurisprudence is reviewed in two situations:[209]

172.1. if the debtor (defendant) has been aware of the fact that a claim has been submitted against him (document instituting the proceedings); and

172.2. if the debtor (defendant) has not been aware of the fact that a claim has been submitted against him (document instituting the proceedings).

173. In the first case the debtor (defendant) may start implementing his right to defence starting from the moment he has become aware of the fact that a claim has been brought against him.[210] The latter means that the term should be counted from the

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[206] Ibid.

[207] Hague Convention of 15 November 1965 regarding judicial or extrajudicial document for service abroad in civil or commercial matters: International treaty of the Republic of Latvia. Latvian Herald, No. 43, 18.03.2009 (Convention is applied in Latvia from 1 November 1995).

[208] Rudevska, B. Quality of Legal Regulation of Minimum Procedural Standards in European Procedures of Enforcement of Decisions: a Critical Analysis. In: *The Quality of Legal Acts and its Importance in Contemporary Legal Space*. International Scientific Conference 4-5 October, 2012. Riga: University of Latvia Press, 2012, p. 632, 633.

[209] Gaudemet-Tallon, H. Compétence et exécution des jugements en Europe. 4e édition. Paris: L.G.D.J., 2010, p. 430.

[210] The same applies also to the service of summons to a court hearing — if summons has been issued to a defendant, observing procedural norms, but it was not effected in sufficient time (for instance, already after the date of the court hearing), such action of the court shall be regarded as a violation of Article 6 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. See, for instance, See 6

moment the respective application has been notified or served tot he debtor (defendant).[211]

174. In the second case the debtor (defendant) is prohibited from the possibility of defending himself, because if he has not received the document instituting the proceedings, he does not know that a claim has been brought against him. Therefore, if the debtor (defendant) has not been notified at all, the issue on notification in sufficient time is not topical.[212]

175. The next issue is about the fact **how long period of time must be given to the debtor for ensuring his defence.** So far (within the scope of Brussels I Regulation) the evaluation of the respective issue was left to the court of the Member State of enforcement that, depending on the circumstances of the case, could determine whether the term has been sufficient.[213]

176. What about minimum procedural standards? Regulation 805/2004 does not provide information about the term "service of documents in sufficient time" thereby leaving this issue for evaluation by the Member State of EEO origin in accordance with *lex fori.* However, if the purpose of the EU legislator in terms of the introduction of minimum procedural standards was "to ensure the notification of the debtor regarding proceedings initiated against him, regarding claims, regarding the fact the person must actively participate in proceedings to contest a claim, and consequences that come into effect if the latter has not been done, providing for a term and method for notification that are sufficient so that he could take care of his defence",[214] the *expected term* should be still specified. Such terms are not specified in Regulation 805/2004.

177. Therefore, according to the authors, the length of the period of time with which the debtor should be provided with for ensuring his defence in the case of the application of Regulation 805/2004 must be determined by the Member State of the EEO origin, following the criteria defined in the judicature of the CJEU and the European Court of Human Rights (ECHR) for the purpose of observing the requirements set forth in Article 6 (1) of EConvHR. However, it is recommendable for the EU legislator to introduce

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December 2007 ECHR judgment in the case: 11724/04 and 13350/04 *Nikoghosyan and Melkonyan against Armenia*, § 38., 39., 40.

[211] See 16 June 1981 judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case 166/80 *Klomps v. Michel*, ECR [1981], p. 01593, para. 19; Magnus, U., Mankowski, P. Brussels I Regulation. München: Sellier, 2007, Art. 34 (2) (Francq S.), p. 586.

[212] Gaudemet-Tallon, H. Compétence et exécution des jugements en Europe. 4e édition. Paris: L.G.D.J., 2010, p. 431, 432.

[213] See 16 June 1981 judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case 166/80 *Klomps v. Michel*, ECR [1981], p. 01593, paragraph 3 and 5 of the judgment; 11 June 1985 judgment of the Court of Justice of the European Union (formerly — the Court of Justice of the European Communities) in the case *Debaecker v. Bouwman*, ECR [1985], p. 01779, paragraph 1 and 2 of the judgment.

[214] See Recital 12 of the Preamble to Regulation 805/2004.

autonomously defined terms in the field of minimum procedural standards within Regulation 805/2004.[215]

1.7.1.8. Evaluation of non-compliance with minimum procedural standards

178. In accordance with **Article 18** of Regulation 805/2004:

1. If the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 13 to 17, such non-compliance shall be cured and a judgment may be certified as a European Enforcement Order if:

(a) the judgment has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14; and

(b) it was possible for the debtor to challenge the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and

(c) the debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

2. If the proceedings in the Member State of origin did not comply with the procedural requirements as set out in Article 13 or Article 14, such non-compliance shall be cured if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence.

179. Article 18 of the Regulation provides for an evaluation of non-compliance with minimum standards (Articles 13 to 17 of the Regulation). Thus, it means that minimum procedural standards and their meaning in the pre-examination stage of the case are reduced. Roots of Article 18 of Regulation 805/2004 may be traced in Article 34 (2) of Brussels I Regulation,[216] according to which "A judgment shall not be recognised where it was given in default of appearance — if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, *unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so*." As it may be observed, also in the EEO procedure the debtor must use the possibility of contesting a claim in the Member State of origin.

180. Article 18 (1) of Regulation 805/2004 provides for non-compliance with minimum standards if the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 13 to 17. This includes:

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[215] See also: Rauscher, T. Die Europäische Vollstreckungstitel für unbestrittene Forderungen. München: Sellier, 2004, S. 44, 45; Rauscher, T. (Hrsg.) Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010, Art. 13 EG-VollstrTitelVO (Pabst S.), S. 127.

[216] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010. Art. 18 EG-VollstrTitelVO (Pabst S.), S. 150.

180.1. service of the document instituting the proceedings (or an equivalent document) to the debtor;

180.2. service of summons to a court hearing to the debtor;

180.3. service to a representative of the debtor; due notification of the debtor regarding the claim and due notification of the debtor regarding procedural order required to contest a claim.

181. If a judge encounters in the process of issuing an EEO certificate that any of these standards has not been observed, he may eliminate deficiencies by fulfilling the requirements defined in Article 18 (1) (a) (b) of the Regulation, thus: a) the **judgment** has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14; **and** (b) it was possible for the debtor to challenge the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing (or possibilities to ask for renewal thereof).

182. After these documents (judgment) have been sent to the debtor in accordance with any of the methods referred to in Articles 13 and 14 of the Regulation, the court must wait for the action of the debtor — whether he will challenge or will not challenge the judgment. Only if the debtor does not contest the judgment, the lack of minimum procedural standards shall be regarded as prevented and the judgment may be certified as EEO, issuing the form referred to in Appendix I to Regulation 805/2004. Particular attention must be paid when completing paragraphs 13.1 to 13.4 of the form. Thus, all three preconditions referred to in Article 18 (1) of the Regulation must be complied with.

183. It is important to accent that with the term **"challenge the judgment by means of a full review"** used in Article 18 (1) (b) of Regulation 805/2004 only those methods of challenging must be understood in which the claim is being reviewed once again as to the substance of the matter.[217] In Latvia this will be challenge according to the procedures of an appeal. Challenge according to the procedures of cassation shall be regarded as "challenge of a judgment by means of full review". Attention must be drawn also to the Latvian text of Regulation 805/2004 which does not precisely specify the essence of challenge of a judgment by means of full review referred to in Article 18 (1) (b). Other EU languages referring to the mentioned legal norm indicate to "full review" of the judgment (English — *full review*; German — *uneingeschränkte Überprüfung;* French — *réexamen complet*).

184. Article 18 (1) of Regulation 805/2004 shall be applicable only if during the proceedings minimum procedural standards provided for in Articles 13 and 14 of the Regulation (not any more in Articles 16 and 17) have not been fulfilled in the Member State of origin. Standards defined in Articles 13 and 14 of the Regulation apply on the

[217] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München: Sellier, 2010. Art. 18 EG-VollstrTitelVO (Pabst S.), S. 151.

document instituting the proceedings (or an equivalent document) or the service of summons to a court hearing to the debtor. The latter means that Article 18 (2) of the Regulation may prevent only deficiencies of the *service* of documents (not the content). In this case the service of documents (that did not conform to minimum standards) to the debtor is not being regarded as an obstacle for the issue of EEO if based on his behaviour during the proceedings it could be observed that he personally and in a sufficient time had received the relevant documents to be able to get ready for his defence. The latter means that the judge must view the matters materially (minutes of the court hearing, applications submitted and requests made by the debtor) and must assess whether the behaviour of the debtor complied with the situation specified in Article 18 (2) of the Regulation. If yes, a judgment delivered as a result of such proceedings may be certified as EEO.

185. Latvian courts in their practice try to eliminate non-compliance with minimum standards. For instance: 1) 18 February 2011 Riga Regional Court judgment,[218] in which the judge applied Article 18 (1) (1) and (b) of Regulation 805/2004 by sending a judgment to the debtor to the address specified in the application of the claim. However, later on the judgment was sent back to the court as not served (with a notice of the Latvian Post "storage period has ended"); 2) 20 August 2010 Kuldīga Regional Court judgment,[219] in which the judge applied Article 18 of the Regulation together and sent the judgment to the debtor that was not received by him after all — the post returned the dispatch with a note that the addressee was abroad; 3) 7 June 2010 Jūrmala City Court judgment,[220] in which the judge applied Article 18 of the Regulation and sent the judgment to the debtor that later on was received back at the court as not served with a note "the addressee does not live in the specified address".

186. Based on the referred to Latvian court examples it may be observed that in situations in which it was not possible to fulfil minimum procedural standards due to the reason that the debtor was not encountered in the specified address, it is quite senseless to later on send also the court judgment to the same address that was returned at the court as not served.

1.7.1.9. Minimum standards for review in exceptional cases

187. In accordance with **Article 19** of Regulation 805/2004:

1. Further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where: (a) (i) the document instituting the proceedings or an equivalent document or, where applicable, the

[218] See 18 February 2011 Riga Regional Court judgment in civil case No. C33324809 [not published].
[219] 20 August 2010 Kuldīga Regional Court judgment in civil case No. C19070309 [not published].
[220] 7 June 2010 Jūrmala City Court judgment in civil case No. C17182908 [not published].

summons to a court hearing, was served by one of the methods provided for in Article 14; and (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part; or (b) the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.
2. This Article is without prejudice to the possibility for Member States to grant access to a review of the judgment under more generous conditions than those mentioned in paragraph 1.

188. So far Article 19 of the Regulation has not been applied in Latvian courts.

189. Article 19 of Regulation 805/2004 provides for **a review of the judgment procedure.** A similar situation is described also in Regulation 1896/2006 (see Article 20) and Regulation 861/2007 (see Article 18). The necessity of such procedure is explained by the fact that irrespective of the observance of minimum procedural standards, there may occur situations in which the debtor (without his fault) receives the court documents addressed to him with a delay and therefore is unable to properly get ready for his defence.[221] In particular for such case Article 19 of the Regulation provides for something similar as a "red stop button" — a review of the judgment — that enables eliminating the injustice against the debtor and to cancel the EEO certificate for such judgment.

190. Article 19 of the Regulation clearly shows that the review procedure **applies only to judgements**, but not court settlements or authentic instruments (see also Article 24 (3) and Article 25 (3) of the Regulation).

191. The first sentence of Article 19 (1) of Regulation 805/2004 to some extent is peculiarly constructed, because: 1) contrary to Regulation 1896/2006 and Regulation 805/2004, a review of a judgment (that has been approved as EEO) is explained as one of minimum procedural standards (as it is specified in Chapter III of Regulation 805/2004); 2) it abstractly determines that a judgment may be certified as EEO only if "the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment [..]". The latter means that the national regulatory enactments of the Member State of origin must include procedural order that provides for the review of a judgment as such (see also Article 30 (1) (a) of the Regulation, according to which there should be such order in the Member States). In Latvia the procedures for the review of a judgment has been defined in Chapter 60.[1] of CPL "Re-adjudicating Matters in Connection with Review of Adjudication in Cases Provided for in Legal Norms of the European Union" and the latter means that in Latvia from the point of view of Article 19 of the Regulation, Latvian court judgments may be approved as EEO *commonly*.

[221] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München: Sellier, 2010, Art. 19 EG-VollstrTitelVO (Pabst S.), S. 156.

192. Who and where is entitled to request the review of EEO? Only the **debtor** is entitled to submit an application regarding the review of EEO (see Article 19 (1) of Regulation 805/2004; Section 485.[1], Paragraph one of CPL).

193. Such application may be submitted by the debtor to court immediately as soon as the conditions described in Article 19 of Regulation 805/2004 are found out. The Regulation does not provide for a specific term, but the 45 day term defined in Section 485.[1], Paragraph two of the Latvian CPL should be taken into account, counting from the moment when conditions on the review of a judgment provided for in Article 19 (1) of Regulation 805/2004 are found out.

194. The debtor may submit an application regarding the review of a judgment delivered by a Latvian court (that has been certified as EEO) to the competent court of Latvia. In accordance with Section 485.[1], Paragraph one, Clause 1 of the Latvian CPL, an application shall be submitted:

194.1. regarding the review of a judgment or a decision of a district (city) court — to the regional court concerned;

194.2. regarding the review of a judgment or a decision of a regional court — to the Civil Matters Court Panel of the Supreme Court;

194.3. regarding the review of a judgment or a decision of the Court Panel — to the Senate Civil Cases Department of the Supreme Court.

195. As already stated, an application on review in Latvia must be submitted to the competent court within a time period of 45 days, starting from the day when the conditions of review referred to in Article 19 (1) of Regulation 805/2004 are found out (See Section 485.[1], Paragraph two of CPL). However, lapsed cases must be taken into account here as well, thus, 10 years (See Section 485.[1], Paragraph three and Section 546, Paragraph one of CPL).

196. In accordance with Article 30 (1) (a) of Regulation 805/2004, the Member States shall notify the Commission of the procedures for rectification and withdrawal referred to in Article 10(2) and for review referred to in Article 19 (1).

197. Notifications of Member States regarding review procedures:[222]

No.	EU Member State	Review procedure
1.	**Belgium**	In accordance with Article 1047 of the Civil Procedure Code of Belgium and further Articles, each default judgment means that the party that has not been present in the proceedings may submit an application regarding the stay of the judgment irrespective of the reasons of absence. In addition to this general provision, under special circumstances a judgment may be also challenged as defined in Article 1133 of the Civil Procedure Code of Belgium. The respective procedure in this matter has been determined in Article 1132 and further Articles (www.just.fgov.be).
2.	**Bulgaria**	Substantiation for the review of a default judgment in exceptional cases has

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See: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_lv.htm#rc_eeo_communications2.

		been described in Article 240 (1) of the Civil Procedure Code.
3.	**Czech Republic**	Regional courts of Czech Republic are acting in accordance with Article 58 and Articles 201-243 of the Law No. 99/1963 Coll (Civil Procedure Law) with amendments.
4.	**Germany**	In conformity with the civil procedure norms of Germany, the debtor usually — not only in exceptional cases referred to in Article 19 (1) of Regulation 805/2004 — has the right to demand the review of a judgment adopted if the debtor has not challenged the claim or a default judgment (see Article 19 (2) of Regulation 805/2004). a) Default judgments and enforcement orders. In accordance with Paragraph 338 of ZPO, a debtor may submit an application to cancel a default judgment. The same legal protection means exists in respect of forced enforcement order that has been issued according to the procedures of a warning (see Paragraph 700 of ZPO, viewing it in relation to Paragraph 338 of ZPO). An objection is expressed by submitting an application regarding the objection to the court, which reviews the case. The term of the application regarding the objection is two weeks. This is an emergency term defined by the law and it is calculated from the moment of delivering a judgment. If the application is permissible, proceedings return to normal stage as it was before the adoption of a default judgment. Permissibility of the application is not influenced by reasons due to which the debtor has not challenged the claim or has not arrived at the court. If in the cases referred to in Article 19 (1) (a) of Regulation 805/2004 not only the document instituting the proceedings or an equivalent document or summons to a court hearing was not served properly, but there are also drawbacks in relation to the delivery of the judgment, for instance, due to the reason that in both cases they were delivered to such address in which the debtor is no longer residing, the following regulation shall be in force: if it is not possible to prove that a default judgment or an enforcement order has been duly served, or the service is not in force, because significant provisions regulating the service have been breached, a two-week period for the submission of the application starts only from the moment when the debtor has actually received the default judgment or enforcement order. Furthermore, the debtor still is entitled to submit an application to cancel the judgment. In cases referred to in Article 19 (1) (b) of Regulation 805/2004, thus, the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part, the following regulation shall be in force: if the obstacle has been prevented in sufficient time before the end of the term for the submission of the application, the debtor may use the common means of the rights of the defence, thus, to submit an application (see Ibid). If the debtor, for instance, was unable to arrive at the court due to a road traffic accident, normally, within a time period of two weeks from the moment of the delivery of the judgment, he would be able to submit an application either by himself or by authorising a representative to do it on his behalf. If the obstacle still remains after the term for the submission of the application has ended, Paragraph 233 of ZPO provides for a possibility for the debtor to submit a claim to return the proceedings in the previous stage. This provision does not confine itself to force majeure cases and allows the party to submit a claim to return the proceedings in the previous stage always when he without any fault on his part was unable to observe any of the emergency terms (or other special terms) specified in the law. An application to return the proceedings in the previous stage must be submitted within a time period of two weeks, counting the term from the day when the obstacle was prevented. The application may no longer be submitted if more than one

		year has passed since the end of the delayed term. The application is reviewed by such court in whose jurisdiction it is to decide also about the application to cancel the judgment (thus, the court, which reviews the case) that must be also submitted within a time period of two weeks. If the debtor has submitted a permissible application to cancel the judgment, but does not arrive at the court hearing, he no longer is allowed to challenge the default judgment by which his application has been declined (see Paragraph 345 of ZPO). However, the debtor has limited rights to submit a judicial review. In accordance with Paragraph 514 (2) of ZPO, he may base his judicial review on the fact that his absence in the court hearing did not occur due to his negligence. General judicial review permissibility limitations (see Paragraph 511 (2) of ZPO) are not applied. A judicial review is submitted in the form of a judicial review application to the appeal court. The term for the submission of a judicial review is one month; this is an emergency term defined by the law that is counted from the day when a full judgment has been issued, but not later than five months after the announcement of the judgment. Due to the reason that an emergency term has been defined in the law, the debtor may submit an application to return the proceedings in the previous stage in accordance with Paragraph 233 of ZPO if the debtor has missed the judicial review term without any fault on his part (see Ibid). b) Judgments in accordance with the materials of legal proceedings If the debtor does not arrive to oral hearing and the court does not adopt a default judgment, but upon the request of the creditor adopts a judgment in accordance with the materials of legal proceedings (for comparison: Paragraph 331 (2) of ZPO), the judgment may be challenged. In accordance with Paragraph 511 of ZPO, a judicial review is permissible if the sum of the claim exceeds EUR 600 or if the court of first instance allows judicial review of the judgment due to especially important reasons (Paragraph 511 (4) of ZPO). The aforementioned description must be taken into account in respect to the requirements of the form for the judicial review and the rights to request the return of the proceedings to the previous stage.
5.	**Estonia**	Under the circumstances referred to in Article 19 (1) of the Regulation in Estonia it is possible to submit applications referring to Article 203 of the Code of Civil Procedure or to submit an application regarding the elimination of a legal error in accordance with Article 372 and Article 373 of the Code of Civil Procedure.
6.	**Greece**	In cases when a debtor does not attend the court hearing due to belated summons or force majeure circumstances, for instance, unaffectable extraordinary circumstances, the review procedure of the judgment that has been certified as the European Enforcement Order is used by the court of origin in which the judgment has been announced. In other words, the appeal procedure for judgments adopted in absence in accordance with the Code of Civil Procedure (Article 495 and Article 501, as well as subsequent Articles).
7.	**Spain**	Review of a judgment in extraordinary circumstances defined in Article 19 of Regulation 805/2004 may be conducted upon a request of the person who does not fulfil the obligations by annulling the judgment (Article 501 of the Civil Procedure Act, Law 1/2000 of 7 January 2000).
8.	**France**	The review procedure as defined by Article 19 is a simple procedure that applies to the judgments of such court that has issued the initial enforcement order.
9.	**Ireland**	Provision 11 of Order No. 13 of the **Supreme Courts** determine that "When the final judgment has come into force in accordance with any of the provisions of the referred to order, the court, if it considers it necessary, has legal rights to change or postpone such judgment". Furthermore, Provision

		14 of Order No. 27 of the Supreme Courts states that "The court may postpone any default judgment in accordance with this order or any of these provisions due to costs or other reasons". Order No. 30 of the **Regional Court** determines that "Any of the parties against whom a default judgment has been taken due to absence or absence of the defender may file a claim to change or postpone the judgment." Further on in the text the judgment determines that "A judge may ...change or postpone the referred to judgment". Provision 3 of Order No. 45 of the **Regional Court** determines that "The party against whom a judgment has been taken may request the issue of an order that changes or postpones the referred to judgment". Further on in the text the order states that "The court may issue or refuse to issue the request to change or postpone the referred to judgment...".
10.	**Italy**	Simple and extraordinary review measures defined in Italian laws correspond to the review procedure specified in Article 19 (1) of the Regulation,
11.	**Cyprus**	[*Not indicated yet*]
12.	**Latvia**	In relation to the introduction of Article 19 (1) of the Regulation, no additional provisions in the national regulatory enactments were developed in Latvia, because provisions of the Civil Procedure Law correspond to it in Latvia. "Section 51. Renewal of Procedural Time Periods (1) Upon the application of a participant in the matter, the court shall renew procedural time periods regarding which there has been default, if the reasons for default are found justified. (2) In renewing a time period regarding which there has been default, the court shall at the same time allow the delayed procedural action to be carried out. Section 52. Extension of Procedural Time Periods The time periods determined by a court or a judge, may be extended pursuant to an application by a participant in the matter. Section 53. Procedures regarding Extension and Renewal of Procedural Time Periods An application regarding extension of a time period or renewal of delayed time period shall be submitted to the court where the delayed action had to be carried out. The latter is being decided at a court hearing by previously notifying the participant to the matter regarding the time and place of the court hearing. Absence of these persons is not an obstacle for the court to take a decision. (2) An application regarding renewal of a procedural time period shall be accompanied by documents required for the carrying out of the procedural action, and the grounds for renewal of the time period. (3) A time period specified by a judge may be extended by a judge sitting alone. (4) An ancillary complaint may be submitted regarding a refusal by a court or a judge to extend or renew a time period.[223] **[False information!!!]**

[223] **As it may be observed, this information provided by Latvia is false and should be replaced with information regarding Chapter 60.[1] of the Latvian CPL!** See also the abstract of the draft law No. 15/Lp10 "Amendments to the Civil Procedure Law", in Paragraph 2 of which it has been specified: "The possibility on the renewal of procedural time periods provided for in CPL (Section 51 of CPL) significantly differs from the judgment review procedure provided for in Regulation 805/2004, Regulation 1896/2006 and Regulation 861/2007. The main difference lies in the fact that in the case of time period renewal, judgment appeal and review of the judgment at cassation or appeal court is allowed. Meanwhile in case of recognising the review of a judgment as substantiated, the contested decision in accordance with

13.	**Lithuania**	We provide text of the respective law of the Republic of Lithuania, according to which Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (Official Gazette No 58 of 7 May 2005) (further in the text: "law") and Code of Civil Procedure of the Republic of Lithuania (Official Gazette No 36-1340 of 6 April 2002) (further in the text: "Code"). A judgment delivered in the absence of the defendant, which is based on a substantiated request of a person who is not present in the review of the matter and that has been submitted within a time period of 20 days from the moment a default judgment has been made, may be reviewed (in accordance with Article 78 of the Code, this 20 day period may be prolonged to persons who have not observed the referred to term due to reasons that are acknowledged by the court as convincing). After receipt of the application, the court sends it together with appendix copies to the parties and third persons involved in the matter, and informs that the involved parties are being requested and third parties are entitled to submit written considerations within a time period of fourteen days. The court reviews the application on written procedures within a time period of fourteen days, counting from the end of the submission term of considerations. If after the review of the application the court establishes that the involved party has not participated in the court hearing due to substantiated reasons about the occurrence of which it was not possible to inform the court in sufficient time, and the application applies to a testimony that might influence lawfulness of the default judgment, the court recalls the default judgment and reviews the matter repeatedly. If the matter is being reviewed in accordance with the documentary procedure (Chapter XXII of the Code), the court has the right to, in case of convincing reasons, prolong the time period granted to the defendant for the submission of objections in accordance with Article 430 (5) of the Code, as well as in cases if the matter is being reviewed in accordance with the provisions of Chapter XXIII of the Code (special features for cases relating to the issue of a court judgment) in case there are convincing reasons, the court may prolong the time period for the submission of objections in respect of a claim of the creditor in conformity with Article 439 (2) of the Code. Article 287 of the Code: "1. The party which does not participate in a court hearing has the right to submit an application regarding the review of a default judgment at a court, which has made the default judgment, within a time period of 20 days from the day the judgment has been adopted. 2. The following shall be specified in such application: 1) court in which the judgment has been made; 2) applicant; 3) circumstances due to which the applicant has not been present at the court hearing and has not informed the court regarding convincing reasons for absence at the specified day of the court hearing, including proof of such

Article 20 (3) of Regulation 1896/2006, as well as Article 18 (2) of Regulation 861/2007 must become invalid. Such procedural consequences are closer to Chapter 59 of CPL (Section 482, Paragraph two of CPL), not the consequences of the renewal of procedural time periods." Abstract available here: http://titania.saeima.lv/LIVS10/SaeimaLIVS10.nsf/webAll?OpenView&Count=30.

		circumstances; 4) circumstances that may influence the lawfulness and effectiveness of the judgment and proof of the referred to circumstances; 5) more detailed information regarding the claim of the applicant; 6) certifying documents attached to the application; and 7) signature of the applicant and date the application has been drawn up. 3. The amount of applications and copies of appendices submitted to the court shall correspond to the parties and third persons involved in the matter. 4. Errors in the application shall be eliminated in accordance with the procedures for the elimination of errors in claims. 5. If judicial reviews and application regarding the review of a default judgment are submitted in relation to the same matter, the application regarding default judgment and any court decisions in respect of the respective judgment shall be reviewed the first." Article 430 (5) of the Code: "If objections have been submitted after the term of twenty days or they do not conform to Paragraph 1 of the Article, the court shall refuse to accept them." A separate appeal may be submitted regarding such court order in which it has been refused to review objections. If the defendant does not observe time limits due to convincing reasons, the court may, upon request, prolong the submission term. Article 439 (2) of the Code: Objections of a debtor in respect of a claim of the creditor shall be submitted in written form within 20 days from the moment the debtor has received a notice regarding the court order. Objections correspond to the general content and procedure document requirements, except for the requirement to specify reasons. If due to convincing circumstances the debtor submits objections after the time period specified in the Article, upon the request of the debtor the court may prolong the time period for submission of objections. A separate appeal may be submitted regarding such court order in which it has been refused to review the objection submitted by the debtor. Article 78 (1) of the Code: "The time period may be prolonged for persons who have not observed the time period for submission defined by the law or determined by court due to reasons that are regarded by court as convincing."
14.	**Luxembourg**	Judgment review procedure in accordance with Article 19 (1) of the Regulation is being implemented in conformity with the provisions of the New Civil Procedure Code in respect of appeal procedures of civil and commercial matters.
15.	**Hungary**	Review of judgments on certification of the European Enforcement Orders is regulated by Chapter VIII of 1952 III Law of the Civil Procedure Code.
16.	**Malta**	Review measures have been described in Article 19 (1), and they are resolved by the Civil Court (First Hall) of Malta.
17.	**The Netherlands**	Review of a decision regarding uncontested claims in accordance with Article 19 of the Regulation may be applied in conformity with Article 8 of the European Enforcement Order Implementing Act. If in accordance with

		Article 8 (3) the order on review must be demanded by means of an application, Article 261 and subsequent Articles of the Code of Civil Procedure shall be applicable. **Article 8 of the European Enforcement Order Implementing Act** 1. In respect of decisions on uncontested claims to which the referred to Regulation applies, the creditor may request the court, which has delivered the order, to review the matter as specified in Article 19 (1) (a) and (b) of the Regulation. 2. If the application on review applies to a judgment, it must be submitted as an application of judicial review in accordance with Article 146 of the Code of Civil Procedure. 3. If the application on review applies to the overall decision, it must be drawn up as a simple submission. 4. Applications must be submitted: a) within a time period of four weeks after the notification of the decision to the debtor in cases that cover the criteria defined in Article 19 (1) (a) of the Regulation; b) within a time period of four weeks as soon as justifying circumstances no longer exist in cases that cover the criteria defined in Article 19 (1) (b) of the Regulation applies;
18.	**Austria**	If corresponding documents are dully issued: <u>an application regarding the renewal of the previous condition</u> if the time period for the submission of the application on appeal of the sustained claim has been missed or the court hearing of the review of the case has not been attended; If the documents have not been dully issued: <u>an application regarding the issue of a decision anew</u> (if the decision has been adopted in a single-stage procedure as a payment order or an order to pay a promissory note), <u>appeal of the decision</u> (in case of default judgments), <u>contest of a decision</u> (in respect of default decisions).
19.	**Poland**	Review procedure: exemption from the submission of appeals in accordance with Articles 168-172 of the Code of Civil Procedure. **"Article 168 (1).** If any of the parties without the fault of their own have not managed to submit the application within the specified period of time, the court shall prolong the submission term. The court may adopt the decision at a closed court hearing. § 2. The exemption is not intended if unfavourable procedural consequences are caused to any of the parties in the delayed period. **Article 169 (1).** A letter with an application regarding exemption shall be submitted to court where the matter had to be reviewed, submitting it within a week after the circumstances that caused non-observance of terms are no longer in force. **Article 169 (2).** Reasons for application must be substantiated in the letter. **Article 169 (3).** The party must act after the submission of the application. **Article 169 (4).** After a year has passed after the end of the term, an exemption may be permissible only in extraordinary circumstances. **Section 172.** An application sent to the court regarding exemption from the defined term does not yet provide for the commencement of review or enforcement of a judgment. However, taking into account the circumstances, the court may suspend proceedings or enforcement of the judgment. The court may adopt the decision at a closed court hearing. If the application has been accepted, the court my review the matter immediately."
20.	**Portugal**	Review procedure referred to in Article 19 (1) (a) of the Regulation has been incorporated in Article 771 (e) of the Code of Civil Procedure. Review procedure referred to in Article 19 (1) (b) of the Regulation has been incorporated in Article 146 of the Code of Civil Procedure.

21.	**Romania**	In accordance with the regulatory enactments of Romania, review procedures referred to in Article 19 (1) of the Regulation are review in normal procedure and extraordinary review.
22.	**Slovakia**	In conformity with Article 19 (1) (a) of the Regulation, courts of Slovakia are entitled to verify judgments in accordance with Articles 201-243 (j) of the Code of Civil Procedure. Therefore in conformity with Article 19 (1) (a) of the Regulation, courts of Slovakia are entitled to verify judgments in accordance with Article 58 of the Code of Civil Procedure (exemption from time period limitation).
23.	**Slovenia**	In Slovenia — review of a judgment in accordance with Articles 394-405 of the Code of Civil Procedure Law (*obnova postopka po členih 394 - 405 Zakona o pravdnem postopku*).
24.	**Finland**	In accordance with Article 12 (1) of the Regulation, minimum standards referred to in Chapter III are applicable also to default decisions made in conformity with Article 3 (1) (b) and (c). In accordance with Article 12 (2), Chapter III shall be applicable if a default judgment was announced in the appeal court. If a default judgment has been made in circumstances that conform to Article 3 (1) (b) and (c), in definite circumstances the debtor has the right to demand the review of a judgment in accordance with Article 19 (1) to certify the judgment as the European Enforcement Order. In Finland due to passiveness of the debtor a default judgment was adopted at a regional court. In accordance with Section 12 (15) of the Code of Civil Procedure, the debtor has the right to demand a repeated review of the matter within a time period of 30 days from the day a certification of the judgment was received. In order to apply the referred to provision, it is not important whether the debtor is aware of the default judgment. Limitation of the thirty-day period does not come into force until the moment when a default judgment has been issued to the debtor. Therefore the referred to provision is broader than the minimum standard referred to in Article 19. Furthermore, in Chapter 31 of the Code of Civil Procedure types of extraordinary appeal are possible to default judgments, including Paragraph 1 — claim that is based on a procedural error and Section 7 — application on annulment that is based on a significant error. Besides, types of extraordinary appeal referred to in Section 17, Chapter 31 of the Code of Civil Procedure are available to restore the term.
25.	**Sweden**	An application for review may be submitted according to the procedures of an appeal in accordance with Chapter 50, Section 1 of the Code of Judicial Procedure as an application for the review of the matter anew in accordance with Chapter 44, Section 9 of the Code of Judicial Procedure, as an application for the review of the matter anew in accordance with Chapter 59, Section 1 of the Act (1990:746) on payment orders and assistance (Article 19 of the Regulation on uncontested claims of European Enforcement Orders). **"Chapter 50, Section 1 of the Code of Judicial Procedure** A party desiring to appeal from a district court judgment in a civil case shall do so in writing. The appeal paper shall be delivered to the district court. It shall have been received by the court within three weeks from the pronouncement of the judgment. **Chapter 44, Section 9 of the Code of Judicial Procedure** A party against whom a judgment by default has been entered may apply for reopening of the case at the court in which the action was instituted within one month from the date on which the judgment was served upon him. If reopening is not applied for, the judgment may not be attacked to the extent that it is against the party in default.

		An application for reopening shall be submitted in writing. If the default judgment was entered during the preparation, the application ought to contain everything necessary to complete the preparation by the applicant. **Chapter 58, Section 11 of the Code of Judicial Procedure** If a person has missed the time applicable to appeal against a judgment or decision or for reopening or reinstatement, and if he had legal excuse, on application by him the expired time may be restored. **Chapter 59, Section 1 of the Code of Judicial Procedure** A judgment that has entered into final force shall be set aside for grave procedural errors on appeal by the person whose legal rights the judgment concerns: 1. if the case was entertained although a procedural impediment existed that a superior court is obliged to notice on its own volition, 2. if the judgment was given against someone who was not properly summoned nor did appear in the case, or if the rights of a person who was not a party to the action are adversely affected by the judgment, 3. if the judgment is so vague or incomplete that the court's adjudication on the merits cannot be ascertained therefrom, or 4. if another grave procedural error occurred in the course of the proceedings that can be assumed to have affected the outcome of the case. An appeal for relief for a grave procedural error pursuant to paragraph 1, clause 4, founded on a circumstance not previously invoked to in the case shall be dismissed unless the appellant shows probable cause that he was unable to invoke the circumstance in the proceedings or otherwise had a valid excuse for failing to do so. **Section 52 of Act (1990:746) on payment orders and assistance** If the defendant is not satisfied with the judgment in the matter regarding a payment order or common assistance, he may request restoration of legal proceedings."
26.	**United Kingdom**	**England and Wales** Rules of the courts of England and Wales drafted in accordance with 1997 Civil Procedure Act will be used for the implementation of the referred to Regulation. The referred to court rules are known as Civil Procedure Rules and have been and have been adopted in accordance with subordinate regulatory enactment. Article 19 (1) envisages that the debtor must have the right to submit an appeal for the review of a judgment in circumstances when he has not received the document instituting the proceedings or he was prevented from objecting to the claim without any fault on his part. In accordance with Part 13 of the Civil Procedure Rules, the debtor is allowed to request the review of a judgment if it is provided for by circumstances referred to in Article 19. The latter defines the procedures for the preparation of an application for the postponement or change of a judgment. A judgment without the presence of a defendant may be obtained if the guilty party has not approved the receipt of summons and/or advocacy. In accordance with Part 13 of the Civil Procedure Rules, the debtor is allowed to request the review of a judgment if it is provided for by circumstances referred to in Article 19. The latter defines the procedures for the preparation of an application for the postponement or change of a judgment. Full version of Part 13 is available at: http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm There are no definite requirements for the preparation of an application for the postponement or change of a judgment. Usually applicants use Form N244

		(http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf). The requested procedure must be specified in the application and the request to postpone or change the judgment must be explained, for instance, the applicant has not duly received the procedure description to prepare for defence. Review of the application provides for a repeated review of the judgment. **Scotland** It is anticipated that court rules existing in Scotland both at the court of first instance (Sheriff Court) and supreme civil court (Court of Session) shall be applied to introduce the Regulation together with all necessary adjustments. The respective rules of the court of first instance (Sheriff Court) and supreme civil court (Court of Session) have been compiled further on. Full version of the rules and respective forms is available here: www.scotcourts.gov.uk. **Rules of the court of first instance (Sheriff Court)** Small claims Small Claims Rules of 2000 regulate procedures in matters in which the amount of the claim does not exceed GBP 750. Review of a judgment: There exist three types of reviews — withdrawal of a decision, appeal and request to change etc. a judgment. In accordance with 21.10 rule, any of the parties may request to change, cancel or cease a judgment, or suspend the enforcement of a judgment, shortly mentioning the reasons for the application beforehand. In accordance with 22.1 rule, any of the parties may submit an application regarding recalling of a judgment by submitting protocol of form No. 20, explaining the absence of the party and mentioning the offered defence. In accordance with 23.1 rule, a party may submit an appeal on the basis of form No. 21 to the sheriff principal not later than 14 days after the final judgment, which includes a claim regarding the substance of the matter and legal basis for the appeal. In accordance with 23.4 rule, an application regarding a permit on the postponement of a judgment in respect of the repayment period or any other related order, specifying the legal basis of the appeal, may be submitted by using form No. 22. If a permit for the postponement of enforcement is granted, the application shall be submitted by using form No. 23. Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) www.scotcourts.gov.uk, www.scotcourts.gov.uk/sheriff/small_claims/index.asp and section provided for in the law on small claims (Act of Sederunt). Forms are available in next chapter. Simplified procedure Simplified Procedure Rules of 2000 regulate procedures in matters in which the amount of the claim is within the limits of GBP 750 and GBP 1500. Review of a judgment:

		There exist three types of reviews — withdrawal of a decision, appeal and request to change etc. a judgment. Furthermore, these are special riles for an appeal in respect of the enforcement of a judgment on repayment of means. In accordance with 24.1 rule, any of the parties may submit an application regarding recalling of a judgment by submitting protocol of form No. 30, explaining the absence of the party and mentioning the offered defence. In accordance with 25.1 rule, a party may submit an appeal on the basis of form No. 31 to the sheriff principal not later than 14 days after making the final judgment, which includes a claim regarding the substance of the matter and legal basis for the appeal. In accordance with 25.4 rule, an application regarding a permit on the postponement of a judgment in respect of the repayment period or any other related order to be executed by using form No. 32 and where the legal basis of the appeal must be specified. If a permit for the postponement of enforcement is granted, the application shall be submitted by using form No. 33. Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) www.scotcourts.gov.uk, www.scotcourts.gov.uk/sheriff/summary_cause/index.asp and section provided for in the law on small claims (Act of Sederunt). Forms are available in next chapter. <u>Normal procedure</u> Normal Procedure Rules of 1993 regulate procedures in matters in which the amount of the claim exceeds GBP 1500. Review of a judgment: There exist two types of appeal methods at sheriff principal and Court of Session, as well as reponding procedure. In accordance with 8.1 rule, the defendant may submit an application regarding recalling of a judgment by submitting a reponding note, explaining the absence of the party and mentioning the offered defence. Such application does not require a specific form; however, usually it is completed in Initial Writ style (form G1). If consent has been received, further on the procedure is organised as if the defendant would have submitted a report on the intention of defence. Section 93 of the 1907 law on Sheriff Court determines that the appeal may be submitted by writing it on the form of the main partner or a separate form. Normal Procedure Rules 31.1 and 31.2 specify the time limits. Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) www.scotcourts.gov.uk, www.scotcourts.gov.uk/library/rules/ordinarycause/index.asp and section provided for in the law on small claims (Act of Sederunt). **1994 Court of Session Rules** Review of a judgment: In accordance with rule 19.2, the defendant may submit an application

		regarding a claim on recalling a judgment, at the same time submitting defence arguments in the respective matter. Review of the matter shall be continued as if the arguments would have been submitted on time. Full version of the rules is available on the homepage, section of the Court of Session www.scotcourts.gov.uk, www.scotcourts.gov.uk/session/rules/index.asp **Northern Ireland** It is anticipated that the existing court rules of Northern Ireland shall be used for the introduction of the referred to Regulation. The referred to rules are known as Rules of the Supreme Court (Northern Ireland) 1980 (adopted in accordance with Judicature (Northern Ireland) Act 1978 and they regulate the procedures in the Supreme Court of Northern Ireland) and the Magistrates' Courts (Northern Ireland) Order 1981 (adopted in accordance with Magistrates' Courts (Northern Ireland) Act 1980 and Civil Evidence (Northern Ireland) Order 1997 and regulatory procedures at Magistrates' Courts). Most important parts of these rules are specified in appendix. Article 19 (1) envisages that the debtor must have the right to submit an appeal for the review of a judgment in circumstances when he has not received the document instituting the proceedings or he was prevented from objecting to the claim without any fault on his part. Order 13, Rule 8 of 1980 Supreme Court of Northern Ireland allow the debtor to submit to the court an appeal regarding the postponement or change of a default judgment. Even though there is not specific application form, overall it may be submitted in the form of summons or written testimony in accordance with the procedure provided for in Order 32, using form No. 28 in appendix A to the rules. Furthermore, Order 12, Rule 12 of 1981 Magistrates' Court does allows the debtor to submit exactly such application of an appeal to the Magistrates' Court. Due to the reason there are no specific requirements regarding the use of the form, the application may be submitted with a notice regarding moving and a certifying written testimony in accordance with Order 14 and using the general form No. 1 and No. 2 as defined in supplement No. 1 to the rules. Both courts postpone or change the judgment according to their own discretion, and there are no rules that would define the execution thereof. **Gibraltar** In accordance with the rules of the Supreme Court of Gibraltar, Rules of the courts of England and Wales are in force in Gibraltar. Rules of the courts of England and Wales drafted in accordance with 1997 Civil Procedure Act will be used for the implementation of the referred to Regulation. The referred to court rules are known as Civil Procedure Rules and have been and have been adopted in accordance with subordinate regulatory enactment. Article 19 (1) envisages that the debtor must have the right to submit an appeal for the review of a judgment in circumstances when he has not received the document instituting the proceedings or he was prevented from objecting to the claim without any fault on his part. In accordance with Part 13 of the Civil Procedure Rules, the debtor is allowed to request the review of a judgment if it is provided for by circumstances referred to in Article 19. The latter defines the procedures for the preparation of an application for the postponement or change of a judgment. A judgment without the presence of a defendant may be obtained if the guilty party has not approved the receipt of summons and/or advocacy. Full version of Part 13 is available at:

		http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm No specific requirements have been defined for the preparation of an application on the postponement or change of a judgment. Usually applicants use Form N244 (http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf). The requested procedure must be specified in the application and the request to postpone or change the judgment must be explained, for instance, the applicant has not duly received the procedure description to prepare for defence. Review of the application provides for a repeated review of the judgment.

198. The application of adjudication must obligatory specify specific circumstances that are on the basis of the review and that have been listed in Article 19 (1) of Regulation 805/2004. No State fee has to be paid for the submission of such application to the competent court of Latvia. In Latvia an application regarding review of adjudication shall be adjudicated by written procedure (See Section 485.[2] of CPL).

199. Basis of review of a judgement which has been certified as EEO — lack of provision to the debtor of due information. From the **Article 19 (1) (a)** (i) of the Regulation 805/2004 it follows that *the document instituting the proceedings* or an equivalent document or, where applicable, *the summons to a court hearing*, shall be served by one of the methods provided for in Article 14 of the Regulation (without proof of receipt). If the aforementioned documents have been served by one of the methods provided for in Article 13 (with proof or receipt), review procedure will not be able to be initiated, based on the Article 19 (1) (a) of the Regulation. Here it should be stated that also within the framework of methods of service as stipulated by the Article 13 of the Regulation (with proof of receipt), the documents can be served to the debtor late. Therefore, law specifies two types of solutions for this issue: 1) according to analogy, to apply Article 19 (1) (a) of the Regulation; or 2) to relate the aforementioned situation to Article 19 (1) (b) of the Regulation by reading it into the general clause "extraordinary circumstances", accordingly.[224]

200. Article 19 (1) (a) (ii) of the Regulation states: "service 1) was not effected in sufficient time 2) to enable him [debtor] to arrange for his defence, 3) without any fault on his part." It should be mentioned that legal norms of the Regulation 805/2004, that are dedicated to the minimum standards for proceedings (Articles 13, 14), do not point to due service of documents. Requirement of sufficient time is only present in Article 19 of the Regulation. The notion "**without any fault on his [debtor's] part**" will have to be assessed by the court for each separate case individually.

201. Just like in the event of applying Article 19 (1) (b) of the Regulation, also Article 19 (1) (a) of the Regulation provides that the debtor has to act promptly to initiate a review procedure.

[224] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 19 EG-VollstrTitelVO (Pabst S.), S. 158; Rauscher, T. Die Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg: Sellier, 2004, S. 62.

202. According to **Article 19 (1) (b)** of the Regulation 805/2004, the debtor may submit an application for review also in case the debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on the part of the debtor. In such case the debtor shall have to submit an application for review promptly. The term "**promptly**" has to be interpreted autonomously, and not by applying any of the interpretations or even terms set by the law of the forum.

203. Article 19 (1) (b) of the Regulation 805/2004 includes all those cases where the fault on the part of the debtor regarding promptly objection to the claim cannot be established. Such cases should also include situations where the debtor has been serviced documents in a language not understood by him, without explaining his right to object to service of such documents. Therefore **the legislator of the EU should consider the possibility to include clear principle of familiar language in the minimum standards for proceedings.**

204. The notion "**prevented from objecting to the claim**" inter alia, should be interpreted through the understanding of Article 3 (1) of the Regulation 805/2004. The aforementioned notion will include:

- **204.1.** cases where the due date for arranging for the defence has been missed;
- **204.2.** situations indicated by Article 3 (1) (c) of the Regulation where the debtor has missed the day of court hearing and has therefore not appeared at the court hearing regarding, and has therefore not continued objecting to the claim during the hearing.[225]

205. Legal consequences of hearing of an application for review. Article 19 of the Regulation 805/2004 does not provide for the legal consequences arising in case the court satisfies or refuses the application for review. According to the **Section 485^3 of the CPL**, a Latvian court examining application for review of adjudication has the undermentioned opportunities.

206. If the court determines that there are circumstances for review of adjudication (that has been certified as EEO), it **shall set aside** the appealed adjudication in full **and refer the matter for re-adjudication** in a first instance court. An ancillary complaint may be submitted regarding this decision of the court (Section 485^3 Paragraphs two and four of the CPL). Apparently, if an adjudication (which had been certified as EEO) is set aside, also the approval of EEO loses effect retroactively[226] (i.e., it loses effect from the moment it had been issued, and not from the moment of coming into effect of the decision of the review instance court). Possibly, **the legislator of the Republic of Latvia should explicitly state in Chapter 60^1 of the CPL what happens not only with the**

[225] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 19 EG-VollstrTitelVO (Pabst S.), S. 158; Rauscher T. Die Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg: Sellier, 2004, S. 63.

[226] D'Avout, L. La circulation automatique des titres exécutoires imposée par le règlement 805/2004 du 21 avril 2004. *Revue critique du droit international privé*. n° 1 (janvier-mars), 2006, p. 38.

judgement, but also with the approval of EEO (Appendix I to the Regulation), taking into account also Article 6 (2) of the Regulation 805/2004.

207. In cases when the execution of EEO in the territory of Latvia *has already been performed*, Section 635 Paragraph five of the CPL provides for **reversal of execution** of the judgement (which has been certified as EEO).[227] Problems will arise in case the EEO has already been executed in *another* Member State (not Latvia, which has issued the EEO and is examining the application for review). **The legislator of the EU should solve such situations autonomously in the Regulation 805/2004 by providing a special standard form in the case of reversal of execution.** Currently this issue of reversal of execution has been left in the competence of the national laws of the Member States.

208. At the moment, the only solution regarding the approval of EEO (Appendix I to the Regulation) can be found in concurrent application of **Article 6 (2)** of the Regulation 805/2004, namely, *where a judgement certified as a EEO has ceased to be enforceable*, a certificate of lack or limitation of enforceability shall, upon application at any time to the court *of origin*, be issued, using the standard form in Appendix IV. According to the Section 541[1] Paragraph four of the CPL, the standard form mentioned in the Article 6 (2) of the Regulation 805/2004 shall be drawn up by the court upon the request of a participant in the matter[228]. The standard form in Appendix IV drawn up by the Latvian court will be sent for further execution to the Member State of *enforcement* of EEO.

209. If the enforcement has not been performed yet, the debtor, who has submitted an application for review in the Member State of *origin* of EEO, has the right to request the court of the Member State of *enforcement* to stay or limit the enforcement of EEO (see Article 23 of the Regulation) for the period while the court of the Member State of *origin* examines the issue of review of judgement.

210. If the court recognises that circumstances indicated in the application cannot be regarded as circumstances for review of adjudication, it shall **refuse the application**. An ancillary complaint may be submitted regarding this decision of the court (Section 485[3] Paragraphs three and four of the CPL).

211. From the Section 485[3] Paragraphs one, three, and four of the CPL, it is **not clear**:

211.1. *at which moment decision of the Latvian court comes into force in an review case?* From Section 442 Paragraph one of the CPL it follows that if the debtor lives in Latvia, decision comes into force after the period of 10 days for submitting an appeal has ended. But if the debtor lives in another EU Member State, the adjudication comes into force after the period of 15 days for submitting an ancillary complaint has ended (see Section 442 Paragraph one [1] of the CPL). If

[227] An issue regarding reversal of execution of the EOPP shall be decided by the court which upon setting aside of the EOPP re-adjudicates the matter (see Section 635 Paragraph five of the CPL).

[228] According to Article 6 (2) of the Regulation 805/2004, such application may only be submitted by the **debtor**.

a court of higher instance satisfies the application of the debtor and sets aside the judgement, no special problems arise. But if the court has refused the application of the debtor, the judgement remains in force.

211.2. *does the court send the decision not only to the debtor, but also to the plaintiff?* From the Section 231 Paragraph two of the CPL it follows, that decision has to be sent only to the person to which it relates. Apparently, here both the debtor, and the plaintiff are meant.

211.3. *from which moment the court decision becomes enforceable?* From the moment the period for submitting ancillary complaint, as stipulated by the Section 442 of the CPL, has ended.

1.8. Certification of the enforceable document as EEO

1.8.1. Issuing of EEO certification to judgements

1.8.1.1. Request and standard form in the Appendix I

212. According to Section 541[1] Paragraph one of the CPL, the creditor has to prepare a written request on drawing up an EEO. This request has to be submitted to the court in which the matter is located at that moment. Neither Regulation 805/2004, nor the CPL set a specific form of the request; however, it is suggested to draw it up so that the court can establish whether the Regulation 805/2004 is at all applicable to this case, including by providing information whether the decision has entered into force, but if it has to be enforced immediately, information on when was it given, as well as to indicate information certifying that the scope (from the point of view substantive matter, geographical application, and application in time) of the Regulation includes the case and that the judgement has been made regarding and uncontested claim. If only partial EEO can be issued, the creditor has to indicated this in the request.

213. Upon receiving the request, the court takes a decision regarding the issuing of EEO (satisfies the request) or non-issuing thereof (refuses the request). If the court establishes that all minimum procedural standards have been complied to, it shall issue EEO by using the standard form in the Appendix I to the Regulation, according to Article 9 (1) of the Regulation 805/2004. This standard form can be easily drawn up in the European Judicial Atlas in Civil Matters.[229] According to Article 9 (1) of the Regulation, the Latvian court shall issue the EEO in the language of the judgement, namely, Latvian.

214. Member State of origin (Article 4 (4) of the Regulation) of the judgement is indicated at Paragraph 1 of the certificate, but at Paragraphs 2 and 3 — the court that issues the EEO certificate and has made the judgement, as well as contact information of

[229] The European Judicial Atlas in Civil Matters can be found at: *http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm*.

the court. The information required by Paragraphs 2 and 3 will usually match. At Paragraph 4 the main information on the judgement is indicated, i.e., date when was it made, case number, as well as parties to the case.

215. A detailed description on the claim has to be included at Column 5 of the form — both the principal and the procedure and term of payments have to be indicated, as well as interest rate or other costs (fees, costs related to court proceedings) indicated in the judgement. If the judgement is to be enforced in the Member State of origin, a click has to be made in the box next to Paragraph 6, but if the judgement can still be appealed, it has to be indicated in Paragraph 7. The next paragraphs include important information on the case in which the judgement has been made: whether the claim is uncontested (Paragraphs 8 and 9), whether it has been made a consumer contract (Paragraph 10). But information on whether all minimum procedural standards for uncontested claims have been complied with has to be indicated in Paragraphs 11 to 13.

216. At the end of the form of EEO certificate, the place and date of drawing up the certificate has to be indicated and certified by seal and signature.

1.8.1.2. Language of EEO

217. As mentioned before in this Study, although Regulation 805/2004 does not explicitly state in which language the documents instituting the proceedings or summons to a court hearing have to be made, but Article 9 (2) clearly indicates that **EEO has to be issued in the language** in which the judgement has been made. Consequently, according to Section 541[1] Paragraph one of the CPL, EEO in Latvia shall be drawn up by court in Latvian.

218. However, **by submitting EEO for enforcement** to the competent authorities of the Member State of enforcement, translation of EEO into the official language of the Member State of enforcement, according to Article 20 (2) (b) of the Regulation has to be submitted. If there are several official languages in that Member State, the EEO has to be submitted in the official language of court proceedings of the place where enforcement is sought. In Latvia that is only Latvian language.

219. According to Article 30 (1) (b) of the Regulation, Member States may also notify of any other language accepted for drawing up the certificate. Separate Member States have notified that they accept EEO also in other languages, [230] for example:

The Czech Republic: Czech, German, and English	**Hungary**: Hungarian and English
Estonia: Estonian and English	**The Netherlands**: Dutch, or any other language mastered by the debtor
France: French, English, German, Italian, and Spanish	**Sweden**: Swedish and English
Luxembourg: French, Luxembourgian, and	**Finland**: Finnish, Swedish, English

[230] See the current information in the European Judicial Atlas in Civil Matters, available: http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm.

German	

220. So, when submitting EEO for enforcement in Estonia, it can also be submitted in English.

221. According to the Regulation, only EEO has to be translated, but the other documents do not have to be translated. Translation of EEO has to be certified in the procedure as set by the national legal norms of the Member State. For example, in Latvia the translation should be certified pursuant to the Cabinet Regulation "Procedures for the Certification of Document Translations in the Official Language"[231], although it must be said that these regulations are very general. Currently it is not defined explicitly enough, what persons can be translators; moreover, translation of legal documents has its own specifics that cannot be mastered by all translators.

1.8.1.3. Problem of servicing EEO to the debtor

222. **Article 9** of the Regulation 805/2004 sets only that:

> *1) the EEO certificate shall be issued using the standard form in Appendix I; and*
> *2) the EEO shall be issued in the language of the judgement (court settlement or an authentic instrument).*

223. Regulation 805/2004 does not provide for a procedure to whom and how EEO certificate has to be sent (or serviced). Unless national laws of Member States do not explicitly provide for service of EEO to the debtor, the EEO certificate to the debtor is not serviced (or sent). However, it should be reminded that according to Article 6 (1) of the ECHR, EEO certificate should be serviced to the debtor latest until commencement of compulsory execution.[232]

224. Section 541[1] Paragraph one of the CPL of Latvia does not stipulate that an EEO certificate issued in Latvia should also be issued to the debtor.

225. If an EEO issued in another EU Member State is submitted for enforcement in Latvia, then pursuant to Section 555 Paragraph one of the CPL of Latvia, a bailiff, when about to commence execution, shall notify the debtor by sending or issuing a notification (but not EEO!) regarding a duty to execute the adjudication within 10 days.

226. In order for the debtor to use the right provided by Regulation 805/2004 to defend oneself against EEO, the debtor has to have an opportunity to receive an EEO certificate. Currently this is not provided neither by Regulation 805/2004, nor by the CPL of Latvia.

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[231] Cabinet Regulation No. 291 “Procedures for the Certification of Document Translations in the Official Language"*Latvian Herald*, No. 302, 29.08.2000

[232] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 9 EG-VollstrTitelVO (Pabst S.), S. 102.

1.8.1.4. Service of EEO to the creditor

227. Neither Article 9 (1), nor Article 20 of the Regulation states explicitly that EEO certificate has to be issued to the creditor. However, from Article 20 (2) (b) of the Regulation it can be concluded that EEO (or a copy thereof which satisfies the conditions necessary to establish its authenticity) has to be issued to the creditor. Otherwise the creditor is not able to fulfil the requirement of Article 20 (2) of the Regulation that the creditor is required to provide the competent enforcement authorities of the Member State of enforcement, inter alia, with copy of EEO certificate which satisfies the conditions necessary to establish its authenticity.

228. Pursuant to Section 541.[1] Paragraph one of the CPL of Latvia, a Latvian court shall draw up an EEO on the basis of request from the creditor. This means that this drawn-up EEO shall be issued to the creditor. Since EEO is an enforcement title in Latvia (right next to national execution documents — see Section 540 Paragraph one Clause 7 of the CPL), according to analogy Section 541 Paragraph three, which explicitly states that a writ of execution *shall be issued to judgement creditor* at his or her written request, can also be applied. Possibly, it should also be specified in Section 541.[1] of the CPL.

229. In the context of EEO, the creditor shall have the opportunity to receive several copies of EEO certificate for submitting them for enforcement in different EU Member States. Section 541.[1] of the CPL of Latvia should clearly provide for such an opportunity.

1.8.1.5. Problem of challenging refusal to issue EEO certificate

230. Certifying a decision as EEO in the Member State of origin is performed by a unilateral procedure (without participation of parties) and **cannot be appealed** (see Article 10 (4) of the Regulation 805/2004, as well as Section 541[1] Paragraph one of the CPL of Latvia). It means that the creditor (and not only the debtor) has no opportunity to appeal certification of a decision as EEO. However, in separate cases Member States in their national legal acts can provide for procedure as to how the creditor should act if the court has left the application regarding certifying a decision as EEO **not proceeded with** due to some errors.[233] A solution in Latvia could be similar to leaving statement of a claim not proceeded with, if the judge takes a reasoned decision, which can be appealed and which does not pose obstacles to the submitter to submit a similar statement after the deficiencies have been rectified (see Section 133 of the CPL). Unfortunately, the CPL

[233] See: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 197.

does not stipulate anything like that in relation to EEO.[234] It is not even stated that a Latvian court could have a possibility to leave an application (request) on certifying a decision as EEO not proceeded with (see Section 541.[1] Paragraphs one and six of the CPL). It is also not regulated what information should be included in the application (request) of the creditor on certifying a decision as EEO.[235] These, however, are not regarded material drawbacks, since they can be resolved by using analogy of legal norms and systematic interpretation.

231. If the debtor has appealed a **decision** that has been certified as EEO or has applied for the **rectification** or **recall** of EEO certification pursuant to Article 10 of the Regulation in the Member State of origin of the decision, then the competent court of the *Member State of enforcement* (not the Member State of origin!) may, upon application by the debtor, **limit the enforcement proceedings** to protective measures, in such case the enforcement id allowed by applying any of measures securing execution, or under exceptional circumstances, **stay the enforcement proceedings** (see Article 23 of the Regulation 805/2004 and Section 644.[2] of the CPL). The mentioned measures shall also be applied in cases provided for by Article 19 of the Regulation 805/2004.

232. If court where the request on issuing of EEO has been submitted **refuses issuing thereof**, such court decision can be appealed if provided for by the law of the forum. Pursuant to Section 541[1] Paragraphs six and seven of the CPL of Latvia, such court decision can be appealed in Latvia — an ancillary complaint may be submitted regarding it. In addition, decision on refusal has to be reasoned.

233. Concerning the **time period** for submitting ancillary complaint, it shall be established pursuant to Section 442 of the CPL, i.e., 10 or 15 days accordingly.

234. Upon submitting an ancillary complaint, a **state fee** in the amount of 20 lats shall be paid (see Section 34 Paragraph five of the CPL).

1.8.1.6. Repeated submission of application for issuing of EEO certificate

235. According to the first sentence of **Article 6 (1)** of the Regulation 805/2004:

> *A judgement on an uncontested claim delivered in a Member State shall, upon application to the court of origin [..].*

236. It is not seen in the Latvian text of the Regulation; however, in texts in languages of other EU Member States it says: "[..] upon application **at any time**" (English — *upon*

[234] It is, however, stipulated regarding the European order for payment (Regulation 1896/2006), see Section 131 Paragraph two of the CPL.

[235] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p.112, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

application <u>*at any time*</u>; German — *auf* <u>*jederzeitigen*</u> *Antrag*; French — *sur demande adressée* <u>*à tout moment*</u>). And that means that application on issuing EEO certificate can be submitted by the creditor to the court at any time — and also repeatedly.

237. However, national laws of Member States may limit possibilities of such repeated submission of applications.[236] The CPL of Latvia does not provide for such clear and explicit restriction. Pursuant to Section 541[1] Paragraphs six and seven of the CPL, the court shall take a reasoned decision on refusal to issue EEO, an ancillary complaint may be submitted regarding it. That means that in case issuing of EEO is refused, the creditor must use the possibility of submitting an ancillary complaint and not submit a repeated application for issuing of EEO certificate.

1.8.2. Issuing of EEO certificate for court settlements and authentic instruments

1.8.2.1. <u>For court settlements</u>

238. Previously this Study established that the Regulation 805/2004 defines notions "court settlements" (§ 67 and further) and "authentic instruments" (§ 71 and further). EEO can give these court settlements and authentic instruments the force of an enforcement title.[237]

239. The Brussels I Regulation provides for a mechanism for declaring both authentic instruments, and court settlements to be enforceable in another Member State (Articles 57 and 58); however, according to the Heidelberg Report on the Application of Brussels I Regulation in the Member States (hereinafter —*Heidelberg Report*), the number of such cases is relatively small[238], and it was predicted that in the Brussels I Regulation the significance of these two articles would decrease upon starting to apply the Regulation 805/2004.[239]

240. As already mentioned in the sub-section "Court settlements" of this Study, in order to issue EEO certificate to **court settlements**, several preconditions have to be fulfilled, pursuant to Article 24 (1) of the Regulation 805/2004.

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[236] Rauscher, T. (Hrsg.). Europäischer Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 9 EG-VollstrTitelVO (Pabst S.), S. 103.

[237] For example, this is what differs EEO from legalisation or apostille, which provides formal confirmation of the authenticity of a document. See Convention Abolishing the Legalization of Documents Between the Member States of the European Communities. International agreement of the Republic of Latvia [2002] *Latvian Herald* No. 145, 09.10.2002; Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents. International agreement of the Republic of Latvia [1995] *Latvian Herald* No. 26, 18.02.1995.

[238] Report on the Application of Regulation Brussels I in the Member States , by B. Hess, T.Pfeiffer, P.Schlosser [2007] Study JLD/C4/2005/03, p. 277.

[239] Magnus, U., Mankowski, P. (ed), European Commentaries on Private International Law Brussels I. Regulation (2nd edn, SELP 2012), p. 798.

240.1. **The court settlement shall be on a specific sum of money and the due date has to be indicated in it** (Article 4 (2) of the Regulation).

240.2. **The court settlement shall be approved at court or concluded before a court**. Such a requirement in the Regulation gives a guarantee of certain control of the court settlement, thus allowing another Member State to trust such court settlement. In Latvia, approval of such court settlement will be possible pursuant to the Chapter 27 "Settlement" of the CPL and by following all the formalities laid down by this chapter. For example, court settlement shall be permitted at any stage in any civil dispute, except in cases provided for in Section 226 Paragraph three o the CPL, which almost matches the exceptions of the scope of the Regulation.[240]

240.3. **The claim must be within the scope of the Regulation 805/2004** (Article 2) and **the court settlement must be enforceable**. Regulations will not cover settlements approved by an arbitration, lawyers, or — currently — mediators. [241] However, Section 227 Paragraph three of the CPL stipulates that a court may confirm a settlement without the participation of the parties if the settlement has been certified by a notary and contains a statement by the parties that they are aware of the procedural consequences of the court confirming the settlement. Therefore, EEO in Latvia shall not be issued only on settlements certified by a notary and lacking court confirmation.

241. Court settlement shall be enforceable in the Member State of origin. The Member State of origin is defined in Article 4 (4) of the Regulation, i.e., it is the Member State in which the court settlement has been approved or concluded.

242. The court shall issue to the creditor the standard form in Appendix II to the Regulation. As mentioned before, court settlement shall be certified as EEO pursuant to Article 24 (1) and the standard form in Appendix II of the Regulation 805/2004. It must be noted that procedure of issuing EEO to judgements and court settlements is different. Standard form in Appendix II is shorter, since it does not contain the information indicated in the standard form in Appendix I on the enforceability of a judgement and documents serviced, etc. Thus, the debtor basically loses any basis for objections, since the refusals of enforcement, laid down in Article 21 of the Regulation, are only linked with judgements and are not applicable to court settlements. Namely, majority of court

[240] Section 226 Paragraph three of the CPL:

Settlement shall not be permitted: 1) in disputes in connection with amendments in registers of documents of civil status; 2) in disputes in connection with the inheritance rights of persons under guardianship or trusteeship; 3) in disputes regarding immovable property, if among the participants are persons whose rights to own or possess immovable property are restricted in accordance with procedures prescribed by law; or 4) if the terms of the settlement infringe on the rights of another person or on interests protected by law.

[241] Member States shall be able to provide for a special procedure for the court to declare the content of the settlement to be enforceable by a judgement, or decision, or authentic document in mediation procedures. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L 136/6, Article 6 (2).

settlements of the EU Member States are contractual in nature; therefore, in order to certify a court settlement as EEO, there are no requirements as to the minimum procedural standards and Article 6 (1) of the Regulation.

243. If the court has taken decision on certifying a court settlement pursuant to Section 228 of the CPL, then the creditor has to draw up a written request on drawing up an EEO to the court in which the matter is located at that moment, according to Section 541[1] Paragraph one of the CPL.[242]

244. By analysing the Latvian case law, it can be established that parties submit such requests both as submissions, and applications; however, the CPL stipulates that in such cases a request shall be submitted; therefore, it is suggested to use this term in future. Moreover, there are different methods for drawing up such requests — the interested parties provide a lengthy description of the whole procedure, but there are some expressing just the request. In drawing up such a request, the creditor should, however, state the main facts in order for the court to be able to determine whether the request goes in the scope of the Regulation, namely, one should indicate:

244.1. if the decision on certifying the court settlement has come into lawful effect, but in cases when the decision has to be executed without delay — when was the decision taken (Section 541[1] Paragraph one of the CPL);

244.2. if the decision taken falls into the scope of the Regulation;

244.3. why is it considered, that the claim is uncontested.

245. In order to make it easier for the court, also other information can be mentioned certainly that can be necessary to draw up the standard form in Appendix II of the Regulation.

246. Upon receiving the request, the court will first take a decision on satisfying or refusing it. In the event of positive answer, the court shall draw up the standard form in Appendix II of the Regulation.

247. Standard form in Appendix II, as well as all other standard forms can be drawn up in the European Judicial Atlas.[243] In the **Column 1** of the standard form the member State of origin has to be indicated pursuant to Article 4 (4) of the Regulation, namely, here the Member State in which the court settlement has been concluded must be mentioned. In the **Column 2**, the name and contact information of the court which has certified EEO must be given. But in the **Column 3**, the institution certifying the court settlement must be mentioned. Even if a settlement in Latvia has been certified by a notary, according to the Regulation and CPL it shall be certified by court; therefore, in Latvia this box will always bear the name of the court which has also issued EEO.

248. In the **Column 4** of the standard form, the information on the court settlement must be given: date of its certification, number, as well as parties and their contact

[242] The Regulation uses the term “application" (Article 24 (1)).
[243] The European Judicial Atlas in Civil Matters can be found at: *http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm*.

information. The amount of the claim — the principal in specific currency, and terms of payments must be given in the **Column 5**. Here also the interest rate, amount of costs, like, court fees and costs, as well as expenditures related to conducting of the matter if they have been included in the court settlement, must be indicated.

249. In the **Column 6**, it must be certified that the court settlement is enforceable in the Member State of origin. Finally, the date and place of drawing up the standard form must be shown, and it must be signed.

250. When drawing up the standard form in the European Judicial Atlas in Civil Matters, in the end it is transformed as a document to be submitted, which can be printed out and/or saved.

251. The number of copies depends on fact in how many Member States it is to be enforced.

1.8.2.2. For authentic instruments

252. In the sub-section "Authentic instruments" of this Study, explanation of the notion "authentic instrument" is provided. Article 25 (1) stipulates the procedure for submitting a request for certifying the **authentic instrument** as EEO. In this case, three conditions must be met cumulatively.

253. The authentic instrument is on an uncontested claim pursuant to Article 4 (2). There has to be an agreement concluded between the debtor and creditor where the debtor has recognised the claim by the creditor (meaning that there is an uncontested claim), and this document complies with the provisions of Article 4 (3) of the Regulation, i.e., the document has been formally drawn up or registered as an authentic instrument.

254. Since there are many and different such authorities in the Member States, then according to Article 30 (1) (c) of the Regulation, each Member State has to notify of the lists of these authorities. The list of these authorities is publicly available in the Atlas. Latvia currently has not notified of these authorities[244], just like Ireland, the United Kingdom, Northern Ireland, and Gibraltar. For example, in Belgium, France, Greece, Spain, Germany, Lithuania, Luxembourg, Austria, Slovenia, and Portugal they can be notaries. In Germany such authorities can be also Youth Welfare Office. However, in separate states, like Bulgaria, the Czech Republic, Estonia, Italy, Poland, etc. such document must be certified by a court.

255. Currently the Saeima of Latvia examines the draft law "Amendments to the Notariate Law" which is supplemented with Division D^1 "Notarial Deeds with Power of Authentic Instruments". The draft law provides for that a loan agreement that has been drawn up as a notarial deed and execution of which is not dependent on the existence of previously provable conditions shall be executed according to the procedure of execution

[244] The European Judicial Atlas in Civil Matters, available at: *http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_en.htm*.

of court judgements as stipulated by the CPL.[245] The draft law also states that a sworn notary upon request of the lender shall draw up EEO pursuant to the Regulation 805/2004.[246] Thus, in near future a notary will be able to draw up EEO for loan agreements that have concluded in the form of notarial deed. It most be noted that the annotation of the draft law does not state if the European Commission will be notified of the corresponding competence of the sworn notaries of Latvia pursuant to Article 30 (1) (c) of the Regulation 805/2004.[247] The draft law also does not provide for drawing up other kinds of agreements or settlements as authentic instruments in the sense of this Regulation, which, however, should be considered.

256. Although according to Section 540 Paragraph six of the CPL, an invoice issued by a sworn advocate is an execution document in Latvia, it is not an authentic instrument in the sense of the Regulation. Therefore, decisions of Latvian courts with which invoices issued by sworn advocates are certified as EEO will be wrong. It was previously mentioned in this Study, that one of Latvian courts has agreed with considerations of a creditor on the fact that "an invoice issued by an advocate is an authentic document according to Section 539 Paragraph two Clause 3 and Section 540 paragraph six of the CPL", in addition, "authentic instrument is defined in laws of the European Community and approved in the judgement by CJEU in the case of *Unibank*."[248] Similarly reasoned decision is in another matter regarding issuing of EEO.[249] It must be noted that until now these are the only matters where EEO have been issued on invoices issued by advocates, thus starting incorrect application of the Regulation in these issues.

257. **Firstly**, Latvia has not notified the European Commission of the authorities that could issue such authentic instruments in Latvia, pursuant to Article 30 (1) (c) of the Regulation. **Secondly**, also no other Member State has recognised advocates as persons authorised to issue authentic instruments in the sense of this Regulation. It must be mentioned, that in the CJEU judgement in the case of *Unibank*[250], the term "authentic instrument" was defined which was later partially adopted in this Regulation in question; namely, in order for an instrument to be authentic, it is necessary that it is issued by a state authority or another authority/official authorised by the Member State of origin.[251] In this case advocates are not authorised for that.

258. Second condition: **application on issuing of EEO must be submitted to the authority of the Member State of origin adopting the authentic instrument**.

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[245] Draft law "Amendments to the Notariate Law" VSS-453, TA-1414, examined by the Cabinet on 31.07.2012, Section 107^1, available at: http://mk.gov.lv/lv/mk/tap/?pid=40249389.

[246] Ibid, Section 107^3

[247] Initial impact assessment report (annotation) of the draft law "Amendments to the Notariate Law" VSS-453, TA-1414, examined by the Cabinet on 31.07.2012, Section 107^1, available at: http://mk.gov.lv/lv/mk/tap/?pid=40249389.

[248] Decision of 31.08.2010 in matter No. C30589310 by Riga City Vidzeme District Court [not published].

[249] Decision of 05.02.2010 in matter No. C30385610 by Riga City Vidzeme District Court [not published].

[250] 17 June 1999 ECJ judgement in the case: C-260/97 *Unibank v. Flemming G. Christensen*, ECR [1999], p. I-03715, paras. 15, 17, 18.

[251] Ibid, para 15.

Currently the procedure of certifying an authentic document in Latvia as EEO is not provided for neither by the CPL, neither by the Bar Act of the Republic of Latvia.[252]

259. Third condition: **standard form in Appendix III of the Regulation** must be issued. It is similar to the standard form in Appendix I. However, just like in standard form in Appendix II, the refusals of enforcement as stipulated in Article 21 of the Regulation are linked with judgements and will not be applied in the case of authentic instruments. It must be noted that according to Brussels I Regulation, an authentic document is allowed not to be not enforced if it is manifestly contrary to public policy (*ordre public*) of the Member State of enforcement. However, the Regulation 805/2004 does not provide for such a possibility of refusal or enforcement.

260. As already mentioned previously, within the framework of the Regulation, Latvia has not notified of the fact that notaries are authorised to issue EEO; therefore, currently authentic instruments cannot be approved as EEO in Latvia. Nevertheless, it should be noted that in another Member States it is possible. In such cases an application has to be drawn up to the authority which has issued this authentic instrument pursuant to Article 25 (1) of the Regulation. The mentioned authority shall take a decision on issuing or not issuing of EEO. In case of issuing, the authority shall draw up the EEO certification for authentic instrument, the standard form is in Appendix III to the Regulation.

261. Appendix III is similar to Appendix II, meaning that it can be drawn up similarly, like mentioned before (see § 242 of this Study). Namely, by providing all the necessary information on the authority issuing the certification, which has drawn up or registered the authentic instrument, as well as all information on the creditor, debtor, and the certified amount of the claim, etc.

1.8.3. Effect and non-appealability of EEO certification

262. Effect of EEO according to enforceability of judgement. According to Article 11 of the Regulation 805/2004, EEO certificate shall take effect only within the limits of the enforceability of the judgement.[253] On the notion of enforceability of judgement, please refer to the sub-section "Enforceability of judgement" (see § 116 and further) of this Study. This legal norm shall be understood as follows — a foreign judgement in the Member State of enforcement has the same enforceability as in the Member State of origin[254] (do not mistake with compulsory enforcement measures![255]).

[252] Bar Act of the Republic of Latvia of 27 April 1993. Law of the Republic of Latvia, *Ziņotājs*, No. 28, 19.08.1993

[253] Attention! Articles 5 and 11, as well as Article 6 (1) of the Regulation 805/2004 relate only to judgements, but not court settlements or authentic instruments (see Article 24 (3) and Article 25 (3) of the Regulation).

[254] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 11 EG-VollstrTitelVO (Pabst S.), S. 120.

So, for example, if judgement that has been certified as EEO states that it is to be enforced immediately, then this judgement will have to be enforced immediately also in the Member State of enforcement, even if laws of this Member State do not provide for immediate enforcement of such judgement.[256]

263. Decisions that have not yet *entered into force* also can be certified as EEO (see Article 4 (1), Article 6 (1) (a), and Article 6 (3) of the Regulation 805/2004). It is enough if the decision is enforceable in the Member State of origin (see Article 6 (1) (a) of the Regulation 805/2004). As it can bee seen, **the fact whether the decision is enforceable is determined according to the national laws of the Member State of origin** (see Article 6 (1) (a) of the Regulation 805/2004).[257] Thus, if the enforceability of a decision is modified or withdrawn, also the enforceability of EEO changes correspondingly.[258] This is also confirmed by the Article 6 (2) of the Regulation 805/2004 stating the following: "Where a judgement certified as a EEO has ceased to be enforceable or its enforceability has been suspended or limited, a certificate of lack or limitation of enforceability shall [..] be issued [..]". If decision certified as EEO lacks enforceability or if the enforceability has been withdrawn or limited (see also Article 11 of the Regulation), the court of the Member State of origin shall, upon application of the **debtor**[259] at any time, issue a **certificate** of **lack or limitation of enforceability**, by using the standard form in Appendix IV (see Article 6 (2) of the Regulation 805/2004, Section 541.[1] Paragraph four of the CPL of Latvia). Unfortunately, the CPL of Latvia does not provide for an event if Latvia receives a "Certificate of lack or limitation of enforceability" (drawn up as standard form in Appendix IV of the Regulation) issued by court of another Member State. From standard form in Appendix IV of the Regulation, it is also seen that the foreign court may include in it:

263.1. "decision **has ceased to be enforceable**";

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[255] Compulsory enforcement measures are stipulated only and solely by national laws of the Member State of enforcement. In Latvia this is the CPL of Latvia (see Article 20 (1) of the Regulation 805/2004).

[256] Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris: L.G.D.J., 2005, p. 165–166.

[257] This norm is also interpreted by: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 193; Hüßtege R. Braucht die Verordnung über den europäischen Vollstreckungstitel eine ordre-public Klausel? Festschrift für Erik Jayme. Band I. München : Sellier European Law Publishers, 2004, S. 376 (although the author considers that decisions have to be valid); Riedel, E. Europäischer Vollstreckungstitel für unbestrittene Forderungen. Köln: Deubner Verlag, 2005, S. 10; Schmidt U. Europäisches Zivilprozessrecht. Das 11. Buch der ZPO. München : Verlag C.H.Beck, 2004, S. 134.

[258] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München: Sellier, 2010, Art. 11 EG-VollstrTitelVO (Pabst S.), S. 121.

[259] See Rauscher, T.(Hrsg.). Europäischer Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 6 EG-VollstrTitelVO (Pabst S.), S. 90. However, Section 541[1] Paragraph four of the CPL states that such request can be submitted by a "participant in the matter" (meaning, also creditor). Thus, the **legislator of the Republic of Latvia has exceeded the limits of Regulation 805/2004.** It means that Section 541[1] Paragraph four of the CPL should have narrowed interpretation, namely, in a united system with Article 6 (2) of the Regulation 805/2004. It follows, that with the notion "participant to the matter" as used in the CPL the notion "debtor" should be understood.

263.2. "enforceability has been **stayed** for time";

263.3. "enforceability has been **limited to protective measures** for time";

263.4. "enforceability has been **suspended** for time until submission of security".

264. If foreign judgement (which has been certified as EEO) has ceased to be enforceable in the Member State of origin, then, according to Section 563 Paragraph one Clause 8 of the CPL, the execution proceedings shall be **terminated**.

265. If foreign court has **stayed** the enforcement of EEO, then the bailiff in Latvia should **stay** the execution proceedings on this basis. However, Sections 560 and 562 of the CPL do not provide for such obligation of and term for staying the execution proceedings.[260] The only thing that can be done currently is to apply Section 560 Paragraph one Clause 6 of the CPL, based on analogy, which relates to cases when a Latvian court has taken a decision on the suspension of the execution of a foreign court or competent authority adjudication (in the sense of Section 644^2). Analogy will in this case reveal as follows: a bailiff has to suspend the execution proceedings if a foreign court has taken a decision and issued the "Certificate of lack or limitation of enforceability" (Appendix IV of the Regulation, see Article 6 (2) of the Regulation), and marked in Paragraph 5.2.1 thereof that enforcement of the decision, court settlement, or authentic instrument is stayed for time. At the same time, also systematic interpretation can be applied since it follows from Articles 1, 5, 11 and 20 of the Regulation 805/2004 and Section 644 of the CPL that foreign court decision, court settlement, or authentic instrument issued by a foreign court and certified as EEO is directly enforceable in Latvia (i.e., without intervention of a Latvian court).

266. The same can be told about **suspending** the enforcement of EEO issued by a foreign court (see Section 559 of the CPL of Latvia where there is no such national legal order).

267. In relation to **limitation to protective measures** of the enforcement of EEO issued by a foreign court, Section 644^2 Paragraph one of the CPL should be supplemented with the event provided for in the Article 6 (2) of the Regulation and submission of standard form in Appendix IV.[261] Moreover, in such situations it should be noted that a foreign court may have applied protective measures that are not present in the civil procedure in Latvia. Therefore, Latvian court should be given the right (in court sitting or without it), by virtue of its decision, to replace these protective measures laid down by a foreign court with measures provided by the CPL of Latvia (see Section 138 of the CPL and Article 20 (1) of the Regulation).

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[260] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promotion Thesis. Riga: Latvijas Universitāte, 2012, p.113, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[261] Ibid, 113. lpp.

268. On the difference between Article 6 (2) and Article 23 of the Regulation 805/2004, refer to sub-section "Stay or limitation of the enforcement" (see § 323 and further) of this Study.

269. **EEO** shall be submitted for enforcement directly to compulsory enforcement authorities of the Member State of enforcement and it is **basis for initiating enforcement proceedings** (see Article 20 (1) and (2) of the Regulation 805/2004). That means that a decision made in one Member State is actually directly enforced in another Member State[262] provided that the Member State of origin has certified this decision as EEO. Such legal construction suggests on the similarity of EEO with the institute of writ of execution as it is known in the national laws (see Section 540 Paragraph one, as well as Section 553 of the CPL). Moreover, it follows from Article 20 (2) of the Regulation 805/2004 that the creditor has to submit the EEO **directly** to the competent compulsory enforcement authorities[263], and not the court, of the Member State of enforcement. It resembles the mechanism of submitting writ of execution. Apparently, by this the EEO attempts to abolish not only the **processes** of exequatur and recognition in the Member State of enforcement[264], but also to replace the national writs of execution of of Member States of origin and enforcement. That means that EEO forms a direct "bridge" between the court of Member State of origin and the compulsory enforcement authority of the Member State of enforcement.[265]

270. Thus, from the procedural and content-related point of view, EEO is similar also to the Latvian writ of execution. It suggests that Regulation 805/2004 has not only abolished the **processes** of exequatur and recognition in the Member State of enforcement and transferred separate elements thereof to the Member State of origin, but also introduced a procedural document replacing the writ of execution of the Member State of enforcement (which was issued by the court of Member State of enforcement based on the decision of exequatur, in the classical process of exequatur). At the same time, EEO replaces also the writ of execution of the Member State of origin, i.e., the court of the Member State of origin issues the EEO **at once**. Thus, issuing of a separate national writ of execution is no more necessary in any Member State.[266] However, here it should be noticed, that **EEO communicate the operation and enforceability of a decision given by the Member State of origin, and not of autonomous EU level.** In

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[262] In the event of exequatur, actually the decision of exequatur is enforced in the Member State of enforcement (not the same decision by foreign court). Therefore, also writ of execution is given based on the decision of exequatur (and not on the basis of foreign decision).

[263] See also: Riedel, E. Europäischer Vollstreckungstitel für unbestrittene Forderungen. Köln: Deubner Verlag, 2005, S. 1.

[264] On replacing the process of exequatur, refer to Riedel, E., *Ibid*., S. 10.

[265] D'Avout, L. La circulation automatique des titres exécutoires imposée par le règlement 805/2004 du 21 avril 2004. *Revue critique de droit international privé*, 2006, No. 1, p. 11. The French author calls EEO also an "automatic inter-Community connection".

[266] Section 540 Paragraph seven of the CPL stipulates that in Latvia, next to the national writs of execution,also EEO issued by a foreign court or competent authority shall be regarded as execution document.

this sense, the name "EEO" is confusing since actually it is nothing else but decision of the Member State of origin and based on it a writ of execution is issued in the form of EEO.[267]

271. Abolishing of process of recognition and exequatur of a decision of foreign court. It follows from Articles 1 and 5 of the Regulation 805/2004, that EEO abolishes the processes of recognition and exequatur of a decision in the Member State of enforcement. Thus EEO at the same time communicate both the operation of the decision of foreign court (like, *res judicata*), and the enforceability thereof.[268] It follows from Article 1[269] of the Regulation 805/2004, that the object of abolition is the **process** of exequatur and recognition in the Member State of enforcement as intermediate proceedings, but not recognition and exequatur as such. The same is suggested also by Article 5, according to which "judgement which has been certified as a European Enforcement Order in the Member State of origin shall be **recognised and enforced** in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition." It means that decision, which has been certified as EEO, has to be recognised and enforced in other Member States automatically, in addition, without providing for a possibility to appeal the recognition of this decision. So the debtor is not even entitled to request the court of the Member State of enforcement to review the recognition of the concrete decision (see, for example, Article 33 (2) of Brussels I Regulation where such a possibility has been provided for). No doubt, certifying a decision as EEO excludes the possibility to apply all the mechanisms of recognition and exequatur provided for in Brussels I Regulation[270], including appeal.[271]

272. There have been two cases in the Latvian case law where creditors turn to Latvian courts with a request to recognise and enforce EEO issued in another Member State in the territory of Latvia. In one matter, it was an EEO issued by a Pärnu County Court, **Estonia**, but the application for recognition and enforcement of this EEO was **refused** by

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[267] See also: Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena: Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.

[268] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promotion Thesis. Riga: LU, 2012, p.111, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[269] Article 1 of the Regulation 805/2004 states: "The purpose of this Regulation is to create a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgements, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement."

[270] See also: Péroz, H. Le règlement CE no. 805/2004 du 21 avril 2004 portant création d'un titre exécutoire européen pour les créances incontestées. *Journal du droit international*, 2005, p. 664.

[271] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p.109, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

Latvian court of first instance based on Article 5 of the Regulation 805/2004.[272] In the other matter, an EEO issued by a **Polish** court was submitted to a Latvian court of first instance for recognition and enforcement. The Latvian court **refused to accept** such application based on Article 20 of the Regulation 805/2004.[273] In both cases the Latvian court based on different articles of the Regulation 805/2004 and took different decisions:

272.1. to refuse the application for recognition and enforcement (Section 644 Paragraph three of the CPL);

272.2. to refuse to accept the application for recognition and enforcement (Section 132 Paragraph one Clause 1 of the CPL);

273. The right way in such cases would be to refer to Articles 1, 5 and 20 of the Regulation 805/2004 and at the same time to **take a decision on refusal to accept the application for recognition and enforcement**, since the dispute is not within the jurisdiction of the court (Section 132 Paragraph one Clause 1 of the CPL), namely, in events provided for in the Regulation 805/2004, decisions of foreign courts are enforceable according to the procedure set by the CPL, without requesting recognition of the adjudication of the foreign court, as well as the pronouncement of the execution of the adjudication of the foreign court (Section 644 Paragraph three of the CPL). An ancillary complaint may be submitted regarding this decision of the court (Section 132 Paragraph three and Section 442 of the CPL).

274. In the first moment it could seem that EEO includes both mentioned notions — recognition and exequatur. Let us compare the content of Article 5 of the Regulation 805/2004 with the classical notion of recognition. If recognition means disseminating the operation of a decision of a foreign court in the territory of another Member State, then initially it can be understood that EEO does not change anything much in the content of notion of recognition, except for the territorial dissemination of the legal consequences thereof (i.e., in the same time in the territory of the whole EU, except for Denmark) and the lack of the right of the Member State of recognition to decide on the recognition or non-recognition of such decision in its territory. However, in the notion of recognition both these mentioned aspects are important: dissemination of the operation **and** allowing such dissemination on the part of the Member State of recognition. If any of these criteria is lacking, it is hard to speak about "recognition".[274] Thus, we must agree to the conclusion of the French legal scientist *L. D Avout* on the fact

[272] Decision of 22.06.2011 in civil matter No. C29657411 by Riga City Latgale District Court [not published].

[273] Decision of 21.05.2010 in civil matter No. 3-10/0017/3 by Kuldīga District Court [not published].

[274] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p.109-110, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

that Regulation 805/2004 introduces automatic **pseudo-recognition** imposed "from the above".[275]

275. Also abolishment of taking exequatur decision in the Member State of enforcement follows from Articles 5, 24, and 25 of the Regulation 805/2004. What is the impact of this innovation on the understanding of notion of exequatur in the context of EEO? Apparently, Article 5 provides for an automatic enforcement without any kind of procedural control in the Member State of enforcement. According to the classical definition, exequatur means assigning of enforceability to a decision of foreign court in the territory of the Member State of enforcement. However, in the context of EEO, notion of exequatur obtains approximately the following definition: exequatur is the assigning of specific[276] enforceability[277] to a decision of court of the Member State in order for the decision to be automatically and directly enforceable in the territory of the whole EU (except for Denmark). From the comparison of both these definitions changes in the content of the notion of exequatur follow; thus, EEO can be placed somewhere in between the classical exequatur and the classical writ of execution. It must be noted that in the context of the notion of exequatur, the Regulation 805/2004 deprive of the right of the Member State of enforcement to decide on allowing or not allowing of enforcement in its territory (the only exception is Article 21 of the Regulation 805/2004), It suggests on emerging of the notion of "self-exequatur" in the EU civil procedure.[278]

276. However, **from the other point of view**, decision in the Member State of enforcement may have more legal consequences than national decisions of the Member State of enforcement in analogical cases. Must agree with the conclusion of the German legal scientist *T. Rauscher*, that EEO communicate the enforceability and operation of a decision of one Member State in the territory of another Member State at once.[279] EEO operates in the whole territory of the EU (except for Denmark). But the decisions of

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[275] D'Avout, L. La circulation automatique des titres exécutoires imposée par le règlement 805/2004 du 21 avril 2004. *Revue critique de droit international privé*, 2006, No. 1, p. 14. But the German professor *C. Kohler* calls it "*ex lege*, dissemination of operation of a decision, preconditions of which are only verified by the court of the Member State of origin which has also taken the respective decision". See: Kohler Ch. Das Prinzip der gegenseitigen Anerkennung in Zivilsachen im europäischen Justizraum. Zeitschrift für Schweizerisches Recht. Basel : Helbing & Lichtenhahn Verlag, 2005, S. 280.

[276] Such enforceability may be called "specific" due to the fact that the decision already has the status of enforceability in the Member State of origin according to national laws of that Member State. Certification of a decision as EEO allows this national enforceability to "move" freely to the territories of all EU Member States (except for Denmark). However, it still remains enforceability of the Member State of origin.

[277] In order to be certified as EEO, a decision of court of the Member State of origin has to comply with specific criteria provided for in the Regulation 805/2004. Only by certifying this decision as EEO can it be entitled to be recognised and enforced in the other EU Member States, except for Denmark.

[278] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p.110, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[279] Rauscher T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München/Heidelberg: Sellier, European Law Publishers, Recht und Wirtschaft Verlag des Betriebs-Berater.-2004, S. 1, 30.

recognition and exequatur stipulated by Brussels I Regulation operate **only** in the territory of the Member State that has taken these decisions. This suggests that the obligation of the procedural quasi-control[280] of recognition and exequatur now has been given to the court of the Member State of origin. From this it follows, that in uncontested claims EEO has completely abolished the **processes** of recognition and exequatur in the Member State of enforcement. This process in much simpler way is now transferred to the Member State of origin.[281]

277. Definition of European Enforcement Order. In law of Latvia, EEO is defined as follows.

278. In relation to judgements:[282]

EEO in uncontested claims is a procedural institute (also a document), which:
1) is issued as document on the basis of decision of the Member State of origin;
2) abolishes the procedure of recognition and exequatur in the Member State of enforcement;
3) replaces the decisions of recognition and exequatur of the Member State of enforcement;
4) contains separate procedural elements of recognition and exequatur (that are performed in the Member State of origin), as well as notions of automatic and absolute "pseudo-recognition" and "self-exequatur";
5) replaces the national writs of execution of both Member States and as such is directly enforceable in the territory of the whole EU (except for Denmark); and
6) communicate the operation and enforceability in the territory of the whole EU (except for Denmark) of a decision given by the Member State of origin, and not of autonomous EU level.

279. In relation to court settlements and authentic instruments:[283]

EEO in uncontested claims is a procedural institute (also a document), which:
1) is issued as document on the basis of a court settlement of authentic instrument certified by court of the Member State of origin;[284]
2) abolishes the procedure of exequatur in the Member State of enforcement of court settlement or authentic instrument;[285]
3) replaces the decision of exequatur of the Member State of enforcement of court settlement or authentic instrument;[286]
4) contains notions of automatic and absolute self-exequatur, thus communicating the enforceability of

[280] This can be called “quasi-control" since self-control can be hardly called control. See also: Stadler, A. Das Europäisches Zivilprozessrecht – Wie viel Beschleunigung verträgt Europa? *IPRax*, 2004, Heft 1, S. 7, where the author suggests that “self-control is not a control". It is also agreed by the professor K. Kohler (see: Kohler, Ch. Das Prinzip der gegenseitigen Anerkennung in Zivilsachen im europäischen Justizraum. Zeitschrift für Schweizerisches Recht. Basel : Helbing & Lichtenhahn Verlag, 2005, S. 287, where the author indicates that “controllee is also the controller and therefore such control can hardly serve the function of trustworthiness").

[281] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p.114, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[282] Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, 115. lpp.; Rudevska, B. Eiropas izpildu raksts (II). *Likums un tiesības*, 2007, 9.sēj., Nr. 2 (90), p.60.

[283] Rudevska, B. Eiropas izpildu raksts (II). *Likums un tiesības*, 2007, 9. sēj., Nr. 2 (90), p.60.

[284] See Article 24 (1) and Article 25 (1) of the Regulation 805/2004.

[285] See Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

[286] See Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

court settlement or authentic instrument of the Member State of origin automatically in the whole territory of the EU (except for Denmark); and
5) replaces the national execution documents of both Member States and as such is directly enforceable in the territory of the whole EU (except for Denmark).

280. Non-appealability of EEO certification (Article 10 (4)). Pursuant to Article 10 (4) of the Regulation 805/2004, no appeal shall lie against the issuing of a European Enforcement Order **certificate**. Here the decision with which EEO is certified must be distinguished between the EEO certification. **Decision** can be appealed if such is provided by the laws of the Member State of origin. But the **EEO certification** itself cannot be appealed once it is issued; this non-appealability derives from the directly applicable EU norms — Article 10 (4) of the Regulation 805/2004 (see Section 5 paragraph three of the CPL of Latvia).

281. Certifying a decision as EEO in the Member State of origin is performed by a unilateral procedure (without participation of parties) and **cannot be appealed** (see Article 10 (4) of the Regulation 805/2004, as well as Section 541[1] Paragraph one of the CPL of Latvia). It means that the creditor (and not only the debtor) has no opportunity to appeal certification of a decision as EEO. However, in separate cases Member States in their national legal acts can provide for procedure as to how the creditor should act if the court has left the application regarding certifying a decision as EEO **not proceeded with** due to some errors.[287] For more on this issue refer to sub-section "Problem of challenging refusal to issue EEO certificate" of this Study (see § 330 and further).

1.8.4. Rectification or withdrawal of the EEO certification

282. According to **Article 10** of the Regulation 805/2004:

> *1 The European Enforcement Order certificate shall, upon application to the court of origin, be: (a) rectified where, due to a material error, there is a discrepancy between the judgement and the certificate; (b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation. 2 The law of the Member State of origin shall apply to the rectification or withdrawal of the European Enforcement Order certificate. 3 An application for the rectification or withdrawal of a European Enforcement Order certificate may be made using the standard form in Appendix VI. 4 No appeal shall lie against the issuing of a European Enforcement Order certificate.*

283. As it can be seen from the mentioned legal norm, issuing of EEO certification cannot be appealed against. Therefore, the Regulation 805/2004 offers participants to the matter opportunity to submit an application for rectification or withdrawal of EEO certificate. Here it must be noted that prohibition of appeal stated in Article 10 (4) of the

[287] See: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 197.

Regulation relates only and solely to the EEO certificate itself, and it means that national decisions on rectification or withdrawal of the EEO certificate can be appealed against if the national laws of the Member State allows for it (see, for example, Section 543[1] Paragraph five and Section 545.[1] Paragraph three of the CPL of Latvia). In Latvia when rectifying or withdrawing an EEO certificate, the national laws of Latvia are applied. Thus, it should be consulted what legal order for this issue has been included in the CPL of Latvia.

284. Pursuant to Article 30 (1) (a) of the Regulation 805/2004, the Member States shall notify the European Commission of the procedures for rectification and withdrawal referred to in Article 10 (2). Latvia has notified of the following: "Implementation measures of Article 10 (2) of the Regulation have been transposed in Sections 543 and 545 of the Civil Procedure Law."[288] It would be more precisely to state that these measures have been introduced in Sections 543[1] and 545[1] of the CPL.

285. Until now the Latvian courts have not applied Article 10 of the Regulation 805/2004.

286. Rectification of EEO certificate and standard form in Appendix VI. Pursuant to Section 543[1] Paragraph one of the CPL, a court, which has rendered a judgement or taken a decision, on the basis of a request by a participant in the matter may rectify errors in an EEO, based upon Article 10 of the Regulation 805/2004. When submitting an application for rectification of EEO, the standard form mentioned in Article 10 (3) of the Regulation 805/2004, it is standard form in Appendix VI of the Regulation "Application for rectification or withdrawal of the European Enforcement Order Certificate" (see Section 543[1] Paragraph two of the CPL).[289] Such application shall be submitted at any time since neither the Regulation, nor the CPL provides for a term for submitting such application. Application for rectification of EEO can be submitted by a participant to the matter (meaning both the creditor, and debtor). No State fee has to be paid for the submission of such application. Application to Latvian court shall be submitted in Latvian, which means that translation expenses has to be covered from the means of submitter.

287. Issue of rectification of errors shall be adjudicated in a court sitting, previously notifying the participants in the matter regarding this; the non-attendance of such persons shall not be an obstacle for adjudication of the issue (see Section 543[1] Paragraph three of the CPL). Errors shall be rectified by a court decision, and an ancillary complaint may be submitted in respect of his decision (see Section 543[1] Paragraphs four and five of the CPL). Apparently, in such event the Latvian court has to issue also a new EEO certificate

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[288] See The European Judicial Atlas in Civil Matters: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_lv.htm. The Atlas presents information also on other EU Member States and their procedures of rectification and withdrawal.

[289] It follows from Article 10 (3) of the Regulation 805/2004, that it is not mandatory to use the standard form in Annex VI, meaning it is optional to use it. However, Section 543[1] Paragraph two of the CPL of Latvia stipulates a mandatory use of this standard form in Latvia.

(standard form in Appendix I) containing the rectifications indicated in the decision. **It is although not very clear what happens with the previous EEO certificate. Regulation 805/2004 has left this issue, as seems, in the competence of national legal norms of the Member States (see Article 10 (2) of the Regulation), however, this issue should be dealt with in the Regulation itself by virtue of joint standard forms.** Currently the legislator of Latvia can only state in the CPL that the previous EEO certificate and its copies have to be returned to the Latvian court and that a note shall be made on them (for example, by virtue of a special stamp) regarding the fact that this EEO certificate has been rectified with a decision of Latvian judge (date, number, and signature of the judge). This however will not solve this problem at the very basis of it.

288. If the submitter of the application for rectification of EEO certificate is debtor (not the creditor), then this debtor has the right, according to Article 23 of the Regulation 805/2004, to submit an application to the competent court of the member State of enforcement (which is not Latvia) on the following: 1) to include in the enforcement proceedings protective measures; 2) to provide security of enforcement (by allowing for the enforcement of EEO at the same time); or 3) under exceptional circumstances, to stay EEO enforcement. For more on Article 23 of the Regulation refer to sub-section "Stay or limitation of the enforcement" (see § 323 and further) of this Study.

289. Rectification of EEO certificate takes place only if due to a material error, there is a discrepancy between the judgement and the EEO certificate. Here misspelling or miscalculation errors are meant, as well as events where the EEO certificate does not bear correct information on the parties which therefore does not match the information in the judgement.[290] Rectification of an EEO certificate is definitely affected also by cases when a Latvian court makes correction of clerical and mathematical calculation errors in the judgement (Section 200 of the CPL) which has previously been certified as EEO. Thus, the rectification of EEO certificate as provided for in Article 10 (1) (a) of the Regulation 805/2004 may take place in two events:

289.1. if the judgement itself is correct, but the judge has made a technical error (i.e., misspelling or miscalculation) in the EEO certificate (information contained by the Paragraphs 2–6 of the standard form in Appendix I);

289.2. if the judge has made a misspelling or miscalculation error in the judgement which has been then transferred also to the EEO certificate (Paragraphs 2–6 of the standard form in Appendix I). In such event, the error in the judgement should be rectified first, and then also in the EEO certificate.

290. Information contained in Paragraphs 7–13 of the standard form in Appendix I is not taken from the judgement, therefore if material errors have been made in this information then the court should be submitted not an application for rectification of the

[290] Skat. Riedel, E. Europäischer Vollstreckungstitel für unbestrittene Forderungen. Köln: Deubner Verlag, 2005, S. 25.

EEO certificate, but for its withdrawal.[291]

291. If the EEO is rectified by a court or competent authority of another Member State, then the revoked part of execution of the adjudication shall be terminated and execution continued in conformity with the rectified EEO (see Section 563 Paragraph six of the CPL). This requirement applies also to Latvian bailiffs. However, since Regulation 805/2004 does not provide for joint standard form for the notice of rectification of EEO certificate, it is not entirely clear how such informing of bailiffs will be performed in practice. Perhaps, the foreign court or competent authority will issue a new EEO certificate.

292. Withdrawal of EEO certificate and standard form in Appendix VI. Pursuant to Section 545[1] Paragraph one of the CPL, a court, which has rendered a judgement or taken a decision after receipt of an application from a participant in the matter, utilising the form referred to in Article 10 (3) of the Regulation 805/2004[292], may withdraw the EEO, based upon Article 10 of the Regulation 805/2004. Application on the withdrawal of EEO certificate can be submitted by any participant to the matter by using the standard form mentioned in Article 10 (3) of the Regulation 805/2004. It is the standard form in Appendix VI "Application for rectification or withdrawal of the European Enforcement Order Certificate" of the Regulation.

293. No State fee has to be paid for the submission of such application. Application to Latvian court shall be submitted in Latvian, which means that translation expenses has to be covered from the means of submitter.

294. Application for the withdrawal of EEO certificate shall be adjudicated in a court sitting, previously notifying the participants in the matter regarding this; the non-attendance of such persons shall not be an obstacle for adjudication of the issue (see Section 545[1] Paragraph two of the CPL). An ancillary complaint may be submitted in respect of a decision by a court in the matter of withdrawal (see Section 545[1] Paragraph three of the CPL). Also submission of this application for withdrawal (just like of application for rectification) can take place at any time since it is not limited to specific term.

295. If a judge in Latvia takes decision to withdraw an EEO certificate then, unfortunately, it is not clear what happens next. In this situation there is only the decision by the Latvian judge, and that is all. Regulation 805/2004 does not provide for any special standard form (apart from situations in Article 6 (2) and (3) of the Regulation) which the court (or competent authority) in the Member State of origin would use to communicate that the EEO certificate has been withdrawn. Regulation 805/2004 has left this issue, as seems, in the competence of national legal

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[291] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 10 EG-VollstrTitelVO (Pabst S.), S. 114.

[292] It follows from Article 10 (3) of the Regulation 805/2004, that it is not mandatory to use the standard form in Annex VI, meaning it is optional to use it. However, Section 545[1] Paragraph one of the CPL of Latvia stipulates a mandatory use of this standard form in Latvia.

norms of the Member States (see Article 10 (2) of the Regulation), however, this issue should be dealt with in the Regulation itself by virtue of joint standard forms. It must be said that standard forms in Appendixes IV and V of the Regulation 805/2004 refer only to events mentioned in Article 6 (2) and (3) of the Regulation where it speaks on the withdrawal or replacement of the *judgement* itself (not the EEO certificate!).

296. If the submitter of the application for withdrawal of EEO certificate is debtor (not the creditor), then this debtor has the right, according to Article 23 of the Regulation 805/2004, to submit an application to the competent court of the member State of enforcement (which is not Latvia) on the following: 1) to include in the enforcement proceedings protective measures; 2) to provide security of enforcement (by allowing for the enforcement of EEO at the same time); or 3) under exceptional circumstances, to stay EEO enforcement. For more on Article 23 of the Regulation refer to sub-section "Stay or limitation the enforcement" (see § 323 and further) of this Study.

297. Withdrawal of EEO takes place only in the event when it is *clearly* that it has been issued unjustifiably, without complying with the requirements of Regulation 805/2004 — mainly those requirements that have been laid down for certifying a judgement as EEO (see Article 6 of the Regulation). For example, it can be seen from the standard form in Appendix VI of the Regulation, that withdrawal can be applied for if the certified judgement has been linked with a consumer contract but the judgement has been taken in a Member State which is not the Member State of domicile of the consumer in the sense or Article 59 of Brussels I Regulation. That means that non-compliance to the norms of international jurisdiction (as indicated by Article 6 (1) (b) or (d) of the Regulation 805/2004) can be basis for the withdrawal of EEO certificate. The same relates also to the non-compliance with the minimum procedural standards, as well as situation when the claim has been contested (not uncontested).

298. The notion "clearly" *a priori* indicates that Article 10 (1) (b) of the Regulation 805/2004 should be interpreted narrowly. But since Article 10 replaces the possibility of appeal against the EEO certificate, then Article 10 (1) (b) has to be interpreted widened. Thus the submitter has to prove why the EEO certificate should be withdrawn.[293] Also in Paragraph 6 of the standard form in Appendix VI of the Regulation, the submitter itself has to indicate and explain the reasons for withdrawal.

299. **If court or competent authority of another Member State withdraws EEO**, then execution proceedings upon request of an interested party shall be terminated in Latvia (see Section 563 Paragraph one Clause 8 of the CPL). This requirement applies also to Latvian bailiffs. However, since Regulation 805/2004 does not provide for joint standard form for the notice of withdrawal of EEO certificate, it is not entirely clear how such informing of bailiffs will be performed in practice.

300. Article 10 of the Regulation 805/2004 is also applicable to **court settlements and**

[293] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 10 EG-VollstrTitelVO (Pabst S.), S. 114.

authentic instruments. A draft law "Amendments to the Notariate Law", which is planned to be supplemented with a new Division D[1] "Notarial Deeds with Power of Authentic Instruments" currently is being reviewed at the second reading by the Saeima.[294] **Section 107[3]** will be included in the referred to chapter and it would **read as follows**:

> *At the request of the interested person regarding the notarial deeds*[295] *indicated in Section 107[1] of the Law, sworn notary shall issue the certificate mentioned in Article 57 (4) of the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (hereinafter referred to as the Regulation 44/2001) (Appendix VI of the Regulation 44/2001). Sworn notary upon request of the lender, according to Article 25 (1) and (3) of the Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (hereinafter referred to as the Regulation 805/2004), shall issue the European Enforcement Order (Appendix III to the Regulation 805/2004) for the notarial deeds indicated in Section 107[1] of the Law. The standard forms mentioned in Article 6 (2) (Appendix IV to the Regulation 805/2004) and Article 6 (3) (Appendix V to the Regulation 805/2004) of the Regulation 805/2004 shall be issued by the sworn notary upon request of the interested person. The sworn notary who has made the notarial deeds mentioned in Section 107[1] of the Law, upon request of the interested person may correct errors in European Enforcement Order of withdraw the European Enforcement Order based on Article 10 of the Regulation 805/2004. When submitting a request for rectification or withdrawal of European Enforcement Order, the standard form mentioned in Article 10 (3) of the Regulation 805/2004 (Appendix VI to the Regulation 805/2004) shall be used.*

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[294] Draft law "Amendments to the Notariate Law". Draft law for the second reading No. 332, p. 11. Available at: http://titania.saeima.lv/LIVS11/saeimalivs11.nsf/0/37D16519E5357087C2257A52003235AE?OpenDocument.

[295] Section 107[1] of the draft law "Amendments to the Notariate Law" the following have been indicated as notarial deeds:

> *A loan agreement that has been drawn up as a notarial deed and execution of which is not dependent on the existence of previously provable conditions shall be executed according to the procedure of execution of court judgements as stipulated by the Civil Procedure Law. When drawing up notarial deeds mentioned in the Paragraph one of this Section, the sworn notary, in addition to the requirements of Section 87[1] of the Law, shall explain to the participants in the notarial deed that in case of non-fulfilment of obligations of such notarial deeds they have the force of execution document, and shall make a corresponding note in the notarial deed, and shall include in the name of the deed notification that such notarial deed shall be executed according to the procedure of execution of court judgements as stipulated by the Civil Procedure Law. In the notarial deed the following information shall be included: the amount of the obligation; interest rate; penalty, if such has been contracted for; due date of procedure of execution, as well as fact that parties understand that in case of non-fulfilment of obligations the notarial deed has the force of an execution document. Penalty in such notarial deeds shall be indicated in per cents and it may not exceed the lawful interest amount as stipulated in Section 1765 Paragraph one of the Civil Law.*

301. As can be seen in the draft law, **the procedural order according to which the notary rectifies or withdraws EEO certificate, and, especially, with what deed (document) this is done, has not been prescribed. As previously mentioned, Regulation 805/2004 does not provide for any standard form.**

1.9. Enforcement of EEO

1.9.1. Process and theoretical framework of enforcement

302. The first sentence of Article 20 (1) of the Regulation stipulates: "Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement." As it can be seen, Article 20 (1) of the Regulation 805/2004[296] clearly and explicitly states that the enforcement procedures of EEO are governed by the national laws of the Member State of enforcement (*lex loci executionis*), unless the Regulation does not provide for autonomous provisions of enforcement (such have been provided for, for example, in Article 20 (2) and (3) and Article 23 of the Regulation). As correctly stated by German legal scientists, the wording of the first sentence of Article 20 (1) "without prejudice to the provisions of this Chapter" are misleading from the point of view of legal technique, since they present the notion that only the norms of the Chapter IV of the Regulation prevail over the national provisions of enforcement. However, if taking into account the purpose of this Regulation, this legal norm has to be understood as reference to *any* provisions of the Regulation stipulating autonomous legal norms for compulsory enforcement proceedings.[297]

303. In Latvia EEO should be enforced according to the provisions of the CPL of Latvia (see Section 644 Paragraph three of the CPL), as well as any adjudication taken in Latvia (see the second sentence of Article 20 (1) of the Regulation, as well as Section 540 Paragraph seven of the CPL).

304. It is important to mention that Article 20 (1) of the Regulation 805/2004 speaks only on the compulsory enforcement proceedings, which is not the same as enforceability of a decision. On the notion of enforceability, please refer to the sub-section "Enforceability of judgement" (see § 116, 323 and further).

[296] See also Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

[297] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 161.

1.9.2. Law applicable to enforcement proceedings

305. As indicated in the previous statement, national laws of the Member State of enforcement shall be applied to the enforcement proceedings of EEO, except for cases specially provided for in the Regulation. For example, if EEO issued in another Member State is submitted for enforcement in Latvia, then the enforcement thereof in Latvia will take place according to legal norms of the CPL of Latvia (*lex loci executionis*), i.e., by applying those compulsory enforcement measures as provided for in the Part E of the CPL of Latvia.

306. However, Regulation 805/2004 stipulates:

306.1. what documents shall be submitted by the creditor to the competent authorities of compulsory enforcement of the Member State of enforcement (Article 20 (2));

306.2. prohibition of *cautio judicatum solvi* (Article 20 (3)); and

306.3. basis and types of stay or limitation of enforcement (Article 23).

1.9.3. Documents to be submitted to enforcement authority

307. Pursuant to Article 20 (2) of the Regulation 805/2004, creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with the following documents.

307.1. a copy of the judgement (court settlement or authentic instrument) which satisfies the conditions necessary to establish its authenticity (Article 20 (1) (a));

307.2. a copy of the EEO certificate which satisfies the conditions necessary to establish its authenticity (Article 20 (1) (b);

307.3. where necessary, a transcription of the EEO certificate or a translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State (for example, Belgium, Luxembourg), the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. The translation shall be certified by a person qualified to do so in one of the Member States (see Article 20 (1) (c)). For example, translation of EEO issued in German in Germany can be certified by a translator authorised for it. As a rule, it does not have to be the translator who provides translation services in Latvia.

308. Submission of a photocopy of the mentioned documents is not permitted — it has to be either true copy[298], or the original. The submitted documents have to provide sufficient information to establish whether they are authentic. It is necessary to avoid cases when one and the same EEO is enforced against the debtor several times.[299]

309. It is also important to note that the creditor has to submit to the bailiff both the copy of the decision, and the copy of the EEO certificate. Law indicates an important problem that could arise in practice in relation to copies of documents, namely, a copy shall comply with the requirements laid down for copies of documents in the Member State of origin (or the issuing state of the EEO certificate).[300] For example, if a Latvian bailiff is submitted an EEO issued in Malta, then the copy thereof shall confirm with the requirements set in the laws of Malta. Of course, in most cases it will be difficult for Latvian bailiffs to verify it.

310. Article 20 (2) of the Regulation 805/2004 provides a thorough list of documents to be submitted; therefore, Latvian bailiffs should not be allowed to demand additional documents from creditors to start enforcement proceedings of EEO in Latvia.

311. The transcription or translation of **EEO certificate** (but not judgement, court settlement, or authentic instrument!) in the language of the Member State of enforcement shall be submitted where necessary. It could seem that it is not a mandatory obligation, unlike the documents required by Article 20 (2) (a) and (b) of the Regulation 805/2004. However, this is not the case, since the Member States have clearly notified of the accepted languages (pursuant to Article 30 (1) (b) of the Regulation). Thus, both these legal norms shall be interpreted systemically.[301] With the notion "where necessary", one should understand situations where the EEO certificate has been issued in a language that had not been notified as accepted by the Member State of enforcement. For example, if an EEO certificate issued in the German language in Austria shall be submitted for enforcement in Germany, no translation thereof is necessary (since Germany has notified of the German language as accepted language). However, if an EEO certificate issued in the German language in Austria shall be submitted for enforcement in Latvia, translation thereof in the Latvian language is mandatory, since Latvia has notified of the Latvian language as the only accepted language). Analogical situation will be in Lithuania. In the event of Estonia, the situation is a little different, since both the English, and Estonian languages are accepted in Estonia. Therefore, for example, an EEO certificate issued in the English language in Scotland shall be submitted for enforcement in Estonia without the translation thereof in the Estonian language.[302]

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[298] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

[299] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 67, 68.

[300] *Ibid*., S. 68.

[301] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

[302] On notifications of Lithuania and Estonia see:

312. According to Article 30 (1) (b) of the Regulation 805/2004, Member States shall notify the Commission of the languages accepted pursuant to Article 20 (2) (c). All notifications of the Member State can be found in The European Judicial Atlas in Civil Matters:
http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm

313. Member States to the Regulation 805/2004 have notified of the following acceptable languages. **Table of indicated languages**

No.	EU Member States	Indicated languages
1	**Belgium**	Flemish, French, or German
2	**Bulgaria**	Bulgarian
3	**The Czech Republic**	Czech, English, German
4	**Germany**	German
5	**Estonia**	Estonian or English
6	**Greece**	Greek and English
7	**Spain**	Spanish
8	**France**	French, English, German, Italian, or Spanish
9	**Ireland**	Irish or English
10	**Italy**	Italian
11	**Cyprus**	[*not indicated yet*]
12	**Latvia**	Latvian
13	**Lithuania**	Lithuanian
14	**Luxembourg**	German and French
15	**Hungary**	Hungarian and English
16	**Malta**	Maltese
17	**The Netherlands**	Dutch, or any other language mastered by the debtor
18	**Austria**	German
19	**Poland**	Polish
20	**Portugal**	Portuguese
21	**Romania**	Romanian
22	**Slovakia**	Slovakian
23	**Slovenia**	Slovenian
24	**Finland**	Finnish, Swedish, or English
25	**Sweden**	Swedish or English
26	**United Kingdom**	English

314. **Transcription** of EEO certificate shall be submitted only when the Member States of enforcement has different writing than in the Member State of origin.[303] In Latvia such transcriptions could be required for EEO certificates issued in Bulgaria or Greece (where the writing is different).

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm.

[303] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

315. **Translation** of EEO certificate is mandatory even when the EEO certificate has just some words in a language that has not been notified as accepted by the Member State of enforcement.[304]

1.9.4. Enforcement proceedings

316. According to Article 20 (2) of the Regulation 805/2004, sworn bailiffs are competent for the enforcement of EEO in Latvia (see Article 29 of the Regulation).

317. When submitting an EEO for the enforcement in Latvia, a State fee in the amount of 2 lats shall be paid (see Article 34 Paragraph six together with Section 540 Paragraph one Clause 7 of the CPL).

318. Territorial jurisdiction for the initiation of execution proceedings, as well as of the competent execution authority shall be established according to national laws of the Member State of enforcement (see, for example, Section 549 Paragraphs one and two of the CPL of Latvia).

319. If the EEO certificate submitted for enforcement has not been filled in appropriately (for example, the Paragraph 5.1 of the EEO certificate does not bear the principal, but Paragraph 5.1.1 bears the amount in "EUR"[305]) or does not satisfy the conditions necessary to establish its authenticity (for example, the EEO has been drawn up without using the standard form; the EEO does not bear the signature of the respective person; a photocopy of the EEO certificate has been submitted), the bailiff shall not accept such EEO for the enforcement based on Article 20 (2) (b) of the Regulation 805/2004.[306] In such events, the bailiff shall set a time period for rectification of deficiencies which shall not be less than 10 days (Section 552^1 Paragraph two of the CPL). If deficiencies are rectified within the time period specified, an execution matter shall be initiated by the bailiff (Section 552^1 Paragraph three of the CPL). If the judgement creditor fails to rectify deficiencies within the time period specified, the EEO shall be deemed not to have been submitted and it shall be returned to the judgement creditor (Section 552^1 Paragraph four of the CPL).

320. The bailiff is not entitled to verify:

320.1. if the claim is uncontested in the sense of the Regulation 805/2004;[307]

320.2. if the EEO certificate has been issued pursuant to the substantive matter, geographical application, and application in time of the Regulation;[308]

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[304] *Ibid.*

[305] Similar see: Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena: JWV, 2010, S. 245, 246.

[306] See also: Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena: JWV, 2010, S. 245.

[307] Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*. 2005, Heft 3, Mai/Juni, S. 199.

[308] *Ibid.*; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 165, 166.

320.3. if the minimum procedural standards for issuing EEO have been complied with by the Member State of origin;[309]

320.4. if the EEO certificate has been issued by a court which is internationally competent according to Article 6 (1) of the Regulation 805/2004;

320.5. if the decision to be enforced and/or EEO certificate has been sent to the debtor.[310]

321. The creditor can rectify all the mentioned deficiencies and errors in certifying EEO by turning to the court of the Member State of origin according to Article 10 of the Regulation (i.e., by asking the court of the Member State of origin either to rectify the material errors, or withdraw the EEO).

322. In practice, problems may be caused by situations where the foreign court decision certified as EEO is not clear to the Latvian bailiff. According to Section 553 of the CPL of Latvia, in such events the bailiff is entitled to request the court which has made the decision, to explain it. However, the Latvian bailiff is not entitled to ask the court of another EU Member State (which has issued the EEO certificate) to explain the decision made by it.

1.9.5. Stay or limitation of the enforcement

323. According to Article 23 of the Regulation 805/2004:

Where the debtor has challenged a judgement certified as an EEO, including an application for review within the meaning of Article 19, or applied for the rectification or withdrawal of an EEO certificate in accordance with Article 10, the competent court or authority in the Member State of enforcement may, upon application by the debtor, limit the enforcement proceedings to protective measures; or make enforcement conditional on the provision of such security as it shall determine; or under exceptional circumstances, stay the enforcement proceedings.

324. The legislator has stipulated in Section 644^2 of the CPL of Latvia, that district (city) court in the territory of which an EEO issued in another Member State is to be executed, on the basis of an application from the debtor and on the basis of Article 23 of the Regulation 805/2004, is entitled to:

324.1. replace the execution of the adjudication certified as EEO of a foreign court with the measures for ensuring the execution of such decision provided for in Section 138 of the CPL;

324.2. vary the form or procedures for the execution of the adjudication;

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[309] Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*. 2005, Heft 3, Mai/Juni, S. 199 ; see also Recital 18 of the preamble to Regulation 805/2004.

[310] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 168.

324.3. suspend the execution of the adjudication.

325. Upon submitting the application provided for in Section 644^2 of the CPL, the debtor does not have to pay the State fee.

326. Application for the stay or limitation of enforcement by the debtor shall be adjudicated in Latvia in a court sitting, previously notifying the participants in the matter regarding this; the non-attendance of such persons shall not be an obstacle for adjudication of the issue (Section 644^2 Paragraph three of the CPL). An ancillary complaint may be submitted regarding this decision of the court (Section 644^2 Paragraph four of the CPL).

327. Provisions of Article 23 of the Regulation 805/2004 in general matches the aim set in Recital 9 of the Regulation 805/2004 — "Such a procedure should offer significant advantages [..] in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails." So Article 23 tries to protect the debtor from situations where the decision (or authentic instrument) certified as EEO has already been appealed in the Member State of origin, but the court (or competent authority) of the Member State of origin has not staid or limited the enforcement thereof. In such cases the court of the Member State of enforcement can provide protection for the debtor against the enforcement of such EEO that has been appealed against in the Member State of origin, but which, according to law, is still binding to the competent enforcement authorities of the Member State of enforcement.

328. Basis for stay or limitation of enforcement Basis for stay or limitation of enforcement of a foreign court decision certified as EEO are laid down in Article 23 of the Regulation 805/2004:

328.1. where the debtor has challenged a judgement (court settlement or authentic instrument) certified as an EEO, including an application for review within the meaning of Article 19; or

328.2. where the debtor has applied for the rectification or withdrawal of an EEO certificate in accordance with Article 10 of the Regulation.

329. In such event, the competent court (or competent authority) in the Member State of enforcement shall assess the prospects of the result of the appeal in the Member State of origin of the decision (or authentic instrument), as well as the irreversible damage of later reversal of execution to the interests of the debtor, if no measures of stay or limitation of the enforcement are not performed in the Member State of enforcement.[311]

330. Where the debtor has challenged a judgement (court settlement or authentic instrument) certified as an EEO, including an application for review within the meaning of Article 19. The notion "where the debtor has challenged a judgement (court settlement or authentic instrument)" shall be understood as a reference to any **process of appeal** of judgement (court settlement or authentic instrument) in the Member State of origin of the

[311] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (juillet-août-septembre), p. 673.

decision (or authentic instrument). The German legal literature also implies that the mentioned types of appeal include appeals to the ECHR.[312]

331. The Regulation 805/2004, next to the process of appeal of judgement (court settlement or authentic instrument) in the Member State of origin, autonomously provides for another base of stay or limitation of enforcement, namely, the submission of the **application for review of judgement**, as stipulated in Article 19 of the Regulation, to the Member State of origin (see also Section 485^1 of the CPL of Latvia). For more on Article 19 refer to the sub-section "Minimum procedural standards for review of judgement under exceptional circumstances", § 323,135 and further.

332. *Where the debtor has applied for the rectification or withdrawal of an EEO certificate in accordance with Article 10 of the Regulation.* The third basis for a Latvian court to decide an issue on the stay or limitation of the enforcement of a decision (or authentic instrument), which has been certified as EEO, of a court of another Member State is when the debtor has applied for rectification or withdrawal of the EEO in the Member State issuing the EEO (see Article 10 of the Regulation). For more on Article 10 of the Regulation 805/2004 refer to the respective sub-section of this Study (§ 282 and further).

333. In all cases in order for a Latvian court, as a court of the Member State of enforcement of EEO, to be able to decide an issue on the stay or limitation of the enforcement of a decision (or authentic instrument) of a court of another Member State the following is necessary:

333.1. application by the debtor (Article 23 of the Regulation 805/2004 and Section 644^2 of the CPL of Latvia; the content of the application and the documents to be attached thereto are stipulated in Section 644^4 of the CPL of Latvia);

333.2. that the debtor has submitted an appeal on the decision (or authentic instrument), which has been certified as EEO, in the Member State of origin. Section 644^4 Paragraph two Clause 3 of the CPL of Latvia stipulates that such application (on the postponement of execution, dividing into time periods, varying the form or procedures for the execution, refusal of execution of the European Enforcement Order) shall be appended other documents upon which the applicant's application is based on. In such case a document shall be appended to the application showing that the debtor has appealed against the decision (or authentic instrument), which has been certified as EEO, in the Member State issuing the EEO;

[312] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 178, 181; Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S.14, 69. See opposite opinion: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*. 2005, Heft 3, Mai/Juni, S. 198.

333.3. that the submission of appeal in the Member State of origin of the EEO has not already stayed, limited, or withdrawn the enforcement of a decision (or authentic instrument), which has been certified as EEO, as follows from Article 6 (2) of the Regulation 805/2004. If the Member State of origin has already done it, then it shall issue the standard form in Appendix IV of the Regulation "Certificate of lack or limitation of enforceability". As it can be seen, the debtor has two means of protection in the event if it has appealed against the decision (or authentic instrument), which has been certified as EEO, in the Member State of origin of the EEO, or if it has submitted an application for review pursuant to Article 19 of the Regulation.

334. Table of differences between Article 6 (2) and Article 23 of the Regulation

Article of the Regulation 805/2004	**Preconditions and basis for application**	**Member State applying the concrete article**	**Types of activity of the Member State**	**Possibilities of activity of the Member State of enforcement**	**Commentary** *(if necessary)*
Article 6 (2) of the Regulation	Where a a decision (or authentic instrument) certified as an EEO has ceased to be enforceable or its enforceability has been modified in the Member State of origin, the enforceability or the amount of enforceability of the EEO shall not confirm with truth (Article 6 (2) and Article 11 of the Regulation). **Basis** — application of the debtor (see Article 6 (2) of the Regulation and Section 541[1]Paragraph four of the CPL of Latvia. The application has been addressed to the court (or competent authority) issuing the EEO, and can be submitted at any time (the term is not limited).	Member State of origin of EEO.	The competent court or authority in the Member State of origin of the EEO shall issue the "Certificate of lack or limitation of enforceability" mentioned in Appendix IV of the Regulation (see also Section 541[1] Paragraph four of the CPL).	The standard form in Appendix IV shall be submitted for enforcement to the competent enforcement authorities of the Member State of enforcement at once. In Latvia — to the bailiff.	*1) Problems may arise in separate cases in relation to direct enforcement in Latvia of standard forms in Appendix IV of the Regulation issued by other Member States. Therefore, the norms of the CPL should be aligned regarding this issue. See also the respective sub-section of the Study.* *2) If due to appeal the Member State of origin of the decision (authentic instrument) makes a new judgement amending the*

					enforcement, then it shall issue the standard form in Appendix V of the Regulation (Article 6 (3)).
Article 23 of the Regulation	1) where the debtor has challenged a judgement (court settlement or authentic instrument) certified as EEO in the Member State of origin; 2) where the debtor has submitted an application for review within the meaning of Article 19 in the Member State of origin; 3) where the debtor has applied for the rectification or withdrawal of an EEO certificate in the Member State of origin in accordance with Article 10 of the Regulation; 4) basis shall be an application of the debtor that has been addressed to the competent court or authority of the Member State of enforcement.	Member State of enforcement of EEO.	1) Limit the enforcement proceedings to protective measures (in Latvia — varying of the form or procedures for the enforcement);*or* 2) make enforcement conditional on the provision of such security as it shall determine (in Latvia — replacing of the enforcement of the decision with means of securing claims as provided for in Section 138 of the CPL;*or* 3) under exceptional circumstances, stay the enforcement proceedings of decision (or authentic instrument) (in Latvia — stay the enforcement of the decision).	Transfer of a decision of a Latvian court regarding the stay or limitation of the enforcement of a decision (or authentic instrument), which has been certified as EEO, of a court of another Member State to a bailiff for execution (Article 20 (1) of the Regulation, Section 560 Paragraph one Clause 6, Section 559 Paragraph two of the CPL of Latvia).	*It follows from the current regulation of the CPL of Latvia, that in case of appeal of* ***authentic instruments*** *issued in other Member States, the issue on the stay or limitation of the enforcement in Latvia, as provided for in Article 23 of the Regulation, shall be decided by the district (city) court in the territory of which the relevant authentic instrument is to be executed (Section 644[2] Paragraph one of the CPL).*

335. Types of stay or limitation of enforcement. Types of stay or limitation of enforcement in Latvia, as provided for in Article 23 of the Regulation 805/2004, are as follows (Section 644[2] Paragraph one of the CPL of Latvia):

335.1. replacement of the execution of the adjudication certified as EEO of a foreign court with the measures for ensuring the execution of such decision provided for in Section 138 of the CPL;

335.2. varying of the form or procedures for the execution of the adjudication;

335.3. suspending of the execution of the adjudication.

336. It must be noted that the way of "enforcement conditional on the provision of such security as determined by the court of Member State of enforcement" (Article 23, sentence two (b) of the Regulation) has not been provided for in the CPL of Latvia. Here a security (English — *security*; German — *Sicherheit*; French — *sûreté*) is meant, which is demanded by the court *from the creditor* (not from the debtor[313]) in the event if the decision (or authentic instrument) later is withdrawn in the Member State of origin.[314] At the same time, compulsory enforcement is still performed in the Member State of enforcement.

337. Replacement of the execution of the adjudication certified as EEO of a foreign court with the measures for ensuring the execution of such decision provided for in Section 138 of the CPL. A court in Latvia is entitled to replace the enforcement of a decision (or authentic instrument) certified as EEO with one of the means of securing claims as stipulated in Section 138 of the CPL of Latvia. It has to be indicated in the decision of court exactly which mean of securing claims is applied. It must be noted that in such event the compulsory enforcement is postponed (Section 559 Paragraph two of the CPL), but in relation to the property of the debtor, the court shall apply any of the means of securing claim (for example, attachment of movable property owned by the debtor).

338. Varying of the form or procedures for the execution of the decision. Latvian court with its decision may vary the form and procedures for the execution of the foreign decision (or authentic instrument) certified as EEO. Unlike Section 206[315] of the CPL, Section 644^2 allows the court to decide the respective issue only upon the application of the debtor (not creditor).

339. Unlike in the event of applying Section 206 of the CPL, Section 644^2 the Latvian court shall asses not the property status of the applicant or other circumstances, but the prospects of the result of the appeal in the Member State of origin of the decision (or authentic instrument), as well as the possible irreversible damage of later reversal of execution to the interests of the debtor, if no measures of stay or limitation of the enforcement are not performed in the Member State of enforcement.

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[313] In the civil proceedings in Latvia securing the execution of a judgement is possible, but in such event measures are aimed against the property of the debtor by applying any of the measures provided for in Section 138 of the CPL (see Section 207 of the CPL).

[314] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 180;

[315] Section 206 Paragraph one of the CPL stipulates that court is entitled pursuant to the application of a participant in the matter to take a decision to vary the form and procedures of execution of the judgement.

340. Unlike in the event of applying Section 206 of the CPL, Section 244^2 the competence to decide on varying the form and procedures lies with the district (city) court in the territory of which the relevant foreign decision (authentic instrument), which has been certified as EEO, is to be executed, and not the issuing court or competent authority of the decision (authentic instrument) (since it is located in another Member State).

341. Unlike in the event of applying Section 206 of the CPL, Section 644^2 does not entitle the bailiff to turn to a court with an application on varying the form or procedure (as well as stay of enforcement or dividing into time periods) of the enforcement of a foreign decision (or authentic instrument) certified as EEO if there are conditions encumbering the enforcement of the EEO or making it impossible. **It is possible that the Latvian legislator should consider the possibility to include such legal norm in the CPL of Latvia. Section 554 Paragraph two of the CPL should also be supplemented with reference to Section 644^1 and Section 644^2. Correspondingly, the word "judgement" should be replaced with the word "adjudication" in Section 554.**

342. *Stay of the enforcement of decision.* Section 644^2 Paragraph one Clause 3 of the CPL has to be read in a united system with Article 23 of the Regulation 805/2004, which means that stay of the enforcement of foreign decision (or authentic instrument) certified as EEO is only allowed under exceptional circumstances (apart from replacing or varying the enforcement).

343. With the notion "exceptional circumstances" the situations should be understood where the enforcement of a foreign decision (or authentic instrument) certified as EEO would violate the procedural public policy (*ordre public*) of the Member State of enforcement.[316] Thus, the Latvian court should look whether the appeal in the Member State of origin has been reasoned with any breach of the right to justice mentioned in Article 6 (1) of the EConvHR.

344. If Latvian court has taken a decision on the suspension of the execution of a foreign court adjudication, a bailiff shall stay execution proceedings until the time set out in the court decision, or until such decision is set aside (see Section 560 Paragraph one Clause 6 and Section 562 Paragraph one Clause 3 of the CPL of Latvia). During the time when the execution proceedings are stayed,the bailiff shall not perform compulsory execution activities (Section 562 Paragraph two of the CPL).

345. Latvian case law in applying Article 23 of the Regulation. In the Latvian case law, one case is known where the court has to decide on the application of Article 23 of the Regulation 805/2004. The applicant had turned to a Latvian court with an application asking to stay the enforcement in Latvia of a judgement by the *Genoa* City Municipal Court certified as EEO. The Latvian court, based on Section 644^2 Paragraph one

[316] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S.14; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 181.

Clause 1, Sections 229, 230, and 441 of the CPL refused to accept this application.[317] The court reasoned this as follows:

346. **First**, the applicant had not appended the full text of the judgement by the Genoa City Municipal Court and the issued EEO that have been certified in accordance with prescribed procedure, as well as translations thereof in Latvian certified in accordance with prescribed procedure (corresponding to Section 13 Paragraph two and Section 111 Paragraph two of the CPL).

347. **Second**, the application was appended copies of invoices and translations thereof in Latvian, but a sworn translator had not certified the correctness of the translations of these documents. Also the correctness of the translation of standard form "Application for rectification or withdrawal of the European Enforcement Order Certificate" in Appendix VI of the Regulation 805/2004 was not certified.

348. Thus, the court decided to refuse to accept the aforementioned application on the stay of enforcement and included in the decision that it may not be appealed.

349. **This decision by the Latvian court has to be regarded as incorrect case law** due to the following reasons:

- **349.1.** The judge had to assess if the submitted application complies with the official criteria provided for in Section 644^4 of the CPL and if the documents stipulated in this Section have been appended to the application.
- **349.2.** If the judge established that the documents appended to the application do not comply with Section 644^4 Paragraph two of the CPL, a decision regarding **leaving the application not proceeded with** (Section 644^5 of the CPL) and providing for a time period for the rectification of deficiencies had to be made (see Section 133 Paragraph two of the CPL), instead of refusing to accept the application (moreover, the judge has not indicated in the decision the respective CPL norm based on which such decision has been made[318]).
- **349.3.** A decision on leaving a statement of claim not proceeded with may be appealed — an ancillary complaint may be submitted regarding it (see Section 133 Paragraph two of the CPL).
- **349.4.** In addition, even if refusing to accept the statement of claim, such court decision may also be appealed by submitting an ancillary complaint (see Section 132 Paragraph three of the CPL), and it cannot be indicated in the decision that it may not be appealed.

350. **<u>Deficiencies of CPL norms</u>**. Successful operation of Article 23 of the Regulation 805/2004 in Latvia can be encumbered since the CPL of Latvia is deficient in the following aspects.

[317] Decision of 16.02.2009 in matter No. 3-10/0093/2009 by Riga City Zemgale Suburb Court [not published].

[318] For example, which of the cases provided for in Section 132 of the CPL has been established in the matter.

351. Section 644[2] of the CPL does not stipulate that district (city) court decision that has been taken in relation to Article 23 of the Regulation 805/2004 has to be enforced immediately, and if submission of an ancillary complaint regarding such decision stays or does not stay the enforcement of the decision. Currently the only option is to apply Section 644[1] (which relates to decisions or Latvian courts that have been taken in matters regarding recognition and/or enforcement of decisions if foreign courts) and Section 206 of the CPL, based on analogy. Namely, decision of district (city) court that has been taken in relation to Article 23 of the Regulation (see Section 644[2] Paragraph one of the CPL) should be enforced immediately. Submission of an ancillary complaint does not stay the enforcement of a decision (which has been taken in relation to Article 23 of the Regulation). Section 644[2] of the CPL should be improved regarding this issue.

352. Section 644[2] does not stipulate who is entitled to submit an ancillary complaint regarding a decision of district (city) court. Thus, an ancillary complaint may be submitted by not only the debtor, but also creditor. Article 23 of the Regulation 805/2004 is meant for the protection of the debtor, and only debtor may submit an application regarding Article 23 of the Regulation. It would not be right if the creditor was able to prolong the deciding of an issue by use of ancillary complaints. For example, according to Article 1084 (3) of the German Code of Civil Procedure (*Zivilprozessordnung*) such court decision that has been taken in relation to Article 23 of the Regulation is final and may not be appealed in Germany.[319] However, if it may be appealed in civil proceedings in Latvia, the range of the subjects of appeal should be limited.

353. Certain doubt arise on the usefulness of the possibility included in Section 644[2] Paragraph one Clause 2 of the CPL, namely the right to "amend the way or procedures for the execution of the adjudication". This is because when applying Section 644[2] Paragraph one the court should assess not the property status or other conditions of the debtor (as it is in Section 206 of the CPL), but basis provided for in Article 23 of the Regulation 805/2004 and they are either application of appeal in the Member State of origin of the EEO, or initiation of review procedure in the Member State of origin of the EEO. In such events the place of enforcement or varying the procedure will not protect the debtor from the enforcement of *a priori* judgement (or authentic instrument) certified as EEO made by an unjust foreign court. Moreover, also the second sentence of Article 23 of the Regulation does not stipulate such type of stay or limitation of the enforcement.

354. Section 644[2], and Section 562 Paragraph one Clause 3 of the CPL does not show the link between a Latvian court decision (which has been adopted in relation to

[319] Zivilprozessordnung. Available: www.gesetze-im-internet.de; see also: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 183.

Article 23 of the Regulation) and later decision that has been taken in the result of appeal by the court or competent authority of the Member State of EEO. In such cases, a separate Latvian court decision repealing the decision taken pursuant to Section 644^2 of the CPL will not be necessary. The most probable action currently is as follows: In the decision on Article 23 of the Regulation, Latvian court stipulates one of the types of stay or limitation of enforcement as provided for in Section 644^2 Paragraph one, and at the same time also indicates in this decision that it is effective as long as one of the following documents, issued by the court or competent authority of the Member State of origin of the EEO, is not submitted to Latvia:

354.1. standard form "Certificate of lack or limitation of enforceability" in Appendix IV of the Regulation, stating in Paragraph 5.1 that *judgement/court settlement, or authentic instrument has ceased to be enforceable* or stating in Paragraph 5.2 that *enforceability has been limited for a time*; or

354.2. standard form "EEO replacement certificate following a challenge" in Appendix V of the Regulation (see Article 6 (2) and (3) of the Regulation). However, it is preferable that the legislator of Latvia would solve this issue clearly and explicitly in Section 644^2 of the CPL.

1.9.6. Refusal of enforcement

355. According to Article 21 of the Regulation 805/2004:

1 Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgement certified as an EEO is irreconcilable with an earlier judgement given in any Member State or in a third country, provided that: the earlier judgement involved the same cause of action and was between the same parties; the earlier judgement was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

2 Under no circumstances may the judgement or its certification as an EEO be reviewed as to their substance in the Member State of enforcement.

356. It has to be mentioned that Article 21 (1) of the Regulation 805/2004 is not applicable to court settlements and authentic instruments, i.e., this legal norm relates only to court judgements (see Article 24 (2) and Article 25 (3) of the Regulation).

357. As previously established, Regulation 805/2004 has abolished the processes of recognition of the decision and exequatur in the Member State of enforcement. The event mentioned in Article 21 (1) of the Regulation 805/2004 is the only remain of the process of recognition and exequatur. Thus, the statement in Articles 1 and 5 of the Regulation

that the EEO procedure has given up the necessity to commence the processes of recognition and exequatur in the Member State of enforcement is not entirely truth.

358. Until now there has not been any matter regarding the application of Article 21 of the Regulation in Latvian courts.

359. Application of the debtor. In order for the Latvian court to decide the issue on the refusal of enforcement of judgement (certified as EEO) of court of another Member State, an application of the debtor is necessary. Latvian court cannot do that upon its own initiative (*ex officio*); see Article 21 (1) of the Regulation and Section 644^3 Paragraph one of the CPL. The application of the debtor shall be formed according to Section 644^4 of the CPL.

360. No State fee has to be paid for the submission of the application. The State fee in the amount of 20 lats as provided for in Section 34 Paragraph seven of the CPL has to be paid only for applications on the recognition and enforcement of foreign court decision, but not for the application for refusal of enforcement of judgement (certified as EEO). However, if the mentioned application asks for both the recognition and enforcement in Latvia a foreign court judgement (that has been adopted earlier than the judgement certified as EEO), then the State fee in the amount of 20 lats has to be paid.

361. The debtor has to submit the application to the competent court of Latvia, which, according to Section 644^3 Paragraph one of the CPL, is the district (city) court in the territory of which an adjudication (certified as EEO) issued in another Member State is to be executed.

362. The application is adjudicated in a court sitting, previously notifying the participants in the matter regarding this. An ancillary complaint may be submitted regarding this decision of the court (Section 644^3 Paragraphs five and six of the CPL). It is not important if the decision satisfies or refuses the application. The decision has to be reasoned.

363. Basis for refusal of enforcement. The basis for refusal of enforcement is stipulated in Article 21 (1) of the Regulation 805/2004 and it is the **irreconcilability of two decisions**. The irreconcilability of decisions is one of the classical obstacles for recognition of foreign court decisions[320] and its significance lies, **first**, in the protection of the consistency of court decisions, and **second**, in the protection of the legal order of the Member State of enforcement by not allowing the "entry" of such foreign court decisions that would ruin the stability of the internal legal order by allowing the operation of two contradictory or even opposite, in the sense of legal consequences, court decisions in the Member State (for example, one decision impose the payment of the purchase price as stipulated in the contract, but the other decision regards this contract as invalid). In other words, verification of the irreconcilability of decisions can be regarded as

[320] Kropholler, J. Internationales Privatrecht. 5.Aufl. Tübingen : Mohr Siebeck Verlag, 2004, S. 651.

"protection filter" of the legal system of the Member State of enforcement.[321] In Article 21 (1) of the Regulation, the **principle of priority of an earlier decision** operates; pursuant to it, the decision that has been taken earlier is recognised and enforced.[322] Regulation 805/2004 does not provide for the necessity for the first decision to have entered into effect. The date of the adoption is of importance.

364. The next criterion is as follows: the both decisions have to be made **regarding the same cause of action** (English — *same cause of action*; German — *identischer Streitgegenstand*; French — *la même cause*, Italian — *una causa avente lo stesso oggetto*; Lithuanian — *ta pačia veiksmo priežastimi*, Polish — *tego samego przedmiotu sporu*; Swedish — *samma sak*) and **between the same parties**. The texts in Latvian and French bears a reference only to the cause of action, but not the subject matter, however the French legal literature refers to interpretation according to which Article 21 (1) (a) can be interpreted wider, i.e., by including also the subject matter (French — *l'identité d'objet*).[323] The notions "between the same parties" and "the same subject matter and cause of action" has to interpreted in the same way as in Article 34 (3) and (4) of the Brussels I Regulation, i.e., here the autonomous interpretation of the notions provided by the CJEU in its present judicature shall be used.[324]

365. Irreconcilable decisions, **from the geographical point of view**, may have been taken:

- **365.1. In the Member State of enforcement and in another EU Member State** (including Denmark), for example, decisions of Latvian and Irish courts; If Latvian court is submitted an application of the debtor for the refusal of the enforcement of Irish court judgement (certified as EEO), then in the event a judgement earlier adopted by Latvian court is irreconcilable with this Irish court judgement, the enforcement of the Irish court decision shall be refused.
- **365.2. In two other EU Member States** (for example, decisions of Irish and German courts). If Latvian court is submitted an application of the debtor for the refusal of the enforcement of Irish court judgement (certified as EEO), then in the event a judgement earlier adopted by German court (no matter if it is certified as EEO, or matches the conditions to be recognised in Latvia according to any of the EU regulations) is irreconcilable with this Irish court judgement, the enforcement of the Irish court decision in Latvia shall be refused.
- **365.3. In other EU Member State and third country** (for example, decisions of Irish and Ukraine courts). If Latvian court is submitted an application of the

[321] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), p.165.
[322] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), p.164.
[323] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (juillet-août-septembre), p. 671.
[324] See 19 May 1998 ECJ judgement in the case: C-351/96 *Drouot Assurances*, ECR [1998], p. I-03075, para. 19.

debtor for the refusal of the enforcement of Irish court judgement (certified as EEO), then in the event a judgement (matching the conditions to be recognised in Latvia) earlier adopted by Ukrainian court is irreconcilable with this Irish court judgement, the enforcement of the Irish court decision in Latvia shall be refused.

366. To the requirement of irreconcilability of decisions, Article 21 (1) (c) of the Regulation 805/2004 adds one more condition, namely, **the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin** of the judgement (certified as EEO). It makes to conclude again that the overall system of the Regulation 805/2004 forces the debtor to be active in the Member State of origin of the judgement and not to postpone the tactics of defence to later time in the Member State of enforcement. Therefore, Article 21 (1) (c) indicates the basis of irreconcilability of decisions as the ultimate exception for the enforcement to be refused. The German legal literature points to the bad legal technique of Article 21 (1) (c), because when translating grammatically, problems may arise. For example, if the debtor has indicated the irreconcilability of decisions in the Member State of origin but without any luck[325], or if the Member State of origin has completely ignored this issue in the court proceedings, then such situation will not be subsumed to the norm included in Article 21 (1) (c). Moreover, the norm of Article 21 (1) (c) includes also the presence of the guilt on the part of the debtor.[326]

367. By applying Article 21 (1) of the Regulation 805/2004, the subject matter of the application of the debtor is the request to refuse the enforcement of court judgement (certified as EEO) of another Member State in Latvia. Thus, the application definitely should be appended not only the EEO, but also the foreign court judgement certified as EEO (see Section 644[4] Paragraph two Clause 1 of the CPL), and *a priori* irreconcilable judgement, since both of them will have to be examined by the Latvian court when deciding on the irreconcilability of decisions as the base for the refusal of enforcement.

368. When deciding issue regarding refusal of the enforcement in Latvia of a foreign judgement certified as EEO, the court may not review as to the substance neither the foreign court judgement (court settlement or authentic instrument)[327], nor the EEO (in the international civil procedure this is also called the prohibition of *révision au fond*[328]). Here attention should be drawn to the inaccuracy of the Latvian text of the Regulation 805/2004, namely, in Article 21 (2) the phrase "may [..] be *appealed* as to

[325] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S.69; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-VollstrTitelVO (Pabst S.), S. 174; Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*. 2005, Heft 3, Mai/Juni, S. 198.

[326] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-VollstrTitelVO (Pabst S.), S. 174; Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (juillet-août-septembre), p. 672.

[327] Only Article 21 (1) of the Regulation 805/2004 is not applicable to court settlements and authentic instruments. Article 21 (2) remains applicable (see Article 24 (3) and Article 25 (3) of the Regulation).

[328] French — review as to the substance.

their substance" is used. However, here the phrase "may [..] be *reviewed* as to their substance" should have been used. **The responsible Latvian authorities should correct this error in the Latvian text of the Regulation.**

1.10. Relations of the Regulation 805/2004 with other laws

369. Brussels I Regulation The interaction of Brussels I Regulation and Regulation 805/2004 has to be examined in several aspects. **First**, the technical relations between the regulations has to be assessed; and **second**, the content-related interaction.

370. Technical interaction. Article 27 of the Regulation 805/2004 stipulates that this Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Brussels I Regulation, of a judgement, a court settlement, or an authentic instrument on an uncontested claim. Similar norm is also included in the Brussels I Regulation. Namely, Article 67 thereof states that this Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgements in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments. Thus, the parties are not forbidden to use the mechanism for recognition and enforcement of the Brussels I Regulation, especially if the case does not fall into the scope of the Regulation 805/2004 or does not match any of the criteria ("uncontested claim", "minimum procedural standards").[329]

371. Content-related interaction. As already mentioned in this Study, there is a range of notions ("domicile of natural and legal person", "consumer", "jurisdiction", etc.) that shall be interpreted as in Brussels I Regulation. It is especially important that within the scope of substantive matter, all the regulations described in the Study have to be interpreted in accordance with Brussels I Regulation by assigning the notion "civil and commercial matters" a united autonomous interpretation.

372. However, in the context of Regulation 805/2004 the jurisdiction regarding consumer is narrowed. Namely, if Brussels I Regulation allows the consumer to bring proceedings against other party to a contract either in the Member State in which that party is domiciled or in the Member State where the consumer is domiciled, then the second sentence of Article 6 (1) (d) of the Regulation 805/2004 states only one kind of jurisdiction in consumer claims, i.e., in claims arising from contract relations of consumers, the case may only be decided in the court of the Member State where the consumer is domiciled. If this requirement has not been complied with and, for example, the judgement has been made in a Member State where the other party, not the consumer,

[329] Recital 20 of the preamble to Regulation 805/2004: Application for certification as a European Enforcement Order for uncontested claims should be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation (EC) No. 44/2001 or other Community instruments.

is domiciled, then it will be impossible to issue an EEO regarding such judgement; however, it will be possible to recognise and enforce such judgement pursuant to Brussels I Regulation.

373. Regulation 805/2004 also bears several direct references to Regulation 44/2001 (Brussels I Regulation), when Brussels I Regulation has to be consulted in parallel. **First**, according to Article 6 (1) (b) and (d) of the Regulation 805/2004, the court when certifying a judgement as EEO shall, *inter alia*, asses if the judgement does not collide with the provisions of jurisdiction provided for in Sections 3 and 6 of the Chapter II of Brussels I Regulation and if the judgement has been declared in the Member State where the debtor is domiciled in the meaning of Article 59 of Brussels I Regulation.

374. **Third countries.** Article 22 of the Regulation 805/2004 stipulates that this Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of Regulation (EC) No. 44/2001 (Brussels I Regulation), pursuant to Article 59 of the Brussels Convention, not to recognise judgements given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgement could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention. Article 59 of the Brussels Convention in connection with Articles 3 and 4 of the Convention regulates the issues of both jurisdiction in relation to defendants that are not domiciled in the Contracting State to the Convention, and recognition and enforcement of such judgements, as well as non-application of national laws in such cases. One must note, that Latvia has not been a contracting state to the Brussels Convention.

2. Regulation 861/2007

2.1. Introduction

375. In 2002 the European Commission adopted the Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation[330], by exploring and examining the content of the Regulation being developed at that time. In 2005 proposals to Regulation[331] were adopted, but in 2007 the Regulation 861/2007 was adopted.

376. According to Article 1 of the Regulation 861/2007, this Regulation establishes a European procedure for small claims, intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. Small claim in the meaning of this Regulation is claim in the amount not exceeding EUR 2000.

377. Basically, this Regulation introduces a simplified mechanism that is similar to the one in the national laws for small claims. The procedure provided for in the Regulation is available if it is established that a cross-border case exists. It must be noted that the procedure provided for in the Regulation is not mandatory, but alternative to the national procedures for small claims in the Member States (see Recital 8 of the preamble to Regulation 861/2007 and Article 1). That means that the claimant may choose whether to use the national or European procedure for small claims in a cross-border case. The aim of the Regulation is to reduce costs and to simplify this procedure; however, the Regulation also charges Latvian courts with unusual obligations, like, the court has to provide the parties written information on the procedural issues, including filling in of standard forms. The courts are also invited to use as simple and inexpensive procedural means as possible to examine such cases. Small claims cases usually are written procedures, but in special events oral hearings are hold through video conference (See Article 5 (1) and Article 8 of the Regulation).

378. Further, each article of the Regulation and its application have been analysed.

379. Standard forms of the Regulation are available here: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_lv.htm.

2.2. Notion of small claim

380. Article 2 (1) of the Regulation 861/2007 stipulates that the net value of a claim does not exceed **EUR 2000 (LVL 2845,74)** at the time when the form A is received by

[330] Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation [2002] COM 746, p. 58-59.

[331] Proposal of the Commission of the European Communities for a regulation of the European Parliament and of the Council establishing a European procedure for small claims, COM (2005) 87.

the court. This amount is excludes all interest, expenses, and disbursements. Thus, it is possible that larger amount is shown in the operative part of the judgement.

381. In Latvia this amount should be calculated according to the official exchange rate of the day when the claim is lodged with court, although the Regulation does not stipulates how the exchange rate should be calculated. Thus, here the law of the forum should be followed.

382. In the draft regulation there were many discussions regarding the amount and if it has to be indicated at all.[332] Some of the Member States and the European Economic and Social Committee considered that the amount of EUR 2000 is too small, but some of the new Member States stated that this amount is too big.[333] Discussions were also raised due to the different amounts of national small claims in the Member States, starting from EUR 600 to EUR 30000. In the result, EUR 2000 was a compromise and was regarded an amount possible to involve sufficient number of cases in relation to this Regulation. It is possible, that in future this amount will be reviewed and that the scope of the Regulation could include claims exceeding EUR 5000.[334]

383. So the scope of the Regulation will include a claim the amount of which does not exceed EUR 2000. The amount of claim shall be evaluated in connection with other criteria of the scope of the Regulation. For example, in one of the cases examined by a Latvian court, the claimant asked to recover maintenance from the defendant residing in another EU Member State.[335] Based on this Regulation, the defendant was levied maintenance in the amount of LVL 60 per month until the child reaches majority. **First**, according to Article 2 (2) (b) of the Regulation, the Regulation is not applied to matters concerning rights in property arising out of maintenance obligations. **Second**, on the moment of making the judgement, the child had seven years left until reaching majority, which means that the total amount of claim is LVL 5040, which exceeds the amount stipulated in the Regulation for several times.

384. The Regulation directly does not solve the issue if the amount of claim exceeding EUR 2000 can be divided into parts. According to researchers, it follows from the meaning of small claims that the claim should not be divided into parts. Or else, the claimant will divide a claim the total amount of which is EUR 10000 into five different small claim forms. If the actual amount of the claim is more than EUR 2000, the European Small Claims Procedure will not be applicable. But if the amount of the claim is EUR 10 000 and the claimant agrees to recover only EUR 2000 from the defendant, the European Small Claims Procedure will be applicable. Of course, in such case the

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[332] See: Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation [2002] COM 746, p. 58-59.

[333] Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and of the Council establishing a European Small Claims procedure COM [2005] O.J. 2006/C 88/14, para 6.1.

[334] EU Citizenship Report 2010: Dismantling the Obstacles to EU citizens' rights COM [2010] COM (2010) 603 final p.13.

[335] Judgement of 13.03.2012 in matter No. C12292211 by Daugavpils City Court [not published].

claimant will not be able to turn to court for recovering the remaining EUR 8000 (or else there would be two matters having the same parties to them, the same subject matter, and cause of action).

385. According to the Regulation, a party may not only recover a debt, but also ask for the reduction of cost, award of expenses for eliminating inconsistencies of goods or services, reimbursement of the amount of money paid, etc.

386. Example:

A consumer living in Latvia purchased high-quality bag for EUR 996 in a French on-line store. When receiving the purchase, the consumer established that the handle is stitched askew.

The consumer sent a claim to the e-mail address shown on the web page of the on-line store, but no reply was received. The consumer turned to the European Consumer Centre in Latvia (www.ecclatvia.lv), but the French merchant did not answer also the claim sent by the ECC The consumer ordered an expert examination, which stated that the bag has a manufacturing defect.

The consumer decided to use the European Small Claims Procedure. According to Article 2 of the Regulation 861/2007 and Article 16 (1) of the Brussels I Regulation, the claim was lodged according to the domicile of the consumer, i.e., Latvia. Item 7 of the form A indicates that the claimant asks to reduce the price of the goods by EUR 100. A request to reimburse all the costs of litigation (costs of State fees and expert examination) was also included.

The court accepted the form A, which matches the requirements of the Regulation, and together with form C in Latvian sent to the owner of the on-line store in France. In the specified term, no reply was received.

The court when applying the written procedure, established, first, if the Regulation can be applied. Second, the court established that according to Article 6 (1) of the Rome I Regulation, the substantive law of the country where the consumer has his habitual residence has to be applied. In this case — legal norms of Latvia. Thus, when making a judgement, the court takes into account Section 28 of the Consumer Rights Protection Law allowing the reduction of price of goods if they are not in conformity with the provisions.

387. Within this example there are, however, some difficulties in assessing the appropriate formula for calculating the amount for which the price should be reduced. Thus, an expert should be asked to establish the percentage-based nonconformity of the bag with its price.

388. As already mentioned, the Regulation in question can be applied not only to monetary claims, but also to **non-monetary claims**, for example, delivery of goods, compensation of damage, etc. Item 7 of form A explains that in such case the items 7.1 and/or 7.2 should be filled in by indicating the subject regarding which the claim has been lodged and the amount of the claim. Explanations to this item show that "in the event of non-monetary claim, it has to be also marked if there is any secondary claim on the compensation in the event it is not possible to satisfy the initial claim." This sentence has not been formulated clearly enough and regular consumer may have certain difficulties in understanding its meaning.

389. The Regulation does not stipulate how the claimant or court should assess non-financial claims; thus, the answer should be looked for in the national laws of the Member States, which, in its turn is a negative tendency, since the Regulation was developed as an alternative to the national small claims procedures. If the court experiences difficulties in the interpretation of this term, the possibility to ask the preliminary ruling to the ECJ should definitely be used.

390. Example

A Latvian limited liability company ordered one professional commercial washing machine for the price EUR 1896 from an Italian supplier via e-mail. The Italian supplier accepted the order of the Latvian company and agreed to deliver the washing machine within the time period of five weeks. The washing machine was not delivered in the defined term. The seller promised the buyer to deliver the washing machine in the nearest time, but the buyer did not receive it, though.
The Latvian company decided to use the European Small Claims Procedure; however, since the contract was concluded by exchanging e-mails and only the washing machine, its price and date of delivery are mentioned in the correspondence, due to the complexity of the matter the company decided to turn to a sworn lawyer for help.

Scenario 1
By examining the materials of the case, the sworn lawyer established that the washing machine had to be delivered to Latvia, thus, according to Article 5 (1) (b) of the Brussels I Regulation, the jurisdiction is in the Member State where, under the contract, the goods were delivered or should have been delivered.
By lodging the claim form A with a Latvian court, initially the claimant indicated in Item 7.2 that the claim is non-financial, i.e., delivery of goods. In addition, the claimant indicated that in case the goods are not delivered, the claimant suffers loss in the amount of EUR 500. It was also asked to compensate the costs of lawyer services, State fee, as well as to recover the interest to it.
In the proceedings, the court established that the parties had not agreed on the law applicable to the dispute as to the substance. According to Article 4 (1) (a) of the Rome I Regulation, a contract for the sale of goods shall be governed by the law of the country where the seller has his habitual residence Ÿ— in this case this is the law of Italy. However, the court also established that both Italy and Latvia are Contracting Parties to the United Nations Convention on Contracts for the International Sale of Goods and according to its Article 1 (1) (a) in such case the Convention is applicable.
The court applied Article 46 of the Convention according to which the buyer may require performance by the seller of his obligations.
The court established that by not delivering the goods, Articles 31 and 33 of the Convention have been violated, thus also the interest to it shall be recovered. However, Article 78 of the Convention does not stipulate the interest rate, which could be calculated pursuant to the applicable national law. In order to establish only the interest rate according to the law of Italy, additional burden would be put on the court in such simple proceedings. Thus the court, taking into account Article 7 (1) of the Convention stipulating that in the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application[336], chose to apply the interest rate stipulated in Article 7.4.9 of the UNIDROIT Principles of International Commercial Contracts.[337]
However, such legal remedy — delivery of goods — will be chosen by the claimant (buyer) only in the event the goods are unique and really necessary to it. In the event the delivery of goods is not possible, the claimant indicates the incurred losses. Usually the losses have to be proved with evidence, which has to be only described in this proceedings, however. This, in its turn, may give rise to objections from the part of the defendant, and to the necessity for the court for additional documents.
If the claimant has already paid the whole price for the goods, then prior to lodging the claim he has to inform the defendant on the termination of the contract, since restitution in the meaning of Article 81 (2) of the Convention can only be possible if the contract has been terminated.

[336] See Schlechtriem & Schwenzer, Commentary on The UN Convention on the International Sale of Goods (CISG) (3rd edition, ed. Schwenzer I.), Oxford University Press, 2010, p. 1057-1060.
[337] Article 7.4.9 (2): The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment. (UNIDROIT Principles of International Commercial Contracts, available:) www.unidroit.org) Since the transaction takes place in the European Union, the lending rates laid down by the European Central Bank may be used.

Scenario 2
By examining the materials of the case, the sworn lawyer established that the buyer had to receive the goods in Italy, thus according to both Article 2 (domicile of the defendant) and Article 5 (1) (b) of the Brussels I Regulation the claim against the Italian merchant shall be lodged with an Italian court. To avoid excessive costs, the sworn lawyer suggested to use the European Order for Payment Procedure, not the European Small Claims Procedure.

391. Article 5 (5) of the Regulation 861/2007 stipulates: if, in his response, the defendant claims that the value of a non-monetary claim exceeds the limit set out in Article 2 (1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. There is no such separate item in the answer form C, thus the defendant will have to make a note at item 1 of the answer form that the amount of non-financial claim exceeds EUR 2000, and thus the claim does not satisfy the conditions of the European Small Claims Procedure. The court has certain freedom of action when deciding this issue; however, in practice it could be quite difficult to establish if such claim exceeds the set threshold or not. In addition, such court decision may not be appealed.

392. Also a Latvian court has faced a claim that cannot be evaluated only in financial terms. The claimant has ordered summer shoes from a company registered abroad; after some time of non-intensive wearing, a defect has appeared. The claimant, by submitting the form A on the European Small Claims Procedure, has indicated in item 7 that claim is financial, but in item 8 (explanation of claim) has declared an additional request to change the shoes for new similar or equivalent, but in case it is not possible to revoke the contract.[338] In a separate decision the court asks the claimant to specify the claim by indicating that:

> *according to Section 128 Paragraph two Clause 7 of the Civil Procedure Law, in a statement of claim the claims of the plaintiff shall be set out. The claims of the plaintiff shall match the subject-matter of the claim. The claims shall be specific, executable, and they shall create legal consequences.*

393. Thus, the court asked the claimant to specify the request part of the claim by stating concrete claims, i.e., so that they are executable and create legal consequences. The request by the court is understandable since form A has not been formed accurately; however, in this event several conditions had to be fulfilled.

394. Unlike stipulated in the Regulation, the court has not used the form B in Appendix II regarding request of court to supplement and/or rectify form of claim, application. Forms are specially designed to ease the work of the court, as well as to allow the parties, which are not provided professional legal assistance, to understand the forms owing to their simple form and language. Also the provision, set out in Article 11 of the Regulation, stating that parties have to be provided practical assistance in filling in the form has to be fulfilled. It is important to remember that Regulation is created as

[338] Judgement of 27.01.2012 in matter No. C15285811 by Jelgava City Court [not published].

autonomous and simple system, therefore it should not be compared to the national proceedings as it has been done in the aforementioned decision.

395. In this case the claimant by providing information on the claim has stated request both for changing the goods, and terminating the contract. **First**, item 8 (information on the claim) of form A is not intended for stating requests on the claim. **Second**, termination of the contract cannot be assessed as financial claim in the meaning of this Regulation, since it is establishing not imparting demand. Thus, the court when receiving similarly incorrectly filled in forms should indicate, in simple and understandable language, in the specially provided for item in form B, that in the information on the claim only description of the problem has to be provided, and that item 7.2 should be specified by stating the replacement of goods. If this replacement of goods is not possible, as were also in the mentioned event, the amount of money, which has been indicated in item 7.2.2 (calculated amount of claim), will be recovered.

396. As stated in Recital 10 of the Preamble to the Regulation, in order to ease the calculation of the amount of claim, **interest rate, expenses, and other costs** are not included in the amount of the claim. So the basic debt may be up to EUR 2000, but it will be possible to request the recovery of other costs.

397. The European Small Claims Procedure stipulates that in addition to the basic debt, also interest set by law and interest set by contract (English — *interest*; German — *Zinsen*; French — *intérêts*) can be recovered.

398. If parties have not agreed on the interest in the contract, the interest rate and date for calculation shall be set out in item 7.4.1 of form A. If parties have agreed on such rate or calculation of **interest set by contract** that cannot be expressed in simple percentage (fraction), the item "another rate" should be marked in the mentioned form. For example, these would be cases when a person has agreed to pay composite interests, different amounts in irregular periods, or if mixed interest rate has been set out — both in set amount and percentage.

399. However, if a party has not appended the contract and the defendant does not object, the court should trust the interest rate informed by the claimant. Moreover, as can be seen from form A, only the interest rate and the date from which the interest has to be calculated have to be indicated. It means, that the judge will have to calculate the interest himself. Even in the event the claimant would like to ease the work of the court, then, by filling in the form electronically in the Atlas, it is not possible to indicate the total amount of the interest calculated. Moreover, the claimant still have to calculate it in order to establish the State fee to be paid; therefore, in the future the possibility should be assessed to include such item in the form of the Regulation, where the claimant could indicate both the formula of calculation and amount of the interest.

400. Under the mandatory interest rate stated in item 7.4.2 of the form, the **interest set by law** should be understood. However, here the claimant does not have to indicate the amount or calculation of the interest rate, but only the date from which the interest has to

be calculated. That means, that the court, first, has to establish the applicable substantive law pursuant to which the interest set by law will have to be calculated. Second, according to this rate, the court calculates also the interest due to the claimant. This again is a case when the court is obligated a duty that could be done by the submitter of the claim.

401. The court upon its initiative, without request by the claimant, does not have to recognise the right to receive the interest set by law from the amount recovered but not received by the court for the period until the enforcement of the decision.

402. The Regulation clearly stipulates that **costs** are costs resulting from services of lawyer and costs arising from the service or translation of documents (Recital 29 of the Preamble), but costs of the proceedings should be determined in accordance with national law. For example, by submitting form A (application of claim), the State fee will have to be paid according to Section 34 of the CPL. Thus, if the amount of the claim is up to LVL 1500 (EUR 2136,75) and up to the threshold set out in the Regulation, i.e. EUR 2000 (LVL 2845,74), the State fee shall be 15% from the amount of the claim, but not less than LVL 50.[339] If the claim is non-monetary one, nevertheless it shall be assessed, by correspondingly calculating the fee from the amount of the claim. The fee has to be calculated from the amount to be recovered according to Section 35 paragraph one of the CPL. For more on stating and calculation of costs refer to the specific sub-section of the Study.

403. It must be noted that the Regulation does not provide for additional recovery of **contractual penalty** or other possible fines. In contrast to the Regulation 1896/2006 where it is possible for the claimant to indicate the contractual penalty in item 8 of the standard form A (application for European Order for Payment), there is no such item in the Regulation 861/2007. Since the interest[340] according to their legal nature cannot be compared to contractual penalty[341], the authors do not support of the practice that instead of interest at item 7.4.1 in the form of the Regulation 861/2007 contractual penalty is indicated. Neither the recitals of the Preamble to the Regulation, nor the text of the Regulation itself do not offer the parties the possibility to apply for the contractual penalty, thus the Regulation cannot be interpreted widened. If a party, though, want to recover contractual penalty, it can be done by submitting a separate claim by using the same Regulation, but in this form the amount of the contractual penalty has to be indicated as the basic claim.

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[339] On statement of claim that can be evaluated for amount of money and that have been received at court until 31 December 2012, State fee shall be paid in the amount not exceeding 1000 lats — 15% from the amount of the claim, but not less than 50 lats. See: Law “Amendments to the Civil Procedure Law" of 15.11.2012 (“LV", No. 90 (4792), 04.12.2012), entering into force on 01.01.2013

[340] Section 1753 of the Civil Law stipulates that interest shall mean the compensation to be given for granting use of, or for lateness relating to a sum of money or other fungible property.

[341] Pursuant to Section 1716 of the Civil Law, contractual penalties are penalties which a person undertakes to bear regarding his or her obligation in such case as he or she does not perform the obligation, or does not perform it satisfactorily.

2.3. Material scope of application

404. The aim of the Regulation is to simplify and speed up cross-border litigation in small claim cases by reducing the costs of litigation. Therefore, also the scope of application of the Regulation has been subordinated to this aim. Article 2 (1) of the Regulation 861/2007, just like the Regulation 805/2004 and Brussels I Regulation, stipulates that it **shall apply [..] to civil and commercial matters**, whatever the nature of the court.[342]

405. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).

406. The Article 2 (2) stipulates the cases where the Regulation shall not be applicable: **the status or legal capacity of natural persons; rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; social security; arbitration**. Since also these norms are similar to those stipulated in Article 2 of the Regulation 805/2004, for their explanation refer to the respective comment § 24 on the Regulation 805/2004.

407. Here it should be mentioned that since the Regulation 861/2007 does not stipulate a mandatory obligation to submit contracts to court, the court will not be able to establish if the claimant and defendant have agreed on settling disputes at **arbitration**. Thus, the proceeding can be used in bad faith, unless the defendant objects during the proceedings by using form C. However, if the defendant recognises the claim in the court, then according to the theory of arbitration, it is regarded that the parties have stepped back from the arbitration contract.[343]

408. The Regulation 861/2007 has some peculiarities of application that are worth discussing them. **First**, this Regulation will apply only to uncontested claims. **Second**, Article 2 (2) (f) to (h) of the Regulation stipulates for additional exceptions.

409. In the scope of the Regulation both contested, and uncontested claims fall. Moreover, these claims can also be non-financial. But in cases relating to non-financial claims, it has to be possible to assess the damage. This assessment cannot exceed EUR 2000, for the claim to fall in the scope of the Regulation. In the event of non-financial claim, the claimant shall fill in item 7.2 of the form A and indicate regarding what the claim has been lodged and what is the calculated amount of the claim.

410. So, in the scope of the Regulation, non-financial claims like on the discrimination of people with particular needs or unequal access to services could fall. The Regulation

[342] It must be added that the English text of the Regulation mentions not only the court, but also tribunals — “the court or tribunal".

[343] See: Kačevska, I. Starptautiskās komerciālās arbitrāžas tiesības. LU disertācija, 2010, p.128, available at: https://luis.lanet.lv/pls/pub/luj.fprnt?l=1&fn=F826193342/Inga%20Kacevska%202010.pdf .

does not provide clearer information regarding such claims, which can result in uncertainties in the process of its application. In addition, in separate jurisdictions cases of this category are excluded from the scope of small claims procedure, since when deciding cases of set categories, different evidences and expert reports have to be examined.[344] Despite being small claims, non-financial claims can be quite complicated and disputable, which, on its part, will make the court to consider the possibility to hold an oral hearing according to Article 8 of the Regulation.

411. One of the **additional exceptions** included in the Regulation is **employment law**, namely, the Regulation shall not be applicable if the claim arises from employment law. It must be noted that this exception shall be interpreted wider than the notion "employment contracts" since it is applicable not only to separate employment contracts, but also to issues related to trade unions. Thus, the scope of this Regulation is narrower than in the event of the Brussels I Regulation. At the same time it should be noted that agent contracts will fall within the scope of the Regulation, since agents will not be regarded as subjects of employment law.

412. In one case, a judge of a general court of Latvia justifiably refused to accept an application of a natural person for the European Small Claims Procedure regarding the recovery of unpaid work remuneration from a municipality, by stating that, according to Article 2 (2) (f) of the Regulation, the Regulation is not applicable to employment relations.[345] It should be added that in this case the Regulation cannot be applied also due to its cross-border nature, but in this case there is no cross-border element.

413. The next special exception of the Regulation is claims regarding **tenancies of immovable property**, with the exception of actions on monetary claims. Article 2 (2) (g) of the Regulation in Latvian has been translated only as "rent", although it is applicable also to "lease". Such exception has been included due to the fact that immovable property rights have exceptional jurisdiction which is correspondingly widened also to rights of lease and rent. Meaning that usually disputes regarding immovable property rights and rights of lease or rent will fall in the jurisdiction of the Member State in the territory of which the immovable property is located.[346] This is due to the fact that in the national law regulating issues of lease and rent, several imperative norms can be included to protect the tenant.[347]

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[344] For example, cases regarding personal injuries are excluded in the Northern Ireland. House of Lords. European Small Claims Procedure: Report with Evidences [2006] 23rd Report of Session 2005-06, para 107 et seq.

[345] Decision of 06.02.2012 in matter No. 3-10/004 by Jēkabpils District Court [not published].

[346] See Article 22 of the Brussels I Regulation However, this Article of Brussels I Regulation provides for an exception — in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State.

[347] Law on Residential Tenancy: Law of the Republic of Latvia, *Latvian Herald*, No. 19, 29.04.1993

414. Here with rent of immovable property *(tenancies)* rent of any residential premises or summer cottages or lease of land or non-residential premises shall be understood. Claims regarding validity or interpretation of contracts on such immovable property shall not be submitted pursuant to this Regulation. However, it will be possible to satisfy all claims, if they can be assessed, related with non-fulfilment of contract, unpaid invoices, or losses, by using the legal mechanism provided for by the Regulation. For example, if any of tenants of recreation villa disturbs another tenant (makes noise, consumes more electricity than agreed before, or cause any other inconveniences), the latter may lodge a claim against the first one to recover losses on the lost holidays and any ancillary costs[348] by use of this Regulation, if it is established that the amount of the claim does not exceed EUR 2000 and it is a cross-border case.

415. The next exception, **violations of privacy and of rights relating to personality, including defamation** was added during the draft regulation phase by stating that similarly to exceptions stated in Article 2 (2) (f) to (g) of the Regulation these issues are decided differently in each Member State and possibly even by special courts.[349] So, also such cases do not fall within the scope of the Regulation.

416. Thus, it can be regarded that in a way this Regulation narrows the notions "civil liability" and "commercial liability"; however, it has been specially devised for the needs of **consumers**. Moreover, this Regulation does not include the norm on the exclusive jurisdiction of consumer disputes as it is in Article 6 (1) (d) of the Regulation 805/2004 of Article 6 (2) of the Regulation 1896/2006. Possibly, it is because the Regulation 861/2007 can be applicable only to uncontested claims. However, certain difficulties could arise for a regular consumer, for example, when filling in item 4 of the Appendix I regarding the jurisdiction, and during the enforcement of the judgement the consumer in general will have no protection, since the judgement in such matter is enforceable in the whole EU.

417. Summarising, the Regulation will be applicable both to contested and uncontested pecuniary (monetary) claims not exceeding EUR 2000. This Regulation can be applied by both consumers, who have purchased goods at on-line stores from other consumers or companies, and, for example, sworn lawyers when recovering unpaid remunerations from clients.

2.4. Geographical scope of application

418. The Regulation is applicable in all EU Member States, also the United Kingdom and Ireland (Recital 37 of the Preamble), but it is not applicable in Denmark pursuant to Article 2 (3) or and Recital 38 of the Preamble to the Regulation.

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[348] See 15 January 1985 ECJ judgement in the case: No. 241/83 *Erich Rösler v Horst Rottwinkel* ECR 1985, p. 00099.

[349] Kramer, E X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p.121, available: *http://www.springerlink.com/content/88w50426x5135h38/*.

2.5. Application in time

419. According to Article 29 of the Regulation 861/2007:

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Union. It shall apply from 1 January 2009, with the exception of Article 25, which shall apply from 1 January 2008.

420. Apart from Regulation 805/2004, the legislator of the EU in this Regulation has not specified the date on which the Regulation 861/2007 shall enter into force.

421. *Date of entering into force* Since the Regulation 861/2007 has been published in the *Official Journal of the European Union* on 31 July 2007[350], it enters into force on the next day, i.e., **1 August 2007**.

422. *Date of application* Although the Regulation 861/2007 enters into force on 1 August 2007, it is applicable from the same date. The legislator of EU has set two dates starting from which particular articles of the Regulation are applicable:

422.1. Article 25 of the Regulation shall be applicable starting from **1 January 2008**. The Article 25 stipulates **obligation to Member States** to communicate to the European Commission specific information:

422.1.1. which courts or tribunals have jurisdiction to give a judgement in the European Small Claims Procedure;

422.1.2. which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4 (1);

422.1.3. whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;

422.1.4. which languages are accepted pursuant to Article 21 (2) (b); and

422.1.5. which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

422.2. all other articles of the Regulation (except for Article 25) **are applied starting from 1 January 2009**. That means that applications for the European Small Claims Procedure can be submitted starting from 1 January 2009.

423. But which date can be regarded as the day of lodging the application — the day when the application has been sent to the court, or the date when the application is received by the court? According to the first sentence of Article 4 (1) of the Regulation:

*The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Appendix I, and **lodging it with the court or tribunal** with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced.*

[350] See the date of publishing the Latvian text of the Regulation: L 199, *Official Journal of the European Union*, 31.07.2007, p. 1-22.

424. As it can be seen, the decisive is the date of lodging the application to the court. The lodging may take place both on the moment when the applicant lodges the application to the court in person, and on the moment when it is sent via fax, or by e-mail. In the last two cases fax and e-mail can be sent to the court starting from 1 January 2009[351], but not earlier.

425. **Latvia** has communicated to the European Commission that applications can be lodged to the court directly or by mail. **Lithuania** has communicated to the European Commission that applications can be lodged to the court directly or by mail. **Estonia** has communicated to the European Commission that applications can be lodged to the court directly, by mail, by fax, or via electronic data interchange channels.[352]

2.6. Notion "cross-border case"

426. As already mentioned before, the aim of the Regulation 861/2007 is to simplify and speed up cross-border litigation in small claim cases, as well as to reduce the costs of litigation. This Regulation shall be applicable only in the event the claim has a cross-border element in it. The definition of a "cross-border case" in this Regulation is almost identical to the one in Article 3 (1) of the Regulation 1896/2006, and it is also similar to the one in Article 2 of the Legal Aid Directive 2002/8/EC.[353]

427. According to Article 3 (1) of the Regulation, a **cross-border case** is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised. Article 3 (2) adds to it that domicile shall be determined in accordance with Articles 59 and 60 of Brussels I Regulation.

428. Thus, from Article 3 of the Regulation 861/2007 it can be concluded at least one of the parties has to be domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised. It follows from the aforementioned that also domiciles of both parties (and not only one party) may be in this another Member State, except Denmark.[354] The court to which an application regarding European Small Claims Procedure is submitted shall always be a court of the EU Member State. For example, cross-border cases will be in the following events:

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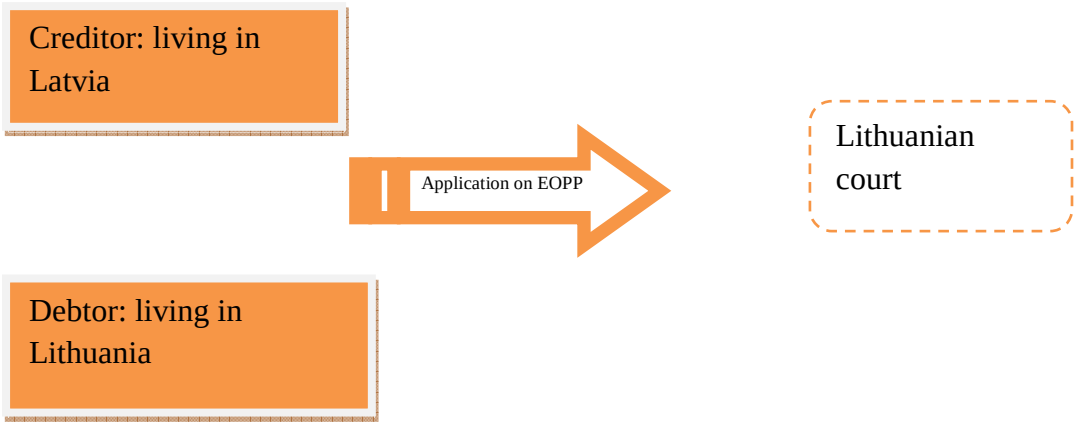
[351] Similar see also: Rauscher, T. (Hrgs.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 29 EG-BagatellVO (Varga I.), S. 544 http://europa.eu/justice_home/judicialatlascivil/.

[352] http://europa.eu/justice_home/judicialatlascivil/.

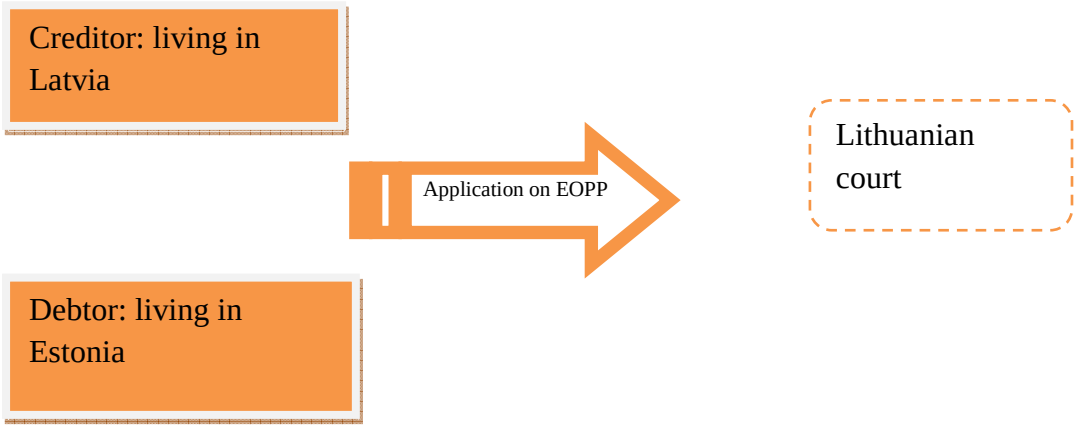
[353] Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes [2003], L 026, Official Journal of the European Union.

[354] See Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

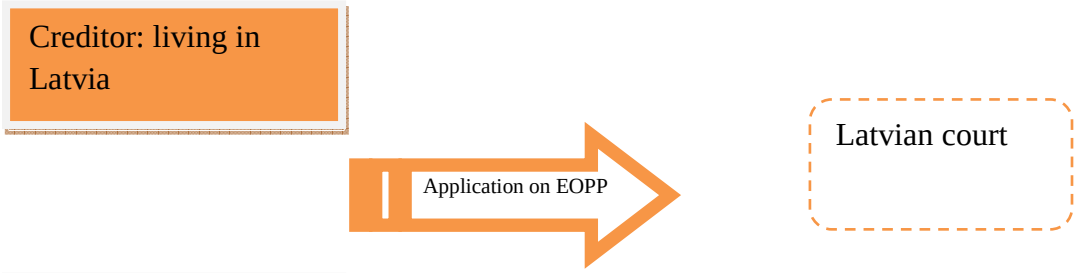
1. example



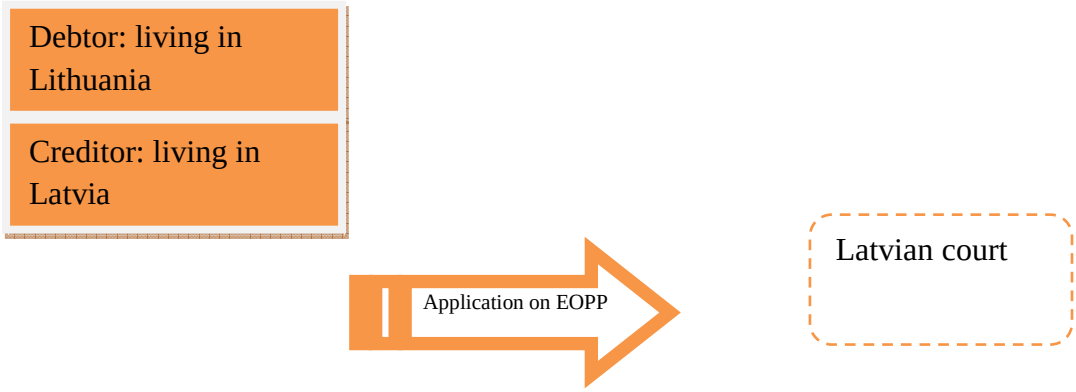
2. example

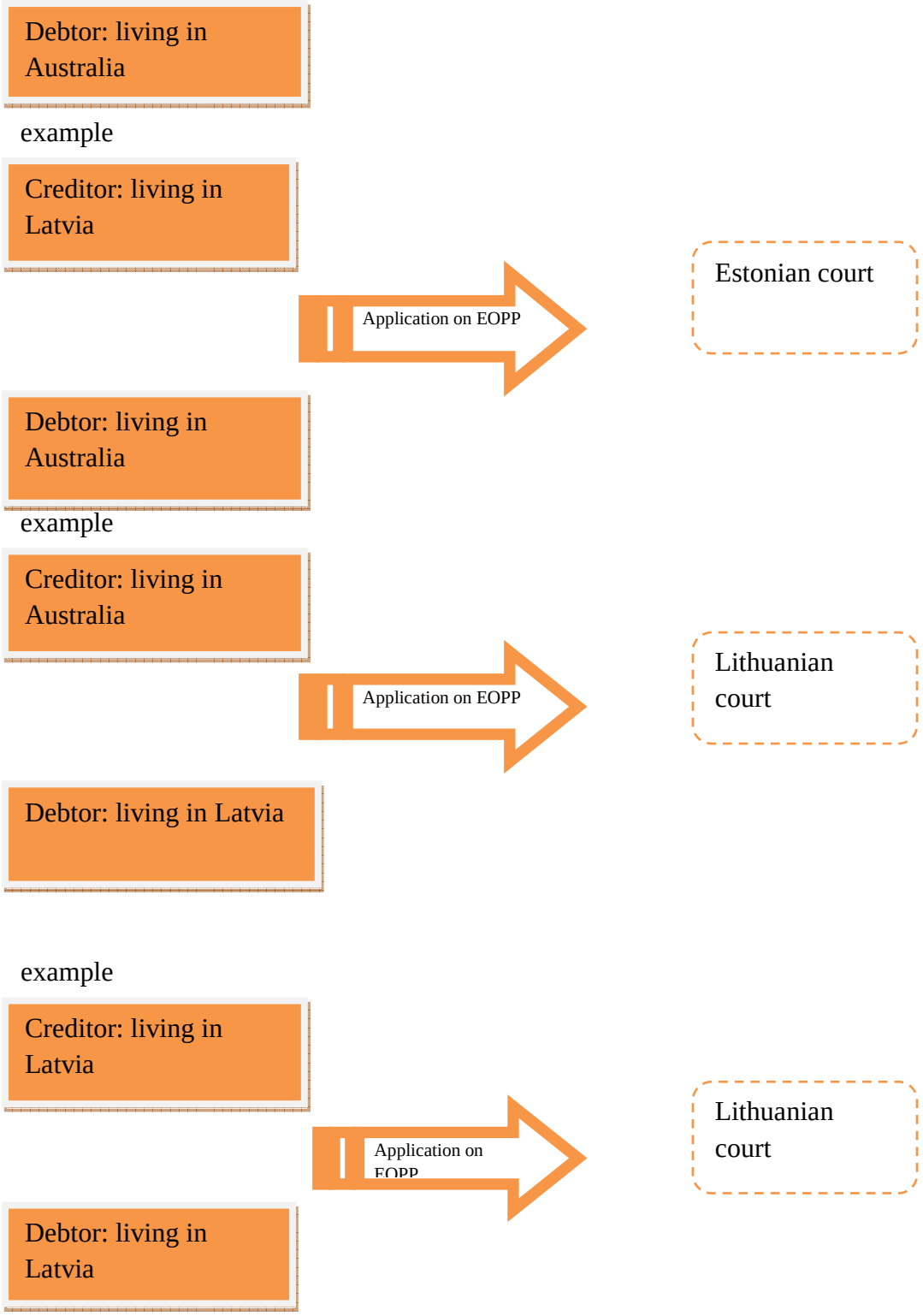


3. example



4.





429. So, in order to establish if there exists a cross-border element, the domicile or habitual residence of the parties shall be defined. The existence of a cross-border case is not created by other possible linking factors, like the location of property or the place

where the contract has been concluded. Cross-border cases shall not be formed also in the event the domicile of the Member State of the court and of the both parties is located in the same EU Member State, or in the event the domiciles of both parties are located abroad. However, as explained further, even in the event a cross-border case arises the court shall establish if it has the jurisdiction to decide the dispute.

430. The notion of **domicile of a natural person**, within the scope of this and Brussels I Regulation, is not an autonomous notion, since the court of the Member State that has received the case shall interpret it pursuant to the national law. Namely, Article 59 (1) of Brussels I Regulation stipulates that in order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. Unfortunately, the notion of "domicile" is significantly different[355] across Member States, which can cause certain problems in establishing it.

431. For Latvian court in order to determine the domicile of a natural person of Latvia it has to be initially defined pursuant to the Civil Law. [356] Section 7 of the Civil Law stipulates that place of residence (domicile) is that place where a person is voluntarily dwelling with the express or implied intent to permanently live or work there. A person may also have more than one place of residence. Temporary residence does not create the legal consequences of a place of residence and shall be adjudged not on the basis of duration, but in accordance with intent. This norm should be applied to establish the domicile of a person from the point of view of law of Latvia.

432. On its part, Section 3 Paragraph one of the Declaration of Place of Residence Law stipulates that a place of residence is any place (with an address) connected with immovable property freely selected by a person, in which the person has voluntarily settled with an intention to reside there expressed directly or implicitly, in which he or she has a lawful basis to reside and which has been recognised by him or her as a place where he or she is reachable in terms of legal relations with the State or local government.[357] This norm in the terms of its legal nature and aim is more appropriate for the solutions of internal situations of Latvia, i.e., to establish which particular address in the territory of Latvia is the place of residence of a person. Also Section 6 Paragraph five of this Law suggests of the internal nature of the aforementioned norm, which, in the event of a foreign domicile refer to the procedure specified by the Population Register Law.[358] It must be noted that also the latter does not give a concrete answer on how to

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[355] See Heidelberg Report, para 181–184. For example, the Civil Procedure Code of Lithuania stipulates that domicile of a natural person shall be that state or its part, in which he permanently or ordinarily resides, but the Civil Law of Estonia stipulates that domicile is the legal place of residence of a person in which he permanently resides.

[356] Civil Procedure Law: Law of the Republic of Latvia, *Latvian Herald*, No. 1, 14.01.1993

[357] Declaration of Place of Residence Law: Law of the Republic of Latvia, *Latvian Herald*, No. 104, 07.07.2002

[358] Section 6 Paragraph five: If a person's place of residence is abroad, the duty to declare a place of residence is fulfilled if the declarant of a place of residence has submitted information regarding the place of residence according to the procedures specified by the Population Register Law.

establish the existence or non-existence of a domicile of a person in the territory of a Member State. The only thing that can be concluded from Section 6 Paragraph five: if a Latvian national resides outside Latvia for more than six consecutive months, it can be regarded that his or her domicile is in the corresponding state, provided that this person has informed his or her address of residence in abroad to the Office of Citizenship and Migration Affairs. While the Latvian national has not informed on this address it shall be regarded that his or her domicile is not outside Latvia.[359]

433. Brussels I Regulation Article 59 (2) regulates how to establish if a person has domicile in another Member State, i.e., if a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State. Thus, the court shall apply the law of that Member State where the person is domiciled. If a Latvian and American agree that jurisdiction lies with a British court, then the British court shall establish if the Latvian has domicile according to Latvian law in order to establish if Article 23 of Brussels I Regulation regarding prorogation of jurisdiction is applicable.

434. Brussels I Regulation does not give an answer of how to establish if a party is domiciled in a third country, thus it shall be established pursuant to the norms of private international law.

435. It must be noted that Article 59 of the Brussels I Regulation does not refer also to the term "**place of habitual residence**", although this term has been mentioned in Article 3 (1) of the Regulation 861/2007 since there may be cases where the domicile of a party cannot be established, but it is possible to establish the place of habitual residence. Thus, the place of habitual residence shall be established in each separate case autonomously by the court guided by the conditions of the case. Fore example, in order to establish if the place of habitual residence exist concurrently with the actual presence in a Member State, other factors shall be taken into account that can testify that this presence is not temporary or accidental and that the place of residence is characterised by a certain integration in the social and family environment. Especially the length, regularity, conditions and reasons for residing in the territory of a Member State and moving of a family to the Member State, nationality, place and conditions of educating, knowledge of language, and family and social connections in the Member State have to be taken into account. Intention to move to another Member State may indicate the change of place of habitual residence, the intention is revealed by certain external conditions as purchase or lease of a house. Another indication could be submission of a request to the competent authorities of the specific Member State for allocation of a social flat.[360] Thus, the phrase "place of habitual residence" shall be interpreted as the place where the person has strong

[359] Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

[360] See 2 April 2009 ECJ judgement in the case: C-523/07 *A*. [2009] ECR, 2009, p. I -02805, para 38-41.

connection to and where the centre of the social life of the person is located. It is also suggested to use this term based on analogy, namely, by using Article 59 of the Brussels I Regulation for establishing also the place of habitual residence.[361]

436. **Domicile of a legal person**, on its part, is an autonomous notion which does not oblige the Member States to turn to norms of private international law. Namely, Brussels I Regulation clearly sets out the criteria for the domicile of a legal person:

> *For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: (a) statutory seat, or (b) central administration, or (c) principal place of business.*

437. "Company or other legal person" means legal persons of any form and organisations without the status of a legal person.

438. Thus, the domicile of a legal person is characterised by three important criteria, which have been adopted from Article 54 (former Article 48) of the Treaty on the Functioning of the European Union.[362] These criteria shall be applied equally, not subsidiary. Moreover, the Regulation does not stipulate hierarchy of these elements; they are exhaustive.

439. All the mentioned locations may be in one Member State, but also other variants are possible, for example, when a company is registered according to Latvian law, but the principal place of business is in Lithuania, and the central administration is in Estonia. So according to the Regulation, the company has three different domiciles, thus making several cross-border elements. This norm shall be applicable also if the company is registered in a third country, for example, Russia, but the principal place of business is Latvia.

440. It must be added, that establishing of domicile is also useful in choosing the jurisdiction in which application for small claim shall be lodged. For example, according to item 4 of the form A, jurisdiction shall be established pursuant to Brussels I Regulation, but item 2 of the form A stipulates that the defendant may be sued according to its domicile, thus, a legal person having the statutory seat, central administration, or principal place of business in different Member States, may be sued in any of these Member States.[363] Such norm gives comparatively wide range of possibilities to creditors to use the tactics of *forum shopping*.

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[361] Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

[362] Article 54: Companies or firms formed in accordance with the law of a Member State and having thEEO registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States. "Companies or firms" means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making. Consolidated Version of the Treaty on the Functioning of the European Union. Latvian text*: Official Journal of the European Union*, C 83, 30.03.2010, p. 47-201.

[363] Magnus, U., Mankowski, P. (ed). *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 811.

441. "Statutory seat" is location in the Member State according to law of which the company has been registered. In the event of Latvia, if the company has been registered pursuant to the Commercial Law and entered into the Commercial Register[364], it shall be regarded that the statutory seat of the company is Latvia even in the event legal address is not indicated in the Articles of Association pursuant to Section 144 of the Commercial Law.

442. As indicated also by Article 60 (2) of the Regulation, such term is not known in the United Kingdom and Ireland, thus "statutory seat" means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.

443. Central administration, on its part, is the place where the centre of company management and control (the real seat) is located, which perhaps is more difficult to establish than the statutory seat, because in such event the actual conditions have to be evaluated which are known to the creditor. This is an independent term and cannot be interpreted pursuant to the national law.[365]

444. Principal place of business is the place where the main commercial activities take place, which can also be established according to the actual conditions.

445. Article 60 (3) of Brussels I Regulation clearly stipulates that in order to determine whether a trust[366] is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law. In such event the Convention on the Law Applicable to Trusts and on their Recognition[367] can be consulted if the Member State has joined to this Convention (Latvia has not joined to it). Although the institute of trust is more familiar in the common law, it is applicable also in the civil law, therefore it should be admitted that the regulation is not clear and may cause complications.

446. Article 3 (3) of the Regulation 861/2007 stipulates that the relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction. Thus, since a cross-border case is established according to the principle of domicile, the creditor should assess whether the domicile or place of residence of a party is in another Member State than that where the proceedings have been initiated, upon the moment of submitting the form A.

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[364] Commercial Law: Law of the Republic of Latvia. *Latvian Herald*, No. 158/160, 04.05.2000

[365] Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p.812.

[366] ***Trusts* — in English**. For unknown reason, in the Latvian translation of Article 60 (3) and Article 5 (6) of the Brussels I Regulation, as well as item 05 of the Paragraph 3 of the standard form in Annex I to the Regulation 1896/2006, the term “trests" (in Latvian) has been mentioned. “Trests" (in Latvian) is a group of companies, but “trasts" (in Latvian) means legal relationship that have been established in writing between the person creating the “trasts" and the person managing the “trasts".

[367] Convention of 1 July 1985 on the Law Applicable to Trusts and on thEEO Recognition, available: *http://www.hcch.net/index_en.php?act=conventions.text&cid=59*. Article 2 of the Convention provides a definition: Legal relationships created — *inter vivos* or on death — by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose.

Unfortunately, the court is not able to verify it, since the Regulation does not require submission of evidence for jurisdiction and cross-border case — only the information required by item 4 and 5 of the form A has to be provided. If after submitting the form A and during the litigation the debtor has changed the domicile or place of residence, it shall not affect the jurisdiction of the court or existence of the cross-border case. In this event the principle of "*perpetuatio fori*" shall be applied, which provides that jurisdiction is not changed automatically.

447. It must be added that there are events when a claim or counter claim has been submitted exceeding the limit of EUR 2000, in such event the case is proceeded with according to the corresponding national procedural law, as provided for by Article 5 (7) of the Regulation 861/2007 (see § 624 of the Study and further). There can also be a situation when only in the event of enforcement of a decision it can be established whether the case is of cross-border nature. In these events, the mechanism provided for by the Regulation 1896/2006 can be used, although a procedure could be stipulated in the future in the Regulation and CPL for changing the national small claim procedure for the European Small Claims Procedure and *vice versa*.

2.7. Commencement of procedure

448. According to **Article 4** of the Regulation 861/2007:

1 The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Appendix I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.

2 Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.

3 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.

4 Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Appendix II, for this purpose. Where the claim appears to be clearly unfounded or the application inadmissible or where the

claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.
5 Member States shall ensure that the claim form is available at all courts and tribunals at which the European Small Claims Procedure can be commenced.

2.7.1. ***Claim form — standard form A***

449. The claimant when commencing the European Small Claims Procedure has to fill in the standard form A in the Appendix I to the Regulation 861/2007. This standard form is mandatory. The form in Latvian is available in the European Judicial Atlas: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_lv_lv.htm.

450. At the beginning of the standard form, there is a note that it shall be drawn up in the language of the Member State in which the court is located (and not the language of the place of residence or native language of the claimant).

451. It follows from the structure of the form A that the claimant has to start the filling in of the standard form from Item 1 "**Court**". However, in order to know with which specific court the application shall be lodged, it would be better for the claimant to start by filling in item 4 of the form, namely, by establishing the Member State whose courts has the international jurisdiction. Only after when it has been established, the claimant may indicate a specific court of the respective Member State having the territorial jurisdiction. These courts (and their addresses) can be found in the European Judicial Atlas:
http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_lv.jsp?countrySession=19&#statePage0

452. Item 2 of the form "**Claimant**":

2 *Claimant*
2.1 Surname, name/name of the company or organisation:
2.2 Street and number/number of PO box:
2.3 City/town, postal code:
2.4 Country:
2.5 Telephone (*):
2.6 E-mail (*):
2.7 Representative of the claimant and its contact information, if applicable:
2.8 Other information (*):

453. In item 2, the claimant has to provide information on itself. If the claimant is a natural person, it has to indicate the name and surname (personal identification number may be provided in item 2.8). If the claimant is a legal person, it has to indicate its name. It is advisable that the claimant indicates in item 2.8 also its registration number and other information that could assist in the identification of the claimant.

454. In item 2.2, the claimant has to indicate the address of the place of residence (or at least the number of the P. O. box) as clearly as possible. Legal person has to indicate its legal address.

455. In item 2.7, the claimant has to indicate its representative (name, surname), if there is one. For example, if a minor is represented by its legal representatives — parents — then the minor has to be indicated as the claimant, but the parents have to be indicated in item 2.7 as the legal representatives. It must be admitted, that **item 2 does not require from the claimant to indicate the year of birth, thus it is impossible to actually establish if the claimant is or is not a minor**. In civil proceedings in Latvia this issue is solved by the duty on the part of the claimant to indicate the personal identification number, which includes also the year of birth (see Section 128 Paragraph two Clause 2 of the CPL).

456. Standard form A allows also for co-claimants. In such event each of the co-claimants shall fill in item 2 of the form separately.[368]

457. Item 3 of the form "**Defendant**":

3 *Defendant*
3.1 Surname, name/name of the company or organisation:
3.2 Street and number/number of PO box:
3.3 City/town, postal code:
3.4 Country:
3.5 Telephone (*):
3.6 E-mail (*):
3.7 Representative of the defendant and its contact information, if applicable:
3.8 Other information (*):

458. In item 3 the claimant has to provide as precise information on the defendant as possible: for a natural person — name, surname; for a legal person — name, and it is desirable to indicate the registration number in item 3.8, if it is known. In item 3.8 another alternative address of the defendant may be indicated where it could be found. The same relates also to personal identification numbers and other identifying information.

459. Next, precise address of the domicile or place of residence (or at least the number of the P. O. box) of the defendant has to be indicated. Since item 3.2 only asks to indicate the street and number, it has to be concluded that here also any other address in which court documents may be serviced to the defendant may be indicated, not only the address of the domicile or place of residence of the defendant. For example, it can be the address of the workplace of the defendant, if the address of the domicile is not known. But, if the address of the domicile is known, then the address of the workplace may be indicated in item 3.8.[369]

460. In item 3.7, the representative of the defendant is indicated, if there is one. For example, if it is known that the defendant is minor, the parents may be indicated as the legal representatives. The same also relates to other representatives acting on the basis of power of attorney or law.

461. Standard form A allows also for co-defendants. In such event the claimant shall fill in item 3 for each of the co-defendant separately.

[368] Mayer/Lindemann/Haibach. Small Claims Verordnung. München : C.H.Beck, 2009, S. 52.
[369] Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 53.

462. Item 4 of the form "**Jurisdiction**":

4 *Why do you think the issue is in the competence of the court?*
4.1 Domicile of the defendant:
4.2 Domicile of the consumer:
4.3 Domicile of the insured person, the insured, or the beneficiary of the insurance compensation:
4.4 Place of enforcement of the corresponding obligations:
4.5 Place of causing damage:
4.6 Location of immovable property:
4.7 Choice of court according to the agreement of the parties:
4.8 Other (please, indicate):

463. In item 4 it has to be indicated why the claimant has chosen to lodge the claim with the court of the specific Member State. For example, why courts of Latvia, and not Sweden, have been chosen. Thus, item 4 relates to the international jurisdiction of courts.

464. By establishing this international jurisdiction, the explanations (but not the Regulation 861/2007 itself) on filling in item 4 states that: The court shall have jurisdiction pursuant to the provisions of the Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (Brussels I Regulation). However, it must be admitted that it follows from the Regulation 861/2007 itself that this international jurisdiction may be based also on other law (not only Brussels I Regulation), for example, here the law of the forum is meant establishing the international jurisdiction of courts.[370]

465. Item 5 of the form "**Cross-border case**":

5 *Cross-border case*
5.1 Member State of the domicile or permanent place of residence of the claimant:
5.2 Member State of the domicile or permanent place of residence of the defendant:
5.3 Member State of the court:

466. In item 5 it has to be justified why this is a cross-border case. Pursuant to Article 3 (1) and (3) of the Regulation 861/2007, **a cross-border case** is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised. By establishing if the concrete case is a cross-border case, the relevant moment for determining whether there is a cross-border case is the date on which the claim form (standard form A) is received by the court or tribunal with jurisdiction.

467. In item 5.1, the claimant indicates the Member State of the domicile — the same as in item 2.5 (for example, Estonia).

468. In item 5.2, the claimant indicates the Member State of the domicile of the defendant — the same as in item 3.4 (for example, Latvia).

469. The domiciles of the parties shall be established pursuant to Article 59 (if it is a natural person) or Article 60 (if it is a legal person) of the Brussels I Regulation; see Article 3 (2) of the Regulation 861/2007.

470. In item 5.3, the claimant indicates the Member State with the court of which it has decided to lodge the claim. Here the Member State of the court having the territorial

[370] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 4 EG-BagatellVO (Varga I.), S. 457.

jurisdiction that has been indicated in item 1.4 (for example, Liepāja City Court) has to be indicated, which, in its turn, is based on the international jurisdiction of courts (for example, Latvia), as indicated in item 4.

471. Item 6 of the form "**Bank data (not mandatory)**":

6 *Bank data (*)*
6.1 How are you going to cover the costs of the application?
1.1.6 With bank transfer:
6.1.2 With credit card:
6.1.3 With direct debit from your bank account:
6.1.4 Other (please, indicate):
6.2 Account to which the demanded or imposed amount has to be transferred by the defendant:
6.2.1 Owner of the account:
2.2.6 Name of the bank, *BIC*, or other corresponding bank code:
6.2.3 Account number/IBAN:

472. In item 6.1, the claimant indicates the form in which it will cover the costs of the litigation. In Latvia it is possible via bank transfer (thus, in Latvia, the supplement to the standard form A does not have to be filled in). The payment order shall be appended to the claim form (standard form A) showing that the claimant has performed the payment (see Article 19 of the Regulation 861/2007 and Section 129 Paragraph 2 Clause 1 of the CPL).

473. In Latvia, **costs of adjudication** are: 1) court costs; and 2) costs related to conducting a matter (Section 33 Paragraph 1 of the CPL).

474. **Court costs** are: State fees, office fees, and costs related to adjudicating a matter (Section 33 Paragraph 2 of the CPL).

475. **Costs related to conducting a matter** are: costs related to assistance of advocates, costs related to attending court sittings, costs related to gathering evidence (Section 22 Paragraph 3 of the CPL).

476. Costs of adjudication have been established in order to partially compensate the costs arising on the part of the State for the financing of the activities of the court, compensating the costs of the litigation to the party for the benefit of which the court decision has been made, urging the debtors to fulfil their obligations voluntarily.[371]

477. In Latvia, the State fee shall be transferred to the following account:[372] **Fee for activities carried out in judicial institutions (State fee):**

Receiver: The Treasury
Registration No. 90000050138
Account No. LV55TREL1060190911200
Receiving bank: The Treasury
BIC: TRELLV22
Purpose of the payment: here data has to be provided for the identification of the matter

478. **<u>Office fee shall be calculated as follows (Section 38 of the CPL):</u>**

[371] See: http://www.tiesas.lv/index.php?id=26
[372] Information available here: http://www.tiesas.lv/index.php?id=26

For issuing a true copy of a document in a matter, as well as for reissuing a court judgement or decision	5 lats
For issuing a certificate	2 lats
For issuing a duplicate of a writ of execution	10 lats
For certifying the coming into effect of a court adjudication, if such adjudication is to be submitted to a foreign institution	3 lats
For summoning witnesses	3 lats per person

479. Office fees shall be paid into the State basic budget (Section 38 Paragraph two of the CPL) by transferring to the following account:[373] **Office fee at court institution**
Receiver: Valsts kase (The Treasury)
Registration No. 90000050138
Account No. LV39TREL1060190911100
Receiving bank: Valsts kase (The Treasury)
BIC: TRELLV22
Purpose of the payment: here data has to be provided for the identification of the matter

480. The claimant can learn the information on what types of payment are accepted in each Member State either by contacting the concrete court, or by consulting the European Judicial Network:
http://ec.europa.eu/civiljustice/case_to_court/case_to_court_gen_lv.htm

481. By lodging a claim for the European Small Claims Procedure with a Latvian court, a State fee has to be paid the amount of which depends on the amount of the claim. As known, this amount of the claim may not exceed EUR 2000 for European Small Claims Procedure (see Article 2 (1) of the Regulation 861/2007). Starting from 1 January 2013, pursuant to Section 34 Paragraph one Clause 1 Sub-clause b of the CPL of Latvia, in regard to claims assessable as a monetary amount to 1500 lats, State fee shall be paid in the amount of 15% of the amount claimed, but not less than 50 lats.[374]

482. In item 6.2, the claimant indicates the account number to which the defendant can transfer the claimed amount or to which the bailiff can later transfer the amount recovered from the defendant. In this way the defendant, when receiving the claim form (standard form A) and recognising it, will be able to fulfil the claim and pay the respective amount.

483. Item 7 of the form "**Claim**": First, it has to be taken into account that for European Small Claims Procedure only those claims **not exceeding EUR 2000** may be lodged. In this amount no interest, expenses, and disbursements are included (see Article 2 (1) of the Regulation 861/2007). First the claimant has to establish if the claim will be "monetary claim" (which can be expressed in a specific amount of money) or

[373] Information available here: http://www.tiesas.lv/index.php?id=26
[374] See: Law "Amendments to the Civil Procedure Law" of 15.11.2012 ("LV", No. 90 (4792), 04.12.2012), entering into force on 01.01.2013

"other claim", i.e. claim that cannot be expressed in monetary terms (for example, on the delivery of goods, replacement of goods, etc.).

484. If it is "**monetary claim**", the claimant shall fill in item 7.1 by indicating the amount of the basic claim (i.e. the amount excluding interest and disbursements) and the currency separately. In item 7.1.2, also the Latvian lat (LVL) has been included as the possible currency. *For example*, the claimant requests the court to recover LVL 1000 from the defendant. The claim has been expressed in monetary terms, which means that the claimant wants the defendant to fulfil the obligations in money (and not in some other way).

485. If it is a **non-monetary claim**, the claimant shall fill in item 7.2 by indicating the subject of the claim and at the same time also the calculated amount of the claim. **Subject of the claim**: the type of fulfilment of the obligations (except for payment) by the defendant shall be indicated by the claimant.

486. Example.

The claimant asks the defendant to return the TV set value of which at the moment of lodging the claim was appraised as LVL 300. Thus, in item 7.2.1 the claimant shall indicate that the court should decide that the defendant has to return the TV set (by providing also identifying information on the TV set, like "Samsung"). In item 7.2.2 the claimant shall indicate the current value of the TV set, t.i., LVL 300.

487. In a non-monetary claim the claimant may also ask the court to oblige the defendant to replace the goods, to repair the item, etc. In other words, we are speaking on action for performance (*actiones cum condemnatione*). Since the claim has to be expressed as amount of money (see Article 2 (1) of the Regulation 861/2007), the Regulation does not relate to declaratory judgements or *actiones sine condemnatione* (for example, to declare a contract void, to recognise property rights to immovable property, etc.)

488. **Calculated amount of claim** means that the claimant (although there is not a request for recovering money) still has to assess the claim in monetary terms at the moment when the claim is lodged with a court (see the aforementioned example regarding TV set).

489. Instruction on filling item 7 of the form A states: *In the event of non-monetary claim, it should be indicated if there is any secondary claim on the compensation in the event it is not possible to satisfy the initial claim.* However, here the national procedural law of the Member State of the court seised should be taken into account regarding the types of claims and their admissibility (see Article 19 of the Regulation 861/2007). Section 134 Paragraph one of the CPL of Latvia allows joining of several mutually related claims in one statement of claim, i.e., claims separate adjudication of which would not be possible or appropriate, which could result in mutually contradictory judgements, or if the joinder favours quicker and a more correct adjudication of the matters.[375]

[375] See Judgement of 01.11.2012 in the matter No. 2012-06-01 by the Constitutional Court, page 8. Available at: http://www.satv.tiesa.gov.lv/upload/spriedums-2012-06-01.pdf

490. The claims included in the statement of claim in order for them to be mutually related shall be specific enough. The clarity of wording of a claim is closely related to the obligation of the court to take as explicit judgement as possible. The CPL allows the claimant submit such statement of a claim in which mutually related claims have been joined. At the same time the court, with a view to ensure legal certainty and rights of the parties to justice, has been granted the freedom of action to provide legal evaluation regarding which claims cannot be regarded mutually related and adjudication of which is not possible within the framework of one proceedings.[376]

491. Jelgava City Court in its judgement of 06.07.2011[377] decided that the claimant had not specifically and clearly indicated the claim in form A (as provided for by Section 128 Paragraph two Clause 7 of the CPL). The claimant had expressed the claim as follows: 1) states that the claim is monetary claim; 2) in the information on the claim (item 8 of the form) requests to replace the shoes with similar or equivalent ones, but, if it is not possible, to revoke the purchase contract and to reimburse the money paid for the shoes. During the litigation, the claimant specified the claim by requesting to replace the shoes with similar ones. By examining the case, it was established that the defendant cannot replace the shoes with similar ones since such model of shoes is not manufactured any more. The defendant expressed wish to reimburse the value of shoes, which has been made obligatory for the defendant in the operative part of the judgement of 27.01.2012 by Jelgava City Court[378].

492. In the opinion of the authors of the Study, statements of claims for the European Small Claims Procedure should be accepted for adjudication in Latvia if the claims expressed in them conform with the respective substantive norm. For example, according to Section 28 Paragraph one of the Consumer Rights Protection Law[379]

> *A consumer to whom **goods** not in conformity with the provisions of a contract are sold or given for use is entitled to require the performance of one of the following actions by the manufacturer or trader: 1) appropriate reduction of the price of the goods; 2) rectification of the non-conformity of the goods with the provisions of the contract, or compensation for the expenses of the consumer for the elimination of the non-conformity; 3) exchange of the goods for the same goods or equivalent goods with which conformity with the provisions of the contract is ensured; or 4) revocation of the contract and repayment to the consumer of the amount paid for the goods.*

493. The same relates also a service not conforming to the provisions of the contract. According to Section 29 Paragraph one of the Consumer Rights Protection Law, a

[376] See Judgement of 01.11.2012 in the matter No. 2012-06-01 by the Constitutional Court, page 19. Available at: http://www.satv.tiesa.gov.lv/upload/spriedums-2012-06-01.pdf

[377] Judgement of 06.07.2011 in civil matter No. [no number] by Jelgava City Court [not published].

[378] Judgement of 27.01.2012 in civil matter No. C15285811 by Jelgava City Court [not published].

[379] Consumer Rights Protection Law: Law of the Republic of Latvia. Latvian Herald, No. 104/105, 01.04.1999

consumer to whom a **service** not conforming to the provisions of the contract has been provided, is entitled to request that the service provider perform one of the following activities: 1) appropriate reduction of the price of the service; 2) rectification of the non-conformity of the service provided with the provisions of the contract free of charge or to reimburse the expenses of the consumer regarding rectification of the non-conformity; 3) manufacturing of another article from the same material or material of the same quality, or provision of service in conformity with the provisions of the contract; or 4) revocation of the contract and repayment to the consumer of the amount paid for the service.

494. As it may be observed, the substantive law allows the consumer to lodge *joined claims* against manufacturer, seller, or provider of a service, i.e., by lodging the main claim (for example, to replace the goods with similar or equivalent one) and secondary claim (for example, to revoke the contract and to reimburse to the consumer the money paid of the goods). As it can be seen from the judgement by Jelgava City Court, the court has still satisfied the secondary claim on reimbursing the price of the goods in the operative part of the judgement.

495. In item 7.3, the claimant has to indicate if there is a request for reimbursing also **costs of litigation**, by indicating the specific costs. In Latvia these can be only the costs of adjudication as provided for in the CPL. Moreover, also limitations of proportionality set out in Article 16 of the Regulation 861/2007 must be taken into account, i.e., costs for expert examination should not exceed the price of goods for several times, etc.

496. In item 7.4, the claimant indicates if there is a request for recovering **interest** from the amount from the defendant. These can be interest set both by law and by contract. If the claimant wishes to recover such interest, the interest rate and the date for calculation shall be set out.

497. Example:

In Germany, Jānis bought a used car Audi A3 (from car sales company "AB GmbH") for EUR 3000. In the purchase contract the parties agreed that Jānis would pay to the seller each month EUR 200 until full payment of the purchase price. The parties also agreed that Jānis would pay to the seller 1% from EUR 200 (from the monthly amount) for each month of delay. At the beginning Jānis performed payments as agreed by the parties, but now he has made no payments for 3 months, thus, the sum owing is EUR 600. The seller wants to recover this amount from Jānis, therefore a claim was lodged with a Latvian court for the European Small Claims Procedure. In items 7.1.1 and 7.1.2 of the form A, the claimant shall indicate EUR 600, but in item 7.4 the claimant shall indicate that it would like to recover also interest (according to the rate as agreed upon in the contract); in item 7.4.1 the claimant shall indicate the interest rate in the amount of 1%, and that interest shall be calculated starting from the date of the last payment (for example, 15.08.2012).[380]

498. It is important to remember that in Latvia interest set by law is 6% per year (see Section 1765 Paragraph one of the Civil Law). The lawful interest amount for the late payment of such a money debt, which is contracted for as compensation in the contract for the supply of goods, for purchase or provision of services, shall be seven percentage points above the basic interest rate (which is 4%, see Section 1765 Paragraph three of the

[380] See also: Mayer/Lindemann/Haibach. Small Claims Verordnung. München : C.H.Beck, 2009, S. 76.

CL) per year, but in contractual relations in a consumer participates — six per cent per year (Section 1765 Paragraph two of the CL).

499. Unfortunately, there is no item in the form A to the Regulation 861/2007 allotted for the **contractual penalty** to be recovered. Does it mean that there is no possibility to recover contractual penalty within the European Small Claims Procedure? In truth, **lack of such item can be regarded as material deficiency of the form A (and thus also form D), which should be eliminated by the legislator of the EU in future (by supplementing item 4.3.1 of the form D with an item for contractual penalty, at the same time).** Reason for this is the fact that contractual penalty is one of the most widespread ways of reinforcement of obligations rights and is often used in transactions. According to the authors of the Study, the Regulation 861/2007 does not exclude contractual penalties from the scope of its application. Article 2 (1) of the Regulation only interest is mentioned. However, since interest and contractual penalty fulfil similar functions of civil liability — reinforce the obligations rights and in a way impose penalty for not fulfilling obligations — Article 2 (1) of the Regulation should also be applicable to contractual penalties, based on analogy. Nevertheless, problems still arise from the form A which is not suited to to contractual penalties. The only solution to this situation could be the submission of a separate claim (form A) explicitly for the contractual penalty (by filling in item 7.1.1 for contractual penalty in the second form; it must be remembered that the contractual penalty may not exceed EUR 2000). A Latvian court could join these two statements of claim in one proceedings as mutually related claims (see Article 19 of the Regulation and Section 134 Paragraph two of the CPL). In such event the Latvian court would make one judgement but it should issue two copies of form D — one for the basic debt, and the other for the contractual penalty (entered in item 4.3.1 as "principal").

500. Item 8 of the form "**Information on the claim**": In item 8.1, the claimant shall clearly and explicitly state the essence of the claim, by indicating the most important facts leading to the claim.

501. In item 8.2 evidence shall be described with which the claim is substantiated. The evidence (corresponding documents) shall be appended to the statement of claim (form A). It is important to take into account the eligibility of evidence, namely, only the evidence relating to the specific matter shall be given.

502. In Latvia the following kinds of evidence may be admitted: testimonies of witnesses, documentary evidence, real evidence, expert examination. For example, facts acknowledged to be universally known, shall not be proved (Section 96 Paragraph one of the CPL). Also facts established pursuant to a judgement that has come into lawful force in one civil matter need not be proved again in adjudication of other civil matters involving the same parties (Section 96 Paragraph two of the CPL). In item 8.2, it shall be indicated which fact is proved by which kind of evidence.

503. In item 8.3, the claimant shall indicate if it prefers an oral hearing of the case. If this is the case, then reasons for which the claim should be heard in an oral hearing have to be provided. It must be noted that the court will only hear the case orally if it finds it appropriate, or if it is requested by any of the parties. The court may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary (see Article 5 (1) of the Regulation 861/2007).

504. Item 9 of the form "**Certification**": If the claimant wishes the court judgement to be later enforced in another EU Member State, it shall promptly — upon submitting the claim — indicate to the court that he or she wants to receive the form D "Certification of judgement pursuant to provisions of European Small Claims Procedure" in the Appendix IV to the Regulation 861/2007 after making of the judgement. According to Section 541[1] Paragraph 4[1] of the CPL, the aforementioned form D shall be issued by the court upon the request of a participant to the matter. This form D together with the judgement should then be sent by the court to the concrete participant to the matter (see Section 208 of the CPL).

505. Item 10 of the form "**Date and signature**":

10 *Date and signature* I, the undersigned, hereby ask the court to make judgement against the defendant(-s), based on my claim. Hereby I confirm that the information provided is true and provided in good faith, as far as I know. Place: _____ Date: ___/___/_____ Name, surname, signature:

506. Here the debtor shall indicate the place, date, name, surname and put his signature. At the same time, the signature confirms that the claimant has indicated correct information in the claim (form A).

*2.7.2. **Means of communication***

507. Pursuant to **Article 4 (2)** of the Regulation 861/2007, Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available (see also Article 25 (1) (b) of the Regulation). Latvia has informed that in Latvia the claimant may submit the statement of claim directly to the competent court or send it by mail.

508. Notifications of Member States regarding means of communication[381]

No.	EU Member States	Means of communication
1	**Belgium**	The only mean of communication acceptable to courts in Belgium for the purposes of the proceedings pursuant to Article 4 (1) of the Regulation is

[381] See: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_communicationshtml_lv_lv.htm.

		direct submission of standard forms A in Appendix I and the corresponding documents to the office of the court of first instance having the territorial jurisdiction AND sending the form A and the corresponding documents **in registered mail** to the office of the court of first instance having the territorial jurisdiction.
2	**Bulgaria**	Claim form (standard form A) for initiation of the European Small Claims Procedure shall be submitted to the competent court in Bulgaria either directly, or by mail.
3	**The Czech Republic**	In The Czech Republic the following "other means of communication" are acceptable: a) e-mail by using the electronic signature in accordance with the Electronic Signatures Act No 227/2000 with later amendments; b) e-mail; c) fax. If application is submitted by e-mail of fax (means of communication mentioned in (b) and (c)), the original of the application shall be submitted to the court within three days, otherwise the application is not taken into account.
4	**Germany**	In all events the following means of communication may be used: mail, including private courier services, fax. In *Brandenburg* electronic access to all local courts of lower level (*Amtsgericht*) and Brandenburg District Court (*Oberlandesgericht*) is possible. Pursuant to Article 130 a of the Civil Procedure Code (*Zivilprozessordnung*, ZPO), there is a possibility to submit electronic documents on the web page www.gerichtsbriefkasten.de by using the electronic mailbox of the court. Technical provisions for submission of data pursuant to the procedural requirements are available on the web page www.erv.brandenburg.de, additional information can be found on the web pages of the specific courts. In Bremen, pursuant to Article 130 a of the Civil Procedure Code (ZPO), electronic access to all local courts of lower level (*Amtsgerichte*) and Hansa District Court (*Hanseatischen Oberlandesgericht*) is possible. Technical provisions for submission of data pursuant to the procedural requirements are available on the web pages of the specific courts In *Hessen*, pursuant to Article 130 a of the Civil Procedure Code (ZPO), electronic submission of documents is possible to all local courts of lower level (*Amtsgerichte*). Technical provisions for submission of data pursuant to the procedural requirements are available on the web page www.hmdj.hessen.de
5	**Estonia**	Means of communication that are allowed for use and accessible to courts in Estonia for the European Small Claims Procedure pursuant to Article 4 (1) of the Regulation, are: personal delivery, as well as sending by mail, fax, or communication channels of electronic databases. By submitting documents, requirements stated in Articles 334–336 of the Civil Procedure Code have to be met. Pursuant to these requirements, applications to court shall be submitted in A4 paper format in eligible typing. It is applicable to documents signed by hand. According to this normative act, participants to the matter, if possible, shall submit to the court also electronic copies of the written litigation documents. It means that by sending a regular electronic mail no digital signature or other certification for the authenticity of the letter is necessary, thus the work of court in the field of document processing is made easier. If documents have been sent to the specific address via fax or e-mail, or any other form allowing receiving of written proof, the original of the written documents shall be submitted to the court immediately or, at

		latest, at the court proceedings, or the time period stipulated in the written procedure for submission of documents. In such event it is regarded that the term for submitting written application or appeal has been complied with. Applications and other documents that have to be drawn up in writing may be submitted to the court electronically, if the court can print out and copy these documents. In such event the documents shall bear electronic signature of the sender or the document shall be sent in by safe mode allowing identifying of the sender. Electronic document shall be considered as submitted to the court when it has been registered with the database of the court used for receiving documents. More information on the procedure for submitting electronic documents to court and on the requirements regarding the form of the documents has been included in the regulations adopted by the Minister of Justice. Court may consider that applications or other documents of the matter that have been sent via e-mail by participant to the matter are acceptable also if these documents have not be signed by hand or electronically provided that the court have no doubt regarding the identity of the sender or the manner of sending the documents, especially, if the same participant to the matter has previously sent electronically signed documents to the court from the same e-mail address within the framework of the same matter or if the court has agreed that applications and other documents may be submitted also in such way. Within the European Small Claims Procedure, the court may deviate from the provisions of the Civil Procedure Code on the service of documents of the matter and form of the documents submitted by participants to the matter, except for cases when the defendant is serviced a notice regarding initiation of the matter.
6	**Greece**	Claims are brought by submitting a written application to the registry office of a magistrate or by submitting the application, which is then registered, to the magistrate in person.
7	**Spain**	Application for claim may be submitted either directly, or by mail or fax.
8	**France**	Application for initiation of proceedings may be sent to the court by mail or electronically.
9	**Ireland**	Means of communication are mail and fax.
10	**Italy**	For the purposes of the European Small Claims Procedure, the acceptable mean of communication is mail.
11	**Cyprus**	The available means of communication that are acceptable in relation to the European Small Claims Procedure, are: submission of the application to the registry office in person or sending by mail or by other means of communication, like, fax or electronic mail.
12	**Latvia**	In Latvia the claimant may submit the statement of claim directly to the competent court or send it by mail.
13	**Lithuania**	If the European Small Claims Procedure is applied (including Article 4 (1) of the Regulation 861/2007), documents for the proceedings shall be submitted to the court either directly, or by mail.
14	**Luxembourg**	For Luxembourg acceptable mean of communication is sending by mail.
15	**Hungary**	In Hungary 1) filled-in standard form (form A) to the form of the claim may be submitted to the court; 2) the application may be sent by mail; or 3) the application may be submitted to the court orally.
16	**Malta**	The acceptable means of communication are registered mail and fax.
17	**The Netherlands**	According to civil procedure laws of the Netherlands (Article 33 of Civil

		Procedure Code), the application form provided for in Regulation 861/2007 may be sent in electronic form if such is allowed by the procedural rules of the court. Currently none of the courts provides for such a possibility. Only the following types of submission are allowed: - by mail; - by delivering at the office of court. Currently, also other kind of communication with the court cannot be done electronically.
18	**Austria**	Pursuant to Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, within the proceedings documents may be submitted not only in paper, but also electronically and via WebERV (Web-basierter Elektronischer Rechtsverkehr). WebERV is available to all natural and legal persons. The technical provisions provide for the involvement of special application software and sending institution. List of the sending institutions is available on the web page: http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv. Documents may not be submitted via fax or e-mail.
19	**Poland**	Written. *(Article 125 Paragraphs 1 and 2 of the Civil Procedure Code in connection with Article 126 Paragraphs 1 and 2 of the Civil Procedure Code and in connection with Article 187 Paragraph 1 of the Civil Procedure Code).*
20	**Portugal**	The acceptable means of communication are: registered mail, fax, or electronic mail.
21	**Romania**	Pursuant to Article 4 (1) of the Regulation, the acceptable and available means of communication for courts within the European Small Claims Procedure are **mail and fax**.
22	**Slovakia**	Pursuant to Article 4 (1) of the Regulation, the acceptable means of communication have been set in Section 42 of Law No. 99/1963 (Civil Procedure Code). *Motions may be lodged in writing, orally on record, by telegraph or by fax. Motions on the merits filed by telegraph must be submitted also in writing or orally on record in no more than three days; original copies of motions filed by fax must be submitted in no more than three days.*
23	**Slovenia**	Means of communication that have been certified in relation to the European Small Claims Procedure and that are accessible to courts pursuant to Article 4 (1): - Claim form (standard form A) in Appendix I may be submitted to the court having the jurisdiction by mail, e-mail, by using communication technologies, by submitting directly to the court, or by using services of a professional agent who will forward the claim (Section 150 b of the Civil Procedure Law).
24	**Finland**	The form mentioned in Article 4 (1) of the Regulation may be submitted directly to the registry of Helsinki Regional Court by mail, by fax, or by e-mail, as stipulated in the Act on Electronic Services and Communication in the Public Sector.
25	**Sweden**	Application for initiation of the European Small Claims Procedure shall be submitted to the competent court either directly, or by mail.
26	**United Kingdom**	**1 England and Wales** For communication with courts in England and Wales within the European Small Claims Procedure, mail services may be used (because it is necessary to collect fee on the initiation of proceedings — for now it is not possible to pay court fee in England and Wales by use of credit card

		or debit card). However, the following documents may be sent by mail,. fax, or electronic mail according to Part 5.5 of the Civil Procedure Rules and Practical Instructions including rules on submitting and sending documents to court. **2 Scotland** Means of communication available to courts in Scotland for purposes of initiating the European Small Claims Procedure are similar to those used in relation to national small claims procedure, namely, first class registered mail. **3 Northern Ireland** Means of communication available to courts in the Northern Ireland for purposes of initiating the European Small Claims Procedure are similar to those used in relation to national small claims procedure, namely, first class registered mail. **4 Gibraltar** The only means of communication acceptable to courts of Gibraltar are by mail (since court fee has to be collected on the initiation of proceedings).

2.7.3. ***Supplementing and Rectifying the Claim***

509. According to **Article 4 (4) (1)** of Regulation 861/2007**:**

Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Appendix II, for this purpose.

510. Where the claim (Form A), in the court's opinion, contains one of such **drawbacks**:

510.1. Information provided by the claimant is inadequate;

510.2. Information is insufficiently clear;

510.3. Form is not filled in properly;

510.4. The claim is clearly unfounded;

510.5. Application is inadmissible; **then,**

511. The court shall give the claimant opportunity:

511.1. To supplement claim application form; or

511.2. To rectify claim application form; or

511.3. To provide supplementary information; or

511.4. To provide supplementary documentation; or

511.5. To withdraw the claim within the period specified by the court.

512. In all cases, the court shall use **Form B** "Request by the Court or Tribunal to complete and/or rectify the claim form", as set out in Appendix II of the Regulation

861/2007. Consequently, Form B may be filled in only by the court. In Form B, the court must specify, which parts of the application are inadequate, incorrect or unclear.[382] Language, in which Form A shall be filled in, is established by Article 6 (1) of Regulation 861/2007, namely, the claim form (Form A) shall be submitted in the language or one of the languages of the court or tribunal. In Latvia, it is official language — Latvian (See Section 13 of CPL).[383]

513. When issuing Form B, the judge shall set the time limit for the claimant to fulfil actions specified by the judge. The court or tribunal may extend the time limits in exceptional circumstances, if necessary in order to safeguard the rights of the parties (See Article 14 (2) of Regulation 861/2007). For more detailed information on time limits, see sub-section "Time limits" of this research (583. § and further). Counting of the term shall begin not from the day of preparing or dispatching Form B, but from the day of receipt thereof by the claimant (See Sentence 2 of Article 5 (6) and Article 13 of Regulation).

514. The concepts of "the claim is clearly unfounded" and of "the claim is inadmissible" should be determined in accordance with national law (See Recital 13 of Preamble to Regulation 861/2007).

515. The concept of **"the claim is clearly unfounded"** shall be referred to those claims, where it is obvious that they cannot be satisfied. Example:

The claimant has stated in Row 8 of Form A that his neighbour — the respondent — is an alien agent, thus, he is the only one to be blamed for the fact that the claimant's TV set has failed during the guarantee period.

516. Example:

The claimant has stated in Row 8 of the Form A that he has no trust in the Estonian court, thus, he pursues claim in the Latvian court (having no international jurisdiction to review this application).[384]

517. The concept of **"the claim is inadmissible"** shall mean that any of preconditions of Regulation 861/2007 in relation to the European Small Claims Procedure has failed to be fulfilled. For instance, the Latvian court has no international jurisdiction, the claim fails to be within the material scope of application specified in Article 2 of Regulation, value of the claim exceeds EUR 2000, the case is not a cross-border case (Article 3 of Regulation) etc.

*2.7.4. **Dismissal of the claim***

518. According to **Article 4 (4) (2)** of Regulation 861/2007**:**

Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed.

[382] Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 121.
[383] See European Judicial Network: http://ec.europa.eu/civiljustice/case_to_court/case_to_court_lat_lv.htm
[384] See also: Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 126.

519. The abovementioned legal norm includes several **grounds for dismissal of the application**, namely:

519.1. The claim is clearly unfounded;

519.2. The application is inadmissible; or

519.3. The claimant fails to complete or rectify the claim form within the time specified by the court.

520. First two grounds for dismissal have been already shortly described above. The third ground is **failure to observe the term by the claimant**. The court, when completing Form B, shall specify the term, within which the claimant must perform the respective amendments or supplements in Form A. If the claimant neither has observed this term nor has requested the court for extension thereof, the court shall dismiss the claim.

521. How the concept of **"dismisses the claim"** used in Regulation shall be understood? According to the Latvian Civil Procedure, the claim may be dismissed by adjudgement, if the court has adjudicated the case *on the merits* (Section 193, Paragraph six of CPL). Procedural situation mentioned in Article 4 (4) of Regulation 861/2007 is similar to the refusal to accept the statement of claim, known in the Latvian Civil Procedure (CPL, Section 132). In other words, if the claimant has failed to register Form B within the specified term, the Latvian judge **shall take decision on refusal to accept a statement of claim** and returning the statement to the applicant. An ancillary complaint may be submitted in relation to this decision by the Latvian judge (Section 132, Paragraph three of CPL), and such refusal by a judge to accept a statement of claim is not an impediment to the submitting of the same statement of claim to the court after the deficiencies in regard to it have been eliminated (See Section 132, Paragraph four of CPL and exceptions mentioned therein).

2.8. Conduct of the procedure

2.8.1. Written and oral process

522. Regulation was intended as a specifically simplified procedure comparing to the legal procedure of the claim.[385] It means that the party, with no specific efforts and profound knowledge of law, may use benefits provided by this procedure and resolve their dispute in a simple, quick and accountable way. For example, according to Article 12 of the Regulation, party shall not be required to make any legal assessment of the claim, unlike in legal proceeding where conditions must be stated, upon which the claim is based. Furthermore, the Regulation emphasizes that party should not be obliged to be represented by a lawyer (See Recital 15 of Preamble), though, at the same time, it has been endeavoured for the process to ensure an effective legal protection and rule of law.

[385] Green Paper On an European Order for payment procedure and on measures to simplify and speed up small claims litigation [2002] COM 746, p.66.

523. To facilitate course of the procedure, Article 5 of the Regulation provides **written procedure**. This issue was one of the most controversial ones during the course of elaboration of the Regulation, since balancing of simple and cheap processes with rights to be heard was required.[386] However, aims of the Regulation — quick and facilitated legal proceedings — may be achieved only in case of a written process and use of modern technologies and Internet. ECHR has specified that an oral process shall not be considered an absolute right,[387] it must be maintained in an emergency case when reviewing of specific legal and technical issues shall be required.[388] Consequently, majority of processes, when applying the Regulation, shall be conducted in writing, however, the Latvian jurisprudence shows the contrary.

524. It must be noted that these processes may take place using ODR (*online dispute resolution*) tools. For example, small claims may be reviewed via specific online e-platforms, where the entire process takes place by using only the Internet environment — the claim forms are submitted and judgements are taken in this e-environment. This process is not only cheap, centralized, but also effective, automated and less formal. Currently, the Regulation leaves at discretion of Member States the opportunity of using e-environment for such requirements, although, it might be that, in the nearest future, resolving of such disputes will be ensured at EU level.[389]

525. **Oral review of the case** may be performed in two events — at court's discretion or at request of a party, which is similar to the procedure of review of analogous national small claims according to CPL Section 250[25]. Text of the Regulation unambiguously states that in both events the court will be the one to establish, if oral reviewing of the case shall be required. However, it may be presumed that oral process will take place rarely, since the Regulation includes presumption for written reviewing of the case (Recital 13 of Preamble), enabling quick and facilitated reviewing of the case. Furthermore, the court, without summoning the parties, has an opportunity to request in writing further details and evidences, if required (Article 7 (1) (a) and (b)).

526. **First**, the court hearing may take place, if the court deems it necessary, though, the Regulation fails to specify criteria to be observed by the court, ensuring freedom for the court itself. When analyzing objectives of the Regulation, the reason to decline oral reviewing of the case shall be, if the court establishes that oral reviewing may hinder or

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[386] Kramer, E X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p. 124, available at: *http://www.springerlink.com/content/88w50426x5135h38/*.

[387] Judgement of ECHR, dated by 12 November 2002, in the case: *Döry v. Sweden* No. 28394/95, ECHR – 2002- V, para 37.

[388] Judgement of ECHR, dated by 10 November 2005, in the case *Schelling v. Austria* No. 55193/00 ECHR- 2005- IX, para 30.

[389] See: Proposal for the European Parliament and Council Directive on Alternative Dispute Resolving and Amendments to Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumers' ADR) COM (2011) 793 and Proposal for the European Parliament and Council Regulation on Online Dispute Resolution for Consumers COM (2011) 794.

raise the cost of the process, for example, summoning of one party for oral court hearing may raise additional costs.

527. However, according to Recital 8 of Preamble, oral hearing shall take place, if it jeopardizes a party's right to justice and right to be heard, recognised by the Charter of Fundamental Rights of the European Union, consequently, ECHR practice must also be taken into account. For example, the court may assess, if as a result of an oral hearing right to justice will be used in a more practical and effective way and if, during oral hearing, the party will be able to defend itself adequately.[390]

528. **Second**, Article 5 of the Regulation states that oral litigation may be requested by any of the parties, noting it in Sub-item 8.3 of Form A and stating the reasons, however, stating the reason shall not be mandatory. The public has different attitudes towards participation in the court proceedings — there are people who tend to avoid visiting the court, but there are parties considering litigation an entertainment, thus, the court shall assess justification of these reasons with a special care. Reason shall be considered justified, if the case, despite the small claim, is complicated, it requires hearing of experts as well as witnesses. In particular, it shall be assessed in case of non-monetary claims, where the claim requires additional justification.

529. If the party has failed to state reasons, or reasons are not of *prima facie* significance, oral hearing shall not be held. Reasons for refusal shall be stated by judge in their decision, furthermore, the court may refer to Recital 14 of Preamble. No ancillary complaint may be submitted for this decision.

530. While analyzing type of the procedure, we will use an example from the Latvian court practice. A Latvian claimant— consumer has submitted an European Small Claims Procedure claim against the respondent — resident of Finland.[391] The respondent states in the answer form that he/she agrees to pay value of goods, and states that the case may be litigated without presence of the respondent, since attendance at the court hearing is complicated and time-consuming. The case was reviewed at an open hearing with participation of a claimant's representative, while non-attendance of the respondent is considered justified. The judgement states that the claimant, at the court hearing, agreed that value of goods and legal expenses shall be reimbursed, and the claimant refused to provide any further explanation. As facts of the case suggest, litigation at an open court hearing in presence of the claimant has no effect on the motive and resolution part of the judgement. Furthermore, the claimant could and wished to provide no further explanation, since she had submitted evidences, acknowledging justification of the claim, furthermore, the respondent had recognized the claim. Consequently, in this case, a fair court proceeding was not jeopardized; on the contrary — written process would save the court's time. The claimant in this case also submitted claim for repayment of fuel costs in relation to attending the court hearings, consequently, written procedure would have

[390] ECHR case *Airey v. Ireland* App No 6289/73 (9 October 1979), para 24.
[391] Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

reduce the claimant's costs. The examination of the case at issue took almost seven months, that is, from eatly July 2011 until 27 January 2012.

531. However, if due to complexity of the case the court may hold an **oral hearing** through video conference or other communication technology if the technical means are available according to Article 8 of the Regulation. The Regulation does not impose on the court a request to use such ways of communication, however, aim of the process shall be taken into account – the simplest and least costly method of taking evidence shall be used (Recital 20 of the Preamble). For example, if the party is in another country, it should spend considerable sum of money to attend the court hearing. As specified below, in this Research (Sub-section "Taking of evidences", 572. § and further), increasingly more EU Member States are encouraged to use these modern technologies. Even initial draft Regulation accurately identified such means of communication as fax, audio and telephone,[392] however, use of these technologies significantly differ across the court practice in the Member States, thus, current edition entitles the court to establish technical means to be used, providing they are available and permitted by national law. For example, in other countries, including England, it is usual practice to question witnesses via telephone or by use of the Voice over Internet Protocol (for instance, Skype).[393] However, even in the states with highly developed information and communication technologies in the court, while questioning consumers and representatives of small businesses, it has been established that practically this opportunity is still only theoretical.[394]

532. Currently, courts in Latvia are equipped with video conference and sound devices, and respective amendments have been made to CPL, in order our courts may use video conferences,[395] however CPL is not adapted to such procedure and it fails to solve number of procedural issues, particularly, if the litigation involves another EU Member State.

533. Apparently, in Latvia, other technical means (chat, voice over IP), in the nearest future, will not be used, although these methods are popular in alternative resolution of small disputes.[396] Furthermore, explanations or testimonies may be recorded by use of

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[392] Council of the European Union Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure [29 November 2005] 15054/05 JUSTCIV 221, CODEC 1107, para 13-15.

[393] House of Lords. European Small Claims Procedure: Report with evidences [2006] 23 rd Report of Session 2005-06, para 126-127.

[394] European Consumer Centre Ireland. *European Small Claims Procedure. First Year of Operation in Ireland* [2010], p. 8 at http://www.eccireland.ie/downloads/ESCP.pdf.

[395] See 2011.09.08 law "Amendments to the Civil Procedure Law" ("LV", 148 (4546), 2011.09.20), valid from 30.09.2011.

[396] See, for example, online mediation service: Risolvioline. RisolviOnline are Milano arbitration institution services, which allow solving of commercial disputes in a simple and economical way by use of the Internet. RisolviOnline allows achieving satisfactory agreement via neutral mediator and expert in conflict management in an informal and closed environment. Attempt of the agreement is made while discussing the issue in a real time discussion chat or forum by use of the Internet site area available only to parties,

technical means, recording conversation or making printout of a chat conversation, and preparing a protocol on such recording or printout. If the party to be questioned fails to understand the litigation language, according to Section 714 of CPL, an interpreter shall participate in taking of evidence in Latvia or in a foreign country, using technical means. Furthermore, Section 13, Paragraph three of CPL entitles the court to allow certain procedural actions to take place in another language.

2.8.2. Representation

534. Recital 15 of Preamble of the Regulation states that the parties should not be obliged to be represented by a lawyer or another legal professional, and Article 10 specifies that representation by a lawyer or another legal professional shall not be mandatory. These norms are included to achieve aims of the Regulation — to review small claims in a quick and non-expensive process. However, the Regulation provides that costs, including those for legal assistance, may be redeemed, if proportional and justified (Article 16), consequently, the party may be provided by legal assistance.

535. Although, it has not been mentioned in the Regulation, it may be allowed that consumer's interests may be represented by a non-lawyer, but, for instance, consumer associations or consumer right protection organizations, however, as stated further, in Latvia, costs for such representation may not be recovered.

536. Though, it shall be expected that due to this reason party will have to complete application itself, the court will have to use Form B to inform the claimant on flaws in the executed document in such a simple and understandable way.

2.8.3. Authority of the court

537. Article 12 of the Regulation divides the court competence into three parts. **First**, it is stated that parties are not required to make any legal assessment of the claim. **Second**, the court shall inform the parties about procedural questions. **Third**, the court shall seek to reach a settlement between the parties. Further, short review of each of these items is provided.

538. First item of the article under review states that the court shall not require the parties to make any **legal assessment** of the claim. Party shall have no obligation to specify reason of the claim, but only to state essence thereof (See Appendix I, Article8 (1)). Consequently, unlike in the national small claim procedure where the claimant themselves shall seek and state the applicable legal norms, this European procedure binds the court to research the reason, upon which the claim has been submitted. As shown by few cases in Latvia, claimants having no representation decide to

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mediator and employees of the arbitration, assigned for this specific service. Available at: http://risolvionline.com/?lng_id=37.

pursue a claim according to the Regulation, they experience difficulties in completing Form A and stating their claim. For example, in an already reviewed case, the claimant stated in Sub-item 7.1 the sum of the claim to be levied, but to the information on the claim stated in Sub-item 8.1, added request on termination of the agreement and exchange of goods. [397]

539. Consequently, when receiving standard form of the application, competence of the court shall include establishing of adequate rights in relation to the dispute and provision of the court's legal assessment of the claim.

540. Part two of this Article states that, if necessary, the court shall **inform the parties about procedural questions**. Recital 21 of Preamble supplements the Article stating that the information about forms shall be made available at courts. While Article 11 states even more specifically — the Member States shall ensure that the parties can receive practical assistance in filling in the forms.

541. Thereby necessity to involve lawyer in small claim procedures is being reduced, however, duties of a lawyer are partially transferred to the court. Despite the fact that forms were made as simple as possible for party to avoid involving professional layers, filling thereof may cause some difficulties for those having no specific legal education, for example, when answering in Form A the question about competence and domiciles of the court (See Article 4). Furthermore, in some cases, blank information fields must be filled in, providing information on the claim and describing evidence (See Item 8.1 and 8.2 of Form A) that also can be complicated. Thus, the court shall ensure assistance to the party requiring such assistance; however, it must be strictly assessed, to avoid such technical assistance and provision of information to become provision of legal assistance.

542. When enforcing this obligation stated by the Regulation, an active role is assigned to **personnel of the court**. The court's personnel shall assist to party to complete forms and provide information on procedural issues, including in relation to rights and obligations, consequences of non-observance of time limits (Recital 28 of Preamble), or in relation to commensurability of costs.

543. The poll revealed deficiency of information on this Regulation in courts of EU Member States and the obligation to assist to parties has not been properly fulfilled.[398] In Latvia, such practice also is not customary, namely, researchers in some registries of Latvian courts requested information on the abovementioned Regulation and issuance of forms. This information was not available at any of the visited courts, although, one court stated that the information may be found in Atlas. Thus, to facilitate the courts work, making of brochures in the courts shall be recommended with instructions and examples

[397] Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

[398] ECC-Net European Small Claims Procedure Report, September 2012, available at: http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf, p.19. 41% of courts of the Member States fail to fulfil the requirement to ensure the forms are available in courts, ka veidlapām ir jābūt pieejamām tiesās, tomēr 12% dalībvalstu tiesās šī informācija ir pieejama, 23% informācija tiek izlikta tiesu mājas lapā.

on how to fill in the respective forms, as well as educate court employees in relation to application of the Regulation. However, at the same time, limits for such assistance by employees must be clearly defined.

544. Articles 12 and 13 of Regulation establish another obligation for the court, namely, the court, when possible, shall attempt to reach **settlement**. This provision may be interpreted in two ways. **First,** the court shall establish, whether the parties prior to submitting of the claim to court have attempted to achieve agreement and/or used any of the procedures for settlement of disputes outside the court, established in laws and regulations. **Second**, the court, if aware of the possibility to make settlement between parties, shall give such opportunity.

545. Consequently, the court shall consider whether parties have performed specific actions prior to submitting the claim to prevent submission of the claim to the court. For example, consumer right protection laws establish that a claim of consumer shall be, first, reviewed by service provider or salesperson, then, the consumer may apply to consumer protection institutions, which may assist in resolving dispute situations, or to submit claim to the respective business.[399] Though, similar to commercial disputes, it may be difficult to establish, since the Regulation states no request to submit any agreements, documents and other evidence, but only to describe them, thus, a party may not consider such document significant and fail to include it into application. For instance, the claimant submits a claim to the court despite of the fact that the Commercial Law provides two-phase procedure of resolving disputes — first, by negotiation, then, in the court. Should the court have any suspicion that parties have used no opportunity of settlement of the dispute through negotiations, the court may apply right contained in Article 7 (1) (a) and request further information from the parties. If it is established that the parties have failed to use the established multi-phase procedure to resolve the dispute, the judge may take this fact into account when dividing costs.

546. Alternatively, the above-mentioned article recommends using ADR (*alternative disupte resolution*) methods, thus, the judge becomes a mediator of the process, making the process even less formal and, possibly, satisfying aims of both parties, contrary to the standard litigation.

547. For example, the informative material of the UK court states: prior to hearing the small claim procedure, parties are encouraged to use free mediation service, which usually is held by phone.[400] Since such process is voluntary, both parties shall agree on

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[399] See Consumer Protection Law: Law of the Republic of Latvia. Latvijas Vēstnesis, No. 104/105, 01.04.1999; European Council and Parliament Directive 2000/31/EC (8 June 2000) on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) PV L 178, Article 17.

[400] Her Majesty's Courts Service. Making a Claim?-Some Questions to ask yourself, at http://www.newham.gov.uk/NR/rdonlyres/FA8E5FA6-3190-46C1-8868-C8CF82001917/0/HMCEX301.pdf .

mediation. If a party has not considered such opportunity, the court may not to recover proceeding costs or to request covering costs of the other party.

548. However, in Latvia, it might be difficult to achieve encouraging of settlements between. The judge themselves, when using ADR, needs some specific skills or must refer the parties to a professional mediator. Furthermore, ADR procedure shall be voluntary, unlike in other states, thus, less effective. And, it must be noted that unnecessary use of such methods may take plenty of time and assets, furthermore, these methods are not applicable to all cases. For instance, if the parties do not reach agreement about a settlement, the procedure must be continued, whereas the goal of the Regulation about fast and cheap procedure has not been achieved.

549. Furthermore, the Regulation does not clearly state that a judge may advance the settlement procedure, because the court forms to be completed do not specify information to the parties regarding the possibility of a settlement, therefore the court may ask the parties to consider an agreement only in oral procedure that in accordance with this Regulation is held rather rarely.

2.8.4. Applicable law

550. According to Article 19 of the Regulation the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted. The fact that the Regulation establishes only basic procedural provisions, and deficiencies therein must be made up using national procedural law of the Member States, thus, forming no autonomous system. Procedural provisions differ across the Member States, including those in relation to appeal, execution and indemnification of costs, causing differences in legal protection of the parties and having effect on the duration and costs of the procedure.

551. For instance, as stated in this Research, in Latvia, to the term issues non-defined by the Regulation 1182/71 national court legislative enactments shall be applied (See Article 19 of the Regulation 861/2007 and 588 § and following paragraphs of this Research). Similarly, when reviewing a claim according to appeal or cassation procedure, the small claim procedure requirements established in the Regulation shall be observed, however, to issues not resolved in the Regulation provisions of CPL of the Republic of Latvia shall be applied (See Article 19 of the Regulation and Section 5, Paragraph three of CPL, as well as 661 § and following paragraphs of this Research).

552. Regulation fails to state the way to establish the applicable law for the dispute in its merits. As we may conclude from the nature of the Regulation, it will be task of the court — to find the applicable law, since the party, when submitting Form A, shall have no obligation to specify justification of the claim, but to state essence thereof.

553. After analysis of the Latvian court practice, applying the Regulation 861/2007, researchers have established that the court fails to explain, how it has arrived at the

applicable law for the dispute in its merits, specifying that the Preamble of the Regulation clearly states that, when hearing the case, legal enactments of the Republic of Latvia shall be applicable.[401] However, the court shall assess, if the applicable law may be established according to Rome Regulation I[402] (or Rome Convention[403]) or to the Regulation on the law applicable to non-contractual obligations (hereinafter referred to as: *Rome II*),[404] however, this process may be extremely complicated, in particular, if the dispute refers to facts of the case.

554. Should the court establish that the parties have failed to agree on the applicable laws, thus, Rome I Regulation must be applied, the, for example, service provision agreement will be governed in accordance with the law of the state, in which the service provider has their permanent residence, while the distribution agreement shall be governed in accordance with the law of the state, in which the distributor has their permanent residence etc. (See Article 4 of the Regulation). Procurement agreement shall be governed by the national laws of the court, in which the vendor has their permanent residence; however, almost all the European Union Member States are Member States to the Convention on contracts for the international sale of goods (CISG),[405] according to Article 1 of which the convention will be applied automatically, if the buyer and the seller are located in different Member States to this convention, and the dispute will be reviewed in the scope of convention.[406]

555. Example:

A Polish businessman as a seller and a Latvian businessman as a buyer agree that the seller will produce and supply 1000 stools made from varnished pine-tree for EUR 9 per item under INCOTERMS 2010® DAP (Delivered at Place) provisions to Jēkabpils, Latvia.[407] Payment has been done and the goods are delivered. When accepting the goods, the buyer discovers that the stools have not been varnished, and informs the seller about this fact. The seller replies that there is no varnish available at the moment. The Latvian businessman like the stools, they decide to keep them, however, they fail to agree with the Polish partner on possible legal protection means, thus, the buyer submits the European Small Claim to the Latvian court, specifying amount of the claim as EUR 1500. In the information on the claim, the claimant explains that they wish to levy from the respondent the amount, which they have overpaid. The respondent fails to respond to Form C.

The Latvian court, when applying Article 5(1) of Brussels I Regulation shall state that in case of sale of goods one party may sue the other party in the court of the Member State, where the goods have been delivered according to agreement.

Furthermore, the Latvian court established that, according to Article 4(1)(a) of the Rome I Regulation, laws of the state, in which the seller has their permanent place of residence, consequently, in this case –

[401] Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

[402] European Parliament and Council Regulation (EC) No. 593/2008 (17 June 2008) on the law applicable to contractual obligations (Rome I). OJ L 177, 04/07./2008, p. 6-16

[403] The Convention on the law applicable to contractual obligations, open for signing in Rome, on 19 June 1980: International Agreement of the Republic of Latvia, *Latvijas Vēstnesis*, 29 December 2006, No. 209.

[404] European Parliament and Council Regulation (EC) No. 864/2007 (11 July 2007) on the law applicable to non-contractual obligations (Rome II). OJ L 199, 04/07./2008, p. 40-49

[405] United Nations Convention on Contracts for the International Sale of Goods. *A/CONF.97/18*, 1980. 2010.

[406] See Kačevska, I. Application of the Convention on Contracts for the International Sale of Goods. Jurista Vārds No. 51/52, 22 December 2009.

[407] INCOTERMS 2010®. ICC Services, 2010.

Poland, shall be applied to the agreement, however, both Latvia and Poland are Member States to the Convention on contracts for the international sale of goods, and the convention shall be applied even, if goods are only to be produced (Article 3), the parties have not refused application of the convention, thus, the court, when reviewing the dispute in its merits, shall observe thereof.
According to Article 53 of the Convention, if goods fail to comply with the contract requirements, irrespective of whether the price is already paid, the may reduce the price at the same proportion, in which the value of the supplied goods at the moment of delivery relates to the value, which the goods would have at that time, if the goods would comply with requirements of the contract.
Since the respondent has had no objections against the claimant's calculation, the court decides to satisfy the claimant's claim to reduce the price and to levy from the respondent the sum specified in the application.

2.8.5. Service of documents

556. Article 13 (1) of Regulation 861/2007 establishes autonomous system for issuance of documents, namely, they shall be served by postal service attested by an acknowledgement of receipt including the date of receipt. If service in accordance with Paragraph 1 is not possible, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No. 805/2004, i.e.,

556.1. personal service attested by acknowledgement of receipt;

556.2. personal service attested by a document signed by the competent person who effected the service stating that the debtor has received the document or refused to receive it;

556.3. service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor;

556.4. orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing;

556.5. personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there;

556.6. in the case of a self-employed debtor or a legal person, personal service at the debtor's business premises on persons who are employed by the debtor;

556.7. deposit of the document in the debtor's mailbox;

556.8. deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit;

556.9. postal service without proof where the debtor has his address in the Member State of origin;

556.10. electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

557. Detailed description of use of these methods see in Sub-paragraph of Articles to be commented of Regulation 805/2004 (507 § and further).

2.8.6. Language of the procedure

558. EU invests efforts into elaboration of various automated translation tools and forming of interpreters' database,[408] however, in the researchers' opinion, language is one of the most significant challenges of the Regulation, since translations and certification thereof affects the procedure both from the aspect of assets and time. Regulation supports use of e-forms available in the Atlas, however, those include questions requiring not only marking of the respective fields, but also provide explanations, which cannot be done having no court language skills, thus, automated translation is often used. However, such translation is not always accurate and reliable, furthermore, inaccurate translation can deteriorate position of the party rather than assist. Insignificant errors shall not affect the procedure, and courts shall not require correction or supplementing of the application, if a reasonable person is able to understand what is stated in the forms, for example, whether the information on the claim and evidences are sufficiently described (See Item 8 of Form A), etc.

559. Currently, Article 6 (1) states that the claim form, the response, any counterclaim, any response to a counterclaim and any **description** of relevant supporting documents shall be submitted in the language or one of the languages of the court. Consequently, **forms shall be translated into the language of the court having jurisdiction in the case,** but, to reduce costs and facilitate the procedure, parties shall submit only document description in the specified language, while the documents itself are not required to be attached and translated.

560. According to Article 25 (1) (d) of the Regulation, Member States until 1 January 2008 had to announce acceptable language of the litigation, and pursuant to the European Judicial Atlas in Civil Matters, to the moment of submission of this Research, the following languages have been stated:[409]

Belgium	Official language (i.e. French, Netherlandic, German)
Bulgaria	Bulgarian
Czech Republic	Czech, Slovak and English
Germany	German
Estonia	Estonian and English
Greece	Greek
Spain	Spanish
France	French, English, German, Italian and Spanish
Ireland	Irish and English

[p] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee: Towards a European e-Justice Strategy [2008] COM (2008) 329 final p.9.

[409] European Judicial Atlas in Civil Matters, Section *European Cross-border Procedures*, Sub-section: Relationship among Member States – acceptable languages, available at: *http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm?countrySession=1&*.

Italy	Italian
Cyprus	Greek and English
Latvia	Latvian
Lithuania	Lithuanian
Luxembourg	French and German
Hungary	Hungarian
Malta	Maltese and English
Netherlands	Dutch
Austria	German
Poland	Polish
Portugal	Portuguese
Romania	Romanian
Slovenia	Slovenian (as well as language of minorities – Italian and Hungarian, in the court regions where those are used)
Slovakia	Slovak
Finland	Finnish; Swedish or English
Sweden	Swedish or English
United Kingdom (England and Wales, Scotland, Northern Ireland, Gibraltar)	English

561. Consequently, if the claimant submits the European Small Claim at the respondent's domicile in Estonia, Form A may be completed in Estonian or English. It is doubtless that English as a supplementary language is very adequate and it actually will reduce costs of such procedure, however, it takes judges to acquire the language skills.

562. Article 6 (2) of the Regulation states that, if any other document received by the court is not in the language in which the proceedings are conducted, the court may require translation of that document only if the translation **appears to be necessary for giving the judgment**. Thus, the court shall have choice — to require or not supplementary evidence translations. However, doubts are raised, whether the court has any difficulties to assess, if the document is necessary for giving the judgement, since evidences may be executed in a language, in which the judge has no sufficient skills. This must be balanced between the principle established in the Regulation that the court should use the simplest and least costly method of taking evidence (Recital 20 of Preamble) and the right to a fair trial and the principle of an adversarial process (Recital 9 of Preamble). Namely, when requesting translation and adequate certification of a contract on several pages, the procedure will become more costly, but in case of non-translating of such a significant evidence risk may arise that the court is unable to establish objectively all the circumstances in the case, thus, this issue must be assessed on a case-by-case basis considering facts of the specific case.

563. Article 6 (3) governs the phase of the procedure when exchange of the submitted forms occurs between the parties and the court. Namely, the provision states that a party may refuse to accept a document in the following two cases:

563.1. If the document is not in the official language of the Member State addressed;[410]

563.2. If the document is not in the language which the addressee understands.

564. Recital 18 of Preamble explains that the concept of **"Member State addressed"** is the Member State where service is to be effected or to where the document is to be dispatched. The abovementioned provision of Article 6 (3) is in compliance with Article 8 of the Regulation on a service of documents, which includes the principle of refusing to accept documents only in extraordinary situations.

565. It shall be explained that for the purposes of CJEU practice "**document**" shall mean such a document, where the specific subject of the claim and justification thereof is stated, as well as summons to participate in the procedure and pursue a claim.[411] For the purposes of the Regulation 861/2007, such documents will be Forms A and C rather than written evidences attached by the parties. However, should the court establish that the respondent is the consumer at a weaker position, it must assess whether the consumer will be able to understand the essence of the dispute from the forms. Nevertheless, translation of all documents will significantly affect costs of the procedure, thus, aims of the Regulation will fail to be achieved.

566. For instance, if the respondent in the United Kingdom receives Form A from the Estonian court in English, he/she cannot refuse acceptance of these documents, since the official language of the United Kingdom is English. Whereas, if the Estonian court delivers these documents to the respondent in Latvia, he/she may refuse acceptance thereof, unless the party has knowledge of English.

567. Regulation has no direct requirement to the party to prove their language skills, when applying Article 6 (3) (b) of Regulation. However, according to the practice of CJEU, in order to establish whether the addressee of the document understands the official language of the Member State where the document must be dispatched, in which the document has been executed, the court must check all references submitted by the claimant in relation thereto.[412] Various criteria must be assessed here, for instance, nationality and domicile of the addressee — physical entity, professional qualification, former communication language between the parties, but in case of legal entity — domicile, size of the business and former collaboration language between the parties.[413] It must be noted that even, if by the contract the parties have agreed that communication language shall be the official language of the Member State where the document must be dispatched, it shall not be base for assumption that this language is known, but it shall be

[410] Or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched.

[411] Judgement of ECJ, dated by 8 May 2008, in the case: C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin* ECR, 2008, p. I 03367, para 75-76.

[412] Judgement of ECJ, dated by 8 May 2008, in the case: C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin* ECR, 2008, p. I 03367, para 80.

[413] Bohunova P. Regulation on Service of Documents: Translations of Documents Instituting Proceedings Served Abroad in *2008 Days of Law*. Brno: Masarykova univerzita, 2008, p. 10.

considered only a reference, which the court may take into account when verifying, if the specific addressee understands the official language of the Member State where the document must be dispatched.[414] In practice, verifying the language knowledge skills might be comparatively difficult, since in this European Small Claim Procedure, the party has no obligation to submit any evidences, for example, contracts, communication between the parties, which might assist in establishing mutual practice in relation to the language, because evidences must be only described and the court may request them only in disputable cases. Furthermore, if a party has refused to accept the documents, even if there is evidence that they understand the language, the Regulation shall not give any right to the court to continue the procedure and consider that the party has received the documents, although it would be reasonable that the party referring to this provision has acquired evidences, and the court may assess whether this party only attempts to defend the procedure.

568. Recital 19 of Preamble of the Regulation 861/2007 states that a party using their right to refuse shall return the document **within one week**. Consequently, if the party receives any of the forms specified in the Regulation in the language, which is not the official language or which they fail to understand, documents must be returned to the court within the specified period of time. Should the term be delayed, the documents will be considered accepted.

569. If the document, however, is translated wrongly into the official language of the Member State addressed, for example, using automated translation tool, the party shall have no right to refuse acceptance of the forms.

570. In Latvia, this article of the Regulation has never be applied, while, for example, in an European Small Claim Procedure in the Netherlands, documents in Dutch were sent to the respondent living in Latvia, but the respondent decided to use his right of non-acceptance provided in Article 6. However, the court denied these objections, stating that the court language in the Netherlands shall be Dutch and the respondent has provided insufficient justification for his objections.[415] It cannot be concluded from the case description, what was legal motivation of the case, as well as, if all documents were dispatched to the respondent in Dutch, or only appendixes thereof. However, reference of the Netherlands' court about the language is in contradiction to the respondent's rights to refuse documents stated in the Regulation, because, in this case, if the respondent fails to understand Dutch, he/she shall have the right to refuse acceptance of forms under Article 6 (3) (b) of the Regulation, but, if the court has any evidences that the respondent is able to understand Dutch, this measure may not be applied. As mentioned above, the Regulation fails to resolve the issue, what shall be done in this situation, if, irrespective of

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[414] Judgement of ECJ, dated by 8 May 2008, in the case: C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v. Industrie- und Handelskammer Berlin* ECR [2008], p. I 03367, para 88.

[415] Kramer, E X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p. 131, available at: *http://www.springerlink.com/content/88w50426x5135h38/*.

the language knowledge, the respondent fails to accept documents. The court may consider these circumstances, when hearing the case and recovering, for example, translation costs from such part. Regulation establish no direct obligation for the party to prove that it fails to understand the specific language, furthermore, in this case, the party will be unable to provide explanations in the language, which they know.

571. Article 6 (3) of the Regulation 861/2007 states that, if the party has refused to accept a document, the court shall request the other party to ensure translation. The other party will have to ensure translation of forms in the shortest possible time. The court shall establish term for the translation considering circumstances of the case, complexity of the document, as well as, if documents shall be translated into the language, for which no translators are available.[416] Translation shall be executed in line with national procedural provisions by a person qualified to make translations in one of the Member States.[417]

2.8.7. Taking of evidence

572. Regulation aims to implement a simplified procedure, where one of the principles is not to overload the court, including with various documents. By submitting the claim, the party may only to specify the documents significant for this case. Recital 12 of Preamble states that supplementary evidence shall be provided only, if required, and also in the foreign language, although the court shall be entitled to request translation thereof according to Article 6 (2) of the Regulation. It must be noted that, if the party is not represented by lawyer, the party itself may be unable to assess, which evidences shall apply to the case. In this procedure, the court will be the one to assess necessity, applicability and admissibility of evidence.

573. Article 9 (1) of the Regulation 861/2007 establishes principal provisions for taking of evidence. Item 1 of this article states the following:

> *The court shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. The court may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.*

574. **First**, the court shall assess content of the completed forms to establish, if they can make justified judgement or if any further information or evidence from parties shall be required. The court may require translation of attached documents according to Article 6 (2), or provision of further information on the claim using Form B in accordance with Article 7. It may be concluded that, to some extent, this is a

[416] Judgement of ECJ, dated by 8 November 2005, in the case C-443/03 *Götz Leffler v. Berlin Chemie AG* ECR [2005], p. I – 09611, para 64.
[417] See Regulation 861/2007, Article 21, Part 2, Paragraph (b), last sentence.

demonstration of the court's procedural assistance to parties, as well as fixing the provision that a party shall have no obligation to provide their own legal assessment on the claim in accordance with Article 12 of the Regulation.

575. If the court fails to obtain evidence from the party located in another Member State, though, such evidence is required to fully assess the case, other available EU instruments may be used. Namely, already draft Regulation stated[418] that for taking evidence the Council Regulation No. 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, which tries to enhance, simplify and accelerate cooperation between courts in taking of evidence (hereinafter: *Taking of Evidence Regulation*).[419] Thus, if additional evidence for a small claim case shall be requested from another EU Member State, according to Chapter 84 of CPL the court shall apply two methods of taking of evidence: Direct taking of evidence or referring to the court in another Member State. When establishing method of taking of evidence, Article 9 (3) of the Regulation 861/2007 shall be taken into account, stating that the court shall use the simplest and least burdensome method of taking evidence. The court may use the Taking of Evidence Regulation's handbook at this point.[420]

576. **Second**, the court will assess necessity, applicability and admissibility of the provided evidences according to national procedural rights. If the procedure takes place in Latvia, Chapter 15 of CPL shall be applied.

577. Some types of evidence are listed in Article 9 (1) of the Regulation. Namely, the procedure allows taking of evidence through written statements, including those of witnesses, experts or parties. However, considering aims of the Regulation and item two of this article, inviting an expert or oral explanation of the parties should be used only in specific cases, since it will not only extend the procedure, but also will increase costs thereof.

578. In such cases when parties or experts shall be heard, who are located in another Member State, this article of the Regulation suggests to the court using modern technologies (See also Recital 20 of Preamble, Article 9 (3)), in order to ensure better use of less costly and quickest ways of talking of evidence and to avoid further burden to the court and parties. Namely, according to Article 13 (2), communication with the parties may be effected also by electronic means of communication. Thus, if questioning of the other party, witness or expert located in another Member State is required, the court may use advantages provided by a **video conference** to reduce consumption of time and

[418] Council of the European Union Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure [29 November 2005] 15054/05 JUSTCIV 221, CODEC 1107, para 15.

[419] Council Regulation (EC) No. 1206/2001 (28 May 2001) on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters, which tries to enhance, simplify and accelerate cooperation between courts in taking of evidence. OJ L 174, 27/06/2001, p. 1-24

[420] Practical manual for application of the Taking of Evidence Regulation. Available at: http://ec.europa.eu/civiljustice/publications/docs/guide_taking_evidence_lv.pdf.

assets. In this case also shall be used the Taking of Evidence Regulation and practical manual on the use of video conferences.[421]

579. The court wishing to take evidence directly from the witness in another Member State may do this in accordance with Article 17 of Taking of Evidence Regulation, which states that, if the court requests opportunity to take evidence directly in another Member State, it shall submit request to its central institution or competent authority (for example, to the court), using Form I attached as appendix thereto. Advantages of such request are that evidence is obtained in accordance with the regulatory enactments of the Member States, which submits request. The latter means that in such case the Latvian court leads the procedure as prescribed by CPL; however, unfortunately Chapter 84 of CPL does not in detail regulate the issues that in case of such taking of evidence differ from usual proceedings. For instance, how in such cases a witness provides his signature on a warning for knowingly providing false testimony (Section 169 of CPL), etc. The legislator should pay greater attention to these internatioanl civil procedural issues. Moreover, Article 5 of the Regulation determines that request to the court of another Member States or competent authority is handed over in the official language of the recipient authority or in another language which the requested Member State has indicated it can accept.[422] It means that a judge must involve interpreters to ensure taking of evidence.

580. As stated before, request to take evidence must be submitted to the central authority or competent authority of the Member State, which receives request by using Form I provided in the appendix to the Regulation, whereas the central authority or competent authority shall inform the court, which submits request, within a time period of 30 days about whether the request has been approved and if yes, under what conditions. Also a video conference is possible in accordance with Articles 10-12 of the Taking of Evidence Regulation if the court demands from the court of another Member State to take evidence. The court, which receives request, fulfils the request within a time period of 90 days from the day of the receipt thereof. However, the court fulfils the latter in accordance with regulatory enactments of its Member State. European E-Justice Portal includes information about the provision of the Member State courts with equipment.[423] It is possible to involve interpreters in such procedure (Section 692, Paragraph two of CPL) and, if allowed by national law, such court hearings may be recorded.

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[421] Use of video conference for taking of evidence in civil matters and criminal matters according to the Council Regulation (EC) No.1206/2001 of 28 May 2001. Practical manual. Available at: http://ec.europa.eu/civiljustice/publications/docs/guide_videoconferencing_lv.pdf; Brochure "Video conference part of the European e-rule of law" available at: https://e-justice.europa.eu/attachments/vc_booklet_lv.pdf .

[422] See Information on languages notified by a Member State for Taking of Evidence Regulation http://ec.europa.eu/justice_home/judicialatlascivil/html/te_otherinfo_lv.htm.

[423] See: Information about equipment in Member States, available at: https://e-justice.europa.eu/content_information_on_national_facilities-151-EU-lv.do .

581. Summons to a court hearing through the mediation of a video conference, like the usual court hearing, must be notified 30 days before sending out summons (Article 7 (1) (c) of the Regulation).

582. Up-to-date technologies would significantly influence the speed and costs of procedures; however, it is necessary for the Latvian legislator to also create a clear national law platform so that the court would be able to use these new means in legal proceedings, including the European Small Claim Procedures, more actively.

2.8.8. Time limit

583. According to **Article 14** of Regulation 861/2007:

> *1. Where the court sets a time limit, the party concerned shall be informed of the consequences of not complying with it.*
> *2. The court may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), in exceptional circumstances, if necessary in order to safeguard the rights of the parties.*
> *3. If, in exceptional circumstances, it is not possible for the court to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible.*

584. Regulation 861/2007 autonomously establishes procedural time limits in the following cases specified in the Regulation:

584.1. **The court's right to establish time limit itself:** The court shall establish for **the claimant** time limit to supplement or rectify entries in the claim statement form; to provide further information or documents; to withdraw the claim. The court for this purpose shall use Form B attached as Appendix II to the Regulation (Article 4 (4) of the Regulation). The abovementioned time limits may be extended (Article 14 (2) of the Regulation).

584.2. **Time limits established for the court and parties by Regulation 861/2007:**

584.2.1. **30 day** term — the **defendant** shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents (Article 5 (3) of the Regulation).

584.2.2. **14 day** term — any counterclaim (submitted by the claimant), and any relevant supporting documents shall be served on the claimant by the **court** within 14 days (Article 5 (6) first sentence of the Regulation).

584.2.3. **30 day** term — **the claimant** shall have 30 days from service to respond to any counterclaim (Article 5 (6) second sentence of the Regulation).

584.2.4. **30 days** term — the court within 30 days shall give a judgment, or perform other actions specified in Article 7 (1) of the Regulation (Article 7 (1) of the Regulation).

584.3. **The abovementioned time limits may be extended** (Article 14 (2) of the Regulation).

584.3.1. **14 days** term — (after receiving the properly filled in claim statement Form A), **the court** shall dispatch to the defendant documents specified in Article 5 (2) of the Regulation (Article 5 (2) of the Regulation). If it is not possible for the court to respect the time limits, it shall take the steps required by those provisions as soon as possible (Article 14 (3) of the Regulation).

584.3.2. **14 days term** — within 14 days **the court** shall dispatch a copy of the response, together with any relevant supporting documents to the claimant (Article 5 (4) of the Regulation). If it is not possible for the court to respect the time limits, it shall take the steps required by those provisions as soon as possible (Article 14 of the Regulation).

584.3.3. **30 days term — the court** or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of the Regulation 861/2007 (Article 5 of the Regulation). If it is not possible for the court to respect the time limits, it shall take the steps required by those provisions as soon as possible (Article 14 of the Regulation).

584.3.4. **14 days term — the court** within 14 days from receipt of documents specified in Article 5 (6) of the Regulation shall deliver them to the claimant. If it is not possible for the court to respect the time limits, it shall take the steps required by those provisions as soon as possible (Article 14 of the Regulation).

2.8.8.1. Calculation and extension of procedural terms

585. All the abovementioned procedural terms stated autonomously by the Regulation 861/2007 the court shall calculate according to Chapter 5 of CPL ("Procedural time periods"), rather than according to the **Council Regulation (EEC, Euratom) No. 1182/71 (3 June 1971) determining the rules applicable to periods, dates and time limits**[424] (See Recital 24 of Preamble of Regulation 861/2007). Article 3 of Regulation 1182/71 establishes **beginning and end of the calculation** (thus, Sections 46-48 of CPL shall not be applicable).

586. According to Article 3 (1) second sentence of Regulation 1182/71 "where [..] a period, expressed in days, is to be calculated from the moment at which an event occurs

[424] Council Regulation (EEC, Euratom) No. 1182/71 (3 June 1971) determining the rules applicable to periods, dates and time limits. OJ L 124, 08/06/1971, p. 1-2

or an action takes place, the day during which that event occurs or that action takes place shall not be considered as falling within the period in question". A period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the last day of the period (Article 3 (1) (b) of Regulation 1182/71). Where the last day of a period expressed otherwise than in hours is a public holiday, Sunday or Saturday, the period shall end with the expiry of the last hour of the following working day" (Article 3 (4) first sentence of Regulation 1182/71). It shall be noted that for the purposes of Regulation 1182/71 the term "public holidays" means all days designated as such in the Member State or in the Community institution in which action is to be taken (See Article 2 (1) of this Regulation).

587. Example:

According to Article 5 (6) second sentence of Regulation 861/2007, the claimant shall have 30 days from service to respond to any counterclaim. The respective action — dispatch of the counterclaim, as well as dispatch of the claimant's response — shall be effected in the claimant's Member State. For example, the claimant resides in Germany, the defendant resides in Latvia, and the small claim statement is reviewed by the Latvian court. The Latvian court shall dispatch the counterclaim to Germany for issuance to the claimant. Since the claimant resides in Germany, the respective action (dispatch of the claimant's response) also will be effected in Germany. If the last day of 30 days time period falls on Thursday, 1 November (which is national holiday in Germany, but not in Latvia), then 30 days time period will end on Friday, 2 November, at midnight.

588. Time period issues not established by Regulation 1182/71 shall be governed by national legislation of the Member State in which the procedure is conducted (See Article 19 of Regulation 861/2007). For example, according to Article 14 (2) of Regulation 861/2007 the court may **extend** specific time limits provided for in the Regulation. Procedure, according to which the time periods may be extended, is established neither in Regulation 1182/71 not Regulation 861/2007. Thus, in this case (based on Article 19 of Regulation 861/2007) Section 52 and 53 of CPL shall be applied. According to Section 53 of CPL, an application regarding extension of a time period shall be submitted to the Latvian court where the action had to be carried out. Such application shall be adjudicated by written procedure, the participants in the matter shall be notified in advance regarding adjudication of the application by written procedure, concurrently sending them an application regarding extension of the time period. A time period specified by a judge may be extended by a judge sitting alone (for example, time periods provided for in Article 4 (4) of Regulation 861/2007 may be extended by the Latvian judge sitting alone).

2.8.8.2. Consequences from non-observance of procedural term

589. Legal consequences autonomously provided for in Regulation 861/2007. Regulation 861/2007 provides for consequences from non-observance of specific time limits. For example, if the court from the **defendant** within 30 days (or during the extended time period — Article 14 (2)) has not received an answer to the claim, i.e. part

II of the Form C, as set out in Appendix III (Article 5 (3) of Regulation), the court shall give a judgment on the claim (See Article 7 (3) of Regulation). Thus, the defendant must duly respond to the claim. "Silence tactic" in this case will be bad for the defendant. It shall be noted that the court must inform the party concerned of the consequences, if they fail to duly provide their response explanation in relation to the claim (Article 14 (1)). This information is already printed in the introductory part of the standard Form C, as set out in Appendix III, which states the following: "*Please note that if you do not answer within 30 days, the court/tribunal shall give a judgement.*" It would be more accurate, if the EU legislator includes in this sentence indication to the moment from which the counting of these 30 days shall begun (See Article 5 (3) of Regulation), i.e. within 30 days after the defendant has received the claim statement form and answer form.

590. If the court from the **claimant** within 30 days (or during the extended time period — Article 14 (2)) has not received an answer to the counterclaim (See Article 5 (6) of Regulation), the court shall give a judgment on the claim (See Article 7 (3) of Regulation). Regulation does not specify, which form shall be applied to the claimant's response to counterclaim. However, the Regulation system suggests that it shall be part II of Form C, as set out in Appendix III, which this time shall be filled in by the claimant. Thus, when sending to the claimant counterclaim submitted by the defendant, the court must attach the standard Form C as well.

591. Where the **claimant** fails to complete or rectify the claim statement entries or fails to provide further information requested by the court within the time specified, the court **shall dismiss their application** (See Article 4 (4) second sentence of Regulation).

592. In the abovementioned cases the defendant or the claimant may request the court to **extend** these time limits in exceptional circumstances (See Article 14 (2) of Regulation). Request shall be submitted to the Latvian court according to Section 53 of CPL, at the same time, taking into account that the judge will have to assess precondition stated in Article 14 (2) of Regulation 861/2007 for extension of time limits — "exceptional circumstances, which prevented the defendant or the claimant from performance of the specified procedural actions within 30 days period".

593. Legal consequences specified in national law of the Member States. If Regulation 861/2007 in specific cases fails to establish legal consequences in case of non-respecting time limits specified in Regulation, such legal consequences shall be in accordance with the national procedural norms of the Member State of the court (See Article 19). For example, Latvian CPL will establish legal consequences in case of non-respecting of the time limit for submitting of appeal or cassation claim (See Article 19 and 17 of Regulation).

594. Latvian court practice in relation to time limit issues. Until the date, in the Latvian courts, four decisions in relation to time limits stated in Regulation 861/2007 have been taken.

595. The Jelgava City Court in their decision dated by 6 July 2011[425] pursuant to Article 4 (4) of Regulation 861/2007 established time limit — 3 August 2011 — for the claimant to specify the claim. Consequently, 28 days from the date of the decision. At the same time, the court pursuant to Section 133, Paragraph one of CPL of the Republic of Latvia left the statement of the claim not proceeded, setting a time limit for rectifying the deficiencies. In this case, the court acted correctly from the procedural aspect, namely, it has left the claim (completed Form A) not proceeded. Regulation 861/2007 does not state what shall be done with the claim, if any time limit is established to the claimant pursuant to Article 4 (4) of Regulation. Thus, this issue shall be governed by the procedural law of each specific Member State (See Article 19). In Latvia, the claim (the completed Form A) is left not proceeded. At the same time, **it is necessary that the Latvian court in such case in their decision on the leaving of the claim not proceeded would specify legal consequences if the time limit is not respected** (See Article 14 (1) of Regulation), namely: a) If a plaintiff *rectifies* the deficiencies within the time limit set, the statement of claim (standard Form A) shall be regarded as submitted on the day when it was first submitted to the court (CPL Section 133, Paragraph three); b) If a plaintiff *does not rectify* the deficiencies within the time limit set, the statement of claim (standard Form A) shall be considered to not have been submitted and shall be returned to the plaintiff (Section 133, Paragraph four of CPL). However, Article 4 (4) second sentence states that "the application shall be dismissed". However, it shall not mean the same as "dismissal of claim statement" in the Civil Procedure of the Republic of Latvia. Thus, the concept of "dismissal of an application" used throughout the Regulation shall be interpreted according to the aim (teleologically rather than grammatically; c) return of a statement of claim to the plaintiff shall not be an impediment to the repeated submission thereof to the court in compliance with the general procedures in regard to submitting statements of claim prescribed in Regulation 861/2007 (Section 133, Paragraph five of CPL).

596. On 20 April 2011, a claimant applied to the Jūrmala City Court with request to extend the time limit established by the court for rectifying deficiencies in his claim (standard Form A) by 2 months.[426] The Jūrmala City Court with their decision dated by 26 April 2011 extended this time limit until 20 June 2011. As we may see, the claimant in this case has himself requested extension of the time limit. The court extended the time limit for slightly less than 2 months. It is preferable that the court in such cases refer to Article 14 (2) of Regulation 861/2007, according to which reason for extending the time limits may be "exceptional circumstances" (for example, difficulties in taking of evidence, the claimant's illness, etc.), which the court must assess. If there is no such exceptional circumstance, extension shall be denied. It is due to the fact that one of aims of Regulation 861/2007 is to accelerate proceedings in small claims.

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[425] Decision of the Jelgava City Court dated by 6 July 2011in the civil matter [no No.] [unpublished].

[426] See Decision of the Jūrmala City Court dated by 4 August 2011 in the civil matter No. 3-11/0087/01 [unpublished].

597. In the abovementioned matter, the claimant within the time limit established by the court failed to submit the required corrections, as a result, the Jūrmala City Court decided to consider the submitted claim as not submitted and to return it to the claimant (Section 133, Paragraph four of CPL).

598. In two cases, the Latvian claimants had taken national small claim proceedings (according to Chapter 30^3 of CPL) against defendants located in other Member States (in one case the defendant lived in Lithuania; in the second one — in Germany). Both the Daugavpils City Court[427] and Liepāja City Court[428] decided that these were cross-border matters and established time limits for the claimants to modify the claim according to Regulation 861/2007. In both cases CPL of the Republic of Latvia was applied to the issue of time limits (which was correct, since the Regulation fails to provide for or even mention such time limits). However, it must be noted that the mechanism of Regulation 861/2007 shall not be considered mandatory in small claims with a foreign element. According to Recital 8 of Preamble and Article 1 of the abovementioned Regulation, the European Small Claim Procedure offers choice along with the national procedures of the Member States not influenced by this Regulation.

2.8.9. Completing and issuance of the answer Form C

599. **Article 5 (2)** of Regulation 861/2007 states that:

> *2. After receiving the properly filled in claim form, the court shall fill in Part I of the standard answer Form C, as set out in Appendix III.*
> *A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.*

600. Consequently, if the court establishes that the claim application form is properly completed, the court shall fill in part I of Form C in the official language (in Latvia – in the Latvian language). Part I of the form shall provide only basic information in relation to the matter, since important information and instructions to the defendant are already given at the beginning of Form C. Namely, it is explained that a claim according to the European Small Claim Procedure is submitted against the defendant, the defendant is given a time limit — 30 days — for providing answer and other information on the process.

Part I (to be filled in by the court)
Name of claimant:

[427] Decision of the Daugavpils City Court dated by 18 May 2012 in the civil matter No. 590/2012 [unpublished].
[428] Decision of the Liepāja City Court dated by 1 February 2012 in the civil matter No. 3-11/0052/11 [unpublished].

Name of defendant: Court: Claim: Case number:

601. Attaching claim application forms, if any — other documents, the court shall dispatch Form C to the defendant.

602. **First**, the judge must perform these procedural actions within 14 days from the date of receipt of claim application form. To achieve aims of the Regulation, the court must act immediately, i.e. according to Recital 23 of Regulation, the court should act as soon as possible. This norm grants right to due litigation in cases of the European Small Claims.

603. **Second**, documents shall be dispatched according to Article 13 of the Regulation, mainly using document delivery by mail with the return message, but, if not available, according to other ways of delivery described below. As mentioned below, the defendant may refuse to accept documents, if they are not executed in the official language or in the language, which the defendant understands (Article 6 (3)). There is possibility that, when receiving the form in Latvian, a citizen of Belgium will fail to understand what is stated therein, thus, he/she may use his/her right to refuse to accept the documents. The documents will be returned to the court, but the court will obligate the claimant to translate the form and will re-send it to the defendant.

604. Article 5 (3) establishes the defendant's right to participate in the procedure. It shall not be considered obligation, namely, the defendant may choose, if they wish to provide an answer or not. If the defendant decides to use such right, they are given 30 days from the date of receipt of the forms and documents. Form C provides both guidelines for proper completion thereof and various instructions to the defendant. One of the principal conditions is that Form C shall be completed by the defendant in the language of the court, which has dispatched this form.

605. Thus, when receiving and accepting Form C, the defendant, first, shall fill in part II. The defendants attitude towards the claim shall be specified in Column 1.

Part II (to be filled in by the defendant)
Do you accept the claim? Yes No Partially If you have answered "no" or "partially", please indicate reasons: The claim is outside of the scope of the European Small Claim Procedure ☐ please specify below Other reason please specify below

606. As mentioned before, in the frame of Regulation 861/2007, there are not only unappealed, but also appealed claims, thus, even if it is stated that the defendant does not accept the claim or accepts it partially, the judge will assess all evidences in the case. Furthermore, the defendant must explain why he/she objects against the claim fully or

partially. It may be stated here, for example, that entire amount of the debt or a part thereof has been paid, or as stated in the following example:

The claimant in the column 7.2.1 of Form A has indicated his/her request that the defendant shall return his/her TV set with the value in amount of LVL 300 to the moment of submission of the claim.
The defendant, when completing Column 1 of Form C states that he/she does not accept the claim, while in explanatory part he/she states the following: the claimant has sold the TV set for LVL 300, which is justified by the payment order.

607. Moreover, the defendant may specify that the claim falls outside of the scope of the European Small Claim Procedure, namely, the claim exceeds EUR 2000, or it is not a monetary claim. For example, if the claimant has requested repair of an article or recognizing an agreement invalid, this box shall be marked, at the same time, providing explanation why the defendant considers that the limit value specified in Regulation has been exceeded or that it is not a monetary claim. If this column is filled in, according to Article 5 (5), when receiving back Form C, the court shall decide within 30 days, whether the claim is within the scope of this Regulation, i.e. whether there is a dispute for a monetary claim to EUR 2000. In Column 1, as other reason, the fact that the claim in this case is submitted to the court of the Member State, which has no jurisdiction may be specified.

608. However, Column 2 shall be filled in by the defendant, if they wish to specify evidence to contest the claim. The defendant may only identify these evidence, however, it is advised to attach documents justifying their position, even in a foreign language, since according to Article 6 (2) of Regulation, if the court considers that the translation is critical for giving the judgment. In the previous example with a TV set the defendant may not only to present No. of the payment order, but also attach it to verify their position. Furthermore, the defendant may request participation of a witness at the court hearing, however, it is advisable to provide specific information in relation to such witness and state, what significant circumstances the witness is able to confirm. If in the defendant's opinion the case requires an expertise, it shall be noted in Column 2.3.

2. If you do not accept the claim, please describe the evidence you wish to put forward to contest it. Please state which points of your answer the evidence supports. Where appropriate, you should add relevant supporting documents.
2.1. Written evidence please specify below
2.2. Witnesses please specify below
2.3. Other please specify below

609. At the beginning of Form C the defendant is informed that the European Small Claim Procedure shall be a written procedure, however, the defendant may request hearing at the court, noting it in Column 3. Reasons why the defendant wants to participate at the court hearing shall not be mandatory stated, though, they are advisable for the court to assess significance of this issue. In any case, in accordance with Article 5 (1) of Regulation, the court may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings.

3. Do you want an oral hearing to be held?

Yes
No
If yes, please indicate reasons (*)

610. Should the defendant bear any litigation expenses, he/she should fill in Column 4. As mentioned above, in Latvia, those may be only litigation costs provided for in CPL (Section 33, Paragraph one of CPL), which in accordance to Article 16 of Regulation shall be reasonable. Most probably, the defendant may include here **costs related to conducting a matter** (Section 33, Paragraph three of CPL): costs related to assistance of advocates, costs related to attending court sittings, and costs related to gathering evidence.

4. Are you claiming the costs of proceedings?
4.1. Yes
4.2. No
4.3. If yes, please specify which costs and if possible, indicate the amount claimed or incurred so far:

611. Information contained in Form C states that the defendant may submit a counterclaim, filling Form A. In Column 5, the defendant may state whether he/she will submit a counterclaim.

5. Do you want to make a counterclaim?
5.1. Yes
5.2. No
5.3. If yes, please fill in and attach a separate Form A

612. In Section 6 the defendant may specify any other information, but in Section 7 — date and place where the form has been signed. Signature will certify that the defendant has provided true information.

6. Other information (*)
7. Date and signature
I declare that the information provided is true to the best of my knowledge and is given in good faith.
Done at:_____
Date:_____/_____/_____
Name and signature

613. This form is relatively easy to complete in Atlas e-environment[429] in your native language, marking the necessary fields, and then, the form may be printed in the language specified by the dispatching Member State. However, as soon as the defendant must provide further information, difficulties may arise from translation thereof into the required language.

614. Article 5 (3) states that the defendant may not to use Form C, but dispatch the answer to the court in any other appropriate way, consequently, the court must accept explanations executed in a free written form.

615. If the defendant fails to submit the answer form within the established time limit, the court shall pass the judgement.

[429] See http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm?countrySession=2&.

2.8.10. Submission of counterclaim

616. Recital 17 of Preamble states that, in cases where the defendant invokes a **right of set-off** during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. This consideration was included, because in some EU Member States two situations may be observed.

617. **One** situation is when the defendant, while defending during the proceeding, states that they have a claim against the claimant, and such claim may fully or partially cover the claimant's claim, consequently, mutual offset would be possible. Such defence is usually used to allow the defendant justify failure to observe their obligations.[430] **Other** situation occurs when the defendant submits a counterclaim in relation to the same process.[431] The difference is that the counterclaim is closely related to the procedure, reason thereof is the same agreement or facts, while the indemnity claim may arise from other legal relations between the parties, it has no mutual relation to the claim. Consequently, as mentioned below, the court will have to assess, whether claim submitted by the defendant is a counterclaim or it shall be considered an indemnity claim.

618. According to Article 5 (6) of Regulation, the defendant shall be entitled to submit a counterclaim, filling in Form A. In this case the court shall review the documents no longer than for 14 days and shall dispatch Form A submitted by the defendant and partially filled in Form C to the claimant. The claimant is given 30 days to prepare the answer.

619. The concept of "**counterclaim**" according to Recital 16 of Preamble should be interpreted within the meaning of Article 6 (3) of Brussels I Regulation as arising from the same contract or facts on which the original claim was based.[432] As mentioned, a simple claim of the defendant against the claimant shall not be considered a counterclaim.[433]

620. Since a counterclaim shall be arising from the same contract or facts, it may considered that such formulation is more limiting rather than "closely related" principle provided for in some national laws.[434]

621. For example, Section 136, Paragraph three provides that

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[430] Opinion of ECJ Advocate General *Leger*, delivered on 17 May 1995, in the case C-341/93 *Danvaern Production v. Schuhfabriken Otterbeck* ECR [1995], p. I-02053, para. 33.

[431] Judgement of ECJ, dated by 13 July 1995, in the case: C-341/93 *Danvaern Production A/s v. Schuhfabriken Otterbeck GmbH*, ECR [1995], p. I-02053, para. 12.

[432] Translation of Article 6 (3) of Brussels I Regulation into Latvian is slightly inaccurate. Namely, in English it states that "*counterclaim arising from the same contract or facts on which the original claim was based*" is translated as "pretprasība, kuras iemesls ir tas pats līgums vai fakti, kas bijis pamatprasības pamatā."

[433] Judgement of ECJ, dated by 13 July 1995, in the case: C-341/93 *Danvaern Production A/s v. Schuhfabriken Otterbeck GmbH*, ECR [1995], p. I-02053, para. 12.

[434] Furthermore, it will have more limiting scope rather than that provided for in Article 6 (1) of Brussels I Regulation.

A court or a judge shall accept a counterclaim if: 1) a mutual set-off is possible as between the claims in the initial action and the counterclaim; 2) allowing the counterclaim would exclude, fully or partly, the allowing of the claims in the initial action; 3) the counterclaim and the initial actions are mutually related, and their joint examination would favour a more quicker and correct adjudication of the matter.

622. When looking from the aspect of this provision of CPL, it may be concluded that the Regulation would exclude those counterclaims, which have only mutual relation or which are closely related, since the counterclaim must be related to the same contract or facts on which the original claim was based. Consequently, assessment of the counterclaim for the purposes of Regulation 861/2007 and Brussels I Regulation shall be provided autonomously and narrowly, not applying CPL to the counterclaim.

623. The concept of "the same contract or facts" may cause certain interpretation difficulties, thus, it is recommended to translate it in a flexible manner to exclude reviewing of claims arising one from another during one procedure; however, such interpretation cannot be the one accepting two non-related claims.[435] Namely, "the same contract or facts" may be in cases when the dispute concerns related agreements, for example, the principal distribution contract with related resale contracts.

624. Furthermore, the counterclaim must be submitted in the case involving the same parties, and it may not concern proceedings involving any third parties.

625. Article 5 (7) of Regulation states that, if the counterclaim exceeds the limit of EUR 2000 set out in the Regulation, the court shall deal with that counterclaim in accordance with the relevant procedural law. Consequently, the defendant may abuse the procedure. Thus, when discussing this issue, the recommendation has been expressed to include into the Regulation opportunity either to accept counterclaims exceeding this established amount[436] or not to accept counterclaim, if it is seemingly unjustified and exaggerated.[437] Recital 13 of Preamble states that the concepts of "clearly unfounded" in the context of the dismissal of a claim and of "inadmissible" in the context of the dismissal of an application should be determined in accordance with national law. Due to this reason some Member States have expanded their national law with provisions in relation to implementation and application of the Regulation.[438]

626. If the counterclaim is submitted in Latvia exceeding the established limit value, i.e. EUR 2000, and the dispute cannot be resolved according to the Regulation, procedure

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[435] Magnus, U., Mankowski, P. (ed). European Commentaries on Private International Law Brussels I. Regulation (2nd edn, SELP 2012), p. 325.

[436] Offer for the European Parliament and Council Regulation, by which the European Small Claim Procedure is established, Article 4 (6), COM/2005/0087, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0087:LV:HTML.

[437] House of Lords. European Small Claims Procedure: Report with evidences [2006] 23rd Report of Session 2005-06, para 114.

[438] For example, the Netherlands, Germany, France, England. Kramer, E. X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p. 128, available at: *http://www.springerlink.com/content/88w50426x5135h38/*.

shall be continued in the claim proceeding according to CPL. First, the judge shall refer to Section 131 of CPL, which states:

> *(1) Upon receipt of a statement of claim in court, a judge shall take a decision within seven days but upon the receipt of the application referred to in Section 644.[7] or 644.[17] of this Law not later than on the next day on:*
> *1) acceptance of the statement of claim and initiation of a matter;*
> *2) refusal to accept the statement of claim;*
> *3) leaving the statement of claim not proceeded with.*
> *(2) If adjudication of a matter is not possible in accordance with European Parliament and Council Regulation No. 861/2007 or the European Parliament and Council Regulation No. 1896/2006**,** a judge shall take one of the decisions provided for in Paragraph one of this Section in the cases provided for in the referred to regulatory enactments regarding proceeding of the statement of claim**.***

627. Article 5 (7) of Regulation clearly states that the claim shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. However, in relation to CPL of the Republic of Latvia, the court will have to leave the statement of claim not proceeded with according to the cit. section Paragraph 1 (3) of CPL, since the claim application has not been executed as specified in Section 128 of CPL and, possibly, all documents are failed to be submitted, since submission thereof is not mandatory pursuant to the Regulation. Such resolution shall be considered correct, since it allows the parties to decide if they wish to continue proceedings according to the standard procedure.

2.9. End of the procedure

628. According to Article 7 of Regulation 861/2007, within 30 days of receipt of the response from the defendant or the claimant, the court shall give a judgment. Draft of the Regulation provided for that the total time for reviewing small claims may not exceed six months from the day when the claim has been submitted, however, some Member States did not agree with that and this time limit was excluded from the text of the Regulation.[439]

629. Latvian courts have gained limited experience in applying this procedure, thus, possibly, the time of reviewing is rather long. Namely, in one of the cases, the claim application form was submitted on 29 June 2011, while the case was reviewed only on 27 January 2012. During the process, the court had to request specification of the claim

[439] Council of the European Union Proposal for a Regulation of the European Parliament and of the Council establishing a European Small Claims Procedure [29 November 2005] 15054/05 JUSTCIV 221, CODEC 1107, para 10-12.

application form.[440] In the Netherlands, shortly after the Regulation entering into force, five cases were reviewed, and the time of reviewing each case was from one month to seven months.[441] Thus, it shall be considered positively that the Regulation establishes no specific time limit, during which the case shall be reviewed; however, courts must observe this specific procedure and ensure reviewing of the case as soon as possible.

630. If the defendant fails to submit their answer or counterclaim according to Article 5 (3) and (6) of Regulation, the court may give a judgement according to Article 7 (3). Furthermore, the abovementioned answer or/and counterclaim must be submitted within the specified time limit — 30 days from the date of issuance, but, if the time limit is delayed, the court shall give a judgment on the claim. The judgment shall be given according to general provisions on adjudicating according to Chapter 22 of CPL.

631. However, if the court from the submitted documents and information fails to decide the case in its merits, then, according to Article 7 (1) (a), first, the court may demand **further details** from the parties. In this case the period of time specified by the court shall not exceed 30 days. For instance, if the court is unable to adjudge the case from the information provided by a party, it may have the right to request submission of written evidence and translations thereof described in Form A. Certainly, all parties concerned shall act operatively that is not always possible, in particular, if evidence with translations thereof shall be requested from abroad.

632. Second, according to Article 7 (1) (b) of Regulation the court may **take evidence** according to provisions contained in Article 9. The abovementioned article has already been analyzed in this Research, however, it must be noted that using this right of the court contained in the Regulation, Recital 20 of Preamble must be taken into account, which states that in the context of oral hearings and the taking of evidence, modern communication technology and least costly method of taking evidence shall be used.

633. Article 7 (1) (c) of Regulation shall establish to the court third alternative, if it is unable to give the judgment in the case, namely, it may summon the parties to an **oral hearing** to be held within 30 days of the summons. First, considering aims of the Regulation that claims of this type shall be reviewed in a written process (Recital 14 of Preamble), oral hearing shall be organized in exceptional cases and, if possible, through video conference or other communication technology (Article 9 (1), Article 8). Second, oral hearing shall be determined assessing both costs and possible burden (Article 9 (2) and (3)). Third, the short time limits established in the Regulation facilitate use of modern technologies, because, for example, if parties are located abroad, visit at the court hearing may turn out to be expensive and take considerable time. Article 8 of Regulation state that the court may hold an oral hearing through video conference or other communication

[440] Supplementary decision of the Jelgava City Court dated by 27 January 2012 in the case No. C15285811 [unpublished].

[441] Kramer, E. X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p. 131, available at: *http://www.springerlink.com/content/88w50426x5135h38/*.

technology if the technical means are available. Here, not only technology availability aspect shall be considered, but also procedural provisions governing such procedure. CPL very superficially establishes such procedure (for example, in Articles 108, 149, 692, etc.), although, video conferences will become daily routine in the nearest future.

2.9.1. Judgement

634. As mentioned, according to Article 7 (1) of Regulation 861/2007, the court the court or tribunal shall give a judgment within 30 days of receipt of the response from the defendant or the claimant, however, if the court arranges oral hearing, according Item 2 of this article, the court shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment, i.e., if further information from the parties is received, which have been required according to Item 1 (a) of this article or evidence have been taken according to Article 7 (1) (b) and Article 9.

635. Although, during discussion of the Regulation, facilitation of decision forms and content of the European Small Claim Procedure was proposed,[442] however, it has not been reflected in the text of the Regulation, and giving judgment occurs according to the national laws. In Latvia, judgment shall be given according to Section 22 of CPL, thus, applying general provisions on making the judgment. The judgment will include both introductory part, descriptive part, reasoning and resolution part (See Article 193 of CPL). The judgment shall not be too long, since the procedure itself is comparatively simple.

636. According to Appendix IV of Regulation, at the request of one of the parties, the court shall issue a certificate concerning a judgment in the European Small Claims Procedure (See Article 20 of Regulation). According to Article 15 (1) of Regulation 861/2007 such judgment shall acquire an autonomous EU scale applicability; it shall be enforceable notwithstanding any possible appeal.

637. Judgment shall be served according to Article 13, i.e. the judgment shall be served by postal service attested by an acknowledgement of receipt. However, if it is not possible, the Regulation refers to Articles 13 and 14 of Regulation 805/2004, which state that the documents may be:

637.1. personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the addressee;

637.2. personal service attested by a document signed by the competent person who effected the service stating that the addressee has received the document or refused to receive it without any legal justification, and the date of the service;

637.3. postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee;

[442] Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation [2002] COM 746, p. 70.

637.4. service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee;

637.5. personal service at the addressee's personal address on persons who are living in the same household as the addressee or are employed there;

637.6. in the case of a self-employed or a legal person, personal service at the addressee's business premises on persons who are employed by the debtor;

637.7. deposit of the document in the addressee's mailbox;

637.8. deposit of the document at a post office or with competent public authorities and the placing in the addressee's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits;

637.9. postal service without proof attested by a document signed by the competent person where the addressee has his address in the Member State of origin;

637.10. by electronic means attested by an automatic confirmation of delivery, provided that the addressee has expressly accepted this method of service in advance.

2.9.2. Costs

638. Both in Form A and Form C parties shall state if any litigation costs have incurred. If the answer is positive, please specify the exact amount. The forms state that such costs may be both for translation and lawyer assistance, as well as for servicing of the documents.

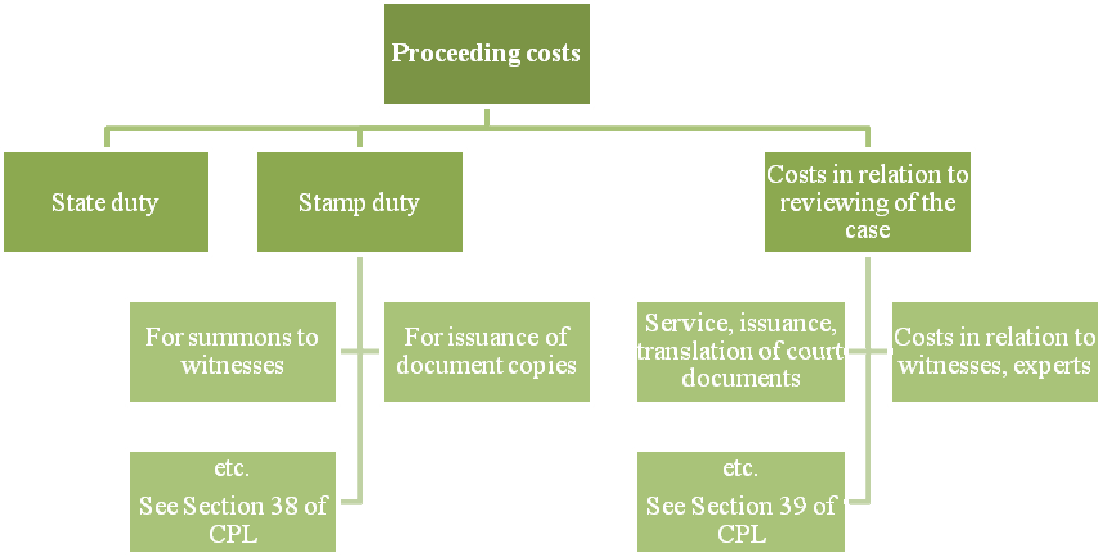
639. Article 16 of Regulation states that the unsuccessful party shall bear the costs of the proceedings. However, the court shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim. Obligation of the unsuccessful party to bear the costs of the proceedings was included into the Regulation to enhance more free access to the court, since creditor often chooses not to litigate, because amount of the claim is small, while costs thereof are large. Furthermore, usually, costs may be claimed in proportion to the levied amount, for example, it is provided in Section 41, Paragraph one of CPL.

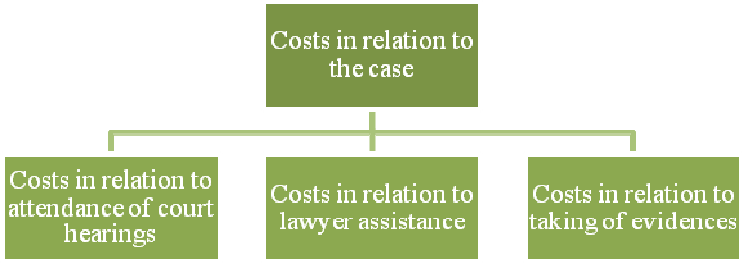
640. Regulation shows indirectly that parties should themselves monitor litigation expenses, in particular, those referring to costs for provision of legal assistance. If those are excessive, the court shall be entitled to refuse reimbursement thereof. However, the court also shall choose less costly ways of taking of evidence, which would not make the

process more expensive and unavailable. Judge shall assess, whether the parties shall be obliged to provide translation of supplementary evidence (See Article 6).

641. Although the Regulation states that **costs** shall be considered payment for lawyers assistance, any costs arising from the service or translation of documents, however, Recital 29 of Regulation states that costs of the proceedings should be determined in accordance with national law. Proceeding costs in civil matters and commercial matters in the European Union are not agreed, thus, information on proceeding costs in the Member States have been added to the European e-rule of law network,[443] however, this information is not always correct.

642. Consequently, in Latvia, application and observance of Chapter 4 "Proceeding costs" of CPL shall be used. The following schemes show what shall be considered proceeding costs according to this chapter.





643. This Research specifies the country and procedure of calculation of state duty and stamp duty, as well as bank accounts, to which these payments shall be made (See 477-481 § of this Research).

[443] See proceeding costs https://e-justice.europa.eu/content_costs_of_proceedings-37-eu-lv.do.

644. Considering that one of basic principles of the Regulation states that a party shall not use assistance of lawyer or other legal professional, draft thereof provided for that a party shall not reimburse costs for **lawyer's assistance**, if no lawyer has represented the other party.[444] However, this would be discriminating in relation to the successful party, thus, currently the Regulation provide for that expenses for the provided legal assistance shall be reimbursed.

645. According to Section 44, Paragraph one, Clause 1 of CPL, costs for the assistance of an advocate — the actual amount thereof, but not exceeding five per cent, not exceeding the normal rate for advocates may be reimbursed. Thus, if the court fully satisfies the European Small Claim in amount of EUR 2000, maximum fee to lawyer might be EUR 100. In Estonia, 30–50% of the amount of claim may be recovered, while in France, maximum fee for the claim amounting to EUR 2500 shall be EUR 1000.[445] In the Netherlands, shortly after the Regulation has entered into force, five cases were reviewed and all claims were satisfied including costs for legal assistance in amount of EUR 250.[446]

646. It has been mentioned above that the Regulation does not prevent any party to be represented not only by a professional lawyer, but also by consumer groups or other interest protection groups; however, according to the Latvian national law and judicature[447] such representation costs will not be reimbursed.

647. One of the highest costs in the procedure will be **translation costs**; however Regulation allows reasonable control of these costs. For example, Article 6 (2) of Regulation allows for a party to submit documents in foreign languages and the court may require provision thereof only, if such translation shall be considered necessary to give judgment.

648. Though, to avoid unnecessary **costs for summon of parties and witnesses to the court hearing**, the court or tribunal should use the simplest and least costly method of taking evidence (Recital 20 of Preamble), i.e. it may not to arrange court hearing at all or to arrange it through use of modern communication technology.

649. The limited Latvian practice suggests that parties use **expert statement** as a supplementary evidence in the case. These costs, unless those are unreasonable or unnecessary, shall be recovered from the unsuccessful party.

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[444] Offer for the European Parliament and Council Regulation, by which the European Small Claim Procedure is established, Article 14 Item 2, COM/2005/0087, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005PC0087:LV:HTML.

[445] See Study on the Transparency of Costs of Civil Judicial Proceedings in the European Union. Final Report, p. 131-132, available at: https://e-justice.europa.eu/attachments/cost_study_report_en.pdf.

[446] Kramer, E. X. "Small Claim, simple recovery? The European small claims procedure and its implementation in the member states" (2011) ERA Forum, p. 131, available at: *http://www.springerlink.com/content/88w50426x5135h38/*.

[447] Judgment of the Senate of the Supreme Court Civil Matter Department, dated by 23 November 2011, in the case No. SKC-377/2011, published at: http://at.gov.lv/files/archive/department1/2011/skc-377-2011.doc .

650. As mentioned above, the Regulation states that the court may decide **not to reimburse costs** which are unnecessary or disproportionate when compared to the claim. Considering that this provision may be interpreted in a very wide range, some lawyers recommend providing of a specific proportionate amount of costs in the Regulation, which may be reimbursed. For example, such costs may not exceed 20% from amount of the claim.[448] However, currently, the court on their own discretion shall assess proportion of this specific sum.

651. Unnecessary costs may arise when a party has translated a document, which does not related to the case or has no effect on the judgment, because according to Regulation the claimant shall describe nature of the case and provide respective evidence (Form A, Column 8.1-8.2) and, if the court considers necessary, it may request the party to submit the required document and/or translation thereof (Articles 6 and 7).

652. To establish whether the costs are proportionate (in the English version of the Regulation text *disproportionate*), financial capabilities of the party, complicacy of the case, as well as time required for execution of the case, as well as amount of the claim shall be taken into account. Furthermore, the court may assess whether the party has misused the procedure, for example, has intentionally provided information (for example, that the parties are bind by an arbitral agreement or the parties have negotiated, if provided for by the agreement or law prior to submission of the claim), or has refused to accept documents with reference to not knowing the language (See Article 6 (3) (b) of Regulation).

653. Proceeding costs, including state duty and stamp duty are not subject to proportion assessment, since amount thereof is state by government. However, the amount of the lawyer's costs may be assessed. It must be taken into account that the Regulation is formed for parties to represent themselves at the simplified proceedings without assistance of professional lawyers. Thus, filling in the forms shall cause no difficulties to lawyer, he/she is not required to put significant efforts or time in providing of legal assistance, consequently, costs may not be high. Reasonable costs would not be those where one of the parties has chosen a representative, who is a highly experienced lawyer with high fee rates to fill in the abovementioned forms.

654. Along with forms, the party shall submit **evidence on the proceeding costs**. Considering that Article 6 (2) of Regulation allows submitting documents in other language rather than the language of the court, it may be presumed that the party may submit, for example, payment order on the payment of the state duty also in other language, if the court is able to understand what is stated in this document, then, the judge may request no translation of the payment order into the court proceeding language.

[448] Dieguez Cortes, J.P. *Does the proposed European procedure enhance the resolution of small claims,* Civil Justice Quarterly, Vol. 27, No. 1, 2008, p. 93.

655. In one of cases in the European Small Claim Procedures in the Latvian court, costs was one of the most significant issues. Claimant requested reimbursement of costs arising from expertise, translation of documents for the defendant, as well as costs for fuel in relation to bringing an action to the court and other trips in relation to the claim according to the submitted route sheet.[449] By additional judgment, costs for expertise and translation were recovered from the defendant. According to Section 44, Paragraph three, Clause 3, in this case costs for the expertise must be unmistakably recovered, since this shall be considered significant evidence in the case. However, facts contained in the case fail to clearly suggest the reason for translation of documents for the defendant, since according to Article 6 of Regulation the proceeding language shall be Latvian, thus, the court, first, should have serviced to the defendant documents in Latvian, and only when he/she has refused to accept them due to not knowing the language, the claimant should have submit the translation (See Article 6 of Regulation).

656. In this case, costs were considerable. Namely, in the case on the claim amounting to LVL 62.99, the state duty was LVL 50 and the claimant had performed expertise for LVL 46.72 and translation of documents for LVL 35, thus, first, a question occurs, whether such process has achieved one of the aims of the Regulation — the procedure was simple and cheap, second, whether such costs are proportionate to the amount of the claim.

2.10. Appeal and review of judgement

2.10.1. Appeal

657. According to **Article 17** of Regulation 861/2007:

> *1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.*
> *2. Article 16 shall apply to any appeal.*

658. It must be noted that Latvian text version of Article 17 (1) of Regulation contains wrong reference to the "appeal" claim. This means "judicial review" (English — *appeal*[450]; French — *voie de recours*; German — *Rechtsmittel*). Thus, the Latvian text version forms wrong view that such judgments shall be appealed according to the appeal

[449] Supplementary decision of the Jelgava City Court dated by 27 January 2012 in the case No. C15285811 [unpublished].

[450] Obviously, the word "apelācija“ was invented in the Latvian text version from English term *appeal*. However, in the English legal terminology *appeal* shall mean review of judgment by any court of lower instance in the court of higher instance. See Oxford Dictionary of Law. Sixth Edition. Martin, E.H., Law, J. (Ed.). Oxford : University Press, 2006, p. 32.

(and not any other) procedure.[451] The abovementioned provision suggests that the Regulation impose no obligation in the Member States to invent the procedure of appeal of judgments in the European Small Claim Procedures. However, if laws of the Member State provide such procedures, the Member States must inform the European Commission on the fact, **whether** and **what** appeal procedures are available, as well as on **time limits** for submission of such appeals.

659. According to Article 25 (1) (c) of Regulation 861/2007, the Member States shall communicate to the Commission whether an appeal is available under their procedural law in accordance with Article 17 and with which court this may be lodged.

660. **Latvia** has informed the European Commission that pursuant to Latvia's procedural legislation governing judgments by a court of first instance, parties to the proceedings may submit an appeal within 20 days of the pronouncement of the judgment (Section 413, PAragraph one and Section 415, Paragraph one of the Civil Procedure Law). If a court of first instance has issued an abridged judgment and set a different deadline for delivery of the full judgment, the time period for an appeal runs from the date set by the court for delivery of the full judgment (Section 415, Paragraph two of the Civil Procedure Law). Similarly, an appeal against a judgment by a court of appellate instance may be submitted by parties to the proceedings in accordance with cassation procedures, the cassation complaint being submitted within 30 days of the judgment being issued (Section 450, Paragraph one and Section 454, Paragraph one of the Civil Procedure Law). If an abridged judgment has been issued, the time period for an appeal runs from the date set by the court for a full judgment. If the judgment is drawn up after the designated date, the time period for submitting an appeal against the judgment runs from the date of actual issue of the judgment (Section 454, Paragraph two of the Civil Procedure Law).[452] It shall be admitted that in Latvia, the European Small Claim Procedure appeals are different from the procedure of appeal in national small claim procedures, namely, the European procedure allows three-phase appeal (the same as in the claim proceeding), while in national small claim procedures, only appeal according to the appeal procedure is available (See Section 250.[27] of CPL).

661. In Latvia, when *submitting* appeal or cassation *claim* for judgment given in the European Small Claim Procedure, all provisions specified in CPL division eight ("Appeal proceedings") or division ten ("Cassation proceedings") shall be observed. When submitting a claim according to appeal or cassation procedure, requirements of the small claim procedures specified in the Regulation shall be observed, however for those issues, which are not resolved in the Regulation, provisions of CPL of the Republic of Latvia

[451] See: Torgāns, K. Maza apmēra prasības Civilprocesa likumā un Regulā Nr. 861/2007, ar ko izveido Eiropas procedūru maza apmēra prasībām. Book: *Inovāciju juridiskais nodrošinājums*. LU 70. konferences rakstu krājums. Riga: LU Akadēmiskais apgāds, 2012, p. 55-58.

[452] Information available in the Judicial Atlas: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&#statePage0.

shall be applied (See Article 19 of Regulation and Section 5, Paragraph three of CPL). At the same time, Article 16 of Regulation 861/2007 shall be binding to courts of appeal: the unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim (See below).

662. If necessary, Regional Court or the Senate of the Supreme Court Civil Matters Department at the request of the defendant shall issue a certificate concerning their judgment using standard Form D, as set out in Appendix IV to Regulation 861/2007 (See Article 20 (2) of Regulation and Section 541.[1], Paragraph 4[1] of CPL). This shall be due to the fact that the judgment in the European Small Claim Procedures in accordance with Article 15 (1) of Regulation shall be enforced immediately notwithstanding any possible appeal in the Member States. If Latvian Regional Court or the Senate of the Supreme Court Civil Matters Department repeals (or terminates proceeding) or amends such judgment, then, the Member State enforcing the judgment shall be informed thereof using standard Form D (in particular, filling paragraph of the form following Item 4.3.2). **Unfortunately, EU legislator has failed to provide in Form D a column, which would include reference to repealing of the initial judgment (or termination of proceeding) and reference to change in enforceability or repealing of enforceability.**

663. When submitting to the Latvian court an **appeal claim**, a **state duty** shall be paid in the amount as set out for submitting of claim application, but for claims which are financial in nature — according to the rate calculated from the amount of claim at the court of first instance (Section 34, Paragraph four of CPL).

664. When submitting a **cassation claim** to the Senate of the Supreme Court Civil Matters Department, a **security deposit** shall be paid in the amount of LVL 200 (Section 458, Paragraph one of CPL). Information on bank accounts where the state duty or security deposit shall be transferred to available at: www.tiesas.lv.

665. Other Member States have made the following announcements. **Announcements of the Member States in relation to appeal procedures**[453]

No.	EU Member State	Appeal procedures
1.	Belgium	Pursuant to Belgian civil procedural law it is possible to lodge an appeal under Article 17 of this Regulation. This appeal must be lodged with the **Court of First Instance, the Commercial Court** or the **Court of Appeal** with material and territorial jurisdiction under the Belgian Judicial Code. Pursuant to Article 1051 of the Belgian Judicial Code, the time limit within which an appeal must be lodged is one month from when the judgment is served or notified in accordance with Article 792(2) and (3) of the Belgian Judicial Code. By analogy with this Article, the time limit within which an

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Seehttp://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&#statePage0.

		appeal must be lodged in the context of the European Small Claims Procedure is one month from when the judgment is served or notified by the competent court in accordance with Article 13 of the Regulation establishing a European Small Claims Procedure.
2.	Bulgaria	Decisions of district courts are subject to appeal before provincial courts (окръжните съдилища). The appeal must be filed through the court which handed down the decision, within two weeks of its having been served to the party concerned (Articles 258 and 259 of the Code of Civil Procedure). A further appeal can be lodged before the Supreme Court of Cassation against a decision of the appeal court on a substantive or procedural issue which: 1. was addressed in conflict with the case law of the Supreme Court of Cassation; 2. was addressed by the courts in a conflicting manner; 3. is of relevance for the proper implementation of legislation and the evolution of the law. Not subject to an appeal in cassation are judgments on cases where the amount involved in the appeal does not exceed BGN 1 000 (€ 511.29). An appeal in cassation must be filed through the court which has handed down the appeal decision, within one month of such decision having been served to the party concerned (Articles 280 and 283 of the Code of Civil Procedure).
3.	Czech Republic	Recourse is available under Czech law in the form of an appeal, which is governed by Sections 201 - 226 of the Code of Civil Procedure. Within 15 days of the service of the written copy of the decision, the appeal has to be lodged with the court whose decision is being appealed. The court then refers the appeal to a higher court, which conducts the appeal proceedings. No appeal is permitted against a decision ordering the payment of sums not exceeding CZK 2 000.
4.	Germany	In accordance with the rules of the Code of Civil Procedure, particularly those in sections 511 et seq. thereof, it is possible to appeal against judgments passed at first instance. The deadline for lodging an appeal is one month from the date on which the judgment is notified in its entirety. All higher regional courts have the authority to rule on appeals against judgments in the European small claims procedure in accordance with the rules regarding their territorial jurisdiction. Please refer to Article 25(1)(c), which is appendixed to this letter.
5.	Estonia	The remedies laid down in Estonian procedural law are the appeal procedure, the cassation procedure, the petition to set aside a default judgment and the review procedure**.** An appeal may be lodged under the appeal procedure against a court judgment delivered in a European Small Claims Procedure if leave to appeal has been

		granted in the judgment of the county court. In general, the court will give leave to appeal if it considers that a ruling by a court of appeal is necessary in order to obtain the opinion of a district court on a point of law. If the county court's judgment does not include leave to appeal, an appeal may still be submitted to a district court, but the district court will admit the appeal only if it is clear that, when making its judgment, the county court incorrectly applied a provision of substantive law, breached procedural requirements or incorrectly appraised evidence, and if this could have had a serious impact on the ruling. Appeals are to be lodged with the district court in whose jurisdiction the county court ruling on the European Small Claims Procedure is located. An appeal may be lodged within 30 days of the service of the judgment on the appellant, but not later than within five months of the judgment of the court of first instance being made public. If the county court judgment was made without the part describing and justifying the judgment and if a participant in the proceedings requested the court to add such a part to its judgment, the period for appeal will begin anew as of the service of the complete judgment. An appeal in cassation may be lodged with the Supreme Court against a court judgment made under the appeal procedure (Chapter 66 of the Code of Civil Procedure). A participant in proceedings may lodge an appeal in cassation with the Supreme Court if a district court has significantly breached procedural requirements or incorrectly applied a provision of substantive law. An appeal in cassation may be lodged within 30 days of the service of the judgment on the participant, but not later than within five months of the district court's judgment being made public. If the judgment in a European Small Claims Procedure is given in default, a petition to set aside the default judgment may be lodged pursuant to the procedure laid down in Section 415 of the Code of Civil Procedure. The petition is to be lodged with the county court within 14 days of the service of the judgment given in default. If a default judgment has to be served outside the Republic of Estonia or by public notice, a petition may be lodged within 28 days of the service of the judgment. In exceptional circumstances where a participant in proceedings so wishes and where new evidence has come to light, an application for review of a court judgment which has entered into force may be submitted to the Supreme Court pursuant to the procedure laid down in Chapter 68 of the Code of Civil Procedure. An application for review may be submitted within two months of becoming aware of there being a reason for review. On the grounds that a

		participant in proceedings was not represented at the proceedings, an application for review may be submitted within two months of the service of the ruling on the participant or, in the case of a party with no active legal capacity in civil proceedings, on the participant's legal representative. For this purpose, service by public notice is not taken into account An application for review may not be submitted if five years have passed since the entry into force of the court ruling concerning which a review is being sought. An application for review may not be submitted on the grounds that the party did not participate or was not represented in the proceedings or in the case laid down in Section 702(2)(8) of the Code of Civil Procedure if ten years have passed since the entry into force of the court ruling.
6.	Greece	Judgments handed down under the small claims procedure are not appealable. However, recourse is available in the form of opposition and cassation.
7.	Spain	An appeal is admissible. It must be prepared before the same court of first instance that gave the judgment, announcing the intention to appeal against the judgment and specifying which points are contested within a period of 5 days. Once prepared, the appeal must be formalised and lodged with the corresponding Provincial Court within a period of 20 days.
8.	France	The appeals that can be brought under French law in accordance with Article 17 of the Regulation are as follows: - ordinary appeal: the defendant who has neither personally received the notice served pursuant to Article 5(2) nor responded in the form prescribed by Article 5(3) (i.e. in the case of a "judgment given by default") may bring proceedings before the court or tribunal that issued the judgment being challenged (Articles 571 to 578 of the Code of Civil Procedure) ; - extraordinary appeal: when the judgment may not or may no longer be challenged, the parties may make one of the following two extraordinary appeals: • further appeal before the Court of Cassation (Articles 605 to 618-1 of the Code of Civil Procedure); • judicial review before the court or tribunal that issued the judgment being challenged (Articles 593 to 603 of the Code of Civil Procedure).
9.	Ireland	An appeal may be lodged with the relevant Circuit Court.
10.	Italy	Under Italian law appeals against decisions of the justice of the peace must be lodged with the district court (*tribunale*), while appeals against decisions of the district court must be lodged with the court of appeal, both within thirty days. Appeals against decisions of the court of appeal on points of law must be lodged with the Supreme Court of Cassation

		within sixty days (section 325 of the Code of Civil Procedure).
11.	Cyprus	The Courts Act referred to above grants an unrestricted right to lodge an appeal against any decision of a court of first instance. The appeal is examined by a panel of the Supreme Court made up of three judges. The Supreme Court has jurisdiction to fully review first-instance decisions. Under the current provisions an appeal must be lodged within 42 days of the issuing of the first-instance decision. However, a shorter period (14 days for instance) and swifter procedures are to be introduced for processing appeals in small claims cases.
12.	Latvia	Pursuant to Latvia's procedural legislation governing judgments by a court of first instance, parties to the proceedings may submit an appeal within 20 days of the pronouncement of the judgment (Articles 413(1) and 415(1) of the Civil Procedure Law). If a court of first instance has issued an abridged judgment and set a different deadline for delivery of the full judgment, the time period for an appeal runs from the date set by the court for delivery of the full judgment (Article 415(2) of the Civil Procedure Law). Similarly, an appeal against a judgment by a court of appellate instance may be submitted by parties to the proceedings in accordance with cassation procedures, the cassation complaint being submitted within 30 days of the judgment being issued (Articles 450(1) and 454(1) of the Civil Procedure Law). If an abridged judgment has been issued, the time period for an appeal runs from the date set by the court for a full judgment. If the judgment is drawn up after the designated date, the time period for submitting an appeal against the judgment runs from the date of actual issue of the judgment (Civil Procedure Law 454(2)).
13.	Lithuania	Pursuant to Article 29 of the Law, court decisions given under the European Small Claims Procedure can be appealed against under the appeal procedure. An appeal is lodged with a regional court via the court which delivered the judgment being appealed against. The appeal may be lodged within thirty days of the date of the judgment of the court of first instance. If the applicant's place of residence or establishment is in a foreign state the appeal may be lodged within forty days of the date of the judgment of the court of first instance.
14.	Luxembourg	Appeals cannot be made against decisions taken by the justice of the peace under the Regulation, as these are final. However, requests for cassation of such decisions can be made to the Court of Cassation. A request for cassation must be lodged within: - two months if the appellant resides in Luxembourg; - two months, plus 15 days, if the appellant resides in another Member State of the European Union.

		This time limit runs from the date when the decision taken by the justice of the peace is served or notified to the person or at his home.
15.	Hungary	In Hungary an appeal may be brought against the judgment under Section 12 of the Code of Civil Procedure (Articles 233 et seq.). The appeal must be notified within fifteen days of the date of the judgment to the (first instance) court that delivered it.
16.	Malta	An appeal is available according to Article 8 of the Small Claims Tribunal Act (Chapter 380). An appeal shall be entered by an application to the Court of Appeal (Inferior Jurisdiction) and is to be filed within twenty (20) days of the decision. Independently of the amount of the claim, an appeal shall lie in the following cases: - on any matter relating to the jurisdiction of the Tribunal; - on any question of prescription; - on any non-compliance with the provisions of Article 7(2) of the Small Claims Tribunal Act (Ch 380)(*); - where the tribunal has acted in a serious manner contrary to the rules of impartiality and equity according to law and such action has prejudiced the rights of the appellant. A right of appeal shall also lie in all cases where the amount in dispute, exceeds €1164.69 (with the fees and expenses excluded). The Court of Appeal may, if it deems an appeal frivolous or vexatory, reject the appeal and order the applicant to pay a penalty of between €232.94 and €1164.69. The amount of the penalty shall be due and payable to the Government as a civil debt, which is liquidated and certain, and may be collected by the Registrar.
17.	Netherlands	<u>Article 2(2) and (3) of the Implementing Law for European Small Claims Procedures:</u> 2. Under the European small claims procedure no higher appeal can be made against the decision of the sub-district court judge. 3. Article 80 of the Judicial Service Act shall apply mutatis mutandis. <u>Article 80 of the Justice Service Act:</u> 1. In a civil case where no higher appeal can be made against the judgment or decision of the sub-district court judge, a party can only lodge a request for cassation if: a. the grounds on which the judgment or decision was made have not been provided; b. the judgment or, as far as legally required, the decision, is not made public; c. there is a lack of competence; or d. legal competence has been exceeded.
18.	Austria	A judgment issued at first instance by an Austrian district court in accordance with Regulation (EC) No 861/2007 establishing a European Small Claims

		Procedure is open to appeal. , On account of the limit of €2 000, an appeal may be lodged solely on the grounds of nullity and/or incorrect appraisal of the legal merits of the case. The appeal must be lodged in writing within four weeks of delivery of the judgment at the district court that issued the judgment at first instance. It must be signed by a lawyer. The party must also be represented by a lawyer at the subsequent appeal proceedings. The decision on the costs of proceedings can – if the judgment itself is not disputed – be disputed by means of a procedure known as ‘cost recourse'. The cost recourse must be lodged within 14 days of delivery of the judgment at the court that issued the judgment.
19.	Poland	When the conditions defined in Article 7(2) of the Regulation are met, the court hands down a judgment, which is subject to appeal by the party in the regional court. The appeal shall be lodged with the court which handed down the contested judgment (district court). *(Articles 316 § 1 and 367 § 1 and 2 of the Code of Civil Procedure, read in conjunction with Article 369 of the Code of Civil Procedure.)* When the conditions defined in Article 7(3) of the Regulation are met, the court hands down a judgment by default. The defendant may raise objections to a judgment by default by way of an appeal to be lodged with the court which handed down the judgment by default. In the event of an unfavourable decision, the plaintiff may lodge an appeal under the general rules. *(Articles 339 § 1, 342 and 344 § 1 of the Code of Civil Procedure).*
20.	Portugal	Appeals are admissible only in situations provided for in Article 678(2) of the Code of Civil Procedure or where the requirements for admissibility to the extraordinary review procedure laid down in Article 771 of that Code are met. The courts with jurisdiction to decide on an appeal are the Appeal courts (*Tribunais da Relação*). An appeal is lodged by submitting a request to the court which gave the decision being appealed against. Article 678(2) of the Code of Civil Procedure: "Decisions given in the same legislative field and on the same fundamental point of law against the uniform case law of the Supreme Court of Justice." Article 771 of the Code of Civil Procedure: "A decision that has become final may be subject to review only where a) other final decisions have proved that the decision was the result of an offence committed by the judge in the performance of his duties;

		b) it is shown that documentary evidence or official court testimony or a statement given by an expert or arbiter is false and, in any of these cases, may have been a determining factor in the decision to be reviewed, and the matter was not discussed during the proceedings in which the decision was given; c) a document is presented which the party was unaware of or which he could not have made use of in the proceedings in which the decision to be reviewed was given and that in itself is sufficient to alter the decision in favour of the defeated party; d) a confession, withdrawal or agreement on which the decision was based is invalid or may be declared invalid; e) the action and execution have taken place in default, with no participation whatsoever by the defendant, and it is shown that no summons was issued or that the summons issued is null and void; f) it is incompatible with the final decision of an international appeal body which is binding on the Portuguese State; g) the dispute was based on an act simulated by the parties, and the court, having failed to realise that a fraud had been perpetrated, did not use the powers conferred on it under Article 665."
21.	Romania	In accordance with Article 17 of the Regulation, an appeal may be lodged with the court only on expiry of **a term of 15 days from notification of the decision** (Article 2821 of the Romanian Civil Code).
22.	Slovakia	Under Slovak procedural law (Section 201 ff. of the Code of Civil Procedure) it will be possible to submit an appeal, within the meaning of Article 17 of the Regulation, to a regional court (*krajský súd*).
23.	Slovenia	Slovenian civil procedural law provides for the possibility of appeal against judgments given in first instance. In civil cases, an appeal is possible within 8 days of the formal service of the judgment (Articles 443 and 458 of the Civil Procedure Act). The appeal may be lodged with the court that gave the judgment at first instance (i.e. the county court) (Article 342 of the Civil Procedure Act). In commercial cases, an appeal is possible within 8 days of the formal service of the judgment (Articles 458 and 480 of the Civil Procedure Act). The appeal may be lodged with the court that gave the judgment at first instance (i.e. the district court) (Article 342 of the Civil Procedure Act). Decisions on these appeals are taken by the higher courts (i.e. *višje sodišče*) (Articles 35 and 333 of the Civil Procedure Act).
24.	Finland	An appeal against a judgment given in the European small claims procedure may be made to the Helsinki

		Court of Appeal, as provided for in Chapter 25 of the Code of Judicial Procedure (Appeal from the District Court to the Court of Appeal). Under Section 5 of Chapter 25 of the Code of Judicial Procedure, a party who wishes to appeal a decision of the District Court is required to declare an intention to appeal, under threat of forfeiting his/her right to be heard. A declaration of an intention to appeal must be filed, at the latest, on the seventh day after the day on which the decision of the District Court was handed down or made available to the parties. Under Section 11 of Chapter 25 of the Code of Judicial Procedure, when a declaration of an intention to appeal has been filed and accepted, the party concerned is provided with appeal instructions that are appendixed to a copy of the decision of the District Court. The deadline for lodging the appeal is 30 days from the day on which the decision of the District Court was handed down or made available to the parties (Section 12 of Chapter 25 of the Code of Judicial Procedure). The party must deliver the appeal document to the registry of the District Court at the latest before the end of office hours on the last day for lodging the appeal. An appeal that is out of time will be ruled inadmissible.
25.	Sweden	A district court judgment given in accordance with Article 7(2) of the European Small Claims Regulation may be appealed against in the court of appeal (*hovsrätt*). Appeals must reach the district court within three weeks from the date on which the judgment is received by the parties. Appeals must be lodged with the competent court of appeal. A court of appeal judgment given in the European Small Claims Procedure may be appealed against in the Supreme Court (*Högsta domstolen*). Appeals must reach the court of appeal within four weeks from the date on which the judgment is passed.
26.	United Kingdom	**1. England and Wales** An appeal is available in England and Wales against a judgment given in the European Small Claims Procedure. The Access to Justice Act 1999 (Destination of Appeals) Order 2000 (the 2000 Order) prescribes the destination of appeals from courts including the county courts. Under the 2000 Order, a Circuit Judge in the county court will deal with an appeal against a decision made by District Judge in the European Small Claim Procedure. Thereafter any appeal will lie in the High Court. The provisions contained in Part 52 of the Civil Procedure Rules and its accompanying Practice Direction govern the procedure for any such appeal. CPR Rule 52.4 specifies the times limits within which such appeal should be lodged. **2. Scotland**

		As in the domestic small claim procedure an appeal will be available against a judgment given by the sheriff in the European Small Claims Procedure. The appeal will be to the Sheriff Principal and can only be taken on a point of law. The decision of the Sheriff Principal will be final and not subject to any further review. Rule 23.1(1) of the Small Claim Rules 2002 specifies the time limit for the lodgement of an appeal in a domestic small claim (14 days) and this will also apply to the European Small Claim. **3. Northern Ireland** No appeal is available in Northern Ireland against a judgment given in the European Small Claims Procedure. Applicants may, of course, apply for a review under Article 18 of the Regulation. **4. Gibraltar** An appeal is available in Gibraltar under the provisions of the Supreme Court Rules 2000 which basically provides that such appeal shall be to the Additional Judge or the Chief Justice of the Supreme Court. The provisions contained in Part 52 of the Civil Procedure Rules and its accompanying Practice Direction will further govern procedures for any such appeal. The Supreme Court Rules 2000 set down the time scale for such appeals to be lodged and, the Supreme Court Rules and Part 52.4 specify the time limits within which such an appeal should be lodged.

666. According to **Article 17 (2)** of Regulation 861/2007 Article 16 shall apply to any appeal: the unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

667. Recital 29 of Preamble of the Regulation states that **the costs of the proceedings** should be determined in accordance with national law. Having regard to the objectives of simplicity and cost-effectiveness, the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred. As we may observe, the concept of "proceeding costs" used in the Regulation shall be considered equivalent to the concept of "litigation costs" used in the civil procedure of the Republic of Latvia.

668. Indication that the unsuccessful party shall bear the costs of the proceedings (litigation costs) complies with Section 41 and 44 of CPL. **However, Article 16 of Regulation orders the Latvian courts to assess "costs which are unnecessarily incurred or are disproportionate to the claim."** To compare: Section 41 of CPL states

that the party in whose favour a judgment is made shall be adjudged recovery of *all* court costs paid by such party, from the opposite party. Thus, some differences may be observed here. The fact whether the proceeding (litigation) costs are 1) unnecessarily incurred, or 2) disproportionate to the claim, the court shall assess in each specific case and in their decision provides justification thereof. For example, the Jelgava City Court with its order dated by 27 January 2012[454] recovered from the defendant most of the costs paid by the claimant (total amount: LVL 81.72), from which LVL 46.72 for expertise of shoes; LVL 35 for translation of documents. The claimant also sought LVL 25.17 for fuel and transportation costs in relation to submission of the claim and submission and receipt of other documents. The court refused to recover these LVL 25.17. The amount of claim in this case was LVL 62.99, but the state fee – LVL 50. The court order basically fails to demonstrate whether the court has assessed necessity and proportionality of *all* the abovementioned costs (LVL 106.89) with regard to the claim (e.g., translation costs; the order fails to explain which documents had been translated and whether it was necessary). In cases, where proceeding costs (except state duty) exceed the amount of the claim, it is important to assess criteria for costs stated in Article 16 of Regulation 861/2007. Thus, the authors **recommend to courts of the Republic of Latvia, in their judgments, by which covering of proceeding (litigation) costs are recovered from the unsuccessful party, to indicate whether the obvious necessity and proportionality has been assessed.**

669. According to **Article 24** of Regulation 861/2007 the Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the **European Judicial Network in Civil and Commercial Matters**. Information on proceeding costs provided by each Member State is available form the website of the network at: http://ec.europa.eu/civiljustice/case_to_court/case_to_court_lat_lv.htm

2.10.2. Mandatory standards for reviewing of the judgment

670. According to **Article 18** of Regulation 861/2007:

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where: a) i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part; or b) the defendant was

[454] Supplementary decision of the Jelgava City Court dated by 27 January 2012 in the case No. C 15285811 [unpublished]. See also decision of the Jelgava City Court dated by 27 January 2012 in the case No. C 15285811 [unpublished].

prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part; provided in either case that he acts promptly.
2. If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force. If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void". In courts of Latvia this article of Regulation has not been yet applied.

671. Unlike Regulation 805/2004, where the review procedure is included in the minimum procedural standards, Article 18 of Regulation 861/2007 contains an independent provision having no relation to any minimum procedural standards (like in case of Regulation 1896/2006).[455]

672. Who and where shall be entitled to request reviewing of judgment in the European Small Claim Procedure. Application for the judgment reviewing may be submitted only by the **defendant** (See Article 18 (1) of Regulation 861/2007; Section 485.[1], Paragraph one of CPL). However, this approach has been criticized in legal literature, because the claimant (whose claim has been denied) shall also be given chance to submit an application for the judgment reviewing.[456]

673. The defendant shall apply with such request to the court as soon as they become aware of existence of reasons listed in Article 18 of Regulation.

674. The defendant shall be entitled to apply for a review of the judgment before the court with jurisdiction of the Member State where the judgment was given (See Article 18 (1) of Regulation). According to Section 485.[1], Paragraph one of the Latvian CPL re-adjudication application shall be submitted: regarding the review of a judgment or a decision of a district (city) court — to the regional court concerned. Since small claims are involved, it is almost impossible for a regional court to review any of these cases as the court of the first instance.

675. Re-adjudication application in Latvia shall be submitted to the competent court within 45 days from the date when the circumstances of review specified in Article 18 (1) of Regulation 861/2007 have been established (See Article 19 of Regulation and Section 485.[1], Paragraph two of CPL). However, those cases where enforcement period, namely, 10 years, has lapsed (See Section 485.[1], Paragraph three and Section 546, Paragraph one of CPL).

[455] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 18 EG-BagatellVO (Varga I.), S. 487.
[456] *Ibid.*, S. 490.

676. It must be noted that Article 18 of Regulation 861/2007 shall be strictly separated from Article 17. Namely, Article 18 relates to reviewing of a judgment, while Article 17 relates to the opportunities to appeal a judgment.[457]

677. The application for review must state specific circumstances, upon which such review is based, and which are listed in Article 18 (1) of Regulation 861/2007. No state duty shall be paid for submission of the application for review to the competent Latvian court. An application regarding review of adjudication shall be adjudicated by written procedure (See Section 485.[2] of CPL).

678. Reasons for review of judgment — lack of information to the defendant. It must be noted that serving of **summons**, mentioned in the Latvian text version of Regulation 861/2007 (Article 18 (1) (a)) shall be considered incorrect. Text versions of other Member States contain no such reference to summons. The text relates document mentioned in Sub-item (i) of this provision – the claim form or the summons to an oral hearing — serving (English — *service*; German — *die Zustellung*; French — *la signification ou la notification*). Thus, the Latvian text version of Regulation 861/2007 (Article 18 (1) (a)) shall be as follows: "ii) **delivery** has been delayed due to the reasons outside the control of the defendant, preventing the defendant from preparing for advocacy".

679. Article 18 (1) (a)(i) of Regulation 861/2007 shows that documents must be served by any of methods specified in Article 14 of Regulation 805/2004 (i.e. without proof of receipt). If documents are delivered by any of methods specified in Article 13 (1) of Regulation or Article 13 of Regulation 805/2004 (i.e. documents were served by postal service attested by an acknowledgement of receipt), procedure of reviewing, based on Article 18 (1) (a)(i) of Regulation, cannot be initiated.

680. Article 18 (1) (a)(ii) of Regulation 861/2007 states: "service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part: 1) was not effected in sufficient time; 2) to enable him to arrange for his defence; 3) without any fault on his part." It must be noted that provisions of Regulation 861/2007 in relation to servicing of documents (Article 13), no indication of timeliness of servicing is given. Such timeliness request appears only in Article 18 of Regulation.

681. General clause "without any fault on the defendant's part" the court should assess on a case-be-case basis. Article 18 (1) (a) of Regulation provides for that the defendant shall act immediately, to initiate the procedure of reviewing the judgment.

682. Force majeure or exceptional circumstances. Article 18 (1) (b) of Regulation 861/2007 states that the application for review may be submitted also, if the defendant was prevented from submitting the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part. The defendant, in this case, must submit application for review without delay. The concept of "without delay" shall

[457] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 18 EG-BagatellVO (Varga I.), S. 487.

be interpreted autonomously rather than applying any of purposes or concepts specified in the national law.

683. Article 18 (1) (b) of Regulation 861/2007 covers all those cases where no fault of the defendant can be established in relation to failure to submit answer in due time. Such cases shall include also situations where the defendant has received judgment in a language unknown to him, without explaining his right to object against such receipt of the documents. This arises from the Recital 19 of Preamble of Regulation 861/2007: "*A party may* refuse to accept a document at the time of service or by returning the document within one week if it is not written in, or accompanied by a translation into, the official language of the Member State addressed (or, if there are several official languages in that Member State, [..], or a language which the addressee understands."

684. Legal consequences of the application for review. According to **Article 18 (2) of Regulation 861/2007** the reviewing court (in Latvia — Regional Court), shall have two opportunities:

- ***684.1.*** **To reject the application for review** (Article 18 (3) first sentence) and the judgment of the European Small Claim Procedure shall remain in force, or
- ***684.2.*** **To satisfy the application for review** (Article 18 (3) second sentence) and the judgment shall become invalid.

685. According to **CPL, Section 485[3]** the Latvian court hearing applications for review shall have the following options:

686. If the court establishes circumstances of judgment review, it **cancels** the contested claim in full **and hands it over for review anew** to the court of first instance. An ancillary claim may be submitted regarding this court decision (Section 485.[3], Paragraphs two and four of CPL).

687. In cases when the enforcement of a judgment in the territory of Latvia has not been performed, Section 635, Paragraph five of CPL envisages **reversal of execution** of the judgment.[458] Problems will occur in case if the judgment has been already enforced in *another* Member State (not in Latvia, which made the judgment and considers the review application). **The EU legislator would autonomously solve such situations by providing for a special standard form in the case of reversal of execution of the judgment in regulation 861/2007.**

688. Meanwhile if enforcement has not been completed yet, the defendant, who has submitted an application on review to the Member State of *origin* is entitled to request the court of the Member State of *enforcement* to limit the enforcement of the judgment (see Article 23 of the Regulation).

689. If the judgment has been wilfully enforced even before submission for forced enforcement, the defendant may request to the court of the Member State of *enforcement*

[458] The reversal of execution of the adopted judgment of the European Small Claim Procedure is decided by the court, which after the cancellation of this judgment reviews the matter anew (see: Section 635, Paragraph five of CPL).

to refuse the enforcement of the judgment without submitting to the Member State of origin an application in review (See Article 22 (2) of the Regulation).

690. If the court acknowledges that the circumstances specified in the application are not to be considered as circumstances of the review of a judgment, the **application is declined**. An ancillary claim may be submitted about the respective court decision (Section 485.[3], Paragraphs three and four of CPL). It is obvious that this possibility mainly corresponds to the first sentence of Article 18 (2) of Regulation 861/2007.

691. From Article 18 (2) of Regulation 861/2007 and Section 485.[3], Paragraphs two, three and four of CPL **it is not clear**:

691.1. *at what point the decision of a Latvian court in a review case comes into force?* According to Section 442, Paragraph one of CPL, in case the defendant resides in Latvia, the decision comes into force after the 10-day term for appeal has passed. Meanwhile if the defendant resides in another EU Member State, the decision comes into force after the 15-day term for appeal has passed. (see Section 442, Paragraph 1.[1] of CPL). If the court has **satisfied** the application of the defendant and has cancelled the judgment, no particular problems arise. However, if the regional court has **declined** the application of the defendant (Section 485.[3], Paragraph three of CPL), according to the first sentence of Article 18 (2) of the Regulation, the judgment remains in force. What happens with the enforcement of a decision made by a regional court in which the defendant is not yet able to submit an ancillary claim (Section 485.[3], Paragraph four of CPL), and does the submission of an ancillary claim suspend the enforcement? As stated before, a decision made by a regional court shall not come into force at once and it is not enforceable immediately as well. Therefore the judgment that has remained in force will also not be subject to immediate enforcement as provided for by Article 15 (1) of the Regulation.

691.2. *does the court send its decision not only to the defendant, but also to the claimant?* According to Section 231, Paragraph two of CPL, a decision shall be sent only to a person to whom it relates. Obviously this refers to the defendant and the claimant.

691.3. *from what moment court decision in a review matter becomes enforceable?* From the moment the term for the submission of an ancillary claim defined in Section 442 of CPL has ended.

2.11. Enforcement procedure

692. **Applicable procedural law.** According to **Article 21 (1)** of Regulation 861/2007:

1. Without prejudice to the provisions of this Chapter, the enforcement procedures shall be governed by the law of the Member State of enforcement. Any

judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

693. The national law of the Member State of enforcement shall be applicable to the enforcement procedure, except for the reservations provided for in the Regulation. For instance, if a judgment adopted in another Member State is submitted for enforcement in Latvia, the enforcement thereof in Latvia shall take place in accordance with the norms of the Latvian CPL (*lex loci executionis*), thus, applying those forced enforcement means that have been defined in Part E of the Latvian CPL. Regulation 861/2007 determines:

693.1. What documents must be submitted to competent forced enforcement authorities of the Member State of enforcement (Article 21 (2));

693.2. That the collector does not require an authorised representative or postal address in the Member State of enforcement (Article 21 (3));

Cautio judicatum solvi prohibition (Article 21 (4)); and

693.3. Basis and types of stay or limitation of enforcement (Article 23).

694. Documents subject for submission (Article 21 (2)). In accordance with Article 21 (2) of Regulation 861/2007, the collector submits the following documents to competent enforcement authorities of the Member State of enforcement:

694.1. A copy of the judgment that conforms to requirements by which authenticity may be established (Article 20 (1) (a)); and

694.2. A copy of certificate referred to in Article 20 (2) of the Regulation and, in case of necessity, the translation thereof in the official language of the Member State of enforcement or — if there are several official languages in the respective Member State (for instance, Belgium Luxembourg) — in the official language of legal procedure, or in one of the official languages of legal procedure used in the territory in which the enforcement of the judgment may be reached in accordance with the regulatory enactments of the respective Member State, or in another language, which has been specified by the Member State of enforcement as acceptable. Each Member State may specify the official language of EU authorities or languages that is not the language of the respective Member State, but is acceptable for it for the European Small Claim Procedure. Content of Form D is translated by a person, who has been qualified for this purpose in one of the Member States (see Article 21 (1) (b)). For instance, translation of a certificate issued in Austria in German into Latvian may be certified by an authorised translator in Austria. The person does not necessarily have to be a translator, who provides translation services in Latvia.

695. Submission of a copy of the judgment is not permissible — it must be a true copy of the judgment[459] or the original. It should be understandable from the submitted

[459] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

documents whether they are authentic to avoid cases when one and the same certificate against a debtor is enforced several times.[460]

696. Furthermore it is important to observe that the collector must submit to the enforcement agent both the original copy of the judgment and the certificate. In the field of courts a crucial problem is pointed out that in practice might occur in respect of true copies of documents, thus, the true copy must correspond to requirements that have been set for the true copies of documents in the Member State of origin.[461] For instance, if a Latvian bailiff receives a judgment adopted in Estonia, the true copy thereof must conform with the requirements set forth in the law of Estonia. Of course, in separate case Latvian bailiffs will face a difficulty to check it.

697. The list of documents subject to submission provided in Article 21 (2) of Regulation 861/2007 is explicit, therefore Latvian bailiffs must not demand from collectors additional documents to initiated the enforcement process in Latvia.[462]

698. Translation of a **certificate** (but not that of a judgment!) in the state language of the Member State shall be submitted in case of necessity. It might seem this is not a mandatory requirements, but it is not so, because the Member States have clearly (in accordance with Article 25 (1) (d) of the Regulation) specified the acceptable languages. Therefore both of these legal norms must be interpreted systematically.[463] Situations, in which EEO certification has been issued in a language, which the Member State of enforcement has not specified as acceptable, must be understood with the notion "in case of necessity". For instance, if a certificate issued in Austria in German must be submitted for enforcement in Luxembourg, no translation thereof is required (because Luxembourg has specified German as an acceptable language),. However, if a certificate issued in Austria in German is submitted for enforcement in Latvia, the translation thereof in Latvian is obligatory, because Latvia has specified only Latvian as an acceptable language. The same situation will be observed also in Lithuania. In the case of Estonia the situation is slightly different, because both English and Estonian are acceptable in Estonia. Therefore, for instance, a certificate issued in Scotland in English may be submitted for enforcement in Estonia without translation into Estonian.[464]

699. In accordance with Article 25 (1) (d) of Regulation 861/2007, Member States must notify those languages to the European Commission that are acceptable in each Member State in accordance with Article 21 (2) (b). Statements of all Member States are available in the European Judicial Atlas in Civil Matters:

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[460] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 67, 68.

[461] *Ibid*., S. 68.

[462] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-BagatellVO (Varga I.), S. 495.

[463] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-BagatellVO (Varga I.), S. 496.

[464] Lietuvas un Igaunijas paziņojumus skat. http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm.

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm

700. Member States of Regulation 861/2007 have specified the following acceptable languages:

Table of the specified languages:

No.	EU Member State	Specified languages
1.	**Belgium**	Flemish, French
2.	**Bulgaria**	Bulgarian
3.	**Czech Republic**	Czech, English, Slovak
4.	**Germany**	German; areas resided by Sorbians — also Sorbian
5.	**Estonia**	Estonian or English
6.	**Greece**	Greek
7.	**Spain**	Spanish
8.	**France**	French, English, German, Italian or Spanish
9.	**Ireland**	Irish or English
10.	**Italy**	Italian
11.	**Cyprus**	Greek, English
12.	**Latvia**	Latvian
13.	**Lithuania**	Lithuanian
14.	**Luxembourg**	German, French
15.	**Hungary**	Hungarian
16.	**Malta**	Maltese, English
17.	**Netherlands**	Dutch
18.	**Austria**	German; languages ethnic groups
19.	**Poland**	Polish
20.	**Portugal**	Portuguese
21.	**Rumania**	Romanian
22.	**Slovakia**	Slovak
23.	**Slovenia**	Slovenian; minority regions — Italian, Hungarian
24.	**Finland**	Finnish, Swedish or English
25.	**Sweden**	Swedish and English
26.	**United Kingdom**	English

701. Translation of a **certificate** is required obligatory if even only a few words in the certificate are in a language that has not been specified as acceptable by the Member State of enforcement.[465]

702. Article 21 (2) and (4) of Regulation 861/2007 applies to the prohibition of collector discrimination. The fact that a collector is the citizen of another state must not serve as a basis for requesting from him *cautio judicatum solvi* in the Member State of

[465] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

enforcement, appointment of a representative and/or postal address in the Member State of enforcement.

2.12. Refusal of enforcement

703. According to **Article 22** of Regulation 861/2007:

1. Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

the earlier judgment involved the same cause of action and was between the same parties;

the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and

the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.

2. Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

704. Application of the debtor. For the Latvian court to decide on refusal of enforcement in Latvia of judgment in the European Small Claim Procedure given in another Member State, application of the debtor shall be required. The Latvian court shall not be entitled to do it on its own initiative (*ex officio*); See Article 22 (1) of Regulation and Section 644.[3], Paragraph three of CPL. The debtor's application shall be executed according to Section 644.[4] of CPL.

705. No state duty shall be paid for submission of the application. State duty specified in Section 34, Paragraph seven of CPL in amount of LVL 20 shall be paid only for applications in relation to recognition and enforcement of judgments by foreign courts rather than the application in relation to refusal of enhancement of judgment (given to the European Small Claim Procedures). However, if the abovementioned application contains request to recognize and enforce in Latvia a judgment given by a foreign court (given in the European Small Claim Procedures), the state duty in amount of LVL 20 shall be paid.

706. The debtor shall submit the application to the competent court of Latvia, which according to Section 644.[3], Paragraph three of CPL shall be district (city) court, in whose territory the judgment of the foreign court in a small claim procedure shall be enforced.

707. The application shall be adjudicated in a court sitting, previously notifying the participants in the matter thereon. An ancillary complaint may be submitted in respect of a court decision (Section 644.[3], Paragraphs five and six of CPL). Irrespective of whether

it is decision by which the application is satisfied or refused, the decision must be justified.

708. Reasons for refusal of enforcement. Reason for refusal of enforcement is stated in Section 22 (1) of Regulation 861/2007 and it is **irreconcilability of judgments**. **Irreconcilability of judgments** shall be considered one of the classical obstacles for recognition of foreign court judgments[466] and it aims, **first**, to safeguard interconnection of court judgments and, **second**, to protect legal procedure of enhancement, protecting it from foreign court judgments, which might degrade stability of the domestic legal procedure, allowing operation of two court judgments contradictory from the aspect of legal consequences or even contrary to the court judgments (for example, one judgment requests payment of the amount specified in the contract, while the other one recognizes this contract invalid). In other words, verification of irreconcilability of judgments shall be considered protective filter of the state legal system.[467]

709. Section 22 (1) of Regulation applies **first judgement principle**, according to which the judgment shall be recognized and/or enforced, which was given first.[468] Regulation 861/2007 establish no provision that the first judgment must have entered into force. Date of acceptance thereof shall matter.

710. The next criterion shall be as follows: both judgments shall be given **in relation to the same cause of action** (English — *same cause of action*; German — *identischer Streitgegenstand*; French — *la même cause*; Italian *una causa avente lo stesso oggetto*; Spanish — *el mismo objeto*; Polish — *tego samego roszczenia*) and **between the same parties**. In the Latvian text version, the same concept is being translated differently for third time already (comparing to Regulation 805/2004 and 1896/2006), namely, this time the concept of "the same cause of action" (Regulation 805/2004 — "tas pats prasījuma pamats"; Regulation 1896/2006 — "tas pats rīcības iemesls"). Thus, all the three abovementioned concepts shall be considered "the same cause and subject of action".

711. The concept of "between the same parties" and "the same cause and subject of action" shall be the same as in Article 34 (3) and (4) of Brussels I Regulation, i.e. autonomous interpretation of concepts provided by CJEU in its former judicature shall be used here.

712. Irreconcilable judgments **form the geographical aspect** may be accepted:

712.1. In the Member State of enhancement in another EU Member State (including Denmark), for example, court judgments of Latvia and Ireland. If debtor's application is submitted to the Latvian court in relation to refusal of enforcement of the Irish court judgment in the small claim procedures, then, in

[466] Kropholler, J. Internationales Privatrecht. 5.Aufl. Tübingen: Mohr Siebeck Verlag, 2004, S. 651.

[467] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, Vol. 8, No. 6 (82), p.165.

[468] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, Vol. 8, No. 6 (82), p. 164.

case the former judgment of the Latvian court is irreconcilable with this judgment of the Irish court, enforcement of the Irish court judgment shall be refused.

712.2. **In two other EU Member States** (for example, decisions of courts in Ireland and Germany). If a debtor's application is submitted to the Latvian court in relation to refusal of enforcement of the Irish court judgment in the small claim procedures, then, in case the former judgment of the German court is irreconcilable with this judgment of the Irish court, enforcement of the Irish court judgment in Latvia shall be refused.

712.3. **In another EU Member State and third country** (for example, decisions of courts in Ireland and Russia). If a debtor's application is submitted to the Latvian court in relation to refusal of enforcement of the Irish court judgment in the small claim procedures, then, in case the former judgment of the Russian court (which complies with provisions to be recognized in Latvia) is irreconcilable with this judgment of the Irish court, enforcement of the Irish court judgment in Latvia shall be refused.

713. The requirement of irreconcilability of judgments is supplemented by another precondition specified in Article 22 (1) (c) of Regulation 861/2007, **namely, the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State where the judgment in the European Small Claims Procedure was given**. Thus, it must be concluded again that general system of Regulation 861/2007 makes the participant to be active in the Member State of origin ot judgement and not to postpone their defence tactics in the enforcement Member State. Thus, Article 22 (1) (c) of Regulation refers to reason of irreconcilability of judgments as an extraordinary exception to refuse the enforcement. It must be noted that provision (c), however, provides for a fault on the debtor's part.[469]

714. When applying Article 22 (1) of Regulation subject of the debtor's application shall be request to refuse enforcement of a judgement by a foreign court in Latvia in the small claim procedures. Thus, the application shall be appendixed not only with certificate specified in Article 20 (2) of Regulation, but also with the judgment of the foreign court (See Section 644.[4], Paragraph two, Clause 1 of CPL) and *a priori* irreconcilable judgement, since they will be assessed by the Latvian court, deciding on irreconcilability of judgments as a reason for refusal of enforcement.

715. When deciding on refusal of enforcement of a foreign court's judgment in the small claim procedures in Latvia, the court may not review in its merits neither the judgment of the foreign court nor the certificate (in the international civil procedure referred also to as *révision au fond*[470] restriction).

[469] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-BagatellVO (Varga I.), S. 497.
[470] Latin – reviewing in its merits.

2.13. Stay or limitation of enforcement

716. According to **Article 23** of Regulation 861/2007:

Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought:

limit the enforcement proceedings to protective measures;

make enforcement conditional on the provision of such security as it shall determine; or

under exceptional circumstances, stay the enforcement proceedings.

717. Section 644.[2], Paragraph one of CPL states that a district (city) court in the territory of which the relevant adjudication of the foreign court on the basis of Article 23 of Regulation No 805/2004, is to be executed, on the basis of the receipt of an application from the debtor is entitled to:

717.1. replace the execution of the adjudication with the measures for ensuring the execution of such adjudication provided for in Section 138 of this Law;

717.2. amend the way or procedures for the execution of the adjudication;

717.3. suspend the execution of the adjudication.

718. When submitting application provided for in Section 644[2] of CPL, the debtor is not required to pay state duty.

719. The applications shall be adjudicated in a Latvian court sitting, previously notifying the participants in the matter regarding this. The non-attendance of such persons shall not be an obstacle for adjudication of the application (Section 644.[2], Paragraph three of CPL). An ancillary complaint may be submitted in respect of a decision by the court (Section 644.[2], Paragraph four of CPL).

720. Provisions of Article 23 of Regulation 861/2007 in general comply with the objective stated in Recitl 8 of Preamble of Regulation 861/2007 — "This Regulation should also make it simpler to obtain the recognition and enforcement of a judgment given in the European Small Claims Procedure in another Member State." Furthermore, Article 15 (1) of Regulation 861/2007 states that: "The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required." Thus, Article 23 aims to safeguard the defendant from situations, in which the judgment has already been appealed in original Member State or time limit for such appeal has not been lapsed yet, however, the court of the Member State of origin has failed to cease or limit enforcement of the judgment.

721. It shall be noted that, unlike Regulations 805/2004 and 1896/2006, Article 23 of Regulation 861/2007 shall be applicable not only in situations where Latvia submit for execution judgments given in other Member States in the European Small Claim

Procedures, but also those given in Latvia in the European Small Claim Procedures (See Article 15 (2) of Regulation).

722. Reasons for stay or limitation. Reasons for stay or limitation of foreign judgment on the small claim procedure are established in Article 23 of Regulation 861/2007, and those are as follows:

722.1. Where a party has challenged a judgment given in the European Small Claims Procedure, or

722.2. where such a challenge is still possible, or

722.3. where a party has made an application for review within the meaning of Article 18.

723. Court of the enforcement Member State (or competent authority) in this case must assess perspectives of outcome of the appeal in the Member State of origin, as well as damage caused to the defendant's interests by irreversible turn, if no enforcement postponing or limiting measures are taken in the Member States.[471]

724. If any of the parties have contested or still can contest judgment given in the European Small Claim Procedures. The concept of "if a party have contested or still can contest" shall be considered reference to any judgment **appeal procedure** in the Member State of origin of the judgment. Appeal may be already submitted, or the time limit for its submission is not lapsed yet (parties may still appeal the judgment). See also Article 17 of Regulation "Appeal".

725. If the defendant has applied for a review of the judgment according to Article 18 of Regulation. Further justification for the Latvian court to decide on stay or limitation of a judgment is the case when the defendant in the State of Origin of the judgment has applied for a review of the judgment (See Article 18 of Regulation). For detailed information on Article 18 of Regulation 861/2007 see Section "Mandatory standards for review of a judgment" of this Research (670 § and further).

726. In all cases the Latvian court as a enforcement Member State court to be able to decide on the stay or limitation of a judgment in the European Small Claim Procedures, the following shall be required:

726.1. Application of a participant of the case (Article 23 of Regulation 861/2007 and Section 644.[2] of CPL; content of the application and documents to be appendixed thereto are established by Section 644.[4] of CPL);

726.2. Participant of the matter shall have submitted an appeal regarding the judgment in the Member State of origin thereof or the term of such appeal has not yet ended. Section 644.[4], Paragraph two, Clause 3 of the Latvian CPL states that other documents upon which the applicant's application is based shall be attached to such application (regarding the stay of the European Enforcement Order, division into terms, type of enforcement or procedure amendment, refusal of

[471] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (juillet-août-septembre), p. 673.

enforcement). In this case a document based on what it is visible that the participant of the matter has contested the referred to judgment in the Member State of origin or the term of the appeal has not yet ended shall be attached to the application; **or**

726.3. Defendant shall have submitted in the Member State of origin a request in accordance with Article 18 of the Regulation to review the judgment adopted in the European Small Claims Procedure (see Section 485.[1] of the Latvian CPL).

727. Types for stay or limitation. Types of stay or limitation of the enforcement of a judgment defined in Article 23 of Regulation 861/2007 in Latvia are as follows (Section 644.[2], Paragraph one of the Latvian CPL):

727.1. replacement of the enforcement of a judgment with measures provided for in Section 138 of CPL to secure the enforcement of the respective judgment;

727.2. alteration of the type or procedure of the enforcement of a judgment;

727.3. suspension of the enforcement of a judgment.

728. It should be noted that the type mentioned in Article 23 (2) (b) of the Regulation "make enforcement conditional on the provision of such security as it shall determine" is not provided for in the Latvian CPL. A guarantee is meant here (English — *security*; German — *Sicherheit*; French — *sûreté*), requested by the court from the claimant (not the defendant) in case if later on the judgment will be revoked in the Member State of origin.[472] At the same time forced enforcement in the Member State of enforcement continues.

729. Replacement of the enforcement of a judgment with the measures provided for in Section 138 of CPL to secure the enforcement of this judgment. Latvian court is entitled to replace the enforcement of a judgment delivered as a result of the European Small Claims Procedure with any of the enforcement security means provided for in Section 138 of the Latvian CPL. The court decision must specify which particular type of enforcement security is applied. It should be noted that in this case forced enforcement is being stayed (Section 559, Paragraph two of CPL), but in respect of the defendant's property — the court applies any of the security means of the enforcement of the judgment (for instance, pledge of moveable property belonging to the defendant).

730. *Alterations in the type or procedure of the enforcement of a judgment.* Latvian court may change its decision in respect of the type or procedure of the enforcement of a judgment. Contrary to Section 206 of CPL[473], Section 644.[2] allows the court to decide upon the referred to issue only after an application of the defendant (not the claimant). However, Article 23 of the Regulation states that an application regarding the stay or limitation of enforcement may be submitted by any of the parties. As it may be observed, the scope of Article 23 of the Regulation is broader than that of Section 644.[2] of CPL.

[472] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-BagatellVO (Varga I.), S. 500.

[473] Section 206, Paragraph one of CPL states that the court may decide upon the alteration of the type and procedure of the enforcement of the judgment on the basis of an application of a **participant in the matter**.

Therefore Article 23 of the Regulation should be applicable (see also Section 5, Paragraph three of CPL).

731. Contrary to Section 206 of CPL, in the case of the application of Section 644.[2], Latvian court must assess not the financial condition or other circumstances of the claimant, but perspectives of the outcome of the appeal in the Member State of origin, as well as the possible irreversible damage to the interests of the defendant of further reverse of a judgment, if no stay or limitation measures of enforcement would not be performed in the Member State of enforcement.

732. Contrary to Section 206 of CPL, in the case of the application of Section 644.[2], district (city) court, within the scope of power of which the respective judgment is enforceable in European Small Claims procedure, is competent to decide upon the type of enforcement or altering the procedure, not the court delivering the judgment or competent authority. In accordance with Article 15 (2) of Regulation 861/2007, Article 23 of the Regulation is applied also if the judgment is enforced in the Member State where it has been adopted. The latter means that a judgment delivered by a Latvian court in the European Small Claims Procedure may be enforced in Latvia. Therefore from the point of view of procedural economy it would be wrong that any of the parties solved the stay or limitation issues provided for in Article 23 of the Regulation not at the Latvian court, which delivered the referred to judgment, but a Latvian court according to the location of the enforcement of the judgment. In accordance with Article 25 (1) (e) of the Regulation, Latvia has informed the European Commission that: "if Article 23 of the Regulation is applied in relation to Article 15 (2) of the Regulation, thus, if the judgment is enforced in the Member State where it has been adopted, according to procedural norms of Latvia (Section 206, Paragraph one of the Civil Procedure Law), competence to apply Article 23 of the Regulation belongs to the court (general jurisdiction court) that delivered the judgment according to the procedures prescribed in the Regulation."[474]

733. In Section 644.[2], Paragraph one of CPL in respect of Article 23 of Regulation 861/2007 the legislator would have to broaden the legal regulation also towards judgments adopted in Latvia in European Small Claims Procedures. Therefore the first sentence of Section 644.[2] , Paragraph one of CPL should read approximately as follows:

No.	Current version of the first sentence of Section 644.[2] , Paragraph one	Amendments offered for the first sentence of Section 644.[2] , Paragraph one
1.	"(1) A district (city) court in the territory of which the relevant adjudication of the foreign court on the basis of [..] European Parliament and Council Regulation No 861/2007, Article 23 [..]is to be executed [..] is entitled to:"	"(1) A district (city) in the territory fof which the relevant adjudication of the foreign court is to be executed on the basis of an application of the debtor **(in the case of Regulation 861/2007 — any of the parties**), on the basis of [..] European Parliament and Council Regulation No 861/2007, Article 23 [..] is entitled to: [,,]. **(1[1]) If the certificate provided for in Article 20 (2) of Regulation No 861/2007 has been issued by a competent Latvian court, competent court specified in Paragraph one of the respective Section shall be a court, which has issued the referred to certificate."**

[474] See http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_lv_lv.htm.

734. Contrary to Section 206 of CPL, in the case of the application of Section 644.[2], the bailiff does not have the right to address the court with an application regarding the alteration of the type or procedure of the enforcement of a foreign court judgment in European Small Claims Procedure (as well as stay or division of enforcement per terms) if there are circumstances that encumber the enforcement of the judgment or makes it impossible. A different situation would be if a Latvian court had adopted the judgment in the European Small Claims Procedure (see Article 15 and Article 23 of the Regulation).

735. Stay of the enforcement of a judgment. Section 644.[2], Paragraph one, Clause 3 of CPL must be taken into account together with Article 23 of Regulation 861/2007, which means that stay of a judgment adopted in the European Small Claims Procedure is permissible only in extraordinary circumstances (contrary to the replacement or alteration of enforcement).

736. The notion "extraordinary circumstances" means situations in which the enforcement of a judgment would violate *ordre public* of the Member State of enforcement.[475] Thus, Latvian court must make sure whether the appeal in the Member State of origin is substantiated with any of violations of the right to fair trial referred to in Article 6 (1) of EConvHR. It must be taken into account that enforcement cannot be suspended on the basis of the exception of *ordre public*! Suspension of enforcement may be substantiated only with extraordinary circumstances that include situations, which *a priori* and quite obviously suggest a violation of the right to fair trial in the Member State of origin.

737. Within the meaning of Regulation 861/2007 the notion "extraordinary circumstances" means also situations in which the defendant has already paid the fine levied in the judgment.

738. If Latvian court has adopted a decision regarding the stay of enforcement, the bailiff shall suspend the records of the enforcement of a judgment until the time period specified in the court judgment or until the cancellation of this decision (see Section 560, Paragraph one, Clause 6 and Section 562, Paragraph one, Clause 3 of the Latvian CPL). At the time when enforcement records are suspended, the bailiff does not perform forced enforcement activities (Section 562, Paragraph two of CPL).

739. ***Drawbacks in CPL norms***. Successful operation of Article 23 of Regulation 861/2007 in Latvia may be encumbered because at the moment the Latvian CPL is incomplete in the aspects mentioned below.

740. Section 644.[2] of CPL does not provide for whether a decision made by district (city) court that has been adopted in relation to Article 23 of Regulation 861/2007 is enforceable immediately or whether the submission of an ancillary claim regarding such decision suspends or does not suspend the enforcement of the decision. At the moment

[475] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S.14; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), Art. 23 EG-BagatellVO (Varga I.)S. 181, 500.

the only option is to apply Section 644.[1] of CPL (what regards Latvian court decisions adopted in matters regarding the recognition and/or enforcement of a foreign court judgment) and Section 206 of CPL based on analogy. Thus, district (city) court decision adopted in relation to Article 23 of the Regulation (see Section 644.[2], Paragraph one of CPL) should be subject to immediate enforcement. Submission of an ancillary claim does not suspend the enforcement of the decision (adopted in relation to Article 23 of the Regulation). Section 644.[2] of CPL in the respective matter should be improved.

741. There arise certain doubts about the efficiency of the option "alteration of the type or procedure of the enforcement of a judgment" included in Section 644.[2], Paragraph one, Clause 2 of CPL. This occurs due to the reason that in the application of Section 644.[2], Paragraph one of CPL the court must assess not the financial condition or other circumstances of the debtor (as it is provided for in Section 206 of CPL), but bases provided for in Article 23 of Regulation 861/2007, and they are either submission of an appeal in the Member State of origin or expiry of the term for the submission of such appeal, or initiation of the review procedure in the Member State of origin. In such cases alteration of the type or procedure of enforcement will not protect the defendant from *a priori* unfair enforcement of a judgment. Furthermore, Article 23 of the Regulation does not provided for such type of stay or limitation of enforcement.

742. In Section 644.[2], Paragraph one of CPL in respect to Article 23 of Regulation 861/2007 the legislator must broaden the legal regulation also towards judgments adopted in Latvia in the European Small Claims Procedures. Therefore the first sentence of Section 644.[2], Paragraph one of CPL should be amended according to the aforementioned **example**.

743. Competent courts (authorities) of the Member States according to Section 23[476] of Regulation 861/2007

No.	Member State	Competent court / authority
1.	**Belgium**	The **court bailiffs** are the authorities in Belgium which have competence to enforce a judgment given by the court in the context of the European Small Claims Procedure. The authority with competence to apply Article 23 of the Regulation establishing a European Small Claims Procedure is *first and foremost* the attachment **judge ("*juge des saisies (exécution)*" and "*beslagrechter (tenhuitvoerlegging)*") of the place where the attachment is carried out**. Pursuant to Article 1395 of the Belgian Judicial Code, the judge of attachments has competence in respect of all actions for precautionary attachment and the means of enforcement. The territorial jurisdiction is defined in Article 633 of the Belgian Judicial Code. The **Court of First Instance**, which has territorial jurisdiction under the Belgian Judicial Code, also has competence in this respect. Point 5 of Article 569 of the Belgian Judicial Code stipulates that the Court of First Instance is competent to hear disputes regarding the enforcement of judgments and rulings. And it also has full jurisdiction pursuant to Article 566 of the Belgian Judicial Code.
2.	**Bulgaria**	Court bailiffs (public and private) are competent for enforcement. For the purposes of applying Article 23 of Regulation (EC) No 861/2007 of the European

[476] The table includes information available in the European Judicial Atlas in Civil Matters: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_lv_lv.htm.

		Parliament and of the Council of 11 July 2007 (EO) establishing a European Small Claims Procedure, competence shall rest with the court before which the case is pending or, where a decision has come into force, with the court of first instance (Article 624(4) of the Code of Civil Procedure).
3.	**Czech Republic**	1. The competent authorities for enforcement in the Czech Republic are the district courts and court executors. The entitled party may: (a) lodge a petition for judicial enforcement of a decision with the court which has territorial jurisdiction; (b) lodge a petition for an order of distraint with the court which has territorial jurisdiction, or (c) lodge a petition for an order of distraint with any court executor. When determining which district court has territorial jurisdiction, the provisions of Sections 84 - 86 of the Code of Civil Procedure will be used in cases falling under paragraph (a), whereas in cases falling under paragraph (b) the provisions of Section 45 of the Court Bailiffs and Enforcement Act No 120/2001, as last amended, ("Enforcement Code") will apply. The judicial enforcement of decisions is governed by the provisions of the Code of Civil Procedure, whereas in the case of court bailiffs the Enforcement Code also applies. *More detailed information on enforcement in the Czech Republic has been published on the website of the European Judicial Network*. 2. The Czech Republic has designated the district courts as the competent authorities for the purposes of the application of Article 23. Their territorial jurisdiction is governed by Sections 84 - 86 of the Code of Civil Procedure in the case of judicial enforcement (see paragraph (a) above) and by Section 45 of the Enforcement Code in the case of enforcement of a decision by a court bailiff (see paragraphs (b) and(c) above).
4.	**Germany**	The enforcing court is also the court with competence for the main proceedings.
5.	**Estonia**	Rulings given in European Small Claims Procedures in Estonia are enforced by independent bailiffs. An application for enforcement proceedings to be commenced is to be submitted to the bailiff of the debtor's place of residence or domicile or at the location of the assets. A list of bailiffs' offices is available at http://www.just.ee/4263. If an appeal is lodged against a ruling given in a European Small Claims Procedure, the measures laid down in Article 23 of the Regulation are applied by the district court with which the appeal is lodged. If a court judgment is given in default and a petition is lodged under Section 415 of the Code of Civil Procedure to set aside the judgment, the application for measures to be applied is to be submitted to the court ruling on the petition. If an appeal has not yet been lodged, the measures laid down in Article 23 of the Regulation are applied by the court which delivered the ruling on the case. The court competent to apply the measure laid down in Article 23(c) of the Regulation is the county court in whose jurisdiction enforcement proceedings are being conducted or would have to be conducted. In the cases laid down in Section 46 of the Code of Enforcement Procedure, a decision to stay the enforcement proceedings may be taken by the bailiff conducting the enforcement proceedings, as well as by the court.
6.	**Greece**	The competent authority for enforcement is the bailiff mandated by the party seeking enforcement. The competent authorities for the implementation of Article 23 of the Regulation are the Justices of the Peace.
7.	**Spain**	The courts of first instance have competence for enforcement and for the application of Article 23.
8.	**France**	The competent authorities with respect to enforcement are the bailiffs and, in the case of attachment of remuneration authorised by a district judge, the chief clerks of the district courts. For the purposes of the application of Article 23, • in the case of a judgment by default, the court or tribunal with which the

		appeal is lodged can, before examining the merits again, withdraw its judgment in so far as it ordered provisional enforcement, which has the effect of staying enforcement; • in all cases, the judge in chambers in an emergency and the enforcing judge after service of a court order or distraining order can order a stay of enforcement by granting a period of grace to the debtor (Article 510 of the Code of Civil Procedure).
9.	**Ireland**	An application for enforcement should be made to the relevant County Registrar/Sheriff through the associated Circuit Court. The relevant District Court is competent to deal with applications for refusal, stay or limitation of enforcement.
10.	**Italy**	Ordinary civil courts have jurisdiction for enforcement. Ordinary civil courts have jurisdiction for the stay or limitation of enforcement under Article 23.
11.	**Cyprus**	The competent authorities for enforcing decisions and applying Article 23 are the courts, which supervise the enforcement of their decisions in accordance with the law.
12.	**Latvia**	In Latvia, sworn court bailiffs are competent to enforce judgments. In accordance with Latvia's procedural legislation (Article 644. (1)), competence for applying Article 23 of the Regulation, where a ruling made abroad is being enforced, lies with the district or city court (court of general jurisdiction) in whose operational territory the relevant foreign court decision is to be enforced. If Article 23 of the Regulation is enforced in connection with Article 15(2), i.e. if the decision is enforced in the Member State in which it was taken, pursuant to Latvia's procedural legislation (Article 206. (1) of the Civil Procedure Law), competence for implementing Article 23 of the Regulation lies with the court (court of general jurisdiction) that issued the judgment in accordance with the procedure provided for in the Regulation.
13.	**Lithuania**	Pursuant to Article 31 of the Law, a decision of the court given under the European Small Claims Procedure and approved by a certificate in standard form D presented in Appendix IV to Regulation No 861/2007 shall be considered an enforcement document. The enforcement functions of enforcement documents shall be carried out by bailiffs. The applications referred to in Article 22(1) of Regulation No 861/2007 on refusal to enforce decisions given in the European Small Claims Procedure shall be examined by the Court of Appeal of Lithuania. The applications referred to in Article 23 of Regulation 861/2007 to stay or limit the enforcement of the decisions given in the European Small Claims Procedure shall be examined by the district court of the place of enforcement.
14.	**Luxembourg**	The justice of the peace has competence with respect to enforcement and the application of Article 23.
15.	**Hungary**	In Hungary, for enforcement matters under the Regulation : *- The following authorities have competence with respect to enforcement :* the local court operating at the seat of the county court competent according to - the debtor's domicile or seat in Hungary; or, failing this, - the location of the debtor's assets that are subject to enforcement, - in the case of a Hungarian branch or representative office of an undertaking having its registered seat abroad, the place of the branch establishment or the representative office; in Budapest, the *Budai Központi Kerületi Bíróság* [Buda Central District Court]. *- The authority with competence as regards the measures under Article 23 :* In Hungary the enforcement court is competent to implement the measures provided for under Article 23. Under Hungarian law the enforcement court is - the court to which the competent independent bailiff was appointed, or - the local court competent according to the seat of the county court to which county court the county bailiff was appointed (in the case of a

		metropolitan court bailiff, the *Pesti Központi Kerületi Bíróság* [Pest Central District Court].
16.	**Malta**	Depending on the residence of the person against whom enforcement is sought, the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) have competence with respect to enforcement and for the purposes of Article 23, pursuant to Article 10(4) of the Small Claims Tribunal Act (Chapter 380).
17.	**Netherlands**	The authorities responsible for the enforcement of a decision in a European small claims case are the Dutch bailiffs. For the authorities responsible for the application of Article 23 of Regulation (EC) No 861/2007, see Article 8 of the Implementing Law for European Small Claims Procedures. Article 8 of the Implementing Law for European Small Claims Procedures:In the case of applications for enforcement as referred to in Articles 22 and 23 of the Regulation, Article 438 of the Code of Civil Procedure is applicable. Article 438 of the Code for Civil Procedure:1. Disputes which arise in connection with an enforcement are brought before a court authorised in the normal manner, or in whose jurisdiction seizure has been made, where one or more of the cases at issue is due to be heard or enforcement will be carried out. 2. Until an interim measure is obtained, the dispute can also be referred for a temporary injunction to the court hearing applications for interim measures as authorised in paragraph 1. Without prejudice to its other powers, the court hearing applications for interim measures can suspend the enforcement for a certain time or until a ruling has been handed down about the dispute, and can then decide that the enforcement can only go ahead or be continued if a security is posted. He can grant "replevin", with or without the posting of a security. During the enforcement he can order incomplete formalities to be rectified stipulating which of the incomplete formalities must be carried out again and who shall bear the costs involved. He can order that any third party involved must consent to the continuation of the enforcement and must then cooperate with the procedure, with or without the posting of a security by the executor.3. If the case does not lend itself to the issue of a temporary injunction, the court hearing the application can, instead of dismissing the application, if the claimant so requests, refer the matter to the court specifying the date on which it must be heard. A respondent who does not appear on the date when called and whose lawyer has not contacted the court on his behalf is not declared to be in default unless he been specifically called to attend the proceedings at a date close to the date of the hearing as requested by the claimant or set by the court at the claimant's request.4. If an objection is made to the bailiff responsible for enforcement which calls for the adoption of an immediate interim measure, the bailiff may present himself to the court with the report he has drawn up in order to enable an interim measure to be adopted between the involved parties in respect of the objection. The court should halt the proceedings until the parties can be called, unless, because of the nature of the objection, it considers that an interim measure is appropriate. The bailiff who exercises his aforementioned authority without the agreement of the claimant, can himself be ordered to pay costs, if it transpires that his action was unfounded. 5. An appeal against enforcement by a third party can be lodged by the claimant and the respondent.
18.	**Austria**	The district courts (*Bezirksgerichte*) have competence both for enforcement and for the application of Article 23. Territorial jurisdiction is determined by the Austrian Enforcement of Judgments Act.
19.	**Poland**	1. The measures provided for in Article 23(a) – (c) of the Regulation are applied in proceedings concerning the provision of security by the district court which has jurisdiction to hear the case. By way of exception, the measures are applied by the regional court examining the appeal if the application for the provision of security was filed during the appeal procedure *(Article 734 of the Code of Civil Procedure)* 2. The measures provided for in Article 23(a) – (b) of the Regulation are applied, as a rule, by the bailiff. In certain cases the competent body is the district court.

		The district court is competent only to stay enforcement proceedings (Article 23(c) of the Regulation).*(Articles 739 742, and 755 § 1(3) of the Code of Civil Procedure).*
20.	**Portugal**	The competent authority with respect to enforcement and the stay or limitation of enforcement is the court in the place where the case was tried or, where the decision was given in another Member State, the court at the domicile of the defendant.
21.	**Romania**	The authority competent to enforce the decision is the **judicial enforcement officer *(executorul judecătoresc)*** of the jurisdiction in which the decision has to be enforced or, where the matter concerns the recovery of goods, the judicial enforcement officer of the jurisdiction in which they are located. If the goods that can be tracked down are located in the jurisdiction of more than one court, the competent authority may be any of the judicial enforcement officers employed by those courts (Article 373 of the Romanian Civil Code). Save where the law provides otherwise, the authority competent to apply Article 23, or to suspend or limit enforcement, is the **enforcement authority *(instanța de executare)*** or the court in whose jurisdiction enforcement is to be effected.
22.	**Slovakia**	The competent authorities for enforcement will be the court executors (*súdni exekútori*). The competent authorities for the implementation of Article 23 of the Regulation will be the courts.
23.	**Slovenia**	Competent authorities with respect to enforcement and competent authorities for the purposes of the application of Article 23. Jurisdiction for enforcement lies with the **county court** (Article 5 of the Execution of Judgments in Civil Matters and Insurance of Claims Act, Official Gazette of the Republic of Slovenia No 3/2007, 12.1.2007, p. 207; ZIZ – UPB4). **County courts** are also competent for the purposes of Article 23.
24.	**Finland**	In Finland the bailiff is the competent authority for the enforcement of judgments given in the small claims procedure. The initiation of enforcement is governed by Chapter 3 of the Enforcement Code (705/2007). The bailiff in the respondent's place of residence or domicile or another local enforcement authority is competent to act. The bailiff is also competent for the purpose of applying Article 23. The district bailiff him/herself decides on the measures referred to in the article.
25.	**Sweden**	The Swedish Enforcement Administration (*Kronofogdemyndigheten*) has competence with respect to enforcement in Sweden and also takes decisions pursuant to Article 23.
26.	**United Kingdom**	**1. England and Wales** As is the case in our domestic small claims procedure it will be the responsibility of the successful party in the European Small Claims Procedure to arrange for enforcement of the court's order. The competent authority for the purposes of enforcement, and for the purposes of Article 23 will be the county court and the High Court. Contact details are provided in a) above. **2. Scotland**As is the case in our domestic small claim procedure it will be the responsibility of the successful party in the European Small Claims Procedure to arrange for enforcement of the court's order. The competent authority for the purposes of the application of Article 23 will be the sheriff court. **3. Northern Ireland**As is the case in domestic small claim procedure it will be the responsibility of the successful party in the European Small Claims Procedure to arrange for enforcement of the court's order. The competent authority for the purposes of the application of Article 23 will be the Enforcement of Judgments Office and the Master, Enforcement of Judgments. **4. Gibraltar** The competent authority for the purposes of enforcement and for the purposes of Article 23 shall be the Supreme Court of Gibraltar.

2.14. Recognition and enforcement in another state

2.14.1. Recognition and enforcement without the requirement to declare

744. According to **Article 20** of Regulation 861/2007**:**

1. A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

2. 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 Appendix IV, at no extra cost.

745. Judgment given in the European Small Claim Procedure differs from EEO by the fact that the first includes enforceability in the scope of EU[477] (except in Denmark).

746. Article 15 (1) of Regulation 861/2007 suggests that a judgment in the European Small Claim Procedure acquires an autonomous EU enforceability, namely, such judgment shall be enforceable notwithstanding any possible appeal in the Member State of origin. Thus, in other Member States it shall require no enforceability declaration (executive procedure), and there is no opportunity to object such recognition (i.e. to initiate a recognition procedure). Majority of the European Small Claim Procedures has been established at an autonomous EU level, including by use of specific standard forms for the scope of EU — from the submission of the application to issuance of the certification on the judgment (See Articles 4-20 of Regulation 861/2007). Certainly, specific procedural issues may be observed, which are still reserved at the discretion of national laws and regulations (for example, partial service of the courts documents, forced enforcement procedures, form and content of the judgment).

747. Thus, a certification on a judgement in the European Small Claim Procedure issued in one Member State (completed Form D) shall be immediately enforced in other Member States, furthermore, without any intermediate procedure (exequatur procedure or registration procedure; except the refusal of enforcement option provided for in Article 22 of Regulation). Judgment to be enforced shall have enforceability of the scope of EU rather than that of the issuing state (unlike EEO).

748. Article 17 of Regulation 861/2007 suggests that the judgment in the European Small Claim Procedure shall **enter into force** from the moment specified by law of the Member State of origin. In Latvia, such court judgment shall come into lawful effect when the time period for its appeal in accordance with appellate procedures has expired and no appeal has been submitted (Section 203, Paragraph one of CPL). According to Section 415, Paragraph one of CPL an appellate complaint regarding a judgment of a first instance court may be submitted within 20 days from the day of pronouncement of the

[477] Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena : Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.

judgment. Latvia, in accordance with Section 25 (1) (c) of Regulation 861/2007 has stated to the European Commission as follows:

> *Pursuant to Latvia's procedural legislation governing judgments by a court of first instance, parties to the proceedings may submit an appeal within 20 days of the pronouncement of the judgment (Articles 413(1) and 415(1) of the Civil Procedure Law). If a court of first instance has issued an abridged judgment and set a different deadline for delivery of the full judgment, the time period for an appeal runs from the date set by the court for delivery of the full judgment (Article 415(2) of the Civil Procedure Law). Similarly, an appeal against a judgment by a court of appellate instance may be submitted by parties to the proceedings in accordance with cassation procedures, the cassation complaint being submitted within 30 days of the judgment being issued (Articles 450(1) and 454(1) of the Civil Procedure Law). If an abridged judgment has been issued, the time period for an appeal runs from the date set by the court for a full judgment. If the judgment is drawn up after the designated date, the time period for submitting an appeal against the judgment runs from the date of actual issue of the judgment (Civil Procedure Law 454(2)).*[478]

749. As it may be concluded, judgments in the European Small Claim Procedure in Latvia shall be appealed in a different way than judgments in national small claim procedures (See Section 250.[27] of CPL, according to which a court judgment in matters regarding claims for small amount may not be appealed in accordance with appeal procedures). **This issue in future, probably, shall be considered by the Latvian law authority, namely, whether the two-phase appeal procedure established in Section 30.[3] of CPL shall not be applied also to judgments in the European Small Claim Procedures**.

750. According to Article 20 (2) of Regulation 861/2007, certification concerning a judgment in the European Small Claim Procedure (Form D) shall be issued by the court at the request of one of the parties rather than on its own initiative (*ex officio*). CPL of the Republic of Latvia, Section 541.[1], Paragraph 4.[1] states that a court shall draw up the certificate referred to in Article 20 (2) of European Parliament and Council Regulation No. 861/2007 upon the request of a participant in the matter. Submission of the request shall be at no extra cost. Request on issuance of certification (Form D) the claimant usually includes in their claim (Form A), noting this fact in Item 9 of Form A. However, if judgment of the Latvian court in the European Small Claim Procedure shall be enforced in Latvia, issuance of such certification shall be considered unnecessary.

[478] For the statement of the Republic of Latvia see: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&#statePage0.

3. Regulation 1896/2006

3.1. Introduction

751. As mentioned above, in 2002, European Commission adopted the Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation,[479] which assessed both procedure for the recovery of uncontested claims in the Member States and the possible solution for implementing such procedure at the European level.

752. The purpose of this Regulation 1896/2006 is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims (Recital 9 of Preamble, Article 1) by creating a European order for payment (hereinafter referred to as *EPO*) procedure. Overall, the European order for payment procedure is similar to the preventive procedure contained in the Latvian national legislation.

753. When applying the Regulation, it is important to take into account that on 16 October 2012, Commission Regulation (EU) No. 936/2012 (4 October 2012) was published on amending the Appendixes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure.[480] It means that new forms of the European order for payment procedure have been approved. Regulation 936/2012 entered into force on the seventh day after publishing, consequently, on 23 October 2012. From this date, the new forms shall be used. If EMR application to the court was submitted until 23 October 2012, the former form shall be used.

754. Forms available in the Atlas here:
http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_information_lv.htm?countrySession=2&.

3.2. Material scope

755. According to Article 4 of Regulation 1896/2006, European order for payment procedure shall be established only for the collection of pecuniary (financial) claims for a specific amount, i.e. non-payment or insufficient payment, or late payment, non-delivery of goods or delivery of defective goods, or non-delivery of services or delivery of poor services, if can be measured financially (See Appendix I Item 6).

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[479] Green Paper On a European Order for payment procedure and on measures to simplify and speed up small claims litigation [2002] COM 746, p. 58-59.
[480] OJ L 283, 16.10.2012, p. 1-23.

756. Article 2 (2) of Regulation establishes scope of application thereof, which is identical to Regulations 805/2004 and 861/2007 reviewed above. Namely, Regulation 1896/2006 shall apply to **civil and commercial matters** in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to **revenue, customs or administrative matters or the liability of the State** for acts and omissions in the exercise of State authority (*acta iure imperii*).

757. The concept of "**civil and commercial matters**" shall be interpreted in accordance with the already reviewed Regulations. Furthermore, it must be noted that Item 6 of Appendix I form to Regulation 1896/2006 directly identifies several categories of civil and commercial matters:

757.1. Sales contract;
757.2. Rental agreement – movable property;
757.3. Rental agreement – immovable property;
757.4. Rental agreement – commercial lease;
757.5. Contract of service - electricity, gas, water, phone;
757.6. Contract of service – medical services;
757.7. Contract of service – transport;
757.8. Contract of service – legal, tax, technical advice;
757.9. Contract of service – hotel, restaurant;
757.10. Contract of service – repair;
757.11. Contract of service – brokerage;
757.12. Contract of service – other;
757.13. Building contract;
757.14. Insurance contract;
757.15. Loan;
757.16. Guarantee or other collateral(s);
757.17. Claims arising from non-contractual obligations if they are subject to an agreement between the parties or an admission of debt (e.g. damages, unjust enrichment[481]);
757.18. Claims arising from joint ownership of property;
757.19. Damages – contract;
757.20. Subscription agreement (newspapers, magazine);
757.21. Membership fee;
757.22. Employment agreement;
757.23. Out-of-court settlement;
757.24. Maintenance agreement.

3.3. Geographical scope

758. Similar to Regulations reviewed above, this Regulation 1896/2006 shall not be applicable to Denmark (See Article 2 (2) of Regulation, as well as Recital 32 of

[481] Official translation into Latvian "*netaisnīga bagātības iegūšana*".

Preamble). However, the United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland appendixed to the Treaty on European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation (Recital 31 of the Preamble).

3.4. Temporal scope

759. According to Article 33 of Regulation 1896/2006 "This Regulation shall enter into force on the day following the date of its publication in the *Official Journal of the European Union*. It shall apply from 12 December 2008, with the exception of Articles 28, 29, 30 and 31 which shall apply from 12 June 2008".

760. Unlike Regulation 805/2004, EU legislator in this Regulation has stated no specific date, on which Regulation 1896/2006 shall enter into force.

3.4.1. Date of entry into force

761. Since Regulation 1896/2006 in the *Official Journal of the European Union* has been published on 30 December 2006[482], it shall enter into force on the following day, i.e. **31 December 2006**.

3.4.2. Beginning of application of Regulation

762. Although Regulation 1896/2006 shall enter into force on 31 December 2006, it may not be applicable from this date. EU legislator has stated two dates, from which specific articles of the Regulation shall be valid:

762.1. Articles 28, 29, 30, and 31 of Regulation shall be applicable from **12 June 2008**. The abovementioned provisions establish **the Member States' obligation** to cooperate to provide the general public and professional circles with information on costs of service of documents and which authorities have competence with respect to enforcement of EOP for the purposes of applying Articles 21, 22 and 23 of Regulation. They also establish obligation of the Member States to provide to the European Commission information specified in Article 29. Articles 30 and 31 of Regulation establish obligation of the European Commission.

762.2. Other articles of Regulation shall be applicable from **12 December 2008**. It means that an application for the European order for payment the claimant may submit to the court from this date — 12 December 2008. According to

[482] See the date of publicing of the Latvian text version of Regulation: *Official Journal* L 399, 30.12.2006, p. 1-32

Article 7(5) of Regulation "The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin."

763. **Latvia** has announced the European Commission that an EOP application may be submitted in writing (in paper format) in person or through an authorized person, or by mail delivery. **Lithuania** has announced the European Commission that an EOP application may be submitted directly or by mail delivery. **Estonia** has announced the European Commission that an EPO application may be submitted in person, by mail delivery, by fax or by electronic data transfer channels.[483]

3.5. Cross-border cases

764. The concept of "**cross-border"** cases is defined in Article 3 of Regulation.[484] According to Article 3(2) of Regulation 1896/2006 it is established that a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. Domicile shall be determined in accordance with Articles 59 and 60 of Brussels I Regulation (Item 2 of the article), furthermore, the relevant moment for determining whether there is a cross-border case shall be the time when the application for a European order for payment is submitted to the court.

765. This "cross-border" definition contained in the Regulation in English complies with the definition stated in Article 3 of Regulation 861/2007, though in Latvian the term "*court seized*" has been translated slightly differently, namely, in Regulation 861/2007 as "tiesa, kas uzsākusi tiesvedību lietā", while in Regulation 1896/2006 as "prasību saņēmusī tiesa".[485] Considering that submission of the claim application and receipt of

[483] http://ec.europa.eu/justice_home/judicialatlascivil/.

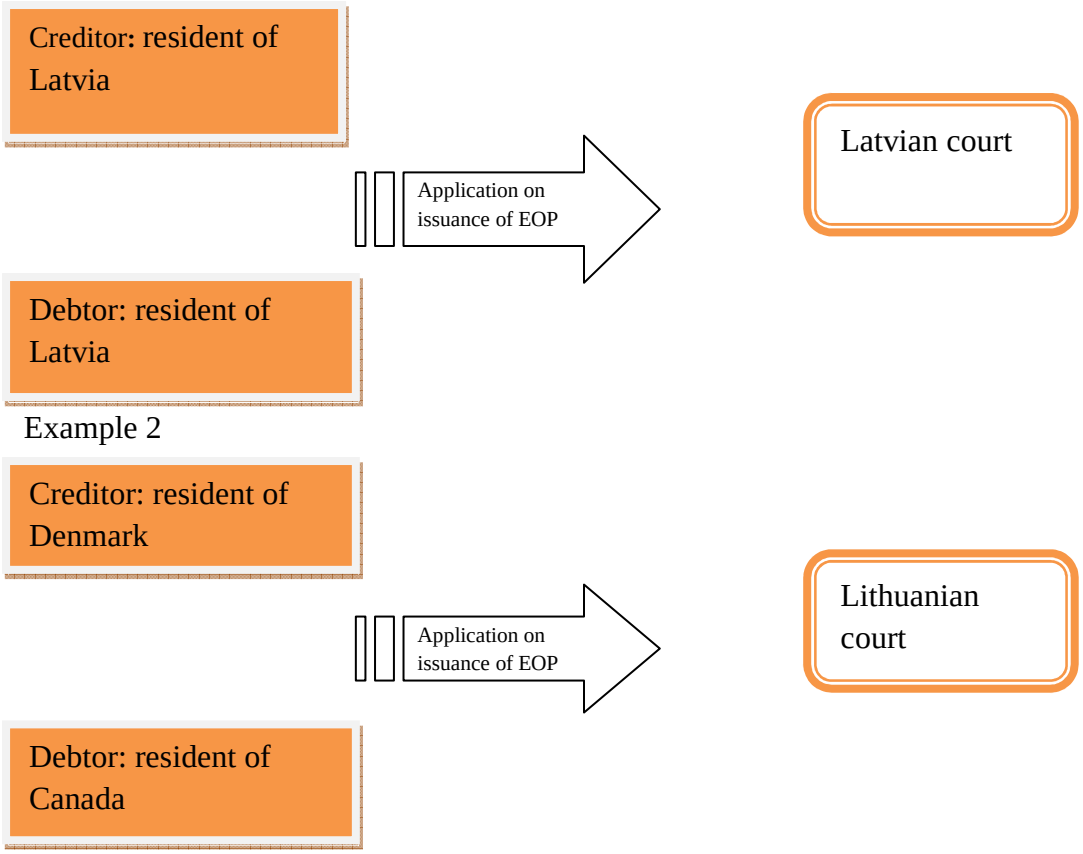
[484] Translation of Article 3 part one of Regulation is incorrect, since insatead of the collocation "pastāvīgās dzīvesvieta", the collocation "**ierastā uzturēšanās vieta**" should be used. For comparison please see text of Regulation in English, German and French: "domicile or habitually rezidence"(English); "Wohnsitz oder gewöhnlicher Aufenthalt" (German); "domicile ou sa résidence habituelle" (French).
Furthermore, reference to "kas nav prasību saņēmušās tiesas atrašanās dalībvalsts" has been interpreted wrongly. The only provision of Latvian text version of Regulation, which includes the word "claim", is Article 5 part two: ""Member State of enforcement" means the Member State in which enforcement of a European order for payment is sought". As a result of such systemic interpretation, the person applying the Latvian text version of the Regulation will draw to a wrong conclusion that the receiving court's Member State shall be the Member State, to whose court the claim on enforcement of EPO has been submitted. While in English, German and French text versions of Regulation, we can see the opposite, namely, **it is the Member State, to whose court the application on issuance of EPO has been submitted**: "Member State other than the member State of the court seised" (English); "(..) in einem anderen Mitgliedstaat als dem des befassten Gerichts" (German); "(..)dans un Etat membre autre que l'Etat membre de la juridiction saisie"(French). As we may see, Article 3 part one of Latvian text version of Regulation shall be considered misleading and indicates to another Member State. See Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds No. 24/25, 16.06.2009

[485] "For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised."

the claim application are different procedural phases, such difference in the translation shall be considered significant. It would be correct to translate this concept in both Regulations as "tiesa, kurā celta prasība", and court already known as competent to hear this claim.[486]

766. For further details and comments on the concept of "cross-border case" please see explanation of Regulation 861/2007 (427, 447. §), however, we should emphasize the principal issues once more. At least one of parties shall have their domicile or habitual place of residence not in the Member State where the proceedings have been brought, but in another Member State (except Denmark). Domicile of the other party may be at any third country outside EU.[487] The court where EPO application is submitted shall always be located at a EU Member State; court state and domicile state of both countries cannot be the same EU Member State, furthermore, domiciles of both parties must be located in EU Member States, they cannot be located in any third countries. For example, cross-border state is not valid in the following cases (cross-border case examples see in chapter on Regulation 861/2007, 428 § of Research):

Example 1



[486] See: Amendment to Council Regulation (EC) No. 44/2001 (22 December 2002) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001) (Special Edition in Latvian, Ch. 19, Vol. 4, p. 42)

[487] See Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds No. 24/25, 16.06.2009

767. Authors of the Research have repeatedly emphasized that **physical person's domicile** for the purpose of this Regulation and Brussels I Regulation shall not be considered autonomous concept, since the court of the Member State, which have received the case, must translate it according to their national law. Namely, Article 59(1) of Brussels I Regulation states that, to establish, whether a person's domicile is located in the Member State, to whose court the claim has been submitted, the court shall apply their laws and regulations.

768. The Latvian court, to establish domicile of a Latvian physical person, will assess Section 7 of Civil Law, which states that Place of residence (domicile) is that place where a person is voluntarily dwelling with the express or implied intent to permanently live or work there. However, to establish a person's domicile in another state, the court shall apply the Member State's laws and regulations in accordance with Article 59(2) of Brussels I Regulation. If a Latvian and an American agree that jurisdiction be held by the English court, the English court must establish whether the Latvian's domicile is according to the Latvian law, in order to establish if Article 23 of Brussels I Regulation on exclusion of jurisdiction shall be applicable.

769. Furthermore, Article 59 of Brussels I Regulation contains no reference to the collocation "**place of residence**", while this term has been mentioned in Article 3(1) of Regulation, since there can be cases where domicile of the parties may be impossible to establish, but it is determinable (rather than temporary) place of residence. Thus, the place of residence will be established from circumstances of the case by the court autonomously in each case (See 435 § of the Research).

770. **Domicile of a legal person,** in turn, is an autonomous concept, and it does not make courts of the Member States to refer to international private law provisions (See 436§ and further paragraphs of this Research). Namely, Brussels I Regulation clearly states criteria for legal person's domicile:

> *For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its: a) statutory seat, or b) central administration, or c) principal place of business. "Company or legal person" shall be considered legal persons of any form, as well as organizations having no status of a legal person.*

3.6. Jurisdiction and establishment thereof

771. In Column 4 of standard Form A of Regulation 1896/2007, creditor must state existence of cross-border case. There is no requirement to submit any evidence with the form, whether the case really is of cross-border nature and whether the court really holds the jurisdiction, thus, the court is unable to this information and it must rely on honesty of the creditor. Furthermore, it may be difficult for consumer to understand meaning of jurisdiction. Form offers the following jurisdiction choices:

3. Grounds for the court's jurisdiction Codes: 01 Domicile of the defendant or co-defendant 02 Place of performance of the obligation in question 03 Place of the harmful event 04 Where a dispute arises out of the operations of a branch, agency or other establishment, the place in which the branch, agency or other establishment is situated 05 Domicile of the trust 06 Where a dispute arises concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, the place of the court under the authority of which the cargo or freight is or could have been arrested 07 Domicile of the policyholder, the insured or the beneficiary in insurance matters 08 Domicile of the consumer 09 Place where the employee carries out his work 10 Place where the business which engaged the employee is situated 11 Place where the immovable property is situated 12 Choice of court agreed by the parties 13 Domicile of the maintenance creditor 14 Other (please specify)	
Code:	Specification only for code 14

772. As stated above, when reviewing Regulation 861/2007 (See 436§ and further paragraphs of this Research) to establish a cross-border case, domicile of the parties or habitual place of residence shall be used, while such elements as the place of enforcement of agreement or place of concluding of the agreement will not be taken into account. Thus, a creditor having their place of residence in Latvia will have an opportunity to apply the Regulation in relation to a debtor with their place of residence in Latvia only, if the creditor can justify that jurisdiction in another Member State is according to Article 6 of Regulation 1896/2006. Namely, Article 6 states that the jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Brussels I Regulation. **Thus, jurisdiction issue shall be considered as one of the initial issues**. Namely, when filling in Form A, creditor shall state in Column 3 reason for the court's jurisdiction.

773. It shall be stated briefly that according to Brussels I Regulation, the court with jurisdiction shall be determines as follows. **First**, Article 2 of Brussels I Regulation establishes the classical *actor sequitur forum rei* principle, i.e. the defendant may always be sued in the courts of their Member State. In this case the defendant must have domicile right in the Member State irrespective of their nationality. Thus, a Russian citizen, having their place of permanent residence in Latvia, for instance, has received permanent residence permit according to Article 24 of Immigration Law[488], thus confirming their purpose to live or work permanently for purpose of Article 7 of CL and/or Ukrainian company with its principal place of business in Lithuania, for instance, plant will be scope of Regulations.

[488] Immigration Law: Law of the Republic of Latvia *Latvijas Vēstnesis* 20.11.2002, No. 169.

774. **Second**, Column 3 part one of Form I of Regulation 1896/2007 states that a justification for court's jurisdiction may be also domicile of co-defendant. Thus, Regulation 1896/2006 does not exclude opportunity to submit application against several debtors. Here, Article 6(1) of Brussels I Regulation shall be applied here, which states that a person domiciled in a Member State may also be sued, where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. National courts must establish on a case-by-basis, if claims are sufficiently related.[489] Certainly, the claimant may use opportunities provided for therein and select, in which court suing of defendants shall be the most beneficial, both considering material and procedural provisions. Forum shopping shall not be considered condemnable, if not used in bad faith.[490]

775. **Third**, Column 3 part one of Form I of Regulation 1896/2007 in accordance with Brussels I Regulation provides opportunity for creditor to choose special jurisdiction provided for on Article 5 of Brussels I Regulation [491] and irrespective of the defendant's domicile. The special jurisdiction is based on the closest relation between the dispute and

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[489] See Decision of ECJ dated by 27 September 1988 in case 189/87 *Athanasios Kalfelis v. Bankhaus Schroder, Muncheyer, Hengst un Co, Bankhaus Schroder, Munchmeyer, Hengst International SA, Ernst Markgraf* ECR [1998], p. 5565.

[490] See Kačevska, I.Taktiskās tiesvedības sekas un identisku prasību izskatīšanas principi. *Aktuālas tiesību realizācijas problēmas: LU 69. konferences rakstu krājums.* LU Akadēmiskais apgāds, 2011, p. 119-126

[491] Brussels I Regulation, Article 5:

> *A person domiciled in a Member State may, in another Member State, be sued: 1. a) in matters relating to a contract, in the courts for the place of performance of the obligation in question; b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be: - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered, - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided, c) if subparagraph (b) does not apply then subparagraph (a) applies; 2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident or, if the matter is ancillary to proceedings concerning the status of a person, in the court which, according to its own law, has jurisdiction to entertain those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; 3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur; 4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings; 5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated; 6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled; 7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question: a) has been arrested to secure such payment, or b) could have been so arrested, but bail or other security has been given; provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.*

the court.[492] Article 5(1)(a) states that in matters relating to a contract, person may be sued in the courts for the place of performance of the obligation in question.

776. "**Contract**" in this case shall be interpreted autonomously from national laws, and it shall be assigned as broad meaning as possible. It is mutual intention to be bind, according to which each of parties must fulfil the agreed obligation.[493] Scope of this definition will include also unilateral documents, e.g. cheques, invoices, bills of exchange, guaranties, as well as preliminary contracts and binding memoranda.

777. More specific terms are provided in relation to **sales and service contracts**, namely, if parties have not agreed otherwise, in case of sales contract, the debtor may be sued in the courts of the Member State where according to the contract the goods have been delivered or they should have been delivered (See Article 5(1)(a) of Brussels I Regulation) or, in case of service contract[494] – where services were provided or should have been provided (See Article 5(1)(b) of Brussels I Regulation).

778. Even if the provision seems clear at first, in practice, it may be not so clearly. Let us look at an example. The Italian company *KeySafety* has supplied to vehicle producers airbags, acquiring components used in this system from the German company *Car Trim*. *KeySafety* gave a warning notice on the contract, and a dispute occurred between the parties both in relation to the nature of the contract and jurisdiction. ECJ had to answer question of the German court, whether Article 5(1)(b) of Brussels I Regulation may be applicable in cases when a contract on production of goods according to the customer's quality and safety requirements is concluded. Thus, the court, to determine jurisdiction, shall assess where the sale contract ends and the service contract begins.[495]

779. The court states that concepts used throughout the Regulation shall be translated autonomously from national law, assessing sales definition both in provisions of EU law and international law,[496] *inter alia*, considering Vienna Convention (1980) on Contracts for International Sale of Goods,[497] where Article 3 part one states that Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production. Thus, the abovementioned provisions providing an indication that goods to be delivered shall be produced first, fail to amend qualification as a sales contract, unless the seller has not supplied significant part of

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[492] Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 105.

[493] *Ibid*., p. 121.

[494] Traditionally, service contracts will be considered contracts on broker, commercial agent, distributor, franchise services, as well as contracts on research, private detective, forwarding agent, marketing, architect, lecturer, lawyer, accountant etc. services. See Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 154.

[495] Decision of ECJ dated by 25 February 2010 in the case: C – 381/08 *Car Trim GmbH v. KeySafety Systems Srl* ECR [2010], p. I – 01255.

[496] Ibid, paras. 34-38.

[497] The United Nations Convention On Contracts For The International Sale Of Goods: International Treaty. *Latvijas Vēstnesis*, 03.07.1997, No. 170.

materials, and it was not established in this case. Furthermore, special instructions by the seller shall not be considered materials.

780. After establishing that it is a sales contract, the court had to determine where according to the contract the goods were or should have to be delivered for purpose of Article 5(1)(b) – where goods were transferred to buyer of where goods were physically transferred to the first carrier to further deliver to the buyer. Here, ECJ states that, first, contract provisions shall be assessed,[498] for example, whether parties have not agreed on Incoterms®[499] or whether it can be established by applying the applicable law chosen by the parties.[500] If there is no such agreement, then, the place of transferring goods for purpose and system of Article 5(1)(b) of Brussels I Regulation shall be, where goods have been received at their destination, i.e. transferred to the buyer, since transfer of ownership rights for goods from the seller to the buyer shall be considered one of main elements in sales contracts.[501] Thus, this place shall be the one, which forms specific link between the transaction and the court, required for the court to establish their jurisdiction according to regulations. This logic jurisdiction determination chain can also be used when applying Regulation 1896/2006.

781. As mentioned above, Regulation 1896/2006 may be applied also to cases on individual **employment contracts**, and in these cases jurisdiction will be determined according to Section 3 and Section 5 of Brussels I Regulation, respectively. In relation to employment contracts those can be places where the employee performs their work activities, or where the company employing the respective employee is situated (See Column 3 of Form I of Regulation 1896/2006). Namely, according to Article 19 of Brussels I Regulation, employee shall be entitled to choose where to sue the employer – either in the courts of the Member State where the employer is domiciled or in another Member State in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so, or, if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated. To safeguard the more vulnerable party — employee, an employer may bring proceedings only in the courts of the Member State in which the employee is domiciled (Article 20).

782. In insurance cases, similar to consumer and employment cases, the more vulnerable party is safeguarded (insured, beneficiary or victim). In relation to jurisdiction, an insurer may be sued in the Member State of their domicile,[502] as well as policyholder,

[498] Decision of ECJ dated by 25 February 2010 in the case: C – 381/08 *Car Trim GmbH v. KeySafety Systems Srl* ECR [2010], p. I – 01255, para 54.

[499] INCOTERMS 2010®. ICC Services, 2010.

[500] For example, according to the Vienna Convention on International Contracts on Sale of Goods (1980), Section 31

[501] See the Vienna Convention on International Contracts on Sale of Goods (1980), Section 30

[502] An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or

insured or beneficiary (claimant) may sue the insurer in the Member State, where he is domiciled.[503] Article 10 also provides for additional jurisdiction in case of liability (*ex delicto* or *ex contractu*) and real estate insurance. In these cases the insurer may be sued in the state where the damage has occurred. While an insurer, irrespective of their domicile, may bring proceedings only in the courts of the Member State in which the policyholder, insured or beneficiary (defendant) is domiciled according to Article 12 of Brussels I Regulation.

783. Consumer contracts also will be included in the purpose of Regulation 1896/2006. Article 6(2) of Regulation 1896/2006 (similar to Article 6(1) of Regulation 805/2004) establishes an exclusive jurisdiction provision for consumers, furthermore this provision is broader that that contained in Part 4 of Brussels I Regulation. Namely, Article 16 of Brussels I Regulation states that a consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or in the courts for the place where the consumer is domiciled (Item 1). While proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled (Item 2). Consumer contracts are defined in Article 15 of Brussels I Regulation. While Article 6(2) of Regulation 1896/2006 states that, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Brussels I Regulation, shall have jurisdiction. If after the conclusion of the contract the consumer moves to another Member State, jurisdiction must be searched according to the latest place of domicile.

784. According to Column 3 of Appendix I to Regulation 1896/2006, as a justification fro jurisdiction, the place is mentioned where **the real property** is situated (*forum rei sitae* principle). Here, when applying Article 22 of Brussels I Regulation, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State.

785. Regulation 1896/2006 may be applied also when recovering non-fulfilled **maintenance obligations**, and jurisdiction will be determined according to the Council

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establishment, be deemed to be domiciled in that Member State. See Article 9 part two of Brussels I Regulation.

[503] See Article 9 part one of Brussels I Regulation.

Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.[504]

786. If parties by contract have agreed on the place of resolving the dispute, Code 12 shall be marked in Column 3 of Appendix I to Regulation 1896/2007. Autonomy or freedom of the parties to conclude jurisdiction agreements shall be feasible except in insurance, consumer, employment or real property agreements, if such agreements are not in line with mandatory jurisdiction provisions of Brussels I Regulation. However, considering that Regulation 1896/2006 requires no submission of documents to the court to confirm existence of jurisdiction, we may rely only on the honour of parties that the provided contractual jurisdiction will be indicated.

787. Summarizing, it shall be noted that all provisions of Brussels I Regulation shall be considered when applying Regulation 1896/2006, as stated in Column 3 of Appendix I, where choice for justification of jurisdiction shall be made. Competency of general jurisdiction court will be governed by national law, in Latvia — Sections 24 and 25 of CPL.

788. Similar to two Regulations mentioned above, the concept of "**court institution**", mentioned in Article 2(1) shall be interpreted the same, though, it must be noted that according to Recital 16 of Regulation 1896/2006, reviewing of EOP application shall not be considered obligation of a judge only. By this sentence, the EC legislator has attempted to emphasize that, for instance, German model for warning on procedures of forced fulfilment of obligation (*Mahnverfahren*), which assigns competence to the first secretary of the court (*Rechtspfleger*), shall be permissible also for EPO procedures, in particular, for issuance of EPO. Recital 16 suggests that EC legislator refers only to "review of application" rather than revision of EPO or refusal to enforce EPO. Thus, we may conclude that revision of EPO in the Member States of origin shall, however, be performed by judge.[505]

789. According to Article 2(2) of Regulation 1896/2006 shall not be applicable to **rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, social security**, which shall be interpreted similar to those in Regulation 805/2004 (See 21 § of the Research).

790. Unlike the already described Regulation, according to Article 2(2)(d) Regulation 1896/2006 shall not be applied to **claims arising from non-contractual obligations, unless:** they have been the subject of an agreement between the parties or there has been an admission of debt, or they relate to liquidated debts arising from joint ownership of

[504] Council Regulation (EC) No 4/2009 Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. OJ L 7, 10.01.2009, p. 1-79

[505] Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi*. Jurista Vārds No. 24/25, 16.06.2009

property. Thus, we may say that this Regulation narrows the concept of "civil matters and commercial matters".

791. However, if parties have concluded such agreement, the court will have to establish jurisdiction and assess, whether it is non-contractual relation. EPO has pointed out that the concept of "non-contractual obligations" shall be interpreted autonomously, and it covers all actions that causes liability of the defendant and is not related to the agreement,[506] for instance, traffic accidents, treatment mistakes, unfair commercial operation, responsibility for goods and services, fraud, etc.[507] In this case, in relation to damage or prohibited actions, jurisdiction shall be held by the Member State where the damage has or may have been occurred according to Column 3 of Form I of Regulation 1896/2006.

792. Unlike the two regulations described above, **arbitration** has not been excluded from the scope of Regulation. From analysis we may conclude that the exemption of arbitration was not included during elaboration of the Regulation, thus, there were no discussions on that afterwards.[508] In theory, if the court establishes that there is a valid arbitration agreement concluded between parties, it must waive its jurisdiction,[509] however, practically, when applying Regulation 1896/2006, the court after receiving Form I cannot establish, whether an arbitration clause has been concluded, or not. The defendant can object by use if form contained in Appendix VI according to Article 16 of the Regulation. In their objections, the defendant shall not explain their reasons, but these objections on jurisdiction the defendant may provide already during the general litigation procedure according to Article 12(2) and (4)(c) of Regulation, if the defendant has not clearly stated in Supplements 2 to Form I that the claim should be submitted for the standard litigation procedure. In turn, when reviewing according to the standard procedure, the court will have to observe Brussels I Regulation, which exclude from its scope disputes in relation to arbitration.

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[506] Decision of ECJ dated by 27 September 1988 in the case C-189/87 *Athanasios Kalfelis v. Bankhaus Schroder, Muncheyer, Hengst un Co, Bankhaus Schroder, Munchmeyer, Hengst International SA, Ernst Markgraf* ECR, 1988, p. 5565, para 18.

[507] Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 237-238.

[508] Procedure File: Civil judicial cooperation: recovery of uncontested claims, European order for payment procedure. Available at: *http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2004/0055%28COD%29*.

[509] Majority of law systems recognize that a valid arbitration agreement permits no state court jurisdiction. For instance, Article 8(1) of *UNCITRAL Model Law* states stat "*A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, [..], refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed*." This is stated also by Article II(3) of *New York Convention*: *The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.* Article 223 of the Civil Procedure Law states that the court shall terminate court proceedings if the parties have agreed, in accordance with procedures set out in law, to submit the dispute for it to be adjudicated in an arbitration court.

3.7. The concept of "European order for payment" (EPO)

793. According to **Article 4** of Regulation 1896/2005:

The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

794. The abovementioned provision suggests that EPO is a procedure of forced fulfilment of obligations applicable in EU (except Denmark) in cross-border cases. EOP procedure represents a non-evidence model, which is, basically, adopted from the German Civil Procedure.[510] However, it cannot be unequivocally stated that EOP is an absolutely analogous to German or non-evidence model.

795. **First**, according to Article 7(2)(e) of Regulation 1896/2006, a creditor shall state a description of evidence supporting the claim rather than evidence itself (in non-evidence model nothing shall be provided at all — neither evidence nor description thereof).

796. **Second**, creditor a creditor shall state in their application the grounds for jurisdiction and the cross-border nature of the case (See Article 7(2)(f)(g) of Regulation).

797. **Third**, first opportunity of the debtor to defend according to EOP shall be statement of opposition which shall be sent within 30 days of service of the order on the defendant (Article 16 of Regulation). However, the second opportunity is extremely limited and permissible only in exceptional cases (Article 20 of Regulation). Thus, we may conclude that EPO procedure in relation to debtor's right is even more reduced than in German or non-evidence model. It shall be noted that according to Article 7(2) of Regulation, a creditor, in their application on issuance of EPO, shall state also the grounds for international jurisdiction and the cross-border nature of the case. While Article 11 of Regulation provides that one of the reasons for rejection of the application on EPO issuance shall be non-observance of international jurisdiction and the cross-border nature of the case as stated in Article 3 of Regulation. It means that both cases shall be considered specific in EPO context, and they must be very significant for creditor to successfully initiate EPO procedure.[511]

798. EPO procedure shall apply to **financial claims for specific amount**. This means that, for instance, creditor may not leave determination of this amount with the court.

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[510] Ferrand, F. "Mahnverfahren“ Allemande, Injonction de payer Française et projets Communautaires: Remarques Compartives. Grenzüberschreitungen. In: Beiträge zum internationalen Verfahrensrecht und zur Schiedsgerichtsbarkeit. Festschrift für P.Schlosser zum 70. Geburtstag. Tübingen: Mohr Siebeck Verlag, 2005, p. 192.; Guinchard S., Ferrand F., Chanais C. Procédure civile. Droit interne et droit communautaire. 29e édition. Paris : Dalloz, p. 881.

[511] Rudevska, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi. *Jurista Vārds*, No. 24/25, 16.06.2009, p. 36

Furthermore, financial debt shall be valid at the moment when application for EOP is submitted to court.[512]

3.8. European order for payment procedure

799. It must be noted at the beginning that **the purpose of EPO procedure** ir simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims, and this procedure must be uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union (See Recital 9 and 29 of Preamble of Regulation 1896/2006).

800. Entire EPO procedure (from the date of submission of EPO application to the date of issuance of EPO) shall be **maximum 90 days**. This is due to the fact that according to Directive 2000/35/EC (29 June 2000) on prevention of late payment in commercial matters[513] Article 5(1) the Member States must ensure that judgment is received within 90 calendar days after submission of the claim or application to the court or to any other competent institution under the condition that the debt or procedure issues are not contested. Within a time period of 90 days the following is not counted in: a) time of the transfer of documents; b) delays caused by the creditor, such as time spent for updating the applications.

801. EPO application in Latvia shall be submitted to the district (city) court by the registered address of the defendant, but, if there is no such, by place of residence or legal address. To resolve this jurisdiction issue, **Section 24 of CPL** shall be supplemented by a respective provision, establishing that district (city) court shall review applications for EPO.

[512] Rauscher, T. (Hrsg.). Europäische Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 4 EG-MahnVO (Gruber U.P.), S. 302.

[513] European Parliament and Council Directive 2000/35/EC on combating late payment in commercial transactions. OJ L 200, 08.08.2000, p. 35-38

3.8.1. Filing an application: Standard Claim Form A

802. Pursuant to **Article 7 (1)** of Regulation 1896/2006:

> *1. An application for European Order for Payment procedure is filed using standard claim form A, as provided in Appendix No. 1.*

803. The mentioned legal rule implies that the EPO application has a unified standardised form, which the applicants who want to initiate the EPO procedure must complete (see Appendix No. 1 to Regulation 1896/2006). If a standard form A is not applied, such application shall be denied (see Article 11 (1) (a) of Regulation 1896/2006).

804. As already specified above, by Regulation (EC) No. 936/2012 of the European Parliament and of the Council of 4 October 2012 *on amending the Appendixes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure*[514] new claim forms (only slightly different from the previous ones) have been introduced; the new forms are applicable as of 23 October 2012.

805. Article 7 of Regulation 1896/2006 provides exhaustive regulation of requirements the EPO application must comply with, except if the Regulation clearly indicates the application of national legal rules.[515]

806. Claim form A helps to remove claimant's language barrier: 1) it is available in the EU E-Justice Portal in all official languages of the EU Member States: https://e-justice.europa.eu/dynform_intro_taxonomy_action.do?&plang=lv; 2) it uses the code system, which allows entry of the relevant digital code, thus avoiding use of language.

807. Claim form A shall be completed (filed) in the language or languages of the court, where the EPO application was filed. In Latvia EPO application shall be filed in Latvian (Section 13 of CPL).[516] It shall be admitted that neither legal rule of Regulation 1896/2006 prescribes in what language EPO should be filed; however, an indication to the language of the court in the country of adjudication is found in the Appendix to the Claim Form A "Guidelines for Completing Claim Form". Since claimant's EPO application (Claim Form A) together with the EPO shall further be forwarded to the defendant in another EU Member State, it shall be noted that according to minimum procedural standards (see Articles 13 and 14 of Regulation 1896/2006), Article 27 of Regulation 1896/2006 (whereof it follows that the Regulation on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters

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[514] Council Regulation (EU) No. 936/2012 (4 October 2012) on amending the Annexes to Regulation (EC) No. 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure. OJ *L 283, 16.10.2012, 1.-23. lpp.*

[515] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, para. 40. Available here: www.europa.eu (Case not considered at ECJ yet).

[516] See EU Judicial Network information on languages: http://ec.europa.eu/civiljustice/case_to_court/case_to_court_lat_lv.htm#8.

shall be applied for the issue of EPO — Documents Service Regulation), as well as Article 8 of the Documents Service Regulation and Section 660 of the Latvian CPL), a defendant is entitled to decline documents in Latvian sent by a court of Latvia (Claim Form A, and EPO). It once again substantiates the opinion on the language issue already mentioned in this Study, as well as integration of the Documents Service Regulation into minimum procedural standards. One should agree to what B. Rudevska said in her address at the International Scientific Conference of University of Latvia *The quality of Legal Acts and its Importance in the Contemporary Legal Space* (4 October 2012), namely, **EU institutions should carry out a significant study regarding the relation among the minimum procedural standards and their interaction with the Documents Service Regulation and national legal acts of the Member States**.

808. If EPO application is filed with the Latvian court in a foreign language, Latvian court, pursuant to Section 131, Paragraph one, Clause 3 of CPL, shall dismiss the application and set a deadline for filing an EPO application in the Latvian language. If the claimant within the specified time limit rectifies the application, the EPO application shall be considered as filed on the day it was first submitted to the court. If the claimant within the specified time limit does not rectify the application, the EPO application shall be considered as not submitted and returned to the claimant (Article 26 of Regulation 1896/2006; and Section 133, Paragraphs three and four of CPL).

809. Pursuant to **Article 7 (5)** of Regulation 1896/2006 the application shall be submitted in **paper form** or by any other means of communication, including electronic means of communication, which are accepted by the Member State of origin and are available to the court of origin. In Latvia an EPO application shall be submitted personally (or through an authorised representative) or sent by post.[517] In Latvia submission of an EPO application in electronic form is not provided for.

810. Pursuant to recital 15 in the preamble to Regulation 1896/2006 and Article 25 of the Regulation, **court fees** shall comprise fees and charges to be paid to the court; the amount of such fees is fixed in accordance with national law. Thus the lodging of EPO application should entail the payment of any applicable court fees. Upon filing EPO applications to Latvian courts, a **state fee** shall be paid — 2% of the indebtedness, however, the amount shall not exceed LVL 350; see Article 26 of Regulation 1896/2006 and Section 34, Paragraph one, Clause 7 of CPL. The EPO delivery costs shall also be covered; in Latvia they are equal to LVL 5.25.[518]

811. State Fee shall be transferred to:[519]

[517] See European Judicial Atlas: http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_lv_lv.htm.

[518] **The prescribed amount may change in accordance with the price changes in contracts for the delivery of goods, postal service fees and amendments to the Civil Procedure Law.**

[519] See: http://www.tiesas.lv/index.php?id=26 .

Beneficiary: Vasts kase (Treasury)
Registration No. 90000050138
Account No. LV55TREL1060190911200
Beneficiary Bank: Valsts kase (Treasury)
BIC: TRELLV22
Purpose of payment: case identification information shall be entered there.

812. EPO delivery costs (LVL 5.25) shall be transferred to:[520]

Beneficiary: Court Administration
Account No. LV51TREL2190458019000
Taxpayer No. 90001672316
Beneficiary Bank: Valsts kase (Treasury)
BIC: TRELLV22

813. Purpose of payment: **21499** Costs related to hearing of the case, case identification information (defendant's name, surname (physical individual), or name of legal entity).

814. Thus, the following documents shall be **enclosed with EPO applications** filed to Latvian courts:

814.1. a document certifying the payment of the State Fee in lats (LVL) (see Article 26 of Regulation 1896/2006 and Section 406.[3], Paragraph three of CPL), **and**

814.2. a document certifying the payment of EPO issuance costs in lats (LVL) (see Article 26 of Regulation 1896/2006 and Section 406.[3], Paragraph three of CPL).

815. The next issue is related to the number of EPO applications to be filed. Regulation 1896/2006 does not specify in how many copies EPO application shall be filed. So there are two options. **First option**: hold a view that the EU legislature has not clearly specified the number of EPO application copies and the issue shall be governed by national law of the Member States (see Article 26 of Regulation).

816. **Second option**: interpret Article 7 of the Regulation as one which exhaustively lists and prescribes all issues related to the content and form of EPO application, and conclude that filing of one copy shall be deemed sufficient. Second option is supported by recitals 9 and 29 in the preamble to Regulation wherewith the purpose of Regulation 1896/2006 is to simplify, speed up and reduce the costs of litigation, as well as to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union. It shall be noted that *P. Mengozzi*, Advocate General of ECJ, in the opinion of 28 June 2012 in Case *Szyrocka*[521] has

[520] See: http://www.tiesas.lv/index.php?id=26.

[521] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, paras. 37, 38, 40. Available at: www.europa.eu (Case not considered at ECJ yet).

pointed out the second option of interpretation. Namely, if all formal provisions of Article 7 of the Regulation have been complied with, issue of EPO shall not be refused for the reason that requirements of national law of the Member State governing similar procedures have not been satisfied, for example, the requirements regarding the number of copies of application or the claim amount specified in national currency.[522]

817. The Latvian courts shall not request filing of EPO application in several copies (i.e. one for each defendant; see Section 129, Paragraph one of CPL). Pursuant to Article 12 (2) of Regulation 1896/2006, EPO shall be issued together with a **copy** of the application form (English — *copy*; German — *Abschrift*; French — *copie*; Italian — *copia*; Spanish — *copia*; Lithuanian — *kopija*). It means that the Latvian courts shall send the defendant a *copy* of EPO application instead of an attested copy (without Appendices 1 and 2 to application). There would be the reason to request that defendant cover these costs, too; consequently, an **option of supplementing Section 38 of CPL with the relevant office fees for making a copy of EPO application** (**Form A, except for Appendices 1 and 2 thereto) shall be considered.** Hence Article 25 of Regulation 1896/2006 has delegated the issue to national procedural law of the Member States.

818. Only one case when the Latvian courts have refused EPO application, which inter alia was not drafted in two copies (the justification thereof Article 12 (2), and Article 11 of the Regulation), has been established).[523] In three cases the courts have dismissed EPO applications, specifying a time limit for rectification of the application, namely, filing the application in two copies (the justification thereof Article 12 (2) of the Regulation; Section 133 of CPL).[524]

3.8.1.1. Content of Application

819. Pursuant **to Article 7 (2)** of Regulation 1896/2006:

> *2. The application shall state: (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made; (b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs; (c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin; (d) the cause of the action, including a*

[522] *Ibid*., para. 38.

[523] See decision of Jēkabpils District Court in Civil Case No. 3-10/0011 dated 30 May 2012 [not published].

[524] See Riga City Zemgale District Court decision in Civil Case No. 3-11/0014/12 dated 9 January 2012 [not published]; Riga District Court decision in Civil Case No. 3-11/0203/12 dated 19 April 2011 [not published]; Riga City Vidzeme District Court decision in Civil Case No. 3-11-0278/5-2010 dated 1 March 2010 [not published].

description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded; (e) a description of evidence supporting the claim; (f) the grounds for jurisdiction; and (g) the cross-border nature of the case within the meaning of Article 3.

820. Article 7 (2) of Regulation 1896/2006 specifies the information to be included in EPO application. Claim Form A has been designed on the basis of this mandatory information. However, neither the Claim Form, nor Article 7 (2) provide for claimant to indicate that as of the day of filing EPO application the claim has fallen due (as prescribed by Art. 4 of the Regulation). It may be regarded that the fact of *filing* a Claim Form to court *per se* includes acknowledgment of the claim fallen due, supported by concludent actions of the claimant.[525]

821. **Article 7 (2) (b)** of Regulation 1896/2006 specifies that capital (Form A, section 6), interest (Form A, section 7) and penalties (Form A, section 8), as well as the costs (Form A, section 9) shall be pointed out separately. Evidently, for example, the value added tax (VAT) shall be included in the notion "capital" and entered into section 6 "Capital".[526] Therefore, the notion of "pecuniary claims for a specific amount" included in Article 4 of the Regulation is specified in detail in Article 7, stating the elements thereof.

822. With regard to capital **currency**, Latvia should receive EPO applications where capital is indicated in the national currency of EU Member State, or in EUR currency (as specified in Form A, section 6, instead of Latvian lats (LVL) only.[527]

823. **Article 7 (2) (c)** of Regulation 1896/2006 also provides for cases demanding **interest** on claim in addition to the principal amount. In such case a claimant shall also specify the *interest rate* (Form A, section 7) and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin. **The interest rate** may be specified as: 1) mandatory interest (prescribed compulsory); 2) contract interest (rate agreed by the parties); 3) capitalised interest (regards the situation, when accrued interest is added to the principal amount, and are taken into account upon calculation of further interest); 4) loan interest (not late payment interest, but credit interest charged at the issue of loan[528]); 5) other type of interest (see Form A, section 7).

824. The **time period** for which that interest may be demanded is: 1) year; 2) half year; 3) quarter; 4) month; 5) another time period (for example, days). However, a claimant shall not specify a particular date till when the respective interest is demanded. Thus,

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[525] See also: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München :Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 315, 316.

[526] Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena : JWV, 2010, S. 248.

[527] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, para. 38. Available at: www.europa.eu (Case not considered at ECJ yet).

[528] Torgāns, K. Saistību tiesības. I daļa. Rīga: Tiesu namu aģentūra, 2006, 146. lpp.

Regulation 1896/2006 does not forbid demanding the so called "open interest", for which neither the date (till when demanded), nor the total final value can be specified.[529]

825. Evidently, interest is the only element of "pecuniar claim" that should not be specified as a particular amount (unlike capital, penalties and costs); it may be specified as percentage (for example, 6% of a hundred per annum) or percentage points above the basic interest rate ((for example, 7 percentage points above the basic rate).[530]

826. Article 3 (1) (d) of Directive 2000/35/EC (29 June 2000) on combating late payment in commercial transactions[531] specifies: "The level of interest for late payment ("the statutory rate"), which the debtor is obliged to pay, shall be the sum of the interest rate applied by the European Central Bank to its most recent main refinancing operation carried out before the first calendar day of the half-year in question ("the reference rate"), plus at least seven percentage points ("the margin"), unless otherwise specified in the contract. For a Member State which is not participating in the third stage of economic and monetary union, the reference rate referred to above shall be the equivalent rate set by its national central bank. In both cases, the reference rate in force on the first calendar day of the half-year in question shall apply for the following six months."

827. *"The interest rate applied by the European Central Bank to its main refinancing operations"* means the interest rate applied to such operations in the case of fixed-rate tenders. In the event that a main refinancing operation was conducted according to a variable-rate tender procedure, this interest rate refers to the marginal interest rate which resulted from that tender. This applies both in the case of single-rate and variable-rate auctions" (see Article 2 (4) of Directive).

828. In Latvia the statutory interest rate is 4%; it changes on 1 January and 1 July every year for such number of percentage points that correspond to the increase or decrease in the recent refinancing rate, set by the Bank of Latvia before the first day of the half-year in question, following the previous change in the principal interest rate. Every year after 1 January and 1 July the Bank of Latvia immediately publishes a notification about the valid principal interest rate in the relevant half-year in the official journal Latvian Herald (see Sect. 1765, Para. 3 of Latvian CL). It shall be noted that the interest calculation method depends on the law applicable to the contract in question (whereof the claim arises from); or the specific interest calculation method the parties have agreed on in the contract. Section 1765 of Latvian Civil Law shall be applicable if the contract between the parties is governed by Latvian law. German law or UNIDROIT principles of international commercial contracts[532], or even European Contract Law

[529] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, paras. 59, 62. Available here: www.europa.eu (Case not considered at ECJ yet).

[530] Seidl S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena: JWV, 2010, S. 247; See also Section 1765 of the Civil Law of Latvia.

[531] Directive 2000/35/EC (29 June 2000) of the European Parliament and of the Council on combating late payment in commercial transactions. OJ L 200, 08.08.2000., 35.-38. lpp.

[532] UNIDROIT International Commercial Law principles, available at: www.unidroit.org

principles, which provide for observation of the European Central Bank (ECB) rate[533], may be applicable to the contract (or interest calculation method).

829. In Article 7 (2) (b) of Regulation 1896/2006 the interest obligation is separated from the capital (or principal obligation) since specification of interest in the EPO application is not mandatory. In most cases interest obligation follows the capital obligation (or principal obligation), namely, interest may be claimed insofar as there is capital for the recovery thereof a claim statement may be filed to court[534]. "The relation between the principal obligation and interest obligation has the following structure:

829.1. interest obligation arises because principal obligation is to be paid (namely, the principal has fallen due) and the relevant payment is outstanding (refers to late payment interest for the period whereof an agreement has been reached or provided by legislative enactments);

829.2. with the lapse of time accessory amounts are included in the principal claim, thus becoming a certain element of the amount in question."[535]

830. **Contractual penalty** shall be specified as a certain amount (for example, LVL 250), additional information about the contractual penalty shall be specified as well (see (Form A, section 8); for example, contractual penalty; contract (Purchase Contract No. 123 dated 3 August 2012) and the clause providing for the respective contractual penalty (clause 7.1 – 0.1% for each day of delay). If contractual penalty has been set out as percentage (for example, 0.1% for each day of delay), the specific amount shall be filled in section "Amount" of section 8, Form A (for example, 250), and interest calculation method shall be indicated in the section *"Please, specify"* of section 8, Form A, inter alia, the number of days of delay.

831. **Costs** (if any) shall be indicated in section 8, Form A, specifying whether they are court fees, or other fees. Pursuant to Article 25 (2) of Regulation 1896/2006, *court fees* shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law. More on court fees in the understanding of the Regulation see sub-chapter "Court fees" of this Study; § 811811 and further.

832. Pursuant to **Article 7 (2) (d)** of Regulation 1896/2006, EPO application (Form A) shall also specify **the cause of the action**, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded. Types of the cause of the action are stated in Section 6 of Form A (for example, purchase contract, construction contract, etc.) The description of the circumstances is also included in Section 6 of Form A (for example, default, late payment, non-delivery of goods or services). The interest claimed shall be indicated in Section 7 of Form A.

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[533] In Latvian see more: Torgāns, K. Saistību tiesības. I daļa. Rīga : Tiesu namu aģentūra, 2006, 149. lpp.

[534] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, para. 53. Available here: www.europa.eu (Case not considered at ECJ yet).

[535] Opinion of *P. Mengozzi*, Advocate General of the European Court of Justice, in Case C-215/11 *Szyrocka*, dated 28 June 2012, para. 54. Available here: www.europa.eu (Case not considered at ECJ yet).

833. Pursuant to **Article 7 (2) (e)** of Regulation 1896/2006, EPO Application (Form A) shall also include a **description of evidence** supporting the claim. Pursuant to recital 14 in the preamble to the Regulation, it should be compulsory for the claimant to include in EPO application (Section 10, Form A) a description of evidence supporting the claim. Evidently, the evidence shall not be enclosed with EPO application (Form A); the description thereof in Section 10 of Form A is sufficient, where the ways of permissible evidence include: 1) written evidence (code 01); 2) witness testimony (code 02); 3) expert opinion (code 03); 4) material evidence (code 04), and other ways of evidence (code 05), which shall be specified in Colum 10 of Form A.

834. Description of *written evidence* shall include the description of the document, document number and date (if any). Description of *witness testimony* shall include names and surnames of witnesses. Description of *expert opinion* shall include name and surname of expert, sphere of expert examination, date of drafting expert opinion, and the number thereof. Description of *material evidence* shall include the description of a specific thing, and, probably, the location thereof.

835. If the claimant in Section 10 of Form A has not specified *any* evidence at all, the court, pursuant to Article 9 of Regulation 1896/2006, shall give the claimant the opportunity to complete the EPO application.[536] It shall be taken into account that the description of evidence serves both to the defendant, and the court which, pursuant to Article 8 of Regulation 1896/2006, in the course of considering EPO application form shall examine, whether the requirements set out in Article 7 are met and whether the claim appears to be founded.[537]

836. In the EPO Application the claimant shall also state the **basis of international jurisdiction** pursuant to Article 6 of Regulation 1896/2006, and whether the case is a **cross-border case** pursuant to Article 3 of the Regulation.

3.8.1.2. Claimant's Declaration

837. Pursuant to **Article 4 (3)** of Regulation 1896/2006:

> *3. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.*

838. The said legal rule provides that the claimant in the EPO application shall certify by his signature that the information provided is true and acknowledge his liability for providing false information. Liability shall be set according to the national law of the

[536] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 317.
[537] *Ibid.*, 316, 317.

country whose court hears the EPO application. In Claim Form A of Regulation 1896/2006, under section 11 the claimant shall sign the following text:

I hereby certify that the information provided is true to the best of my knowledge and belief. I acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin. Place: _____ Date: _____ Signature and/or stamp: _____

839. Such certification is necessary because:

839.1. the court issues the order solely on the basis of information provided by the claimant; the information is not verified by the court (see Article 12 (4) (a) of Regulation 1896/2006);

839.2. evidence is not enclosed with the EPO application, only a description of evidence supporting the claim is included (see Article 7 (2) (e) of Regulation 1896/2006).

840. It follows from the said text that liability occurs only for *knowingly* providing false information, not due to inadvertence, for example.

841. Legal literature points out that Regulation 1896/2006 should also specify information on (for example, in Article 29), what kind of liability is prescribed in each Member State.[538] Such information would enable a claimant learn the particular consequences of his action. In other words, upon signing the said certification a claimant shall be aware of the particular legal consequences of his actions in the relevant Member State.

842. Besides, it is not known, whether criminal or civil liability is implied.[539] At present it may be either the one, or the other.

3.8.1.3. Application Form and the Signature therein

843. As the questions of the application form have already been considered, this sub-chapter will deal with **Article 7 (4)** of Regulation 1896/2006:

> *4. In an Appendix to the application the claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings within the meaning of Article 17 in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.*

844. In Appendix 2 to Appendix I (Claim Form A) of Regulation 1896/2006 the claimant may at once indicate that he **opposes** a transfer to ordinary civil proceedings

[538] Kormann J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena: JWV, 2007, S. 101; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 317.

[539] Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 101.

should the defendant file his objection against EPO. It shall be noted that the information provided by the claimant in Appendix 2 to Form A is not forwarded to the defendant (see Article 12 (2) of the Regulation), wherewith the defendant is not advised of the claimant's intent in the matter. It is correct because if the defendant knew the claimant's position of opposing ordinary civil proceedings he would file an objection without delay.[540]

845. If the claimant has not stated anything in Appendix 2, it is **presumed** that he would like to transfer adjudication of application to ordinary civil proceedings. Article 7 (4) of the Regulation enables the claimant inform the court thereof subsequently (i. e. after filing the EPO application, but in any event before the EPO — Appendix V — is issued. The Regulation does not prescribe a special form for notification of the court, therefore it may be either in a free format application, or filling in Appendix 2 to form A and submitting to the court.

846. The claimant, who takes a decision on the transfer of claim to ordinary civil proceedings, shall duly consider changes in the international jurisdiction of the court, namely, whether the court of international competence in EPO issues will also retain its international competence in the event of ordinary civil proceedings, if the matter concerns *consumers*. Rules of Article 6 (2) of Regulation 1896/2006 shall be compared to the rules of Brussels I Regulation on jurisdiction (Articles 15-17).[541]

847. Pursuant to **Article 7 (6)** of the Regulation:

> *The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.*

848. EPO application (Form A) shall be signed by the claimant or his representative. Signature shall be put right behind section 11 — below the certification of truthfulness of information.

849. If EPO application has not been signed, the court, pursuant to Article 9 of Regulation 1896/2006, shall give the claimant the opportunity to complete or rectify the application within a time limit set by the court. In Latvia the court shall make a decision on the dismissal of application and set a time limit to rectify the application (see Sect. 133 of CPL). Here a question may arise: why by analogy Section 406.[4] of CPL whereunder EPO application shall be refused is not applicable. Answer: Article 9 of Regulation 1896/2006 clearly states that in such cases the court *shall give* the claimant *the opportunity to complete or rectify* EPO application within a time limit set by the

[540] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 318.
[541] *Ibid.*, S. 319.

court. The application of this legal rule in Latvia complies with Section 133 of CPL — dismissal of application, setting a time limit for the rectification thereof.

850. As already stated previously, filing of EPO application electronically is not provided for in Latvia.

3.8.2. Hearing of Claim

851. Pursuant to **Article 8** of Regulation 1896/2006:

> *The court seized of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.*

852. It shall be pointed out at once that in Latvia examination of EPO applications does not have the form of an automated procedure. When an EPO application (Form A) has been received, the court as soon as possible (i. e. without unnecessary delay) and on the basis of information contained in the application form shall examine:

852.1. whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met, **and**

852.2. whether the claim appears to be founded.

853. Meeting the requirements set out in Articles 2, 3, 4, 6 and 7 of Regulation 1896/2006. The court shall examine:

853.1. whether the scope of material application of Regulation 1896/2006 is met (Article 2 of the Regulation);

853.2. whether the case is a cross-border case (Article 3 of the Regulation);

853.3. whether EPO application concerns collection of pecuniary claim for a specific amount that has fallen due at the time when the application for a European order for payment is submitted (Article 4 of the Regulation);

853.4. whether international jurisdiction laid down in Article 6 of the Regulation is met. In other words, whether the Latvian court has international competence to examine the particular EPO application;

853.5. whether all autonomous requirements regarding the form and content of application under Article 7 of the Regulation are met.

854. If the court establishes that some requirements of Article 7 of the Regulation are not met, the court shall give the claimant the opportunity to rectify and/or complete the EPO application. If within the time limit set by the court the claimant has failed to make the relevant rectifications and/or completions, the court, pursuant to Article 11 (1) (a) and (c) of Regulation 1896/2006, may reject the EPO application.

855. Pursuant to Article 10 of Regulation 1896/2006, if the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that

effect, using standard form C as set out in Appendix III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court.

856. Whether the claim seems clearly founded and admissible. This requirement shall be interpreted together with Article 11 (1) (a) and (c) of the Regulation. The notion "seems clearly founded and admissible" should be interpreted as an EPO application which is supported by evidently existing payment obligation.[542]

3.8.3. Completion and Rectification of Application: Standard Form B

857. Pursuant to **Article 9** of Regulation 1896/2006:

> *1. If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Appendix II.*
> *2. Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may at its discretion extend that time limit.*

858. It follows from the abovementioned legal rule that in the cases specified therein the court has an obligation to give the claimant the opportunity to **complete or rectify EPO application**. The completion of rectification of application may be performed in cases if the data or information in the EPO application (Article 7 of the Regulation) is incomplete or inaccurate. For example, the claimant has failed to sign EPO application, or complete certain graphs of the application (form A). The same refers when the claimant has filled in obviously erroneous data or entered the information in the wrong sections. Also the cases when the claimant has not filed the court an application in Latvian. In all abovementioned cases the court is not entitled to reject EPO application at once (immediately applying Article 11 (1) (a) of the Regulation). **The court is obliged to give the claimant an opportunity to complete or rectify EPO application.**

859. Giving the claimant an opportunity to complete or rectify EPO application, the court applies **form B** as set out in Appendix II to Regulation 1896/2006. Concurrently, the court sets a time limit for the return of completed or rectified application. In form B the court may oblige the claimant to file the EPO application in Latvian. The court may commission the claimant to complete or rectify the following data: the parties and their representatives (code 01); basis of jurisdiction (code 02); cross-border case (code 03); bank details (code 04); principal amount (code 05); interest (code 06); penalties (code

[542] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 8 EG-MahnVO (Gruber U.P.), S. 321, 322.

07); costs (code 08); evidence (code 09); additional findings (code 10); signature (code 11).

860. If the claimant within the time limit set by the court returns the completed or rectified application, the court shall issue EPO (Article 12 of the Regulation). If the claimant within the time limit set by the court fails to return the completed or rectified application, the court shall reject EPO application (Article 11 (1) (c) of the Regulation). If the claimant returns the completed or rectified application after the time limit set by the court, but the court has not yet made a decision on the issue of EPO or the rejection of application, such completed or rectified application shall be accepted by the court and deemed as filed.[543]

861. Completion or rectification of EPO shall not be made in the event the EPO application is **clearly unfounded or inadmissible**. Detailed explanation of the notion "**clearly unfounded or inadmissible**" has been provided further (see the next sub-chapter of the Study "Rejection of application", § 877 and further).

862. **Analysis of adjudications of Latvian courts** allows concluding that Latvian courts seldom apply Article 9 of Regulation 1896/2006. Instead the courts reject EPO applications at once (pursuant to Article 11 (1) (a) of the Regulation).

863. *For example:*

863.1. Riga City Zemgale Suburb Court[544] applied Article 9 of Regulation 1896/2006 to enable the claimant: to specify in EPO application the period for which interest on claim is demanded (Article 7 (2) (c) of the Regulation); to specify the debtor's name as the CMR waybill, whereon the claim was founded, bore a different debtor's name.

863.2. Riga City Zemgale Suburb Court in two cases[545] applied Article 9 of Regulation 1896/2006 to give the claimant time for the payment of State duty. It shall be noted that Article 9 of the Regulation does not provide for such cases. For the non-payment of State duty Article 26 of the Regulation shall be applied, respectively, the provisions of Latvian CPL.

863.3. In four cases Latvian courts rejected EPO application (pursuant to Article 11 (1) of Regulation 1896/2006) instead of giving the claimant an opportunity to complete or rectify the application as provided by Article 9 of the Regulation.[546]

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[543] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 11 EG-MahnVO (Gruber U.P.), S. 331.

[544] Riga City Zemgale District Court decision of 6 February 2012 . in Civil Case No. 3-11/0050/12 [not published].

[545] Riga City Zemgale District Court decision of 29 November 2011 in Civil Case No. 3-11/0491/5-2011 [not published]; Riga City Zemgale District Court decision of 2 August 2011 in Civil Case No. 3-11/0293-2011 [not published] and Riga City Zemgale District Court decision of 31 October 2011 in Civil Case No. 3-11/0293-2011 on the extension of time limit [not published].

[546] Riga City Vidzeme District Court decision of 4 November 2010 in Civil Case No. 3-10/1040/13-2010 [not published]; Riga City Vidzeme District Court decision of 15 March 2010 in Civil Case No. 3-10/0531/5-2010 [not published]; Riga City Zemgale District Court decision of 12 August 2009 in Civil

864. Such action of Latvian courts may partially be attributed to the fact that, according to national procedure of enforcement of obligations by notification procedure as provided by the Civil Procedure Law of Latvia, the application shall not be modified, completed or rectified, i. e. the application shall be either accepted or rejected. Wherewith the Latvian courts have not got accustomed to opportunities of compromise as provided by Articles 9 and 10 of Regulation 1896/2006. Thus the **possibility of integrating reference to Articles 9 and 10 of Regulation 1896/2006 into Section 131 of CPL may be considered on, or extra attention to the issue should be paid in the Latvian judges training programmes**.

3.8.4. Modification of Application: Standard Form C

865. Pursuant to **Article 10** of Regulation 1896/2006:

> *1. If the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that effect, using standard form C as set out in Appendix III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form C sent by the court within a time limit specified by the court in accordance with Article 9(2).*
> *2. If the claimant accepts the court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law.*
> *3. If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for a European order for payment in its entirety.*

866. Although Article 10 (1) of Regulation 1896/2006 points out partial meeting of the requirements referred to in Article 8 on the part of the claimant, the following text of Article 10 (1); however, suggests that it refers to the cases, when the pecuniary claim *amount* specified in the EPO application only partially meets the criteria set out in Article 7 (2) (b) of the Regulation, and in the rest of the claim such amount seems clearly unfounded. Such situations may arise if:

866.1. EPO application comprises several concurrent pecuniary claims and part of such claims may seem clearly unfounded;

Case No. 3-10/0555-2009 [not published]; Valmiera District Court decision of 12 March 2009 in Civil Case No. 3-10/0065-09 [not published].

866.2. EPO applications contains one pecuniary claim, however, the amount thereof seems clearly unjustified.[547] For example, the principal amount (capital) is set to be LVL 1200, but the penalty makes LVL 340 000.

867. If the court finds out such cases, it is obliged, pursuant to Article 10 (1) of the Regulation, to specify a commensurate amount of penalty (for example, reduce the penalty from LVL 340 000 to LVL 2000 respectively) and offer the claimant either to accept, or refuse the proposal for the European order for payment in the amount suggested by the court. Concurrently, the court informs the claimant of the consequences of such decision, as well as sets the time limit for providing a reply to the proposal of the court. The time limit shall be set pursuant to Article 9 (2) of the Regulation, namely, the court shall set the time limit it deems to be appropriate in the circumstances; the court at its discretion (*ex officio*) may extend that time limit. The court performs all abovementioned actions using standard **form C** as set out in Appendix III to Regulation 1896/2006 "Proposal to the claimant to modify an application for European order for payment".

868. The claimant has two options — either to accept (actively) the proposal of the court on the modification of claim amount, or refuse the proposal (actively or passively).

869. If the claimant **accepts** the proposal of the court, he shall reply by returning the standard form C sent by the court within the time limit specified by the court (Article 10 (1) of the Regulation); the claimant shall put a cross in the last section of the form *"I accept the above proposal by the court"*; specify the place and date of completion, corporate name of company or organisation (legal entity), name/surname, and sign the form (affix a stamp).

870. Upon return of standard form C within the specified time limit, wherewith the claimant accepts the court's proposal, the court shall **issue EPO in accordance with Article 12 for that part of the claim accepted by the claimant**. The consequences with respect to the remaining part of the initial claim shall be governed by national law (see Article 10 (2) of the Regulation). Consequences may imply both material legal consequences, and procedural legal consequences.[548] It means that with respect to the part of the claim rejected in the EPO procedure the claimant may submit a claim statement to the court in compliance with the procedures prescribed by law (see Section 222 of CPL).

871. Pursuant to Section 219, Paragraph two of CPL, the court shall leave the claim unajudicated for the part whereof EPO was not issued as prescribed by Article 10 (2) of Regulation 1896/2006. It means that the court shall take a special motivated decision for that part of the pecuniary claim. An ancillary complaint may be submitted regarding such decision (Section 221 of CPL). For the part of the claim which the claimant has accepted

[547] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 10 EG-MahnVO (Gruber U.P.), S. 325.

[548] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 10 EG-MahnVO (Gruber U.P.), S. 326.

the court shall issue EPO (standard form E as set out in Appendix V to Regulation 1896/2006).

872. If the claimant **refuses** the proposal of the court, he shall reply by returning the standard form C sent by the court within the time limit specified by the court (Article 10 (1) of the Regulation); the claimant shall put a cross in the last section of the form *"I refuse the above proposal by the court"*; specify the place and date of completion, corporate name of company or organisation (legal entity), name/surname, and sign the form (affix a stamp, if any).

873. Upon return of standard form C within the specified time limit, wherewith the claimant refuses the court's proposal, the court, pursuant to Article 10 (3) and Article 11 (1) (d) of the Regulation, shall **reject EPO application in its entirety.**

874. The same occurs if the claimant fails to return his reply (makes no reply) within the time limit specified by the court.

875. To reject an EPO application, the court shall use standard form D as set out in Appendix IV to Regulation 1896/2006 "Decision to reject the application for a European order for payment" (see paragraph two of Article 11 (1) of the Regulation). More on the rejection of EPO application in the sub-chapter "Rejection of Application" of this Study; § 877 and further on.

876. It shall be noted that **Article 9 is different from Article 10** of Regulation 1896/2006 as to:

Regulation 1896/2006, article	Scope of application	Standard form to be completed and the performer	Legal consequences
Article 9	If the formal requirements set out in Article 7 of the Regulation are not met and unless the claim is clearly unfounded or the application is inadmissible. Already initially it is clear that if the claimant completes or rectifies EPO application, the court may issue EPO for the pecuniary claim **in its entirety**.	**Form B:** to be completed by the court (and sent to the claimant).	1. If the claimant within the time limit set by the court **has** completed and/or rectified EPO application, the court shall **issue EPO for the pecuniary claim in its entirety** (using form E). 2. If the claimant within the time limit set by the court **has not** completed and/or rectified EPO application, the court shall **reject EPO application in its entirety** (using form D).
Article 10	The *amount* of pecuniary claim stated in the EPO application only partially complies with the criteria set out by Article 7 (2) (b)-(d) of the Regulation; for the rest of the claim that amount seems clearly unfounded. Therefore, it is initially clear that EPO may be issued only for **part** of the pecuniary claim.	**Form C:** - initially to be completed by the court (and sent to the claimant); - last section of form C to be completed by the claimant (and returned to the court within the specified time limit).	1. If the claimant within the specified time limit **accepts** the proposal by the court, the court shall **issue EPO for the part** of amount which the claimant has accepted (using form E). For the rest of the claim court proceedings shall be terminated (Section 219, Paragraph two of CPL); the court shall take a special motivated decision thereof. 2. If the claimant refuses the court proposal or does not reply within the specified time limit, the court shall **reject EPO application in its entirety (not only for the part thereof)** (using form D). Further on the legal consequences provided by Article 11 (2) and (3) of the Regulation arise: there shall be no right of appeal against

			the rejection of the application; the rejection of the application shall not prevent the claimant from pursuing the claim by means of a new EPO application or of any other procedure available under the law of a Member State.

3.8.5. Rejection of Application

877. Pursuant to **Article 11** of Regulation 1896/2006:

1. The court shall reject the application if: a) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met; ***or*** *b) the claim is clearly unfounded or inadmissible;* ***or*** *c) the claimant fails to send his reply within the time limit specified by the court under Article 9(2);* ***or*** *d) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Article 10. The claimant shall be informed of the grounds for the rejection by means of standard form D as set out in Appendix IV.*

2. There shall be no right of appeal against the rejection of the application.

3. The rejection of the application shall not prevent the claimant from pursuing the claim by means of a new application for a European order for payment or of any other procedure available under the law of a Member State.

878. The court may reject EPO application in four cases only:

878.1. if the requirements set out in Articles 2, 3, 4, 6 and 7 of Regulation 1896/2006 are not met;

878.2. the claim is clearly unfounded or inadmissible;

878.3. the claimant fails to send his reply within the time limit specified by the court under Article 9 (2) of the Regulation;

878.4. the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal in accordance with Article 10 of the Regulation.

879. It shall be minded that **Article 11 (1) (a)** of the Regulation is to be interpreted through the prism of Article 9 (or Article 10) and Article 7 of the Regulation; it shall be applicable at once only in cases when completion or rectification (Article 9), or modification (Article 10) of the application is impossible. **If completion, rectification, or modification of EPO application is possible, the court shall not immediately reject EPO application on the basis of Article 11 (1) (a) of the Regulation.** Unfortunately, Latvian courts tend to apply Article 11 (1) (a) of Regulation 1896/2006 immediately, not giving the claimant an opportunity to complete, rectify, or modify EPO application.

879.1. *For example,* Riga City Vidzeme Suburb Court[549] immediately rejected EPO application (on the basis of Article 11, Para. 1 in its entirety) because: 1) the amount of the claim and interest on the claim was stated in euros (EUR) instead of lats (LVL); 2) a document in a foreign language was appended to the application. The above cases do not provide sufficient basis for the rejection of EPO application immediately. Regulation 1896/2006 does not provide for any documents to be appended to EPO application. All information about the pecuniary claim shall be included in the EPO application (standard form A). Also stating the claim amount is EUR currency is not a sufficient basis for rejecting EPO application.

879.2. In another case Riga City Zemgale Suburb Court[550] immediately rejected EPO application (on the basis of Article 11 (1) in its entirety) because the registration number of the defendant as specified by the claimant was that of another company in accordance with the information of the Register of Enterprises of the Republic of Latvia. In this case the court was to allow the claimant to rectify the EPO application (applying Article 9 of the Regulation).

879.3. *For example,* Valmiera District Court[551] immediately rejected EPO application (on the basis of Article 11 (1) in its entirety) because the claimant had not used standard form A and had not submitted the claim statement in Latvian.

880. It follows from the above that **Latvian courts not only tend to reject EPO applications immediately, but also refer to Article 11 (1) (a) of Regulation 1896/2006 in its entirety, thus not discriminating among the essentially different legal rules therein and, consequently, among the different basis for rejection of EPO application**.

881. If the claim in the EPO application is clearly unfounded or inadmissible, the court may reject such application immediately in accordance with **Article 11 (1) (b) of the Regulation.** The notion **"unfounded or inadmissible"** is a general stipulation, which a judge in each particular case shall assess according to his own belief. The said notion might include, for example, situations wherein the EPO application is a clear proof of a non-existent pecuniary claim.

881.1. *For example,* the claimant has indicated the president and government of a EU Member State as defendants; the pecuniary claim (capital) has been specified in the amount of EUR 20 million; in turn, in section 6 of form A "The claim relates to" the claimant has marked code 25 ("Other"), specifying "Inducer of economic crisis"; the other sections of EPO application have not been completed. It is evident that such pecuniary claim is non-existent, clearly unfounded and

[549] Riga City Vidzeme District Court decision of 15 March 2010 in Civil Case No. 3-10/0531/5-2010 [not published].
[550] Riga City Zemgale District Court decision of 12 August 2009 in Civil Case No. 3-10/0555-2009 [not published].
[551] Valmiera District Court decision of 12 March 2009 in Civil Case No. 3-10/0065-09 [not published].

inadmissible therefore such EPO application shall be rejected (pursuant to Article 11 (1) (b) of the Regulation).

882. When examining whether an EPO application is founded or unfounded the court shall only be governed by the information stated in EPO application, in particular by the description of evidence available in support of the claim (section 10 of form A) and the description of the claim (section 6 of form A).

882.1. *For example,* Riga City Vidzeme Suburb Court[552] deemed as unfounded and therefore inadmissible the EPO application wherein: 1) a copy of a payment order in a foreign language was appended; 2) documents certifying the payment of legal fees (LVL 5.25) were not appended; 3) the claimant had appended 26 documents in foreign languages which, obviously, justify the claim. At the same time the claimant had stated the purchase contract to be the basis for the claim. It is evident has shall not be established. The court was to apply Article 9 of Regulation 1896/2006 and give the claimant an opportunity to complete or rectify the EPO application. With regard to documents certifying payment of legal fees the court was to take a decision to dismiss EPO application, setting a time limit for the rectification thereof — execution of relevant payments and submission of documents certifying the payment of legal fees (see Art. 25 of the Regulation; Section 131, Paragraph two and Paragraph one, Clause 3 of CPL).

883. **Article 11 (1) (c) and (d)** of Regulation 1896/2006 shall only be applicable if:

883.1. the court has previously charged the claimant with the task to complete or rectify EPO application within a specified time limit (Aricle 9 of the Regulation) and the claimant within that time limit has not sent his reply to the court; or

883.2. the court has previously proposed the claimant to modify EPO application within a specified time limit (Article 10 of the Regulation) and the claimant within that time limit has not sent his reply to the court, or has refused the court proposal.

884. **When rejecting EPO application** in accordance with a reason set out in Article 11 of the Regulation, a judge takes a *decision to refuse accepting EPO application* (see Section 131, Paragraph two and Paragraph one, Clause 2; Section 406.[4] of CPL). However, unlike Section 132, Paragraph three of CPL, no ancillary claim can be submitted regarding such court decision. Pursuant to Article 11 (2) of Regulation 1896/2006 there shall be no right of appeal against the rejection of the application. However, the legal consequences of the decision to reject EPO application (see Article 11 (3) of the Regulation) and the decision to refuse accepting EPO application (see Section 131, Paragraph two and Paragraph one, Clause 2; and Section 406.[4] of CPL) are identical.

[552] Riga City Vidzeme District Court decision of 4 November 2010 in Civil Case No. 3-10/1040/13-2010 [not published].

885. Since, pursuant to Article 25 of Regulation 1896/2006, the amount of fees and charges to be paid to the court is fixed in accordance with national law of the Member States, the paid State duty and the costs related to the delivery of notification shall be included if the proceedings are to be continued as ordinary civil proceedings (Section 36.[1] of CPL). Transfer to ordinary civil proceedings may occur upon two cumulative preconditions: 1) the defendant has lodged a statement of opposition to EPO (standard form F), **and** 2) the claimant in EPO application — Appendix 2 to form A — has left a blank space, not specifying that he does not want the proceedings to be continued as ordinary civil proceedings. It shall be noted that pursuant to Article 7 (4) of the Regulation the claimant may inform the court of his opposition to a transfer to ordinary civil proceedings after the EPO application has been submitted, but in any event before the issue of EPO (form E).

886. If the claimant has indicated that he opposes to a transfer to ordinary civil proceedings, court fees (State fees and the costs related to delivery of notification) should be repaid to the claimant immediately, including the respective indication in the court decision (Section 37, Paragraph one, Clause 2 of CPL). More on the court fees in the sub-chapter "Court Fees" of this Study.

887. It follows from the abovementioned that the enacting part of the court decision be like this (if the claimant does not want to transfer to ordinary civil proceedings):

[..]

Decided:

1. Reject the company "ABC" application for European order for payment against SIA "A un B".
2. Issue standard form D as provided by Article 11 (1) of Regulation 1896/2006 and send it to the claimant -company "ABC.
3. Decision in the part for the rejection of the application for European order for payment shall not be appealed.
4. Rejection of the application for European order for payment shall not prevent the claimant from pursuing the claim by means of a new application for a European order for payment or of any other procedure available under the Civil Procedure Law of Latvia.
5. Reimburse the applicant — company "ABC" — the paid State fee in the amount of LVL 30.
6. Decision in the part for reimbursement of State fee may be appealed submitting an ancillary claim within 15 days[553] as from the day of issue of attested copy of the decision.

3.8.6. Legal Representation

888. All three Regulations dealt with in this Study emphasize that representation by a lawyer or another legal professional shall not be mandatory. Also Article 24 of Regulation 1896/2006 states that no legal representation is required for the claimant in respect of the application for a European order for payment and for the defendant in respect of the statement of opposition to EPO. However, standard form A to Appendix I

[553] The situation, when the claimant lives in a Member State other than Latvia, is taken into account. If the claimant lives in Latvia, ancillary complaint shall be submitted within 10 days as from the day when the court decision was taken (Section 442 of CPL).

has some sections where representatives may be specified (Item 2), thus the party may apply the right to a lawyer.

889. As stated above, not always a party will be able to complete the appended forms unassisted by a legal professional. Although the forms are unsophisticated, some issues may present difficulties, for example, grounds for court's jurisdiction; therefore, a party may decide to authorise a lawyer to represent the party in the relevant court proceedings.

3.8.7. Court Fees

890. Article 25 (2) of the Regulation states that **court fees** shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law. Recital 26 in the preamble to Regulation 1896/2006 and Article 25 thereof point out that court fees should not include, for example, lawyers' fees. Thus, in the understanding of the Regulation court fees would be similar to those prescribed by Section 33 of CPL, namely, court costs — State fees, office fees and costs related to adjudicating a matter.

891. The scope of adjudication costs shall be set in accordance with the national law of the Member State where standard form A — Appendix I to the Regulation was submitted. In Latvia, pursuant to CPL, State fees in such cases would be 2% of the indebtedness, however, not exceeding LVL 350 (Section 34, Paragraph one, Clause 7), as well as costs related to conducting a matter, i. e. costs of delivery and issue of court documents.

892. However, a party may incur **other costs**, inter alia, the costs related to conducting of a matter, for example lawyer's fees. Although the Regulation does not specify such type of costs, the standard form A "Application for a European order for payment" has a section to indicate court fees and other fees — to be specified (section 9 "Costs (if applicable)"). Thus the claimant may also specify other costs related to EPO procedure.

893. If the defendant has advised of his opposition to EPO, using form F, and the proceedings have been transferred to ordinary civil proceedings (Article 17 of the Regulation), in Latvia Section 36.[1] of CPL shall be applied with regard to court fees; Section 36.[1] of CPL prescribes that the fee for EPO application paid in accordance with the Regulation 1896/2006 shall be included in the amount of State fee for lodging a claim if the defendant has advised of his opposition to EPO and the proceedings shall be continued before the competent court of Latvia. It means that the claimant shall pay additional State fee, but the State fee deposited during the EPO proceedings shall be included in the amount to be paid.

3.9. Issue of EPO

894. Pursuant to **Article 12** of Regulation 1896/2006:

1. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Appendix V. The 30 day period shall not include the time taken by the claimant to complete, rectify or modify the application.
2. If the requirements referred to in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European order for payment using standard form E as set out in Appendix V. The 30 day period shall not include the time taken by the claimant to complete, rectify or modify the application.
3. In the European order for payment, the defendant shall be advised of his options to: (a) pay the amount indicated in the order to the claimant; or (b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him.
4. In the European order for payment, the defendant shall be informed that: (a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court; (b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16; (c) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.
5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15.

3.9.1. Issue of EPO: standard form E

895. If all requirements specified in Article 8 of Regulation 1896/2006 are met (i. e. the provisions of Articles 2, 3, 4, 6 and 7), the court shall issue EPO without delay (in exceptional cases — within 30 days as from the day when EPO application was submitted[554]), i. e. complete standard form E as set out in Appendix V to the Regulation. The Latvian courts shall complete the form in Latvian which is the official language of court proceedings in Latvia (see Section 13 of CPL).

896. Regulation 1896/2006 has a significant deficiency regarding the language issue when completing form E. Regulation 1896/2006 does not include the requirement of sending the EPO (form E) to the defendant in a language the defendant understands.[555] If the defendant lives in Latvia, no problem will arise. If the defendant lives, for example, in Italy, there is no use of sending him the EPO drafted in Latvian (except when the defendant living in Italy is a citizen of Latvia and *a priori* understands Latvian).

[554] If the court issues EPO later than within the 30 day period, such EPO shall be valid. The purpose of Article 12, Para. 1 of the Regulation is to point out the obligation of the court to act as soon as possible. See: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 12 EG-MahnVO (Gruber U.P.), S. 335.

[555] On the above issue see also: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 12 EG-MahnVO (Gruber U.P.), S. 336, 337 ; Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 204-206.

897. The same also refers to standard form F "Opposition to a European order for payment" to be appended to EPO (form E), which the defendant shall **complete. In future EU legislature should bring this issue in Regulation 1896/2006 to a close**. Moreover, if there is an attempt to serve an EPO drafted in Latvian on the defendant who lives in Italy, the latter pursuant to Article 8 of the Documents Service Regulation has the right to refuse accepting such document (provided the Member State of enforcement — Italy has explained the defendant his right thereof). It once again emphasises the necessity of including the language issue in the minimum procedural standards and of clear connection to the Documents Service Regulation (at present not explicitly mentioned only in Article 27 of Regulation 1896/2006[556]).

898. At present the best possible solution is the following: the Latvian courts shall apply standard form E in Latvian and in the language of the Member State in whose territory EPO is enforceable (for example, Italian). Since standard form E does not require to include information to be translated,[557] the Latvian court shall complete the Latvian standard form E and the Italian standard form E in the Latvian language, appending a blank standard form F in the Italian and Latvian languages respectively. It would be wrong to make the defendant, who is not advised in European executive procedures, within the 30 day period find a translator or refer to a legal professional who would help to find the equivalent standard forms on the website of the European Judicial Network.

899. If defendants were more educated, they would refuse to receive EPO on the basis of Article 8 of Document Service Regulation. However, it shall be noted that the European Court of Justice in its judgment in the case *Götz Leffler* has prescribed that the refusal to receive document as per Article 8 of the Regulation on the service of documents shall not be deemed as non-service of the document. Absence of translation may be eliminated, namely, the document issuing authority shall be advised that the addressee (defendant) has refused to receive document because the translation has not been appended thereto and send the translation to the defendant as soon as possible.

900. For effective protection of the document addressee the day when the defendant was able to understand the document, i. e. the date when the translation[558] was received, shall be taken into account — not the day when the defendant could get acquainted with the delivered document. In other words, if the defendant due to the language barrier has

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[556] Pursuant to Article 27 of Regulation 1896/2006, Regulation 1896/2006 does not affect the application of Regulation on the service of documents (Regulation 1393/2007). In turn, the legal rules of Regulation 1896/2006 (minimum procedural standards) dealing with the service of EPO, do not include the slightest reference to Regulation on the service of documents.

[557] Standard form E as set out in Annex V to Regulation 1896/2006 requests the judge to include the following information: court, parties and thEEO addresses, mark the relevant currency and specify the amount in figures. The court shall not complete the section "Important information for the defendant" – it is standardised information which is included in form E in all languages of the Member States.

[558] European Court of Justice judgment of 8 November 2005 in the case: C-443/03 *Götz Leffler*, ECR [2005], p. I-09611, paras 39, 64, 67.

refused to receive the EPO drafted in Latvian, the Latvian court shall provide the translation of EPO into Italian and once again send the document to the defendant. The day when the defendant has received EPO in Italian shall be deemed the day of EPO service on the defendant.

901. Pursuant to Article 12 (2) of Regulation 1896/2006, EPO is issued together with a copy of EPO application form (form A), which does not include information the defendant has provided in accordance with Appendices 1 and 2 to the application for a European order for payment. The court shall append a blank standard form F to the form E (preferable not only in Latvian, but also in the official language of the state where EPO is supplied to), see Article 16 (1) of Regulation 1896/2006.

902. So, the court shall serve on the defendant:

Form E + form A (except Appendices 1 and 2) + blank form F.

3.9.2. Notification of defendant

903. Pursuant to **Article 12 (3)** of Regulation 1896/2006, the defendant shall be advised of his option to:

903.1. pay the claimant the amount indicated in the order; **or**

903.2. oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him.

904. In other words, the court asks the defendant *de solvendo vel trahendo* (Latin — settle the debt or do something for his own sake). The court makes such proposal solely on the basis of information which was provided by the claimant and was not verified by the court (see Article 12 (4) (a) of Regulation 1896/2006).[559]

905. It follows from the section "Important information for the defendant" of standard form E that the defendant is asked either to pay the claimant the amount indicated in the EPO, or lodge with the court of origin a statement of opposition to be sent within 30 days of service of the order on him (completed standard form F).

906. However, a problem arises in relation to clause d) of this section which specifies: "This order will become enforceable unless a statement of opposition has been lodged with the court within 30 days. If the defendant within 30 days pays the indicated amount (as set out in Article 12 (3) (a) of Regulation 1896/2006) and consequently does not lodge an opposition, the EPO will become enforceable anyway.

907. Therefore, the **defendants, who have paid the indicated amount, are advised to concurrently lodge with the court of origin a statement of opposition (complete form F)**. It will safeguard defendants from further problems related to application for a review of the European order for payment before the competent court in the Member State of origin (see Article 20, Para. 2 of Regulation 1896/2006). **The responsible EU**

[559] Rudevska, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi. *Jurista Vārds*, Nr. 24/25, 2009. gada 16. jūnijs, 34. lpp.

authorities should improve form E as set out in Appendix V to Regulation 1896/2006, as well as Article 12 (4) (b) of the Regulation, and prescribe: "b) This order will become enforceable unless a statement of opposition has been lodged pursuant to Article 16, **or the amount indicated in the order has been paid to the claimant."**

908. Pursuant to **Article 12 (4)** of Regulation 1896/2006, in the European order for payment the defendant shall be informed that:

908.1. the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;

908.2. the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;

908.3. where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

909. The mentioned legal rule specifies the information which in a standardised form has been included in form E. See form E: subchapters c), d) and e) of the section "Important information for the defendant". This circumstance once again emphasises the importance of language which is understandable to the defendant in Regulation 1896/2006.

910. The defendant cannot tell from Appendix 2 to form A (Application for a European order for payment) appended to form E whether the claimant has explicitly requested that the proceedings be terminated (upon lodging of defendant's opposition); in accordance with Article 12 (2) of the Regulation the court does not supply such information to the defendant.

3.9.3. EPO service on the defendant

911. The notion of minimum procedural standards and the theoretical background thereof is provided together with the analysis of Regulation 805/2004 (§ 135 and further).

912. With regard to the types of documents to be issued, Regulation 1896/2006 prescribes only the issue of European order for payment. The notion **European order for payment** shall be understood as autonomous for the purpose of this Regulation, namely, it is the European order for payment, which is to be issued to the defendant. The European order for payment shall comprise standard form E as set out in Appendix V to the Regulation. It shall not comprise the information provided by the claimant in Appendices 1 and 2 to form A (see Article 12 (2) of the Regulation).

913. Nevertheless, Regulation 1896/2006 (like Regulation 861/2007) does not comprise any reference to document **translations**. It seems that the language issue is not important to EU legislature, namely, the minimum procedural standards per se, without a

language which is understandable to the defendant, are considered to provide the defendant a good opportunity to take care of his defence, i. e. the right to fair trial.

914. Service with proof of receipt. This type of service shall not be used if the defendant's address is not known:

915. *Personal service* (Article 13 (a), and (b)).[560] Personal service my be attested by:

915.1. an acknowledgement of receipt, including the date of receipt, which is signed by the defendant; or

915.2. a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service. The abovementioned situation requires that in case of refusal to receive the document the competent person should record that the defendant has refused to receive EPO without any legal justification. In Latvia such competent person cannot be a postal employee (who has neither the right, nor the competence to record the procedure of legal justification for refusal). Thus the notion *competent person* in Latvia shall imply a sworn bailiff, a sworn notary or a court official in the court premises. It shall be noted that in accordance with Section 57 of CPL: "If a person to be summoned or summonsed to the court refuses to accept the summons, the *summons server* shall make an appropriate notation in the summons, *specifying the reason*, date and time *thereof*. In this respect Article 13 (b) of the Regulation is more strict than Section 57, Paragraph one of CPL.

916. Both types of document service (as per Article 13 (a), (b) of the Regulation) have a high degree of credibility and comply with the summons served by a messenger as set out by Section 56 of CPL (Section 56, Paragraph seven of CPL) or delivery of court summons and other documents by a sworn bailiff as per Section 74, Paragraph one, Clause 1 of the Law on Bailiffs[561], or serving the documents in person to the addressee against signature (Section 56, Paragraph three of CPL), or serving the documents through a sworn notary (Sections 135-136 of Notariate Law). The date of EPO service shall be deemed the date when the addressee (defendant) has personally received the document (Section 56.[1], Paragraph one and two). It complies with the moment of service of cross-border document (Section 56.[2], Paragraph two of CPL).

917. *Postal service* (Article 13 (c).[562] Postal service of EPO shall be attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant. Such method of serving court documents complies with the procedure specified by Section 56.[1] of CPL, which prescribes the day of delivery of summons to be on the seventh day as from the day of sending (Section 56.[1], Paragraph three of CPL). However, if an EPO from Latvia is to be sent to another Member State, the seven-day period shall not be applicable. In such case the Latvian court shall be governed by

[560] See Article 13 (a) and (b) of Regulation 1896/2006.
[561] Law on Bailiffs: Law of the Republic of Latvia. *Latvijas Vēstnesis*, Nr. 165, 2002. gada 13. novembris.
[562] See Article 13(c) of Regulation 1896/2006.

Article 9 of the Regulation on the service of documents together with Section 56.[2], Paragraph two of CPL. It shall be noted that in accordance with Section 56.[2], Paragraph two of CPL: "If judicial documents have been delivered to a person in accordance with the procedures specified in Paragraph one of this Section, it shall be considered that the person has been notified [..] regarding the content of the relevant document only in such case, if the confirmation regarding service of the document has been received. Documents shall be considered as served on the *date* indicated in the confirmation regarding service of documents."

918. *Service by electronic means* (Article 13 (d).[563] Service by electronic means service of documents by fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant. Such type of delivery only partially complies with Section 56, Paragraph six of CPL, since the Regulation requires that service be attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant. In this case the minimum procedural standards do not require that acknowledgement of receipt be in a form of an e-mail. The defendant may return the acknowledgement of receipt by mail of by fax.[564]

919. **Service without proof of receipt.** This type of service shall only be used if the defendant's address is known for certain.[565]

920. *Personal service* (Article 14 (1) (a)-(c)).[566]

920.1. Personal service of EPO is service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there *(physical persons)*. Acknowledgement of receipt shall be signed by the person who received the document. Such procedure complies with the procedure as per Section 56, Paragraph eight of CPL.

920.2. In the case of a *self-employed* defendant or a *legal person*, personal service means service at the defendant's business premises on persons who are employed by the defendant. Also in this case the acknowledgement of receipt shall be signed by the person who received the document. Such procedure more or less complies with the procedure as per Section 56, Paragraph eight of CPL, except that minimum procedural standards request that documents be served not only at the workplace of a physical person, but at the premises of enterprise of the defendant - a self-employed person or a legal entity by service on the defendant's employee. Here Section 56, Paragraph six of CPL shall be taken into account.

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[563] See Article 13(e) of Regulation 1896/2006.

[564] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 13 EG-VollstrTitelVO (Pabst S.), S. 130.

[565] See Article 14, Para. 2 of Regulation 805/2004; Article 14, Para. 2 of Regulation 1896/2006, and Article 13, Para. 2 of Regulation 861/2007.

[566] See Article 14, Paras. 1 d) and e) of Regulation 805/2004; Article 14, Paras. 1 d) and e) of Regulation 1896/2006, and Article 13, Para. 2 of Regulation 861/2007.

920.3. Deposit of the order (EPO) in the defendant's mailbox (both physical persons and legal entities). Such procedure does not comply with an ordinary mail according to Section 56, Paragraph two of CPL. A person who has deposited a judicial document in the defendant's mailbox shall acknowledge the service by a signed document specifying the type of service and date.

921. *Service by mail* (Article 14 (1) (d) and (e)).[567]

921.1. Deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits.

921.2. Postal service without proof pursuant to Article 14, Paragraph three of Regulation 1896/2006 if the defendant has his address in the Member State of origin. Such procedure complies with the procedure of service of an ordinary mail as per Section 56, Paragraph two of CPL (see Section 56, Paragraph one of CPL).

922. *Service by electronic means* (Article 14 (1) (d)).[568] Service of a document by electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance. Section 56, Paragraph six of CPL[1] however does not provide for automatic confirmation of delivery.

923. Upon personal service of document (EPO) without proof and upon service to a postal office the responsible person, who has served the document, shall sign the document specifying:

923.1. the method of service used;

923.2. the date of service, and

923.3. where the order has been served on a person other than the defendant, the name of that person and his relation to the defendant.[569]

924. *Service on a representative.* Article 15 of Regulation 1896/2006 states that service pursuant to Articles 13 or 14 may also be effected on a defendant's representative. This rule shall be considered together with recital 22 in the preamble to the Regulation which specifies that Article 15 should apply to situations where the defendant cannot represent himself in court, as in the case of a legal person, and where a person authorised to represent him is determined by law, as well as to situations where the defendant has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.

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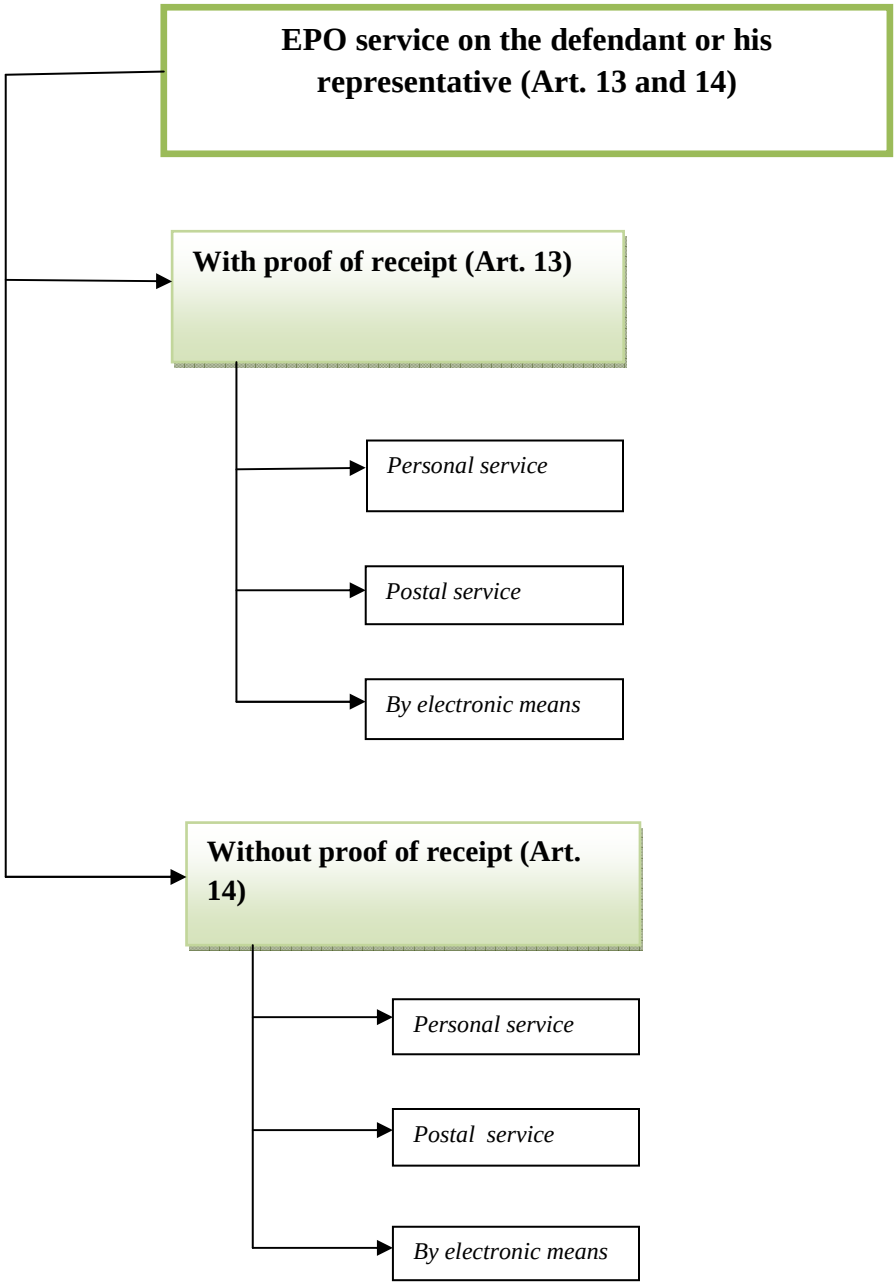
[567] See Article 14, Paras. 1 d) and e) of Regulation 805/2004; Article 14, Paras. 1 d) and e) of Regulation 1896/2006 and Article 13, Para. 2 of Regulation 861/2007.

[568] See Article 14, Para. 1 f) of Regulation 805/2004; Article 14, Para. 1 f) of Regulation 1896/2006, and Article 13, Para. 2 of Regulation 861/2007.

[569] See Article 14, Para. 3 a) of Regulation 805/2004; Article 14, Para. 3 a) of Regulation 1896/2006, and Article 13, Para. 2 of Regulation 861/2007.

925. The summary of minimum procedural standards prescribed by Regulation 1896/2006 shall be depicted as the following chart:[570]



[570] Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienīgā un Hāgas Starptautisko Privāttiesību konferencē. Promocijas darbs. Rīga : Latvijas Universitāte, 2012. See: Annex No. 5 of Promotion Paper, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

3.9.4. Some common problem issues

926. Regulation 1896/2006 reflects a specific situation: it states that the court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15 (see Article 12 (5) of the Regulation). At the same time non-compliance with the said standards does not prevent to declare the EPO enforceable, i. e. as soon as declaration of enforceability (standard form G) has been issued, EPO shall be enforceable.[571] The court shall only verify the EPO service date, not the compliance of service method to the minimum procedural standards.[572] Systemic interpretation of legal rules of the Regulation shall make out that the court shall not only verify the EPO service date, but also the compliance of service method to the minimum procedural standards as set out in Articles 13, 14 and 15. Otherwise these standards have no significance at all, like recitals 19 and 27 in the preamble to the Regulation.

927. Another significant shortage pointed out by legal professionals shall be mentioned, namely, all of a sudden the minimum procedural standards are not as autonomous as set out in Regulation 805/2004.[573] Let us compare both Regulations and their legal rules with regard to the minimum procedural standards:

928. *Table*[574]

Regulation 805/2004	Regulation 1896/2006
Article 13 "The document instituting the proceedings or an equivalent document may have been served on the debtor **by one of the following methods:** [*methods with proof*]".	**Article 13** "The European order for payment may be served on the defendant **<u>in accordance with the national law of the State in which the service is to be effected</u>, by one of the following methods:** [*methods with proof*]".
Article 14 "Service of the document instituting the proceedings	**Article 14** "The European order for payment may also be

[571] Of course, the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin if there are grounds for review as specified by Article 20 of Regulation 1896/2006, concurrently asking the court of the Member State of origin to stay or limit the enforceability of EPO. In this respect it would be advisable to supplement standard form G as set out in Annex VII to Regulation 1896/2006 with the information for the defendant, namely, that pursuant to Article 20 of the Regulation he is entitled to apply for a review of EPO, and pursuant to Article 23 - to stay or limit the enforceability of EPO. Concurrently Article 18, Para. 3 of the Regulation shall be amended with the provision that declaration of enforceability of EPO shall also be sent to the defendant (not to the claimant only). At present the defendant may learn of an enforeceable EPO when the bailiff begins the proceedings.

[572] See also: Gruber, U.P. Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. Rauscher, T. (Hrsg.). München : Sellier, 2010, S. 339 (Art. 12).

[573] Lopez de Tejada, M., D'Avout, L. Les non-dits de la procédure européenne d'injonction de payer. *Revue critique de droit international privé*. Paris : Dalloz, n° 4 (octobre-décembre), 2007, p. 727.

[574] Rudevska, B. Quality of Legal Regulation of Minimum Procedural Standards in European Procedures of Enforcement of Decisions: A Critical Analysis. In: *The Quality of Legal Acts and its Importance in Contemporary Legal Space*. International Scientific Conference 4-5 October, 2012. Riga : University of Latvia Press, 2012, p. 628 (skat. tabulu Nr. 1).

or an equivalent document and any summons to a court hearing on the debtor may also have been **effected by one of the following methods**: [*methods without proof*]".	served on the defendant **in accordance with the national law of the State in which service is to be effected**, **by one of the following methods:** [*methods without proof*]". See also **Article 12 (5):** "The court shall ensure that the order is served on the defendant **in accordance with national law by a method that shall meet the minimum standards** laid down in Articles 13, 14 and 15".

929. It follows from the comparison *table* that in case of EPO the service of judicial documents shall be made not simply applying a method of minimum procedural standards, but also in accordance with national law of the State in which service is to be effected (concurrently applying one of the methods of minimum procedural standards). If the defendant lives in the State of the court which has issued the EPO, such legal order is comprehensible. If the defendant resides in another Member State, let us imagine the following situation:[575]

930. *Situation*

A commercial company registered in Latvia files with the Latvian court an application for a European order for payment (using standard form A as set out in Appendix I to Regulation 1896/2006) against a legal entity registered in Germany. The Latvian court issues EPO (using standard form E as set out in Appendix V to the Regulation) against that legal entity registered in Germany. Further, the Latvian court (in accordance with Art. 12, Para. 5 of the Regulation) shall serve the EPO on the defendant living in Germany pursuant to national law of Germany, concurrently meeting the minimum standards laid down in Articles 13, 14 and 15 of the Regulation. How should the Latvian court act in the opinion of EU legislature?

931. In what way will the Latvian court be able to verify the compliance of judicial documents service procedure with the minimum procedural standards? Are the competent authorities of Germany, which ensure the service of Latvian judicial documents, obliged to comply with the minimum procedural standards? Of course, the Regulation on the service of documents is binding on the EU Member States (see also Article 27 of Regulation 1896/2006); so the German party is to serve the Latvian judicial documents on the defendant living in Germany pursuant to Article 7 of the Regulation on the service of documents. According to Article 7: "The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular form requested by the transmitting agency,[576] unless such a method is incompatible". Article 7 refers to national law of the Member State even if the transmitting agency has requested a particular form of service (for example, taking into account the minimum procedural standards of Regulation 1896/2006). The criticism of the authors of the Study is based on the fact that EU legislature itself in the preambles to Regulation 805/2004 and Regulation 1896/2006 has pointed out that due to differences between Member States' rules of civil procedure and especially those governing the

[575] Ibid.

[576] In relation to transmitting agency it shall be noted that the Member State which has expressed the request may be obliged to cover the expenses related to such transmitting agency (see Art. 11, Para. 2 of Regulation on the service of documents).

service of documents, it is necessary to lay down **a specific and detailed definition** of minimum standards that should apply in the context of the European order for payment procedure (see recital 19 in the preamble to Regulation 1896/2006, and recitals 12 and 13 in the preamble to Regulation 805/2004). Thus Regulation 1896/2006 (and also Regulation 805/2004) should have a more explicit and logical tie to the Regulation on the service of documents and the national procedural rules regarding the service of documents. The Regulation on the service of documents is mentioned only in Article 27 of Regulation 1896/2006, not among the minimum procedural standards. Likewise the minimum procedural standards do not include the requirement of use of a language to be understood, which is essential to the defendant.

3.10. Opposition to EPO: standard form F

932. Articles 16 and 17 of the Regulation specify the order of lodging a statement of opposition to the EPO. The defendant drafts his opposition using the standard form F (Appendix VI to the Regulation): Opposition to a European order for payment. The court, pursuant to Article 16 (1), supplies a blank standard form F together with the EPO (standard form E as set out is Appendix V to the Regulation). It shall be noted that the European order for payment is issued together with a copy of the application form (standard form A). It does not comprise the information provided by the claimant in Appendices 1 and 2 to form A (see Article 12 (2) of the Regulation). So the envelope which the court sends to the defendant shall contain the following information: 1) a blank standard form F; 2) the court completed standard form E (EPO) with the appended 3) copy of the claimant completed application — standard form A without the Appendices 1 and 2 to form A. As mentioned before, the Regulation 936/2012 has amended the Appendixes to Regulation 1896/2006, however, no essential changes refer to form F.

933. Standard form F is to be filled in easily. The court requisites and the case number shall be specified, and the parties shall be identified – the data may taken from the court supplied form E - European order for payment.

934. Pursuant to recital 23 in the preamble to the Regulation, the defendant may submit his statement of opposition using the standard form set out in this Regulation. However, the courts should take into account any other written form of opposition if it is expressed in a clear manner. Quite often free written forms of opposition to EPO expressing the essence of the mater are submitted to the Latvian courts which have accepted such free forms of opposition to EPO in accordance with Regulation 1896/2006.[577]

935. In accordance with both standard form F, and Article 16 (3) of the Regulation the defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this. He shall only specify the date of issue of EPO. Although the reasons for opposition may be various, for example, the court is not

[577] Decision of Riga City Northern Suburb court of 8 June 2012 in the case No. 3-11/00147 [not published].

competent or the particular case is not a cross-border case, or the defendant wants the case to be considered in longer and more complicated proceedings, the reasons shall not be specified in the standard form F. The defendant shall sign form F (see Article 16 (5) of Regulation 1896/2006); specify the date and place of completing the document. It is important that Regulation 1896/2006 does not provide for lodging of partial opposition. Consequently, if the defendant in standard form F for some reason has specified that he contests the EPO for only the part of the claim, such opposition shall be deemed as the opposition to EPO in its entirety.[578]

936. The statement of opposition shall be sent within 30 days of service of the order on the defendant (Article 16 (5) of the Regulation). The period shall also include days of rest and public holidays; for the purposes of calculating time limits, Regulation 1182/71 shall apply (recital 28 in the preamble to Regulation 1896/2006).

937. Pursuant to Article 16 (4) and (5) of Regulation 1896/2006, the statement of opposition — a completed standard form F shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin. The European Judicial Atlas will help to learn the means of communication accepted for the purposes of the European order for payment procedure and available to the courts (see Article 29 (1) (c) of the Regulation — the obligation of the Member States to communicate to the Commission). Regulation 1896/2006 sets out a special procedure when lodging the statement of opposition electronically. E-documents shall be signed with an electronic signature in accordance with Article 2 (2) of the Electronic Signatures Directive.[579]

938. In Latvia an application may only be lodged in a written form in person or through an authorised representative, or by mail. In Estonia fax and electronic data transmission channels may be used in addition to the methods available in Latvia.

939. Article 16 of Regulation 1896/2006 does not specify that the statement (completed form F) shall be served to the court of origin in the **language** of the court of origin. However, it follows from Article 26 of the Regulation — all procedural issues not specifically dealt with in this Regulation shall be governed by national law. Pursuant to Section 13, Paragraph one of CPL in Latvia court proceedings shall take place in the official language of court proceedings — the Latvian language. Since the forms set out in Appendixes to Regulation 1896/2006 are standardised and available in all languages of the Member States, from the rational point of view it would be advisable that the defendant completed form F in his native language, and in the language of the court of

[578] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 16 EG-MahnVO (Gruber U.P.), S. 344.

[579] Article 2, Para. 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 013, 19.01.2000) prescribes 2) "advanced electronic signature" means an electronic signature which meets the following requirements: a) it is uniquely linked to the signatory; b) it is capable of identifying the signatory; c) it is created using means that the signatory can maintain under his sole control; and d) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

origin. As already mentioned, the defendant himself or his authorised representative shall sign the opposition (form F). Unfortunately, neither the Regulation 1896/2006, nor the standard form F as set out in Appendix VI thereto provide for an opportunity of appending the authorisation of the defendant's representative to form F[580]; moreover, even indication of such authorisation is not foreseen in form F. In form F the defendant shall only specify the name, surname, address, city and country of the defendant's authorised representative or legally authorised representative, as well as the occupation and e-mail (optionally). **In the future the EU legislature should settle the issue in Regulation 1896/2006 either by incorporating such authorisation in standard form F (in case of legally authorised representative), or providing for indication of authorisation identifying information.** Pursuant to Article 17 (3) of the Regulation, the claimant shall be informed whether the defendant has lodged a statement of opposition. In other words, the court shall send the claimant for his knowledge a copy of the defendant's statement of opposition.

940. Article 17 of Regulation 1896/2006 states the effects of lodging of a statement of opposition within the prescribed 30 day period and the relevant action of the court in such case. Upon receipt of statement of opposition the court shall initially verify whether the claimant in Appendix 2 to standard form A — Application for a European order for payment or in a separate document has indicated that he does not want a transfer to ordinary civil proceedings. If the claimant does not want a transfer to ordinary civil proceedings, the court at its own initiative shall not take a decision on the dismissal of the European order for payment.[581] If the relevant section has been completed, the court shall terminate the proceedings pursuant to Article 17 (1) of the Regulation.

941. If the claimant has not made any indications in the Appendix 2, it is presumed that he would like to transfer adjudication of application to ordinary civil proceedings. The claimant may subsequently inform the court about the "transfer" of EPO proceedings to "ordinary civil proceedings.

942. If the court is to continue adjudication of the case in "ordinary civil proceedings", no automatic transfer from EPO to contentious procedure is foreseen; pursuant to Article 17 (2) of the Regulation, the transfer to ordinary civil proceedings shall be governed by the law of the Member State of origin.

943. The Civil Procedure Law of Latvia does not provide for an automatic transfer to ordinary civil proceedings because the EPO application does not comprise all mandatory requisites that shall be set out in a statement of claim (see Section 128 of CPL). However, pursuant to Section 131, Paragraph two of CPL, if adjudication of a matter is not possible in accordance with European Parliament and Council Regulation No 1896/2006, a judge shall take one of the following decisions (see Section 131, Paragraph one of CPL):

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[580] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 16 EG-MahnVO (Gruber U.P.), S. 344.

[581] See: Markovskis, E. Saistību bezstrīdus piespiedu izpildes brīdinājuma kārtībā uzlabošanas virzieni. II. Problēmas brīdinājuma procesā pēc brīdinājuma izsniegšanas. *Jurista Vārds* Nr. 34 (733), 21.08.2012.

943.1. on acceptance of the statement of claim and initiation of a matter;

943.2. on refusal to accept the statement of claim;

943.3. on leaving the statement of claim not proceeded with.

944. If the defendant's opposition has been received and the claimant has informed that he wants the court to hear the case in "ordinary proceedings", the court shall take a decision on the dismissal of claim statement, imposing a deadline for the claimant to eliminate shortages, i. e. draft the relevant claim statement and lodge the required documents. According the Civil Procedure Law of Latvia it means not only drafting a claim statement, but also paying the State fees. Pursuant to Section 36.[1] of CPL, a fee paid in accordance with European Parliament and Council Regulation No 1896/2006 for the application regarding European order for payment shall be included in the State fee for the claim, if the defendant has notified regarding an objection against the European order for payment and legal proceedings of the claim are proceeded with. Unfortunately, this legal rule does not mention including the fees paid for the delivery of EPO into the State fee for the claim; thus by analogy Section 406.[4], Paragraph four of CPL shall be applied in the matter.

3.11. Enforceability

3.11.1. Enforceability in general

945. **Enforceability of EPO.** Pursuant to **Article 18** of Regulation 1896/2006:

1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Appendix VII. The court shall verify the date of service.

2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

3. The court shall send the enforceable European order for payment to the claimant. This Article of the Regulation has not been applied by the Latvian courts yet.

946. Declaration of EPO as enforceable and sending to the claimant. To enable the court of the Member State of origin to declare EPO as enforceable, several preconditions shall be met:

946.1. the 30 day period of service as per Article 16 (2) of the Regulation has run out;

946.2. in addition to the said 30 day period the judge shall also take into account the time period required for servicing the notification on the defendant;

946.3. within this period of time (30 days + additional time period for service) the defendant has not lodged with the court his opposition (completed standard form F);

946.4. the court shall verify the date of service of EPO on the defendant (and the compliance of service to the minimum procedural standards).

947. Only when all abovementioned preconditions have cumulatively been met the court is entitled to issue an enforceable European order for payment (using the standard form G as set out in Appendix VII to the Regulation) and send it to the claimant.

948. The 30 day period is a time period which, pursuant to Article 16 (2) of Regulation 1896/2006, is given to the defendant to enable him lodge his opposition to EPO. The time limit is not determined according to the Latvian CPL, but according to Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits[582] (see recital 28 in the preamble to Regulation 1896/2006).

949. The 30 day period autonomously set by Article 16 (2) of Regulation 1896/2006 shall not be extended (not even according to the Latvian CPL).

950. In fact, a situation may occur when the defendant has sent his opposition later than within that 30 day period, but the opposition has been received by the court before declaring European order for payment enforceable (namely, before completing and issuing of form G). In such case EPO shall be declared as enforceable because the imperative time period as set out in Article 16 (2) of Regulation 1896/2006 has been exceeded.[583]

951. If the defendant has sent the court his opposition within the 30 day period, but the opposition has been received by the court after declaring the European order for payment enforceable (after completing and issuing of form G) such situation may be rectified only through Article 20 (2) of Regulation 1896/2006, i. e. asking for a review of the European order for payment before the competent court in the Member State of origin.[584] In Latvia it will be re-adjudication of a matter in connection with review of adjudication of EPO (see Section 485.[1] of CPL).

952. Verifying the date of EPO service on the defendant, the court shall take into consideration not only the date when EPO was served on the defendant, but whether the minimum procedural standards set out in Articles 13-15 of the Regulation were met in the service procedure.[585] (On the minimum procedural standards see the sub-chapter "EPO service" of this Study; § 911 and further on).

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[582] Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits. OJ L 124, 08.06.1971, 1. lpp.

[583] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 28 EG-MahnVO (Gruber U.P.), S. 351.

[584] *Ibid.*, S. 351, 352.

[585] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 18 EG-MahnVO (Gruber U.P.), S. 351.

953. The time period for service of notification is the time limit which is required for service of the court issued EPO notification on the defendant. In France this period is 10 days according to Articles 1424-14 of French Civil Procedure Code (*Code de procédure civile*).[586] In Germany the attitude towards this time period is much more considerate, namely, the court shall take into account the service distance, weather conditions and other relevant factors.[587] In Latvia, the same as in Germany, judges are free to evaluate and set the time limit in each particular case. If the defendant resides or stays in Latvia, such additional time period will be shorter. (see Section 56 of CPL). In turn, if the defendant resides or stays in Greece or French Alps, the time period will be considerably longer.

954. When the court has issued an enforceable European order for payment (standard forms E, A and G), it shall **serve it on the claimant** as soon as possible. Regulation 1896/2006 does not require serving the EPO on the defendant as well. Thus the issue shall be governed by national law of the Member State of origin (see Article 26 of the Regulation). Section 541.[1], Paragraph 4.[2] of Latvian CPL does not deal with the issue. So the Latvian courts may act at their own discretion – they may choose whether to serve the enforceable European order for payment on the defendant, or not. In turn, if a Latvian bailiff has received an enforceable EPO issued in another Member State, such bailiff shall send to the defendant residing in Latvia a notification on voluntary execution of European order for payment, specifying a time period for the execution thereof (see Section 555 of CPL).

955. Formal requirements of enforceability. Pursuant to **Article 18 (2)** of Regulation 1896/2006, "Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin."

956. Enforceability is an element of obligation in an adjudication adopted by the public authorities. It manifests as an ability to address law enforcement authorities to achieve coercive implementation of particular adjustment.[588] Enforceability is a characteristic feature of court adjudication, not the legal effects of an adjudication.[589] Characteristic feature of adjudication differs from legal effects of adjudication: the first adjudication possesses *ex lege* or automatic compliance with the particular civil procedure rule; in turn, the adjudication has legal effects in relation to intellectual activity of a judge in making the adjudication (the internal content of adjudication).[590]

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[586] Cuniberti, G., Normand C., Cornette F. Droit international de l'exécution. Recouvrement des créances civiles et commerciales. Paris : L.G.D.J., 2011, p. 115.

[587] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 18 EG-MahnVO (Gruber U.P.), S. 351.

[588] Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris : L.G.D.J., 2005, p. 143.

[589] Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga : Tiesu namu aģentūra, 2006, 305.lpp.; Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris : L.G.D.J., 2005, p. 32, 41, 64, 142.

[590] Bureau, D., Muir Watt, H. Droit international privé. Tome I. Partie générale. Paris : PUF, 2007, p. 237.

957. The notion of **enforceability** may include the following indications. **First**, European order for payment in essence and by content is such that it may be submitted to law enforcement authorities to be enforced, i. e. coercive implementation procedure is applicable.[591] EPO shall become enforceable right after the expiration of the 30 day period for lodging of an opposition and the respective service period, and the court has issued a notification on the enforceability of EPO (standard form G). The completion and issue of standard form G is a mere procedural execution of EPO enforceability.[592]

958. With regard to the notion of enforceability attention shall be paid to the European Court of Justice determined limits. It follows from the case law of ECJ in the cases *Coursier*,[593] *Apostolides*[594] and *Prism Investments BV*[595] that also in Regulation 1896/2006 the notion of enforceability should be interpreted as the *formal* enforceability of European order for payment. The notion "enforceable" formally refers to EPO enforceability only; it does not refer to the circumstances under which EPO may be enforceable in the Member State of origin, namely, the actual impediments do not influence the enforceability of European order for payment.[596] Such formal enforceability will also be valid if the defendant has applied for a review of the European order for payment before the competent court in the Member State of origin (see Article 20 of Regulation 1896/2006).

959. **Second,** European order for payment has not been executed yet (see, e. g. Section 638, Paragraph two, Clause 4 and Paragraph three, Clause 3 of CPL; Article 22 (2) of Regulation 1896/2006).

960. **Third,** pursuant to Regulation 1896/2006 and law of the Member State of origin, European order for payment has reached the phase when it is enforceable (see Article 18 of Regulation 1896/2006).[597]

961. So, the enforceability is typical to those European orders for payment regarding which the court in the Member State of origin has issued Declaration of enforceability (standard form G). Regulation 1896/2006 does not mention anything about the European order for payment coming into force; however, it may be concluded from Article 18 and Article 20 (3) of Regulation 1896/2006 that EPO shall come into force at the very

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[591] Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga : Tiesu namu aģentūra, 2006, 305.-307. lpp.

[592] Lopez de Tejada, M., D'Avout, L. Les non-dits de la procédure européenne d'injonction de payer. *Revue critique de droit international privé*. Paris : Dalloz, 2007, n° 4 (octobre-décembre), p. 734.

[593] European Court of Justice judgment of 29 April 1999 in the Case: C-267/97 *Coursier*, ECR [1999], p. I-2543, para. 29.

[594] European Court of Justice judgment of 28 April 2009 in the Case: C-420/07 *Apostolides*, ECR [2009], p. I-3571, paras. 66, 69.

[595] European Court of Justice judgment of 13 October 2011 in the Case: C-139/10 *Prism Investments BV*, ECR [2011], p. I-00000, para. 43.

[596] See by analogy opinion of Advocate general *J. Kokott* of European Court of Justice, delivered on 18 December 2008 in the Case: C-420/07 *Apostolides*, ECR [2009], p. I-03571, paras. 97, 98.

[597] See, for example, Sections 204 and 538 of Latvian CPL, as well as Section 637, Para. 2, Clause 2 and Section 638, Para. 3, Clause 1.

moment it becomes enforceable. Article 20 (3) of the Regulation says: "If the court rejects the defendant's application [..] the European order for payment *shall remain* in force". Thus it was in force before the defendant lodged an application for a review of EPO.

962. **Enforcement of EPO.** Pursuant to **Article 21** of Regulation 1896/2006:

> 1. *Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement. A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.*
>
> 2. *For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with: (a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity; and (b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.*
>
> *3. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.*

963. <u>Law applicable to enforcement procedures.</u> Article 21 (1) of the Regulation states that enforcement procedures shall be governed by the law of the Member State of enforcement with the exceptions as explicitly provided by the Regulation. For example, if a European order for payment issued in another Member State is submitted for enforcement in Latvia, it will be enforced according to the rules of the Latvian CPL (*lex loci executionis*), i. e., by application of coercive measures specified in Part E of the Latvian CPL.

964. Pursuant to Article 20 (2) of Regulation 1896/2006, sworn bailiffs in Latvia are competent to execute European order for payment (see Article 28 (b) of the Regulation). However, Regulation 1896/2006 per se autonomously prescribes:

964.1. what documents the claimant shall provide to the competent authorities of the Member State of enforcement (Article 21 (2));

964.2. prohibition of *cautio judicatum solvi* (Article 21 (3)); and

964.3. the basis for stay or limitation of enforcement and the methods thereof (Article 23).

965. Enforcement documents (Article 21 (2)). Pursuant to Article 21 (2) of Regulation the claimant shall provide the competent authorities of the Member State of enforcement with the following documents:

965.1. a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity (Article 21 (1) (a)); **and**

965.2. where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State (for example, Belgium, Luxembourg), the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States. For example, a respectively qualified translator in Italy or Spain may certify the translation into Latvian of the European order for payment issued in Italy in the Italian language. It shall not mandatory be a translator who provides translation services in Latvia.

966. Submission of photocopies of the mentioned documents is inadmissible — they shall be attested copies of document[598] or the original documents. The submitted documents shall bear a testimony that they are authentic documents. This requirement shall exclude a possibility that one and the same EPO towards the debtor be executed several times.[599]

967. The claimant shall submit the bailiff not only the EPO (standard form E), but enforceable EPO, i. e. duly completed forms A, E and G,[600] however it should be admitted that the bailiff only needs the EPO form.

968. Legal science points out a significant problem which might arise in practice regarding attested copies of documents, namely, an attested copy shall comply with the requirements set out for attested copies of the adjudication in the Member State of origin (or EPO issuing state).[601] For example, if a Latvian bailiff has received for enforcement a European order for payment issued in Sweden, the attested copy of such EPO shall

[598] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

[599] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 67, 68.

[600] Rudevska, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi. Jurista Vārds, Nr. 24/25, 2009. gada 16. jūnijs, 45. lpp.

[601] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 68.

comply with the requirements according to Swedish law. Of course, Latvian bailiffs may have some difficulty in verifying the compliance. **The EU legislature shall consider a possibility of introducing common unified standards for drafting attested copies of documents**.[602]

969. The list of documents according to Article 20 (2) of Regulation 1896/2006 is exhaustive, therefore Latvian bailiffs shall not request additional documents from claimants to initiate EPO enforcement process in Latvia.

970. **A translation of the European order for payment** into the official language of the Member State of enforcement shall be provided where necessary. It may seem that the provision is not mandatory unlike the documents listed in Article 21 (2) (a) of Regulation 1896/2006. However, it is not the case. The Member States have explicitly (in accordance with Article 29 (1) (d) of the Regulation) communicated the accepted languages. Therefore both legal rules shall be interpreted in a systematic manner.[603]

971. The notion "where necessary" means the situations where a European order for payment has been issued in the language, which the Member State of enforcement has not communicated as acceptable. For example, if an EPO issued in Luxembourg in the German language shall be served for enforcement in Germany, no translation is necessary (Germany has notified German as accepted language). In turn, if an EPO issued in Luxembourg in German be submitted for enforcement in Latvia, a translation into Latvian shall be mandatory since Latvia has notified Latvian as the only official language of court proceedings. The situation is analogue in Lithuania. In Estonia the situation is slightly different – both Estonian and English have been notified as official court languages. Therefore, an EPO issued in Ireland in English shall be submitted for enforcement in Estonia without a translation.[604]

972. Pursuant to Article 29 (1) (d) of Regulation 1896/2006, Member States shall communicate to the Commission languages accepted pursuant to Article 21 (2) (b). Notifications of all Member States are available in the European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm

973. The Member States to Regulation 1896/2006 have notified the following acceptable languages.

Table of Notified Languages.

No.	EU Member State	Notified languages
1.	**Belgium**	Flemish, French
2.	**Bulgaria**	Bulgarian
3.	**Czech Republic**	Czech, English, Slovak

[602] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 68.

[603] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

[604] Notifications of Lithuania and Estonia are available here: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm.

4.	**Germany**	German
5.	**Estonia**	Estonian or English
6.	**Greece**	Greek
7.	**Spain**	Spanish
8.	**France**	French, English, German, Italian or Spanish
9.	**Ireland**	Irish or English
10.	**Italy**	Italian
11.	**Cyprus**	Greek, English
12.	**Latvia**	Latvian
13.	**Lithuania**	Lithuanian
14.	**Luxembourg**	German and French
15.	**Hungary**	Hungarian (Magyar)
16.	**Malta**	[*not notified yet*]
17.	**Netherlands**	Dutch
18.	**Austria**	German
19.	**Poland**	Polish
20.	**Portugal**	Portuguese
21.	**Romania**	Romanian
22.	**Slovakia**	Slovak
23.	**Slovenia**	Slovenian, Italian, Hungarian (Magyar)
24.	**Finland**	Finnish, Swedish or English
25.	**Sweden**	Swedish or English
26.	**United Kingdom**	English

974. EPO **translation** is mandatory whenever EPO contains at least a few words in a language which the Member State of enforcement has not notified as accepted.[605]

3.11.2. Abolition of exequatur

975. Pursuant to **Article 19** of Regulation 1896/2006:

A European order for payment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

976. The institution of European order for payment differs from the EEO notion — the first one includes EU scale activity and enforceability[606] (except Denmark).

977. Pursuant to Article 19 of Regulation 1896/2006, a European order for payment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability (exequatur process) and without any possibility of opposing its recognition (i. e. initiate

[605] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

[606] Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena : Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.

recognition procedure). In fact, the entire EPO issue procedure has been set autonomous on the EU level, inter alia, using special European Union standard forms – from submitting of an application for European order for payment to the issue of enforceable EPO (see Articles 7-18 of Regulation 1896/2006). Of course, the procedural issues not specifically dealt with in the Regulation shall be governed by national law (for example, partially the issue of European order for payment, enforcement procedures, court fees, transfer from EPO procedure to ordinary civil proceedings). But these circumstances do not influence the autonomous status of EPO in the EU legal space.[607]

978. So, in Article 19 of Regulation 1896/2006 **the EU legislature has not been sufficiently accurate when stating: "A European order for payment which has become enforceable in the Member State of origin". It would have been more accurate to say: "An EPO issued and enforceable in one Member State according to this Regulation shall be immediately enforced in the other Member States (except Denmark)."**

979. Consequently, an enforceable EPO issued in one Member State (standard forms E, A and G) shall be immediately enforced in the other Member States, moreover - enforced without any interim procedure (without exequatur procedure or registration procedure; except the possibility of refusal of enforcement as prescribed by Article 22 of the Regulation). An enforceable EPO possesses EU scale activity and enforceability instead of the activity and enforceability of the Member State of issue (unlike EEO). The EPO shall come into force at the moment when the court pursuant to Article 18 (1) of Regulation 1896/2006 declares the European order for payment enforceable using standard form G. The EPO shall become null and void only if the court of the Member State of origin pursuant to Article 20 of Regulation 1896/2006 decides that the review is justified (see sentence two of Article 20 (3) of the Regulation).

980. Unfortunately, the EU legislature in Regulation 1896/2006 has not stated the autonomous action of EPO, namely its legal consequences and the scope of such consequences (for example, the impact of enforceable EPO on third parties, etc.).[608]

981. EPO in general does not possess *res judicata* or the status of a case law because in the EPO proceedings the claim is not considered on its merits.[609]

982. The EU legislature in the Regulation should also specify the autonomous legal consequences or action of an enforceable European order for payment.

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[607] Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promocijas darbs. Rīga : LU, 2012, p. 116, available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

[608] See also: Lopez de Tejada, M., D'Avout L. Les non-dits de la procédure européenne d'injonction de payer. *Revue critique de droit international privé.* Paris : Dalloz, 2007, n° 4 (octobre-décembre), p. 734, 735.

[609] Lopez de Tejada, M., D'Avout L. Les non-dits de la procédure européenne d'injonction de payer. *Revue critique de droit international privé.* Paris : Dalloz, 2007, n° 4 (octobre-décembre), p. 736, 745.

3.11.3. Review

983. Pursuant to **Article 20** of Regulation 1896/2006:

1. *After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where: (a) (i) the order for payment was served by one of the methods provided for in Article 14, and (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part, or (b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.*

2. After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.

3. If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.

984. If the court decides that review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

985. This article of the Regulation has not been applied by the Latvian courts yet.

986. Who and when is entitled to ask for the review of EPO? Only the claimant is competent to apply for a review of the European order for payment (see Article 20 (1) of Regulation 1896/2006; Section 485.[1], Paragraph one of CPL).

987. The defendant may submit an application for review of EPO only after the expiry of the 30 day period of service of the order on the defendant specified by Article 16 (2) of Regulation 1896/2006.[610]

988. The defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin (see Article 20 (1) of the Regulation). Pursuant to Section 485.[1], Paragraph one, Clause 1 of Latvian CPL the application for a review shall be submitted: regarding the review of a judgment or a decision of a district (city) court — to the regional court concerned.

989. The application for a review of EPO in Latvia may be submitted within 45 days from the day when the circumstances of review provided for in Article 20 (1) or (2) of Regulation 1896/2006 have been ascertained (see Article 26 of the Regulation; Section 485.[1], Paragraph one, Clause 1 of CPL). However, the cases when a limitation period, namely, the 10 year period sets in, shall be taken into account (see Section 485.[1],

[610] Pursuant to Article 16, Para. 2 of Regulation 1896/2006 "The statement of opposition shall be sent within 30 days of service of the order on the defendant."

Paragraph three of CPL; Section 546, Paragraph one of CPL). Pursuant to Article 29 (1) (b) of Regulation 1896/2006, Member States shall communicate to the Commission the review procedure and the competent courts for the purposes of the application of Article 20.

990. Competent courts of the Member states for the purposes of the application for review:[611]

No.	EU Member State	Competent Courts
1.	**Belgium**	*Not notified yet.*
2.	**Bulgaria**	Within the time period prescribed by Article 16, Para. 2 the debtor after the service of the European order for payment on him may apply to the court of appellate jurisdiction and request for a review (appeal according to Article 423 of the Civil Procedure Code).
3.	**Chech Republic**	The review procedure lies within the jurisdiction of the court, which has issued the European order for payment.
4.	**Germany**	The competent court will be lower instance local court of Berlin-Wedding (Amtsgericht Wedding, 13343 Berlin).
5.	**Estonia**	According to the procedure set out by Article 489 of the Civil Procedure Code a European order for payment may be contested by submitting an opposition to the court adjudication. The opposition shall be filed with the district court which has issued the European order for payment. The adjudication with regard to the opposition may be appealed at the regional court which has the relevant jurisdiction. In special cases, at the request of the party to the case, and if new evidence has been received, pursuant to the procedure prescribed by chapter 68 of the Civil Procedure Code an application for the review of a valid court adjudication may be submitted to the Supreme Court.
6.	**Greece**	The review procedure shall be initiated submitting an opposition to the European order for payment to the magistrate or the judge of first instance court in the body of one judge who has issued the order; the latter is competent to make a decision regarding the opposition.
7.	**Spain**	The review prescribed by Article 20 (1) of the Regulation is performed at the request of the default party, revoking the final adjudication (Article 501 and further articles of the Civil Procedure Code, Law 1/2000 of 7 January 2000). The review prescribed by Article 20 (2) of the Regulation shall be performed filing a proposal for revocation of court documents

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See.: http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsreview_lv.jsp?countrySession=19&#statePage0

		(Article 238 and further articles of the Constitutional law on the judicial power; Law 6/1985 of 1 July 1985). In both cases first instance courts have jurisdiction in the matter.
8.	**France**	In exceptional cases the provisions of the review procedure prescribed by Article 20 of the Regulation are identical to those applicable in the opposition procedure. The application for review shall be submitted to the court which has issued the European order for payment.
9.	**Ireland**	The High Court has the jurisdiction in the review procedure: High Court Central Office Administrative address: Four Courts, Inns Quay, Dublin 7 Ireland.
10.	**Italy**	The court of review pursuant to Article 20 (1) of Regulation (EC) No 1896/2006 and the legal proceedings thereof shall be the court, which has issued the European order for payment for the purpose of Article 650 of the Civil Procedure Code of Italy. The court of review pursuant to Article 20 (2) of Regulation (EC) No 1896/2006 and the legal proceedings thereof shall be the regular court, which has issued the European order for payment and to whom the relevant proceedings shall be addressed according to the general rules of the Procedure.
11.	**Cyprus**	The review procedure has been specified by the procedural rules of the Civil proceedings. Written applications of the parties to the claim make the basis for the procedure. In exceptional cases, at the option of the court, the court may hear an oral testimony in addition to written statements and affidavits. The competent courts are the courts notified in clause a).
12.	**Latvia**	Not notified yet.
13.	**Lithuania**	Pursuant to Article 23 of law, the court, which has issued the European order for payment, shall review the reasons for the issue of European order for payment mentioned in Article 20 (1) and (2) of Regulation No 1896/2006. After the receipt of application for the review of European order for payment the court shall send the claimant copies of the application an the Appendixes thereto and inform the claimant that he shall provide a reply in writing within 14 days after the service of the application. The court shall consider the application for the review of European order for payment in written proceedings within 14 days after the expiry of the term for reply to the application and issue an order with regard to one of the decisions as per Article 20 (3) of Regulation No 1896/2006.
14.	**Luxembourg**	The following court instances have the jurisdiction over the statement of opposition and application for review:

		1. District court if the chairperson of the district court or the acting judge have issued the European order for payment. 2. Chief magistrate or the acting judge if the magistrate has issued the European order for payment. 3. Labour court if the chairperson of the Labour court or the acting judge have issued the European order for payment.
15.	**Hungary**	In Hungary the competent court shall be the court, which has issued the European order for payment.
16.	**Malta**	Not notified yet.
17.	**Netherlands**	Article 9 of Law on the application of the procedure of European order for payment: 1. In relation to European order for payment, which has been recognised as enforceable in the understanding of the Regulation, the defendant, pursuant to the circumstances as per Article 20 (1) and (2) of Regulation No 1896/2006, may submit an application for review to the court which has issued the European order for payment. 2. The application shall be submitted: a. in the event as per Article 20 (1) (a) of the Regulation – within four weeks after the defendant has been notified of the enforceable European order for payment; b. in the event as per Article 20 (1) (b) of the Regulation – within four weeks after the reasons mentioned therein have extinguished; c. in the event as per Article 20 (2) of the Regulation — within four weeks after the defendant has learned the reason for the review as indicated therein. 3. Representation by a lawyer or another legal professional shall not be mandatory to submit an application for review.
18.	**Austria**	Applications for review, pursuant to Article 20 (1) and (2) of the Regulation, shall procedurally be considered as applications *restitutio in integrum*. However, a positive decision regarding the application, which is taken in accordance with Para. 2, may be appealed. Bezirksgericht für Handelssachen Wien Administrative address: Justizzentrum Wien Mitte Marxergasse 1a; A-1030 Wien.
19.	**Poland**	Protection of the defendant in the understanding of Article 20 (1) of Regulation 1896/2006 is provided by the provisions on the extension of the time period whereunder a statement of opposition to the European order for payment may be submitted. Part I, Division VI, Chapter 5 "Non-compliance with the time periods and the provisions for extension" (Articles 167-172) of the Civil Procedure Code apply. Pursuant to these provisions a written

		application for the extension of time periods shall be submitted to the court of adjudication within a week from the extinguishing of circumstances which were the reason for such non-compliance. The reasons for application shall be specified in the relevant application. After filing of the application the party concerned shall perform a procedural action. If one year has passed after the expiry of the time period the extension of time periods is permitted only in special cases. The fact that an application for the extension of time period has been submitted does not mean that hearing of the case or enforcement of the adjudication be terminated. In relation to Article 20 (2) of the Regulation the provisions of Article 505 (20) of the Civil Procedure Code apply. The application shall comply with the conditions relating to reply in the case; the reasons for revocation of the European order for payment shall be specified. The competent court is the court which has issued the European order for payment. Prior to revocation of the European order for payment the court shall hear the applicant or invite him to submit a statement in writing.
20.	**Portugal**	The review procedure is the one as prescribed by Article 20 of Regulation 1896/2006; in Portugal the competent court of review is the district court which has issued the European order for payment. Tribunal de Comarca (Secretaria-Geral de Serviço Externo do Porto) Administrative address: R. Gonçalo Cristóvão, 347- 3º e 4º; P-4000-270 Porto.
21.	**Romania**	The legislative acts regarding payment orders (Government Order No. 5/2001) prescribe the procedural means, which the defendant (debtor) may apply to appeal the enforcement of payment order. If the defendant (debtor) for some reason has not requested revocation of court adjudication regarding the payment order, he has a possibility on the basis of material arguments to appeal the enforcement order, which includes the payment order. Thus, by virtue of Article 26 of Regulation 1896/2006 the defendant upon the appeal of enforcement may file with the competent court of Romania an application for the review of European order for payment in the exceptional cases as prescribed by Article 20 (1) and (2) of the Regulation. Moreover, in cases under Article 20 (1) of Regulation 1896/2006 the defendant, pursuant to Article 103 of the Civil Procedure Code of Romania, may apply for release from the limitation regarding the period when

		a statement of opposition be submitted according to Article 16 of the Regulation. Pursuant to legislative acts regarding payment orders, the period for appeal and formulation of defence shall begin from the moment when the order for enforcement of European order for payment has been served on the defendant/debtor – either in person or by a registered letter with an acknowledgement of receipt. Therefore in cases when state legislative acts apply Article 14 of Regulation 1896/2006 and consequently Article 20 (1) of this Regulation shall not be applicable.
22.	**Slovakia**	With reference to Article 29 (1) (b) and Article 228 and further articles of OSP [Civil Procedure Code] respectively, an application for extraordinary means of legal defence ("review") shall be submitted to the competent court, which made adjudication in the first instance court — district court.
23.	**Slovenia**	Courts, which have jurisdiction in review procedures and application of Article 20 of Regulation 1896/2006, are district courts and regional courts.
24.	**Finland**	Article 20 of Regulation 1896/2006 with regard to review of European order for payment is fully applicable in Finland. For the purposes of Article 20 of the Regulation the competent court is Helsinki District Court. In addition to the provisions of Article 20 of the Regulation the provisions of Chapter 31 of the Procedural Code regarding opportunities of extraordinary appeal are applicable. They include appeal by virtue of procedural error (Article 1 of Chapter 31) and revocation of final adjudication (Article 7 of Chapter 31). Chapter 17 of the Procedural Code includes a provision for setting a new time period.
25.	**Sweden**	An application for review is heard by the appellate court (*hovrätt*) (Article 13 of legislative act on the procedure for European order for payment). If the claim is satisfied, the appellate court makes a concurrent decision that Swedish law enforcement body shall reconsider the matter.
26.	**United Kingdom**	**1. England and Wales** An application for review, pursuant to Article 20 of Regulation 1896/2006, in England and Wales shall be filed with the competent court, which has issued the European order for payment in accordance with Part 23 of the Civil Procedure Law. **2. Northern Ireland** An application for review, pursuant to Article 20 of the Regulation, in Northern Ireland shall be filed with the Supreme Court in accordance with Rules of the Supreme Court (Northern Ireland) 1980, which shall

		be amended to provide for such procedure. **3. Scotland** The method applicable for the purposes of review pursuant to Article 20 of the Regulation is under consideration in Scotland at present; all claims shall be addressed to the sheriff. **4. Gibraltar** An application for review, pursuant to Article 20 of the Regulation, in Gibraltar shall be filed in accordance with Part 23 of the Civil Procedure Law.

991. The particular circumstances which lie at the basis for review and are listed in Article 20 (1) and (2) of Regulation 1896/2006 are to be specified in the application for review. No State fee for filing of application for review with the Latvian court shall be paid. In Latvia an application regarding review of adjudication shall be adjudicated by written procedure (see Section 485.[2] of CPL).

3.11.3.1. Grounds for review of a European order for payment — failure to inform the defendant

992. It must immediately be pointed out that Article 20 (1) (a) of Regulation 1896/2006 of the Latvian text, mentions the delivery of a **notice**, which is wrong. The texts in the languages of other member countries do not include this reference to a notice. Here, discussion concerns the European Payment Order (in Latvian — *Eiropas maksājuma rīkojums*; in German — *Zahlungsbefehl*; in French — *l'injonction de payer*). Therefore, Article 20 (1) (a) of the Regulation of the Latvian text should contain the following text:

> *i)* ***The European order of payment*** *was served using one of the methods anticipated in Article 14; and ii)* ***delivery*** *did not occur in due time for reasons of force majeure or otherwise independent of the fault of the defendant, thus preventing the defendant from preparing a suitable defence to the claim.*

993. In Article 20 (1) (a) i) of Regulation 1896/2006, it is clear that the EPO must be served by one of the methods provided by Article 14 of the Regulation (that is, without confirmation of receipt). If the EPO was served by a method provided by Article 13 (that is, with confirmation of receipt), the review process cannot be initiated based on Article 20 (1) (a) of the Regulation.

994. Article 20 (1) (a) ii) of the Regulation Section indicates that:

> *The EPO was 1) not served in due time 2) for reasons for which the defendant is not at fault, 3) thus preventing the defendant from preparing a defence.*

995. It must be noted that, within the legal norms of Regulation 1896/2006 dedicated to the minimal procedural standards (Articles 13 and 14), no deadline within which the EPO must be served is mentioned. The requirement of due time appears only in

Article 20 of the Regulation. It must be admitted that timely service of the EPO does not affect the defendant's opportunity to build a defence. This is because the defendant has a right to submit a review application **only when** the 30-day term for objection submission, indicated in Article 16 (2) of the Regulation, has ended. In turn, this 30-day period is counted only from the moment the EPO is served to the defendant.[612] As can be seen, the wording of Article 20 (1) (a), ii) of the Regulation is more than unfortunate. In Law, it is taught that the term "service of EPO" must be understood as "the moment the defendant was made conscious of the EPO", while the term "preparing a defence" must be understood as "submitting an objection to the EPO".[613]

996. The idea of "conditions independent of the defendant (due to force majeure)" must be independently evaluating by the court in each individual situation.

997. Just as in the case of applying Article 20 (1) (b) of the Regulation, Article 20 (1) (a) of the Regulation anticipates that the defendant must act immediately in order to initiate the EPO review procedure.

998. **Article 20 (1) (b)** of Regulation 1896/2006 with respect to sub-paragraph (a), is considered the norm of general law.[614] The legal norm mentioned determines that a defendant can submit a review application even if the submission of objections has been delayed by force majeure or exceptional conditions arising not through the fault of the defendant. In this case, the defendant must submit a review application without further delay. The term "without delay" is to be translated independently, not through the application of a defined understanding or terminology in the court country's state legislation.

999. Article 20 (1) (b) of Regulation 1896/2006 encompasses all of those cases where the defendant's fault has not been established in the delay of a review application. Situations where the EPO is served in a language incomprehensible to the defendant, without explaining their right to object to the receipt of such a document, must also be included among these cases.[615] As such, the **EU legislator should consider the opportunity to include clearly the principle of a comprehensible language in the minimal procedural standards.**

[612] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 359.
[613] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 359.
[614] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 358, 359.
[615] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 361.

1000. On 9 July 2012, the Vienna Commercial Court (Austria) assigned the prejudicial question of the interpretation of Article 20 (1) (b) and Article 20 (2) of Regulation 1896/2006 to the ECJ.[616] The following questions were asked:

> *1) Should the fact that the lawyer engaged has missed the deadline to submit a review application for the EOP be considered the defendant's own fault, in the interpretation of Article 20 (1) (b) of Regulation 1896/2006?*
> *2) In the case where the lawyer's faulty actions are not the defendant's own fault, is the fact that the lawyer engaged has erroneously indicated the time limit for the review application of the EOP to be considered an exceptional condition in the interpretation of Article 20 (2) of the Regulation?*

1001. Time will show what answer the ECJ will bring to these prejudicial questions.

3.11.3.2. Obviously wrong issue of an EPO

1002. In accordance with Article 20 (2) of Regulation 1896/2006, the review process can be initiated after the end of the 30 day period if the EOP has been obviously wrongly issued, taking into account the specific requirements of this Regulation, or due to other exceptional circumstances.

1003. Translating the general phrase **"obviously wrongly issued"**, the cases indicated in Article 11 of Regulation 1896/2006 must be first used as guidelines, where the application for EPO issue should have been rejected during the revision stage.[617] If this has not been noticed, then it can be corrected during the review process (following the defendant's application).

1004. The cases anticipated in Article 11 of Regulation 1896/2006 are the following:

1004.1. the pre-conditions stated in the Regulation's Article 2 (matters of material application), Article 3 (cross-border cases), Article 4 (the claim was not made in terms of a specific financial demand as an expression of actual money), Article 6 (the international jurisdiction of the EPO's court of issue) or Article 7 (the requirements of EPO formulation and content) for EPO issue;

1004.2. the claim is clearly unfounded.

1004.3. also in the case where the EPO application form has not been fully completed.

1005. In practice, it is important to limit Article 20 (1) of Regulation 1896/2006 from the norm of Article 20 (2). As previously indicated, Article 20 (1) requires the lack of defendant fault, as well as immediate action form the defendant, to initiate the review

[616] Request to provide a prejudicial judgment, which was submitted on 9 July 2012 to Handelsgericht Wien (Austria), case: C-324/12, *Novontech Zala Kft v. LOGICDATA Electronic & Software Entwicklungs GmbH* (2012/C 303/24). Pieejams : www.europa.eu.

[617] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 363.

process. In turn, Article 20 (2) is more applicable directly to flaws in the process of EPO issue itself. For example, Article 20 (2) of the Regulation will be also applicable in cases where the defendant has sent their objections in a timely manner (within the 30-day deadline), while the court has received them only after the EPO has been declared enforceable.[618]

1006. The general phrase **"other exceptional circumstances"** Article 20 (2) of Regulation 1896/2006 are considered in Law as the most unclear of all provisions of Regulation 1896/2006. Here, cases where the EOP has been issued based on *consciously* false facts can be included. Therefore, Article 20 (2) cannot be applied in cases where the EOP has been issued on inadvertently false facts.[619] Of course, this is only a theoretical opinion; court practice over time will show what content will fill the general phrase mentioned.

3.11.3.3. Legal consequences of examining a review application

1007. In accordance with **Article 20 (3) of Regulation 1896/2006**, the court examining the review application (in Latvia — the regional court) has two options:

1007.1. **reject the application** (Sentence 1 of Article 20 (3) of the Regulation and as such the EPO remains enforceable, or

1007.2. **accept the application** (Sentence 2 of Article 20 (3) of the Regulation) and as such the EPO is no longer enforceable.

1008. In accordance with **Section 485.[3] of CPL**, a Latvian court examining a review application has these options.

1009. If the court determines that there are grounds to review the EPO, it **revokes** the disputed decision (EPO) in its entirety **and passes the case for a new examination** in a Court of First Instance. An ancillary claim to this court decision can be submitted (Section 485.[3], Paragraphs two and four of CPL). Here, a somewhat unclear situation is forming, because it turns out that a regional court revokes the EPO declared enforceable, and passes the case for new examination to a court of first instance, which must begin the entire EPO examination process from the beginning. In separate cases, this would not necessary. For instance, if the defendant has already fulfilled the condition even before an enforceable EPO has been issued. Here, it would be enough to revoke the EPO.

1010. The same applies to cases where the court of first instance has applied Regulation 1896/2006, although it was not applicable (for example, the court had no jurisdiction in this case; the case did not fit within the material, geographic or temporal scope of the Regulation; etc.). Passing the case for new examination to a court of first instance is

[618] *Ibid*., S. 364, 365.

[619] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 366, 367.

justified only in the situations indicated in Article 20 (1) of the Regulation.[620] As such, it would be more correct to provide the CL with the option of satisfying the review application by revoking the EOP declared enforceable (not passing the case for new examination to a court of first instance).

1011. In cases where the EOP has already been settled in the territory of Latvia, Section 635, Paragraph five of the CPL anticipates a **reversal of execution**.[621] Problems arise if the EPO has been settled in a *different* Member State (not in Latvia, which has issued the EPO and is examining the review application). **The EU legislator should resolve such situations autonomously within the Regulation 1896/2006, anticipating a special standard form in case of a reversal of execution.**

1012. Meanwhile, if settlement has not occurred, the defendant, who has submitted a review application in the country of origin of the EPO, has a right to request a court in the country of *settlement* to halt or limit the EPO settlement (see Article 23 of the Regulation). A situation may arise where an EPO issued by a Latvian court must be settled (fully or partially) within the territory of Latvia; then review and also cease of settlement will be decided within Latvia, that is, 1) *EPO review* — in a Latvian regional court whose operational territory contains the court of first instance issuing the EPO; 2) *cease or limit of settlement* — a local (municipal) court, in whose operational territory the EPO is to be settled. As can be seen, two separate courts will examine mutually related questions. **Was the intent of the Latvian legislator in these situations conscious, or accidental?**

1013. If the EPO has been settled before submission for forced settlement, the defendant may request to decline EPO settlement in a court of the *settlement* Member State, without submitting a review application in the Member State of origin (see Article 22 (2) of the Regulation). Still, this applies to situations where the EPO has been justifiably issued (none of the grounds for review in Article 20 of the Regulation are present) and the defendant has voluntarily paid the sum indicated in the EPO.

1014. If the court admits that the circumstances indicated in the application cannot be considered circumstances for EPO review, it **rejects the application**. An ancillary claim can be submitted regarding this court decision (Section 485.[3], Paragraphs three and four

[620] It must be remembered that a new examination of the case due to new circumstances is still different from a new examination due to a review of the decision. In the first case, the new circumstances influencing the results of the case review are established. In the case of EPO review, different conditions are in effect: 1) the case is not examined as such in an EPO process (similar to the process of forcibly enforcing national obligations by warning); 2) the EPO by its legal nature cannot be equated with a decision where a case is examined as such; 3) in the case of new circumstances the case is passed for new examination to a court of first instance because Section 4, Paragraph two of CPL clearly indicates that a civil suit is not to be examined **as such** in a higher court, until it has been examined in a lower court (unless otherwise indicated by the CPL). In the case of an EPO, no examination of the case as such occurs, which is why Section 4, Paragraph two of CPL is not applicable to these situations.

[621] The court rules on the enforcement turn of an EPO, reviewing the case from the beginning after the annulment of the EPO (see Section 635, Paragraph five of CPL).

of CPL). As can be seen, this opportunity generally corresponds to the first sentence of Article 20 (3) of Regulation 1896/2006.

1015. From Article 20 (3) of Regulation 1896/2006 and Section 485.[3], Paragraphs two, three and four the **following questions are unclear.**

1015.1. *At which point does a decision from a Latvian court become enforceable during the review case?* According to Section 442, Paragraph one of CPL, if the defendant lives in Latvia, the decision comes into effect once the 10-day objection period has ended. In turn, if the defendant lives in a different EU Member State, then the decision comes into effect once the 15-day period for ancillary claim submission has passed (see Section 442, Paragraph 1.[1] of CPL). If the regional court has satisfied the defendant's application and has revoked the EPO, then no particular issues arise. However, if the regional court has rejected the defendant's application, then the EPO remains enforceable.

1015.2. *What happens to the decision during the time the defendant can still submit an ancillary claim and does the submission of an ancillary claim halt enforcement of the decision?* As previously indicated, the decision of the regional court does not come into effect immediately, and is not to be enforced without delay. As such, neither will the still-enforceable EPO be settled without delay. But how will the Member State of settlement know of this (if not the same as Member State of review)? **The fact that the EU legislator has not determined a unified standard form for these situations — that is, for EPO review processes and their legal consequences — is to be rated negatively. That is, they should be autonomous and immediately distributed in the entire EU territory (except Denmark).**

1015.3. *Does the court send its decision not just to the defendant, but also to the claimant?* According to Section 231 Paragraph one of CPL, the decision is delivered only to the person to which it refers. Obviously, here discussion concerns both the defendant and the claimant.

1015.4. *At which point does the court decision become enforceable?* With the moment the submission period for the ancillary claim has ended, as indicated in Section 442 of CPL.

3.11.4. Refusal of enforcement

1016. In accordance with **Article 22** of Regulation 1896/2006:

1. Enforcement shall, upon application by the defendant, be refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that: the earlier decision or order involved the same cause of action between the same parties; and the earlier

decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement; and the irreconcilability[622] *could not have been raised as an objection in the court proceedings in the Member State of origin.*
2. Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.
3. Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.

1017. In Latvian courts, this Article of the Regulation has not yet been applied.

1018. As previously established, the Member State of enforcement of Regulation 1896/2006 has cancelled the process of decision recognition and exequatur. The situation mentioned in Article 22 (1) of Regulation 1896/2006 is the only remnant of the recognition and exequatur process.

1019. The defendant's (debtor's) application. For a Latvian court to decide the issue of a refusal to enforce an EPO issued by the court of a different Member State in Latvia, an application from the defendant (debtor) is necessary). A Latvian court may not do so by its own initiative (*ex officio*); see Article 22 (1) of the Regulation and Section 644.[3], Paragraph four of CPL. The defendant's (debtor's) application is to be completed in accordance with Section 644.[4].

1020. The state fee does not apply to submission of the application. Section 34, Paragraph seven of CPL provides for a state fee in the amount of LVL 20, which must be paid only for applications for the recognition and enforcement of foreign court decisions, but not for the application to refuse enforcement of an EPO. Still, if the application mentioned simultaneously requests that a foreign court's decision be recognized and enforced in Latvia (made earlier than the EPO), then the state fee of LVL 20 must be paid.

1021. The debtor must submit an application to the competent Latvian court, which, according to Section 644.[3], Paragraph four of CPL, is district (city) court in the territory of which the EPO is enforceable.

1022. The application is reviewed in a court session, with the participants of the case notified in advance. An ancillary claim about the court decision can be submitted (Section 644.[3], Paragraphs five and six of CPL). It is irrelevant if this is a decision which satisfies or rejects the application. The decision must be well-founded.

1023. Ground for refusing enforcement. Grounds for refusing enforcement are listed in Article 22 (1) and (2) of Regulation 1896/2006 and these are the **irreconcilability of two decisions,** as well as the **voluntary settlement of the EPO** by the defendant.

[622] Article 22 (1) of Regulation 1896/2006, in the Latvian language text, has an obviously wrong term "nolēmumu nesamierināmība" (irreconcilability). There is no such term in civil procedure; there is the term "nolēmumu nesavienojamība" (incompatibility) (in French, *incompatible*; in German, *unvereinbar*; in Italian, *incompatibile*; in Spanish, *incompatible*; in Lithuanian, *nesuderinamas*).

1024. Irreconcilability of decisions. The irreconcilability of decisions is one of the classic barriers to having foreign court decisions recognized[623] and it is significant because, **first**, to protect the mutual consistency of court decisions and, **second**, to protect the legal process of the country of enforcement, not allowing such foreign court decisions which would undermine the stability of local legal order by allowing two conflicting or even opposing court decisions to be active in the country (for example, one decision orders that the sale price indicated in the contract must be paid, while a second decision proclaims this contract to be void). In other words, the test of decision irreconcilability is to be viewed as a protective filter for the legal system of the country of enforcement.[624]

1025. Article 22 (1) of Regulation contains a **principle of first decision priority in time**, in accordance with which the decision or order accepted temporally first is recognized and enforced.[625] Regulation 1896/2006 does not anticipate that the decision (or order) accepted first temporally may already be in effect. The date of the decision is crucial.

1026. The next criterium is this: both decisions must be accepted **with the same cause of action** (in Latvian — *tas pats prasības priekšmets un pamats*; in German — *identischer Streitgegenstand*; in French — *la même cause*; in Italian — *una causa avente lo stesso oggetto*; in Spanish — *el mismo objeto*; in Lithuanian — *tuo pačiu iekšinio pagrindu*; in Polish — *tego samego przedmiotu sporu*; in Swedish — *samma sak*) and **between the same parties**. The Latvian text uses an imprecise term, "the same cause of action". This concept is unknown in Civil Law, which is why it is to be considered equivalent to the concept "the same subject and basis of the claim *(direct translation — transl.)*". The concepts "between the same parties" and "the same cause of action" are to be translated as in Article 34 (3) and (4) of Brussels I Regulation, that is — here, the autonomous interpretation of these concepts is to be applied, provided by the ECJ in its former and current adjudication.

1027. Irreconcilable decisions **of to a geographic nature** can be accepted:

- **1027.1. In the Member State of enforcement and another EU Member State** (including Denmark), for example, the decisions of Latvian and Irish courts. If a debtor's application is submitted to a Latvian court concerning a refusal to enforce an EPO issued by an Irish court then, if the preceding decision of the Latvian court is irreconcilable with this EPO issued in Ireland, then the Irish EPO is to be refused.
- **1027.2. In two other EU Member States** (for example, court decisions of Ireland and Germany). If a debtor's application is submitted to a Latvian court concerning a refusal to enforce an EPO issued by an Irish court, then, if the preceding

[623] Kropholler, J. Internationales Privatrecht. 5.Aufl. Tübingen : Mohr Siebeck Verlag, 2004, S. 651.
[624] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637. panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), 165. lpp.
[625] Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637. panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), 164. lpp.

decision made by a German court (regardless if confirmed as a European Enforcement Order (EEO)), or corresponding to the conditions to be recognized in Latvia in accordance with EU regulations) is irreconcilable with this EPO issued by an Irish court, then the enforcement of the Irish EPO in Latvia is to be refused.

1027.3. **In a different EU Member State and a third country** (for example, Irish and Ukrainian court decisions). If a debtor's application is submitted to a Latvian court concerning a refusal to enforce an EPO issued by an Irish court, then, if the preceding decision made by the Ukrainian court (adhering to the conditions to be recognized in Latvia) is irreconcilable with the EPO issued by the Irish court, the enforcement of the Irish EPO in Latvia is to be refused.

1028. Another pre-requisite for the irreconcilability of decisions in the claim is added by Article 22 (1) (c) of Regulation 1896/2006. That is, **the irreconcilability cannot be used as grounds for the objection in the court procedure of the EPO Member State of origin**. This once more leads to the conclusion that the overall system of Regulation 1896/2006 forces the defendant to be active in the Member State of origin of the EOP specifically, and avoid delays in their defence at a later time in the Member State of enforcement. Thus, Article 22 (1) (c) indicates the irreconcilability of decisions as the final exception for the refusal to enforce the EPO. The concept "court procedures of the Member State of origin" should be understood as the processes listed in Articles 16 and 17 of Regulation 1896/2006.[626]

1029. Unfortunately, the F standard application form "Objection to a European order of payment" mentioned in Appendix VI of Regulation 1896/2006 does not anticipate that a defendant might wish to indicate such irreconcilability. As such, legal literature indicates situations where the defendant has discovered the irreconcilability of decisions after the period for objection submission provided in Article 16 (2) of the Regulation has already ended.[627]

1030. German legal literature admits that Article 22 (1) of Regulation 1896/2006 is not applicable to mutually competing EPOs issued in different Member States between the same parties and with the same cause of action. In this situation, the legal mechanism anticipated in Article 20 (1) of the Regulation is in the defendant's action — to obtain EOP review in the Member State issuing the later EPO.[628]

1031. When applying Article 22 (1) of Regulation 1896/2006, the defendant's subject of application is the request to refuse the enforcement in Latvia of an EPO issued by the court of a different Member State. As such, the EPO and the *a priori* irreconcilable decision (see Section 644.[4], Paragraph two, Clauses 1 and 2 of CPL) should be appended

[626] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 375.
[627] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 375.
[628] *Ibid.*, S. 377.

to the application, as both of these must be examined by the Latvian court when making a decision on the irreconcilability of decisions as the grounds for refusing enforcement of the EPO.

1032. Voluntary enforcement of the EPO by the defendant. In accordance with Article 22 (1) of Regulation 1896/2006, enforcement of the EPO by defendant application is refused also when, if and as much as the defendant has paid the amount **ordered in the EPO** to the claimant (a real transaction must occur, not merely, for example, a clearing). Here attention is directed to the words "ordered in the EPO", which thus indicates only those payments made following the issue of the EPO (E standard form) but not to those already paid before issue of the EPO. This means that this norm cannot be applied in all situations where the defendant has already paid the financial debt. Everything is determined by the **point in time** when payment was made.

1033. The EPO procedure, just as the process of forcibly enforcing national obligations by warning (further in text — *FENOW*) recognized in Latvian civil procedure, and similar procedures existing in other EU Member States, is directed towards obtaining a specific action from the debtor, that is — "pay or object".[629] Both actions in the classic FENOW process are not demanded simultaneously of the debtor. Imagine a situation where the debtor, receiving the E standard form "European order for payment" provided in Article 12 (1) of Regulation 1896/2006 does not submit an objection (by completing the F standard form) but by paying the amount indicated in the EPO. At this stage, Regulation 1896/2006 does not require the defendant to produce any proof of payment of the debt. Article 12 (4) (b) of the Regulation states: "the order becomes enforceable unless a notice of objection is submitted to the court, in accordance with Article 16" (therefore — a F standard form completed by the defendant). This means that, if the defendant pays the sum without objections, then the EPO becomes enforceable in any case, which is absurd.[630] **The EU legislator should correct this mistake**. As long as this is not done, defendants who have already paid the settlement amount must simultaneously submit their objections on a F standard form; thus — in the case of the EPO, the phrase is "pay **and** object, or don't pay and object". If the defendant obeys the information on the E standard form and pays, then later he will have difficulties not paying this debt twice over — paying voluntarily **and** paying through EPO enforcement. Of course, this situation is completely dependent on the claimant's honesty — if they see that the defendant has reacted to the EPO by paying, then they will revoke their

[629] Correa Delcasso, J.P. Le titre exécutoire européen et l'inversion du contentieux. *Revue internationale de droit comparé.* 2001, n° 1 (janvier-mars), p. 65. See also Regulation 1896/2006 columns of point a. on the Appendix E forms "Important information for the defendant", which indicates: "You may i) pay the claimant the amount indicated in this order or ii) object to the order by submitting a notice about your objection to the court issuing the order, within the period indicated in point b.".

[630] For comparison, see Section 406.[7], Paragraph one of the Latvian CPL: "Debtor's objections submitted within the prescribed time period against the validity of the payment obligation or **the payment of the debt** shall be the basis for termination of court proceedings regarding compulsory execution of obligations in accordance with warning procedures."

application or will not submit an EPO already in effect for enforcement.[631] But this may not occur. In this situation, the defendant will be able to make use of the opportunities in Article 22 (2) of Regulation 1896/2006.[632]

1034. If the debtor has paid the debt before the EPO has been issued, then Article 22 (1) of the Regulation will not be applicable, as the defendant should have already objected to the EPO in a timely manner (Article 16 of the Regulation). If the defendant has not submitted their objections in the time limit anticipated, they can still use the opportunity provided in Article 20 (2) of the Regulation 1896/2006 to request that the EPO be reviewed in its Member State of origin, because the EOP has been issued obviously wrongly.[633]

1035. When submitting the application mentioned in Section 644.[3], Paragraph four of the Latvian CPL the defendant must append the document certifying the payment of the amount ordered in the EPO (see Section 644.[4], Paragraph two, Clause 3 of CPL).

1036. Prohibition of *révision au fond*. When ruling on the question of enforcement refusal of a foreign-issued EPO in Latvia, the court cannot review the EPO as such (in international civil law, it is sometimes referred to as a prohibition of *révision au fond*[634]). It must assess only the fact of decision irreconcilability, or the fact of payment of the amount ordered in the EPO.

3.11.5. Stay or limitation of enforcement

1037. In accordance with **Article 23** of Regulation 1896/2006:

> *Where the defendant has applied for a review in accordance with Article 20, the competent court in the Member State of enforcement may, upon application by the defendant:*
> *limit the enforcement proceedings to protective measures; or make enforcement conditional on the provision of such security as it shall determine; or under exceptional circumstances, stay the enforcement proceedings.*

1038. Within Section 644.[2], Paragraph one of the Latvian CPL, the legislator has anticipated that the local (municipal) court, within whose territory the EPO is to be

[631] Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 169.

[632] Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 169; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 380.

[633] See also: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 381.

[634] French – review by substance.

enforced, by application of the debtor[635] and based on Article 23 of Regulation 1896/2006, has a right to:

1038.1. Substitute EPO enforcement with activities anticipated in Section 138 of CPL to ensure the enforcement of this order;

1038.2. amend the form or process of EPO enforcement;

1038.3. stay EPO enforcement.

1039. When submitting the application provided in Section 644.[2] of CPL, the debtor does not pay the state fee.

1040. The debtor's application for stay or limitation of enforcement is reviewed by the Latvian court in court session, notifying the case participants in advance, although their non-attendance is not a barrier to review of the application (Section 644.[2], Paragraph three of CPL). An ancillary claim regarding the court decision can be submitted Section 644.[2], Paragraph four of CPL).

1041. The rules in Article 23 of Regulation 1896/2006 altogether correspond to the goal defined in Recital 9 of the Preamble to the Regulation — "The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement."

1042. Article 23 of the Regulation attempts to protect the defendant from situations where a review application has already been submitted in the EPO's Member State of *origin*, but the Member State of origin has not stayed or limited EPO enforcement. Here the Member State of *enforcement* can protect the defendant from the enforcement of such an EPO submitted in its country of origin for review, but, by law, the EPO is still binding to the competent enforcement facilities of the state.

3.11.5.1. Grounds for enforcement postponement or limitation

1043. Grounds for postponement or limitation of EPO enforcement are indicated in Article 23 of Regulation 1896//2006, and these are: **if the defendant has requested EPO review in its Member State of origin in accordance with Article 20 of the Regulation**.

1044. In this case, the court of the Member State of enforcement must assess the prospective results of EPO review in its Member State of origin, as well as the irrevocable harm to the defendant arising from an enforcement turn later, if no

[635] Unlike Regulation 1896/2006, which uses the term “defendant", Section 644 of CPL uses the term “debtor".

enforcement postponement or limitation occurs in the Member State of enforcement.[636] For more details about Article 20 of Regulation 1896/2006, see sub-chapter "Review" of the Research(§983 and forward).

1045. In all cases, for a Latvian court as a court of the Member State of enforcement, can decide the question of postponing or limiting an EPO issued in a different Member State, the following are necessary:

- **1045.1.** the debtor's application (Article 23 of Regulation 1896/2006 and Section 644.[2] of the Latvian CPL; application content and the documents to be appended are determined by Section 644.[4] of the Latvian CPL;
- **1045.2.** the debtor must have already submitted an application for EPO review (Article 20 of the Regulation) in its Member State of origin. Section 644.[4], Paragraph two, Clauses 2 and 3 of the Latvian CPL state that this application (regarding postponement of EPO enforcement, division into segments, form of enforcement or amendments to the process, refusal of enforcement) must have appended to it an appropriately certified EPO statement transcript, as well as other documents used by the defendant (debtor) as grounds for the application. In this case, the application must also have appended to it a document showing that the applicant has submitted an EPO review request in the EPO's issuing country.

3.11.5.2. Forms of enforcement postponement or limitation

1046. The forms of EPO enforcement postponement or limitation in Latvia, according to Article 23 of Regulation 1896/2006, are the following (Section 644.[2], Paragraph one of the Latvian CPL):

- **1046.1.** Replacing EPO enforcement with actions anticipated in Section 138 of CPL to ensure this order is enforced;
- **1046.2.** amendments to the form or process of EPO enforcement;
- **1046.3.** EPO enforcement suspension.

1047. It must be noted that the form mentioned in Article 23 (b) of the Regulation, "to put forth for enforcement the condition to produce the collateral determined by the court", is not anticipated in the Latvian CPL. Here, the topic is a guarantee (also, *security*; in Latvian — *garantija*; in German — *Sicherheit*; in French — *sûreté*), demanded from the defendant by the court in case the EPO is later declared invalid in its Member State of

[636] Péroz, H. Le règlement CE n° 805/2004 du 21 avril 2004 portant création d'un titre exécutiore européen pour les créances incontestées. Journal du droit international. 2005, n° 3 (juillet-août-septembre), p. 673; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-MahnVO (Gruber U.P.), S. 384, 385.

origin.[637] Simultaneously, forced enforcement in the Member State of enforcement continues.

1048. Replacing EPO enforcement with actions anticipated in Section 138 of CPL as security for enforcing the order. The Latvian court has a right to replace EOP enforcement with a form of security anticipated in Section 138 of the Latvian CPL. The court decision must indicate which form of security is being applied. It must be noted that, in this case, forced settlement is postponed (Section 559, Paragraph two of CPL). However, with respect to the defendant's possessions, the court applies a form of security in the decision (for example, by confiscating the defendant's movable property).

1049. Amendments to the form or process of EPO enforcement. The Latvian court may, with its decision, amend the form or process of EPO enforcement. Unlike Section 206 of CPL,[638] Section 644.^{2} allows the court to decide on this question only after the defendant's (but not the claimant's) request.

1050. Unlike Section 206 of CPL, in the case of the application of Section 644.^{2}, the Latvian court must assess not the defendant's material status or other conditions, but the prospective results of EPO review in the EPO's Member State of origin, as well as the possible irreversible harm to the defendant's interests in case of an enforcement turn later, if no enforcement postponement or limitation actions in the Member State of enforcement are taken.

1051. Unlike Section 206 of CPL, in the case of application of Section 644.^{2}, the local (municipal) court, in whose jurisdiction the EPO is to be enforced, has competency to rule on amendments to form or process of enforcement.

1052. Unlike Section 206 of CPL, in case Section 644.^{2} is applied, the court enforcement officer does not have recourse to the court with an application to amend the form or process of EPO enforcement (as well as postponement of enforcement or division into parts), if there are circumstances encumbering EPO enforcement or making it impossible. **Possibly, the Latvian legislator should consider the option to include such a standard legislation in the Latvian CPL.**

1053. Suspending EPO enforcement. Section 644.^{2}, Paragraph one, Clause 3 of CPL must be read as a unified whole with Article 23 of Regulation 1896/2006, which means that the suspension of EPO enforcement is allowable only in exceptional circumstances (unlike substitution or amendment of enforcement).

1054. The concept of "exceptional circumstances" should be understood in situations where EPO enforcement would transgress the public order of the Member State of

[637] Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 180.

[638] The first part of CL Article 206 anticipates that the court may decide on amendments to sentence enforcement form and process based on the application of a case participant.

enforcement (*ordre public*).[639] Therefore, the Latvian court must see if the review application submitted in the EPO Member State of origin has grounds due to transgressing on one's rights to a fair trial, as mentioned in the first part of Article 6 of the EConvHR, and which correspond to the situations listed in Article 20 of the Regulation.

1055. If a Latvian court has ruled to suspend enforcement, the law enforcement officer suspends the process of EPO enforcement until the time indicated in the court decision, or until the decision is repealed (see Section 560, Paragraph one, Clause 6 of CPL and Section 562, Paragraph one, Clause 3 of CPL). During the time the process of enforcement is suspended, the law enforcement officer does not engage in any forced enforcement activities (Section 562, Paragraph two of CPL).

3.12. Interaction of Regulation 1896/2006 with other bills of standard legislation

1056. Brussels I Regulation (Regulation (EC) 44/2001) will be applied in accordance with Article 6 (1) of Regulation 1896/2006, determining international jurisdiction (see §771 of this Research and forward), whereby Brussels I Regulation essentially supplements the reviewable Regulation 1896/2006. The standards of Brussels I Regulation will be applicable to the determination of a person's domicile (see Article 3 (2) of Regulation 1896/2006).

1057. In accordance with Recital 28 of the Preamble to Regulation 1896/2006, **Regulation 1182/71** is to be the guideline with which to determine those conditions with time periods, dates and deadlines. As indicated in the Study, the interaction of these Regulations is essential (see § 948 and forward), since the deadlines stipulated in Regulation 1896/2006 are calculated in accordance with Regulation 1182/71, not the Latvian CPL. Recital 28 of the preamble to Regulation 1896/2006 states: "To calculate deadlines, the Council Regulation (EEC, Euratom) No. 1182/71 [...]. The defendant must be notified of this and informed that the official holidays of the Member State of the court issuing the European order of payment will be taken into account." For example, Regulation 1182/71 will be applicable to deadlines mentioned in Article 9, Article 12 (1) and Article 16 (2) of Regulation 1896/2006. Meanwhile, terminology not mentioned in Regulation 1896/2006 and, by virtue of Article 26 or Article 21 (1) of the Regulation, direct towards the Member State's national standard legislation, will be calculated using the Member State's national procedural regulations.

1058. Meanwhile, Article 27 of 1896/2006 states that this Regulation is not impacted by application of the ***Regulation for Issuing Documents***. This means that, within

[639] Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S.14; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 181.

Regulation 1896/2006 itself, is a determined, autonomous procedure referring to the ways the document (EPO) can be served (see pages 13–15), which leads to the conclusion that the Regulation for Issuing Documents can be applied only through the minimal procedural standard prism incorporated into Regulation 1896/2006.

1059. All **procedural** questions not specifically defined in Regulation 1896/2006 are regulated by the national standard legislation of Member States (see Article 26 of the Regulation). For example, these are questions to be resolved regarding the amount of court fees (§817 and forward), the issue of documents (§ 954 and forward) and the forced enforcement of the EPO (§ 963 and forward). If such questions not defined in Regulation 1896/2006 occur during the issue of the EPO, then the national procedural standards (*lex fori*) of the country reviewing the EPO application should mainly be applied. However, if the procedural questions not regulated directly by the Regulation occur during EPO enforcement, then the national procedural legislation of the Member State of enforcement must be applied — *lex loci executiones* (see also Article 21 (1) of Regulation 1896/2006). It must be noted again that the deadlines not mentioned in Regulation 1896/2006 which arise from the national legislation of Member States, must be calculated with the latter (see Article 26 and Article 21 (1) of the Regulation). For example, a Latvian judge's decision not to advance an EPO application (Section 131, Paragraph two of CPL) can be appealed by the deadline specified in Section 133, Paragraph two and Section 442 of the Latvian CPL and this deadline is to be calculated in accordance with Sections 47 and 48 of CPL. As can be seen, with respect to the calculation of deadlines, one must be careful and must first determine if the deadline is defined in Regulation 1896/2006 itself or is only in the Member State's national procedural legislation (which is indicated in Article 26 or Article 21 (1) of Regulation 1896/2006).

4. A general assessment of the use of the European Judicial Atlas in Civil Matters

1060. Several times in the Study, it has been indicated that useful information may be found in the Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm) necessary for legal collaboration in civil cases, including the application of the Regulations examined in the Study. Using the Atlas, the relevant courts and facilities to be applied to in specific cases can be selected. It is especially convenient to complete the Regulation's forms online, changing the form's language following completion and before printing (so that the person receiving the form can read it in their own language) and send these forms electronically. It must be added that the contents of the Atlas is incrementally being included into the European e-legal site:
https://e-justice.europa.eu/content_european_judicial_atlas_in_civil_matters-88-lv.do.

1061. Performing an empirical study (see § 1094 and forward), the Researchers interrogated judges, court bailiffs and other attorneys regarding use of the Atlas. **First**,

they were asked whether the Atlas was used in the course of their work. Nine judges and one attorney responded affirmatively. However, nine judges and four attorneys indicated that they had not used it at that time. It is positive to note that precisely judges are those using the Atlas in their work.

1062. **Second**, respondents were requested to indicate any difficulties in applying the Atlas. 80% of those surveyed replied negatively, while two judges indicated that, for example, the application forms for Regulation 1896/2006 in Latvian do not correspond to the original, and that often problems of a technical nature are often experienced — the system is often down or slow.

1063. **Third**, in reply to the question, nine judges and three attorneys indicated that it would be necessary to organize a training seminar for work with the Atlas.

1064. It must be added that, during the Research, court administration employees were selectively questioned about the availability of Regulation 861/2007 forms in court. The Study's authors were directed to the Atlas, which indicates that court employees are also informed about the Atlas and know what information it has available.

1065. *Conclusions*: While the Atlas and the e-legal site are wonderful tools for courts and practicing attorneys, the researchers believe that its potential is squandered and more information about the Atlas should be dispersed. In addition, organization of training seminars related to the Atlas and the site should be considered.

5. Statistics of Regulation application

1066. Unfortunately, the viewable categories of cases in publicly available reviews of civil law statistics are not subdivided,[640] which made the precise summarization of numbers of cases difficult. Still, the authors of the Research managed to collect court decisions pertaining to the Regulations examined. Data of the court decisions are applicable to the time period until 1 August 2012. The decisions known by the authors of the Research are used and analyzed in this Research.

1067. From author data, **Regulation 805/2004** has been applied in Latvian courts within the time period specified at least 26 times. Most applications have been received in the courts of the Riga jurisdiction — 21. EPOs have been issued in only two cases. Unfortunately, in both cases Regulation 805/2004 has been applied incorrectly, because the EOP has been confirmed by a bill issued by a Latvian sworn advocate.[641] **First**, a bill from a sworn attorney does not contain all characteristics of a public notice mentioned in the Regulation (see Article 4 (3) of the Regulation and § 256 of the Research and forward). **Second**, Latvia has not notified the European Commission that attorneys in Latvia may issue public notices in accordance with Article 25 of the Regulation.

1068. In the majority — 20 — of cases, the request to issue an EPO has been denied, or these requests have been rejected. The courts have ruled: refusal to accept the request; due to lack of progress in the request and lack of problem resolution in the request.

1069. The main reason for refusing to issue an EPO is that the defendant has not been informed of the main court process, so it cannot be believed that the process has followed minimal procedural standards. For example, in several cases, since the defendant did not receive court notices at their registered address in Latvia, they were invited to the court session through an advertisement in the newspaper Latvian Herald, in accordance with Section 59 of the Civil Procedure Law.[642] In these cases, the courts had grounds not to confirm decisions with an EPO, because, as mentioned in this Research, Regulation 805/2004 clearly defines the ways in which documents may be served to the debtor, and invitation to a court session via a publication is not sufficient notice for the defendant about the initiated process. (see § 135 and forward). Unfortunately, the new procedure in

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[640] See Legal Information System statistics, available at: *https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O&SessionId=DCF6E66C100419EF3CA38F20A8084970&groupid=tisstatcl&topmenuid=151*.

[641] Decision of the Riga Municipal Vidzeme District court from February 5, 2010, in civil case No. C30385610 [unpublished]; Decision of the Riga Municipal Vidzeme District court from August 31, 2010 in civil case No. C30589310 [unpublished].

[642] Decision of the Daugavpils court from November 21, 2011, in civil case No. C12144611 [not published]; decision of the Talsi regional court from November 24, 2011, in civil case No. C36031711 [not published]; decision of the Kurzeme district court from November 10, 2011, in civil case No. C40114410 [not published].

effect from 1 January 2013, regarding the legal fiction of document issue[643] (if documents are mailed to the defendant's registered domicile in Latvia; see Section 56.[1], Paragraph two of CPL) will not correspond to minimal procedural standards (see Article 14 (1) (e) of Regulation 805/2004 together with Recital 13 of the Preamble to the Regulation).

1070. In a different case, the court ruled that the decision cannot be confirmed as a contested EPO demand.[644] That is, during the court process it was determined that, in their explanations, the debtor has indicated that they do not recognize the demand and that it is unfounded. As mentioned in the subchapter "Uncontested demands" of this Study (§ 81 and forward), if the debtor has objected to a demand, then it cannot be regarded that the preconditions in Article 3 (1) of Regulation 805/2004 for an uncontested demand have been filled.

1071. In other cases where decisions were not confirmed as EPOs, the applicants themselves have not understood the scope of Regulation 805/2004 application. So, for example, in two cases, the applicants have submitted applications to confirm an EPO via court decision for the issue of an enforcement notice for the forced enforcement of a decision from a permanent court of arbitration.[645] Article 2 (2) (d) of Regulation 805/2004 clearly indicates that the Regulation is not applicable to courts of arbitration. This also applies to cases where the court has ruled on the issue of a notice of enforcement for the forced enforcement of a decision from a court of arbitration. The recognition and enforcement of an arbitration decision is determined by the New York Convention on the recognition and enforcement of foreign arbitral awards.[646]

1072. The researchers discovered that, for the most part, when reviewing cases in accordance with Regulation 805/2004, Latvian courts have applied it consistently and correctly. In addition, the length of application review is eight days, although the Kuldiga court has reviewed such cases within one or only two days.

1073. The following Latvian courts have had cases where Regulation 805/2004 has been applied:

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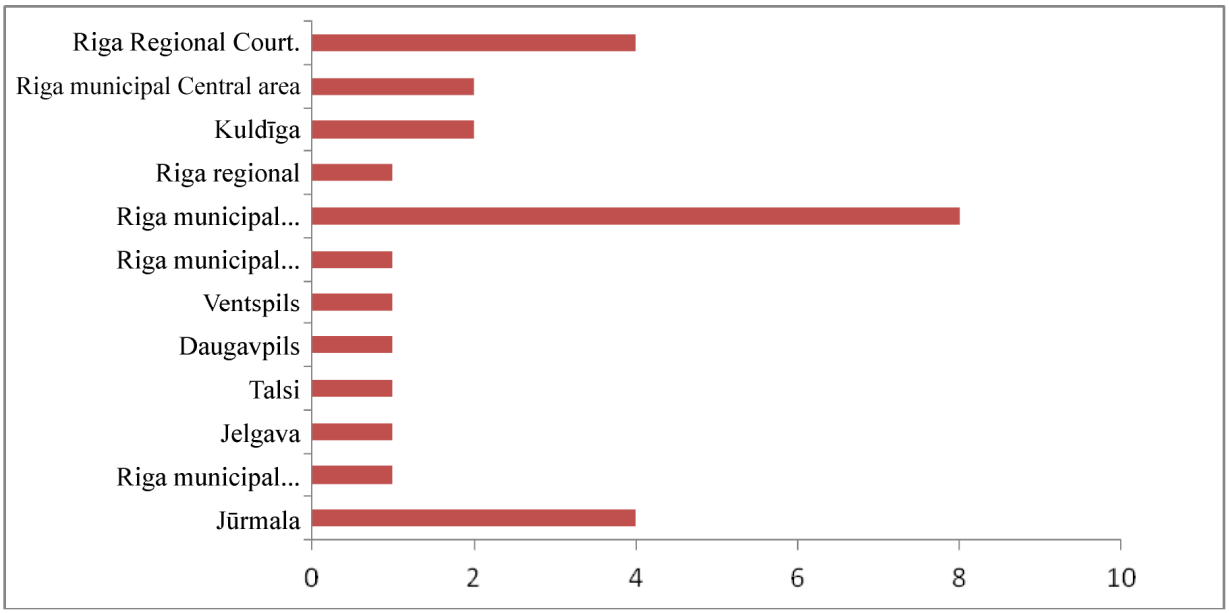
[643] In the second part of the new Article 56[1] of the CL, it is referred to as the presumption of issue, although in reality it is legal fiction. For more details, see: Rudevska, B., Jonikāns, V. Deklarētās dzīvesvietas princips Civilprocesa likumā: vai tiešām risinājums. Jurista Vārds, Nr. 36, 2012. gada 4.,septembris, , 7., 8. un 11. lpp.

[644] Decision of the Jūrmala municipal court from December 9, 2010, in civil case No. C17132509 [unpublished].

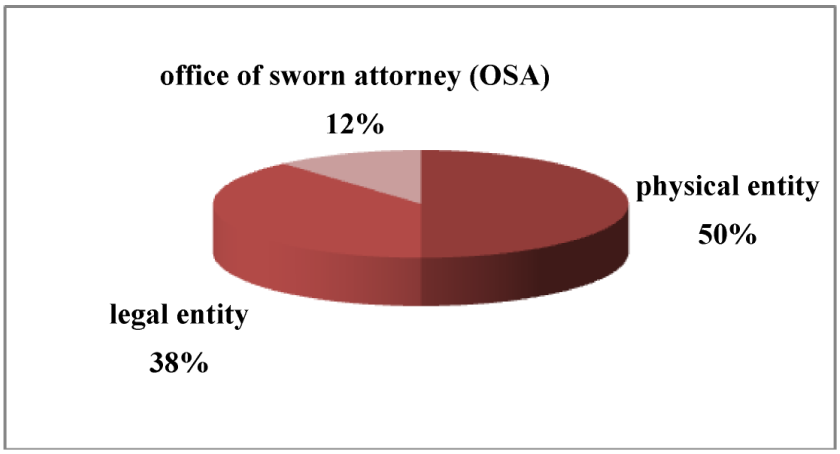
[645] Decision of the Riga District Court Collegium of Civil Matters from September 12, 2011, in civil case No. 3-12/3031 [unpublished], decision of a Jelgava court judge from November 28, 2011, in civil case No. 3-12/0735.

[646] The New York Arbitration Convention, on the Recognition on Enfrocement of Foreign Arbitral Awards [1958] 330 UNTS 38.



1074. Most court decisions do not indicate the defendant's domicile. Still, in separate cases, an EPO has been requested for decisions ruled against Lithuanian, Italian, British and German physical and legal entities. It is interesting that, in three cases, the defendants have been the offices of sworn attorneys, who have requested that bills issued by sworn attorneys be confirmed as EPOs.

1075. The next graph shows the fractional division by defendant category.



1076. In four cases, ancillary claims regarding a decision from a court of first instance were submitted, but all four were refused by a higher court.

1077. The authors of the Study have determined that **Regulation 861/2007** is comparatively rarely applied in Latvian courts. Researchers successfully found only 6 cases, of which only one was examined as such. This one case has been mentioned multiple times in this Study, and is to be rated positively.[647] Still, the suggestion of the

[647] Decision of Jelgava court on 27 January 2012, in civil case No. C15285811 [not published].

Researchers is, henceforth, when examining European small claims cases, to evaluate whether an oral examination of the case is really necessary, because the goal of this Regulation is to examine these cases in writing, as quickly as possible (see Recital 14 of the Preamble to Regulation 861/2007 and Article 5 (1) of the Regulation). It must also be indicated that the Regulation mentioned is applicable to those cases which have a monetary value. In that way, for example, the question of breach of contract is not to be ruled on in this process.

1078. In the other cases, applications for review were rejected or the application was left without progress, but the further resolution of these cases remains unknown to the researchers. It must be added that the courts have left the applications without progression on proper grounds, because the claimants have either not used the mechanisms of the Regulation in cross-border matters[648] or have not filled out application form A properly — for example, have incorrectly indicated the claim.[649] In these cases, it is important that the court, in as simple language as possible, indicates these deficiencies using form B, thus fulfilling the requirement of the Regulation contained within Recitals 21 and 22 of the Preamble to the Regulation — to provide practical help to all parties in the completion of forms.

1079. In one case, the judge had grounds to refuse a European small claims application, because the request regarded the collection of unused vacation pay from a municipality.[650] As indicated in the decision, in accordance with Article 2 (2) (f) of Regulation 861/2004, it is inapplicable to employment rights. In addition, it must be mentioned that, in this case, the Regulation was also not applied because it did not have a cross-border character (see Article 3 of the Regulation), that is — none of the parties involved in the case was residing or had a domicile in different EU Member State.

1080. From the application of Regulation 861/2004, Latvian courts may arrive at the conclusion that, unfortunately, the parties involved and even their representatives are poorly informed about applications of the Regulation, and that they lack the skills to apply it even though the information is available online.[651] This, however, allows the conclusion that the goals of this Regulation are not fully reached — by simplifying and accelerating court proceedings, as well as by not using the professional help of attorneys. In these cases, the court spends additional time in inviting all parties to specify the applications of the claim, and also do so in cases where the parties have representation.

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[648] Decision of the Liepāja court from 1 February 2012, in civil case No. 3-11/0052/11 [not published], decision of the Daugavpils court from 18 May 2012, in civil case No. 590/2012 [not published].

[649] Decision of the Jelgava court from 6 July 2011 in civil case [no case number indicated, not published].

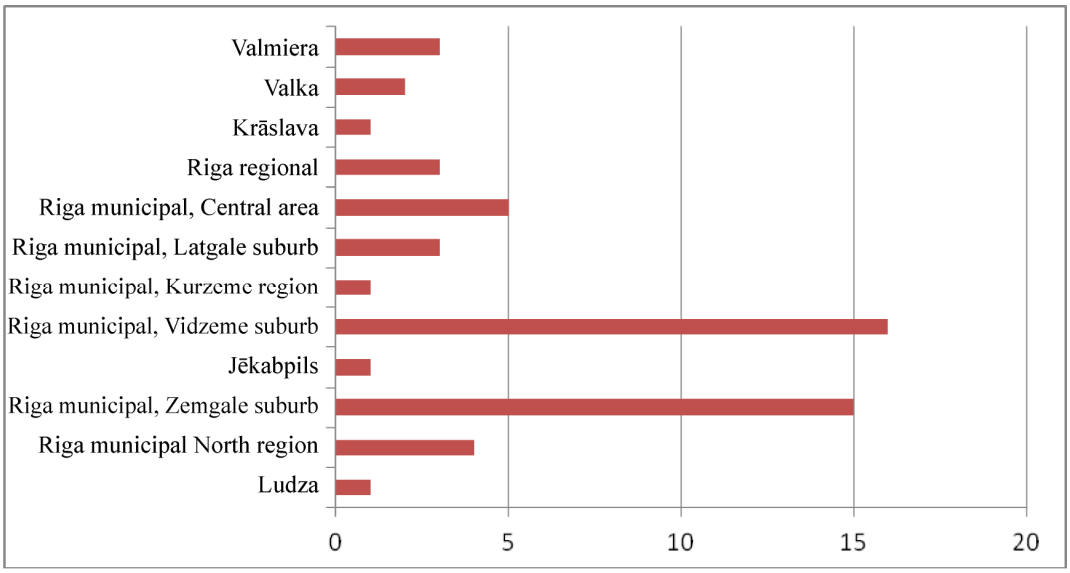
[650] Decision of the Jekabpils regional court from 6 February 2012, in civil case No. 3-10/0004 [not published].

[651] For example, the site of the European Consumer Information Centre: http://www.ecclatvia.lv/index.php/lv/component/content/article/256-mazaapmeraprasibas. European Judicial Atlas in Civil Matters: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm.

1081. One positive aspect is that parties wish to use this procedure (or, in cross-border cases, the court suggests it to parties), if the claim amount is small, that is, below EUR 2000. From the decisions from which was possible to discover claim amounts, these amounts fluctuated from LVL 116 to LVL 1242. In the case reviewed, though, the claim amount was LVL 62.99, but with various court fees (state fee, forensic analysis, etc.), came to a total of LVL 106.89. In addition, the court considered LVL 81.72 of those to be well-grounded, and this amount was collected from the defendant. In this case, it can be observed that the process is fairly expensive and, in opening a case, the defendant must invest a significant sum. Thus, the question once again arises: is the goal of the Regulation — to decrease the cost of cross-border litigation – actually achieved.

1082. From the information available to the researchers, **Regulation 1896/2006** has been applied by municipal and regional courts 55. The most applications (47) have been received by the Riga legal district courts, 5 — in Vidzeme, 2 — in Latgale, and 1 in the Zemgale court district.

1083. This graphic reflect the courts which have applied **Regulation 1896/2006**:



1084. Defendants are most often represented from Lithuania, Poland and Estonia, but still, in the majority of cases, the country of domicile of creditors is not indicated in the decision. Meanwhile, most defendants are legal entities — 52, but in only 3 cases — private entities.

1085. Of 55 cases, only nine were litigated. In these cases, all requirements of the Regulation, from the court's point of view, have been fulfilled. From the researchers' point of view, in the case of a positive decision, the judge must rule not to initiate litigation, but for the issue of a European order of payment.

1086. Also, courts have ruled to leave a case without examination (in three cases), even though this procedure is not anticipated in the Regulation itself. For example, in these cases, the EPO was delivered to the defendant in accordance with the order in Article 13

(a) of Regulation 1896/2006 — as registered mail with a notice of delivery, but the letter has not been delivered to the addressee. The court, when determining that the Regulation provides no answer for action to be taken if the defendant does not receive the EPO, followed the statements of Chapter 50.[1], Section 406.[6], Paragraph two of the Civil Procedure Law, which declare that, if delivery of a warning to the debtor is not possible, the judge decides to issue the application without examination.[652]

1087. Courts have also refused to accept applications for EPO (11 cases). Article 11 of the Regulation clearly indicates cases, when the application can be rejected. Of all these cases, only three judges have referred to this article.

1088. Similarly, courts have ruled to suspend proceedings (in seven cases). In this category of cases, courts have received the defendant's objections to the EOP and, if the claimant has indicated in their application that they do not wish to review the case in the usual litigation procedure, then, in accordance with Article 17 (1) of the Regulation, the court suspends litigation.[653]

1089. In 17 cases, the application was left without progress and the creditor was provided with an opportunity to eliminate deficiencies. The most common deficiency was the non-payment of state fees and other expenses related to case review, and document submission in a language other than the national language. Still, in various cases, when they have been found lacking, the courts refuse to accept applications. Thus it is necessary to create a consistent court practice, where, in such cases, the application is either refused or left without progress. Here, Articles 9 and 11 of the Regulation should be used as guidelines.

1090. The examination of these cases indicates that defendants whose domicile or place of residence is in a different Member State have not examined the information available in the Atlas about the official language in Latvia. However, here a deficiency of the Regulation appears — not all barriers for effective access to courts are removed (Recitals 8 and 9 of the Preamble). That is, even if the A form can be completed on the European E-Justice Portal by simultaneously using the form in one's native language, several fields require not only checking the proper box but written explanations (see form A, aisles 6 and 10). Still, according to the researchers, the biggest problem is related to fee payment, that courts do not accept payments in other currencies (for example, EUR) or if they have been drawn up in a different language.

1091. In cases where deficiencies have not been averted, the courts, in accordance with Section 133 of the CPL, have ruled that the EPO application is not submitted (four cases).

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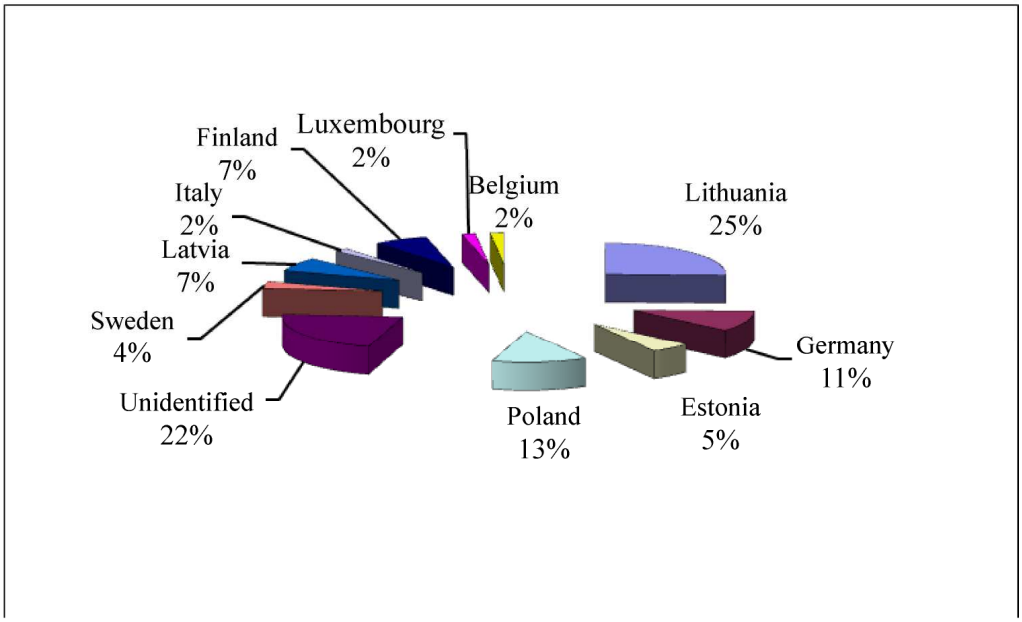
[652] Decision of the Krāslava regional court judge from 13 September 2011, in the civil case No. 3-12/230 [not published], decision from the Riga municipal Latgale District court from 5 May 2011, in civil case No. 3-12/0762/11.

[653] See decision of the Riga municipal Zemgale District court from 17 February 2012, in civil case No. 3-12/0011/5-2012 [not published], decision of the Riga district court from 9 February 2012, in civil case No. C33300012 [not published].

1092. With respect to the general application of this Regulation, it must be said that the courts understand Regulation 1896/2006, but the efficient and effective application of the Regulation is bothered by variation in national rights, language and currency.

1093. The Table indicates countries of origin of creditors, as fractions:



6. Results of a survey of representatives of legal professions about the application of regulations in practice: An empirical study

1094. Researchers developed survey forms for judges, caourt bailiffs and practicing attorneys (see samples in Appendix 2 of this Research). The forms were published online, and a request to fill them out were sent to all judges, court bailiffs and selectively chosen attorneys. The forms were distributed in the Latvian Judge Training Centre.

1095. The forms were completed anonymously, and it must be admitted that the response was less than overwhelming, which could be explained by the fact that these Regulations are not often applied in the practice of court employees and attorneys.

6.1. The number of judges surveyed and an assessment of their responsiveness

1096. On 1 October 2012, survey forms, with the kind support of the Court Administration, were sent out to all Latvian judges by e-mail with an invitation to complete them electronically. In the same way, with the kind support of the Latvian Judge Training Centre, a second electronic invitation was sent out, as well as forms in paper format. In this way, 18 judges were surveyed. The researchers once again extend their gratitude to these judges for their time and responsiveness! The results of judge surveys are appended to this Research as Appendix No. 3.

1097. Regulation 805/2004 has been applied by only two judges, but three judges believe that the text of the Regulation is unsatisfactory and the language quality of the text needs improvement. Applying the Regulation, judges have not had difficulty in determining if the request is "uncontested" (four replies), but those judges who have examined an application to confirm a decision as an EPO, have not beforehand confirmed the observance of minimal procedural standards of the process whose result has led to this decision (Article 6 (1) (c) and Articles 12 to 17 of the Regulation), thus nobody has managed to avert the inconsistency with minimal procedural standards. Six confirmed replies have been received about the necessity to coordinate the conditions of minimal procedural standard (Articles 12 to 19 of the Regulation) with the standards of the Latvian CPL about the issue of court documents (Chapter 6 of CPL). None of the judges surveyed have reviewed a debtor's demand to refuse enforcement in Latvia of an EPO issued in a different EU Member State (Article 21 of the Regulation).

1098. Vital are the replies to the question of whether the judges are clear in all cases of the mutual relationship of Regulation 805/2004 with Regulation 4/2009 (Article 68 (2) of Regulation 4/2009). Of seven respondents, only two have answered in the affirmative, the others have insufficient knowledge of the questions of Regulation interaction (four

replies), as well as concern over the legal quality of regulation text are present (one response). To the question "Are CPL standards, with respect to the application of Regulation 805/2004, satisfactory?", seven judges have given a positive reply.

1099. Regulation 1896/2006 has been applied by only four judges surveyed, and only one has issued or refused to issue an EPO. Judges admit that they have no problems in determining a cross-border character to a case, the presence of an uncontested financial demand or international jurisdiction. Taking into account that a relatively small number of judges have applied the Regulation in practice, the question "Is it necessary to improve the transition from the regular civil suit and should it be more clearly formulated by the CPL?" received only one positive reply. In addition, the judge has indicated that the lack of a separate regulation in the CPL causes judges, by analogy, to apply Chapter 50.[1] of the CPL. The majority have no opinion about this transition from one process to the other.

1100. In questions about difficulties in the completion of standard forms, it has been consistently indicated that no forms have been completed at all. Judges have positively rated the consideration that cases in this category could be passed to land registry judges — 100% of respondents.

1101. Meanwhile, of 18 surveyed judges, only two have applied **Regulation 861/2007**, but no one has calculated any deadlines in accordance with this Regulation. In the question of how judges determine international jurisdiction in cases where the Regulation must be applied, opinions differ, as 67% have responded that it is determined in accordance with Brussels I Regulation, but the remaining judges do not apply it. The judges surveyed have not had cause to complete the standard forms in the appendix of the Regulation.

1102. Most judges have admitted that they have not attended training about the Regulations examined in the Study. Still, a respondent indicated that "seminars are very theoretical, mainly regulation articles are read out, but nothing is said of applying them in practice and how to act in specific cases and how forms should be completed". A positive aspect is that six of the judges surveyed would attend training in English, one — in French and one — in German. Half (50%) of surveyed judges use the Atlas, but five would need training in the use of this site.

1103. In the survey, mainly regional and municipal judges expressed their opinions, being the main appliers of these Regulations in Latvia. Still, 89% stated, that they do not specialize in civil and commercial matters. The Regulations examined in the Study simplify the process and alleviate the work of the court, but the presence of a cross-border character as well as the application of national standards to fill the holes in the Regulations requires special knowledge, which is why it is hoped that this Study and the following training will not only increase the popularity of the Regulations, but also their correct application.

6.2. The number of practicing attorneys surveyed and an assessment of their responsiveness

1104. On 1 October 2012, an electronic invitation to fill out the survey was sent out to selectively chosen attorneys, and it was also published in social venues with open forums specifically for attorneys. The response was tepid. This can be explained by the fact that attorneys rarely use the Regulations examined in the Research. This is also confirmed by five surveyed attorneys — two sworn lawyers, one assistant to a sworn attorney, and two lawyers in a legal office. For example, only one of them has applied Regulation 805/2005, three — Regulation 1896/2006, but none — Regulation 861/2007.

1105. As only one attorney has applied Regulation **805/2004**, it has not been possible to identify the difficulties in applying this Regulation. Still, an attorney surveyed has expressed the opinion that the quality of Latvian of the Regulation must be improved, without indicated what, exactly, should be improved. Two attorneys replied affirmatively to the question of whether it is necessary to coordinate minimal procedural standards with the standards of the CPL.

1106. Regulation **1896/2006** has been applied by a majority of the attorneys surveyed, together — three attorneys, and two of them believe that the Regulation's text in Latvian is unsatisfactory. Attorneys have not had difficulty in judging international jurisdiction or the status of a cross-border case, or the presence of an uncontested financial demand in cases. According to them, the transition anticipated in the Regulation to regular civil law (Article 17 (1) of the Regulation) in the Latvian CPL should be simplified. This was indicated by two of the attorneys surveyed, while two had no opinion on this matter. Two attorneys believe that the EPO process would be easier if Regulation 1896/2006 would contain an autonomous rights standard, which anticipates the claimant's responsibility to cover court fees, but three attorneys specify that form A of Regulation 1896/2006 requires an aisle where the claimant can immediately indicate a request to have all court fees compensated. Two opinions were expressed concerning the inclusion of special legal standards into the Latvian CPL (thus declining from the application of Section 406.[6], Paragraph two of the Latvian CPL), which determines the process by which the EPO (that is, form A and other attached documents) is served to the defendant. The question of whether EPO issue should be passed to land registry judges received an affirmative reply from two attorneys, while two objected to this possibility. The question of whether attorneys in Latvia have had difficulty in enforcing an EPO issued in a different country by submitting form G, "Notice of Enforcement", in Appendix VII of Regulation 1896/2006 to a competent facility, three replies were received — one "yes", one "no" and one "do not recall". The author of the affirmative reply indicated in comments that "the notice of enforcement was appealed, formally using a complaint about law enforcement officer comportment, essentially objecting the legality of issuing the notice of enforcement itself".

1107. During an oral survey, one of the sworn attorneys indicated that often it is difficult to determine the defendant's — private entity's — address in a different EU Member State. It is only known (from relatives, neighbours) that they moved permanently to, for example, Ireland, but this person's actual address is unknown. In practice, it is very complicated to find this information (for example, it must be searched via the police; requests to Latvian embassies must be sent) or even impossible. If the defendant's address in another EU Member State is unknown, then none of the EU enforcement processes — no matter whether Regulation 805/2004, Regulation 1896/2006 or Regulation 861/2007 — can be used. **As such, the problem mentioned should be resolved at the EU level, for example, by implementing an effective and fast collaboration among Member States for discovering the address of domicile of physical entities for legal purposes.**

1108. Since none of those surveyed had applied **Regulation 861/2007**, then survey results have not provided the results desired, which would aid in understanding the difficulties of applying this Regulation.

1109. Nevertheless, it was interesting to discover that no attorneys surveyed had attended any training concerning these Regulations, but would be willing to do so in foreign languages. Only one attorney has used the European Judicial Atlas in Civil Matters in their work.

1110. One of the advantages of all the Regulations is that these European procedures allow to forego the inclusion of an attorney (for example, Recital 15 of the Preamble to Regulation 861/2007), which could be a reason for attorneys applying them so rarely in daily work. At the same time, it must be admitted that these procedures are not yet too popular in Latvia.

6.3. The number of court bailiffs surveyed and an assessment of their responsiveness

1111. On 1 October 2012, with the mediation of the Latvian Sworn Law Enforcement Officer Council, invitations to all court bailiffs to fill out the surveys mentioned were sent out. On 1 November 2012, individually selected enforcement officers were addressed. However, the researchers were unable to gain any response from any law enforcement officer to complete the survey concerning the Regulations, even though, according to the information available to the Researchers, enforcement officers encounter such cases daily. Researchers can only repeat the request for court bailiffs to be more active in the future, so that these Studies can examine questions significant to them, too.

7. Implementation of Regulations in the Latvian legal system

7.1. Performed legislative measures

1112. The Regulations were incorporated into the CPL, as well as the Land Register Law and the Notariate Law.

1113. The incorporation of Regulations into the **CPL** occurred in three stages.

1114. Stage one: amendments to the CPL 07.09.2006. edit were made, coming into effect on 11.10.2006.[654] These amendments affected the implementation of Regulation 805/2004. The concepts, used in Regulation 805/2004, of "enforcement suspension and enforcement limitation" were unknown within the Latvian legal system, and as such the enforcement actions defined in Section 644.[2], Paragraph one, Clauses 1 to 3 of the Civil Procedure Law were compared to the enforcement actions anticipated and known within national legal standards.[655]

1115. Stage two: the 05.02.2009 amendment of the law was accepted, which took effect on 01.03.2009,[656] with which Regulation 1896/2006 was incorporated into CPL. For example, Section 541.[1] of CPL was supplemented with Paragraph 4.[2], declaring that a court issues a European order for payment in accordance with the conditions of the regulation mentioned. Similarly, the amendments affect questions in the implementation of Regulation 861/2007, including the service of court documents. Nevertheless, the initial legislative bill and annotation make no mention of this last regulation and the amendments mentioned were included only in the second reading.

1116. State three: the 08.09.2011. amendment to the law was accepted, which came into effect on 30.09.2011[657], and these amendments are some of the most expansive in relation to the regulations examined. A new chapter, 60.[1], was added to CPL, "New examination of the case due to decision review under circumstances anticipated by legal standards of the European Union". This chapter determines the agreement and review process for applications in exceptional circumstances, as anticipated by Article 19 of Regulation 805/2004, Article 18 of Regulation 861/2007, Article 20 of Regulation 1896/2006. The annotation of the law indicates that, if a court rules, in accordance with the regulations

[654] 07.09.2006. law "Amendments to Civil Law", "LV", 154 (3522), 27.09.2006, available: *http://www.likumi.lv/doc.php?id=144415*.

[655] Annotations to the law "Amendments to Civil Law", project VSS-1382, TA-3126, available: http://mk.gov.lv/doc/2005/TManot_301105.doc, 3. lpp.

[656] 05.02.2009 law "Amendments to Civil Law", "LV", 31 (4017), 25.02.2009, available: *http://www.likumi.lv/doc.php?id=188235*.

[657] 08.09.2011. law "Amendments to Civil Law", "LV", 148 (4546), 20.09.2011, available: *http://www.likumi.lv/doc.php?id=236269*.

mentioned (Article 18 (2) of Regulation 861/2007, Article 20 (2) of Regulation 1896/2006), that the defendant has grounds to request decision review, then the appealed decision loses power. Still, Regulation 805/2004 does not directly provide for such consequences, because it was incorporated first and at that time, the necessity of these rules was not yet known. For this reason along with the new Section 485.[3] of CPL the consequences which anticipate that, if a court allows decision review and thus the contested decision loses power, refers to all cases of decision review anticipated in all regulations mentioned. These consequences, when a legally effective and enforceable decision can lose its power in accordance with CPL, is possible only in situations where a new examination of a case where the decision has already come into legal effect. For this reason, decision review in the CPL is incorporated in Part 11, by supplementing it with a new Chapter 60.[1].[658]

1117. The 5 February 2009, amendments to the CPL did not anticipated a standard state fee for submitting an application for a European order of payment. The legislator, taking into account that the process by which the court issues a European order of payment, is similar to the process defined in the CPL for a notice of enforcement for the forced enforcement of a decision, has declared the same fee amount for an application for a European order of payment,[659] meaning that, currently, the state fee is currently two percent of the amount owed, but no more than LVL 350. Similarly, a process is anticipated for accepting the state fee, a process in Section 36.[1] — for an application for a European order of payment in accordance with the European Parliament and Council Regulation No 1896/2006, the fee paid is to be transferred to the state budget for the claim, if the defendant has notified of objections against the European order for payment and legislation of the claim continues.

1118. Section 206[1] of the Civil Procedure Law was supplemented with rules concerning the actions of the court issuing a decision by following Regulation 861/2007, if a debtor's request, in relation to Article 15 (2) of Regulation 861/2007 or Article 23 of Regulation 1896/2006. The articles mentioned in the regulations determine the suspension or limitation of enforcement. In these cases, the court can replace the decision or enforcement of the European order of payment with the request for security or collateral as provided for in Section 138 of the Civil Procedure Law, for ensuring the enforcement of the decision or the European order of payment; amend the form or process of decision or European order of payment enforcement; suspend the enforcement of the decision or the European order of payment. The article's second part anticipates the process for the review of such an application, that is — it is reviewed in court session, by notifying all parties of the case. An ancillary claim regarding the court decision can be submitted.

1119. Appendix 3 contains all direct references to the Regulations within the CPL.

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[658] Annotation to the law "Amendments in Civil Law", project VSS-1172, TA-3791, available: *http://mk.gov.lv/doc/2005/TMAnot_120110_groz_CPL.3791.doc*, p. 29.

[659] Annotation to the law "Amendments in Civil Law", project VSS-1172, TA-3791, available: *http://mk.gov.lv/doc/2005/TMAnot_120110_groz_CPL.3791.doc*, p. 34.

1120. The Regulations were implemented through changes in **other standard legal legislation**, too.

1121. During the preparation of this Research, the Cabinet of Ministers supported amendments to the Notariate Law, declaring that a sworn attorney, by lender request in accordance with Article 25 (1) and (3) of Regulation 805/2004, referring to contracts of financial loans in the form of notarized notices, issue a European Enforcement Order (Regulation 805/2004 Appendix III).[660] The forms mentioned in Article 6 (2) of Regulation 805/2004 (Regulation 805/2004 Appendix IV) and Article 6 (3) (Regulation 805/2004 Appendix V) are issued by a sworn attorney by request of the interested party.

1122. A sworn attorney issuing such notarized notices by request of the interested party may correct errors in the European Enforcement Order or recall the European Enforcement Order, based on Article 10 of Regulation 805/2004. When submitting a request for the correction of recall of a European Enforcement Order, the form mentioned in Article 10 (3) of Regulation 805/2004 must be used (Regulation 805/2004 Appendix VI).[661]

1123. However, the amendments mentioned to not anticipate other forms of contract or negotiation to become notarized notices for which a European Enforcement Order could be written. In addition, to this point, Latvia has not notified the Commission (as per Article 30 (1) (c) of Regulation 805/2004) that notaries may issue public notices in accordance with Article 25 of the Regulation. This information is not in the Atlas.

1124. In the Land Register Law[662], together with 26 May 2011, law "Amendments to the Land Register Law"[663], Section 64, Paragraph one is supplemented with Clauses 7, 8 and 9, which determine the foundational documents for a request for securities. In accordance with these Paragraphs currently in effect: "The Documents mentioned in Section 61, Paragraph one must be submitted as originals, excepting situations when the request for security is based on: [...] 7) a European Enforcement Order issued by a foreign court or other competent institution in accordance Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims; 8) a court's, also a foreign court's, issued certificate in accordance with Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, Article 20 (2); 9) a foreign court's or other competent institution's issued European order of payment in accordance with Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, Article 18."

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[660] Draft law "Amendments to Notariate Law" VSS-453, TA-1414, reviewed at the Cabinet of Ministers on 31.07.2012, Section 107.[1] available at http://mk.gov.lv/lv/mk/tap/?pid=40249389.

[661] Ibid. Article 107.[2] *et seq.*

[662] 22 December 1937 Land Register Law: Law of the Republic of Latvia. Latvian Herald, No. 11, 08.04.1993.

[663] Amendments to the Land Register Law: Law of the Republic of Latvia. LAtvian Herald, No. 93, 15.06.2011.

1125. In accordance with Section 64, Paragraph two of the Land Register Law, "In the situation anticipated [...] in part one of this article is issued [...], in the situation anticipated by Clause 7 — a copy of the enforcement document certified by a law enforcement officer from a foreign court or competent institution, but in the situation anticipated in Clauses 8 and 9 — a copy of the issued document, certified by a sworn law enforcement officer, also a foreign court."

7.2. Education and Training

1126. Within this Research, it was also discovered what kind of trainings concerning the regulations examined is organized for judges, court bailiffs, sworn attorneys and other legal employees, and how often this training occurs. Queried were: the Latvian Judge Training Centre, the Latvian Council of Sworn Attorneys and the Council of Court Bailiffs, as well as the Ministry of Justice of the Republic of Latvia.

1127. In its 30 August 2012 letter, the **Ministry of Justice** indicates that, in March and April of 2010, it organized a training session "Cross-border litigation in civil matters — the European order of payment and the European procedure for small claims", offering a general overview of Regulation 1896/2006 and Regulation 861/2007, the pre-conditions of their application and the Latvian perspective. 120 participants experienced the training, including: judges, representatives of municipal offices, sworn attorneys and the representative of the Ministry of Justice of Lithuania.

1128. In accordance with the information provided by the **Latvian Judge Training Centre** on 5 July 2012, this centre has organized training five times for one and the same lecture — training for EU autonomous procedures in commercial matters and civil matters for courts of first and second instance (18 February 2009; 4 December 2009; 18 March 2009; 11 February 2010; 18 October 2010). The approximate number of participants, in total, was about 120 attorneys.

1129. In accordance with the information provided by the **Latvian Council of Court Bailiffs** on 17 July 2012, the council has organized two lectures — on 5 November 2010, a lecture titled "Enforcement of foreign court decisions in Latvia: from theory to practice" and, on 11 May 2012, a lecture titled "The applicable law, process of recognition and enforcement, interaction with Latvian regulations with the rules of Council Regulation (EC) No 44/2001, rules for the agreement of cases", within whose framework training about European Union level procedures in civil matters also occurred. The number of participants is not mentioned.

1130. In accordance with information provided on 10 July 2012 from the **Latvian Council of Sworn Attorneys**, this organization has not organized any special training about the examined regulations, and the Council has not received any information which it could disperse to colleagues about the fact that such training is being held by some other institution of the Republic of Latvia.

1131. It must be stated that attorneys are interested in supplementing their knowledge about the regulations examined in this study, and training that has already occurred has provided a general overview in their application. Still, judging from all worry expressed by those practicing in courts, attorneys and judges, it is believed that knowledge is insufficient which is why we hope that this Study will aid practicing lawyers and other interested parties to be more familiar with these regulations.

7.3. Publications

1132. In Latvia, in the period from 1 January 2004 to 10 December 2012, the following publications in the Latvian language about Regulation 805/2004, Regulation 861/2007 and Regulation 1896/2006, have been issued:

- Rudevska, Baiba. Eiropas izpildu raksts. *Likums un Tiesības*. Nr. 1 un No. 2, (9.sēj.), 2007.
- Palčevska, Dagnija. Eiropas procedūru piemērošanas jautājumi. *Jurista Vārds*, Nr. 9 (562), 03.03.2009.
- Rudevska, Baiba. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjautājumi. *Jurista Vārds*, Nr. 24/25 (567/568), 16.06.2009.
- Torgāns, Kalvis. Maza apmēra prasības Civilprocesa likumā un Regulā Nr. 861/2007, ar ko izveido Eiropas procedūru maza apmēra. Book: *Inovāciju juridiskais nodrošinājums. LU 70. konferences rakstu krājums*. Riga: University of Latvia Press, 2012, p. 49 – 59.
- Markovskis, Erlens. Saistību bezstrīdus piespiedu izpildes brīdinājuma kārtībā uzlabošanas virzieni. II. Problēmas brīdinājuma procesā pēc brīdinājuma. *Jurista Vārds*, Nr. 34 (733), 21.08.2012.
- Damane, Linda. Notariālais akts kā mantisko un nemantisko tiesību garants. Promotion Paper. Riga: University of Latvia Press, 2011. Available at: https://luis.lanet.lv/pls/pub/luj.fprnt?l=1&fn=F-2050448075/LindaDamane 2012.pdf. See Sub-paragraph 3.1.2 of this Promotion Paper "Notariāls akts kā izpildu dokuments Eiropas Parlamenta un Padomes Regulas (EK) Nr. 805/2004 (2004. gada 21. aprīlis), ar ko izveido Eiropas izpildes rīkojumu neapstrīdētiem prasījumiem, izpratnē" (p. 113–116).
- Rudevska, Baiba; Jonikāns, Valerijans. Deklarētās dzīvesvietas princips Civilprocesa likumā: vai tiešām risinājums. *Jurista Vārds*, Nr. 36, 2012. gada 4. septembris, p. 4–12. See this article's Paragraph 2.4. "Starptautiskais civilprocess un tiesas dokumentu izsniegšana" (p. 11).
- Rudevska, Baiba. Quality of Legal Regulation of Minimum Procedural Standards in European Procedures of Enforcement of Decisions: A Critical Analysis. In: *The Quality of Legal Acts and its Importance in Contemporary Legal Space*.

International Scientific Conference, October 4-5, 2012. Riga: University of Latvia Press, 2012, p. 626-634.

- Rudevska, Baiba. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komerclietās Eiropas Savienībā un Hāgas Starptautisko privāttiesību konferencē. Promotion Paper. Riga: University of Latvia Press, 2012. Defence of this promotional article is anticipated on 22 January 2013, at the University of Latvia, Riga, Raina bulv. 19. Available at: https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F885910470/Baiba%20Rudevska%202012.pdf.

1133. In Latvia, from the time period from 1 January 2004 until 10 December 2012, the following scientific seminars have been held concerning the regulations mentioned here:

- Rudevska, Baiba. Oral presentation: "Eiropas maksājuma rīkojuma procedūra: piemērošanas priekšnosacījumi un aktuālākie problēmjautājumi" (8 October 2008). The scientific conference organized by the Latvian Ministry of Justice "*Current issues in Civil Law 2007-2008"*.
- Torgāns, Kalvis. Oral presentation: "Maza apmēra prasības Civilprocesa likumā un Regulā Nr.861/2007. The 70th scientific conference organized by the University of Latvia.
- Rudevska, Baiba. Oral presentation: "Minimālo procesuālo standartu tiesiskā regulējuma kvalitāte Eiropas izpildu procedūrās: kritiska analīze" (4 October 2012). International scientific conference organized by the University of Latvia, "*Tiesību aktu kvalitāte un tās nozīme mūsdienu tiesiskajā telpā (The Quality of Legal Acts and its Importance in Contemporary Legal Space)*".

Abbreviations

2007 Hague Protocol	Hague Protocol of 23 November 2007 on the Law Applicable on Maintenance Obligations
Atlas	European Judicial Atlas in Civil Matters
Brussels I Regulation	Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation)
Brussels Convention	Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters
CL	Civil Law
CPL	Civil Procedure Law
Para	Paragraph
Service Regulation	Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
ECHR	European Court of Human Rights
EConvHR	4 November 1950. Convention for the Protection of Human Rights and Fundamental Freedoms
EEO	European Enforcement Order
EC	European Community
ECJ	European Court of Justice
Electronic Signatures Directive	Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures
EPO	European Order for Payment
EU	European Union
CJEU	Court of Justice of the European Union (formerly — the Court of Justice of the European Communities)
Et seq.	*Et sequens (Latin)…* and further on.
Joint Programme of Measures	30 November 2000 — the EU Commission and the Council adopted the Joint Programme of Measures regarding the implementation of the principle of mutual recognition in civil and commercial matters
The Hague Programme	The Hague Programme: strengthening freedom, security and justice in the European Union
Heidelberg Report	Hess, B., Pfeiffer, T., Schlosser, P. Heidelberg Report on the Application of Brussels I Regulation in 25 Member States (Study JLS/C4/2005/03)
TFEU	Treaty on the Functioning of the European Union
Agreement with Denmark	Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
New York Convention	1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Para or §	Paragraph
Art.	Article
Research	Research "Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States" (No. TM 2012/04/EK)
Researchers	In Latvia — Doc. Dr.iur Inga Kačevska, Dr. iur. Baiba Rudevska, in Lithuania — Prof. Dr. iur. Vytautas Mizaras, Dr. iur. Aurimas Brazdeikis and in Estonia — Dr. iur. cand. Maarja Torga
Taking of Evidence Regulation	Council Regulation No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters
Regulation 1346/2000	Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
Regulation 1896/2006	Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure
Regulation 4/2009	Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
Regulation 805/2004	Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims
Regulation 861/2007	Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure
Rome I Regulation	Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations
Rome II Regulation	Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations
Rome Convention	Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980
See	See
Bulletin	Supreme Council of the Republic of Latvia and Government Bulletin

Appendixes attached to the Latvian version of the Reseach:

Study methodology

Inquiry forms used in the study

Results of judge inquiry forms

Results of lawyer inquiry forms

Inclusion of regulations within the Latvian CPL

CHAPTER 2: LITHUANIA

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1. Implementation of regulations in Lithuanian legal system

1.1. Lawmaking

1.1.1. Approach to implementing regulations in Lithuanian legal system

1. This research analyses three European Union regulations: i) Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims[664] (hereafter – Regulation 805/2004), which came into effect on 21 January 2005, however in European Union (hereafter – EU) Member States only became applicable, with the exception of some general and final provisions (Articles 30-32), on 21 October 2005 (Regulation 805/2004, Article 33, parts 1 and 2); ii) Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure[665] (hereafter – Regulation 1896/2006), which became fully applicable on 12 December 2008; iii) Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (hereafter – Regulation 861/2007, European Small Claims Regulation), which became fully applicable on 1 January 2009. It should be noted that a European Union Regulation shall be applied universally; it is binding in its entirety and directly applicable in all European Union Member States (Treaty on the Functioning of the European Union (hereafter – TFEU), Art. 288, Par. 2). Hence, regulations are effective and applicable in each EU Member State automatically and as such, shall replace national legal acts governing relationships. EU Member States are not allowed to unilaterally grant exemptions to regulations or invalidate them, they do not need to be incorporated into EU Member State‘s legal system. Instead of citing and copying the Regulations, it is recommended to provide references to the appropriate Regulation and its provisions, seeking to create a clear regulatory framework (by the review procedure of Lithuanian legal acts, seeking to withdraw provisions of Lithuanian legal acts transferring requirements of European Union Regulations and ensure their direct application, established by the ruling of the Government of the Republic of Lithuania of 18 September 2003, No. 1180[667], Par. 2 and 3). However, in certain cases some questions are left to decide by national law. In these cases, in order to ensure the effectiveness of the application of the Regulations, it might be necessary to adopt provisions for a smooth direct operation of the Regulations in a national law. The addressing of certain issues is left to Member States.

2. To establish the provisions necessary for the implementation of Regulation No. 805/2004 in Lithuanian legal system, Lithuanian lawmaker decided to avoid amending and (or) supplementing the Code of Civil Procedure of the Republic of Lithuania (hereafter – CCP) and instead adopt a separate (special) law. On 21 April 2005 the Republic of Lithuania Law No. X-170 was passed on the implementation of Regulation (EC) No. 805/2004 of the European Parliament and of the

[664] OL 2004 special edition, Section 19, Volume 7, p. 38.
[665] OL 2006 L 399, p. 1.
[666] OL 2007 L 199, p. 1.
[667] Valstybės žinios, 2003, Nr. 90-4077.
[668] Official Gazette, 2002, No. 36–1340.

Council creating a European Enforcement Order for uncontested claims (hereafter – law on the implementation of Regulation 805/2004). In this case, Article 4(1) of the CCP was used, which established that "in implementing European Union legislation, other laws of the Republic of Lithuania may establish different rules for case investigation, delivery and enforcement of judgments, than are set out in this CCP".

3. It should be noted that the decision of Lithuanian lawmaker to adopt a separate (special) law instead of amending (supplementing) the CCP was based on avoiding frequent changes of the CCP, thereby creating conditions for the stability of the CCP as a codified law. Adopting the above law on Regulation (EC) No. 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims, Lithuanian Supreme Court (LSC) proposed to consider supplementing (changing) the existing CCP for the purpose of implementing the Regulation in question. LSC noted that without fully aligning CCP provisions with the aforementioned draft provisions, the integrity and sistematicity of procedural provisions established in the CCP and the legal regulation of the civil procedure in general will be lost. However, the Law and Order Committee of the Parliament of the Republic of Lithuania rejected the proposal, arguing, among others, that the adoption of a separate (special) law maintains the stability of CCP as a codified legal source for the civil procedure, as well as facilitates the search of procedural provisions for the application a Regulation, as they are not scattered across the CCP.

4. Continuing the aforementioned traditions and essentially because of the same arguments, it was decided to also adopt separate (special) laws on the implementation of Regulation 1896/2006 and Regulation 861/2007. For this purpose on 13 November 2008 Law No. X-1809 on Implementation of European Union and International Legal Acts Governing Civil Procedure in the Republic of Lithuania was passed (hereafter – Implementation Law).

1.1.2. Laws implementing Regulations

5. As mentioned above, Lithuanian lawmaker decided to implement considered Regulations by adopting separate (special) laws, instead of amending (supplementing) the CCP. A law implementing Regulation 805/2004 was passed on 21 of April 2005 and came into force on 21 October 2005 (Art. 8 of Law implementing Regulation 805/2004) It consisted of 8 articles (The purpose of the Law; European Enforcement Order; Requirements for procedural documents; Authentic instruments; Correction or withdrawal of the Enforcement Order; Refusal to enforce a judgment; Suspension or limitation of judgment enforcement; Final provisions). Law implementing Regulation 805/2004 remained in force until 29 November 2008. On 29 November 2008 the Implementation Law came into force; therefore, in accordance with its Article 33(3), Law implementing Regulation 805/2004 was no longer valid. Its standards were transferred (together with several non-essential editorial changes) to the section seven of the Implementation Law.

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[669] Official Gazette, 2005, No. 58–2005.

[670] *Explanatory notes on the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure in the Republic of Lithuania"* [online]. [Accessed 05 August 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=320649&p_query=&p_tr2=2>.

[671] *Committee report on the Implementation Law on 21 April 2004 regulation (EC) No. 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims* [online]. [Accessed 5 August 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=254005&p_query=&p_tr2=2>.

6. Sections eight and nine of the Implementation Law provide for the implementation of Regulation 1896/2006 and Regulation 861/2007. Section eight – IMPLEMENTATION OF REGULATION (EC) NO. 1896/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 DECEMBER 2006 CREATING A EUROPEAN ORDER FOR PAYMENT PROCEDURE – consists of 6 articles: Characteristics of the procedure; Jurisdiction of a matter; Stamp duty; Proceedings according to national procedural law; European Order for Payments review; European Order for Payments enforcement. Section nine – IMPLEMENTATION OF REGULATION (EC) NO. 861/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 JULY 2007 ESTABLISHING A EUROPEAN SMALL CLAIMS PROCEDURE – consists of 7 articles: Judgment enforcement; Jurisdiction of a matter; Stamp duty; Proceedings according to national procedural law; Appeals; Judgment reviews; Procedure characteristics. The content of the aforementioned Implementation Law articles will be analyzed elsewhere in the Research. The Implementation Law applies to matter (appeals, pleas) that were brought after the effective date of this Law. Matters (appeals, pleas) brought before the effective date of this Law shall be examined under provisions valid before this Law (Art. 32 of the Implementation Law). However, we believe that the certification of a judgment, claim for which had been brought before the effective date of the Implementation Law, yet the judgment was delivered after the effective date of the Implementation Law, and issue of such European Enforcement order certificate shall be decided according to the standards of the Implementation Law. This conclusion draws on the fact that Article 32 of the Implementation Law refers only to matters (not judgments) and discusses the exclusion of the Implementation Law in the matters brought before its effective date. Such wording of the Law, we believe, implies that Article 32 of the Implementation Law is relevant to the examination of matters (appeals, pleads) in a court, yet irrelevant for the issue or enforcement of a European Enforcement Order (hereafter – EEO) certificate for a judgment delivered after the effective date of the Implementation Law.

8. It is emphasized that Regulation 805/2004 shall apply only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the effective date of this Regulation.

1.2. Workshops and publications

1.2.1. Workshops

9. One of the key goals of the considered Regulations is to improve and optimize the administration of justice (*sensu lato*) in European Union Member States, especially in matters with an international element. Therefore, adequate knowledge of these Regulations is important not only for law practitioners (advocates and other legal practitioners), but also for lawyers associated with the application of law (judges, bailiffs, notaries). Because of this reason, recommended reading list for Lithuanian notaries' qualifying examination program includes Regulation 805/2004[672], while recommended reading list for Lithuanian bailiffs' qualifying examination program includes all three Regulations (Regulation 805/2004, Regulation 1896/2006 and Regulation 861/2007 (hereafter referred together as Regulations)[673]. Meanwhile, these same Regulations are not specifically mentioned neither in advocates'[674], nor in judges'[675] qualifying examination programs. Nor are they included in the aforementioned programs as a separate topic. Yet, this does not mean that the knowledge of these Regulations for individuals seeking to become judges and lawyers is not necessary. Supposedly, the necessity of having knowledge of considered Regulations may arise in other lawyer and advocate program subjects (e.g. technicalities in enforcing foreign judgments). However, we believe it would be appropriate to define more specifically in lawyers' and advocates' qualifying examination programs the requirement to understand the rules of the civil procedure under European Union Regulations, of which the considered Regulations are constituents as well.

10. Advocates, their assistants, bailiffs, their agents, assistants, notaries, assessors and judges and their assistants, as well as other legal staff of the judicial system are those legal framework participants who should, the researchers believe, be most concerned with the discussed Regulations. Article 57(1)(5) of the Law on Advocacy[676] of the Republic of Lithuania establishes that one of the functions of Lithuanian Bar Association is to organize and perform the professional development of advocates. Article 46(1)(5) of the Law on Bailiffs[677] of the Republic of Lithuania establishes that the function of Lithuanian Chamber of Bailiffs, *inter alia*, is to organize and perform the professional development of bailiffs' assistants. Article 4(1) of the Law on Notary[678] of the Republic of Lithuania establishes that the professional development of notaries shall be organized by the Chamber of Notaries and coordinated by the Ministry of Justice of the Republic of Lithuania. Article 93(2) of the Law on Courts[679] of the Republic of Lithuania establishes that the training of

[672] Notary qualifying examination program approved by the Republic of Lithuania Minister of Justice on 10 January 2007 by order No. 1R-11 (with amendments). The Gazette, 2007, No. 7–300.
[673] Bailiff qualifying examination program approved by the Republic of Lithuania Minister of Justice on 22 August 2011 by order No. 1R-203. The Gazette, 2011, No. 107–5073.
[674] Lawyer qualifying examination program approved by the Republic of Lithuania Minister of Justice on 1 December 2008 by order No. 1R-458, The Gazette, 2008, No. 143-5757.
[675] Judicial candidates' examination program approved by the Judicial Council on 8 October 2004 by resolution No. 279 [online]. [Accessed at 5 August 2012]. At: <http://www.teismai.lt/lt/siekiantiems-teisejo-karjeros/siekiantiems-teisejo-karjeros-pageidaujantiems-tapti-apylinkes-teismo-teiseju/siekiantiems-teisejo-karjeros-pageidaujantiems-tapti-apylinkes-teismo-teiseju-teises-aktai/>.
[676] The Gazette, 2004, No. 50-1632.
[677] The Gazette, 2002, No. 53-2042.
[678] The Gazette, 1992, No. 28-810.
[679] The Gazette, 1994, No. 46-851.

judges shall be organized by the National Courts Administration. Taking into account the above, the researchers made inquiries to Lithuanian Bar Association, Lithuanian Chamber of Bailiffs, Lithuanian Chamber of Notaries and the Training Center of the National Courts Administration regarding training in considered Regulations.

11. The following results were obtained:

- The Chamber of Bailiffs did not reply to the inquiry;
- Lithuanian Bar Association replied on 12 July 2012 by pointing out that workshops on considered Regulations were not conducted. On the other hand, however, it can be seen on Lithuanian Bar Association website that on 23 October 2012 a seminar was organized by Lithuanian Bar Association and Lithuanian Consumer's Institute on "European Order for Payments and European Small Claims procedures in the context of consumer rights protection". In addition, on 30 October 2012 and 20 November 2012 in Vilnius and on 6 November 2012 in Kaunas a seminar will be organized on the subject of "Legal communication trends in civil matters among EU Member States. Regulation of legal family relationships and proceedings in EU civil procedure"[680].

12. Lithuanian Chamber of Notaries on 25 June 2012 provided the following information:

[680] See <http://www.advoco.lt/default.aspx?item=news&id=17633> [Accessed at 27 October 2012].

Workshop on Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

Workshop subject (seminar) title	Workshop location and date	Workshop duration (in academic or normal hours)	Lecturer	Total number of workshop participants	Number of notaries participating in a workshop	Number of assessors participating in a workshop	Number of non-Vilnius participants	Number of non-Vilnius, non-Kaunas and non-Klaipeda participants
Bills and notary's writ of order: theory and practice	30 May 2007, Reval Hotel Lietuva, Vilnius	1 academic hour	Marius Strackaitis	No data**	No data**	No data**	No data**	No data**
Legal possibilities to recover debt using promissory notes in foreign countries, its recognition and enforcement peculiarities, European Enforcement Order	30 May 2007, Reval Hotel Lietuva, Vilnius	1 academic hour	Laura Gumuliauskiene	No data**	No data**	No data**	No data**	No data**
European Enforcement Order	12 September 2008, Chamber of Notaries, Vilnius	1 academic hour	Laura Gumuliauskiene	No data**	No data**	No data**	No data**	No data**
European Enforcement Order	13 September 2008, Chamber of Notaries, Vilnius	1 academic hour	Laura Gumuliauskiene	No data**	No data**	No data**	No data**	No data**
Promissory notes – formalization, protestation and practice of issuing writs of execution	29 January 2010, Chamber of Notaries, Vilnius	1 academic hour	Justas Ciomanas	79	77	2	48	41
Promissory notes – formalization, protestation and practice of issuing writs of execution	26 February 2010, Chamber of Notaries, Vilnius	1 academic hour	Justas Ciomanas	83	81	2	66	51

**Organizers of the international conference "Promissory note: from signing to fulfilling" that took place on 30 May 2007 at Reval Hotel Lietuva, Vilnius – Lithuanian Chamber of Bailiffs and law firm "Foigt ir partneriai/ Regija Borenius". Lithuanian Chamber of Notaries provides no data about conference participants.

*** No available registration data on participants of a seminar on succession law and promissory notes that took place on 12-13 September 2008 at Lithuanian Chamber of Notaries.

13. The Training Center of the National Courts Administration on 18 June 2012 provided the following information:

I. Workshop on Regulation (EC) No. 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure

Workshop subject (seminar) title	Workshop location and date	Workshop duration (in academic or normal hours)	Lecturer	Total number of workshop participants	Organized for and attended by: local, regional, Lithuanian Court of Appeal or (and) Lithuanian Supreme Court personnel	Number of judges participating in a workshop	Number of judge assistants and other supporting legal staff	Number of non-Vilnius participants	Number of non-Vilnius, non-Kaunas and non-Klaipeda participants
1. Seminar on civil law and civil procedure (for appellate courts judges). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) European Enforcement Order procedure implementation in Lithuanian civil procedure law; c) concept of uncontested claim and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the	The Training Center of the National Courts Administration Sanklodiskes vlg., Moletai dist. (7 October 2009)	6 academic hours	Dr. Laura Gumuliauskiene	35	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (county court judges and their assistants participated).	27	8	20	7

issue of European Enforcement Order".									
2. Seminar on European Union civil procedure. Subject "Summary proceedings in the European Union civil procedure: European Order for Payments procedure. Scope, procedure and peculiarities of order recognition and enforcement. European Small Claims procedure. Scope, procedure and peculiarities of order recognition and enforcement".	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (3 March 2009)	4 academic hours	Laura Kirileviciute	22	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (regional, regional administrative and local court judges and their assistants participated).	22	0	15	9
3. Seminar on civil procedure (for local court judges with more than 5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims Procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) European Enforcement Order procedure implementation in Lithuanian civil procedure law; c) concept of	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (7 October 2010)	6 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local court judges (local court judges participated).	37	0	33	27

"uncontested claim" and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of European Enforcement Order issued by another EU Member State."									
4. Seminar on civil procedure (for local court judges with less than 5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) Implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of "uncontested claim" and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of European Enforcement Order issued by another EU Member State."	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (22 February 2010)	6 academic hours	Dr. Laura Gumuliauskiene	38	Workshop for local court judges (Lithuanian Court of Appeal, local and regional court judges and their assistants participated).	32	6	31	22

5. Seminar on civil law and civil procedure (for appellate courts judges). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of "uncontested claim" and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order".	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (27 October 2010)	4 academic hours	Dr. Laura Gumuliauskiene	50	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Court of Appeal and county judges and their assistants participated).	49	1	26	9
6. Seminar on European Union civil procedure. Subject "Summary proceedings in the European Union civil procedure: European Order for Payments procedure. Scope, procedure and peculiarities of order recognition and enforcement. European Small Claims procedure. Scope, procedure and peculiarities of order recognition and enforcement".	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (2 December 2010)	4 academic hours	Dr. Laura Gumuliauskiene	32	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (local administrative, local and regional court judges and their assistants participated).	29	3	23	15

7. Seminar on European Union civil procedure. Subject: "Summary proceedings under EU law. European Order for Payments procedure. European Small Claims procedure".	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (15 November 2011)	2 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Highest Administrative Court, local and regional court judges and their assistants participated).	33	4	23	15
8. Seminar on European Union law and procedure. Subject "European Union summary proceedings".	The Training Center of the National Courts Administration, Sanklodiskes vlg., Moletai dist. (4 May 2012)	4 academic hours	Assoc. Prof. Dr. Laura Gumuliauskiene	49	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Highest Administrative Court, local administrative, local and regional court judges and their assistants participated).	41	8	18	13

II. Workshop on Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment procedure

Workshop subject (seminar) title	Workshop location and date	Workshop duration (in academic or normal hours)	Lecturer	Total number of workshop participants	Organized for and attended by: local, regional, Lithuanian Court of Appeal or (and) Lithuanian Supreme Court personnel*	Number of judges participating in a workshop*	Number of judge assistants and other supporting legal staff*	Number of non-Vilnius participants*	Number of non-Vilnius, non-Kaunas and non-Klaipeda participants*
1. Civil law and civil procedure (for judges of appellate courts). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of “uncontested claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (7 October 2009)	6 academic hours	Dr. Laura Gumuliauskiene	35	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (county court judges and their assistants participated).	27	8	20	7

basis for the issue of a European Enforcement Order".									
2. Seminar on European Union civil procedure. Subject "Summary proceedings in European Union civil procedure: European Order for Payments procedure. Scope, procedure and peculiarities of order recognition and enforcement. European Small Claims procedure. Scope, procedure and peculiarities of order recognition and enforcement".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (3 March 2009)	4 academic hours	Laura Kirileviciute	22	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (regional, regional administrative and local court judges and their assistants participated).	22	0	15	9
3. Seminar on civil procedure (for local court judges with more than 5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order Procedure in Lithuanian civil procedure law; c) concept of “uncontested	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (7 October 2010)	6 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local court judges (local court judges participated).	37	0	33	27

claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of a European Enforcement Order issued by another EU Member State."									
4. Seminar on civil procedure (for local court judges with less than 5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of “uncontested requirement” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of a European	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (February 22 2010)	6 academic hours	Dr. Laura Gumuliauskiene	38	Workshop for local court judges (Lithuanian Court of Appeal, local and regional court judges and their assistants participated).	32	6	31	22

Enforcement Order issued by another EU Member State."									
5. Seminar on civil law and civil procedure (for appellate courts judges). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order Procedure in Lithuanian civil procedure law; c) concept of “uncontested claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (27 October 2010)	4 academic hours	Dr. Laura Gumuliauskiene	50	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Court of Appeal and county judges and their assistants participated).	49	1	26	9
6. Seminar on European Union civil procedure. Subject "Summary proceedings in the European Union civil procedure: European Order for Payments procedure. Scope, procedure and peculiarities of order recognition and enforcement. European Small Claims procedure. Scope,	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (2 December 2010)	4 academic hours	Dr. Laura Gumuliauskiene	32	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (local administrative, local and regional court judges and their assistants	29	3	23	15

procedure and peculiarities of order recognition and enforcement".					participated).				
7. Seminar on European Union civil procedure. Subject: "Summary proceedings in accordance with EU law. European Order for Payments procedure. European Small Claims procedure".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (15 November 2011)	2 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Highest Administrative Court, local and regional court judges and their assistants participated).	33	4	23	15
8. Seminar on European Union law and procedure. Subject "European Union summary proceedings".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (4 May 2012)	4 academic hours	Assoc. Prof. Dr. Laura Gumuliauskiene	49	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Highest Administrative Court, local administrative, local and regional court judges and their assistants participated).	41	8	18	13

III. Workshop on Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

Workshop subject (seminar) title	Workshop location and date	Workshop duration (in academic or normal hours)	Lecturer	Total number of workshop participants	Organized for and attended by: local, regional, Lithuanian Court of Appeal or (and) Lithuanian Supreme Court personnel*	Number of judges participating in a workshop*	Number of judge assistants and other supporting legal staff*	Number of non-Vilnius participants*	Number of non-Vilnius, non-Kaunas and non-Klaipeda participants*
1. Seminar on civil procedure (for local court judges with more than 5 years work experience). Subject "Common issues with European Union civil procedure. Mutual cooperation of European Union Member States in civil matters. Jurisdictional issues and the enforcement of judgment in European Union".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (16 October 2008)	6 academic hours	Laura Gumuliauskiene	30	Workshop for local court judges (local court judges and their assistants participated).	29	1	20	18
2. Seminar on civil procedure (for local court judges with less than 5 years work experience). Subject "Common issues with European Union civil procedure. Mutual cooperation of European Union Member States in civil matters. Jurisdictional issues and the enforcement of judgments in European Union".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (1 October 2008)	6 academic hours	Laura Gumuliauskiene	34	Workshop for local court judges (local court judges participated).	34	0	23	17

3. Seminar on Civil law and civil procedure (for appellate courts judges). Subject "Main issues of European Union civil procedure: theoretical overview, practical examples and exercises, European Court of Justice practices in relation to different issues in question. Other issues of European Union civil procedure".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (28 May 2008)	8 academic hours	Laura Gumuliauskiene	17	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Court of Appeal and county judges and their assistants participated).	13	4	10	2
4. Seminar on Civil law and civil procedure (for appellate courts judges). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of “uncontested claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order".	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (7 October 2009)	6 academic hours	Dr. Laura Gumuliauskiene	35	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (county court judges and their assistants participated).	27	8	20	7
5. Seminar on civil procedure (for local court judges with more than	The Training	6 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local court judges (local	37	0	33	27

5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims procedure in Lithuanian courts. 2. Issue of European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of "uncontested claim" and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of a European Enforcement Order issued by another EU Member State".	Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (7 October 2010)				court judges participated).				
6. Seminar on civil procedure (for local court judges with less than 5 years work experience). Subject "Peculiarities of matters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (22 February 2010)	6 academic hours	Dr. Laura Gumuliauskiene	38	Workshop for local court judges (Lithuanian Court of Appeal, local and regional court judges and their assistants participated).	32	6	31	22

procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of “uncontested claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of a European Enforcement Order issued by another EU Member State."									
7. Seminar on civil law and civil procedure (for appellate courts judges). Subject "Recognition and enforcement of foreign judgments in European Union Member States: Mutual recognition and enforcement of European Union Member States' judgments. Recognition of third countries' judgments in European Union (and Lithuania). Procedure for a unified European Enforcement Order: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (27 October 2010)	4 academic hours	Dr. Laura Gumuliauskiene	50	Workshop was organized for county, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Court of Appeal and county judges and their assistants participated).	49	1	26	9

“uncontested claim” and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order".									
8. Seminar on European Union civil procedure. Subject "Recognition and enforcement of Lithuanian judgments in European Union Member States. The role of the decision-delivering court in the preparation of documents for the recognition of Lithuanian judgment abroad. European Enforcement Order procedure."	The Training Center of the National Cou Administration, Sanklodiskes vlg., Moletai dist. (14 November 2011)	2 academic hours	Dr. Laura Gumuliauskiene	37	Workshop for local, regional, Lithuanian Court of Appeal and Lithuanian Supreme Court judges (Lithuanian Highest Administrative Court, local and regional court judges and their assistants participated).	33	4	23	15

14. In analyzing the aforementioned data, it must be noted that Lithuanian Bar Association organized first workshop, partly related to the considered Regulations only in October 2012. Given the significance, importance and relevance of these Regulations, the situation is viewed negatively. Discussed Regulations significantly facilitate the circulation, recognition and enforcement of judgments (without exequatur) in other European Union Member States, therefore, they should be particularly relevant to advocates. Especially, since Lithuanian notaries actually had 6 seminars (6 academic hours) that were partly or fully dedicated to one of the considered Regulations – Regulation 805/2004. Researchers believe that the lack of workshops for Lithuanian advocates can lead to a poor understanding and employment of standards and procedures established by these Regulations which can, in turn, have a negative (economically and in terms of business competitiveness as well) impact on Lithuanian citizens and companies that litigate against other EU Member State entities. Thus, Lithuanian Bar Association is recommended to consider European Union civil procedure during the professional development of lawyers (and their assistants).

15. As for the training of judges and other legal personnel (judges and other legal personnel hereafter referred to as Court Personnel), we can see that these legal framework participants had quite a few workshops related to the Regulations. Including, among others, quite a lot of Court Personnel from smaller Lithuanian cities, other than Vilnius, Kaunas and Klaipeda. It allowed the knowledge of the Regulations to be spread territorially. It should be noted that a similar situation can be found in notary professional development. On the other hand, however, not once were the seminars by the lawyer training center of the National Courts Administration attended by Lithuanian Supreme Court judges or other Court Personnel, even though some of these seminars were, among others, intended for them. These workshops were attended by judges and staff of other courts. It should also be noted that some of these seminars involving the Regulations were attended by administrative court employees, even though the possibility to apply these Regulations in practice in administrative courts is minimal (scope of the Regulations will be covered in more detail in other parts of this Research). Even so, participation in the seminars on the Regulations by judge assistants and other supportive Court Personnel (non-judges) was rather insignificant (as a percent of all participants, the number was between 0 and 23%). However, note that National Courts Administration, the Association of the Assistants of Judges and the Training Center of the Ministry of Justice organized separate seminars for them:

- Mutual cooperation of European Union Member States in civil matters. Summary proceedings in European Union civil procedure: Lecturer Dr. L. Gumuliauskiene 8 November 2010, 4 academic hours

Workshop for judge assistants on Regulation (EC) No. 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and on Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment procedure

Workshop subject (seminar) title	Workshop location and date	Workshop duration (in academic or normal hours)	Lecturer	Total number of workshop participants	Organized for and attended by: local, regional, Lithuanian Court of Appeal or (and) Lithuanian Supreme Court personnel*	Number of judges participating in a workshop*	Number of judge assistants and other supporting legal staff*
Peculiarities of maters with an international element (*cross border cases*). Consideration of application for the issue of a European Order for Payments in Lithuanian courts. 1. Consideration of applications under European Small Claims procedure in Lithuanian courts. 2. Issue of a European Enforcement Order following the delivery of a judgment: a) appropriate service of instruments as a requirement for rendering a claim uncontested and issuing a European Enforcement Order; b) implementation of European Enforcement Order procedure in Lithuanian civil procedure law; c) concept of "uncontested claim" and its equivalent in Lithuanian civil procedure law; d) authentic instruments as a basis for the issue of a European Enforcement Order. 3. Role of a court in the enforcement of a European Enforcement Order issued by another EU Member State.	3 February 2011. NCA	4 academic hours	Dr. Laura Gumuliauskiene	90	5	0	85

16. As seen from the data, first workshop on the application of Regulation 805/2004 for both notaries and Court Personnel was organized nearly two years after its coming into effect, despite the fact that its application date and its content were known beforehand[681]. Researchers believe that such omission might have had a negative impact on the applicability, spread and practice of the Regulation. Meanwhile, situation with Regulations 1896/2004 and 861/2007 was much better. First workshop on the application of this Regulation for Court Personnel was conducted just a few months after their effective date.

17. It should be noted that besides the aforementioned official workshops, commercial seminars were organized as well. For example, on 29-30 April 2008 Vilnius Court of Commercial Arbitration organized a one and a half day long seminar on "European Union civil procedure peculiarities: Brussels I and Brussels II and European Enforcement Order" for advocates, lawyers, bailiffs and individuals willing to lean about European Union civil procedure. Seminar leader – Prof. Habil. Dr. Vytautas Nekrosius. Issues considered during the seminar:

- Jurisdiction in international matters related to more than one EU Member State (alternative jurisdiction, exceptional jurisdiction, conventional jurisdiction, family jurisdiction issues)
- Possibilities for interim measures
- Jurisdiction over divorce, marriage annulment or separation
- Jurisdiction over child access right
- Peculiarities of decision enforcement in another Member State
- European Enforcement Order for uncontested claims
- European Court of Justice practice.

18. On 2 March 2009 a scientific–practical conference on "Civil procedure law issues and modernization tendencies" was organized in which V. Vebraite delivered a report on the subject "**Scope of Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims".**

1.2.2. Publications[682]

19. The researchers found the following publications of Lithuanian authors relating to Regulation 805/2004:

1) NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Part One. Vilnius: Justitia, 2009.

[681] For example, Regulation 805/2004 was published in the Gazette on 30 April 2004 and began to be applied (fully) on 21 October 2005. First lawyer Training Center of the National Courts Administration event took place in 2008.

[682] Publications are presented by the data that the researchers were able to find on 1 June 2012.

Chapter IV of this study (pages 191–230 in the book) is dedicated to Regulation 805/2004. The study discusses not only European Court of Justice (hereafter – ECJ) practice but also provides a summary of practices of German and Polish scholars in this area. In writing this paper, works of R. Geimer, R. Schuetze, T. Rauscher, P. Gottwald, J. Kropholler and other "classical" scholars were used[683]. Researchers believe it is a high-level and quite comprehensive scientific paper on the application of Regulation 805/2004 in which the reader can find answers to many of the issues raised while reading Regulation 805/2004.

2) GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų pripažinimas ir vykdymas Lietuvoje* [online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008. At: *<https://mms.mruni.eu/DownloadFile.aspx?FileID=202>*. Sections 2.1–2.4 of this thesis (pages 100–170 in the thesis) are essentially dedicated to Regulation 805/2004, while section 2.5 (pages 171–176 in the thesis) is dedicated to Regulations 1896/2004 and 861/2007.

3) GUMULIAUSKIENE, LAURA. European Enforcement Order procedure implementation – Lithuanian experience. *Jurisprudence*, 2010, No. 4(122), p. 135-152

The article analyzes the implementation of the five-year old "Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims" and the legal regulation of unanimous judgment enforcement without exequatur in Lithuanian civil procedure law. The Regulation was implemented in Lithuania on 13 November 2008 by the European Union and international legislation implementation law governing the Republic of Lithuania civil process. The article provides a detailed analysis of Chapter seven of this article on the transfer of European Enforcement Order Procedure to Lithuanian civil procedure law, as well as identifies legal regulation gaps, lawmaker's inconsistency and proposes solutions for the improvement of the existing legal regulation[684].

4) VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo ribos. *Justitia*, 2009, No. 1(71), p. 61-65

This article discusses the object, procedural limits and other issues of Regulation 805/204 based on the works of Lithuanian and German scholars.

5) VISINSKIS, VIGINTAS Ne teismo išduodami vykdomieji dokumentai. *Jurisprudence*, 2008, No. 7(109), p. 47-55

This article briefly examines European Enforcement Orders issued by notaries as instruments permitting enforcement. Based on Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, a framework is created. Unde it, authentic notarized

[683] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Part One. Vilnius: Justitia, 2009, p. 12.

[684] GUMULIAUSKIENE, LAURA. European Enforcement Order Procedure implementation – Lithuanian experience. *Jurisprudence*, 2010, No. 4(122), p. 135

instruments can circulate freely in all Member States with only minimum requirements in place. Under these requirements it is not necessary to undergo any intermediate procedures before recognition and enforcement in the Member State in which this judgment has to be enforced. In accordance with Lithuanian national law, the issue of a European Enforcement Order based on authentic instruments can only be accomplished by a notary[685].

6) VISINSKIS, VIGINTAS; STAUSKIENE, EGIDIJA. Teismo išduodami vykdomieji dokumentai, *Jurisprudence*, 2007, No. 11(101), p. 58-65

This article briefly examines the significance of a European Enforcement Order as an instrument permitting enforcement.

It should be noted that the European Commission has published a practical guide for the application of Regulation 805/2004[686]. It contains, among other things, a useful matrix for decision certification as an EEO. However, it is prone to translation errors as well, for example, first chapter of the guide is called "European judicial passport" even though it is does not mention passports in any way.

20. The researchers found the following publications of Lithuanian authors relating to Regulation 1896/2006:

1) VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 1896/2006, nustatančio Europos mokėjimo įsakymo procedūrą, taikymo ypatumai. *Teise*, 2010, No. 77(122), p. 50-61.

This article analyzes Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment Procedure Matters covered are its scope, European Order for Payment issue procedure and its benefits, and the protection of debtors' rights.

2) GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų pripažinimas ir vykdymas Lietuvoje* [online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008. At: *<https://mms.mruni.eu/DownloadFile.aspx?FileID=202>*.

Sections 2.1–2.4 of this thesis (pages 100–170 in the thesis) are essentially dedicated to Regulation 805/2004, while section 2.5 (pages 171–176 in the thesis) is dedicated to Regulations 1896/2004 and 861/2007.

3) NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 56-66.

In this monograph the author mostly analyzes simplified civil proceedings, including court order, established in the national civil procedure, however, in one of the chapters he also discusses the main features of European Order for Payments issue procedure.

4) NORKUS, RIMVYDAS. Nauji teisiniai instrumentai civilinio proceso srityje: ar bus sukurtas Europos Sąjungos civilinis procesas? In *Right to legal defense and practical*

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[685] VISINSKIS, VIGINTAS e teismo išduodami vykdomieji dokumentai, *Jurisprudence*, 2008, No. 7(109), p. 47

[686] *Practical guide to the Regulation on European Enforcement Order application* [online]. [Accessed at 8 September 2012]. At: <http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lt.pdf>.

aspects of its realization: material from international scientific–practical conference. Chief editor S. Velyvis. Vilnius: Visus plenus, 2006, p. 124-139.

This article discusses the main features of European Enforcement Order issue procedure. It should be noted that in this paper the author analyzes draft Regulation 1896/2006 and, among others, negatively views Lithuanian language terminology used in it and offers to refer to the Procedure discussed in the draft Regulation as European promotion procedure to reflect its essence and emphasize its nature[687]. As seen, authors proposals were partially implemented. In Regulation 1896/2006 Lithuanian term of European Order for Payments Procedure is used.

It should be noted that the European Commission has published a practical guide for the application of Regulation 1896/2006[688].

21. The researchers found the following publications of Lithuanian authors relating to Regulation 861/2007:

1) VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo. Procedūra europos sąjungoje. *Teise*, 2011, No. 79(122), p. 35-47.

The article analyses the main provisions of Regulation (EC) No. 861/2007 of 11 July 2007 establishing a European Small Claims Procedure, also conduct of the procedure and indicates its main benefits and drawbacks.

2) GUMULIAUSKIENE, LAURA. *teismų sprendimų pripažinimas ir vykdymas Lietuvoje* [online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008. At: <*https://mms.mruni.eu/DownloadFile.aspx?FileID=202*>.

Sections 2.1–2.4 of this thesis (pages 100–170 in the thesis) are essentially dedicated to Regulation 805/2004, while section 2.5 (pages 171–176 in the thesis) is dedicated to Regulations 1896/2004 and 861/2007.

3) NORKUS, RIMVYDAS. Nauji teisiniai instrumentai civilinio proceso srityje: ar bus sukurtas Europos Sąjungos civilinis procesas? In *Right to legal defense and practical aspects of its realization:* material from international scientific–practical conference. Chief editor S. Velyvis. Vilnius: Visus plenus, 2006, p. 124-139.

The article discusses the main features of European requirements for Small Claims Procedure. However, as in case of Regulation 1896/2006, the author briefly discusses draft Regulation 861/2007 instead of the actual legislation and once again criticizes Lithuanian terminology used in the draft by offering the refer to the procedure in the draft Regulation as "European small property litigation procedure". This proposition is based on the fact that draft Regulation also intends to apply the procedure for non-monetary

[687] NORKUS, RIMVYDAS. auji teisiniai instrumentai civilinio proceso srityje: ar bus sukurtas Europos Sąjungos civilinis procesas? In *Right to legal defense and practical aspects of its realization:* material from international scientific–practical conference. Chief editor S. Velyvis. Vilnius: Visus plenus, 2006, p. 127, footnote no. 6.

[688] *Practical guide to the Regulation on the application of European Order for Payments* [online]. P. 12 [Accessed on 28 September 2012]. At: <http://ec.europa.eu/justice/civil/document/index_en.htm>.

requirements[689]. This proposition remained virtually unfulfilled – the title of Regulation 861/2007 still contains a reference to "small claims".

22. Summarizing the above, it should be noted that the main focus of Lithuanian legal doctrine is Regulation 805/2004. The main reason for that, the researchers believe, is the fact that this Regulation has been in effect for more than 7 years. It was long enough to publish a study, defended (partially) by a PhD thesis, on the issues of the application of the Regulation. In the aforementioned studies, which, by the way, also analyzed other issues of European Union and international civil procedure, the focus on Regulation 805/2004 was quite significant. Both papers are high-level, quite comprehensive scientific studies providing quite a few answers to the practical aspects of Regulation application in Lithuanian legal framework.

23. Regulations 1896/2006 and 861/2007 have received little analysis in Lithuanian jurisprudence. Essentially, they have one academic article each dedicated to them. In the other article the author discussed draft Regulations and not the enacted legislation. Comments made by this scholar, however, remain relevant nowadays.

[689] NORKUS, RIMVYDAS. auji teisiniai instrumentai civilinio proceso srityje: ar bus sukurtas Europos Sąjungos civilinis procesas? In *Right to legal defense and practical aspects of its realization:* material from international scientific–practical conference. Chief editor S. Velyvis. Vilnius: Visus plenus, 2006, p. 127, footnote no. 13.

1.3. Evaluation

24. Lithuanian lawmaker decided to adopt a separate law for the implementation of Regulations instead of amending (supplementing) the existing CCP. Such decision is not flawed in itself. However, it leads to the fact that the proper application of the aforementioned Regulations often requires analyzing at least three legislations at the same time: respective Regulation, Implementation Law and the CCP, since many procedural issues of the aforementioned legislations are not aligned. This situation can impede the application of the law, a survey confirms it (for results see Chapter 3 of the research). In addition, fears that the establishment of standards for the implementation of Regulation in the CCP would threaten its stability proved to be unfounded. Legal standards for the implementation of Regulation have not been changed since their adoption. Therefore, it would be more sensible and more appropriate for the civil procedure law, as a codified and systematic branch of law, to establish legal standards for the implementation of the Regulation in the CCP (possibly in a single chapter), as it has been done, for example, in Germany.

25. It would be appropriate to define more specifically in lawyers' and advocates' qualifying examination programs the requirement to understand the rules of the civil procedure under European Union Regulations, of which the considered Regulations are constituents as well.

26. Lithuanian Bar Association organized its first workshop, partly related to the considered Regulations only in October 2012. Given the significance, importance and relevance of these Regulations, the situation is viewed negatively. This conclusion is confirmed by the fact that 79 percent of advocates (assistants) who replied to researchers' question on this matter wanted more workshops relating to the Regulations. Thus, Lithuanian Bar Association is recommended to consider European Union civil procedure during the professional development of lawyers (and their assistants).

27. Even though Court Personnel had quite a few workshops regarding the considered Regulations, a survey of judges showed that more workshops could be organized (see more in par. 49 of the Research).

28. Initial training on EU civil procedure legislation should not be conducted several years after their coming into effect but rather before their application in Lithuania. Usually these Regulations take effect after one or more years after their official publication.

29. High-level and useful scientific publications in Lithuanian regarding the considered Regulations for legal practitioners are rare. A publication is issued specifically for European Enforcement Order Regulation that is similar to the Regulation comment. It is the study of V. Nekrosius called *Europos Sąjungos civilinio proceso teisė*. Other publications are often more introductory to a specific legislation or too brief and concise to provide practitioners with the necessary answers or suggestions. The survey of judges also showed that they believe there should be more legal practical information in Lithuanian about the Regulations (see more in par. 49 of the Research).

2. Statistics

2.1. Data accessibility, time period and sources

30. Statistical data on the application of Regulations is not collected separately (intentionally). It cannot be found on National Court Administration, Lithuanian Chamber of Notaries or Lithuanian Chamber of Bailiffs websites. Neither is it specifically reflected publicly in annual statistical reports on Lithuanian court activities[690], or the performance reviews of the Republic of Lithuania courts and local court authorities[691]. Taking into account these circumstances, the researchers requested the data from the National Courts Administration, Lithuanian Chamber of Notaries and Lithuanian Chamber of Bailiffs. They requested data on the application of Regulations from their full implementation in Lithuania until 8 May 2012.

31. It should be noted that judicial information system LITEKO (hereafter – LITEKO) is installed in Lithuanian courts. The main functions of the system are: to electronically collect information on every matter (procedural documents, parties and other participants in proceedings, the procedure, judicial documents) both in each court and the central database; based on the gathered data, to generate statistical reports on judge and court activities. In terms of the latter, it was noted that an automatic preparation of statistical reports on court activities regarding the application of the Regulations depends in part on the classification of categories of procedural decisions in civil matters, approved by the Council of Judges on 25 April 2008 by resolution No. 13P-50-(7.1.2)[692]. By using the right categories of this classification it is possible to find all procedural decisions in the category and to automatically generate summarized data. However, in the classification of procedural decisions in civil cases only the following categories directly related to the Regulations can be found: 129.14 “European Enforcement Order" and 125.11.4 "European Court Order". We could not find a category that would be specifically related to Regulation 861/2007. As pointed out by the National Courts Administration, it is unable to provide all the necessary information for researchers, since some of it is not collected or systematized by LITEKO, including the requested data on the application of Regulation 861/2007. *Since this data can be relevant and since Regulations 805/2004 and 1896/2006 have separate categories in the classification, National Courts Administration and the Council of Judges are offered to consider the creation of a special category for European Small Claims Regulation in the classification of procedural decisions in civil cases.*

[690] See <http://www.teismai.lt/lt/teismai/teismai-statistika/>.
[691] See <http://www.teismai.lt/lt/teismu-savivalda/teismu-savivalda-veiklos-ataskaitos/>.
[692] At: < *www.teismai.lt/dokumentai/tarybos_nutarimai/20080425-50.doc*>.

2.2. Statistical data

2.2.1. Lithuanian court activities

32. National Courts Administration, in reply to researchers inquiry, provided the following data on the application of Regulation 805/2004:

European Enforcement Orders issued by Lithuanian courts	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**From 1 January 2012 to 8 May 2012**
Lithuanian courts contacted regarding the issue of EEO's	3	2	6	13	12	17	28	11
EEO's issued by Lithuanian courts	2	1	5	10	7	10	14	9
Appeals regarding the withdrawal of an EEO issued by a Lithuanian court (Point b, Par. 1, Art. 10 of the Regulation.)								
Withdrawn (fully or in part) EEO's issued by a Lithuanian court (Point b, Par. 1, Art. 10 of the Regulation.)								
Appeal regarding the withdrawal of an EEO issued by a Lithuanian notary (Point b, Par. 1, Art. 10 of the Regulation.)								
Withdrawn (fully or in part) EEO's issued by a Lithuanian notary (Point b, Par. 1, Art. 10 of the Regulation.)								
Appeal to Lithuanian Court of Appeal regarding the refusal to comply with an EEO (Art. 21 of the Regulation)								
Refusal (full or partial) of Lithuanian Court of Appeal to authorize an EEO (Art. 21 of the Regulation)								

Appeal to Lithuanian courts regarding the suspension or limitation of the enforcement of an EEO (Art. 21 of the Regulation)								
EEO enforcement (full or partial) suspended or limited by Lithuanian judgments (Art. 23 of the Regulation)								

NOTE: empty cells mean that the respondent did not provide the requested data, i.e. no information is available on the matter.

33. National Courts Administration provided the following data on the application of Regulation 1896/2006:

EOP's issued by Lithuanian courts	**2008**	**2009**	**2010**	**2011**	**From 1 January 2012 to 8 May 2012**
Lithuanian courts contacted regarding the issue of EOP's	3	6	19	22	1
EOP's issued by Lithuanian courts	3	5	15	19	1
Average EOP time of issue	5,5 d.	7,8 d.	19 d.	17 d.	7
EOP's issued by Lithuanian courts that came into force	2	4	5	10	1
Average time period between the application for EOP and EOP's coming into force	35 d.	33,5 d.	137,8 d.	130,9 d.	56 d.
Appeal regarding the review of an EEO issued by a Lithuanian court (Art. 20 of the Regulation)		1			
Withdrawn (fully or in part) EEO's issued by a Lithuanian court during the review procedure (Art. 20 of the Regulation)					
Appeal to Lithuanian Court of Appeal regarding the refusal to comply with an EEO (Art. 22 of the Regulation)					
Refusal (full or partial) of Lithuanian Court of Appeal to authorize an EEO (Art. 22 of the Regulation)					
Appeal to Lithuanian courts regarding the suspension or limitation of the enforcement of an EEO (Art. 23 of the Regulation)					
EEO enforcement suspended or					

imited by judgments of Lithuanian courts (fully or in part) (Art. 23 of the Regulation)					

NOTE: empty cells mean that the respondent did not provide the requested data, i.e. no information is available on the matter.

34. As can be seen from the tables above, the researchers intended to receive a lot more statistical information on Lithuanian court activities regarding the application of Regulations, yet this was not the case.

2.2.2. Lithuanian notary activities

35. According to Article 15 of the Implementation Law, authentic instruments that can be certified as a European Enforcement Order[693] are notary-protested and unprotested bills and cheques with notary made enforcement notes. On creditor's request, European Enforcement Order for the aforementioned authentic instruments is issued by the notary who had made the enforcement note. A notary issues a European Enforcement Order no later than five working days after receiving an application for the issue of a European Enforcement Order. Hence, Lithuanian notaries have the right to issue EEO certificates.

36. Yet, Lithuanian Chamber of Notaries replied to researchers' request for statistical data by saying that specific information and statistical data on the issue of European Enforcement Orders under EU Regulation 805/2004 by Lithuanian notaries have not and are not collected. Therefore, it is impossible to provide any data on this matter. On the other hand, however, it is seen from the publicly available databases of courts' procedural decisions that Lithuanian notaries (in Kaisiadorys region 3rd and Vilnius 2nd notarial bureaus) have been issuing EEO's, since courts had appeals regarding them[694].

2.2.3. Lithuanian bailiff activities

37. Lithuanian Chamber of Bailiffs, in reply to request for statistical data, informed us that Lithuanian Chamber of Bailiffs does not collect statistical information on foreign country instruments permitting enforcement submitted under the Regulations. However, seeking to provide the requested information, Lithuanian Chamber of Bailiffs surveyed bailiffs. Out of 116 bailiffs 63 replied. Summarized statistical data:

		2010	**2011**	**2012**
Under Regulation No.	Submitted/accepted for enforcement (number)			

[693] Part 1, Article 25 of Regulation 805/2004

[694] See, for example, Lithuanian Court of Appeal Civil Division's ruling of 9 August 2011 *R. D.* c. b., No 2–1708/2011 cat. 94.2.1; 122.3; 129.14; 130.1; ruling of 26 October 2012 *A.S.* c.b., No. 2-73/2012 cat. 110.1.

861/2007 of European Small Claims Procedure	Enforced (number)			
	Which foreign country submitted from?			
Under Regulation No. 1896/2006 of European Order for Payments	Submitted/accepted for enforcement (number)	2	4	3
	Enforced (number)	2	2	1
	Which foreign country submitted from?	Poland (2)	Poland (3), Germany (1)	Poland (3)
Under Regulation No. 805/2004 of European Enforcement Order	Submitted/accepted for enforcement (number)	7	6	1
	Enforced (number)	3	4	1
	Which foreign country submitted from?	Poland (5), Germany (1), Austria (1)	Poland (3), Germany (1), Latvia (1) England (1)	Germany (1)

NOTE: empty cells mean that the respondent did not provide the requested data, i.e. no information is available on the matter.

38. Summarizing the above data, it is seen that mostly Polish and German instruments are submitted in Lithuania under the Regulation. However, most of the requested information on the application of the Regulations in bailiff activities was not received (see Annex I).

3. Research on the practical application of the Regulations: empirical study results

39. To achieve the objectives of this Research, the researchers had to use, *inter alia*, sociological research methods. Because of this reason four questionnaires were produced to find out various aspects of the practical application of the Regulations and the use of European Judicial Atlas. These questionnaires were intended for the following: judges, advocates (their assistants, other lawyers), bailiffs (their assistants, agents, lawyers) and notaries. Questionnaires were electronic. They were uploaded on <http://webanketa.com/> from 14 October 2012 until 26 October 2012. This chapter discusses and analyzes only those questionnaire parts relating to the Regulations. The part for the use of European Judicial Atlas is discussed in more detail in Chapter 10 of this research.

40. Judge questionnaires were sent to the Presidents of Lithuanian Supreme Court, Lithuanian Court of Appeal, every civil division of regional courts, also Vilnius 1, 2, 3, 4, Siauliai, Klaipeda, Panevezys, Kaunas local courts, Vilnius, Klaipeda, Marijampole, Mazeikiai, Lazdijai, Vilkaviskis, Rokiskis, Alytus, Silute, Kretinga, Taurage, Jonava, Utena, Radviliskis, Birzai, Pasvalys, Druskininkai, Kedainiai, Telsiai, Sakiai region local courts asking to hand them out to selected judges or all court judges. 34 questionnaire responses were received.

41. Information on advocate (assistant, lawyer) questionnaire was distributed with the help of Lithuanian Bar Association, i.e. via internal Lithuanian Bar Association communication tools. 48 questionnaire responses were received.

42. Information on bailiff questionnaire was distributed with the help of Lithuanian Chamber of Bailiffs, i.e. via internal Lithuanian Chamber of Bailiffs communication tools. 10 questionnaire responses were received.

43. Information on notary questionnaire was distributed with the help of Lithuanian Chamber of Notaries, i.e. via internal Lithuanian Chamber of Notaries communication tools. 1 questionnaire response was received. It was clear, however, that the respondent did not have experience in the application of the considered Regulations, therefore, questionnaire data is not provided separately. Besides, they would be unrepresentative.

3.1. Judge questionnaire results

44. The following summarized data was derived from the questionnaire:

Chapter 1 INTRODUCTORY QUESTIONS

Your position:

Answers	Graph	%	Sum
Judge of a district court	.	48,48	16
Judge of a regional court	.	36,36	12
Judge of a Court of Appeal of Lithuania	.	15,15	5
Judge of a Supreme Court of Lithuania		0	0
		Answers:	33
		Unanswered:	1

Your work experience:

Answers	Graph	%	Sum
Less than 5 years	.	21,21	7
From 5 to 10 years	.	21,21	7
From 10 to 20 years	.	33,33	11
Over 20 years	.	24,24	8
		Answers:	33
		Unanswered:	1

Is your workplace located in Vilnius, Kaunas or Klaipėda?

Answers	Graph	%	Sum
Yes	.	61,29	19
No	.	38,71	12
		Answers:	31
		Unanswered:	3

As a judge, have you ever had to apply:

Answers	Graph	%	Sum
Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims			
Yes	.	33,33	10
No	.	56,67	17
Do not remember	.	10	3
Regulation 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure			
Yes	.	17,86	5
No	.	67,86	19
Do not remember	.	14,29	4
Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure			
Yes	.	3,7	1
No	.	88,89	24
Do not remember	.	7,41	2

Is your court specialized to investigate cases related to the European Union civil procedure?

Answers	Graph	%	Sum
Yes, there is such specialization, but I do not specialize in this field	.	3,23	1
Yes, there is such specialization and I belong to it	.	3,23	1
No, there is no such specialization	.	93,55	29
		Answers:	31
		Unanswered:	3

Have you ever participated in trainings related to one or more of the aforementioned Regulations concerning the European Enforcement Order, the European Order for Payment or the European Small Claims?

Answers	Graph	%	Sum
Yes	.	37,5	12
No	.	46,88	15
Do not remember	.	15,63	5
		Answers:	32
		Unanswered:	2

If your answer to the previous question is "yes", have you been satisfied with the quality of the trainings?

Answers	Graph	%	Sum
Yes	.	26,67	4
No	.	26,67	4
Do not remember	.	46,67	7
		Answers:	15
		Unanswered:	19

In your opinion, should there be more trainings organized concerning the previously mentioned Regulations?

Answers	Graph	%	Sum
Yes	.	83,87	26
No	.	3,23	1
No opinion	.	12,9	4
		Answers:	31
		Unanswered:	3

Would you participate in trainings in a foreign language on the previously mentioned Regulations?

Answers	Graph	%	Sum
Yes	.	56,25	18
No	.	43,75	14
		Answers:	32
		Unanswered:	2

In what foreign language would it be acceptable for you to have trainings concerning the above mentioned Regulations?

Answers	Graph	%	Sum
English	.	30,23	13
German	.	11,63	5
French	.	2,33	1
Russian	.	48,84	21
Other (please specify):	.	6,98	3
Lithuanian or using a translator because of special terms, Lithuanian, Polish		Answers:	29
		Unanswered:	5

As a judge, do you feel you are given sufficient legal practical information in Lithuanian concerning the aforementioned Regulations and their application?

Answers	Graph	%	Sum
Yes, it is sufficient	.	15,15	5
More information could be provided	.	69,7	23
Information is seriously lacking	.	6,06	2
Hard to tell	.	9,09	3
		Answers:	33
		Unanswered:	1

Chapter II. General Questions concerning Regulations 805/2004, 1896/2006 and 861/2007

Have you encountered any difficulties in determining the scope of the aforementioned Regulations 805/2004, 1896/2006 or 861/2007 (Art. 2 of the Regulations, for example, the concept of civil and commercial matters, the concept of administrative matter, etc.)?

Answers	Graph	%	Sum
No	.	22,22	4
Do not remember	.	27,78	5
Yes, I have encountered difficulties but do not remember them	.	50	9
Yes, I have encountered difficulties:		0	0
		Answers:	18
		Unanswered:	16

In completing the forms of the aforementioned Regulations 805/2004, 1896/2006 or 861/2007, do you use electronic tools on the European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm) or E-Justice (https://e-justice.europa.eu) website to complete those forms?

Answers	Graph	%	Sum
Often	.	58,82	10

I did not know about these tools	.	11,76	2
Rarely because (if possible, tell why):	.	29,41	5
Such cases are rare; I have not had such cases; electronic forms are usually filled in by an assistant		Answers:	17
		Unanswered:	17

In your opinion, should service methods set out national civil procedure be unified with those laid down in Regulations 805/2004 and 1896/2006?

Answers	Graph	%	Sum
Yes	.	70	14
No	.	5	1
Do not know	.	20	4
Your comments (if any):	.	5	1
due to different relevant and other legal regulation, mechanical unification may be problematic		Answers:	19
		Unanswered:	15

Have you ever had to examine an application for the limitation or stay of enforcement of a European Enforcement Order, European order for payment or a judgment given in a European Small Claims procedure (Art. 23 of the Regulation 805/2004, 1896/2006 and 861/2007)?

Answers	Graph	%	Sum
Yes	.	18,18	4
No	.	81,82	18
Do not remember		0	0
		Answers:	22
		Unanswered:	12

If the answer to the question above is "yes", do you feel that the content of legal provisions relating to the limitation or stay of enforcement is clear and smooth in terms of practical application?

Answers	Graph	%	Sum
Yes	.	16,67	1
Cannot answer	.	66,67	4
No. If possible, please specify what difficulties (problems) you have encountered:	.	16,67	1
in the public space there are several different form versions and they are all valid, sometimes it is not clear what to fill in.		Answers:	6
		Unanswered:	28

Have you ever examined (or been involved in the examination of) the application for the refusal of enforcement of a document, a European order for payment or a European Small Claims Procedure

judgment certified as a European Enforcement Order by another Member State?

Answers	Graph	%	Sum
Yes		0	0
No	.	86,67	13
Do not remember	.	13,33	2
		Answers:	15
		Unanswered:	19

If the answer to the question above is "yes", do you feel that legal provisions governing the refusal of enforcement are clear and smooth in terms of practical application?

Answers	Graph	%	Sum
Cannot answer	.	100	2
Yes, clear and smooth		0	0
Unclear (problematic). If possible, specify why:		0	0
		Answers:	2
		Unanswered:	32

Have you ever encountered any problems or obscurities how to determine the international character of case for the European order for payment or European Small Claims Procedure?

Answers	Graph	%	Sum
No	.	60	9
Do not remember	.	40	6
Yes. If you remember, please please specify:		0	0
		Answers:	15
		Unanswered:	19

Have you ever encountered any difficulties or uncertainties in determining the jurisdiction over a case concerning a European order for payment or a European Small Claims Procedure?

Answers	Graph	%	Sum
No	.	60	9
Do not remember	.	40	6
Yes. If you remember, please specify:		0	0
		Answers:	15
		Unanswered:	19

What deficiencies do you usually see in documents submitted in accordance with Regulations 805/2004, 1896/2006 or 861/2007?

Answers	Graph	%	Sum
Unused forms		0	0

Incorrectly completed forms	.	30	3
Unpaid stamp duty	.	10	1
No translation enclosed	.	50	5
Other:	.	10	1
have not dealt with the admission of such documents		Answers:	8
		Unanswered:	26

Do you feel that the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure is clear and sufficiently comprehensive?

Answers	Graph	%	Sum
Yes	.	26,32	5
Do not know	.	47,37	9
No. If possible, please specify what you are not satisfied with:	.	26,32	5
more detailed regulation in the Civil Procedure Code is needed		Answers:	19
		Unanswered:	15

Chapter III. QUESTIONS RELATING TO REGULATION 805/2004 (EUROPEAN ENFORCEMENT ORDER)

Are you satisfied with the quality of the Lithuanian version of Regulation 805/2004?

Answers	Graph	%	Sum
Yes, satisfied	.	85,71	12
No, not satisfied. If possible, specify why:	.	14,29	2
insufficient knowledge of English language to compare the translation with original text, meanwhile lecturers recommend to do this because, according to them, concepts in the original Regulations may be interpreted slightly differently (in a context) than it is given in their translation		Answers:	14
		Unanswered:	20

Do you encounter or have you ever encountered any difficulties in determining if a claim is uncontested (Regulation 805/2004 Article 3. 1 part)?

Answers	Graph	%	Sum
No, no difficulties.	.	70	7
Yes, but cannot recall the difficulties	.	20	2
Yes, I have encountered the following difficulties:	.	10	1
		Answers:	10
		Unanswered:	24

Have you ever had to scrutinize the compliance of a judgment to be certified as a European Enforcement Order with minimum procedural standards (Point c, Par. 1, Art. 6; Art. 12-17)?

Answers	Graph	%	Sum
No	.	58,33	7
Yes	.	41,67	5
Do not remember		0	0
		Answers:	12
		Unanswered:	22

If the answer to the question above is "yes", have you ever encountered any difficulties in interpreting provisions on the minimum procedural requirements (Art. 12-17 of the Regulation)?

Answers	Graph	%	Sum
No		0	0
Yes, yet cannot recall specific difficulties	.	80	4
Yes, I have encountered the following difficulties:	.	20	1
		Answers:	5
		Unanswered:	29

Have you ever had to decide that even though there was non-compliance with minimum procedural standards, they were rectified in accordance with Art. 18 of the Regulation?

Answers	Graph	%	Sum
Yes, it happens often.		0	0
Yes, but it is a rare or a one-off occasion.		0	0
No, I have never had to consider deficiencies rectified	.	60	6
Do not remember	.	40	4
Your comments (if any):		0	0
		Answers:	10
		Unanswered:	24

Have you ever had to decided on the rectification or withdrawal of a European Enforcement Order certificate (Art. 10 of Regulation 805/2004)?

Answers	Graph	%	Sum
Yes	.	15,38	2
No	.	69,23	9
Do not remember	.	15,38	2
		Answers:	13
		Unanswered:	21

If the answer to the question above is "yes", have you ever encountered any difficulties in interpreting the Regulation or the national law concerning the

rectification or withdrawal of a European Enforcement Order certificate?

Answers	Graph	%	Sum
Do not remember	.	50	2
No, no difficulties.	.	25	1
Yes. If possible, please indicate what difficulties you have encountered:	.	25	1
		Answers:	4
		Unanswered:	30

Have you ever encountered any uncertainties or difficulties while completing an Annex to Regulation 805/2004

Answers	Graph	%	Sum
No. 1 "European Enforcement Order certificate - judgment"?			
Do not remember	.	23,08	3
No	.	30,77	4
Have never had to fill in	.	30,77	4
Yes (specify if possible):	.	15,38	2
it is not clear in what language a certificate shall be issued, not explained if all spaces are mandatory to fill in, it is assistants‘ job to fill them in			
No. 2 "European Enforcement Order certificate - court settlement"?			
Do not remember	.	7,69	1
No	.	15,38	2
Have never had to fill in	.	76,92	10
Yes (specify if possible):		0	0
No. 4 "Certificate concerning the stay or limitation of enforcement (Par. 2, Art. 6)"?			
Do not remember	.	7,69	1
No	.	15,38	2
Have never had to fill in	.	76,92	10
Yes (specify if possible):		0	0
No. 5 "European Enforcement Order modification certificate upon a challange (Par. 3, Art. 6)"?			
Do not remember	.	16,67	2
No	.	8,33	1
Have never had to fill in	.	75	9
Yes (specify if possible):		0	0

Your additional observations regarding Regulation 805/2004 or national legal acts on its implementation (if any):

Answers			

There are uncertainties regarding jurisdiction in a case where a consumer contract has been concluded and the defendant-consumer has left for habitual residence in another Member State following its conclusion.			
		Answers:	1
		Unanswered:	33

Chapter IV. QUESTIONS REGARDING REGULATION 1896/2006 (EUROPEAN PAYMENT ORDER)

Are you satisfied with the quality of the Lithuanian version of Regulation 1896/2006?

Answers	Graph	%	Sum
Yes, satisfied	.	88,89	8
No, not satisfied. If possible, please indicate why:	.	11,11	1
		Answers:	9
		Unanswered:	25

If a document confirming the payment of stamp duty has not been provided together with the application for a European order for payment, you:

Answers	Graph	%	Sum
Use Form B - Request on a claimant to complete and/or rectify an application for a European order for payment	.	22,22	2
Issue a separate order for eliminating the deficiencies	.	44,44	4
Other:	.	33,33	3
I have not encountered such situation; have not encountered; such request has not been lodged in my work experience		Answers:	9
		Unanswered:	25

Have you ever encountered any difficulties or uncertainties concerning provisions governing the rejection of a European order for payment (Art. 11 of the Regulation).?

Answers	Graph	%	Sum
No	.	50	4
Do not remember	.	37,5	3
I have not rejected an application on European order for payment	.	12,5	1
Yes. If you recall, please specify:		0	0
		Answers:	8
		Unanswered:	26

Do you encounter any difficulties in recovering sending costs from a losing party?

Answers	Graph	%	Sum
No difficulties arise, they are recovered by using Form E - European Order for Payment	.	25	2

No, they are recovered by issuing a separate order	.	12,5	1
Cannot answer	.	50	4
Yes, they do arise because (If possible, please specify):	.	12,5	1
		Answers:	8
		Unanswered:	26

Have you ever encountered difficulties in completing any of the Annexes to Regulation 1896/2006

Answers	Graph	%	Sum
No. 2 "Form B - Request for the claimant to complete and/or rectify the application for a European order for payment''?			
No	.	18,18	2
Do not remember	.	18,18	2
Have never had to fill in	.	54,55	6
Yes (If possible, please specify what):	.	9,09	1
it is assistants‘ job to fill them in			
No. 3 "Form C - Proposal for the claimant to modify the application for a European order for payment"?			
No		0	0
Do not remember	.	20	2
Have never had to fill in	.	80	8
Yes (If possible, please specify what):		0	0
No. 4 "Form D - Decision to reject the application for a European order for payment"?			
No		0	0
Do not remember	.	30	3
Have never had to fill in	.	70	7
Yes (If possible, please specify what):		0	0
No. 5 "Form E - European order for payment"?			
No	.	30	3
Do not remember	.	20	2
Have never had to fill in	.	50	5
Yes (If possible, please specify what):		0	0
No. 7 "Declaration concerning enforceability"?			
No	.	20	2
Do not remember	.	20	2
Have never had to fill in	.	60	6
Yes (If possible, please specify what):		0	0

Have you ever had to decide on an application for the withdrawal of a European order for payment by using a review procedure (Art. 17 of the Regulation)?

Answers	Graph	%	Sum
Yes		0	0
No	.	100	10

Do not remember		0	0
		Answers:	10
		Unanswered:	24

If the answer to the question above is "yes", have you ever encountered any difficulties or uncertainties in the application of legal provisions governing the review of a European order for payment?

Answers	Graph	%	Sum
Cannot answer		0	0
No, there have been no difficulties (uncertainties)		0	0
Yes. If possible, please specify what difficulties (uncertainties) you have encountered:		0	0
		Answers:	0
		Unanswered:	34

Do you feel that the European order for payment procedure is practically efficient to investigate cross-border matters?

Answers	Graph	%	Sum
Yes, very efficient.	.	22,22	2
Efficient but improvable.	.	77,78	7
Inefficient rather than efficient		0	0
Totally inefficient		0	0
		Answers:	9
		Unanswered:	25

Your additional observations regarding Regulation 1896/2006 or national legal acts on its implementation (if any):

Answers			
		Answers:	0
		Unanswered:	34

Chapter 5 QUESTIONS REGARDING REGULATION 861/2007

Are you satisfied with the quality of the Lithuanian version of Regulation 861/2007?

Answers	Graph	%	Sum
Yes, satisfied	.	77,78	7
No, not satisfied. If possible, indicate why:	.	22,22	2
		Answers:	9
		Unanswered:	25

Have you ever had any difficulties in determining if the value of a claim does not exceed EUR 2,000?

Answers	Graph	%	Sum
Do not remember	.	50	3
No	.	50	3
Yes If possible, indicate what:		0	0
		Answers:	6
		Unanswered:	28

Do you fell that Regulation 861/2007 provisions governing the presentation, taking and other aspects of proof are clear?

Answers	Graph	%	Sum
Cannot answer	.	55,56	5
Yes, they are clear	.	11,11	1
No, they are unclear (if possible, please specify why):	.	33,33	3
unclear relationship between the Regulation and national law in the request of proof		Answers:	9
		Unanswered:	25

Do you feel that FORM A - CLAIM FORM - of Annex No. 1 to Regulation 861/2007 is suitable for instituting proceedings?

Answers	Graph	%	Sum
Cannot answer	.	77,78	7
Yes, suitable	.	22,22	2
No, not suitable. If possible, please indicate why:		0	0
		Answers:	9
		Unanswered:	25

Do you often appoint an oral court hearing in small claims under Regulation 861/2007?

Answers	Graph	%	Sum
Yes, always or often.	.	20	1
More often than not		0	0
Less often than not	.	40	2
Never or hardly ever	.	40	2
		Answers:	5
		Unanswered:	29

Have you ever used the possibility of excluding the award of certain litigation costs provided for in Article 16 of Regulation 861/2007 (for example, when they are disproportionally high compared to the amount of a claim)?

Answers	Graph	%	Sum
Yes, I use this possibility often		0	0
Yes, but I hardly ever use it	.	12,5	1
I do not use this possibility or use it rarely	.	12,5	1
Cannot answer	.	75	6
Your comments (if any):		0	0
		Answers:	8

		Unanswered:	26

Have you ever encountered any difficulties in filling in any of the Annexes to Regulation 861/2007

Answers	Graph	%	Sum
No. 2 "FORM B - REQUEST BY THE COURT TO COMPLETE AND/OR RECTIFY THE CLAIM FORM?"			
No		0	0
Do not remember	.	11,11	1
Have never had to fill in	.	88,89	8
Yes (If possible, please specify what):		0	0
No. 4 "FORM D - CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE?"			
No		0	0
Do not remember	.	11,11	1
Have never had to fill in	.	88,89	8
Yes (If possible, please specify what):		0	0

Do you feel that the European Small Claims Procedure is practically efficient in investigating cross-border matters?

Answers	Graph	%	Sum
Yes, very efficient.	.	14,29	1
Efficient, yet improvable.	.	57,14	4
Inefficient rather than efficient	.	28,57	2
Totally inefficient		0	0
		Answers:	7
		Unanswered:	27

Your additional observations regarding Regulation 1896/2006 or national legal acts on its implementation (if any):

Answers			
		Answers:	0
		Unanswered:	34

3.2. Results of the advocate (assistant, lawyer) survey

45. After the advocate (assistant, lawyer) survey, the results are as follows:

Chapter 1 INTRODUCTORY QUESTIONS

Your position:

Answers	Graph	%	Sum
Advocate	.	79,17	38

Advocate‘s assistant	.	20,83	10
Lawyer		0	0
		Answers:	48
		Unanswered:	0

Your legal work experience is:

Answers	Graph	%	Sum
Less than 5 years	.	16,67	8
From 5 to 10 years	.	52,08	25
From 10 to 20 years	.	25	12
Over 20 years	.	6,25	3
		Answers:	48
		Unanswered:	0

Is your workplace located in Vilnius, Kaunas or Klaipeda?

Answers	Graph	%	Sum
Yes	.	95,83	46
No	.	4,17	2
		Answers:	48
		Unanswered:	0

Have you ever applied or consulted on one of the following:

Answers	Graph	%	Sum
Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims			
Yes	.	39,02	16
No	.	60,98	25
Do not remember		0	0
Regulation 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure			
Yes	.	27,27	12
No	.	68,18	30
Do not remember	.	4,55	2
Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure			
Yes	.	7,5	3
No	.	90	36
Do not remember	.	2,5	1

Do you specialize in investigating cases related to the EU

Civil Procedure?

Answers	Graph	%	Sum
No, but the office I work in has such specialization	.	12,5	6
Yes, I do.	.	8,33	4
No, I do not and the office where I work does not have such specialization either	.	62,5	30
Difficult to say	.	16,67	8
		Answers:	48
		Unanswered:	0

Have you ever participated in trainings related to one or more of the aforementioned Regulations concerning the European Enforcement Order, the European Order for Payment or the European Small Claims?

Answers	Graph	%	Sum
Yes	.	10,42	5
No	.	87,5	42
Do not remember	.	2,08	1
		Answers:	48
		Unanswered:	0

If your answer to the previous question is "yes", have you been satisfied with the quality of the trainings?

Answers	Graph	%	Sum
Yes	.	22,22	2
No	.	33,33	3
Do not remember	.	44,44	4
		Answers:	9
		Unanswered:	39

In your opinion, should there be more trainings organized on the previously mentioned Regulations?

Answers	Graph	%	Sum
Yes	.	79,17	38
No	.	4,17	2
No opinion	.	16,67	8
		Answers:	48
		Unanswered:	0

Would you participate in trainings in a foreign language concerning the aforementioned Regulations?

Answers	Graph	%	Sum
Yes	.	68,09	32
No	.	31,91	15
		Answers:	47

		Unanswered:	1

In what foreign language would it be acceptable for you to have trainings concerning the above mentioned Regulations?

Answers	Graph	%	Sum
English	.	54,39	31
German	.	5,26	3
French	.	1,75	1
Russian	.	26,32	15
Other (please specify):	.	12,28	7
Lithuanian; Lithuanian; Lithuanian; Lithuanian; Lithuanian; any other language, provided that a translation into Lithuanian is ensured; any language is suitable with translation		Answers:	43
		Unanswered:	5

As a pacticioner, do you feel you have sufficient legal practical information in Lithuanian concerning the aforementioned Regulations and their application?

Answers	Graph	%	Sum
Yes, enough	.	10,42	5
More information could be provided	.	41,67	20
A serious lack of information	.	22,92	11
Difficult to say	.	25	12
		Answers:	48
		Unanswered:	0

Chapter II. General Questions concerning Regulations 805/2004, 1896/2006 and 861/2007

Are you satisfied with the work of Lithuanian courts in applying the aforementioned Regulations?

Answers	Graph	%	Sum
Yes	.	16,67	5
No	.	16,67	5
Difficult to say	.	63,33	19
Your comments (if any):	.	3,33	1
In my practice court issued European Enforcement Order certificate only after repeated applications and submission of detailed comments of provisions of the Regulation.		Answers:	29
		Unanswered:	19

In your opinion, is there enough practical information (on the Internet, in legal doctrine, etc.) on how to apply to courts of the other Member States to use the possibilities of Regulation 805/2004, 1896/2006, 861/2007 ?

Answers	Graph	%	Sum
Yes, enough or almost enough	.	13,79	4
It is not easy to find necessary information	.	65,52	19
It is impossible or almost impossible to find necessary information	.	6,9	2
Your comments (if any):	.	13,79	4
cannot answer; have not tried; have not encountered; difficult implementation of these regulations abroad		Answers:	29
		Unanswered:	19

Have you encountered any difficulties in determining the scope of the aforementioned Regulations 805/2004, 1896/2006 or 861/2007 (Art. 2 of the Regulations, for example, the concept of civil and commercial matters, the concept of administrative matter, etc.)?

Answers	Graph	%	Sum
No	.	30,77	8
Do not remember	.	34,62	9
Yes, I have encountered difficulties, yet cannot recall them	.	26,92	7
Yes, I have encountered the following difficulties:	.	7,69	2
Cannot answer because I have not dealt with it in practice		Answers:	26
		Unanswered:	22

In completing the forms of the aforementioned Regulations 805/2004, 1896/2006 or 861/2007, do you use electronic tools on the European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm) or E-Justice (https://e-justice.europa.eu) website to complete those forms?

Answers	Graph	%	Sum
Often	.	10,71	3
I did not know about these tools	.	75	21
Rarely because (if possible, tell why):	.	14,29	4
have not encountered; rarely apply, therefore, forget soon		Answers:	28
		Unanswered:	20

In your opinion, should service methods set out national civil procedure be unified with those laid down in Regulations 805/2004 and 1896/2006?

Answers	Graph	%	Sum
Yes	.	59,26	16
No	.	7,41	2
Do not know	.	29,63	8
Your comments (if any):	.	3,7	1
Cannot answer, however, if it is possible, it would be convenient		Answers:	27
		Unanswered:	21

Have you ever had to deal with or consult on the application for the limitation or stay of enforcement of a European Enforcement Order, a European order for payment or a judgment given in a European Small Claims Procedure (Art. 23 of Regulation 805/2004, 1896/2006 and 861/2007)?

Answers	Graph	%	Sum
Yes	.	28,57	8
No	.	64,29	18
Do not remember	.	7,14	2
		Answers:	28
		Unanswered:	20

If the answer to the question above is "yes", do you feel that the content of legal provisions relating to the limitation or stay of enforcement is clear and smooth in terms of practical application?

Answers	Graph	%	Sum
Yes	.	10	1
Cannot answer	.	60	6
No If possible, please specify what difficulties (problems) you have encountered:	.	30	3
Foreign agencies are hard to cooperate with, difficult to control (for example, recovery) procedure; difficult to understand the actual meaning due to peculiar (not in a legal sense, but maybe more in terms of style and the puculiarity of categories used) language of translations		Answers:	10
		Unanswered:	38

Have you ever had to deal with or consult on the application for the refusal of enforcement of an instrument, a European order for payment or a judgment given in a European Small Claims Procedure certified as a European Enforcement Order by another Member State?

Answers	Graph	%	Sum
Yes	.	7,69	2
No	.	84,62	22
Do not remember	.	7,69	2
		Answers:	26
		Unanswered:	22

If the answer to the question above is "yes", do you feel that the content of legal provisions relating to the refusal of enforcement is clear and smooth in terms of practical application?

Answers	Graph	%	Sum

Cannot answer	.	33,33	1
Yes, clear and not causing problems		0	0
No, not clear (problematic) If possible, indicate why:	.	66,67	2
It takes time, EU practice would solve everything. I do not think it should be changed		Answers:	3
		Unanswered:	45

Have you ever encountered any difficulties or uncertainties on how to determine the cross-border nature of a case on a European order for payment or a European Small Claims Procedure (Art. 3 of Regulation 1896/2006 and 861/2007)?

Answers	Graph	%	Sum
No	.	50	12
Do not remember	.	41,67	10
Yes. If you remember, please specify:	.	8,33	2
		Answers:	24
		Unanswered:	24

Have you ever encountered any difficulties or uncertainties on how to determine jurisdiction over a European order for payment or a European Small Claims Procedure?

Answers	Graph	%	Sum
No	.	50	12
Do not remember	.	41,67	10
Yes. If you remember, please specify:	.	8,33	2
on the application of special jurisdiction in accordance with Art. 5 of Regulation 44/2001.		Answers:	24
		Unanswered:	24

Do you feel that the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure is clear and sufficiently comprehensive?

Answers	Graph	%	Sum
Yes	.	7,69	2
Do not know	.	65,38	17
No. If possible, please specify what you are not satisfied with:	.	26,92	7
		Answers:	26
		Unanswered:	22

Chapter III QUESTIONS CONCERNING REGULATION 805/2004 (EUROPEAN ENFORCEMENT ORDER)

Are you satisfied with the quality of the Lithuanian

version of Regulation 805/2004?

Answers	Graph	%	Sum
Yes, satisfied	.	76,47	13
No, not satisfied. If possible, indicate why:	.	23,53	4
it is okay, but you can tell that it is a translation		Answers:	17
		Unanswered:	31

Do you encounter or have ever encountered any difficulties in determining if a claim is uncontested (Regulation 805/2004 Article 3. 1 part)?

Answers	Graph	%	Sum
No difficulties	.	50	7
Yes, yet cannot recall specific difficulties	.	28,57	4
Yes, I have encountered the following difficulties:	.	21,43	3
do not remember; have not applied		Answers:	14
		Unanswered:	34

Have you ever encountered any difficulties in interpreting provisions on the minimum procedural standards (Art. 12-17 of the Regulation)?

Answers	Graph	%	Sum
No	.	47,06	8
Yes, yet cannot recall specific difficulties	.	29,41	5
Yes, I have encountered the following difficulties:	.	23,53	4
Do not know what these articles mean; have not applied; since a default judgment has been given, the court refused to issue a European Enforcement Order on the grounds that the procedural documents of court were served to the defendant by publication; the main issues arise concerning the payment of stamp duty in a foreign country. In such case local advocates assistance is still necessary.		Answers:	17
		Unanswered:	31

Have you ever encountered a situation where there was non-compliance with minimum procedural standards, yet they were rectified in accordance with Art. 18 of the Regulation?

Answers	Graph	%	Sum
Yes, it happens often		0	0
Yes, but it is a rare or a one-off occasion.		0	0
No, I have never had to consider deficiencies rectified	.	58,82	10
Do not remember	.	35,29	6
Your comments (if any):	.	5,88	1
have not occured		Answers:	17
		Unanswered:	31

Have you ever dealt with or consulted on the rectification or withdrawal of a European Enforcement Order (Art. 10 of Regulation 805/2004)?

Answers	Graph	%	Sum
Yes	.	5,88	1
No	.	88,24	15
Do not remember	.	5,88	1
		Answers:	17
		Unanswered:	31

If the answer to the question above is "yes", have you ever encoountered any difficulties in interpreting the Regulation or national law with regard to the rectification or withdrawal of a European Enforcement Order?

Answers	Graph	%	Sum
Do not remember	.	50	1
No, no difficulties.		0	0
Yes. If possible, indicate what difficulties you have encountered:	.	50	1
		Answers:	2
		Unanswered:	46

Have you ever encountered any difficulties or uncertainties in filling in Form on "application for rectification or withdrawal of a European Enforcement Order certificate (Par. 3, Art. 10)" of Annex No. 6 to Regulation 805/2004

Answers	Graph	%	Sum
I have not had to fill in this form	.	100	17
No, I have not encountered any difficulties (uncertainties)		0	0
Yes, I have encountered difficulties (uncertainties), yet do not recall them		0	0
Yes, there were these difficulties (uncertainties):		0	0
		Answers:	17
		Unanswered:	31

Have you ever encountered any difficulties in obtaining a European Enforcement Order certificate in Lithuania?

Answers	Graph	%	Sum
I have never applied for it	.	38,89	7
No, no difficulties.	.	38,89	7
Yes, I had difficulties. If possible, please specify:	.	22,22	4
Translation difficulties			

After an application for a European Enforcement Order certificate on 9 June 2010, Vilnius 2nd District Court found the following deficiencies in the application: the applicant did not indicate where the debtor had left, also did not provide an exact address, the applicant did not provide evidence that the debtor had left for habitual residence abroad, and the court noted that a European Enforcement Order certificate shall only be granted against foreign entities. The Court also noted that if the person had been habitually resident abroad at the time of the application, the case could not have been investigated by a simplified procedure. Thus, we prepared a letter to the court concerning rectification, in which we specified to the court the provisions of the Regulation, indicating that the deficiencies had been identified wrongly. Upon receiving this letter, the court has finally issued a certificate.	Answers:	18
	Unanswered:	30

Have you ever encountered any difficulties in enforcing a European Enforcement Order in Lithuania?

Answers	Graph	%	Sum
Do not remember	.	17,65	3
No	.	11,76	2
I have not dealt with its enforcement	.	52,94	9
Yes, I had difficulties. If possible, please specify:	.	17,65	3
It is very difficult to find a bailiff in another State. Besides, an application to court shall first be made (in Hungary). To achieve that, an EEO, a judgment, power of attorney shall be apostilled. It is difficult to find a competent institution or a person of another State who could perform the certification. Procedural laws are also different in each State. In Lithuania all costs incurred during enforcement proceedings can be transferred to the debtor, while in the United Kingdom (as far as we were able to figure out) there is a fixed amount that cannot be transferred to the debtor, which complicates the enforcement, thereby possibly making small claims inefficient at all. Difficult enforcement procedure abroad, lack of cooperation from institutions, unclear which institutions to apply to, control of recovery procedure is almost impossible			
		Answers:	17
		Unanswered:	31

Do you feel that a European Enforcement Order certificate is an efficient instrument?

Answers	Graph	%	Sum
Yes, very efficient.	.	25	4
Efficient, yet improvable.	.	56,25	9
Inefficient rather than efficient	.	18,75	3
Totally inefficient		0	0
		Answers:	16

		Unanswered:	32

Your additional observations concerning Regulation 805/2004, national legal acts on its implementation or case law (if any) :

Answers			
I would recommend to unify the distribution of enforcement costs throughout the States - in my opinion, costs incurred during the enforcement procedure should be recovered from the debtor.			
		Answers:	1
		Unanswered:	47

Chapter 4 QUESTIONS CONCERNING REGULATION 1896/2006 (EUROPEAN PAYMENT ORDER)

Are you satisfied with the quality of the Lithuanian version of Regulation 1896/2006?

Answers	Graph	%	Sum
Yes, satisfied	.	66,67	6
No, not satisfied. If possible, indicate why:	.	33,33	3
I have not read.		Answers:	9
		Unanswered:	39

Have you ever encountered any difficulties concerning the provisions governing the rejection of a European order for payment (Art. 11 of the Regulation).?

Answers	Graph	%	Sum
No	.	41,67	5
Do not remember	.	58,33	7
Yes. If you remember, please specify:		0	0
		Answers:	12
		Unanswered:	36

Have you ever encountered any difficulties in completing any of the Annexes to Regulation 1896/2006

Answers	Graph	%	Sum
No. 1 "Form A - Application for a European order for payment"?			
No	.	25	2
Do not remember	.	25	2
Have never had to fill in	.	50	4
Yes (If possible, please specify what):		0	0
No. 6 "Form F - Opposition against a European order for payment"?			
No	.	37,5	3
Do not remember	.	12,5	1
Have never had to fill in	.	50	4

Yes (If possible, please specify what):		0	0

Have you ever encountered any difficulties in obtaining a European Enforcement Order certificate?

Answers	Graph	%	Sum
I have never applied for it	.	76,92	10
o		0	0
Yes If possible, indicate what:	.	23,08	3
In 2009-2010 the courts were little informed of it, I do not know the situation right now We had difficulties when asking in Ireland (jurisdiction under a contract). We hired local advocates, as we had questions regarding stamp duty, service, etc. Local advocates informed us that the instrumet was new in their courts and they were not sure how long untill it gets granted. In the end, everything was delayed due to service.			
		Answers:	13
		Unanswered:	35

Have you ever dealt with or consulted on the application for the withdrawal of a European order for payment by a review procedure (Art. 17 of the Regulation)?

Answers	Graph	%	Sum
Yes	.	7,69	1
No	.	84,62	11
Do not remember	.	7,69	1
		Answers:	13
		Unanswered:	35

If the answer to the question above is "yes", have you ever encountered any difficulties or uncertainties concerning the application of legal provisions governing the review of a European order for payment?

Answers	Graph	%	Sum
Cannot answer	.	66,67	2
No, I have not encountered any difficulties (uncertainties)		0	0
Yes. If possible, indicate what difficulties (uncertainties) you have encountered:	.	33,33	1
		Answers:	3
		Unanswered:	45

Have you ever encountered any difficulties in enforcing a European order for payment in Lithuania?

Answers	Graph	%	Sum
Do not remember	.	38,46	5
No		0	0
I have not had to deal with its enforcement	.	61,54	8

Yes, I had some difficulties. If possible, indicate what:		0	0
		Answers:	13
		Unanswered:	35

Do you feel that a European order for payment procedure is practically efficient in investigating cross-border matters?

Answers	Graph	%	Sum
Yes, very efficient	.	11,11	1
Efficient, yet improvable.	.	77,78	7
Inefficient rather than efficient	.	11,11	1
Totally inefficient		0	0
		Answers:	9
		Unanswered:	39

Your additional observations on Regulation 1896/2006, national legal acts on its implementation or case law (if any) :

Answers			
		Answers:	0
		Unanswered:	48

Chapter 5 QUESTIONS CONCERNING REGULATION 861/2007
Are you satisfied with the quality of the Lithuanian version of Regulation 861/2007?

Answers	Graph	%	Sum
Yes, satisfied	.	83,33	5
No, not satisfied. If possible, indicate why:	.	16,67	1
		Answers:	6
		Unanswered:	42

Have you ever had difficulties in determining if the value of a claim does not exceed EUR 2,000?

Answers	Graph	%	Sum
Do not remember	.	22,22	2
No	.	77,78	7
Yes If possible, indicate what:		0	0
		Answers:	9
		Unanswered:	39

Do you feel that the folowing forms of Annexes to Regulation 861/2007 are:

Answers	Graph	%	Sum
No. 1 FORM A - CLAIM FORM is suitable for instituting proceedings?			

Have not had to fill it in/ Cannot answer	.	100	7
Yes, suitable		0	0
Unsuitable (If possible, please specify why)		0	0
No. 3 FORM C - ANSWER FORM is suitable?			
Have not had to fill it in/ Cannot answer	.	100	6
Yes, suitable		0	0
Unsuitable (If possible, please specify why)		0	0

Do you feel that Regulation 861/2007 provisions governing the presentation, collection and other aspects of proof are clear?

Answers	Graph	%	Sum
Cannot answer	.	88,89	8
Yes, clear		0	0
Unclear because (If possible, please specify why):	.	11,11	1
		Answers:	9
		Unanswered:	39

Do you feel that an oral court hearing if often necessary in cases under Regulation 861/2007 on Small Claims?

Answers	Graph	%	Sum
Yes, always or often		0	0
More often than not	.	33,33	2
Less often than not	.	50	3
Almost never or hardly ever	.	16,67	1
		Answers:	6
		Unanswered:	42

Do you think that Lithuanian courts fairly recover litigation costs in a small claims procedure in accordance with Regulation 861/2007?

Answers	Graph	%	Sum
Yes, fairly		0	0
No, they recover insufficient amounts	.	25	2
No, they recover excessive amounts		0	0
Cannot answer	.	62,5	5
Your comments (if any):	.	12,5	1
Award of litigation costs in courts should be reviewed on its merits, it does not meet present day realities		Answers:	7
		Unanswered:	41

In your opinion, does Lithuania properly fulfill its obligation provided for in Regulation 861/2007 to provide practical assistance in filling out the forms as set out in the Regulation?

Answers	Graph	%	Sum
Yes		0	0
No	.	25	2
Difficult to say	.	75	6
Your comments (if any):		0	0
		Answers:	8
		Unanswered:	40

Have you ever encountered any difficulties in enforcing a judgment given and declared enforceable in accordance with Regulation 861/2007 in Lithuania?

Answers	Graph	%	Sum
Do not remember	.	25	2
No	.	12,5	1
I have not dealt with its enforcement	.	62,5	5
Yes, I had some difficulties. If possible, indicate what:		0	0
		Answers:	8
		Unanswered:	40

Do you feel that the European Small Claims Procedure is practically efficient to investigate cross-border matters?

Answers	Graph	%	Sum
Yes, very efficient.		0	0
Efficient, yet improvable.	.	71,43	5
Inefficient rather than efficient	.	28,57	2
Totally inefficient		0	0
		Answers:	7
		Unanswered:	41

Your additional observations regarding Regulation 861/2007, national legal acts or case law concerning its implementation(if any) :

Answers			
		Answers:	0
		Unanswered:	48

3.3. Results of the bailiff (assistant, representative) survey

46. After the survey of bailiffs (assistants, representatives) the following summarized data has been obtained:

Chapter 1 INTRODUCTORY QUESTIONS

Your position:

Answers	Graph	%	Sum
Bailiff	.	11,11	1

Assistant of a bailiff	.	88,89	8
Representative of a bailiff		0	0
Lawyer of a bailiff office		0	0
		Answers:	9
		Unanswered:	1

Your work experience as a bailiff (assistant, representative, lawyer) is:

Answers	Graph	%	Sum
Less than 5 years	.	25	2
From 5 to 10 years	.	62,5	5
From 10 to 20 years	.	12,5	1
Over 20 years		0	0
		Answers:	8
		Unanswered:	2

Is your workplace located in Vilnius, Kaunas or Klaipeda?

Answers	Graph	%	Sum
Yes	.	70	7
No	.	30	3
		Answers:	10
		Unanswered:	0

Have you ever had to enforce a document issued in accordance with:

Answers	Graph	%	Sum
Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims			
Yes	.	30	3
No	.	70	7
Do not remember		0	0
Regulation 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure			
Yes	.	11,11	1
No	.	88,89	8
Do not remember		0	0
Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure			
Yes		0	0
No	.	100	7
Do not remember		0	0

Have you ever participated in trainings related to one or more of the aforementioned Regulations concerning the European Enforcement Order, the European Order for Payment or the European Small Claims?

Answers	Graph	%	Sum
Yes	.	20	2
No	.	80	8
Do not remember		0	0
		Answers:	10
		Unanswered:	0

If your answer to the previous question is "yes", have you been satisfied with the quality of the trainings?

Answers	Graph	%	Sum
Yes	.	50	2
No	.	25	1
Do not remember	.	25	1
		Answers:	4
		Unanswered:	6

Do you feel that there should be more trainings organized concerning the aforementioned Regulations?

Answers	Graph	%	Sum
Yes	.	100	10
No		0	0
No opinion		0	0
		Answers:	10
		Unanswered:	0

Would you participate in trainings in a foreign language concerning the aforementioned Regulations?

Answers	Graph	%	Sum
Yes	.	60	6
No	.	40	4
		Answers:	10
		Unanswered:	0

In which language would the trainings on the aforementioned Regulations would be acceptable for you?

Answers	Graph	%	Sum
English	.	30,77	4
German		0	0
French		0	0
Russian	.	46,15	6
Other (please specify):	.	23,08	3
Lithuanian; Spanish; Lithuanian		Answers:	9
		Unanswered:	1

As a practitioner, do you feel you are given enough information in Lithuanian on enforcement of documents issued according to the aforementioned Regulations?

Answers	Graph	%	Sum
Yes, enough		0	0
More information could be provided	.	40	4
Information is seriously lacking	.	60	6
Difficult to say		0	0
		Answers:	10
		Unanswered:	0

Chapter II. General Questions concerning Regulations 805/2004, 1896/2006 and 861/2007

Are you satisfied with the work of Lithuanian courts in applying the aforementioned Regulations?

Answers	Graph	%	Sum
Yes	.	14,29	1
No		0	0
Difficult to say	.	85,71	6
Your comments (if any):		0	0
		Answers:	7
		Unanswered:	3

Do you feel that persons against whom enforcement actions under the document issued in accordance with Regulations 805/2004, 1896/2006 or 861/2007 are taken, are given enough information on how they can protect their rights under these Regulations (for example, a review procedure, an application for the rectification or withdrawal of a European Enforcement Order, an application for the refusal of enforcement, etc.)?

Answers	Graph	%	Sum
Yes, enough		0	0
More often yes than not		0	0
Rarely	.	28,57	2
Persons seriously lack such knowledge	.	71,43	5
Your comments (if any):		0	0
		Answers:	7
		Unanswered:	3

Do you feel that enforcement actions in enforcing documents, issued in accordance with the aforementioned Regulations are contested more often than those of national origin?

Answers	Graph	%	Sum
Yes, they are contested more often		0	0
No, they are contested less often	.	14,29	1

Difficult to say	.	85,71	6
		Answers:	7
		Unanswered:	3

Do you feel that the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure is clear and sufficiently comprehensive?

Answers	Graph	%	Sum
Yes	.	14,29	1
Do not know	.	57,14	4
No. If possible, specify what you are not satisfied with:	.	28,57	2
the description of the application of the aforementioned Regulations is confusing, both the Regulation and its implementation law have to be read simultaneously		Answers:	7
		Unanswered:	3

Do foreigners submit documents granted in accordance with the aforementioned Regulations together with their translation into Lithuanian?

Answers	Graph	%	Sum
Always or almost always	.	14,29	1
Difficult to say	.	57,14	4
Translations of all documents are rarely submitted	.	28,57	2
		Answers:	7
		Unanswered:	3

Chapter III. QUESTIONS CONCERNING REGULATION 805/2004 (EUROPEAN ENFORCEMENT ORDER)

Are you satisfied with the the quality of Lithuanian version of Regulation 805/2004?

Answers	Graph	%	Sum
Yes, satisfied	.	75	3
No, not satisfied. If possible, indicate why:	.	25	1
		Answers:	4
		Unanswered:	6

Are the forms of Regulation 805//2004 suitable and do not cause difficulties in enforcement procedure?

Answers	Graph	%	Sum
Form of Annex No. 1 "European Enforcement Order certificate - judgment"			
Yes, suitable	.	33,33	1
Difficult to say		0	0
I have not dealt with it	.	66,67	2
No unsuitable (If possible, please specify):		0	0
Form of Annex No. 2 "European Enforcement Order certificate - court settlement"			
Yes, suitable	.	33,33	1

Difficult to say		0	0
I have not dealt with it	.	66,67	2
No unsuitable (If possible, please specify):		0	0
Form of Annex No. 3 "European Enforcement Order certificate - authentic instrument"			
Yes, suitable	.	33,33	1
Difficult to say		0	0
I have not dealt with it	.	66,67	2
No unsuitable (If possible, please specify):		0	0

Have you ever had to deal with Form No. 4 of Annex to Regulation 805/2004 "Certificate concerning the stay or limitation of enforcement (Par. 2, Art. 6)"?

Answers	Graph	%	Sum
Yes		0	0
No	.	100	3
Do not remember		0	0
		Answers:	3
		Unanswered:	7

If the answer to the question above is "yes", do you feel that the legal regulation on bailiff‘s actions in such situation is clear and does not cause any difficulties for you?

Answers	Graph	%	Sum
Yes, clear		0	0
Difficult to say		0	0
Unclear (If possible, please specify why):		0	0
		Answers:	0
		Unanswered:	10

Have you ever encountered any difficulties in enforcing a European Enforcement Order?

Answers	Graph	%	Sum
Do not remember		0	0
No	.	33,33	1
I have not dealt with its enforcement	.	66,67	2
Yes, I had some difficulties. If possible, indicate what:		0	0
		Answers:	3
		Unanswered:	7

Have you ever had to decide on the rectification or withdrawal of a European Enforcement Order (Art. 23 of Regulation 805/2004)?

Answers	Graph	%	Sum
Yes		0	0
No	.	100	2

Do not remember		0	0
		Answers:	2
		Unanswered:	8

If the answer to the question above is "yes", do you feel that the content of legal provisions concerning the limitation or stay of enforcement is clear and smooth in terms or practical application?

Answers	Graph	%	Sum
Yes		0	0
Cannot answer		0	0
No. If possible, please specify what difficulties (problems) you have encountered:		0	0
		Answers:	0
		Unanswered:	10

In your opinion, should courts have an exclusive jurisdiction to decide on the stay or limitation of a a European Enforcement Order?

Answers	Graph	%	Sum
Yes	.	66,67	2
No	.	33,33	1
Difficult to say		0	0
		Answers:	3
		Unanswered:	7

Do you feel that the European Enforcement Order certificate is an efficient instrument?

Answers	Graph	%	Sum
Yes, very efficient.	.	33,33	1
Efficient, yet improvable.	.	66,67	2
Inefficient rather than efficient		0	0
Totally inefficient		0	0
		Answers:	3
		Unanswered:	7

Your additional observations regarding Regulation 805/2004, national legal acts and case lawregarding its implementation (if any) :

Answers			
		Answers:	0
		Unanswered:	10

Chapter IV QUESTIONS CONCERNING REGULATION 1896/2006 (EUROPEAN PAYMENT ORDER)

Are you satisfied with the quality of the Lithuanian version of Regulation 1896/2006?

Answers	Graph	%	Sum

Yes, satisfied	.	66,67	2
No, not satisfied. If possible, indicate why:	.	33,33	1
		Answers:	3
		Unanswered:	7

Are documents submitted for enforcement in accordance with Regulation 1896/2006 (Form E - European order for payment and Form G - Declaration of enforceability) are suitable and do not cause any difficulties in the enforcement process?

Answers	Graph	%	Sum
Yes, they are suitable	.	33,33	1
Difficult to say	.	33,33	1
I have not dealt with them	.	33,33	1
No, they are unsuitable and cause the following difficulties (If possible, please specify):		0	0
		Answers:	3
		Unanswered:	7

Have you ever encountered any difficulties in enforcing a European Order for Payment in Lithuania?

Answers	Graph	%	Sum
Do not remember		0	0
No	.	33,33	1
I have not dealt with its enforcement	.	66,67	2
Yes, I had some difficulties. If possible, indicate what:		0	0
		Answers:	3
		Unanswered:	7

Do you feel that the European order for payment procedure is practically efficient?

Answers	Graph	%	Sum
Yes, very efficient.	.	33,33	1
Efficient, yet improvable.	.	66,67	2
Inefficient rather than efficient		0	0
Totally inefficient		0	0
		Answers:	3
		Unanswered:	7

Your additional observations regarding Regulation 1896/2006, national legal acts or case law regarding its implementation (if any) :

Answers			
		Answers:	0
		Unanswered:	10

Chapter V. QUESTIONS CONCERNING REGULATION 861/2007

Are you satisfied with the quality of the Lithuanian

version of Regulation 861/2007?

Answers	Graph	%	Sum
Yes, satisfied	.	33,33	1
No, not satisfied. If possible, indicate why:	.	66,67	2
		Answers:	3
		Unanswered:	7

Is Form D - CERTIFICATE CONCERNING A JUDGMENT IN THE EUROPEAN SMALL CLAIMS PROCEDURE of Regulation 861/2007 is suitable and do not cause any difficulties in the enforcement procedure?

Answers	Graph	%	Sum
Yes, it is.		0	0
Difficult to say		0	0
I have not dealt with it	.	100	2
No, unsuitable and causes the following difficulties (If possible, please specify):		0	0
		Answers:	2
		Unanswered:	8

Have you ever encountered any difficulties a judgment given and declared enforceable in accordance with Regulation 861/2007 in Lithuania?

Answers	Graph	%	Sum
Do not remember		0	0
No		0	0
I have not dealt with its enforcement	.	100	2
Yes, I had some difficulties. If possible, indicate what:		0	0
		Answers:	2
		Unanswered:	8

Do you feel that the European Small Claims Procedure is practically efficient?

Answers	Graph	%	Sum
Yes, very efficient.		0	0
Efficient, yet improvable.	.	100	2
Inefficient rather than efficient		0	0
Totally inefficient		0	0
		Answers:	2
		Unanswered:	8

Your additional observations on Regulation 861/2007, national legal acts or case law regarding its implementation (if any) :

Answers			
		Answers:	0
		Unanswered:	10

3.4. Summary of survey results

47. Mostly court, advocate (assistant) and bailiff (assistant) practices deal with Regulation 805/2004. The least encountered is Regulation 861/2007 of Small Claims. In addition, the results also show that many Lithuanian judges, advocates (assistants) and bailiffs (assistants) have never encountered considered Regulations at all. For example, 57[695] to 89[696] percent of judges (depending on the Regulation), 61 to 90 percent of advocates (assistants) and 70 to 100 percent of bailiffs (assistants) (depending on the Regulation) surveyed stated that they have never applied the Regulation in question. This suggests that considered EU legal instruments are not well-known to Lithuanian residents either.

48. *Judges do not usually (94 percent of respondents) specialize in cases involving EU civil procedure.* The absence of specializations can be justified in small local courts. However, we believe, it should be considered and discussed in large courts. Especially, since 21 percent of advocates (assistants) who answered indicated that this specialization exists in their working office.

49. Considered Regulations have been adopted recently and not on the national level, but on European Union level, therefore, there should certainly be a need for knowledge on these Regulations. *However, only 38 percent of judges, 20 percent of bailiffs (assistants) and only 10 percent of advocates (assistants) said they have participated in workshops regarding these Regulations.* Satisfaction with these workshops ranges from 22 to 50 percent. *Yet, most importantly, 84 percent of judges, 79 percent of advocates (assistants) and 100 percent of bailiffs (assistants) indicated that more workshops regarding considered matters should be organized. In addition, 76 percent of judges, 74 percent of advocates (assistants) and 100 of bailiffs (assistants) indicated that either there is a lack or there should be more practical legal information on Regulations in Lithuanian. It sends a strong signal to the law education and to the institutions responsible for professional development of lawyers.* Quite many respondents would agree that workshops should be organized in foreign languages.

50. It should be emphasized that *all bailiffs (assistants) indicated that individuals concerned with enforcement actions rarely know or lack knowledge on how they could defend their rights under the aforementioned Regulations (e.g. review procedure, application for European Enforcement Order rectification or withdrawal, application for the refusal to comply and other). It is important information showing that the society*

[695] Percentages provided here are rounded to the nearest whole number.

[696] Percentages provided here and below are calculated from the number of replies to a specific question and not from the total number of surveyed respondents, unless indicated otherwise.

lacks legal education. In turn, it is this lack of knowledge on how to defend one's rights that often leads to the dissatisfaction with the whole legal framework and the state.

51. The survey showed that bot advocates (assistants) and bailiffs (assistants) have an average opinion on Lithuanian courts' work applying Regulations. Many found it difficult to evaluate it. Greater part of advocates (assistants) indicated that they have no difficulties obtaining European Enforcement Order certificate. Yet, many advocates (assistants) said that they need to further prove and explain to judges their intentions to exercise the rights under the Regulations.

52. The survey also showed that Lithuanian advocates (assistants) find it difficult (66 percent) of very difficult (7 percent) to find practical information (on the Internet, in the legal doctrine or elsewhere) on how to contact other Member State courts in order to take advantage of opportunities offered by Regulations 805/2004, 1896/2006, 861/2007.

53. It can also be seen that judges (50 percent) have difficulties determining the scope of the Regulations.

54. *It is surprising that 75 percent of advocates (assistants) were unaware of the electronic tools on European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm) or E-Justice (https://e-justice.europa.eu) websites for filling out Regulation forms.* It is encouraging, on the other hand, that these facilitating tools are often used by 59 percent of judges.

55. The majority of judges and advocates (assistants) favor the alignment of serving methods provided in the national civil procedure with those provided in Regulations 805/2004 and 1896/2006. One of the judges, we believe, however, very aptly noted that mechanical alignment can be problematic.

56. One of the judges pointed out the fact that there are several different form versions available and all of them are valid, thus, sometimes it is unclear which one should be filled out.

57. It seems that legal practitioners have no major problems with the application of Regulation standards relating to enforcement suspension or withdrawal. It is also clear, however, that it is a rather rare issue.

58. None of the judges who responded have had to deal with the refusal to enforce an instrument under any of the Regulations.

59. Neither advocates (assistants), nor judges usually have any issues determining the international character of a case under Regulation 861/2007 or 1896/2006, applying or explaining the standards governing the refusal of European Order for Payments, or determining if a claim exceeds 2 000 euros (under Regulation 861/2007). The exact same situation is with the jurisdiction of these matters.

60. Judges pointed out that the most common limitation regarding the Regulations is the absence of corresponding translations.

61. Noteworthy is the fact that 26-28 percent of respondents are not satisfied with the Implementation Law. Yet, specific issues are usually not indicated. One of the judges

offers to regulate everything in more detail in the Civil Code of Procedure, meanwhile one of the bailiffs (assistants) says that it is inconvenient to apply and analyze both Regulations and the law at the same time.

62. All of the respondents are essentially satisfied with the quality of Lithuanian versions of the Regulations, except the fact that 2 of 3 bailiff (assistant) respondents said they were unhappy with the Lithuanian text of Regulation 861/2007. As we will see, however, the quality of the Lithuanian version of Regulation 805/2004 should obviously be improved.

63. It seems that in practice there are no major problems in determining if a claim is uncontested under Regulation 805/2004; nor are there difficulties in filling out forms provided in Regulation 805/2004, 1896/2006, 861/2007 annexes. However, more than half of the advocates (assistants) and all judges who responded to the particular question indicated that they had had difficulties in explaining the provisions concerning minimum procedural standards (Articles 12-17 of Regulation 805/2004).

64. The survey suggests that applications for European Enforcement Order rectification or withdrawal are submitted rarely, since respondents have almost no experience with such requests. This is the exact same situation with the applications for European Order for Payments withdrawal review.

65. Both advocates (assistants) and bailiffs (assistants) regard European Enforcement Order certificate as an effective, yet improvable instrument. Identical view prevails among judges, advocates (assistants), bailiffs (assistants) on European Order for Payments and European Small Claims cases. The latter was viewed least favorably. Bailiffs (assistants) essentially have no difficulties enforcing European Enforcement Order certificate or European Order for Payments.

66. The responses lead to the assumption that both advocates (assistants) and judges are not very clear about Regulation 861/2007 standards governing the substantiation procedure.

67. Judges rarely arrange oral proceedings in small claims cases. It should be noted that advocates (assistants) agree with the fact that oral proceedings in such cases is unnecessary more often than not.

68. Even though Lithuanian judges indicated that they rarely take advantage of the right provided for in Article 16 of Regulation 861/2007 not to award certain disproportionate litigation expenses, yet advocates (assistants) nevertheless indicated that the amounts awarded by courts are too small and are out of line with today's reality.

69. 25 percent of advocates (assistants) who responded said that Lithuania does not properly fulfill their obligation under Regulation 861/2007 to provide practical assistance when filling out forms established by the Regulation.

4. Review of Regulation 805/2004 and case-law[697] evaluation

70. The deliverance of a judgment does not automatically mean the end of a civil procedure, since often it has to be enforced. However, a judgment delivered in one country cannot automatically be enforced in another country even if the defendant did not contest and essentially accepted the claim. Therefore, interested parties can inevitably run into difficulties if a judgment and its uncontested claim have to be enforced in a different country. Given the above, the need to have effective means of defending one's interests on the international scale is growing because international relations are no longer a rarity but a daily routine and often a necessity in order to successfully expand one's business or fulfill other goals and needs.

71. European Union has set itself a goal to maintain and expand the area of freedom, security and justice in which a free movement of people is ensured. Seeking to gradually establish such area, European Union, among other things, has to adopt measures necessary for the existence of internal market related to judicial cooperation in civil cases. On 3 December 1998 the European Council adopted an action plan by the Council and the Commission on how to more efficiently implement the provisions of the Treaty of Amsterdam regarding security and justice area (the Vienna Action Plan). The European Council meeting in Tampere on 15 and 16 October 1999 saw the agreement that mutual recognition of judgments is the key to creating a reliable judicial area. On 30 November 2000 the Council adopted a program of measures to accomplish the principle of mutual recognition in civil and commercial judgments. In its first stage this program involved the abolishment of exequatur, i.e. the establishment of European Enforcement Order for uncontested claims (Regulation 805/2004 Recital 1-4).

72. Regulation on European Enforcement Order was adopted on 21 April 2004. Its goal is to establish European Enforcement Order for uncontested claims so that judgments, settlements and authentic instruments could circulate freely and with minimum requirements among all Member States until their recognition and enforcement by avoiding intermediate procedures in the Member State in which the decision has to be enforce (Article 1 of the Regulation). In reality, Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters application by allowing decision making in cases where no dispute essentially exists can be viewed as too strict and disproportionate, considering the goal to ensure proper functioning of internal market. Especially, since possibly some 90 percent of all judgments delivered among Member States are accepted due to uncontested

[697] In preparing this chapter, where appropriate, the researchers analyzed and used Lithuanian court and European Court of Justice practices relating to Regulation 805/2004 that the researchers managed to retrieve on 1 October 2012 on publicly available Lithuanian court and European Union Court of Justice decision databases at www.infolex.lt/praktika; http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2; http://curia.europa.eu/juris/recherche.jsf?language=en.

claims[698]. Therefore, Regulation 805/2004 has become the first successful step that considerably facilitates the enforcement of judgments in civil and commercial cases in European Union states. A document certified as a European Enforcement Order can be enforced in another Member State without exequatur, meanwhile the possibility to refuse to enforce a European Enforcement Order in the State of enforcement it is reduced to the minimum by eliminating even the clause of the public order.

4.1. Regulation scope (Articles 2, 26, 33)

4.1.1. Material coverage (Par. 1 and 2, Article 2)

73. Article 2(1) of Regulation 805/2004 establishes that this Regulation is applied in civil and commercial cases despite the judicial nature. Therefore, it is irrelevant for the application of the Regulation if the proceedings are held in a general jurisdiction or a specialized (e.g. administrative) court, just as it is irrelevant according to what justice the case is examined[699]. Thus, discussed legislation can be just as well applied to civil claims in criminal proceedings[700]. An EEO certificate can be issued not only for first instance but also higher instance court judgments. Nevertheless, the Regulation is not applied to revenue[701], customs[702] and administrative matters or the liability of of the State for actions or omissions[703] in exercising state authorities (*acta iure imperii*). This Regulation also excludes: the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession; (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; (c) social security; (d) arbitration (Par 2, Art. 2 of Regulation 805/2004).

74. According to V. Nekrosius, all of the aforementioned categories of matters, except the cases of State liability, have corresponding categories of matters in Article 1 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the

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[698] STORSKRUBB, EVA. *civil procedure and EU Law: A Policy Area Uncovered.* Oxford University Press, 2008, p. 156.

[699] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 61.

[700] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung.* Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 3, Art. 1 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[701] We believe that this section of Regulation 805/2004 is mistranslated into Lithuanian. It uses the word "pajamų" even though English version uses "revenue", while German version uses "Steuer-"; translated into Lithuanian, it is more suitable to use the word "mokesčių" in this case.

[702] We believe that this section of Regulation 805/2004 is mistranslated into Lithuanian. It uses the word "muitinių" even though English version uses "customs", while German version uses "Zollsachen"; translated into Lithuanian, it is more suitable to use the word "muitų" in this case.

[703] We believe that this section of Regulation 805/2004 is mistranslated into Lithuanian. It uses the word "aplaidumas" even though English version uses "omissions"; translated into Lithuanian, it is more suitable to use the word "neveikimas" in this case.

recognition and enforcement of judgments in civil and commercial matters (hereafter – Brussels I Regulation). Thus, technically both regulations are applied for matters of same categories, therefore, such concepts as "civil and commercial matter", "social insurance relationships" and others, which are subject to an autonomous interpretation, have to be interpreted the same way as corresponding concepts in Article 1 of Brussels I Regulation[704]. Of great importance in this case is European Court of Justice (hereafter – ECJ) practice.

75. Even though *acte iuri imperii* mentioned in Article 2(1) of Regulation 805/2004 do not have their equivalent in Brussels I Regulation, this concept is closely related to ECJ practice when interpreting the concept of "civil and commercial matter"[705]. Consequently, in interpreting the concept of "civil and commercial matter", one has to use Brussels I Regulation and ECJ cases for the interpretation of Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereafter – Brussels Convention)[706].

76. In accordance with established European Court of Justice practice, the concept of "civil and commercial matter" has to be given a separate meaning based on corresponding Council legislation goals and structure and general principles on which the national legal framework is based on (ruling in LTU Lufttransportunternehmen GmbH & Co KG *v.* Eurocontrol, C-29/76, Coll.1976, 1541). Court of Justice stated that in deciding if a matter is civil and commercial, two elements are important: subject matter and the nature of party relations.

77. Speaking specifically about claims in which at least one of the parties is a public authority, the Court of Justice emphasized that a matter is not civil or commercial as long as it is related to a dispute between the that public authority and a private person on its actions in exercising state authorities. Thus, the Court of Justice makes a distinction between *acta iure imperii* that are not involved in the concept of "civil and commercial matters" and *acta iure gestionis* that are. In practice *acta iure imperii* and *acta iure gestionis* are difficult to distinguish. The following are several guidelines provided in Court of Justice practices:

- In *Eurocontrol* the Court of Justice stated a claim by a public authority established under international agreement which seeks to recover from a private party a payment for the use of its equipment and services where the use has been mandatory and the payment was decided unilaterally, is not a civil nor commercial matter.

[704] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 195.
[705] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 195.
[706] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 62.

- In *Ruffer* (C-814/79 Netherland State v. Ruffer; Coll. 1980, 3807) the Court of Justice decided that the claim by a public authority against a ship owner to recover shipwreck removal expenses also cannot be considered civil or commercial.
- In *Sonntag* (case C-172/91, Coll. 1993, I-1963) the Court of Justice decided otherwise, i.e. that a civil claim for the compensation for injury by criminal acts is civil. However, such a claim falls outside of the scope of "civil or commercial matter" concept if a damage doer is a public authority that was exercising its state authorities (in this case, the teacher looking after students was not classified as a person "exercising state authorities").
- In *Gemeente Steenbergen* (case C-271/00, Coll. 2002, I-10489) the Court of Justice stated that the concept of "civil matters" includes a recourse by which a public body seeks to recover from a person, covered by a private law, amounts that it has paid as a social support to his former spouse and child, provided that the plea and the rules regarding its making are regulated by the usual provisions on maintenance obligations. If a recourse is based on provisions by which lawmakers transferred to the public body certain authorities, it cannot be considered civil.
- In *Preservatrice fonciere* (case C-266/01, Coll. 2003, I-4867) the Court of Justice stated that the concept of "civil and commercial matters" include claims by which the state seeks to ensure that a person regulated by a private law would be subject to the security guarantee made to allow a third party to offer a guarantee required and defined by that state as long as the legal relationship of the creditor and guarantee provider does not establish that the state will exercise authorities superior to those existing under the rules governing private persons relations.
- In *Frahuil v.Assitalia* (case C-265/02, Coll. 2004, I-1543) it was decided that if a claim against an importer who has been required to pay duties, submitted using means of legal subrogation, is made by a guarantee provider who has paid these fees while carrying out the guarantee agreement by which he undertook to ensure the customs that the duties will be paid for by a forwarder to whom the debtor has initially assigned paying off the debt, such claim has to be considered as falling within the "civil and commercial matter" concept.
- Finally, in ruling in *Lechouritou* (case C-292/05, Coll. 2007, I-1519), the Court of Justice confirmed that a recourse on the damage and loss caused by the state army during a war does not fall within "civil matter" concept[707].

78. V. Nekrosius, when discussing "civil and commercial law" concept, notes that the considered matter is related to private, not public legal relations that are based on the sovereignty of state and citizen relations. Besides, public state authorities are exercised via administrative institutions, instead of courts. Replying to the question on who has the

[707] *Practical guide to the application of the Regulation on European Enforcement Order* [online]. [Accessed on 8 September 2012]. At: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lt.pdf>.

right to explain this concept, priority is unilaterally given to the autonomous explanation. The identified areas, for which the Regulation is not applied, also have to be explained autonomously. The concept of "civil and commercial disputes" used in the Regulation comes from Brussels Convention, therefore, the whole explanation of the concept used in this Convention applies to it. Such matter, in which a judgment is delivered on the parties, one of which is a public authority, while the other – a private person, is not considered neither civil, nor commercial if the claimant is the public authority and the matter is related to the execution of public authorities. When identifying a civil or a commercial matter, a principal rule should be first used saying that matters in which the parties are private persons nevertheless meet the criteria, since private persons cannot, in principle, be given any of the aforementioned public authorities. On the other hand, however, the fact that one of the parties is a public body does not automatically imply that the matter itself is neither civil, nor commercial. It will not be recognized that a public body is carrying out its public functions if these tasks and functions are essentially no different from private functions and tasks[708].

79. It is agreed that contractual claims, even when they are submitted by a public body, are still civil in nature. If the state makes a claim for the infringement of property rights, it is not recognized that state functions are carried out in this case[709]. On the other hand, however, legal doctrine indicates that disputes arising from public procurements are not civil (commercial)[710]. In case of public procurements it should be noted that they, by nature, are regulated by the public and not private law, regardless of the use of the procurement. In states where specialized administrative courts exist, public procurement disputes are usually heard by them (e.g. France, Belgium, Italy, Spain, Sweden, Portugal). We believe, however, that not every dispute relating to public procurement is civil (commercial) under Regulation 44/2001. For example, if a contracting organization makes a claim to recover the losses incurred due to a defective product that was purchased under public procurement contract, there are insufficient legal arguments to claim that such a dispute could not qualify as civil. On the other hand, if the core of this dispute is a judgment delivered by Public Procurement Commission in accordance with imperative public law standards, such a dispute is rather administrative legal rather than civil (commercial).

80. V. Nekrosius indicates that ECJ has recognized the fact that a claim by a foreign lawyer to recover him the fees will be considered civil even if the claim has arisen from client protection in a criminal matter or his actions were directed to the fulfillment of public functions. Besides, it is agreed that claims for state responsibility are neither civil,

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[708] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 25-26.

[709] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 26.

[710] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 62.

nor commercial, yet requirements for public bodies in an area in which they do not fulfill public functions are civil. On the other hand, as evidence shows, State claim can be admitted as civil. We can conclude that in cases where a public body in accordance with the procedural law of a respective state under the force of law acquires private person functions (*ex offitio*, defense of public law), such a claim is considered civil or commercial[711]. Disputes arising from legal labor relations will essentially by considered civil as well.

81. The nature of matters which are considered neither civil, nor commercial (e.g. matters arising from revenue or customs legal) remains even if a claim is transferred from a state to a private person by a cession. As mentioned, the fundamental factor in deciding if a matter is civil is precisely the nature of material legal relations and not its structure. It is clear, therefore, that the change of a party (creditor) in no way affects the nature of material legal relations[712].

82. The concept of state, the researchers believe, should also include municipalities (their bodies) where they fulfill their public administration functions. Therefore, the Regulation shall not only be excluded from revenue or customs disputes and other administrative matters, but also from matters relating to the liability for damage resulting from illegal action of public authorities (Article 6.271 of the CC), also from illegal actions of preliminary investigation officers, public prosecutor, judge and a court (Article 6.272 of the CC).

4.1.2. Geographic coverage (Par. 3, Article 2)

83. According to Article 2(3) of Regulation 805/2004, the Regulation does not apply to Denmark. Due to this, the legislation applies, regardless of the nationality and the domicile (habitat, registered address) of persons related to it, to instruments provided in the Regulation from all European Union Member States with the exception of Denmark. It should be noted that an EEO certificate can be issued for a Danish citizen or resident as a debtor. For example, Lithuanian court decision to recover debt from a Danish citizen or resident can be certified as an EEO. In such case it will be recognizable and enforceable under Regulation 805/2004 in every European Union Member State (e.g. Sweden) with the exception of Denmark. An EEO certificate can also be issued exclusively for internal matters [713], for example, for a Lithuanian dispute between two of its citizens (residents), since this court judgment or settlement may have to be enforced in another EU Member State (e.g. in a case where a debtor has property in that state).

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[711] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 27.

[712] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 27.

[713] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2208.

84. It should be noted that Regulation 805/2004 applies not only to traditional Member States' (with the exception of Denmark) territories, but also:

– Guadeloupe, French Guiana, Martinique, Reunion, Saint Barthelemy, Saint Martin, Azores, Madeira and Canaries (Par. 1, Article 355 of the Treaty on the Functioning of the European Union (hereafter – TFEU));

– Aland Islands (Finland);

– Gibraltar.

85. However, it does not apply to:

- Vatican and San Marino;
- Faroe Islands;
- Monaco and Andorra;
- Greenland,
- New Caledonia and Dependencies,
- French Polynesia,
- French Southern and Antarctic Lands,
- Wallis and Futuna,
- Mayotte,
- Saint-Pierre and Miquelon,
- Aruba,
- Netherland Antilles: Bonaire, Curacao, Saba, St. Eustatius, Saint Martin,
- Anguilla,
- Cayman Islands,
- Falkland Islands,
- South Georgia and the South Sandwich Islands,
- Montserrat,
- Pitcairn,
- Saint Helena and its Dependencies,
- British Antarctic Territory,
- British Indian Ocean Territory,
- Turks and Caicos Islands,
- British Virgin Islands,
- Bermuda Islands;
- Channel Islands (Jersey, Alderney, Sark, Guernsey)
- The Isle of Man.

4.1.3. Regulation applicability in time (Articles 26, 33)

86. Regulation 805/2004 came into force on 21 January 2005, however, its main procedural provisions became applied only from 21 October 2005 (Par. 1 and 2, Art. 33 of Regulation 805/2004). Hence, the Regulation applies only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after 21 January 2005 (Art. 26 of Regulation 805/2004). The same position is provided in the practical guide for Regulation on European Enforcement Order

application[714], thus, we disagree with V. Vebraite who states that only judgments delivered after 21 October 2005 can be certified as an EEO[715]. Regulation applicability in time is not related to when the Regulation itself came out or when the proceedings began. It is important only for a judgment to be delivered after 21 January 2005; in Bulgaria and Romania Regulation 805/2004 came into force on 1 January 2007, therefore, in these countries only instruments received after this date can be confirmed as an EEO.

87. It should be noted that after effective date of Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of judgments and cooperation in matters relating to maintenance obligations[716] (hereafter – Regulation 4/2009), Regulation 805/2004 cannot be applied to maintenance (including child maintenance) claims, since Article 68(2) of Regulation 4/2009 provides that it replaces in maintenance obligations Regulation (EC) No. 805/2004, except cases where European Enforcement Orders for maintenance obligations are issued in a Member State that is not subject to Hague Protocol of 2007. Lithuanian case law provides[717] that EEO certificates can be just as well issued after the effective date of Regulation 4/2009, arguing that Article 75(1) of this Regulation provides that it shall apply only to proceedings instituted, to court settlements approved or concluded, and to authentic instruments established after its date of application. Yet, Article 75(2)(a) and and the second paragraph of Regulation 4/2009 establishes that Sections 2 and 3 of Chapter IV of this Regulation are applicable earlier than its effective date in Member State judgments for which the application for their recognition and enforceability was submitted after this date; First and second paragraphs of *mutatis mutandis* are applicable to approved or concluded settlements and authentic instruments prepared in Member States. Therefore, this standard can also be considered to establish the application of respective sections (Sections 2 and 3 of Chapter IV) of Regulation 4/2009 to judgments that were delivered in matters brought before the effective date of the Regulation, yet applications for their recognition and enforcement were submitted after. Explaining Regulation 4/2009 in this respect, its safe to say that EEO certificates cannot be issued for judgments delivered before 18 June 2011 if applications for their recognition and enforcement were submitted after this date; in this case, under Article 75(2) of Regulation 4/2009, Sections 2 and 3 of Chapter IV of this Regulation shall be applied.

88. It should be noted that according to the Council decision of 30 November 2009, under which the European Community made Hague Protocol of 23 November 2007 on

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[714] *Practical guide to the application of the Regulation on European Enforcement Order* [online]. [Accessed on 8 September 2012]. At: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lt.pdf>.

[715] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 65.

[716] OL L 007, 01/10/2009, p. 0001 – 0079.

[717] Panevezys District Court ruling of 12 October 2011. See Panevezys Regional Court Civil Division ruling in a c.m. *O.* of 15 November 2011. *S. v. E. S.*, No. 2S-773-212/2011, cat. 122.4.

the law applicable to maintenance obligations[718], this decision is not necessary or applicable to Denmark and the United Kingdom. Thus, Regulation 805/2004 can be applied to United Kingdom judgments, settlements and authentic instruments (hereafter court decisions, settlements and authentic instruments are together referred to as "Regulatory documents") regarding maintenance obligations.

4.1.4. Titles to be certified as an EEO (Art. 3, Par. 1, 2, 3, 6 of Art. 4, Art. 7, 24 and 25)

4.1.4.1. The concept of titles to be certified as an EEO

89. Regulation 805/2004 shall apply to judgments, court settlements and authentic instruments on uncontested claims (Par. 1, Art. 3 of the Regulation).

4.1.4.1.1. Judgments (Par. 1, Art. 3; Par. 1, Art. 4)

90. The definition of a judgment for which Regulation 805/2004 applies is provided in Article 4(1) of this Regulation: "judgment" – any judgment given by a court or tribunal 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. This Regulation shall also apply to judgments delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders (Par. 2, Art. 3 of Regulation 805/2004). Thus, an EEO certificate can also be issued for appellate or cassation court judgments.

91. The concept of "court" within the meaning of Article 3(1) and Article 4(1) of Regulation 805/2004 (hereafter referred to as "Regulation"), is an autonomous legal concept of the EU. The definition of this concept takes into account ECJ practice in explaining Brussels Convention and (or) Brussels I Regulation. Judge participation in deciding its definition according to the Regulation is not required. Nor is it necessary to hear the other party before delivering the judgment[719]. Therefore, an enforceable court order and a preliminary judgment can be certified as an EEO in the documentary procedure. However, in this case it is essential to comply with Regulation's provisions pursuant to uncontested claims, since an EEO shall only be issued for judgments on uncontested claims.

92. It should be noted that the application of Regulation 805/2004 does not require the judgment to be final and (or) irreversible. However, other standards for certification need to be met, for example, the judgment has to be enforceable (Point a, Par. 1, Art. 6 of the Regulation). In Lithuania this situation could be possible if first instance judgment

[718] OL L 331, 2009, 12, 16, p. 17-18.
[719] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2211.

was immediately enforceable (Art. 282 of the CCP) or the court would authorize immediate enforceability (Art. 283 of the CCP).

93. Regulation 805/2004 applies only to judgments on "claims" defined in Article 4(2) of the Regulation: "claim" – a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument. Therefore, judgments on claims for payment of indefinite sums of money (e.g. for recovery of an item, obligation to undertake actions) falls outside of the scope of Regulation 805/2004.

94. The Regulation does not indicate the minimum amount of money, therefore, an EEO certificate can also be issued in small claim cases. The basis of the claim for the payment – let it be an agreement or any other legal basis – is irrelevant [720].

95. Judgment on the application of Regulation 805/2004 is exclusively a judgment of the Member State court, delivered after examining the matter according to Member State procedural standards and requirements. This is explained by the fact that the abolition of exequatur in certain Member State judgments under the Regulation is based on confidence in Member State legal frameworks. Therefore, a third party judgment recognized and (or) enforced in a Member State cannot be certified as an EEO[721]. Court order on precautionary measures, made *ex parte*, i.e. without hearing the other party, cannot be certified as an EEO either. ECJ has stated[722] that an order which has *ex parte* applied precautionary measures cannot be considered under Brussels Convention (currently Regulation 44/2001) enforceable in another Member State[723]. A writ of execution issued according to an arbitration judgment cannot be certified as a European Enforcement Order because Regulation 805/2004 does not apply to matters of arbitration (Point d, Par. 2, Art. 2 of the Regulation) and also because this writ of execution does not result from the activities of the court as a public authority.

4.1.4.1.2. Decisions on costs related to court proceedings (Par. 1. Art. 4; Art. 7)

i) Decisions included in judgments (Art. 7)

96. Article 7 of Regulation 805/2004 establishes that where a judgment includes an enforceable[724] decision on the amount of costs related to the court proceedings, including the interest rates, it shall be certified as a European Enforcement Order also with regard

[720] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 62.

[721] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung.* Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 2, Art. 4 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[722] European Court of Justice judgment of 21 May 1980 in *Bernard Denilauler v SNC Couchet Frères*, No. 125/79.

[723] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung.* Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 3, Art. 4 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[724] We believe that this section of Regulation 805/2004 is mistranslated into Lithuanian. It uses the word "vykdomąjį" even though the English version uses "enforceable", while the German version uses "vollstreckbare"; translated into Lithuanian, it is more suitable to use the word "vykdytiną" in this case.

to the costs unless the debtor has specifically[725] 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. In this case it should be noted that the part of judgment related to costs can be certified as an EEO only when all EEO certification conditions regarding the main claim are met[726]. In this case it is unnecessary to verify that all EEO certification conditions related to the decision on costs of proceedings are met. It is only necessary to determine the fact that the debtor has not objected to the obligation to cover these costs. In Lithuania the distribution of costs related to proceedings shall be decided by deciding on the principal issue in the dispute (Par. 3, Art. 5 of the CCP), hence this part can be certified as an EEO based on the aforementioned conditions.

ii) Separate decisions (Par. 1, Art. 4)

97. The researchers believe that where a Lithuanian court resolves the matter of costs related to proceedings by a separate decision, this decision, under the terms of Article 4(1) of the Regulation shall be made and can be certified as an EEO in accordance with the general procedure (Art. 277 of the CPC). Article 7 of Regulation 805/2004 in this case, i.e. where a separate decision is made, shall not be applied because, we believe, Article 7 of the Regulation implies that costs should not dealt with in the same document as the judgment on the subject matter. Especially, since a contrary explanation would mean that in making a separate decision, which under Lithuanian law is partly "a process in the process" and partly an independent process, the certification of this decision as an EEO would not need to meet minimum procedural standards established in the Regulation, since under Article 7 of the Regulation it would be sufficient to know that they have been met in making a judgment on the main claims. We believe it would provide an undue basis to limit and violate debtor's rights and legitimate interests. This same opinion essentially prevails in Lithuanian legal doctrine[727].

98. Following this interpretation of the Regulation, a separate decision on costs related to proceedings in non-pecuniary civil cases, which essentially fall within the scope of Regulation 805/2004, can be certified as an EEO (see Art. 2 of the Regulation)[728]. In these matters the main (material legal) claim, being non-pecuniary (unrelated to payment of a sum of money), does not fall within the definition of a "claim"

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[725] We believe that this section of Regulation 805/2004 is mistranslated into Lithuanian. It uses the word "ypač" even though the English version uses "specifically", while the German version uses "ausdrücklich"; translated into Lithuanian, it is more suitable to use the word "konkrečiai" in this case.

[726] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 1, Art. 7 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[727] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 205-206.

[728] See STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 2, Art. 7 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

under Article 4(2) of the Regulation, which means that this part of the matter is outside of the scope of the Regulation, therefore, a decision related to this section could not be certified as an EEO. However, it does not prohibit to certify under the general procedure as an EEO a separate decision on the distribution of costs related to the proceedings that are pecuniary. Given the above, it is held that the Implementation Law shall be supplemented with a standard that says if a claimant immediately applies for the issue of an EEO certificate for costs related to the proceedings concerning a dispute on the main material legal claim or where a non-pecuniary (main) claim is made (and because of it an EEO certificate cannot be issued), the court can decide on the costs related to the proceedings by a making a separate decision under Article 277 of the CCP. It would allow to certify this decision as an EEO, provided no dispute would arise on the costs related to the proceedings, and improve the protection of creditors' rights, as well as expand a free circulation of judgments in the European Union avoiding exequatur.

99. It should be noted that upon making a separate decision on costs related to proceedings, this decision can still be certified as an EEO, even if the main claim was contested in the procedure, if the section of the judgment relating to costs of proceedings is uncontested and meets other requirements in the Regulation. However, if a claimant appeals against the judgment on the main claims, apparently we cannot claim there is no dispute on costs of proceedings, since by contesting the main claim, the defendant in such case also indirectly questions the distribution of costs, which depends on the final judgment and the subject matter.

4.1.4.1.3. Court settlements (Par. 1, Art. 3; Art. 24)

100. Regulation 805/2004 also applies to settlements concerning a claim within the meaning of Article 4(2) of the Regulation (i.e. regarding payment of specific sums of money, also see 4.1.4.2.1), if these settlements have been approved by a court. It does not take into account if a settlement was concluded in the course of proceedings or was approved by the court at the request of the parties. In this respect the definition of settlement is broader than that in Brussels I Regulation, which clearly states that a settlement must be approved in the course of proceedings. Therefore, in Lithuania settlements concluded in the course of proceedings or when they are approved by the general procedure under Article XXXIX of the CCP can be certified as an EEO. It does not matter if the whole dispute or only some part of it has been resolved by a settlement approved by a court[729]. Compliance with minimum procedural standards established in Chapter III of Regulation 805/2004 in the considered case is irrelevant and unnecessary, since parties themselves agree on a specific sum of money to be paid. It should be noted

[729] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 62.

that the Regulation does not require an off-court settlement to be approved by the judge himself and does not provide any certification form[730].

101. It should be noted that settlements reached in proceedings on succession fall outside of the scope of the Regulation (Point a, Par. 2, Art.2 of the Regulation). Mixed settlements, which only partly fall within the scope of the Regulation, also cannot be recognized as appropriate settlements within the meaning of Regulation 805/2004, except in cases where some part of the settlement can be separated. In accordance with ECJ practice, *in dubio pro regulatione (vel conventione*) principle cannot be applied in this case.[731] Thus, it is essential that the subject of a settlement falls within the scope of the Regulation (see more 4.1.1).

4.1.4.1.4. Authentic instruments (Par. 1, Art. 3; Par. 3, Art. 4, Art. 25)

102. According to Art. 4(3) of the Regulation, "authentic instrument" is: (a) a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which: (i) relates to the signature and the content of the instrument; and (ii) has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates; or b) an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them; According to Article 15(1) of the Implementation Law, authentic instruments recognized in Lithuania are notary protested and non-protestable bills and cheques with executory clauses made by a notary. However, it should be noted that in some countries authentic instruments, which may be certified as an EEO, may include settlements approved by notaries[732]. It was noted that after the abolishment of court competency to resolve debt recovery in favor of a mortgage lender on 1 July 2012 and transferring this function to notaries, it would be appropriate to supplement the Implementation Law by a provision that an EEO on hypotec and mortgage settlements with executory clauses could be issued by notaries. Without this amendment a situation occurs that because of claims arising from hypotec and mortgage relations, an EEO cannot be issued.

4.1.4.2. *<u>The concept of "uncontested claim" (Par. 1, Art. 3; Par. 2, Art. 4)</u>*

4.1.4.2.1. The concept of "claim" (Par. 2, Art. 4)

[730] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 197.

[731] VEKAS, LAJOS. Article 58, note 6. In *Brussels I Regulation.* Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007.

[732] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 63.

103. Article 4(2) establishes that a "claim" is a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment, court settlement or authentic instrument. More on the concept see 4.1.4.1.1. A fine on claimant's request for the failure to comply with a judgment binding the debtor to commence or cease an activity (Art. 771 of the CCP) is not considered a judgment on the claim within Regulation application terms[733]. It should be emphasized that a claim for payment of a specific sum of money, according to the Regulation, has to fall due or its date has to be indicated in the judgment. The latter aspect has an important practical meaning, since it allows to certify Regulation instrument as an EEO even if payments according to this instrument have to be periodically made in the future.

104. A claim has to indicate a specific sum of money. Legal doctrine indicates that a claim is also appropriate in cases where a specific sum of money is calculated in accordance with a Regulation instrument, for example, awarding interest. However, it is not enough to simply request to award interest that is due by law[734]. Under Paragraph 5.2 of Regulation Annex I, the researchers believe, judgment section relating to a claim to award a specific amount of interest from a specific date until the fulfillment of the main claim, for the delay of which interest is calculated, can be certified as an EEO.

105. If a judgment awards a sum of money that is calculated as a percentage of the amount receivable in the future and, therefore, indefinite, this section of the judgment cannot be certified as an EEO because such claim is not specific enough[735].

4.1.4.2.2. The concept of "uncontested" (Par. 1, Art. 3)

106. Lithuanian version of Article 3(1) of the Regulation establishes that a claim shall be regarded as uncontested if: a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or b) 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 the court proceedings; or c) 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; or d) the debtor has expressly agreed to it in an authentic instrument.

107. However, in Lithuanian legal doctrine the aforementioned content of the Regulation standard is provided differently[736]. In fact, the translation of the Regulation

[733] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 4, Art. 6 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

[734] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2211.

[735] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2211.

into Lithuanian is not entirely accurate and can be misleading. Therefore, we will refer to the content of Article 3(3) of the Regulation laid out in the legal doctrine; a claim shall be regarded as uncontested if: a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or b) 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 the court proceedings; or c) 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; or d) the debtor has expressly agreed to it in an authentic instrument[737].

108. According to V. Nekrosius, all of the aforementioned circumstances can, in essence, be divided into two groups: i) where a debtor admits the claim by active participation (a judgment delivered on the basis of claim recognition, a settlement, etc.; in other words, by his active participation in the procedure, the debtor admits that the claim actually exists) and ii) when debtor's passivity implies that he does not contest the claim (does not respond to the claim, does not appear at the court hearing, etc.; this group is more problematic, since we encounter an indirect presumption of uncontestability, therefore, the court has to make sure that the debtor was informed about the claim on time and appropriately, and had enough time to arrange for his defense)[738].

i) Debtor's actions (Point a, Par. 1, Art. 3)

109. For legal settlement as an uncontested claim see 4.1.4.1.3. Uncontested claims also include claims that are admitted by the debtor in the course of the proceedings. According to Lithuanian civil procedure law, it is held that the debtor admitted the claim if this procedural action had been performed in accordance with the procedure established in Article 140 of the CCP and the judgment was delivered on this ground. An EEO certificate can just as well be issued in cases where only some of the claims are admitted – for these claims[739].

110. Vilnius regional court has acknowledged that a claim can also be considered uncontested in cases where following the settlement for periodic payments approved by

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[736] E.g., NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 196.

[737] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 196.

[738] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 196.

[739] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 197.

the court, it is later (in another, i.e. new case) sought to change them (change the subject for which they have to be paid)[740]. There is no reason to disagree with this approach.

ii) Debtor's passivity (Points b and c, Par. 1, Art. 3)

111. V. Nekrosius indicates that in order for Article 3(1)(b) of the Regulation to be applied, there should be no objection from a debtor during proceedings as to the validity of the claim. It should be noted that the objection has to be related precisely to the validity of the claim. Therefore, for example, neither debtor's objection made on the ground of non-jurisdiction of the matter made to the specific court, nor an objection made before the proceedings (extrajudicial objection), nor, finally, an objection based on debtor's difficult financial situation, will be considered objections under this article. It is accepted that a debtor does not object the claim by not appearing at the hearing and not indicating to the court if he will use defensive measures. In discussing debtor's objection according to the considered Article, another requirement is essential – an objection has to be made in accordance with all fundamental Member State procedural rules[741]. Therefore, if debtor's reply to the failure to comply with CCP requirements is returned and held unplaced or it is refused to be accepted, it can be said that the debtor has not provided an objection. Yet, a timely objection to a court order or a preliminary judgment, which complies with CCP requirements (e.g. objections to preliminary judgments must meet general requirements regarding instruments' content and format, must be reasoned and validated by means of proof provided in Article 177 of the CCP (Par. 1, Art. 430 of the CCP)), is held to be appropriate and, therefore, the debtor cannot be considered passive and the claim – uncontested. If the debtor makes an application for the review of a default judgment, the claim can usually cannot be considered uncontested either, except in cases where in his application, the debtor does not contest the debt but challenges the jurisdiction of the matter[742]. In this respect, we believe, Lithuanian courts are not completely correct in explaining Regulation standards. For example, Panevezys regional court indicated that a claim is held contested in a case where the absence of response from a defendant leads to a default judgment, while an application for judgment review has procedural deficiencies according to the national law and, therefore, has not been examined on its merits[743]. Considering the fact that the Regulation provides that objections have to be placed in accordance with the procedural requirements of the Member State of origin, in this case the provision could have been maintained that

[740] Vilnius Regional Court Civil Division ruling in a c.m. *D. P. v. A. P.* of 28 March 2012, No. 2S-588-619/2012, cat. 129.1; 129.4.
[741] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 198-199.
[742] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2209.
[743] Panevezys Regional Court Civil Division ruling in a c.m. *J. P. v. R. V.* of 8 September 2011., No. 2S-591-198/2011, cat. 121.14; 122.4; 129.14.

objections had not been legally submitted and, therefore, the claim can be held uncontested under Article 3(1)(b) of the Regulation.

112. If an application to issue an EEO certificate is submitted, yet the court has information that an application for the renewal of the period for objections to a court order or a preliminary judgment or an application for the renewal of the period for an appeal to a default judgment has been submitted, we believe that an EEO certificate should not be issued until the renewal of these periods has been resolved because by accepting the aforementioned objections, the claim would lose its unconterstability attribute.

113. It should be noted that EEO certificate does not automatically lose its power if the judgment for which it was issued has been challenged, i.e. even though the claim itself lost its uncontestability attribute[744]. On the other hand, if due to an appeal the judgment, certified as an EEO, loses its enforceability in the Member State of origin, it should not be enforced in another Member State either (Art. 11 of the Regulation). If a debtor fully or partly wins the appeal, he may apply to the court in EEO state of origin for a certificate indicating that the judgment certified as an EEO is no longer enforceable or its enforceability is limited (Par. 2, Art. 6 of the Regulation). Following the judgment delivered by a higher instance court, there is also an opportunity to apply for an EEO replacement certificate (Par. 3., Art. 6 of the Regulation). EEO replacement certificate can only be issued where a new judgment has been delivered following a challenge to a judgment certified as an EEO[745]. An opinion prevails that in the latter case an EEO replacement certificate can be issued after examining the case in a higher instance court in spite of the fact that the claim, in fact, became contested after submitting an appeal against the lower instance judgment[746]. However, V. Nekrosius also notes that the court issuing an EEO replacement order has to avoid the re-examination of the compliance with Article 6(1) during the proceedings[747]. On the other hand, it is not agreed if it is necessary to examine the compliance with the requirements of Articles 13–19 in the appellate court. Some authors claim that where a judgment has been certified as an EEO, yet was followed by an appeal, requirements of Articles 13–19 of the Regulation apply to passive uncontested claims but not to claims that became contested during the proceedings in the appellate court[748]. If an appeal is submitted before a judgment is

[744] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 198-199.

[745] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 205.

[746] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 3, Art. 3 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

[747] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 205.

[748] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 12, Art. 10 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

certified as an EEO, the claim loses its uncontestability status and such a judgment cannot be certified as an EEO.

114. V. Nekrosius points out that in order to apply Article 3(1)(c) of the Regulation, it first has to be identified that a debtor, initially objecting the claim, later has not appeared at the court hearing without any valid reasons, i.e. failed to fulfill his obligation to pursue the advancement of proceedings. It will also be held that a party has not appeared at a court hearing where the law requires a mandatory participation of a lawyer, yet the party appeared alone. It is particularly important that such default of appearance in a hearing will be held as admission of the claim only in those cases where *lex fori* of the respective state establishes that an absence amounts to a tacit admission of a claim or of facts. Thus, it is clear that under Lithuanian law the default of appearance in an appellate or cassation court will not be considered a tacit admission, since it is forbidden here to make default judgments, meanwhile, the absence of a party does not prevent a matter from being examined on its merits. A situation where a party does not appear at the court hearing, yet submits a request to hear the case without its participation (except in cases where the court finds the participation of the party compulsory) is not considered to be a tacit admission either[749].

115. It should be noted that in cases where, according to Lithuanian CCP, a default judgment due to defendant's failure to respond has been made, Article 1(b) instead of Article 1(c) of the Regulation shall be applied. Nevertheless, Lithuanian legal doctrine involves different opinions on whether an EEO certificate shall be issued where a reply was submitted, yet a default judgment was delivered because of the failure to submit a duplicate or because the defendant did not appear at the hearing. V. Nekrosius believes that the issue of an EEO in this case is possible[750]. We believe that a more reasonable stance is that of V. Vebraite, which says that under Article 3(1)(c) of the Regulation such issue is not allowed[751]. The explanatory notes on Regulation 805/2004 implementation law mention that a claim is held uncontested when a default judgment has been delivered in accordance with Article 142(4) of the CCP[752], i.e. when a reply has not been submitted, and no other cases of default judgment are mentioned. In this respect, it should also be emphasized that the aforementioned Regulation standard clearly indicates that an absence of a party in the hearing is considered to be a tacit admission only where so provided by the national law. Such a provision in Lithuanian law does not exist,

[749] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 198-199.

[750] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 200.

[751] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 203.

[752] Explanatory notes on Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims [online]. [Accessed on 9 September 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=250834&p_query=&p_tr2=2>.

therefore, an extensive explanation, thereby limiting debtor's rights, we believe, is not reasonable. The fact that the defendant has not submitted an application for the review of the default judgment, where it has been delivered because of his absence (non-representation) in the hearing, does not alter the conclusions because Lithuanian law does in particular provide that the failure to submit the aforementioned application means a tacit admission of the claim. Especially, since there is no reason to certify a default judgment as an EEO without a duplicate, since Article 3(1)(c) of the Regulation applies only where the absence or non-representation is in the hearing and not in the stage of written notice to defend the case. Nevertheless, Lithuanian court practice follows V. Nekrosius' position and certifies a default judgment, delivered after receiving a reply with objections to the claim, yet there being a default of appearance in the hearing, as an EEO, holding the claim as uncontested due to the fact that the party has not appeared at the hearing, has not arranged for its representation and has not informed the court about the change of address[753].

4.1.4.3. State of origin and State of enforcement (Par. 4 and 5, Art. 4)

116. According to Article 4(4) of the Regulation, "Member State of origin" is the Member State in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered, and is to be certified as a European Enforcement Order. According to Article 4(5) of the Regulation, "Member State of enforcement" is the Member State in which enforcement of the judgment, court settlement or authentic instrument certified as a European Enforcement Order is sought. It should be noted that in this Regulation, the term "Member State" shall mean Member States with the exception of Denmark (Par. 3, Art. 2 of the Regulation). Attention should be drawn to the fact that a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition (Article 5 of the Regulation). Thus, this rule essentially eliminates any control of an EEO instrument in the Member State of enforcement by transferring this function to the courts of the Member State of origin. The enforceability of an instrument certified as an EEO is determined by the recognition procedure in the courts of the Member State of origin. After giving a judgment an EEO status, even where there are rough procedural violations, which under Articles 34–35 of Brussels I Regulation provide a basis for the refusal to enforce a judgment, its content cannot be altered. Debtor loses the option to justify his position in the Member State of enforcement on the basis of deficiencies in the service of documents and of objection to *ordre public*, however, gains the option to appeal to the

[753] Vilnius Regional Court Civil Division ruling of 19 January 2011 in a c.m. *UAB „Finansų rizikos valdymas“ v. K. O.*, No. 2S-78-56/2011, cat. 121.14; 121.18; 122.4; 129.15.

European Court of Human Rights or apply for a suspension or a limitation of enforcement (Article 23 of the Regulation), besides, he has all the options to use judgment legitimacy and soundness control forms in the Member State of origin of the instrument certified as an EEO[754].

4.1.4.4. Conditions for certification as an EEO (Par. 1, Art. 6 and Chapter III: Art: 12–19)

117. Considering the above, a judgment is to be certified as an EEO if:

1) the case in which it is delivered falls within the scope of the Regulation (Art. 2 of the Regulation);

2) it was delivered after the effective date of the Regulation, i.e. after 21 January 2005 (in Bulgaria and Romania – after 1 January 2007);

3) it was delivered in any EU Member State except with the exception of Denmark;

4) it was delivered by a court within the meaning of the Regulation;

5) it meets the characteristics of a judgment defined in Article 4(1) of the Regulation;

6) it was delivered on a claim within the meaning of Article 4(2) of the Regulation;

7) it was delivered on an uncontested claim within the meaning of Article 3(1) of the Regulation;

118. However, the aforementioned conditions are not sufficient to certify a judgment as an EEO. The fulfillment of additional conditions is necessary.

119. It should be noted that an EEO certificate can be issued for a part, i.e. not all independent claims, as well as for a part of an indivisible claim (e.g. when the defendant partly admits the debt) (Art. 8 of the Regulation). A creditor can apply for the issue of an EEO for a part of the satisfied claim, even though the remaining part can also fulfill EEO certification conditions[755].

4.1.4.4.1. The concept of "certification as an EEO" (Par. 1, Art. 6)

120. According to Article 6(1) of the Regulation, a judgment can be certified as an EEO by submitting an application to the the court of origin. V. Nekrosius that the Regulation does not provide any terms for the application, therefore it can be made at any time. Hence, an application can be submitted either before the claim (in the application for a court order), or during the proceedings, or after the enforcement of the judgment. An application for the certification of a judgment as an EEO is to be submitted to a court

[754] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 201.

[755] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 8, Art. 5 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

in the Member State of origin. Here we have in mind a court as an institution. Whether it should be performed by a judge who has delivered the judgment or by a different one, is left to decide for *lex fori* of each Member State. V. Nekrosius believes that the decision should follow the provision that the a judgment shall be certified as a European Enforcement Order by the same judge (judges) who have delivered it[756]. We believe that this position debatable. Legal doctrine states that a judge who has participated in the case in which the EEO is applied for, should not decide on its issuance, since it would mean that the judge would have to decide on his own judgment on the insurance of a jurisdiction and minimum standards[757]. The principle that no one may be judge in one's own case essentially prohibits this. Besides, it can be psychologically challenging for the same judge to admit that he has made errors in the procedure, therefore, in a sense, he could not be impartial in deciding on the issue of an EEO. In case the application to certify a judgment as an EEO has been received in a court which has not delivered it, such an application may be rejected (Par. 3, Art. 6 and Point 2, Par. 2, Art. 137 of the CCP).

121. It should be noted that neither the Regulation, nor Lithuanian law provides that in case of a rejection from a court to certify a certain judgment as an EEO, the creditor cannot reapply to the court with the same request. Consequently, an application for the issue of an EEO can be submitted even if the court has earlier rejected such an application. However, the abuse of this right, the researchers believe, should lead to a penalty for the creditor awarding him for damages (Article 95 of the CCP). It is noteworthy that neither the Implementation Law, nor the CCP provides the procedure for issuing an EEO and if court rejection to issue an EEO can be appealed. In this case, we believe, we should follow the analogy in the provisions of Chapter XLIV of the CCP (procedure for the issue of writs of execution), which, according to Article 646(3) of the CCP, lead to the fact that a decision to issue an EEO can be challenged by a separate appeal. Especially, since Lithuanian Court of Appeal has explained that a judgment on refusing to issue an writ of execution prevents this person from exercising his rights and, therefore, can be challenged by a separate appeal (Par. 1 and 2., Art. 334 of the CCP)[758]. That a decision to refuse the issue of an EEO is subject to appeal can be seen in Lithuanian court practice[759].

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[756] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 201-202.

[757] STORSKRUBB, EVA. *civil procedure and EU Law: A Policy Area Uncovered*. Oxford University Press, 2008, p. 158.

[758] Lithuanian Court of Appeal Civil Division's ruling of 9 August 2008 in *G. Š.* bankruptcy case, No. 2-769/2008, cat. 121.14; 126.7; 121.6; 122.1.

[759] See, for example, Vilnius Regional Court Civil Division ruling of 7 November 2010 in c. c. *AB Ūkio bankas v. UAB „Joanos avialinijos, No. 2S-1185-56/2010, cat.* 121.18; 122.4; Kaunas Regional Court Civil Division ruling of 2 May 2012 in a c.m. *UAB „General Financing“ v. S. G.*, No. 2S-860-153/2012, cat. 122.1., 122.3, 122.5, 129.14; Panevezys Regional Court Civil Division ruling of 15 November 2011 in a c.m. *O. S. v. E. S.*, No. 2S-773-212/2011, cat. 122.4 ant other.

122. Even though the Regulation provides that an application for the certification as an EEO can be submitted "at any time", an EEO certificate is not to be issued if the limitation period for presenting a writ of execution for enforcement set out in Article 606 of the CCP has expired, except in cases where this period has been renewed under the procedure established in Article 608 of the CCP or the writ of execution has been issued and presented for enforcement in accordance with the national law standards. This conclusion is based on the fact that after the expiry of the period during which instruments can be presented for enforcement, under Lithuanian law a judgment loses its enforceability attribute, which is necessary for its enforcement as an EEO (Point a, Par. 1, Art. 6 of the Regulation).

4.1.4.4.2. Jurisdiction (Point b, Par. 1, Art. 6)

123. Article 6(1)(b) of the Regulation requires that the certification of a judgment as an EEO should include the verification that the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001. Therefore, as V. Nekrosius points out, when certifying a judgment as an EEO, the court must verify that in the course of the proceedings Brussels I Regulation rules on exclusive jurisdiction and jurisdiction over insurance contracts have not been violated. This condition does not mention the control of jurisdiction over matters related to consumer contracts. This is because these cases have separate rules under point d of the same Article provided for them. Except for the duty of a court provided in the considered article to verify the compliance with jurisdiction rules in the aforementioned categories of matters, the violation of other jurisdiction rules cannot, in principle, prevent a judgment from being certified as an EEO. The verification of compliance with jurisdiction rules has to be specified by the controlling and approving court by filling out the form provided in Annex I of the Regulation (p. 9)[760].

124. We believe that it should be held that considered conditions regarding jurisdiction have been departed from and an EEO certification cannot be issued even in cases where the defendant admits the claim, if the matter itself is examined by violating exceptional jurisdiction rules established in Article 22 of Regulation 44/2001. Nevertheless, if a settlement is concluded or approved in the court under Article 24(3) of the Regulation, the verification of the considered jurisdiction rules is not performed.

4.1.4.4.3. Judgment enforceability

125. A judgment can be certified as an EEO only where it is enforceable in the Member State of Origin (Point a, Par. 1, Art. 6 of the Regulation). Enforceability

[760] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 203.

conditions determined by *lex fori* of the State of origin. Thus, if a certificate is to be issued in Lithuania, the judgment shall be enforced (and its enforceability not withdrawn, for example, due to a cassation appeal) or recognized as immediately enforceable. Even though a judgment is to be enforced in the State of origin, whether or not this judgment would be enforceable under *lex fori* of the State of enforcement, is irrelevant, since following the issue of an EEO certificate, the judgment will have to be enforced in the Member State of enforcement[761].

4.1.4.4.4. Debtor's domicile

126. According to Article 6(1)(d) of the Regulation, debtor's domicile can acquire a legal meaning if:

- a claim is uncontested within the meaning of Article 3(1)(b) or (c), i.e. a debtor was passive in the course of proceedings; and
- it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and
- the debtor is the consumer.

127. Where all three of the above conditions are fulfilled[762], a judgment can be certified as an EEO only if it was delivered in the Member State in which the debtor's domicile is located within the meaning of Article 59 of Regulation (EC) No. 44/2001.

128. It should be noted that Lithuanian courts make mistakes when applying the aforementioned standard. For example, Vilnius regional court in a ruling of 17 November 2010 explained Article 6(1)(d) of the Regulation as if an EEO certificate in all cases shall be issued only if the debtor is the consumer[763]. However, this explanation clearly contravenes the content and essence of Article 6(1) of the Regulation, since Article 6(1) of the Regulation only provides additional defense for consumers, yet does not define debtors because of whom the EEO certificate is to be issued.

129. Legal doctrine also indicates that where a debtor due to his passivity does not contest a claim, a judgment can only be delivered in the debtor's domicile[764]. However, this statement, we believe, is not entirely accurate because the aforementioned rule applies only where the debtor is the consumer and other conditions provided in Article 6(1)(d) of the Regulation exist. In all other cases a judgment can be delivered in places outside of the debtor's domicile, as long as it originates from Regulation 44/2001 or other applicable provisions.

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[761] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 202-203.

[762] The fact that all three conditions are necessary is clearly confirmed by the use of conjunction "and" in English, French and Italian editions of the Regulation.

[763] Vilnius Regional Court Civil Division ruling of 17 November 2012 in a c.m. *AB Ūkio bankas v. UAB „Joanos avialinijos“*, No. 2S-1185-56/2010, cat. 121.18.122.4.

[764] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 62.

130. V. Nekrosius in analyzing Article 6(1)(d) of the Regulation, points out that this condition applies only where a debtor was passive in the course of the proceedings (Point b or c, Par. 1, Art 3) and is not to be applied where by his active participation he admitted the claim. However, ir does not imply that the judgment cannot be granted EEO status where the debtor admitted the claim by active participation and due to this it is held uncontested under the Regulation. Nevertheless, according to V. Nekrosius, the aforementioned standard does not mean that where a debtor (consumer) admits a claim, the court certifying a judgment as an European Enforcement order can avoid verifying jurisdiction rules (even though it appears as if the considered condition does not require it, V. Nekrosius nevertheless believes that it is rather an editorial error and the analogy of the law should be applied). Quite the opposite, a judgment shall be certified as an EEO only where the procedure met Section 4 of Chapter II of Brussels I Regulation requirements. This is confirmed by Points 8 and 10 of Annex I of the Regulation, which does not distinguish if the claim became uncontested because of active or passive participation of the debtor. V. Nekrosius also points out that it can be clearly seen from the condition that a judgment has to be delivered in the matter arising from consumer contracts. In explaining the concept of "consumer contracts", we have to follow Article 15(1) of Brussels I Regulation. It is important that the consumer was the debtor (this defense does not apply to a creditor). Yet, Article 6(1)(d) of the Regulation applies also where both parties of proceedings are consumers (this is the essential difference from consumer defense established in Brussels I Regulation (where one of the parties must be a businessman)). V. Nekrosius also notes that in applying the considered item, debtor's domicile (which under Brussels I Regulation is determined by the *lex fori* of the respective Member State) has to be in the Member State in which the judgment has been delivered. If debtor's domicile is in several Member States, a judgment delivered in each of them can be certified as an EEO[765].

131. Nevertheless, we can see different opinions in legal doctrine on the issue of whether it should be verified if jurisdiction rules for matters provided in Articles 15–17 of Regulation 44/2001, relating to consumer contracts, were met in case of Article 3(1) of the Regulation (where the debtor is active and admits the claim or concludes a settlement). Some German authors indicate that a position opposite to the aforementioned V. Nekrosius' exists, i.e. that where a debtor–consumer is active (Point a, Par. 1 of the Regulation), the compliance with the mentioned jurisdiction rules is not verified, since it can be clearly seen from the content of Article 6(1)(d) of the Regulation[766]. We agree with this view, taking into account the fact that where a consumer agrees with the claim or concludes a settlement, chances of violating his rights are minimal, since he essentially

[765] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 203-204.

[766] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 6, Art. 10 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

agrees with his own claim. In this situation giving (too much) prominence to jurisdiction rules by elevating them above the settlement of the parties, we believe, is unreasonable. Especially, since even European Commission's practical guide to the application of the Regulation[767] provides nothing that would imply that in this case it is necessary to verify the compliance with Articles 15–17 of the Regulation.

132. It should be noted that in cases arising from consumer contracts, we believe a court should be active under the national law, since the matter is related to the protection of public interest, therefore, where there is doubt that the debtor is the consumer, the court shall undertake actions allowed by the laws to clarify this circumstance and only then proceed to the certification of a judgment as an EEO. Otherwise, additional guarantees, which were to be provided to consumers under the considered Article 6(1)(d) of the Regulation, can become ineffective and illusory.

133. It is emphasized that ECJ clarified in the ruling of 15 March [768] that European Union law shall be interpreted in a way that prohibits to certify a default decision in respect of a defendant whose domicile is unknown as a European Enforcement Order within the meaning of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

134. Concepts of "natural and legal persons' domicile" and "consumer" have already been commented on in Lithuanian legal doctrine[769], therefore in this Research these issues will not be discussed in detail.

4.1.4.4.5. Minimum procedural standards for uncontested claims

i) The scope of minimum standards (Art. 12, 13; Par. 1, Art. 14; Art. 16, 17)

135. A judgment shall be certified as an EEO where a court states that the proceedings on a claim held uncontested under Article 3(1)(b) and (c) of the Regulation, i.e. when the debtor is passive, meets the standards set out in Chapter III of the Regulation. This provision, first of all, seeks to ensure that minimum standards of the protection of debtor's rights are complied with, especially where he is not involved in the procedure[770]. This defense is essential, since a judgment certified as an EEO in the Member State of enforcement cannot be refused to be enforced, even on the basis of *ordre public*. As

[767] *Practical guide to the application of the Regulation on European Enforcement Order* [online]. [Accessed on 8 September 2012]. At: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lt.pdf>.

[768] European Court of Justice ruling in *G. v. Cornelius de Visser* of 15 March 2012, No. C–292/10, unpublished as of yet.

[769] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: *Justitia*, 2009, p. 28, 29, 50, 51.

[770] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 203.

indicated in Recital 10 of the Regulation, where a court delivered a judgment on an uncontested claim without the debtor being involved, the elimination of any obstacles in the Member State of enforcement is inherent and depends on sufficient guarantee that defense rights are being exercised. It should be noted that minimum procedural standards established in Chapter III of the Regulation are not relevant where the debtor admits the claim by active participation or concludes (approves) a settlement.

136. V. Nekrosius emphasizes that the main objective of minimum procedural standards set out in Chapter III (Art. 12–19) of the Regulation is to ensure that a debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defense. The requirements of Chapter III of the Regulation, according to Article 12, shall apply both to the uncontested claims within the meaning of Article 3(1)(b) and (c) and to the issuing of an EEO certificate or a replacement certificate within the meaning of Article 6(3) for a decision following a challenge to a judgment where, at the time of that decision, the conditions of Article 3(1)(b) or (c) are fulfilled It is completely irrelevant for the compliance with the minimum procedural standards if the matter was initially national or with an international element. According to Article 12(2) it is also completely irrelevant for the compliance with the minimum procedural standards if the appealed judgment has been certified as an EEO and an additional EEO certificate has been issued following the appeal, or the judgment will have to be certified as an EEO after the appeal. If a creditor aims for the judgment to be certified as an EEO under the Regulation, the requirements set out in Chapter III in any case have to be complied with because the existence and establishment of these requirements played a key role in abolishing exequatur in Member States[771].

137. V. Nekrosius also points out that neither the Regulation on the service of procedural documents, nor Regulation 805/2004 deals with the language issue. Minimum standards do not include a provision that says that documents served have to be translated into a language easily understood by the addressee, even though to ensure the execution of defendant's right to be heard undoubtedly requires language comprehension as one of its more important conditions. Nor does the Regulation provide the definition for the concept of "in sufficient time", leaving it for the competence of *lex fori*, even though in pursuance of equal debtor protection standards, such a regulation would be desirable[772].

138. German legal doctrine, among other things, indicates that even serving a document in a language not understood by the debtor, under Regulation 805/2004 will be considered appropriate – if the need arises, the debtor himself shall acquire its

[771] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 210.

[772] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 211.

translation[773]. However, procedural documents shall be serviced in the EU in accordance with Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000[774] (hereafter – Regulation 1393/2007). This Regulation provides for addressee the right to refuse to accept the document to be served if it is not written in, or accompanied by a translation into, either of the following languages: a language which the addressee understands; or (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected (Par.1, Art. 8 of Regulation 1393/2007). Hence, Regulation 805/2004 can be systematically interpreted with Regulation 1393/2007 and where an addressee refuses to accept a document or returns it in accordance with Regulation 1393/2007, it can be assumed that appropriate service of a document has not occurred. Lithuanian legal practice also follows the provision that an EEO cannot be issued if a defendant refuses to accept a preliminary judgment, delivered under documentary procedure, together with its accompanying documents on the basis of Article 8 of Regulation 1393/2007, i.e. regarding failure to comply with language requirements for serviced documents[775]. The researchers believe this to be a reasonable position. However, problems may arise where a procedural document instead of being serviced for the addressee himself, is serviced for a related person, since this can prevent from exercising the right to refuse to accept or to return a document. Debtor's rights in this case can apparently be ensured by Article 19 of the Regulation (minimum requirements for review in exceptional cases).

139. It should be noted that according to European Court of Justice practice, it is not always necessary to translate additional documents attached the to main document (see Par. 363 of the Research).

140. V. Nekrosius emphasizes[776] that minimum procedural standards set out in the considered chapter do not directly affect national procedural law and should be interpreted as evaluative standards. Member States are not obliged to adopt these provisions in their national laws. In other words, a court deciding on granting an EEO status, has to evaluate the proceedings that took place beforehand and answer the question if it met minimum procedural standards set out in Chapter III. If the answer is positive, the judgment can be certified as an EEO.

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[773] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 12, Art. 2 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

[774] OL 2007, L 324, p. 79-120.

[775] Vilnius Regional Court Civil Division ruling of 26 January 2012 in a c.m. *UAB „Ecolink Baltic“ v. Lenkijos bendrovė „Tagros Polska“ Kataryna Nieciecka*, No. 2S-516-611/2012, cat. 104.10; 106.3; 122.2; 122.4.

[776] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 211.

141. Thus, these minimum procedural standards only indirectly affect the content of national procedural law, since the States, seeking that their judgments could be certified as an EEO, are concerned with developing mechanisms for serving procedural documents that meet the requirements in the Regulation. It should be noted that Article 14(1) of the Implementation Law establishes that where in a claim (for the issue of a court order) the claimant (creditor) has additionally identified that he will be pursuing the issue of a European Enforcement Order, the court in the course of the proceedings serve procedural documents in accordance with methods for serving procedural documents established in the Code of civil procedure of the Republic of Lithuania and falling within the terms of Articles 13, 14, 15 of Regulation (EC) No, 805/2004. This provision also indirectly affects the national procedural law, since it binds courts to apply serving methods under the Regulation where a claimant (creditor) expresses to the court his request for certifying a judgment as an EEO. However, if there are no opportunities to serve procedural documents by the methods established by Articles 13–15 of the Regulation, proceedings, we believe, should not cease. In this case a court should inform the claimant on the impossibility to serve procedural documents by methods meeting Regulation requirements and suggest other serving methods (e.g. assign a tutor or serve by means of publication). In any case a court is obliged to ensure that the matter will be examined in a reasonable period of time, therefore, claimant's requests for a procedural document to be served exclusively by methods meeting Regulation requirements shall not be mandatory and impede the matter from being examined operatively.

142. In Lithuanian legal doctrine we can find an opinion that a court shall serve procedural documents by methods complying with Regulation requirements in every case, based, among others, on the fact that the omission of the fact that the certification of an EEO will be pursued does not exempt a court from the obligation to comply with directly applicable and effective legislations[777]. Yet, this position is unreasonable because of the aforementioned reasons – the Regulation does not unify national serving methods and, therefore, in this respect (regarding the application of serving methods in Member States) is not mandatory. Serving methods established in the Regulation are relevant only where it is sought to answer the question if a judgment can be certified as an EEO.

143. V. Nekrosius writes that Article 13 and other articles of the Regulation set out minimum standards for the service of procedural documents that are a matter of autonomic interpretation. The existence of these requirements in no way implies the existence of an independent EU procedural document serving institute, nevertheless, it is a certain position indicating what serving methods in Europe are held sufficiently ensuring the protection of the debtor's procedural rights. A list of serving methods for procedural documents mentioned in Articles 13 and 14 of the document is extensive, which, in turn, means that serving by methods other than the indicated, does not comply

[777] GUMULIAUSKIENE, LAURA. The implementation of European Enforcement Order procedure – Lithuanian experience. *Jurisprudence*, 2010, No. 4(122), p. 143

with the standard for minimum standards set out in the Regulation. Under the aforementioned articles, a document instituting the proceedings or its equivalent shall be served. Both of these concepts shall be interpreted the same way as their analogous concepts used in Article 34(2) of Brussels I Regulation[778].

144. Even though the aforementioned author points out that according to Articles 13–15 of the Regulation, a document instituting the proceedings or its equivalent shall be served, it is obvious from those articles that it is he same manner in which an invitation to a hearing, which in Lithuania may take a form of a subpoena or a notification, shall be served (Art. 133 of the CCP).

145. Besides requirements for serving methods, the Regulation also establishes requirements for the content of information that is to be served to the debtor (Art. 16 and 17 of the Regulation).

146. V. Nekrosius claims that in order to appropriately ensure the protection of debtor's rights in the certification of a judgment as an EEO, he has to be properly informed on essential procedural aspects when examining a matter. What information in this respect is recognized as essential is provided in Articles 16 and 17 of the Regulation. For example, Article 16 by means of the required information aims to ensure that a debtor is provided with due information about the claim, i.e. the persons who have submitted the claim (both parties shall be indicated; representatives' names are not required), its amount (a specific sum has to be indicated), interest rate (information about interest rate is not required if statutory interest is automatically added under the *lex fori* law of the State) and a statement of the reason (a brief justification is sufficient). It is obvious that without this information a debtor would be unable to decide if and how he will defend himself and what could be the consequences of his passivity. It should be noted that the aforementioned information has to be provided in the document instituting the proceedings or its equivalent. Article 16 contains an extensive list of information that is to be served to the debtor, which cannot be interpreted in the national law by means of expansion[779].

147. Given what requirements in Lithuania are made for procedural documents (Art. 111 of the CCP), claim (Art. 135 of the CCP), application for the issue of a court order (Art. 433 of the CCP) served to the claimant, there should be no problems regarding the compliance with Article 16 requirements, unless the procedural document has been accepted by violating the aforementioned conditions set out in the national law.

148. Article 17 of the Regulation establishes that the following must have been clearly stated in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing: (a) the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the

[778] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 211-212.

[779] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 219.

time for the court hearing, as applicable, the name and the address of the institution to which to respond or before which to appear, as applicable, and whether it is mandatory to be represented by a lawyer; (b) the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

149. V. Nekrosius writes that the information provided in Article 17 of the Regulation is to ensure that a debtor was provided with due information about the possibility to contest the claim and the consequences of passivity in contesting it. Information set out in this article shall only be served to the debtor in cases provided in Article 12(1). Besides, it should be noted that as in respect to other minimum standards, indicated rules are evaluative and do not directly affect national procedural law[780].

150. According to the general principle, the information provided in the Article shall be provided to the debtor in a document instituting the proceedings or its equivalent. However, unlike the information to be provided by Article 16, this information can be provided to a debtor in a subpoena (if the serving of the document instituting the proceedings institutes a period for submitting a reply (or its equivalent), the provision of information in a subpoena, obviously, will not be deemed appropriate). The considered information can be provided in a separate document, which is served together with the document instituting the proceedings or its equivalent procedural document or a subpoena. The above information, as a separate procedural document, can be provided to the debtor by both the court and the claimant[781].

151. The Regulation does not answer the question as in what language the aforementioned information shall be served to the debtor. In this case we should first follow Article 8 of the Regulation on the service of procedural documents (Regulation 1393/2007). In any case, the serving of information in a language not understood by the debtor does not in itself make the notification invalid[782].

152. Article 17(a) requires that a debtor was informed about the possibility to contest the claim. Since claim contestation forms, matters related to content and definitions are transfered to *lex fori* of the respective Member State, the Regulation does not provide comprehensive list of criteria, according to which the informing of a debtor is evaluated. If a national law provides for additional debtor's actions to contest a claim, the debtor has to be informed about them as well. It is especially important in this case to inform the debtor about possible claim contestation deadlines and if it is necessary to be represented by a lawyer, etc.[783].

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[780] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 219-220.

[781] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 220.

[782] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 220.

[783] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 220.

153. V. Nekrosius also indicates that point b) of the same Article requires that a debtor would be informed about the consequences of an absence of objection, default of appearance in the hearing and his obligation to recover costs related to the proceedings. The Regulation again does not provide a comprehensive list of criteria, leaving this matter for *lex fori*. In any case, a debtor shall be informed that the judgment can be certified as an EEO, that a default judgment can be delivered on the formal basis of the assessment of evidence, etc.[784]. However, regarding the latter aspect, it is necessary to notice that German legal doctrine follows the provision that a debtor does not have to be informed that an EEO may be issued because of him, It is indicated that Article 17(b) is meant to define the legal consequences of non-participation in the proceedings or the non-objection of a claim under a national law[785]. We believe there is no reason to disagree with this position.

154. The researchers believe that there could be issues arising from the compliance with the aforementioned standards in Lithuania. In this respect, we cannot fully agree with V. Vebraite that Article 17 standards are fully matched by CCP standards determining what is to be included when serving a claim to the defendant and setting a deadline to submit a reply, as well as standards for preliminary judgment and notification of the debtor in case of a court order[786]. First of all, the CCP does not provide that upon serving the aforementioned documents it is unnecessary to include information whether representation during the proceedings is mandatory. This information is required to be provided by Article 17(a) of the Regulation. On the other hand, Article 17(a) of the Regulation can be interpreted as requiring to provide information only regarding the necessity of representation, where it is not mandatory by *lex fori*, instead of the representation itself. Yet, this conclusion does not arise from the wording of Article 17(a) of the Regulation either in Lithuanian or other languages (English, German) – they provide that information is to be provided on whether representation is necessary, not the information about the mandatory representation, where it is mandatory. Besides, Lithuanian law does not provide that a claimant shall be informed about the responsibility for the costs of proceedings, even though the service of such information is established in Article 17(b) of the Regulation. Depending on what has been mentioned first, seeking to avoid uncertainty about the compliance of information served the the claimant with Article 17 of the Regulation, it suggested to supplement the CCP or the Implementation Law with standards that would oblige a court, when serving a claim for the submission of a reply, preliminary judgment or a court order, as well as serving a subpoena, to indicate if representation during the proceedings is mandatory or not, also defendant's (debtor's)

[784] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. First part. Vilnius: Justitia, 2009, p. 220-221.

[785] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Auflage 2010 [online]. Par. 17, Art. 4 of EuVTVO [Accessed on 14 August 2012]. At: <http://beck-online.de>.

[786] VEBRAITE, VIGITA. Europos Parlamento ir Tarybos reglamento (EB) Nr. 805/2004, sukuriančio neginčytinų reikalavimų Europos vykdomąjį raštą, taikymo sritis. *Justitia*, 2009, No. 1(71), p. 64.

obligation to accept responsibility of costs of the proceedings if a negative judgment will be delivered, where a claim or a subpoena is served to the claimant (in case of preliminary judgment and court order, information regarding costs of proceedings shall be indicated in the procedural documents themselves, therefore, additional information about them is not necessary).

155. We disagree with the position of L. Gumuliauskiene that Regulation 805/2004 supplements national civil procedure laws determining standards for the content of procedural documents[787]. It is clear from Articles 16 and 17, when interpreting them together with Article 6(1)(c) and Article 12, that Lithuanian courts are not obliged to directly apply and follow Articles 16 and 17 of the Regulation by serving appropriate procedural documents. These articles only set standards that have to be meted by the national procedure in order for a judgment to be certified as an EEO. The objective of the Regulation is in no way to unify the content of procedural documents in Member States.

156. It is emphasized that where the documents served to the debtor do not fulfill the standards set out by Articles 16 and 17, certification of judgment as an EEO is possible only if the shortcomings are corrected following standards established in Article 18 of the Regulation.

157. Methods of service provided in Articles 13–15 of the Regulation are legally equal, i.e. the fulfillment of minimum procedural standards to satisfy the condition of certification as an EEO requires only that the considered procedural document was provided by one of the methods provided in Articles 13–15 of the Regulation.

158. Article 14 (2) of the Implementation Law establishes that "where information provided in Paragraph 1 of this article has not been served to the court, European Enforcement Order may be issued in matters provided in Article 3(1)(a) of Regulation No.805/2004, also in other matters if procedural documents in these matters have been served by methods in compliance with Articles 13, 14, 15 of Regulation (EC) No. 805/2004". This provision in is reasonably criticized in legal doctrine because at first sight it can be interpreted in a way that where an uncontested claim under Article 3(1)(b) and (c) exists, a judgment can be certified as an EEO only if the service has been performed by Articles 13–15 of the Regulation, despite the fact that Article 18 of the Regulation provides the possibility to certify a judgment as an EEO even in those cases where th standards of Articles 13–17 of the Regulation have not been met[788]. However, this interpretation of the aforementioned standard contradicts the Regulation. Therefore, we believe it should be interpreted not as limiting the possibility to certify a judgment as an EEO, delivered in proceedings where standards set out in Articles 13–17 of the Regulation, but as providing one of the ways in which a judgment can be certified as an

[787] GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų pripažinimas ir vykdymas Lietuvoje* [online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008, p. 109. At: <https://mms.mruni.eu/DownloadFile.aspx?FileID=202>.

[788] GUMULIAUSKIENE, LAURA. The implementation of European Enforcement Order procedure – Lithuanian experience. *Jurisprudence*, 2010, No. 4(122), p. 143

EEO, i.e. where the service took Place by methods provided in Articles 13–15 of the Regulation. It is emphasized that besides the method of service it is also mandatory to meet the content standards for the information served to the debtor (Art. 16, 17 of the Regulation).

159. A judgment can be certified as an EEO even where some violations of the national procedural law took place, if minimum procedural standards were met. Therefore, we believe that L. Gumuliauskienė is not completely accurate saying that proceedings, in the course of which an uncontested judgment, requested to be certified as an EEO or on the basis of which the issue of a European Enforcement Order is requested, was made, has meet <...> national civil procedure standards[789]. These standards for the certification as an EEO are relevant only to the extent that they can determine that conditions for certification as an EEO established in the Regulation have not been fulfilled. National civil procedure violations can also be relevant in appealing a judgment by an appeal or a cassation, which also allows to ensure that debtor's rights and legal interests will not be violated.

160. It is emphasized that ECJ clarified in the ruling of 15 March 2012[790] that public body law shall be interpreted in a way that prohibits to certify a default decision in respect of a defendant whose domicile is unknown as a European Enforcement Order within the meaning of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

4.1.4.4.6. Service with proof of receipt by the debtor (Art. 13 and 15)

161. Article 15 of the Regulation provides that according to requirements of Articles 13 and 14 (discussed later), procedural documents can also be served on a debtor's representative. This rule is completely understandable and sound, since a representative in any event acts in and on behalf of the principal. Even though the Regulation does not provide the definition of "principal", it is assumed that the mentioned rule includes serving to a representative under the law, as well as serving to a representative under the order (without the representative being an advocate). Besides, in this case we do not necessarily mean procedural representation. The Regulation also does not regulate the issues of representation relationship origination, leaving it in the power of a particular *lex fori*. However, according to V. Nekrosius, the discussed rule insistently establishes a principal permission to serve procedural documents to a representative, therefore, debtor's argument based on, for example, the fact that national law does not provide for

[789] GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų pripažinimas ir vykdymas Lietuvoje* [online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008, p. 109. At: <https://mms.mruni.eu/DownloadFile.aspx?FileID=202>.

[790] European Court of Justice ruling in *G. v. Cornelius de Visser* of 15 March 2012, No. C–292/10, unpublished as of yet.

any service method (or even prohibits it) will not be considered as sufficient to hold the serving of procedural documents as inappropriate and refuse to declare a judgment as an EEO[791].

i) Personal service and its forms (Points a and b, Par. 1, Art. 13)

162. Personal service and its forms:

- Personal service attested by an acknowledgment of receipt, including the date of receipt, which is signed by the debtor (Point a, Par.1, Art. 13). This service method requires a procedural document to be served on a debtor in person and signed by him by indicating the date of service. Sending the proof of service to the court is not required by this service method. According to V. Nekrosius, this service method is considered appropriate if a procedural document is served by an officer (e.g. in Lithuania it might be a process server or a bailiff). In any case, a postman shall not be considered as an officer, since he does not fall within the requirements of point c[792].
- personal service attested by a document signed by the competent person who effected the service stating that the debtor has received the document or refused to receive it without any legal justification, and the date of the service (Point b, Par. 1, Art. 13). According to V. Nekrosius, contrary to the already discussed method, when a document is signed by the addressee himself, an appropriate service will be that, where service of a procedural document in person is attested by the competent person. In any case this attestation must be produced in the acknowledgment of receipt including the date of the service. Essential requirement is that a debtor has to be served a procedural document in person. A competent person is considered to be any person, who under Member State's *lex fori* has the right to serve or attest the serving. An acknowledgment of receipt has to additionally state that the procedural documents have been served in person. In speaking about Lithuania, this category of service methods may involve service of procedural documents under Article 123(3) of the CCP, however, only in cases where the aforementioned persons serve procedural documents to the debtor in person or forward the acknowledgment of receipt to the hearing court. As can be seen, serving of procedural documents exclusively under Article 123(3) of the CCP does not meet minimum procedural standards provided for in the Regulation. A less certain situation occurs when a debtor refuses to accept served documents. In this case we should consider not the fact of serving, but instead of the attempt to serve, which according to the Regulation is considered sufficient if the refusal by the debtor was unjustified (when the debtor cannot legally justify his refusal to accept the procedural document). The Regulation does not answer the question when the refusal to accept procedural documents

[791] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 219.
[792] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 212.

shall be considered justified or unjustified, leaving to decide it for Member State's *lex fori*. For example, in Lithuania the refusal is to be considered justified if it is made by an adult, live-in family member, who has contrary interest against the outcome of the case[793]. Also as one of justified ways of refusing to accept a document, we believe, may be the refusal to accept a served document under Article 8 of Regulation No. 1393/2007, when language requirements for served procedural documents are not met.

ii) Service by post (Point c, Par. 1, Art. 13)

163. V. Nekrosius points out that where a procedural document is served by post, which in Lithuania is the main body of serving procedural documents, the Regulation requires three conditions to be fulfilled: personal service to the debtor; his signature including the date of receipt and returning of the acknowledgment of receipt. According to him, in any case "Lietuvos pastas" is the only appropriate post service under Lithuanian law[794]. However, this conclusion is subject to disagreement, since the Communications Regulatory Authority of the Republic of Lithuania declares that there are 17 persons who can provide postal services in Lithuania[795].

iii) Service by electronic means (Point d, Par. 1, Art. 13)

164. Article 13(1)(d) of the Regulation provides that procedural documents may be served by electronic means such as fax or e-mail, when the debtor attests the receipt of the document, including the date of receipt, as well as signs it and returns. V. Nekrosius writes that the discussed point raises minimum standards for service of procedural documents by electronic means. Both fax and e-mail fall under electronic means. A question arises if debtor's attestation, required in the provision, can be done, as the service itself, by post of e-mail. According to V. Nekrosius, it is assumed that the Regulation allows it, however, acknowledgment of receipt sent by e-mail shall be signed by the debtor by an electronic signature (even though the provision does not require it directly) because it is the only definite confirmation that the document has been received by the debtor in person[796].

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[793] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 212-213.
[794] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 213.
[795] See <http://www.rrt.lt/lt/vartotojui_71/pasto-ir-pasiuntiniu-paslaugos/paslaugu-teikejai_93/pasto-paslaugu-teikejai.html> [Accessed on 26 August 2012].
[796] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 214.

165. V. Nekrosius also indicates that in any way of debtor's acknowledgment of receipt it should be noted that the Regulation does not provide a unified procedural form for this attestation, therefore, each case should follow *lex fori*.

166. Provisions of Article 13(2) are relevant only in the case of summons to a court hearing when they are served separately from procedural documents instituting the proceedings. Under paragraph 2, such summons shall be served in compliance with the rules set in paragraph 1. Yet, service is also to be accepted as appropriate provided that it has been done orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing[797]. This possibility is established in Article 162(2)[2] of the CCP. It should be noted that the content of Article 14(2) of the Regulation has been translated into Lithuanian very vaguely, therefore, it should be corrected by taking into account the aforementioned.

167. Before talking about service methods established in Article 14 of the Regulation, it should be noted that service methods provided for in Articles 13 and 14 are equal. In other words, makers of the Regulation established that serving of procedural documents by any of the service methods indicated in the aforementioned articles is accepted as appropriate and a court is not required to first try to serve procedural document to the addressee in person[798].

4.1.4.4.7. Service without debtor's proof of receipt

168. In talking about the service of procedural documents without debtor's proof of receipt, V. Nekrosius points out that minimum standards for the service of procedural documents without the attestation of their receipt established in Article 14 of the Regulation are based on the idea that the mentioned service methods reasonably suggest that the documents have reached the addressee. In other words, methods indicated in this article guarantee that a procedural document has reached addressee's authority to the extent where he must take care of its collection. The protection of rights of an addressee who failed to collect procedural documents without any fault on his part is ensured by provisions of Article 19(1) of the Regulation. In any case, appropriate service is not based solely on legal fiction (e.g. service by publication[799]). This position is clearly

[797] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 214.

[798] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 214-215.

[799] The fact that service of procedural documents by publication does not meet the requirements of the Regulation is also confirmed by Lithuanian case law, see. e.g. Kaunas Regional Court Civil Division ruling of 2 May 2012 in a c.m. *UAB „General Financing“ v. S. G.*, No. 2S-860-153/2012, cat. 122.1., 122.3, 122.5, 129.14; Panevezys Regional Court Civil Division ruling of 15 November 2011 in a c.m. *O. S. v. E. S.*, No. 2S-773-212/2011, cat. 122.4; Vilnius Regional Court Civil Division ruling of 23 August 2011 in a c.m. *D. P. (D. P.) v. I. J. S. W.*, No. 2S-1467-520/2011, cat. 122.4.

substantiated by paragraph 2 of the discussed article, according to which aforementioned service methods meet minimum procedural standards only where debtor's address is known with certainty. An address is understood as a mailing address by which a debtor can be constantly contacted. This provision of paragraph 2 does not apply in cases of electronic service, i.e. when procedural documents are served via e-mail or fax. In this case the requirement of paragraph 2 shall be interpreted in a way that says the court has to know addressee's e-mail or fax number. Whichever requirement to know debtor's address it may be, it should be said that a court has to undertake measures that would ensure the reliability of data provided by the claimant (the fact that a creditor has provided the court with relevant information does not necessarily create sufficient grounds for certifying a judgment as an EEO)[800]. The above provisions mean that, in principle, service via a curator should not be considered as meeting the requirements of the Regulation either.

169. Note that within the meaning of the Regulation Lithuanian case law also holds as inappropriate a situation where no specific information about the service method is available (when a document was served according to Regulation 1393/2007)[801]. We agree with this position. However, it is clear from Lithuanian case law that an EEO is granted by courts according to legal fiction, which is not provided for in Article 14 of the Regulation. E.g. Vilnius Regional Court[802] granted an EEO despite the fact that summons to a hearing had not been served – the court held it was appropriate by following legal fiction established in Article 805 of the CCP[803]. Yet, the Regulation does not provide for this service method as appropriate.

i) Personal service and its forms (Points a and b, Par. 1, Art. 14)

170. According to Article 14(1)(a) and (b) of the Regulation, service of the document instituting the proceedings or an equivalent document and any summons to a court hearing on the debtor may also be effected by one of the following methods: a) personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there; (b) in the case of a self-employed debtor or a legal

[800] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 214-215.

[801] Lithuanian Court of Appeal Civil Division ruling of 14 July 2011 in a c.m. *bankrutavusi uždaroji akcinė bendrovė „Tagatis“ v. Lenkijos įmonė European Marketing Service Sp. Z.o.o.*, No. 2-1428/2011, cat. 129.14.

[802] Vilnius Regional Court Civil Division ruling of 19 January 2011 in a c.m. *UAB „Finansų rizikos valdymas“ v. K. O.*, No. 2S-78-56/2011, cat. 121.14; 121.18; 122.4; 129.15.

[803] Article 805(1) and (2) of the CCP provide that where a party residing abroad has not appointed a representative in the case, it must appoint an authorized person residing in the Republic of Lithuania which is to be served procedural documents related to the case; if the party residing abroad has failed to fulfill its obligation indicated in paragraph 1 of this article and has not appointed an authorized person, all procedural documents addressed to it remain in the case and are held served <...>.

person, personal service at the debtor's business premises on persons who are employed by the debtor.

171. Commenting on the above provision, V. Nekrosius first draws attention to the requirement that all procedural documents are to be served on persons living or employed at the same address as the debtor. Hence, a concept different than "domicile" has been used and should be interpreted more widely and not necessarily match. The discussed requirement also does not mention age of a person who is served procedural documents. In other words, his majority is not necessary. V. Nekrosius and we agree with the view set out in the literature that a person who is served documents should, according to his age and environmental awareness, be able to appropriately understand the essence of his function. In terms of a corresponding method in Lithuania, V. Nekrosius claims that we should, even though the Regulation does not require, follow Article 123(3) of the CCP which provides that procedural documents are to be served on an adult. Unlike in Article 13 of the Regulation, under which unjustified refusal to accept documents is equal to appropriate service, such a rule here has not been established. Therefore, the same assumption cannot be made in this case. This service method may be applied both where an addressee is a natural and a legal person. Hence, in interpreting the concept of "employed persons", V. Nekrosius says that we should not be limited to the legal meaning of employment. This category shall involve not only persons, employed by the debtor on employment contracts, but also persons providing service to the debtor on the basis of a contract with a legal person or direct civil contract with the debtor. Such persons, for example, may be housekeepers, nannies and others. In any case it is necessary to assess whether a third party will be able to deliver the document to the debtor[804].

172. The discussed service method basically falls within Article 123(3) of the CCP although in certain cases such service may also meet requirements of Article 13(1)(b) of the Regulation (e.g. service to workplace administration). Yet, in this, as well as other cases of service provided for in the CCP, it is necessary to check carefully if the service complies with the provisions of the Regulation. For example, under the CCP natural persons can be served documents at their workplace (Par. 1, Art. 122; Par. 3, Art. 123 of the CCP). However, we believe that this service would not meet the requirements of Article 14(1) of the Regulation, since it requires to serve a document at a domicile and not at the place of employment. Nevertheless, service at a workplace may be appropriate by other service methods provided for in the Regulation (e.g. methods set out in Article 13(1) of the Regulation). Some service methods are not provided for in Lithuanian law at all, e.g. service to housekeepers, nannies and others. In this respect, obviously, it would appropriate to consider the establishment of additional service methods in Lithuanian CCP.

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[804] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 214-216.

173. Lithuanian case law had a matter which the court resolved by rejecting the service of a procedural document on debtor's mother[805]. Yet, this position according to Article 14(1)(a) can only be held justified if the location of service was not the debtors domicile or if the debtor's domicile was unknown.

174. In discussing Article 14(1)(b) of the Regulation, V. Nekrosius notes that it applies not only to legal persons (whose concept shall be interpreted following attributes set out in Article 60(1) of Brussels I Regulation), but also to natural persons who are employers (e.g. members of the liberal professions). Concepts of "employer" and "employee" are to be understood broadly, not limited to the scope of labor law. In addition, for this service method to be recognized as appropriate, a claim for a debtor does not have to arise out of legal or natural person's business activity. Procedural documents shall be served at the debtor's "business premises", i.e. location where activities of the person concerned are carried out (e.g. headquarters, outlet, office, production facilities and others). Legally, in terms of natural persons, these premises should be separated from their private facilities, however, the Regulation does not require that directly[806].

175. Note that where a natural person to be served a document is not self-employed, Article 14(1)(a) of the Regulation shall apply. Trainees may also be the persons to be served documents under point b. This service method is essentially met by the first sentence of Article 123(4) of the CCP.

176. Under Lithuanian CCP, legal persons shall be served procedural documents at the address registered in the Register of Legal Entities (Par. 2, Art. 122 of the CCP). However, it was said above that Article 14(1)(b) of the Regulation requires to serve a document at a business location that may be different than the registered address. A similar situation may arise in case of self-employed persons if they were to be served documents as natural persons at their domicile instead of their business location. These circumstances should be taken into account in order to recognize a service as fulfilled under Article 14(1)(b) of the Regulation.

ii) deposit of the document in the debtor's mailbox (points c, d, e, Par. 1, Art. 14)

177. Article 14(1)(c), (d) and (e) of the Regulation establishes that a document instituting proceedings or an equivalent document and summons to a hearing may also be served on the debtor by one of the following methods: <...> c) deposit of the document in the debtor's mailbox;
d) deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or

[805] Kaunas Regional Court Civil Division ruling of 3 May 2011 in a c.m. *R. K. v A. K.*, No 2S-769-173/2011, cat. 122.4; 129.13.
[806] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 216.

the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits; e) postal service without proof pursuant to paragraph 3 where the debtor has his address in the Member State of origin.

178. Commenting on these provisions, V. Nekrosius points out that under the Regulation it is sufficient for procedural documents to be "served" by depositing them in the debtor's mailbox. In this case it is not required that the post office ensures the collection of these documents – it is the risk of the debtor. Likewise, security of the mailbox and control of its content is left to the responsibility of the debtor. Debtor's address shall be interpreted according to paragraph 2 of the article concerned. In oder to recognize the service as appropriate under Article 14(1)(d) of the Regulation, it is necessary to fulfill three conditions: leave served documents at a post office (which should be near the private address of the debtor), leave a corresponding notification at the debtor's mailbox and indicate that a a procedural document has been served or the running of time has been set in motion upon the delivery of the notification (not that the latter condition is alternative in nature). In this case the document is considered served from the moment of depositing the notification in the debtor's mailbox[807]. The discussed service method can essentially be met by the service to legal persons according the second sentence of Article 123(4) of the CCP, where in case of the debtor's (legal person's) and its employees' registered address not being found, a notification regarding the leave of a registered judicial item in the post office shall be deposited to the debtor's mailbox. According to V. Nekrosius, service of procedural documents by post where attestation of its delivery is not required (acknowledgment of receipt, signed by the debtor and returned to the court is not required; Article 14(1)(e) of the Regulation) is only possible where the debtor's address is in the Member State of the proceedings according to the paragraph 2. In comparing translated versions, it is unclear if this provisions also applies to cases where only one of the debtor's addresses is in the Member State of the proceedings. In this respect, V. Nekrosius agrees with the position expressed in the literature, which says that a condition is fulfilled if it is one of the debtor's addresses (not necessarily in the same Member State)[808]. It is believed that this service method may be met by the sending of a summons to a hearing, since court notifications under the CCP are not served against receipt and acknowledgment of receipt need not to be sent to the court (Art. 124 and Par. 1, Art. 133 of the CCP).

iii) electronic means (points d, f, Par. 1, Art. 14)

179. Article 14(1)(f) of the Regulation establishes that a document instigating proceedings or an equivalent document and summons to a hearing may also be served on

[807] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 216-217.
[808] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 217.

the debtor by electronic means, which automatically confirm the dispatch, if the debtor expressly accepted this service method in advance. Commenting on this provision, V. Nekrosius writes that this service method encompasses all possible electronic means of service, especially fax and e-mail. One of the fundamental conditions for the use of these means is an automatic confirmation of dispatching a procedural document. Attestation that the procedural document has reached the addressee is not required. Forwarding a document via e-mail requires only a confirmation from the sending server that the information has been sent to the other server. In case of fax, information from the machine that the document has been sent is sufficient. Second condition for the legitimacy of this method is an early acceptance of this method of forwarding information by the debtor. This acceptance may be a general one, i.e. unrelated to a specific process, yet in any case it has to be presented to the court before the forwarding of procedural documents via electronic means. The condition ultimately does not contain any requirements for the form and the content of the acceptance, other than the fact that it has to be expressly stated[809].

180. The possibility of serving procedural documents by electronic means in Lithuania is to be implemented from 1 January 2013. However, it should be noted that Article 175(9)[1] of the CCP establishes mandatory service by electronic means for some categories of persons. In case where service is to be carried out by this, i.e. mandatory method, the service will not fulfill the provision of Article 14(1)(f), which establishes that the debtor must expressly accept this service method. Until the Minister of Justice confirms the manner and form of the service of procedural documents, it is not possible to assess if electronic service in Lithuania will provide an automatic confirmation of dispatching. The Minister of Justice should take into account this consideration when approving the above procedure.

181. It should be emphasized that service methods provided in Article 3(1)(a)–(d) will only be recognized as appropriate if an acknowledgment of receipt is issued thereon. It relates to a certain proof confirming that the procedural document has been served by the indicated method. If a document attesting service is not issued, a judgment cannot be certified as an EEO even if the service of documents by the method indicated in the Regulation may be proved by other means. A document attesting service must be issued and signed by the person serving. It must include the service method and the date and in the case where the documents were served on a person other than the debtor – the surname of that person and his relationship with the debtor. When serving in accordance with the procedure set out in Article 14(1)(a) and (b), an additional alternative requirement is provided – attestation of the receiving person. The Regulation does not provide for any requirements for the content of the attestation, yet it is believed that given the similarities of the service methods, the content requirements provided for in Article

[809] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 218.

13 should suffice. The key requirement is that the court shall be provided with data of the receiving person that would allow to conclude that the document has reached the authority of the actual addressee[810]. Article 124(3) of the CCP essentially ensures the fulfillment of the above requirements. Problems may arise only in the case where the document served was a notification on a hearing, since the aforementioned provision in this case does not apply and the court may not receive an attestation of receipt.

4.1.4.4.8. Cure of non-compliance with minimum standards (Art. 18)

182. Article 18(1) establishes that if the proceedings in the Member State of origin did not meet the procedural requirements as set out in Articles 13 to 17, such non-compliance shall be cured and a judgment may be certified as a European Enforcement Order if: a) the judgment has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14; and b) it was possible for the debtor to contest the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and c) the debtor has failed to contest the judgment in compliance with the relevant procedural requirements. Paragraph 2 of this Article provides that if the proceedings in the Member State of origin did not comply with the procedural requirements as set out in Article 13 or Article 14, such non-compliance shall be cured if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defense. Hence, these provisions essentially provide that compliance with the requirements of Articles 13–17 of the Regulation is not mandatory in all cases if the protection of debtor's rights is ensured by other methods specified in Article 18. Commenting on these provisions, V. Nekrosius points out that Article 18 of the Regulation provides for the possibility in certain cases, in which the minimum procedural standards provided in Articles 13–17 have not been followed, to cure resulting procedural deficiencies and certify the judgment as an EEO. Note that according to Article 18, any deficiency resulting from the violation of minimum procedural requirements may be cured. The cure system established in the concerned article is also based on Article 34(2) of Brussels I Regulation, providing that it is prohibited to refuse the recognition of a judgment on the grounds of inappropriate service of a document instituting the proceedings on the debtor, if in the event of this deficiency the defendant still had an opportunity to contest the judgment, yet failed to do so. Looking at the content of Article 18, we can essentially conclude that it does not refer to the cure of deficiencies as such. Cure of deficiencies here is interpreted differently, i.e. by establishing the following provision: if it is stated that in the case of procedural

[810] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 218.

deficiencies other additional conditions provided in the article have been met, it is accepted that in spite of these deficiencies, the exercise of the debtor's procedural rights has been ensured sufficiently, so that the judgment may be certified as an EEO[811].

183. Paragraphs 1 and 2 of the discussed article provide for two alternative possibilities of curing deficiencies. Paragraph 1 of the article shall only be applied in the event where minimum procedural standards established in Articles 13–17 have not been met, meanwhile paragraph 2 – in the event where minimum procedural standards for the service of procedural documents set out in Articles 13–14 have not been met. In any case it should be noted that requirements indicated in both paragraph 1 and 2 for each cure method are not alternative, but rather holistic in nature, i.e. can only be applied if all the conditions set out in the paragraph have been met[812].

184. Commenting on the cure of deficiencies according to Article 18(1), V. Nekrosius points out that it provides for the existence of all three mandatory conditions in order for the deficiencies of a judgment (based on Art. 13–17) to be held cured:

a) the judgment has been served on the debtor in compliance with the requirements pursuant to Article 13 or Article 14. First conditions insistently states that a judgment shall be served on the debtor in accordance with the requirements of Articles 13–14 of the Regulation. It ensures the minimum level of probability of the debtor being informed about the judgment. Even though the provision does not mention the possibility of serving procedural documents to the debtor's representative provided for in Article 15, it should be said that in this case it may also be applied, as it also ensures the meeting of the minimum standards;

b) it was possible for the debtor to contest the judgment by means of a full review and the debtor has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing. The key point here is the fact that the debtor had the possibility to appeal against the judgment and also to contest its legitimacy and validity in the former state. It is important that the debtor is granted comprehensive control over the judgment, i.e. challenging its legitimacy and validity. Therefore, the possibility of cassation alone does not satisfy the established minimum standards. The debtor shall be informed about the possibility of appealing against the judgment either in the judgment itself or in a separate procedural document provided together with it. He must be informed about the procedure of lodging an appeal (to which court it should be lodged; whether it should be lodged in writing or by including it in the minutes; also about mandatory representation, if the law provides for

[811] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 221-222.

[812] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 221.

it), as well as its deadlines[813]. Lithuanian CCP requires to indicate the deadline and the procedure of the appeal in the judgment itself and also obligates the court to send the judgment to the absent party (Point 5, Par. 5, Art. 270 and Par. 1, Art. 273 of the CCP), therefore, these requirements of the above provision should be ensured by Lithuanian law and courts to the extent that they are related to informing of the debtor;

c) the debtor has failed to contest the judgment in compliance with the relevant procedural requirements. In this case it is essential that the debtor has failed to contest the judgment event though both conditions mentioned above were existent. In any event, a statement that the judgment has not been contested is only possible after the expiry of the time limit for a complaint. On the other hand, theoretical possibility of renewing the time limit does not imply that it has not been failed to comply with. According to V. Nekrosius, there is a prevailing position in the literature that if a court receives an application to renew the expired time limit, it is recognized that the judgment has been contested and the indicated condition has not been fulfilled. However, the author only partially agrees with this opinion, since it is only necessary to admit that the judgment has been contested if the court has grants the application for the renewal of the procedural time limit. Any other interpretation of this provision would allow for an unlimited abuse and delaying of proceedings, which essentially runs counter to the objectives of the Regulation[814].

185. V. Nekrosius points out that compliance with the minimum standards set out in Article 18(2) of the Regulation cures only those document service deficiencies that fall within Articles 13–14. The requirement for the cure of these deficiencies is the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defense. Hence, in this case it is not sufficient for the document to reach the debtor's authority; it is required that he personally receives this document. An official deficiency of service does not automatically prevent the grant of an EEO status, if the debtor personally received procedural documents in by other methods which did not preclude the possibility of appropriately defending himself in the proceedings. The only proof of the existence of these conditions is debtor's conduct in the proceedings. Positive procedural actions taken by the debtor in forming his position shall be recognized as such conduct (e.g. submission of an answer to the claim; submission of a complaint on the grounds that procedural documents have not been appropriately served, etc.). In this case these action are not required to be effective with regard to the proceedings, since their purpose is to prove that the debtor knows the content of the procedural documents[815].

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[813] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 221-222.

[814] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 222-223.

[815] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 223.

186. It should be emphasized that according to Article 18(2) of the Regulation, only deficiencies relating to Articles 13 and 14 of this legal act (deficiencies of service) may be cured, therefore, compliance with requirements of Articles 16 and 17 of the Regulation must be examined further. A person, although knowing about the document he is served in accordance with Article 18(2) of the Regulation, yet not having information about the claim lodged against it (Art. 16 of the Regulation) and the necessary procedural actions and requirements to contest it (Art. 17 of the Regulation), cannot make an adequate and well informed decision on his further actions, therefore, the level of protection of debtor's rights in this case would be insufficient to certify a judgment as an EEO.

187. Lithuanian case law shows that superior courts in considering the granting of an EEO usually try to assess[816] if there is a possibility to cure the non-compliance with Articles 13–17, even where this issue has not been separately raised in the procedural document provided to the appellate court. Such practice is seen as positive. However, as the case law shows, this assessment usually leads to the decision that the judgment (or another equal document) has been served on the debtor in compliance with the requirements of Articles 13–14 of the Regulation. This leads to the fact that the cure of deficiencies is not possible due to non fulfillment of the provision of Article 18(1)(a) of the Regulation. In cases where it is not possible to decide on the cure of deficiencies, Lithuanian appellate courts explain to applicants their right to re-apply (repeatedly) for the granting of an EEO in case these (cure) requirements were met[817]. Article 117(2) of the CCP establishes that if a person involved in the matter agrees, the court may issue him a procedural document to serve it to the addressee. Thus, if the court cannot serve the judgment to the debtor, there is basically a possibility for the creditor himself to undertake active measures to request the court to issue him a procedural document for service and to seek for the judgment to be served by methods consistent with the requirements of the civil procedure law and Articles 13–14 of the Regulation. Such service, as mentioned above, would allow for the cure of non-compliance with minimum procedural standards.

4.1.4.4.9. Minimum standards for review in exceptional cases (Art. 19)

188. Article 19(1) of the Regulation establishes that further to Articles 13 to 18, a judgment can only be certified as a European Enforcement Order if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment where:

[816] Vilnius Regional Court Civil Division ruling of 23 August 2011 in a c.m. *D. P. (D. P.) v. I. J. S. W.*, No. 2S-1467-520/2011, cat. 122.4; Vilnius Regional Court Civil Division ruling of 15 November 2011 in a c.m. *O. S. v. E. S.*, No. 2S-773-212/2011, cat. Lithuanian Court of Appeal Civil Division ruling of 14 July 2011 in a c.m. *bankrutavusi uždaroji akcinė bendrovė „Tagatis“ v. Lenkijos įmonė European Marketing Service Sp. Z.o.o.*, No. 2-1428/2011, cat. 129.14.

[817] Kaunas Regional Court Civil Division ruling of 20 October 2010 in a c.m. *J. K.*, No. 2S-1984-273/2010, cat. 122.2.;122.3.122.4.

a) i) the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and ii) service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part; or b) the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly. Article 19(2) of the Regulation establishes that his article is without prejudice to the possibility for Member States to grant access to a review of the judgment under more generous conditions than those mentioned in paragraph 1.

189. Commenting on the considered provision, V. Nekrosius points out that despite compliance with the minimum procedural standards set out in the Regulation, it is entirely possible that a situation may arise where the debtor is served procedural documents late without any fault on his part and due to this, loses the opportunity to appropriately arrange for his defense. Precisely for situations like these Article 19 of the Regulation provides for an exceptional possibility to review the judgment, based on the national law of the original state. If such possibility is not provided for in the national law of the Member State, the judgment cannot be certified as an EEO. In Lithuania this procedural possibility is provided for both the application for a review of a default judgment and the renewal of the procedural time limit for making objections in the documentary and court order procedure. Thus, the aforementioned article does not establish autonomous power of control over such decision, but rather requires the existence of this procedural form in national law. In this respect, provisions of Article 19 may also be considered as minimum procedural requirements. Therefore, in deciding about the granting of an EEO status, the court shall verify that this possibility of objection is provided for in the national law, regardless of whether or not the impediments indicated in Article 19(1) existed. As in the case of Article 18, the possibility of objection provided for in the national law, must allow for a comprehensive control of the lawfulness and validity of the judgment. This undoubtedly puts certain pressure on each Member State to provide for the indicated possibilities of objection, otherwise, judgments will not meet minimum procedural standards and will not be certified as an EEO.

190. The possibility provided for in the discussed article must be guaranteed on two occasions:

- when a document instituting proceedings or an equivalent document or, where required, the summons to a court hearing, if served by one of the methods provided for in Article 14, were not served in sufficient time to enable the debtor to arrange for his defense, without any fault on his part;
- when the debtor was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part.

191. Paragraph 1 of the concerned article also establishes debtor's obligation to act on the above possibility of objection promptly. This obligation should be taken to mean that

the debtor should act without violating procedural time limits established in the national law, whereas if an application for the renewal of the procedural time limit is submitted – in compliance with the obligation to seek for the advancement of proceedings[818].

192. German case law indicates that the application of Article 19(1)(a) is more concerned with the moment of becoming aware of and familiarizing oneself with the served document, rather than the moment of service. It states that Article 19 of the Regulation shall be applied in those cases, where a person, without a fault on his part, becomes familiar of the content of the served document too late[819]. Therefore, even if in legal terms the service was timely, yet without a fault of his own the debtor became familiar with the content of the document too late, Article 19 of the Regulation shall be applied.

193. We essentially agree with V. Nekrosius' position that Lithuanian law meets the requirements of the discussed article of the Regulation. It is assumed that in cases where a judgment is delivered due to a completely passive conduct of a defender (did not provide a response and failed to appear in the hearing; such case is possible when the claimant does not call for a default judgment), the requirements of the aforementioned article for the possibility of a review would be met by the right to lodge an appeal or to apply for the renewal of the time limit for lodging an appeal[820]. The only issue that may arise in this case is that Lithuanian law provides for a three month period for lodging an appeal; Article 307(3) of the CCP establishes that an application to renew the expired time limit for lodging a complaint cannot be submitted if more than three months have passed since the delivery of the judgment. In turn, Article 19 of the Regulation provides no period for taking advantage of the established review procedure. Therefore, it is believed that in order to avoid any ambiguities, Article 307(3) could be supplemented by a provision that the time limit provided for in this article does no apply where the debtor seeks to take advantage of the possibility to contest the judgment in accordance with Article 19(1) of Regulation 805/2004.

194. Information on the procedures of a review in the other Member States is provided in the European Judicial Atlas (see http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_lt.pdf >).

4.1.5. Enforceable documents certified as an EEO

[818] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 223-224.

[819] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 19, Par. 5 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[820] Even though discussions may arise if in this case Article 19 of the Regulation allows for the right to appeal (Article 18(1) of the Regulation uses words "challenge", "užginčyti" (Lit.), "Rechtsbehelf" (Ger.), rather than the right to a review in the same court in which the judgment was delivered (Article 19 of the Regulation uses words "review", "peržiūrėti" (Lit.), "Überprüfung" (Ger.).

4.1.5.1. Certification of judgments as an EEO (Art. 9)

195. Article 9 of the Regulation establishes that a European Enforcement Order certificate is granted by filling in the standard form provided in Annex I. European Enforcement Order certificate is granted in the same language as the judgment. It should be emphasized that before certifying a document as an EEO, a competent authority (a court or a notary in Lithuania) has to *ex officio* verify that all conditions for certifying that document as an EEO have been met.

4.1.5.1.1. Applications and the standard form under Annex No. 1 (Par. 1, Art. 9)

196. Commenting on the considered provision, V. Nekrosius indicates that the approved EEO certificate form shall facilitate the work of the court, ensure the use of a unified EEO certificate in all Member States, and facilitate its translation. On the other hand, we must note that the use of the approved form should not only facilitate the work of the court, but also ensure the unification of procedural documents in all Member States. Therefore, this form is mandatory and cannot be altered by the court in any way. If a document does not comply with the provided form, it cannot be certified as an EEO certificate[821].

197. Note that standard forms may be filled in at one's convenience directly online and later printed out on European Judicial Atlas in Civil Matters website (see http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_filling_lt_lt.htm).

198. A judgment is certified as an EEO without hearing of the debtor, since his right to be heard has already been implemented during the proceedings. Hearing of the debtor in this case is not required neither by the Regulation, nor by the Implementation Law, nor by Article 646 of the CCP. Besides, it ensures the implementation of process concentration principle towards the creditor. On the other hand, Article 10 of the Regulation establishes that the withdrawal and rectification of an EEO certificate re-ensures to the debtor the right to be heard[822]. In addition, if the granting of an EEO certificate is requested during the proceedings, the debtor is able to present his position on this request. For the granting of EEO certificates (hereafter EEOC) *mutatis mutandis* Chapter XLIV of the CCP is applied (Procedure for granting enforcement orders). It should be emphasized that Article 10(4) imperatively establishes the fact that the granting of an European Enforcement Order certificate is conclusive.

199. An application for granting an EEOC should comply with general requirements for procedural documents (Art. 111 of the CCP). It is recommended that it specifically

[821] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 206.

[822] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 207.

indicates how (and when) the conditions required for the certification of a judgment as an EEO were fulfilled. It would facilitate the work of courts in scrutinizing if the requirements of the Regulation have been appropriately met. However, neither the Regulation, nor the Implementation Law provides that in the application for granting an EEO the applicant must prove that it will have to be enforced in another Member State, because, for example, the debtor is domiciled there or has property in it. Besides, since the debtor is not informed about the granting of an EEOC, we believe that courts should be more flexible in considering the issue of the indication of the debtor's address in the application for the granting of an EEOC – it is usually not necessary at all for the court to know the current domicile of the debtor.

200. For application for an EEOC also see 4.1.4.4.1.

4.1.5.1.2. Language of an EEO certificate (Par. 2, Art. 9)

201. According to paragraph 2 of the considered article, EEO certificate shall be granted in the language of the judgment. V. Nekrosius notes that according to Article 13(4) of the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure of the Republic of Lithuania, an EEO certificate or its copy are provided for enforcement in Lithuania translated into Lithuanian language. Neither the Regulation, nor Lithuanian laws require the translation of a judgment, on the basis of which an EEO certificate has been granted. According to him, it is self-evident, since the Regulation abolishes exequatur, whereas all information necessary for the enforcement, is provided in the EEO certificate[823].

202. It should be noted, however, that Article 13(4) of the Implementation Law establishes that a European Enforcement Order or its copy shall be provided for enforcement in the Republic of Lithuania translated into Lithuanian and be enforced without applying the provisions of Article 4 of this Law. Hence, the Law indicates that it is not the translation of an EEO certificate or its copy that should be provided, but rather the translation of the EEO itself or its copy. In terms of these two concepts – European Enforcement Order and EEO certificate – we agree with L. Gumuliauskiene's position that according to the terminology used in the Regulation, an enforceable document in Lithuanian civil procedure law shall be regarded as a judgment of another EU Member State, a court settlement or an authentic document certified as a European Enforcement Order, or simply the European Enforcement Order itself. Meanwhile, an enforcement document shall be regarded as a standard European Enforcement Order certificate, approved as an appendix of the Regulation[824]. Given the above, we could say that the Implementation Law provides for an obligation to provide the judgment of another EU

[823] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 206.

[824] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 141.

Member State (or its copy) with its translation in Lithuanian. However, as L. Gumuliauskiene correctly notes, such provision would be inconsistent with Article 20(2) of the Regulation, under which the following shall be provided for enforcement in another EU Member State: 1) a copy of the judgment, 2) a copy of European Enforcement Order certificate and, where required, 3) a translation of European Enforcement Order certificate. Despite the fact that concerned persons and courts can directly refer to provisions of the Regulation, this inconsistency between the EU legal act and its national implementation legal act cannot be justified neither by use of legal logic, nor by requirements for harmonizing lawmaking and law, one of which is the clarity of legal acts[825].

4.1.5.1.3. Issues relating to service of an EEO certificate to the debtor

203. According to V. Nekrosius, a court should *ex offitio* serve a copy of an EEO certificate to the debtor (in case of serving in Lithuania, it should be done following relevant provisions of the CCP, whereas serving in another Member State – following the Regulation regarding service of procedural documents)[826]. However, this position is debatable – neither the Regulation[827], nor the Implementation Law provides that an EEO certificate should be served on the debtor, and there is basically no need for it, since the debtor would have to be familiarized with the judgment made against him.

204. The Regulation does not provide whether in case where the court forwards to the debtor an EEO certificate, it should translate it into a language that he understands (which meets the requirements of Regulation 1393/2007 or another piece of legislation). We believe that given the fact that the Regulation does not establish a direct obligation for the court to forward an EEO to the debtor in any case, it does not need to translate the EEO certificate.

4.1.5.1.4. Service of an EEO certificate to the creditor (Point b, Par. 2, Art. 20)

205. By *Mutatis mutandis* applying Article 646 of the CCP, it is clear that an EEO certificate shall be granted to the creditor against receipt or sent by registered mail. Since an EEO certificate may need to be enforced in several Member States, the Implementation Law could establish that the court may grant several EEO certificates.

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[825] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 141.

[826] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 207.

[827] PABST, STEFFEN. *Der Europäische Vollstreckungstitel.* In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010, p. 102.

4.1.5.1.5. The problem of appealing against refusal to grant an EEO certificate

206. As mentioned above, neither the Implementation Law, nor the CCP provides for any procedure for granting an EEO certificate and if court's refusal to grant an EEO may be appealed. In this case, we believe, we should follow the analogy in the provisions of Chapter XLIV of the CCP (Procedure for granting enforcement orders), which, according to Article 646(3) of the CCP, lead to conclude that a decision to grant an EEO may be contested by a separate appeal. Especially, since Lithuanian Court of Appeal has explained that a court order on refusing to grant an enforcement order prevents this person from exercising his rights and, therefore, may be contested by a separate appeal (CCP, Art. 334, Par. 1 and 2)[828]. The fact that a decision to refuse the granting of an EEO is subject to appeal can be seen in Lithuanian court practice[829].

4.1.5.1.6. Re-application for the granting of an EEO certificate

207. It should be noted that neither the Regulation, nor Lithuanian law provides that in case of refusal from a court to certify a certain judgment as an EEO, the creditor cannot re-apply to the court with the same request. Consequently, an application for the granting of an EEO may be submitted even if the court has rejected such an application earlier. However, the abuse of this right, the researchers believe, should lead to a penalty for the creditor awarding him for damages (Article 95 of the CCP).

4.1.5.2. Certification of court settlements and authentic instruments as an EEO (Par. 1, Art. 24; Par. 1, Art. 25)

208. In analyzing Article 24(1) of the Regulation in Lithuanian, first thing that strikes the most is the complexity of translation. We believe that a more precise translation of this provision would be the following: "susitarimas dėl reikalavimo, kaip jis suprantamas pagal 4 straipsnio 2 dalį, kuris buvo patvirtintas teismo arba sudarytas teisme teismo proceso metu ir yra vykdytinas valstybėje narėje, kurioje jis buvo patvirtintas arba sudarytas, pagal prašymą jį patvirtinusiam teismui arba teismui, kuriame jis buvo sudarytas, patvirtinamas Europos vykdomuoju raštu užpildant II priede pateiktą standartinės formos blanką." [A settlement concerning a claim within the meaning of Article 4(2) which has been approved by a court or concluded before a court in the course of proceedings and is enforceable in the Member State in which it was approved or

[828] Lithuanian Court of Appeal Civil Division ruling of 16 October 2008 in *G.Š.* bankruptcy case, No. 2-769/2008, cat. 126.7; 121.6; 122.1.

[829] See, for example, Vilnius Regional Court Civil Division ruling of 7 November 2010 in a c.m. *AB Ūkio bankas v. UAB „Joanos avialinijos“*, No. 2S-1185-56/2010, cat. 121.18; 122.4; Kaunas Regional Court Civil Division ruling of 2 May 2012 in a c.m. *UAB „General Financing“ v. S. G.*, No. 2S-860-153/2012, cat. 122.1., 122.3, 122.5, 129.14; Panevezys Regional Court Civil Division ruling of 15 November 2011 in a c.m. *O. S. v. E. S.*, No. 2S-773-212/2011, cat. 122.4 ant other.

concluded shall, upon application to the court that approved it or before which it was concluded, be certified as a European Enforcement Order using the standard form in Annex II.]. For more on the concept of a settlement which may be certified as an EEO see 4.1.4.1.3. Such settlements are held conclusive according to Articlee 3(1)(a) of the Regulation. It should be emphasized that in order for a settlement to be certified as an EEO, it must be enforceable in the Member State of origin and also be concluded on a claim within the meaning of the Regulation (see more 4.1.4.2.1), therefore, a settlement on non-monetary claim cannot be certified as an EEO. For the granting of an EEOC on a settlement one must apply to the court in which it was concluded or approved. A settlement approved by the court (effective and enforceable court order, by which the settlement is approved) should be submitted together with the request to certify the settlement as an EEO. For the granting of a settlement, provisions of Chapter XLIV (Procedure for granting enforcement orders) shall be applied *mutatis mutandis.* Therefore, an EEOC on a settlement should be granted by first examining this question in a hearing, by notifying all persons involved in the matter (absence of these persons should not prevent the court from solving the question of granting an EEOC); a separate complaint may be lodged against a judgment to refuse to grant an EEOC on a settlement (analogically Par. 3, Art. 646 of the CCP).

209. Article 25(1) establishes that an authentic instrument concerning a claim within the meaning of Article 4(2) (see more 4.1.4.2.1) which is enforceable in one Member State shall, upon application to the authority designated by the Member State of origin, be certified as a European Enforcement Order, using the standard form in Annex III. For more details about the concept of an authentic instrument see 4.1.4.1.4. In order to be certified as an EEO, an authentic instrument has to be enforceable in a Member State. In terms of Lithuanian law, it means that it has to contain an enforcement record. Therefore, if by applying provisional measures the recovery by a notary's writ of execution is suspended, an EEOC cannot be granted. If provisional measures are applied after the granting of an EEOC, it is possible to apply for the granting of a certificate indicating the stay or limitation of enforceability, using Annex IV of the Regulation (Par. 2, Art. 6 of the Regulation). According to Article 15(2) of the Implementation Law, at request of a creditor, a European Enforcement Order concerning bills and cheques (only these documents are recognized as authentic in Lithuania) is granted by the notary who has made the enforcement record. A notary issues a European Enforcement Order no later than five working days after receiving the application for the granting of a European Enforcement Order. Thus, applications for the certificate concerning stay or limitation should probably be made to the notary who has granted the EEO certificate. Note that Lithuanian law does not regulate the procedure for granting an EEO certificate performed by a notary in any case. It is considered to be a deficiency in legal regulation. Therefore, in this case, we believe, resolution No. 988 approved by the Government of the Republic

of Lithuania on 13 September 1999 should be *mutatis mutandis* followed[830]. In applying for the granting of an EEOC for an authentic instrument, the instrument itself and records proving its enforceability should be provided. Refusal by the notary to grant an EEO for an authentic instrument, we believe, is to be contested under the general procedure (Art. 511 of the CCP).

210. We agree with L. Gumuliauskiene on the fact that it would be appropriate to consider suggestions on supplementing Regulation (EC) No 805/2004 of the European Parliament and of the Council, as well as modifying the form for a European Enforcement Order certificate (Annex III), by including a provision that the institution granting a European Enforcement Order certificate (a notary in this case) should indicate in a separate column the amount of fee for the granting of the European Enforcement Order, which would also be recovered from the debtor to the creditor[831].

211. As can be seen from Articles 24(3) and 25(3) of the Regulation, minimum procedural requirements established in Chapter III of the Regulation do not apply for settlements and authentic instruments. However, settlements and authentic instruments, where applicable, do fall within the application of Chapter II of the Regulation, with the exception of Article 5 (this provision is not applicable because the abolishment of exequatur concerning settlements and authentic instruments is established in Articles 24(2) and 25(2) of the Regulation), Article 6(1) (requirements for certifying a judgment as a European Enforcement Order), Article 9(1) (this provision is not applicable because an EEO certificate concerning settlements is to be granted in accordance with Annex No. 2, and certificates concerning authentic instruments – in accordance with Annex No. 3). Therefore, an EEOC concerning a settlement and authentic instrument may be rectified and withdrawn under Article 10 of the Regulation. Yet, a granted EEOC concerning both a settlement and an authentic instrument cannot be contested in any way (Par. 4, Art. 10 of the Regulation). Settlements and authentic instruments, where applicable, fall within the application of Chapter IV of the Regulation, with the exception of Article 21(1) and Article 22 (Agreements with third countries). Hence, a settlement and an authentic instrument certified as an EEO cannot be refused to be enforced on the basis of Article 21(1) of the Regulation, however, it is possible to stay or limit its enforceability under Article 23 of the Regulation.

4.1.5.3. Certificate and form of Annex No. 2

212. EEOC certificate concerning settlements shall be granted according to Annex No. 2, which contains information necessary for certifying a settlement as an EEO.

[830] The Gazette, 1999, No. 78-2323.

[831] GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų vykdymas ir pripažinimas Lietuvoje*[online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008, p. 168. At: <https://mms.mruni.eu/DownloadFile.aspx?FileID=202>.

4.1.5.4. Power and definitive nature of an EEO

213. Articles 5, 24(2) and 25(2) of the Regulation respectively establish the following:

- a judgment which has been certified as a European Enforcement Order in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition;
- a settlement which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability;
- an authentic instrument which has been certified as a European Enforcement Order in the Member State of origin shall be enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its enforceability.

214. As can be seen from the above, a judgment, a settlement or an authentic instrument certified as an EEO can be enforced in another Member State without the need for any additional recognition or authorization procedures. This provision is expressed in Lithuanian law as well. Article 14(1)–(3) of the Implementation Law establishes that a European Enforcement Order is an instrument permitting enforcement; the content of a European Enforcement Order falls outside the scope of the requirements established in Article 648 of the Code of Civil Procedure of the Republic of Lithuania; judgments, settlements and authentic instruments for which a European Enforcement Order has been granted are enforceable documents. They are enforced in accordance with the standards set out in Section VI of the Code of Civil Procedure of the Republic of Lithuania within the meaning of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (hereafter Regulation (EC) No. 805/2004) and insofar as this Law does not provide otherwise. In terms of the latter provisions, we agree with L. Gumuliauskiene on the fact that the Implementation Law does not quite use precise terminology. Enforceable document in Lithuanian civil procedure law shall be regarded as a judgment, a settlement or an authentic instrument certified as a European Enforcement Order in another Member State, or the European Enforcement Order itself. Meanwhile, an enforcement document shall be regarded as a standard European Enforcement Order certificate, approved as an appendix of the Regulation[832].

215. It is only possible to refuse to enforce an EEO on the basis of Article 21 of the Regulation (see more on irreconcilable judgments in 4.1.6.3). Control on inspecting if requirements for due proceedings were not violated in certifying a judgment as an EEO, under the model established in the Regulation and continues in other concerned

[832] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 141.

Regulations 861/2007 and 1896/2006, shall be transferred to the courts of the Member State of origin, thereby establishing extremely high level of trust among Member State courts and legal frameworks.

216. V. Nekrosius indicates that Article 11 of the Regulation states that an EEO certificate takes effect only within the limits of the enforceability of the judgment for which it is granted. Therefore, the considered article links the power of an EEO certificate with the power of the judgment in the State of origin. It means that enforceability of a document certified as a European Enforcement Order in the other Member States cannot exceed the scope of that in the Member State of origin. Therefore, an EEO certificate automatically assumes all enforcement limits of the judgment for which it has been granted existing in the Member State of origin. That is to say that the Regulation adopts the general principle of recognizing and enforcing judgments, which says that foreign judgments cannot be reduced in terms of easiness of enforcement, nor can their scope exceed that in their State of origin[833].

217. German case law also indicates that the aforementioned provision of Article 11 of the Regulation establishes that an EEOC only creates a possibility of enforcement in anthe other Member States and does not produce any additional effects, therefore, in order for the judgment to be recognized (in terms of application of prejudice) in different proceedings in another Member State, related procedures shall be performed in accordance with Brussels I Regulation[834]. In other words, recognition of a judgment in another Member State under Article 5 of the Regulation is only relevant insofar as it is related to the enforcement of the judgment. A judgment certified as an EEO could not have prejudicial power in different proceedings. This position is based, among others, on the fact that the Regulation was ought to resolve the granting of the abolishment of exequatur, and not the issue of broader recognition of judgments[835]. On the other hand, however, an opposite position is feasible that Article 5 of the Regulation nevertheless encompasses general recognition of a judgment certified as an EEO (i.e. granting of a status equal to the national judgment) in another Member State. The question of which position is correct should apparently be decided by the Court of Justice.

218. As far as Article 11 of the Regulation goes, it should also be said that its translation into Lithuanian is not entirely accurate. Given English and German versions of Article 11 of the Regulation, we believe that a more accurate translation would be: "Europos vykdomojo rašto pažymėjimas veikia tiek, kiek vykdytinas yra teismo sprendimas" [The European Enforcement Order certificate shall take effect only within the limits of the enforceability of the judgment].

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[833] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 207.

[834] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2215.

[835] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Justitia, 2010, p. 2211-2212.

4.1.5.5. Rectification or withdrawal of an EEO certificate

219. Article 10(1) of the Regulation establishes that a European Enforcement Order certificate shall, upon application to the court of origin, be: a) rectified where, due to a material error, there is a discrepancy between the judgment and the certificate; b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation.

220. V. Nekrosius also adds on this institute: The rectification and withdrawal of an EEO together form means of defense of debtor's interests (note that the discussed article does not cover means of interest protection). It can be seen from the headline of the article that a clearly wrongly granted EEO certificate may be rectified or withdrawn. Completeness of the procedure for the rectification and withdrawal can also be evidenced in paragraph 4 of the Article, which states that the granting of a European Enforcement Order certificate is not subject to appeal. This provision should be interpreted as saying that no correction of an EEO certificate is possible, other than that on the basis of and by the procedure in Article 10. Hence, no provision of additional means in the national law is possible. Note that Article 10 provides for the procedure for the rectification and withdrawal of a granted EEO, which is in no way related and in no way limits the possibility of the States of proceedings to use judgment legitimacy and validity control forms provided for in the national law of the State of origin. Provisions of Article 10 of the Regulation apply to a judgment, a settlement, and an authentic instrument within the meaning of the Regulation. The Regulation establishes that an application for the rectification or withdrawal of an EEO certificate shall be made to the court of origin. Meanwhile, the issue concerning which court and by what procedure will decide on the validity of this application is left to the *lex fori* of each Member State (Par. 2, Art. 10). Article 16 of the Implementation Law indicates that both the issue of rectification and that of withdrawal shall be resolved by the court of origin, and, where the application is for the rectification or withdrawal of an EEO certificate granted on an authentic instrument – by the local court in the region of the notary office[836]. These applications are not subject to stamp duty. Neither the Regulation, nor the concerned Implementation Law, nor the CCP provides answers to very important issues concerning the rectification and withdrawal of an EEO certificate. Questions remain as to the time period within which the debtor can apply to the court of origin for the rectification or withdrawal of an EEO certificate, the procedure by which the concerned application shall be examined and

[836] In this respect we disagree with L. Gumuliauskiene on the fact that in the case of rectification of an EEOC on an authentic instrument a person can primarily apply to a notary (GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų vykdymas ir pripažinimas Lietuvoje*[online]. PhD thesis [accessed on 05 August 2012]. Vilnius: Mykolas Romeris University, 2008, p. 166. At: <https://mms.mruni.eu/DownloadFile.aspx?FileID=202>). We believe that Article 16(4) of the Implementation Law clearly establishes local court's competency to decide on the rectification or withdrawal of an EEOC on an authentic instrument.

whether the refusal of the court to rectify or withdraw an EEO certificate may be objected. Unfortunately, in all the above cases there is an obvious gap left by the Lithuanian lawmaker[837].

221. V. Nekrosius points out that Lithuanian CCP imposes no time limits for lodging of applications for the rectification of spelling and arithmetic errors, nor the rectification of an enforcement order. The aim is to ensure that parties are always able to correct basic and inadvertent errors, unrelated to the investigation. It is likely that the same approach is followed in rectifying and withdrawing an EEO certificate, therefore, in todays situation we should refer to the provision that lodging an application under Article 10 of the Regulation is not subject to any formal procedural terms. In terms of procedural rules, governing the investigation of the concerned application, it goes to say that they are no clearer. However, in this case we could apply an analogy of Article 276 of the CCP and thereby say that the application shall be considered by a written procedure, whereas the decision (which, by the way, based on the analogy of Paragraph 4 of the same Article, shall be contested by a separate appeal) is to be sent out by the court to the parties to the proceedings within three days of the delivery of the judgment. It should be noted that according to Paragraph 3 of the concerned Article, an application concerning the rectification or withdrawal of an EEO certificate may be lodged by filling in the standard form provided in Annex VI of the Regulation. Thus, the use of this standard form is not mandatory (debtor may lodge the application following content requirements for procedural documents provided for in the CCP of the Republic of Lithuania), nevertheless, it appeared in the Regulation in order to facilitate debtor's situation[838].

222. Adding to the above, note that Article 16(1) of the Implementation Law establishes that where there is a spelling or any other discrepancy between a European Enforcement Order and the authentic instrument, provisions of Article 648(6) of the Code of Civil Procedure of the Republic of Lithuania shall be *mutatis mutandis* applied. Therefore, we believe that in deciding on the rectification of an EEOC, Article 648(6) of the CCP should be followed, instead of Article 276 of the CCP, as suggested by V. Nekrosius. It means that the procedure for examining such applications is, among others, determined by Article 593 of the CCP, according to which the court shall investigate any allegations arising from the ongoing proceedings no later than seven days from the adoption of the judgment; allegations are to be examined by written procedure, without notifying interested parties, unless the court admits that an oral hearing is necessary. Default of appearance of interested persons in the oral hearing shall not prevent to examine the matter on its merits (Par. 1 and 2, Art. 593 of the CCP). We believe that these procedural rules can also be *mutatis mutandis* followed in deciding on withdrawal of an EEO certificate.

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[837] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 207-208.

[838] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 208-209.

223. Interpreting Article 648(6) of the CCP alongside Article 593(5) of the CCP, we can say that a judgment concerning (non) rectification of an EEOC is conclusive, since a possibility for objection of such decision is not provided for in procedural provisions. However, case law actually recognizes the right to contest this judgment (i.e. concerning the rectification of an enforcement order under Par. 6, Art. 648 of the CCP)[839]. We agree with this practice due to the fact that the possibility of contesting such judgment as to the rectification of errors is provided for in Article 276(3) of the CCP. Given the above, we believe that a judgment concerning (non) withdrawal of an EEO certificate should also be subject to appeal.

224. Note that Lithuanian Supreme Court in the notes on Regulation 805/2004 Implementation Bill indicated that it would be appropriate if the Bill also provided for possibilities and procedure of lodging complaints against judgments on the rectification and withdrawal of a European Enforcement Order to supreme courts, with the exception of these procedural documents, against which an appeal is not allowed by the Regulation[840]. As can be seen, this issue was not covered in the Law.

225. Note that in, for example, Germany an application for the withdrawal of an EEO certificate can be lodged within one month, whereas if the document needs to be sent abroad – within two months of serving the certificate. However, this time period cannot commence earlier that the moment of service of the judgment on which the certificate has been granted. On the other hand, however, several German authors emphasize that given the fact that the Regulation provides no time limits for such application, the limit provided in German case law violates EU law and, hence, cannot be applied[841]. Therefore, Lithuanian lawmaker's decision to set no time period for lodging the appeal can be accepted.

226. Also note that neither the application for rectification, nor the application for a withdrawal in itself can stay the enforcement of an EEO. However, the lodge of such application is a basis for applying to the court for stay or limitation of the enforcement under Article 23 of the Regulation. The Regulation also establishes that an EEO certificate is to be rectified or withdrawn upon request, i.e. the court cannot act on its own initiative.

4.1.5.5.1. Rectification of an EEO certificate an the form provided in Annex No. VI

[839] See, for example, Panevezys Regional Court Civil Division ruling of 25 November 2010 in a c.m. *A. P. v. UAB „Vekada“*, No. 2S-530-280/2010, cat. 116.10.1;121.14;122.3;122.4.

[840] Committee Report on the Implementation Bill of Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims [online]. [Accessed on 5 August 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=254005&p_query=&p_tr2=2>.

[841] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2214.

227. V. Nekrosius indicates that the only basis for the rectification of an EEO certificate – is discrepancies between the judgment and the EEO certificate due to an essential (material) error. The most noteworthy are the inaccuracies in the Lithuanian translation, since both English and German versions refer to a material, not essential error. Therefore, it must first be considered how the concept of "material error" should be interpreted. It is clear that this concept has no relation to the control or correction of the content of a judgment, since this function is performed when applying judgment lawfulness and validity control forms in the Member State of origin. In addition, the requirement clearly emphasizes that it is an EEO certificate that does not meet the content of the judgment, not vice versa. Due to this, according to V. Nekrosius, there is no reason to disagree with the position in the literature that any discrepancy between an EEO certificate and the content of the judgment on which it was granted allows for its rectification. Without a doubt it involves clear grammatical and arithmetical errors[842]. An application for the rectification of an EEO certificate may also be lodged by the creditor, if, for example, the sum that it indicates is wrong.

4.1.5.5.2. Withdrawal of an EEO certificate an the form provided in Annex No. VI

228. V. Nekrosius points out that according to Article 10(1)(b), an EEO certificate may be withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this Regulation. Therefore, the essential requirement is a clearly wrong granting of an EEO certificate. It is obvious that the using of the term "clearly wrong" is intended to limit debtor's chances of applying for the withdrawal of an EEO certificate, by narrowing it to essential cases of unlawfulness. It is to be unambiguously recognized that an EEO status is unlawful if at least one of the requirements for its recognition provided for in the Regulation has been omitted, or if the judgment altogether falls out of the scope of the Regulation (e.g. a claim cannot be held uncontested under the Regulation)[843].

229. Note that Kaunas Regional Court upheld the decision of Kaisiadorys Region local court in its ruling of 28 September 2012[844], by which a notary-granted EEO was *inter alia* recognized as invalid from its moment of granting. Such decision was made given the fact that the notary had no right to make an enforcement record in the bill. In a situation where an enforcement record was made unjustly, we believe, it becomes obvious that the EEO certificate was also granted clearly wrongly, and it shall be withdrawn based on Article 10(1)(b) of the Regulation.

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[842] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 209.

[843] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 209.

[844] Kaunas Regional Court Civil Division ruling of 28 September 2012 in a c.m. *DRJ REAL ESTATE BG ir R. D. v. A. B.*, No. 2A-1595-510/2012, cat. 22.3; 36.2; 129.14; 134; 121.14; 121.18; 121.21.

230. We believe it should be agreed with the position provided in German legal doctrine that the aforementioned requirement of wrongful granting should not be interpreted too narrowly, having regard to the necessity of ensuring sufficient protection of debtor's interests[845].

231. The application form for the rectification or withdrawal (Annex No. VI of the Regulation) is not mandatory, i.e. the applicant may apply for the rectification and (or) withdrawal of an EEO certificate using a different form, meeting CCP requirements. Neither the Regulation, nor the Implementation Law provides that an application for the rectification or withdrawal should be subject to stamp duty.

4.1.6. Enforcement of an EEO in the State of enforcement

4.1.6.1. Enforcement procedure and its theoretical scope (Art. 20, 24(2), 25(2), 5 and 11); law applied to the enforcement procedure (Par. 1, Art. 20); documents to be submitted to the enforcement institution

232. In discussing EEO enforcement, V. Nekrosius points out that a judgment certified as an EEO shall be enforced in accordance with *lex fori* of the State of enforcement, unless Articles 20–23 of the Regulation establish special provisions. Article 20(1) of the Regulation provides a principal provision that a judgment certified as an EEO shall be enforced under the same conditions as a judgment handed down in the Member State of enforcement. This means not only that a judgment certified as an EEO is to be enforced using the same means of enforcement, but also that parties of the enforcement procedure have the same opportunities for complaint as the participants of this procedure in the national enforcement procedure. The scope of enforcement is indicated in Article 11 of the Regulation, which states that the effect of an EEO certificate is within the limits of the enforceability of the judgment. The debtor may initiate the limitation or stay of enforcement by applying to the court for the issue of the form indicated in Article 6(2) of the Regulation, which is to be issued during the enforcement procedure. In this case in Lithuania the enforceability of a judgment is limited or suspended in accordance with provisions of Article 625, 627 of the CCP[846].

233. Adding to the above, it should be noted that Article 6(2) of the Regulation applies only where a judgment certified as a European Enforcement Order is no longer enforceable or its enforceability was suspended or limited. However, it is not to say that the enforcement procedure cannot be suspended or limited in the Member State of enforcement on different grounds indicated there. As mentioned above, a judgment

[845] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 10, Par. 7 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[846] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 225.

certified as an EEO shall be enforced in accordance with *lex fori* of the State of enforcement.

234. Authentic instruments and settlements certified as an EEO shall also be enforced according to *lex fori*. It should be emphasized that by using means of defense against EEO enforcement in the Member State of enforcement established by *lex fori*, a judgment certified as an EEO, or an EEOC cannot be reviewed on its merits – is prohibited by Article 21(2) of the Regulation.

235. V. Nekrosius notes that an enforcement procedure in the Member State of origin is to be initiated by the creditor, by directly applying to a competent enforcement institution (in Lithuania – a bailiff). Article 20(2) lists procedural documents that must be provided by the creditor. It should be noted that the list of documents provided in Paragraph 2 is a special provision towards *lex fori*. Therefore, no requirement for submitting additional documents based on *lex fori* is possible. Thus, the creditor is required to provide:

a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity. In this case a copy of the judgment is required. The judgment can be provided in its original language, since its translation is not required. The concept of "conditions necessary to establish its authenticity" is absorbed from Article 53(1) of Brussels I Regulation and shall be interpreted in the same way. The purpose of this provision is to avoid several enforcement procedures on the same enforcement order. In order for the aforementioned condition to be satisfied, it is not enough to provide a plain copy of the judgment – it has to be approved by the court;

b) a copy of the EEO certificate which satisfies the conditions necessary to establish its authenticity. This condition is subject to the same requirements as the first one;

c) where necessary, a transcription of the EEO certificate (from Greek to Latin alphabet and vice versa) or a translation thereof into the official language of the Member State of enforcement. According to V. Nekrosius, the implementation of the latter provision is not left at the discretion of a concerned Member State court or enforcement institution, since according to Article 30(1)(b) of the Regulation, Member States are required to notify the Commission of its official language. Under Article 13(4) of the Implementation Law, a translation of an EEO certificate into Lithuanian shall be required for enforcement in Lithuania. The translation is to be performed and approved by an authorized person of either Member State. Therefore, the creditor may select in which Member State the translation is to be performed[847].

236. The aforementioned requirements shall apply to settlements and authentic instruments *mutatis mutandis* (Par. 3, Art. 24 and Par. 3, Art. 25 of the Regulation). It should be noted that in submitting an EEOC for enforcement, the creditor is not required to provide proof that the judgment or the EEO certificate was served on the debtor.

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[847] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 225-226.

237. Paragraph 3 of the discussed Article establishes a general prohibition of discrimination, the content of which corresponds to the rule established in Article 51 of Brussels I Regulation. The prohibition of discrimination implies that on the grounds that a party is not domiciled in the Member State of enforcement or is a foreign national, it is prohibited to require from him any form of deposit (however described), security and so[848]. Note that the prohibition of discrimination applies not only to Member State citizens or residents, but also third party citizens and residents, requesting to enforce a document certified as an EEO[849].

238. It should be agreed with L. Gumuliauskienė on the fact that the Implementation Law does not use entirely accurate terminology in terms of documents to be provided for enforcement[850]. Article 13(4) of the Implementation Law establishes that a European Enforcement Order or its copy is to be submitted in the Republic of Lithuania translated into Lithuanian language <...>. However, the Regulation only allows to require a copy of an EEO certificate and not the judgment certified as an EEO itself.

239. For EEO enforcement characteristics within the meaning of Articles 5 and 11 of the Regulation see 4.1.5.4.

240. Note that the other Member States have notified that they accept EEOCs in languages other than their official language[851]. Therefore, translating EEOCs granted by Lithuanian courts into the official language of the concerned Member State is not always necessary:

State	Languages in which EEO certificates may be accepted
Belgium	Dutch, French, German
Bulgaria	Bulgarian
Czech Republic	Czech, German, English
Germany	German (if the creditor is to provide a translation)
Estonia	Estonian, English
Greece	No specific information available
Spain	Spanish
France	Languages, accepted in registering an EEO in French enforcement institutions, are French, English, German, Italian and Spanish
Ireland	Irish, English
Italy	Italian
Cyprus	No information
Latvia	Latvian

[848] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 225-226.

[849] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 20, Par. 9 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[850] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 141.

[851] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_be_en.htm> [Accessed on 16 August 2012].

Luxembourg	German, French
Hungary	Hungarian, English
Malta	Maltese
Netherlands	Dutch or any other language understood by the debtor
Austria	German
Poland	Polish
Portugal	Portuguese
Romania	Romanian
Slovenia	Slovenian
Slovakia	Slovak
Finland	Finnish, Swedish, English
Sweden	Swedish, English
United Kingdom	English

241. However, it should also be noted that in, for example, German legal doctrine a position prevails that according to the Regulation, a translation of an EEOC can be required where necessary ("gegebenefalls" (Ger.); Point c, Par. 2, Art. 20 of the Regulation), which means that a translation is necessary only where an EEOC is supplemented by individual records. Where there are no individual records, Article 20(2)(c) of the Regulation is irrelevant[852]. This position looks to be quite significant given the linguistic formulation of the aforementioned provision of the Regulation. Yet, it seems that it has not prevailed in Europe. For example, Lithuanian legislation imperatively requires a translation of an EEOC into Lithuanian.

242. It should be emphasized that a creditor is not required to apply to a Member State court for an authorization to enforce and EEO. Nevertheless, Lithuanian court practice indicates that creditors do lodge such applications. Lithuanian Court of Appeal refuses to accept these applications, by rightly indicating that an EEOC can be enforced without the approval of another Member State judge[853].

243. If documents provided for enforcement do not comply with the Regulation, also inasmuch as they do not violate requirements of the Regulation, the CCP and the Implementation Law, the bailiff may refuse to accept the EEO certificate for enforcement *mutatis mutandis* in accordance with provisions of Chapter XLV of the CCP.

4.1.6.2. Stay or limitation of enforcement (Art. 23)

244. V. Nekrosius indicates that the possibility of suspending or limiting enforcement in the Member State of enforcement is directly related to the objective of the Regulation to ensure that control of a judgment to be certified as an EEO shall be carried out in the

[852] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 20, Par. 7 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[853] Lithuanian Court of Appeal Civil Division ruling of 22 April 2008 on application of *K. C. krovinių transportas*, No. 2T–70/2008.

original Member State. Member State of enforcement may only stay or limit enforcement of a judgment for the time period equal to the time it takes to investigate a complaint against the legality and validity of the judgment certified as an EEO in the courts of the original Member State.

245. Article 23 of the Regulation provides a comprehensive list of conditions, under which a Member State court has the right to stay or limit the enforcement of a judgment:

a) where the debtor has contested a judgment certified as an EEO, including an application for review within the meaning of Article 19, or

b) where the debtor has applied for the rectification or withdrawal of an EEO certificate in accordance with Article 10. This condition does not require the debtor to contest a judgment that has already been certified as an EEO. Challenging involves both ordinary and extraordinary judgment control forms, which fall within the meaning of Article 19 of the Regulation. In addition, this condition also involves an application for the rectification of an EEO certificate, submitted under Article 10 of the Regulation[854].

246. Therefore, it is just as possible to apply for the stay or limitation of a judgment where a cassation appeal has been lodged in the Member State of origin. This option, we believe, should also be available where an application for the renewal of the procedure has been lodged. However, a mere lodging of an application for the renewal of the time limit for lodging an appeal, cassation or separate complaint, or an application for the renewal of proceedings, or complaints against a court order or a preliminary judgment, as well as an allegation concerning a default judgment, we believe, should not be considered as a challenge of a judgment within the meaning of Article 23 of the Regulation. Until the application to renew the time limit has not been granted, there is no reason to expect that a judgment certified as an EEO will be withdrawn. Meanwhile, German legal doctrine emphasizes that a "challenge" within the meaning of the discussed provision is only as such where there is a possibility that the unsatisfactory judgment will be modified[855]. Lodging of a petition to the European Court of Human Rights is not subject to a challenge within the meaning of the first paragraph of Article 23 of the Regulation[856], although different opinions exist[857]. Nevertheless, if lodging of a petition to the ECHR is to be considered a challenge within the meaning of the first clause of the first paragraph of Article 23 of the Regulation, EEO enforcement may be delayed (limited or suspended) because of lengthy investigation periods in ECHR, which would be contradictory to the

[854] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 228.

[855] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 23, Par. 3 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[856] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 23, Par. 4 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[857] HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2222.

objectives of the Regulation. Therefore, we agree with the position that an application to the ECHR is not to be considered as a complaint within the meaning of the first clause of the first paragraph of Article 23 of the Regulation, as national means, allowing to modify a judgment shall be used. Meanwhile, even in case of detecting a violation of the Convention, the ECHR cannot directly modify or withdraw a national judgment. Complaints against actions of enforcement of a judgment certified as an EEO in the Member State of enforcement are not considered as a challenge within the meaning of the concerned provision either. Legal consequences of such complaints shall be decided in accordance with the enforcement procedure law of the Member State of enforcement.

247. It should be emphasized that by applying the considered provision, courts of the Member State of enforcement may encounter significant difficulties in finding out and scrutinizing if the lodging of a considered appeal under the legislation of the Member State of origin is a contestation in accordance with the first clause of the first paragraph of Article 23 of the Regulation, since legal frameworks of the other Member States may have very different means of defense against judgments, of which the court of the Member State of enforcement may not have sufficient knowledge. For example, there is no unanimous position in German legal doctrine as to whether a constitutional complaint can be considered a challenge within the meaning of the considered provision[858]. Therefore, it would be useful if the Regulation was supplemented by lists of complaints and other appeals complying with the first clause of the first paragraph of Article 23 of the Regulation from every Member State, or if such information was provided in European Judicial Atlas in Civil Matters website. Currently this website contains information about review procedures indicated in Article 19 of the Regulation (they are also relevant to Art. 23 of the Regulation, since it contains a reference to Art. 19), however it is reasonable to assume from the first clause of the first paragraph of Article 23 of the Regulation that these review procedures mentioned in Article 19 are not necessarily the only means of contest complying with the first clause of the first paragraph of Article 23 of the Regulation.

248. V. Nekrosius points to the fact that in each of the above cases the stay or limitation of enforcement proceedings requires an application of the debtor to the court. In any case, even after a complaint has been lodged in a foreign State, the court cannot undertake these actions *ex offitio.*

249. Article 23 of the Regulation indicates that a competent court or authority in a State of enforcement may, upon application by the debtor:

a) limit the enforcement proceedings to protective measures (protective measures established by *lex fori* may be applied in this case);

[858] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 23, Par. 4 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

b) make enforcement conditional on paying a certain insurance amount to the court's or any other authority's account;
c) under exceptional circumstances, stay the enforcement proceedings (a situation can fall within such measures when a complaint is based on such deficiencies of a judgment, which may contradict with Lithuanian *ordre public).*

250. From the above alternatives it can be seen that the court is completely free to choose which of the indicated measures it will apply and if they will be applied at all. The court is not bound by the will of the parties in this case. In implementing this provision at its own discretion, the court shall first assess possibilities of granting the complaint, and if the limitation of enforcement will not cause disproportionate damage. Hence, the court is not obliged to grant a debtor's request. After assessing all of the above conditions, it has the right to refuse to limit or stay enforcement[859].

251. Adding to the above, it should be emphasized that we believe that German legal doctrine completely reasonably states that a stay of enforcement shall only be applied in exceptional cases, and where the conditions of the first paragraph of Article 23 of the Regulation exist, the foremost consideration should be the possibility of applying the measures provided for in Article 23(a) and (b)[860].

252. Article 18 of the Implementation Law establishes:
"1. Decisions indicated in Article 23(1)(a) of Regulation (EC) 805/2004 shall be made by, according to the level of competence, a local court or a bailiff in the location in which the judgment, concluded settlement or authentic instrument is to be enforced.
2. Decisions indicated in Article 23(1)(b) of Regulation (EC) 805/2004, shall be made by a local court in the location in which the judgment, concluded settlement or authentic instrument is to be enforced.
3. Decisions indicated in Article 23(1)(c) of Regulation (EC) 805/2004 shall be made by, according to the level of confidence, a local bailiff in the location in which the judgment, concluded settlement or authentic instrument is to be enforced.
4. A court investigates applications concerning the issues indicated in Paragraphs 1 and 2 of this Article by *mutatis mutandis* applying Article 593 of the Code of Civil Procedure of the Republic of Lithuania."

253. According to V. Nekrosius, given the aforementioned limitation or stay provisions of enforcement of a judgment certified as an EEO, the provisions of Article 18(1)–(3) of the Implementation Law, granting the right to decide these issues to a local court or a bailiff (in case of a stay – bailiff only) in the location of enforcement, seem strange. For in this case it is necessary to assess factual circumstances related to the proceedings in another court, therefore, the decision of these issues should be an

[859] NEKROSIUS, VYTAUTAS. *Europos Sajungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 229.
[860] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 23, Par. 9 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

exclusive competence of a local court of the enforcement location[861]. We completely agree with this position. For example, in Germany only courts decide on the discussed measures. Especially, since measures indicated in Article 23(a) of the Regulation, according to the Implementation Law, may be applied by both a court and a bailiff, however, it is not clear when a person should apply to a bailiff and when – to a court. Note that bailiffs (assistants) who have participated in the researchers' survey were also in favor of such legal regulation that only a court shall decide on the limitation or stay of enforcement. In fairness, only three respondents replied to this question.

254. It should be noted that the rule that an application for the stay or limitation of enforcement is to be lodged for a local court of the enforcement location may produce uncertainties in the application of law. Under Article 590(1) and (2) of the CCP, if the debtor is a natural person, the bailiff shall enforce the document permitting enforcement at this person's domicile, location of his property or his place of employment, and if the debtor is a legal person – at the debtor's premises or the location of its assets. Hence, there might be more than one place of enforcement, which can cause confusion as to which local court it should applied to. Therefore, the rule concerning the jurisdiction of application for the stay or limitation of enforcement established in the Implementation Law should be corrected by establishing that the considered applications shall be lodged to the local court of the bailiff's, in charge of enforcing a document certified as an EEO, office location. Basically, an analogical rule currently exists in Article 594(1) of the CCP.

255. As can be seen from courts practice, debtors in Lithuania occasionally mistakenly lodge complaints against the stay of enforcement and bailiffs' actions to Lithuanian Court of Appeal, which is not competent to decide these issues. Lithuanian Court of Appeal holds such applications as unplaced and returns them to the owner[862].

256. It should be agreed with L. Gumuliauskiene on the fact that a bailiff in investigating a request for the application of measures established in the second paragraph of Article 23 of the Regulation shall *mutatis mutandis* follow Article 625 of the CCP[863], since the Implementation Law does not directly decide this issue. In addition, we believe that in investigating a request for the concerned measures, a court or a bailiff shall usually allow the creditor to state his position on the application, since a judgment by the court or the bailiff might have a negative effect on his interests in this case (*audiatur et altera pars*). The Implementation Law does not regulate what procedure the court shall follow in deciding on the application under Article 23 of the Regulation. We believe that in this case it should follow Article 593 of the CCP "Investigation of applications to court during the enforcement proceedings".

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[861] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 229.

[862] Lithuanian Court of Appeal Civil Division ruling of 16 October 2009 in a civil matter on *L.D.* application, No. 2T-193/2009, cat. 130.3.1.

[863] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 145.

257. The Implementation Law does not regulate if judgments of a court (a bailiff) given (in their broadest sense) under the second paragraph of Article 23 of the Regulation, are subject to appeal. With regard to challenging bailiff's actions (both choosing and refusing to apply measures indicated in Article 23 of the Regulation), we believe, that in the considered case general provisions of the CCP, allowing their challenging, shall be applied (Art. 510 of the CCP). In terms of a judgment delivered under Article 23(b) of the Regulation, it should be said that this provision essentially covers the imposition of a security deposit, and under Article 102(4) of the CCP, a decision to impose a deposit may be contested by a separate complaint. Protective measures granted by the court (Point a, Art. 23 of the Regulation) may also be contested by a separate complaint (Art. 151 of the CCP). In this respect, it should be noted that in applying Article 23(a) of the Regulation, the court, we believe, shall follow Article 271(3) of the CCP under which Section Five, Chapter 10 of the Code – provisional protective measures – shall be *mutatis mutandis* applied to the enforcement. The Implementation Law does not provide if a court's refusal to apply measures of Article 23 of the Regulation is subject to appeal. However, given the fact that similar actions of a bailiff shall be contested, the refusal of a court to apply the considered measures should also be subject to appeal. Especially, since the refusal of a local court to grant a debtor's application essentially prevents him from using the protection measures established in Article 23 of the Regulation. On the other hand, in, for example, Germany judgments delivered under Article 23 of the Regulation are not subject to appeal (Par. 3, Art. 1084 of the German CCP).

258. The limitation or stay of enforcement is only valid in the Member State in which the judgment to apply such measures was delivered. This judgments is not recognized in the other Member States. Therefore, for the limitation or stay of enforcement in the other Member States one should apply to competent authorities (courts) of these States[864].

259. Article 23 of the regulation is to also be applied to authentic instruments and settlements (Par. 3, Art. 24; Par. 3, Art. 25 of the Regulation). For example, when the Member State of origin of an authentic instrument is not Lithuania, one may apply for the invalidation of the authentic instrument and its enforcement record[865]. It would allow to apply to the Member State of enforcement for the stay or limitation of enforcement actions.

4.1.6.3. Refusal of enforcement (Art. 21)

[864] By analogy: NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 23, Par. 8 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[865] See, for example, Lithuanian Court of Appeal Civil Division ruling of 26 January 2012 in a c.m. *D. I. v A. Š.*, No. 2-73/2012, cat. 110.1.

260. Commenting on Article 21 of the Regulation – Refusal of enforcement – V. Nekrosius notes that it provides for the only reason, based on which a court in the Member State of enforcement may refuse to enforce a judgment – if the judgment certified as an EEO is irreconcilable with an earlier judgment. Article 17 of the Implementation Law establishes that in Lithuania only Lithuanian Court of Appeal can decide on the refusal to enforce a judgment certified as an EEO by way of order concerning this issue by a written procedure. An application concerning the refusal to enforce a judgment certified as an EEO is not subject to stamp duty. Note that the earlier judgment is only considered at the request of a party and not by the court's own motion (*ex offitio*)[866]. Neither the Regulation nor the Implementation Law establish any time limits for lodging such application. However, it would be beneficial if the Regulation established a time limit within which (since the finding out of the reason for the refusal) the defendant should apply to a court.

261. V. Nekrosius points out that Paragraph 1 of the discussed Article indicates three requirements, the existence of which allows for Lithuanian Court of Appeal to refuse to enforce a judgment certified as an EEO:

- the earlier judgment involved the same cause of action and was between the same parties. Interpretation of the concepts identified in this provision should follow Article 34(4) of Brussels I Regulation, since they are parallel in this case[867]. Due to this, it should be assumed that the earlier judgment not necessarily has to have *res judicata* power – it may have been delivered in the proceedings for provisional protective measures or any other simplified procedure. The judgment has to be delivered by a court within the meaning of European Union, and not national law. However, the concept of earlier judgment does not involve settlements, since the purpose of the considered provision is to avoid inconsistencies between two judgments of the court acting as such. The discussed provision also does not cover earlier arbitral awards, which satisfy conditions for recognition in the Member State of enforcement. Nevertheless, in this respect, in order to ensure the effect of 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it is suggested to use the considered provision by analogy. It should be emphasized that an earlier judgment essentially has to be delivered in a civil or commercial matter and does not have to be delivered in compliance with requirements set out in Regulation 805/2004, *inter alia* minimum procedural standards[868]. The concept of "between the same parties" used in the Regulation is subject to autonomous interpretation. In this case a "partial" concurrence of parties is sufficient – there is no need for the procedural status of both countries to be the same. Based on the practice of

[866] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 226.
[867] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 227.
[868] See FRANCQ, STEPHANIE. Article 34, note 64, 65, 66. In *Brussels I Regulation.* Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007, p. 593–594.

the ECJ, a judgment in exceptional cases shall be held as delivered on a dispute between the same parties, even if the parties are not "the same", yet their interests in both proceedings essentially concur to the extent where a judgment delivered to one of the parties will directly affect the other one[869]. The considered rule shall also take effect in cases where the earlier judgment involves only some of parties participating in the later judgment[870]. In stating the identity of the subject of a judgment, the theory of key events in both proceedings formulated by the ECJ shall be followed, instead of the cause and matter of an action identity theory. A complete concurrence of the cause and matter of claims is not required – it is sufficient that essential aspects of elements of these claims concur (claims are to be identical if, for example, one of the claims is concerned with recognition, whereas the other – with adjudgment, yet both request the invalidation of the agreement)[871]. Irreconcilable judgments are considered to be such judgments, whose resulting legal consequences negate one another. Therefore, such judgments need not be delivered on the same legal matter. Legal status of a judgment may also be of relevance in deciding on irreconcilability. For example, a *res judicata* judgment shall be superior against a provisional judgment in deciding on the merits of a dispute. An earlier judgment, we believe, shall be considered to be that, which took effect in the Member State of origin earlier than the judgment certified as an EEO[872].

- the earlier judgment was given in the Member State of enforcement or fulfills the conditions necessary for its recognition in the Member State of enforcement. This provision does not differentiate between judgments delivered in a Member State of enforcement and any other Member State, as well as third countries. All these judgments are considered equal within the considered article, and the only determinant is an earlier time of delivery compared to the judgment certified as an EEO. In assessing if a judgment fulfills conditions for recognition, we have to take into account a possible dual situation. Where an earlier judgment has been delivered in another Member State, Lithuanian Court of Appeal, in deciding on the refusal to enforce a judgment certified as an EEO, must assess if the earlier judgment meets the requirements set out in Article 33 and others of Brussels I Regulation. Where a judgment has been delivered in a third country, the court has to assess its compliance with requirements set out in Article 810 of the CCP[873];

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[869] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 136.

[870] FENTIMAN, ROBERT. Article 27, note 7. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007, p. 501.

[871] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 73.

[872] See FRANCQ, STEPHANIE. Article 34, note 67, 69, 74. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007, p. 593, 594, 599.

[873] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 227.

- the irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin. Hence, it is clear that an earlier judgment and the judgment certified as an EEO must be irreconcilable (a judgment shall not be irreconcilable if, for example, it has been delivered on different parts of the same claim). A provision, affirming that it is required to prove that the party did not and could not use irreconcilability of judgments during the proceedings in the original Member State, is formulated rather poorly, since it is precisely Lithuanian Court of Appeal that is to determine its (non) existence. First thing to do in this case is to consider the time of delivery of an earlier judgment in terms of the later proceedings. If the court determines that the debtor had enough time, as compared to the later proceedings, to use this argument, the application for the refusal to enforce a judgment certified as an EEO shall not be granted[874].

262. Paragraph 2 of the considered article refers to the scope of investigating a judgment certified as an EEO. As in Brussels I and Brussels IIa Regulations, this Regulation also establishes a principal provision stating that a judgment cannot be reviewed as to its substance. The only subject – is the irreconcilability of the judgments and the existence of other provisions[875]. Not even the condition if a judgment, a settlement or an authentic instrument falls within the scope of the Regulation may be investigated. Note that Lithuanian Court of Appeal justly refuses to investigate debtors' applications concerning the refusal to recognize other Member State judgments certified as an EEO and to be enforced in Lithuania[876]. Only application for the refusal to enforce a judgment is possible in this case.

263. The procedure for the refusal of enforcement is not provided for in the law, therefore, we should agree with L. Gumuliauskiene on the fact that this issue should be decided *mutatis mutandis* according to Article 4 of the Implementation Law[877], which regulates the procedure for the recognition and enforcement of judgments of other European Union States. However, we believe, that only Article 4(6) of the Implementation Law should be followed in this case, since it regulates the proceedings for the refusal to enforce an already enforceable judgment (which an EEO is). A judgment of Lithuanian Court of Appeal three judge panel to refuse to enforce an EEO may be contested by a cassation appeal (Par. 6, Art. 4 of the Implementation Law by analogy).

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[874] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 227-228.

[875] NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 228.

[876] Lithuanian Court of Appeal Civil Division ruling of 16 October 2009 in a civil matter on *L.D.* application, No. 2T-193/2009, cat. 130.3.1.

[877] GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122), p. 144.

264. A decision of the Lithuanian court to refuse to enforce an EEO does not invalidate it, therefore, it may be enforced in the other Member States, unless they also refuse to enforce it on the grounds of and by the procedure established in the Regulation.

265. It should be emphasized that Paragraph 1 of the considered article does not apply to authentic instruments and settlements (Par. 3, Art. 24 and Par. 3, Art. 25 of the Regulation). Therefore, a settlement or authentic instrument certified as an EEO cannot be refused to be enforced even if it is irreconcilable with an earlier judgment.

4.1.7. Regulation 805/2004 in relation to other regulations

4.1.7.1. Relationship with agreements with third countries (Art. 22)

266. Article 22 of the Regulation establishes that this Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of Regulation (EC) No 44/2001, pursuant to Article 59 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, not to recognize judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the Article 3(2) of that Convention.

267. Lithuania has not entered into agreements relevant to the application of this article. After the effect of Regulation 44/2001 Member States altogether have no right to enter into agreements that may be irreconcilable with the regimen established in the aforementioned Regulation[878].

4.1.7.2. Relationship with Regulation 44/2001 (Art. 27)

268. According to Article 27 of the Regulation, this Regulation shall not affect the possibility of seeking recognition and enforcement, in accordance with Regulation (EC) No 44/2001, of a judgment, a settlement or an authentic instrument on an uncontested claim. In addition, a creditor may seek recognition and enforcement of a judgment according to Regulation 44/2001 and granting of an EEO certificate in parallel. In such case that enforcement document, which was received first is to be presented for enforcement[879]. Note that those courts of the Member State of enforcement, which recognize and permit the enforcement of a judgment under Regulation 44/2001, have no

[878] MANKOWSKI, PETER. Article 72, note 2. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007, p. 766.

[879] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 27, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

right to grant an EEOC on such judgment. The granting of an EEOC is to be decided by courts in the Member State of origin[880].

4.1.7.3. Relationship with Regulation 1348/2000 (Art. 28)

269. Article 28 of the Regulation establishes that this Regulation shall not affect the application of Regulation (EC) No 1348/2000. Regulation 1348/2000 is no longer valid, therefore currently Regulation 1397/2007 applies. It should be emphasized that where served procedural documents do not meet requirements of Articles 13 and 14 of Regulation 805/2004, it in no way implies that the service under Regulation 1397/2007 has been defective. Regulation 805/2004 does not establish autonomous or new service methods, but rather only sets minimum conditions, in the existence of which a judgment may be certified as an EEO. However, if the service has been effected by violating provisions of Regulation 1397/2007, a judgment may nevertheless be certified as an EEO if all requirements of Regulation 805/2004 are met[881].

5. Suggestions regarding Regulation 805/2004 and its application

270. Suggestions regarding Regulation 805/2004 and its application:

1) In applying the Regulation, its recommended not to limit oneself to the Lithuanian version of the Regulation. This version is translated incorrectly or vaguely in several instances. Competent authorities should undertake actions to correct the incorrect translation.

2) In deciding on the granting of an EEO certificate, Lithuanian courts shall thoroughly examine if requirements of the Regulation are met. The main aspects of the application and interpretation of the Regulation to be considered in applying Regulation 805/2004, after taking into account presumable errors of Lithuanian courts, are listed in Table 5.1 below.

3) Lithuanian courts should not be afraid to use their right to contact European Court of Justice regarding explanation of certain provisions of the Regulation. The Research showed that on certain issues there is no unanimous opinion not only among different elements of courts, but also in the legal doctrine (see Table 5.2 below).

4) Regulation 805/2004 leaves enough freedom of choice for a national lawmaker. However, a Lithuanian lawmaker has not bothered to regulate many issues, which inhibits effective operation of this legal instrument, as, to begin with, certain issues are

[880] Lithuanian Court of Appeal Civil Division ruling of 30 September 2008 in a c. m. on *L.D.* application, No. 2T–149/2008, cat. 130.3.1.

[881] STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. Art. 28 of EuVTVO [Accessed on 15 September 2012]. At: <http://beck-online.de>.

debatable and there is no unanimous agreement on them in the legal doctrine, and also, courts, especially local ones, may find it difficult to resolve these issues by themselves. It is discussed whether the Implementation Law and other legislation should be supplemented with provisions, which would regulate the most controversial issues (see Table 5.3 below).

5) Lithuanian Supreme Court has not yet investigated one matter related to the application of the Regulation. Therefore, it is thought that an overview of the application of the Regulation in lower courts would benefit the expansion of the application and interpretation of the Regulation. Especially, since Lithuanian Supreme Court has a Law Analysis and Synthesis Department, meanwhile, legal scholars, *inter alia* because of personal data protection, do not have full access to the information concerning the application of the Regulation stored in LITEKO system. Only by studying publicly available information it can be difficult to decide if the Regulation is interpreted and applied properly in Lithuanian court practice.

6) It is discussed whether the Regulation should include, as a minimum procedural standard, the service of a document instituting proceedings or any summons to a hearing in a language understood (and complying with Regulation 1393/2007 or an international agreement) by the defendant.

7) It would be useful if the Regulation was supplemented by lists of complaints and other appeals complying with the first clause of the first paragraph of Article 23 of the Regulation from every Member State, or if such information was provided in European Judicial Atlas in Civil Matters website. Currently this website contains information about review procedures indicated in Article 19 of the Regulation (they are also relevant to Art. 23 of the Regulation, since it contains a reference to Art. 19), however it is reasonable to assume from the first clause of the first paragraph of Article 23 of the Regulation that these review procedures mentioned in Article 19 are not necessarily the only means of contest complying with the first clause of the first paragraph of Article 23 of the Regulation.

8) Information on the implementation of the Regulation in Lithuania provided in European Judicial Atlas website is outdated – an expired Regulation Implementation Law is cited, as well as CCP provisions that have been changed (e.g. Art. 287 of the CCP). The Atlas also does not mention the fact that review of a judgment within the meaning of Article 19 of the Regulation in Lithuania is possible by lodging an appeal; no related information is provided either. It seems that Lithuania does not recognize the possibility of granting an EEO on a Lithuanian judgment given, in case where the defendant is completely passive during the proceedings, without the request of a claimant for a default judgment, as Lithuania has not notified about any review procedure required by Article 19 of the Regulation.

9) Note that standard forms may be filled in at one's convenience directly online and later printed out on European Judicial Atlas in Civil Matters website (see http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_filling_lt_lt.htm).

Table 5.1. – The main aspects to be considered in applying Regulation 805/2004 identified after taking into account presumable errors of Lithuanian courts	
Section in the Research	**Brief description of a main aspect**
4.1.4.2.2	Debtor's appeal has to be lodged in accordance with essential procedural rules of a Member State. Therefore, if debtor's reply (or any other procedural document) to the failure to comply with CCP requirements is returned and held unplaced, or it is refused to be accepted, it can be said that the debtor has not provided an objection.
4.1.4.2.2	Lithuanian court practice follows V. Nekrosius' position by which a default judgment, delivered after receiving a complaint against the claim, yet with the complainant defaulting on his appearance at the hearing, may be certified as an EEO. This position cannot be accepted.
4.1.4.4.4	Lithuanian case law establishes that an EEO in any case can only be granted only if the debtor is the consumer. However, this explanation clearly contradicts with the content and essence of Article 6(1) of the Regulation, since Article 6(1) of the Regulation only provides additional defense for consumers, yet does not define debtors because of whom an EEO may be granted.
4.1.4.4.4	The ECJ clarified in the ruling of 15 March 2012 that European Union law shall be interpreted in a way that prohibits to certify a default judgment against a defendant whose domicile is unknown as a European Enforcement Order within the meaning of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.
4.1.4.4.7	Vilnius Regional Court granted an EEO even though a summons to the hearing had not been served. By considering the notification of the hearing to be appropriate, the court was following legal fiction established in Article 805 of the CCP. Yet, the Regulation does not provide for this service method as appropriate. On the other hand, however, as inappropriate service within the meaning of the Regulation Lithuanian case law justly holds a situation where there is no exact data on the service of a document instituting proceedings or a

	summons to a hearing.
4.1.4.4.7	Service by publication or via a curator is not considered appropriate in terms of the Regulation either.
4.1.5.1.1	Neither the Regulation, nor the Implementation Law provides that in the application for granting an EEO the applicant must prove that it will have to be enforced in another Member State, because, for example, the debtor is domiciled there or has property in it.

Table 5.2. – Main debatable issues (problems) with regard to the application of Regulation 805/2004

Section in the Research	Brief description of an issue
4.1.3	Regulation 4/2009 may be interpreted in a way that EEO certificates cannot be granted on judgments concerning maintenance obligations delivered before 18 June 2011, if applications with regard to them were submitted after this date; in this case, under Article 75(2) of Regulation 4/2009, Sections 2 and 3 of Chapter IV of this Regulation shall be applied.
4.1.4.4.1	It is debatable if a judge to have participated in delivering a judgment on a matter relating to the granting of an EEO can objectively and without bias investigate such application, given the principle that no one can be a judge in his own case (lot. *nemo iudex in causa sua*).
4.1.4.4.4	There are differing opinions in legal doctrine with regard to the issue of whether in such case where the consumer is the debtor, and Article 3(1)(a) exists (a debtor is active and admits the claim or concludes a settlement), compliance with jurisdiction requirements for matters established in Articles 15–17 of Regulation 44/2001, related to consumer contracts, should be scrutinized.
4.1.4.4.5	According to V. Nekrosius, the debtor shall be informed that the judgment may be certified as an EEO, that a default judgment may be delivered founded on the grounds of a formal assessment of evidence, and so on. However, with regards to the latter aspect, it is necessary to note that German legal doctrine follows the provision that a debtor does not have to be informed on the fact that an EEO may be granted against him. It is indicated that Article 17(b) of the Regulation is meant to define legal consequences of non-participation in proceedings or the non-objection to a claim under the national law.
4.1.4.4.5	We disagree with the position of L. Gumuliauskiene that Regulation 805/2004 supplements national civil procedure laws establishing

	requirements for the content of procedural documents. It is clear from Articles 16 and 17 of the Regulation, when interpreting them together with Article 6(1)(c) and Article 12, that Lithuanian courts are not obliged to directly apply and follow Articles 16 and 17 of the Regulation in serving appropriate procedural documents. These articles only set requirements that have to be met by the national procedure in order for a judgment to be certified as an EEO. Regulation's objective is in no way to unify the content of procedural documents in Member States.
4.1.4.4.6 ii)	According to V. Nekrosius, in any case "Lietuvos pastas" is the only appropriate postal service provider under Lithuanian law. However, this conclusion is subject to disagreement, since the Communications Regulatory Authority of the Republic of Lithuania declares that there are 17 persons who can provide postal services in Lithuania.
4.1.5.1.3	Several authors claim that a court should also *ex offitio* serve a copy of an EEO certificate to the debtor. Yet, this position is debatable, since neither the Regulation, nor the Implementation Law establishes that an EEO certificate is to be served on the debtor.
4.1.5.4	German case law indicates that Article 11 of the Regulation establishes that an EEOC only creates a possibility of enforcement in another Member State and does not produce any additional effects, therefore, in order for a judgment to be recognized (in terms of application of prejudice) in different proceedings in another Member State, related procedures shall be performed in accordance with Brussels I Regulation. In other words, recognition of a judgment in another Member State under Article 5 of the Regulation is only relevant insofar as it is related to the enforcement of the judgment. A judgment certified as an EEO could not have prejudicial power in different proceedings. This position is based, among others, on the fact that the Regulation was ought to resolve the granting of the abolishment of exequatur, and not the issue of broader recognition of judgments. On the other hand, however, an opposite position is feasible that Article 5 of the Regulation nevertheless encompasses general recognition of a judgment certified as an EEO (i.e. granting of a status equal to the national judgment) in another Member State.
4.1.5.5	The Implementation Law does not establish any procedure by which the withdrawal of an EEO certificate is to be decided. In addition, Interpreting Article 648(6) of the CCP alongside Article 593(5) of the CCP, we can say that a judgment concerning (non) rectification of an EEOC is conclusive, since a possibility for objection against such judgment is not provided for by the procedural provisions. However, case law actually recognizes the right to contest such judgment (i.e. concerning the rectification of an enforcement

	order under Par. 6, Art. 648 of the CCP). We agree with this practice due to the fact that the possibility of contesting such judgment as to the rectification of errors is provided for in Article 276(3) of the CCP. Given the above, we believe that a judgment concerning (non) withdrawal of an EEO certificate should also be subject to appeal.
4.1.6.1	German legal doctrine follows the position that according to the Regulation, a translation of an EEOC may be required where necessary ("gegebenefalls" (Ger.); Point c, Par. 2, Art. 20 of the Regulation), which means that a translation is necessary only where an EEOC is supplemented by individual records. Where there are no individual records, Article 20(2)(c) of the Regulation is irrelevant. This position looks to be quite significant given the linguistic formulation of the aforementioned provision of the Regulation.
4.1.6.2	Lodging of an application for the renewal of the time limit for lodging an appeal, cassation or separate complaint, or an application for the renewal of proceedings, or complaints against a court order or a preliminary judgment, as well as an allegation concerning a default judgment, we believe, should not be considered as a challenge of a judgment within the meaning of Article 23 of the Regulation. Until the application to renew the time limit has not been granted, there is no reason to expect that a judgment certified as an EEO will be withdrawn.
4.1.6.2	Lodging of a petition to the European Court of Human Rights is not subject to a challenge within the meaning of the first paragraph of Article 23 of the Regulation, although different opinions exist.
4.1.6.2	German legal doctrine states that a stay of enforcement shall only be applied in exceptional cases, and where the conditions of the first paragraph of Article 23 of the Regulation exist, the foremost consideration should be the possibility of applying the measures provided for in Article 23(a) and (b).

Table 5.3. – Main suggestions and comments regarding the Implementation Law

Section in the Research	Brief description of a suggestion/comment
4.1.4.1.2 ii)	The Implementation Law could be supplemented by a provision that says if a claimant immediately applies for the granting of an EEO certificate regarding costs related to the proceedings of a matter concerning a dispute on the main material legal claim or in which a non-monetary (main) claim has been made, the court can decide on the costs related to the proceedings by a separate judgment under Article 277 of the CCP. It would allow to certify this decision as an EEO, provided that no dispute would arise on the

	costs related to the proceedings, and thereby improve the protection of creditors' rights, as well as expand a free circulation of judgments in the European Union avoiding exequatur.
4.1.4.1.4	It would be appropriate to supplement the Implementation Law by a provision establishing that an EEO on hypotec and mortgages with enforcement records may be issued by notaries. Without this amendment a situation occurs that because of claims arising from hypotec and mortgage relations, an EEO cannot be granted.
4.1.4.4.5	Seeking to avoid uncertainty about the compliance of information, served on the the claimant, with Article 17 of the Regulation, it is suggested to supplement the CCP or the Implementation Law with provisions that would oblige a court, when serving a claim for the submission of a reply, a preliminary judgment or a court order, as well as serving a subpoena, to indicate if representation during the proceedings is mandatory or not, also defendant's (debtor's) obligation to accept responsibility for costs of the proceedings if a negative judgment is delivered, when forwarding to the defendant a claim or a subpoena (in case of a preliminary judgment and a court order, information regarding costs of proceedings shall be indicated in the procedural documents themselves, therefore, additional information about them is not necessary).
4.1.4.4.5	Article 14(2) of the Implementation Law establishes that "where information, indicated in Paragraph 1 of this article, has not been presented to the court, a European Enforcement Order may be granted on matters indicated in Article 3(1)(a) of Regulation No.805/2004, also in other matters if procedural documents in these matters have been served by methods in compliance with Articles 13, 14, 15 of Regulation (EC) No. 805/2004". This provision is justly criticized in legal doctrine because at first sight it can be interpreted in a way, which says that if an uncontested claim under Article 3(1)(b) and (c) exists, a judgment may be certified as an EEO only if the service has been performed according to Articles 13–15 of the Regulation, despite the fact that Article 18 of the Regulation provides for the possibility of certifying a judgment as an EEO even in those cases, where the requirements of Articles 13–17 of the Regulation have not been complied with. However, this interpretation of the aforementioned standard contradicts the Regulation. Therefore, we believe that the provisions of the Implementation Law should be up for consideration in terms of the aforementioned aspect.
4.1.4.4.7 iii)	Until the Minister of Justice confirms the procedure and form of the service of procedural documents via electronic means, it is not possible to assess if electronic service in Lithuania will provide an automatic confirmation of

	dispatching, which may be relevant in terms of the application of Regulation 14. The Minister of Justice should take into account this consideration when approving the above procedure.
4.1.4.4.9	It is believed that in order to avoid any ambiguities, Article 307(3) of the CCP could be supplemented by a provision that the time limit provided for in this article shall not apply where the debtor seeks to take advantage of the possibility of contesting the judgment in accordance with Article 19(1) of Regulation 805/2004.
4.1.5.2	Lithuanian law does not regulate the procedure for granting an EEO certificate performed by a notary in any case. It is considered to be a deficiency in legal regulation.
4.1.5.5	The Implementation Law does not establish by what procedure the withdrawal of an EEO certificate should be decided.
4.1.6.2	Provisions of Article 18(1)–(3) of the Implementation Law, granting the right for deciding the issues of the stay and limitation of enforcement to a local court or a bailiff (in case of a stay of enforcement – a bailiff only) in the location of enforcement, seem very strange. For in this case it is necessary to assess factual circumstances related to the proceedings in another court. Especially, since measures indicated in Article 23(a) of the Regulation, according to the Implementation Law, may be applied by both a court and a bailiff, however, it is not clear when a person should apply to a bailiff and when – to a court.
4.1.6.2	The rule concerning the jurisdiction of application for the stay or limitation of enforcement established in the Implementation Law should be corrected by establishing that the considered applications shall be lodged to the local court in the bailiff's, in charge of enforcing a document certified as an EEO, office location.
4.1.6.2	The Implementation Law does not regulate if judgments of a court (a bailiff) given (in their broadest sense) under the second paragraph of Article 23 of the Regulation, are subject to appeal; also by what procedure the stay or limitation of enforcement under Article 23 of the Regulation shall be decided.
4.1.6.3	The procedure for the refusal of enforcing (Art. 21 of the Regulation) a judgment is not established in the Implementation Law. We believe, that only Article 4(6) of the Implementation Law should be followed in this case, since it regulates the proceedings for the refusal to enforce an already enforceable judgment (which an EEO is). The Implementation Law could be supplemented in this respect.

6. Review of the application of Regulation 861/2007 and assessment of case law[882]

271. In implementing a claim in a cross-border civil matter, a question often arises if it is worthwhile financially. Due to lack of knowledge of a foreign legal framework, service of procedural documents, translation or travel costs, it is often considered if proceedings in a foreign court should be started at all. It is particularly relevant to small claims. Ever since the effect of the Treaty of Amsterdam on 1 May, 1999, considerations began on a European Union level on how to facilitate the examination of matters of small claims. Especially, since many States of the Community have special procedures for civil disputes in their national laws. On 20 December 2002 the European Commission confirmed the Green Paper on a European Order for Payment Procedure and on measures to simplify and speed up small claims litigation. This document summarized legal regulations in this area of fifteen European Union States at that time, as well as the main ideas of further legal regulation on a European Union level. It was once more emphasized that costs of small claims in the European Union were disproportionately high and their investigation way too long. On 15 March of 2005 the European Commission suggested the introduction of a Regulation, establishing European Small Claims Procedure. The Regulation itself was adopted on 11 July 2007 with significant changes and has been valid since 1 January, 2009 all throughout the European Union, with the exception of Denmark. This Regulation, unlike the Regulation creating a European Enforcement Order for uncontested claims or the Regulation creating a European Order for Payment Procedure, regulates the investigation of dispute proceedings in which a claimant does not necessarily admit the claim. Hence, it is the first attempt to establish on a European Union level a simple and fast, as well as cost effective legal procedure for dispute proceedings[883].

272. As can be seen from Article 1 of the Regulation, the purpose of this legal act is to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. This Regulation also eliminates intermediate proceedings necessary to enable recognition and enforcement, in the other Member States, of judgments given in one Member State in the European Small Claims Procedure. Thus, this Procedure is intended to allow for better use of the right to apply to court (Recital 7 of the Regulation). This is ensured by establishing a relatively simple and fast procedure for obtaining a

[882] In preparing this chapter, where appropriate, the researchers analyzed and used Lithuanian court and European Court of Justice practices relating to Regulation 861/2007, which the researchers managed to retrieve on 1 October 2012 from publicly available Lithuanian court and European Court of Justice decision databases at www.infolex.lt/praktika; http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2; http://curia.europa.eu/juris/recherche.jsf?language=en.

[883] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teise*, 2011, No. 79(122), p. 35-36.

judgment on a small claim. On the other hand, however, as will be seen later, even though the goal is to reduce costs related to small claims, the Regulation does not regulate the structure (type) of stamp duty and other litigation or enforcement costs, essentially leaving it to the national law of civil procedure. In addition, allocation of litigation costs is also rather abstract, leaving considerable freedom for a judge dealing with the case. Many other relevant aspects are also left to national legal regulation (e.g. calculation of claim cost, possibility of appeal, representation characteristics, etc.). Regulation of the responsibility of a party of proceedings to provide proof is hard to comprehend even for legal professionals. Hence, first and foremost, due to different legal regulation and traditions in different Member States, operation of the Regulation in the European Union area becomes unequal and fragmented; secondly, achieving the goal to minimize the costs of the proceedings becomes extremely difficult; thirdly, to expect that nearly every member of the general population can use this Procedure, as was intended in adopting this Regulation, is apparently naive.

273. It should be emphasized that the European Small Claims Procedure is an alternative to procedures provided for in Member State laws. Therefore, the Regulation does not alter the rules of a national civil procedure. Claimants simply have more chances to select how they will defend their rights. A claimant has the right to choose whether to use national protective measures and then, if necessary, to request for the certification of a given judgment as an EEO, provided that conditions established in Regulation 805/2004 are fulfilled. In addition, a claimant may apply for the granting of a European order for payment (hereafter EPO), provided that conditions for the application of Regulation 1896/2006 are fulfilled. On the other hand, if it is likely that a defendant will contest the claim, and provided that the value of the claim does not exceed EUR 2 000, it is not appropriate for the claimant to apply for the granting of an EPO and far more handy to apply to court by the procedure established in Regulation 861/2007 (hereafter referred to as Regulation), especially if there is a possibility that the judgment will have to be enforced in another Member State. A judgment given in accordance with the considered Regulation can be enforced in another Member State without exequatur, even without scrutinizing if its enforcement in the Member State of enforcement complies with the public order. As in case of Regulations 805/2004 and 1896/2006, it is prohibited in the Member State of enforcement to review (*révision au fond*) a judgment, given in the European Small Claims Procedure (hereafter ESC, ESCP), on its merits.

274. Unlike Regulation 805/2004, which essentially applies to judgments given in accordance with a national civil procedure, by allowing to certify them as an EEO and thereby facilitate their enforcement in the other Member States, Regulation 861/2007 establishes an independent procedure based on the EU law for obtaining a judgment on a small claim, which, after receiving a certificate that the judgment is given in accordance with Regulation 861/2007, may be enforced in another Member State without recognition and enforcement authorization procedures. In addition, unlike Regulations 805/2004 and

1896/2006, Regulation 861/2007 is intended to also regulate the procedure in such cases in which the defendant actively contests the claim.

275. The procedure established in Regulation 861/2007 is based on the proportionality of procedural measures and costs to the significance and value of a dispute, which is clear from evidence collection rules (Par. 2 and 3, Art. 9). The Regulation establishes quite strict time limits for courts' and parties' actions. Annexes of the Regulation provides forms to use during the Procedure, which should facilitate parties' and court's work and allow for leading proceedings without lawyer's assistance, thereby avoiding costs usually incurred in civil matters[884].

6.1. Scope of the Regulation (Art. 2)

6.1.1. The concept of "small claim" (Par. 1, Art. 2)

276. The discussed Regulation shall apply in cross-border civil and commercial matters, whatever the nature of the court, where the value of a claim does not exceed EUR 2000 at the time when the claim form is received by the competent court, excluding all interest, expenses and disbursements. However, the condition that the calculation of the value of a claim excludes interest, expenses (including litigation) and disbursements does not imply that the court cannot award them in delivering a final judgment under the ESC Procedure. On the other hand, the Regulation does not provide any criteria on how the value of a claim shall be calculated. It only mentions that in order to facilitate calculation, interest and other expenses are to be excluded from the calculation of the value of a claim. Therefore, in order to accurately calculate the value of a claim, the national law of a Member State of origin shall be followed. In Lithuania Article 85 of the Code of Civil Procedure of the Republic of Lithuania shall be applied. Thus, leaving such an important issue to be regulated by national laws, may allow for unequal application of the Regulation in the Member States. Regulation also does not indicate how to calculate an exchange rate if a claim is in a currency different than the euro. The most sensible approach would be to calculate the exchange rate according to the official exchange rate between the euro and the other currency set by the European Central Bank on the day when the court receives the claim. No difficulties should arise in Lithuania, as the exchange rate between litas and the euro is constant. It might be a bit tricky in the other Member States, in which the exchange rate between the euro and the official currency is floating[885].

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[884] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. Introduction to EuBagatellVO, Par. 5-8 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[885] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 37.

277. Unlike in the Procedure for European Orders for Payment, a Small Claims Procedure is possible not only for claims for award, but also for claims for the modification or recognition of legal relationships, provided that it is possible to calculate the value of a claim and it does not exceed EUR 2000[886]. Of course, claims for the recognition or modification of legal relationships will not usually fall within the scope of the Regulation because of their immeasurable nature. On the other hand, actions for award, not necessarily arising out of monetary claims, do fall within the scope of the Regulation (e.g. a claim may require the award of an item which is valued under EUR 2 000). Declarative negative claims (e.g. requiring to recognize that a violation has not been made) in principle fall within the scope of the Regulation[887].

278. The Regulation does not prohibit partial claims, i.e. in which only part of payment of the debt, not exceeding EUE 2 000, is required[888]. However, decision on whether later, i.e. after being awarded part of the debt, it is possible to make a claim for the remaining amount on the same grounds to the same party, we believe, is to be made by the law of the Member State to which the additional claim has been made.

279. Bringing of a counterclaim does not render the ESC Procedure impossible, provided that the counterclaim meets the concept of a small claim under the Regulation. In addition, the cost of a counterclaim shall not be added to the value of the claim in calculating if it does not exceed 2 000 euros.

280. From what has been mentioned above, it is clear that the Regulation establishes a quantitative criterion for small claim litigations, which essentially hinders the consideration of qualitative aspects of a claim. An extremely complex, in terms of legal application, claim may be investigated in pursuance of the Regulation, provided that it does not exceed EUR 2 000 and falls within the scope of the Regulation. Court cannot refuse to investigate a matter in pursuance of the Regulation if the conditions established in it have been fulfilled. Therefore, the simplified procedure, which the Regulation has been aiming to establish, may also be applied in investigating such matters, which, according to their qualitative aspects (complexity, significance, etc.), should be investigated not by the "simplified", but at least by the normal procedure. It is debatable if such legal regulation is appropriate and adequate to the pursued objectives.

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[886] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 36.

[887] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 2, Par. 1 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[888] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 6. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

6.1.2. Material coverage of the Regulation (Par. 1 and 2, Art. 2)

281. As can be seen from Article 2(1) of the Regulation, it shall appy only to civil or commercial matters. It shall not apply to matters concerning revenue, customs or administrative matters or to the liability of the State for actions or omissions in exercising state authorities (*acta iure imperii*). Since in terms of the aforementioned matter categories the scope of Regulation 861/2007 and Regulation 805/2004 is the same, in this context see paragraphs 74–82 of the Research. Even though the Regulation indicates that it shall apply regardless of the nature of the court, due to the specificity of the procedure established by the Regulation it is essentially impossible to bring and investigate a small claim in accordance with the ESC Procedure in a criminal matter.

282. Article 2(2) of the Regulation lists additional matter categories to which this Regulation shall not apply. Those are matters concerning: a) the status or legal capacity of natural persons; b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession; c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; d) social security; e) arbitration; f) employment law; g) tenancies of immovable property, with the exception of actions on monetary claims; or h) violations of privacy and of rights relating to personality, including defamation. Article 2(2)(a)–(e) of the Regulation is essentially the same as Article 2(2)(a)–(d) of Regulation 805/2004, therefore, on this subject see paragraph 74 of the Research. On the other hand, however, Article 2(2)(b) of Regulation 1896/2006 specifically indicates that this Regulation shall not extend to maintenance obligations and matters and matters arising from them. The recognition and enforcement of maintenance obligations is currently regulated by Regulation 4/2009.

283. Note that unlike Regulations 805/2004 and 1896/2006, this Regulation is not extended to claims arising from employment relationships, tenancy of immovable property, with the exception of actions on monetary claims, and violations of privacy and rights relating to personality, including defamation. Yet, the latter claims (on violations of privacy and rights relating to personality, including defamation) would also fall within the scope of Regulation 1896/2006 only where they arise from an arrangement in which the parties agreed on the amount due for the violation of the aforementioned rights (see more 8.2.1.2).

284. Categories falling outside the scope of the Regulation, indicated in Article 2(2)(f)–(h), are usually not suitable to be investigated by the simplified and accelerated procedure established in the Regulation[889].

[889] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 2, Par. 8 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

285. It should be noted that the Regulation only excludes matters exclusively related to the tenancy of immovable property. Therefore, if a matter is related to the tenancy of movable property, for example, leasing of a household item, the Regulation can be applied in its full scope. In addition, the Regulation also encompasses all matters related to the tenancy of immovable property, concerning monetary claims under EUR 2000. Therefore, under the Regulation, one may require to award the unpaid tenancy amount of both movable and immovable property. However, one may not require the invalidation of a tenancy agreement for immovable property. A claim to invalidate a sale and purchase agreement for immovable property will usually fall outside the scope of the Regulation due to exceeding the value of EUR 2 000. Article 2(2)(b) of the Regulation is primarily intended for limiting the possibility of investigating, by the simplified procedure established in the Regulation, often complex matters concerning invalidation or termination of immovable property contracts.

286. By establishing a provision that the considered Regulation shall not apply to matters concerning violation of privacy and personality rights, the aim is to ensure that Member State citizens are not overly encouraged to bring completely unfounded claims in such matters. Also considered is the fact that because these matters often fail to be scrutinized quickly, more effort should be made to reconcile the parties. Nevertheless, V. Vebraite believes that the concepts of "privacy" and "violation of personality rights" autonomously should be interpreted very narrowly. Matters concerning non-monetary damage should not be excluded from the scope of the Regulation completely. For example, if the violation of personality rights is related to ruining health, then, when making a general claim, the Regulation should be possible to use[890].

287. We believe that if the granting of the considered claim requires dealing with legal relationships excluded from the scope of the Regulation by Article 2(2)(f) and (h) (e.g. if false and degrading rumors were spread), in such case the monetary claims inextricably linked to (arising from) these legal relationships shall not fall within the scope of the Regulation (e.g. a claim for award of damage caused by the spreading of false and degrading rumors). On the other hand, if in the same matter both a non monetary claim regarding an agreement, which essentially falls within the scope of the Regulation, and a monetary claim to use restitution and recover (award) to the claimant the contracted assets are brought, all claims, as being closely related, shall essentially fall within the scope of the Regulation.

288. Claims arising from employment relationships are excluded from the Regulation even if a claim is exclusively monetary (e.g. to award unpaid earnings). However, such claims do fall within the scope of Regulation 1896/2006.

[890] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teise*, 2011, No. 79(122), p. 36-37.

6.1.3. Geographic coverage (Par. 3, Art. 2)

289. In the considered Regulation, the concept of "Member State" means Member States with the exception of Denmark. Therefore, neither application to Danish courts with regard to small claim litigation in accordance with the ESC Procedure, nor to present, by the Procedure established in the Regulation (i.e. without exequatur), for enforcement a judgment given in ESC proceedings to competent Danish authorities is possible. Besides, the Regulation applies only to cross-border matters (Par. 1, Art.2; Art. 3 of the Regulation). In this respect see Chapter 6.1.5. See Paragraphs 84–85 of this Research as to what is included in the country territories.

6.1.4. Regulation applicability in time (Art. 29)

290. This Regulation became effective on 1 January 2009, with the exception of Article 25, which became effective on 1 January 2008. The aforementioned provision shall not limit claimant's right to apply to court in accordance with the ESCP after 1 January 2009 for claims, whose founding events occurred before 1 January 2009.

6.1.5. The concept of a cross-border case (Art. 3)

291. As mentioned before, the Regulation applies only to cross-border cases. This is due to the fact that there is no unanimous agreement on whether the EU has competence to investigate cases of different nature[891]. In this respect, it should be noted that Regulation 805/2004 does not encounter such issues, since it does not regulate autonomous procedures in a Member State and is only intended to facilitate the enforcement of judgments in the other Member States (Art. 1, Regulation 805/2004).

292. A cross-border case within the meaning of Regulation 861/2007 is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seized (Par. 1, Art. 3 of the Regulation). In this respect, Regulation 861/2007 and 1896/2006 are the same, therefore on this subject see Chapter 8.2.4.

293. The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the competent court (Par. 3, Art. 3 of the Regulation). Therefore, later changing of a domicile does not impact the applicability of the Regulation. In addition, the time of occurrence of the event on which the claim is founded is irrelevant.

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[891] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. Introduction to EuBagatellVO, Par. 4 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

294. A domicile or a habitual residence is determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001 (Par. 2, Art. 3 of the Regulation). On this subject see Chapters 8.2.4.1 and 8.2.4.2 of the Research.

6.1.6. Commencement of the Procedure (Art. 4)

295. The European Small Claims Procedure, just as the Procedure for European Orders for Payment, is an alternative. The claimant himself decides whether to use this Procedure, provided that the dispute falls within the scope of the Regulation, or not. Therefore, the application of the Procedure is different from that in Lithuania or, for example, in Germany. Based on Article 441(2) of the Code of Civil Procedure of the Republic of Lithuania, a court investigating the matter, not the claimant, has the right to decide in what form and by what procedure to investigate a matter for an award of an amount, not exceeding five thousand litas.

296. In case of a cross-border dispute, provided that the value of the claim, excluding interest, expenses and disbursements, does not exceed EUR 2000, Lithuanian court, in accordance with its obligation of explanation, may inform the claimant that such procedure is possible and how he could use it. In addition, Article 4(5) of the Regulation indicates that Member States shall ensure that all courts, in which the European Small Claims Procedure may be commenced, have a claim form. Since this Procedure can only be commenced upon request of a claimant and is very formal, it is not possible to switch to it immediately if the value of a claim has diminished to the established limit[892]. Since a claimant has the right to choose to commence the Procedure under the Regulation, we believe, based on the principle of dispositiveness, that the claimant may choose to forgo proceedings under this EU legal act and request to investigate the matter under the general national civil procedure. In addition, a court is not allowed to decide to investigate a matter under the discussed Regulation at its own discretion.

297. Forms provided in the Annex of the Regulation can be conveniently filled out in various Member State languages using the European Judicial Atlas in Civil Matters tool (see <http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_lt.htm>) or dynamic forms available on E-Justice website (see <https://e-justice.europa.eu/content_small_claims_forms-177-lt.do>). It allows the creditor, by using the form in a language he understands, to easier fill out a form in the language of the court to which he shall apply, as the form itself is translated into another language automatically. Of course, the authentic content filled in the form is not translated.

298. Essentially, the purpose of mandatory forms is to facilitate and speed up the Procedure.

[892] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 38.

6.1.6.1. Submission of the standard claim Form A (Annex I)

299. A claimant commences the European Small Claims Procedure by filling out a standard claim Form A, provided in Annex I. The claim form shall involve a description of evidence supporting the claim and, where necessary, any other relevant supporting documents (Par. 1, Art. 4).

300. The use of standard Form A is mandatory, and the request to apply the ESCP in an ordinary claim is not possible[893]. Therefore, if such request is set out in an ordinary claim, Lithuanian court is not required to commence the Procedure under the Regulation, however, we believe, shall set a time limit for the claimant to cure the deficiencies of the procedural document, i.e. submit a form meeting the requirements of the Regulation (Par. 2, Art. 115 of the CCP). Shall the claimant not provide Form A within the established time limit, the court shall investigate the possibility of continuing the proceedings in accordance with relevant civil procedure standards.

301. The standard form is drawn up as a questionnaire, with only several parts requiring a brief description. For example, to briefly describe the cause of his action. Hence, a claimant should not encounter any considerable difficulties in filling out the standard form by himself. A claimant is notified right away that the form is to be filled out in a language that is used in the court to which he is applying. Therefore, in Lithuania the standard form may only be submitted in Lithuanian.

302. Much discussion had arisen as to whether the claim shall be accompanied by evidence. After careful consideration, Article 4(1) of the Regulation left a rather vague provision saying that a description of evidence supporting the claim and, where appropriate, any other relevant supporting documents shall be included in the form. The aim is to minimize document translation expenses. Difficulties may arise in deciding what legal consequences are caused by a court's opinion on the fact that a claimant has not included in the claim the necessary documents. After a systematic analysis of the Regulation, V. Vebraite believes that it should be assumed that failure to include in the standard claim form all the necessary document shall not provide a basis for rejecting an application or requesting a rectification of the claim form. Especially, since Article 9 of the Regulation provides for a possibility of collecting evidence during proceedings[894].

303. In fact, it should be noted that provisions of the Regulation concerning submission of evidence to a court together with the claim are very unclear. We believe, the most accurate interpretation of the provisions of the Regulation would be that in the stage of accepting a claim, unlike in Article 135(2) of the CCP, a court is not normally allowed to require from a claimant to provide specific evidence supporting the claim – the Regulation only provides for an obligation of providing a description of evidence. A

[893] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 39.
[894] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 39.

court decides on the necessity to take evidence after receiving a response to the claim and, if necessary, only then undertakes measures established in Article 9 of the Regulation to collect them (see Points a and b, Par. 1, Art. 7 of the Regulation). Of course, it does not prevent the court, having accepted a claim without evidence, where necessary, to immediately explain to the claimant that without presenting the evidence, the court may reject the claim (Par. 2, Art. 12 of the Regulation). It is not allowed to refuse the acceptance of late evidence, i.e. provided separately from a claim or a response (Par. 2, Art. 181 of the CCP), where the court itself undertakes measures to collect the evidence (Point b., Par. 1, Art. 7 of the Regulation). On the other hand, however, in, for example, German legal doctrine no unanimous position on the possibility of applying rules concerning refusal of accepting late evidence, established by *lex fori*, exists (Ger. *Präklusion*)[895]. In our opinion, given that the Regulation is indeed very vague in terms of rules of proof and relevant obligations, the application of these rules is usually not allowed and essentially impossible, since parties are not specifically obliged to submit evidence together with a claim or an answer. On the other hand, if a court sets to participants to proceedings a time limit for providing additional information or evidence (Points a and b, Par. 1, Art. 7; Art. 9 of the Regulation), yet a person ignores it or defaults on his appearance at an oral hearing (Point c., Par. 1, Art. 7 and Art. 8 of the Regulation) and only after that provides the evidence or other documents, the application of Article 181(2) of the CCP would be possible and reconcilable with the Regulation, since it would allow for the prevention of delaying of proceedings. In any case, the Regulation does not prohibit submission of evidence supporting a claim, i.e. a claimant may at any time add to the claim form the necessary requirements.

304. Lithuanian courts, apparently, undertake a slightly different position. For example, Druskininkai local court in a ruling of 7 May, 2012 decided to hold a claim as unplaced under the Regulation and returned it to the claimant, as he had not provided, together with the claim, any evidence supporting litigation expenses, nor added copies of other documents to the participants to the proceedings, nor translations of the evidence into Lithuanian language, as well as did not cure these deficiencies within the time limit set by the court[896].

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[895] E.g., VARGA, ISTVAN. Das europäische Verfahren für geringfügige Forderungen. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010, p. 458. However, other authors indicate that the Regulation does not prohibit the refusal of late evidence. See NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 7, Par. 5 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[896] Druskininkai District Court ruling of 7 May, 2012 in a c.m. *SIA GRAVIDUS v. UAB „Transtaja“*, No.2-404-182/2012, cat. 103.4.; 106.3.

305. Representation when applying to court using Form A is not mandatory. However, shall a representative be appointed, Lithuanian courts, we believe, justly require to add documents confirming representation[897].

306. The Regulation does not prohibit multiple claimants or defendants. However, forms established by the Regulation are not suitable neither for multiple claimants, nor multiple defendants. In addition, the standard form does not provide a space for indicating third parties, not bringing claims, whose participation in proceedings may be necessary (e.g. a guarantor). The aforementioned information in this case could possibly be presented in boxes 2.8 and 3.8 of the standard form "Other information" or by using extra papers, adjusting them respectively. Despite the fact, the standard form is still to be improved in this respect. The standard form is also to be improved with relation to the fact that it does not directly mention the possibility of demanding interest.

307. The cross-border nature of a case is determined by Brussels I Regulation. An action against several debtors, domiciled in different States, may only be brought providing that they are related by a common jurisdiction, i.e. both defendants can be sued in the same Member State in accordance with rules of jurisdiction (e.g. Art. 6 of Brussels I Regulation). It should be emphasized that unlike Regulation 1896/2006 (Par. 2, Art. 6), Regulation 861/2007 does not establish that cases related to the ESCP can only be investigated in courts of the State in which the debtor is domiciled. If a defendant is not domiciled in a Member State, a possibility of bringing him as a claimant to courts in Member States is determined by jurisdictional rules of that[898].

308. Jurisdiction of a Member State court to investigate a dispute shall be substantiated by filling out claim Form A (see section 4 of the form), for example, an agreement on the jurisdiction of the case may be indicated.

309. Claim Form A indicates that information concerning jurisdiction rules is presented on the European Judicial Atlas website http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm. However, such information on this website is not available.

310. According to Article 26 of the Implementation Law, cases on European Small Claims shall be investigated by local courts in accordance with territorial jurisdiction rules established in the Code of Civil Procedure of the Republic of Lithuania. Therefore, if, based on rules for cross-border jurisdiction, a case pertains to the jurisdiction of Lithuanian courts, a specific Lithuanian court is determined according to jurisdiction standards established in Lithuanian CCP, with the exception of cases in which Regulation

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[897] Druskininkai District Court ruling of 7 May, 2012 in a c.m. *SIA GRAVIDUS v. UAB „Transtaja“*, No.2-404-182/2012, cat. 103.4.; 106.3.

[898] VARGA, ISTVAN. Das europäische Verfahren für geringfügige Forderungen. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010, p. 446.

44/2001, for example, its Article 5, establishes the jurisdiction of a case to a court of a certain location[899].

311. Where a claim is brought under the Regulation to a Lithuanian court to which such application is not justiciable, the court has the right to refuse to accept such application in accordance with Article 137(2)(2) of the CCP.

312. It is debatable if, in pursuance of specialization of judges and unified proceedings, claims under the Regulation, instead of being attached to all courts, should instead be attached to 5–10 largest Lithuanian local courts (e.g. one in each county or region), assigning to them, by the Implementation Law, the investigation of cases that are under the jurisdiction of other local courts.

313. When applying to Lithuanian courts with a small claim under the Regulation by a procedure established by legal acts, established stamp duty is to be paid (and evidence supporting it added). In Lithuania court fees shall be paid by the general procedure, i.e. stamp duty is to be paid by a method selected by the person (Internet banking, payment by cash or a transfer, or other) to an indicated revenue account of the State Tax Inspectorate under the Ministry of Finance (hereafter State Tax Inspectorate) (Point 5 of the rules of stamp duty calculation, payment, offsetting and refunding, established by a ruling of the Republic of Lithuania of 27 October 2011 No. 1240[900]).

314. Even though Form A in Annex I of the Regulation indicates that details on stamp duty in the other Member States, as well as its payment methods, can be checked on the European Judicial Atlas in Civil Matters website, after opening the website, it appears that information on this website is not being updated, whereas information on payment methods and procedure for calculating and paying stamp duty in Lithuania (e.g. to what account) is not available at all. Hence, the content of the form in this respect is misleading. The lack of information on how stamp duty is to be paid in another Member State was also indicated in the survey carried out by the researchers, emphasizing, among others, that the lack of this information forces looking for qualified legal assistance in the Member State to which the application is being made. It increases the costs of this Procedure.

315. Claim Form A is not designed for lodging applications concerning the application of provisional protective measures. Therefore, an application for provisional protective measures shall be lodged by claimants either by a separate procedural document, meeting CCP requirements, or by accordingly modifying claim Form A. It is considered to be a deficiency of this form. A court should decide on provisional protective measures by a separate judgment.

316. For language requirements for forms and other documents (including enclosed evidence) see 6.1.7.5.

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[899] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 11. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[900] The Gazette, 2011, No. 130-6171.

6.1.6.2. Means of communication and the availability of forms (Par. 2 and 5, Art. 4)

317. Application form shall be lodged to a court with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced (Par. 1, Art. 4 of the Regulation). Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available (Par. 2, Art. 4 of the Regulation). Member States shall ensure that the claim form is available at all courts at which the European Small Claims Procedure can be commenced (Par. 5, Art. 4 of the Regulation).

318. Means of communication accepted by Member States may be accessed on European Judicial Atlas website[901]. Currently, Lithuania has notified that it accepts documents, lodged directly (to a court registry) or by post. Thus, service via e-mail or fax in Lithuania is not accepted. Situation is likely to change on 1 January 2013, when all procedural documents will be allowed to be served using electronic means of communication.

319. The Regulation does not require Member States to allow bringing a claim under the ESCP, with judicial officer adding the application to the protocol. However, an obligation arises for Member States from Article 11 of the Regulation to ensure that interested parties can receive practical assistance in filling in the forms. The regulation does not make it clear what is sufficient for the fulfillment of this obligation (e.g. whether for this purpose assistance at courts, other authorities shall be provided), therefore States' position on these issues is likely to differ.

6.1.6.3. Inadmissible applications and withdrawal of a claim; supplementation or rectification of a claim; supplementation of additional information; standard Form B (Annex III) (Par. 3 and 4, Art. 4)

320. If a claim falls outside the scope of this Regulation, the court shall inform the claimant to this effect. Unless the claimant withdraws the claim, the court shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted (Par. 3, Art. 4 of the Regulation).

321. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court shall use standard Form B, as set out in Annex II, for this purpose. Where the claim appears to be clearly unfounded or the application inadmissible or where

[901] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_lt_861.pdf> [Accessed on 27 October 2012].

the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed (Par. 4, Art. 4 of the Regulation).

322. A claim is considered to be properly supplemented or rectified if a corrected or supplemented form is dispatched before the established deadline, regardless of the court receiving it lated. The Regulation does not establish what time limit a court shall set. Nevertheless, a court shall always bear in mind that the objective of the Regulation, among others, is as fast procedure as possible. Note that Form B is designed in such a way that it prompts a court to establish a time limit for curing deficiencies by a specific date. However, German legal doctrine indicates that courts should usually set a 14-day (since receiving of the notification of deficiencies) time limit[902]. This time limit may be extended by the court (Par. 2, Art. 14 of the Regulation). Instead of correcting or supplementing the claim, the claimant can withdraw it.

323. As it stems from the above, the Regulation establishes a certain preliminary procedure for scrutinizing a claim, in which it is determined if a claim falls within the scope of the Regulation (material and geographical), if it is well-grounded and admissible, if the information provided by the claimant is sufficient, (sufficiently) clear, and if the claim form is filled in properly. Neither the Regulation, nor the CCP provides for a procedural form for this investigation, therefore, the aforementioned issues are to be decided by a written procedure.

324. Article 28 of the Implementation Law establishes that in the case set out in Article 4(3) of Regulation 861/2007, i.e. where a claim falls outside the scope of this Regulation, a court must inform a claimant that he, no later than fourteen days after the service of a court notification, has the right to lodge a claim complying with the requirements set by the Code of Civil Procedure of the Republic of Lithuania. If a claimant does not lodge a properly documented claim to the court within the time limit established in Paragraph 1 of this Article, the application is held unplaced and returned to the claimant by a court order. This court order may be contested by a separate dispute. These rules, we believe, shall also *mutatis mutandis* be applied in a case where a court establishes that a claim non only falls outside the scope of the Regulation, but is also clearly unfounded or inadmissible, as provided for in Article 4(4) of the Regulation, since the Regulation does not provide for a possibility of rejecting a claim outside the scope of the Regulation[903]. Returning of a claim on the discussed grounds does not prevent one from re-applying to court. Upon receiving the above court notification, a claimant may also withdraw the claim (Art. 139 of the CCP).

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[902] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 4, Par. 10 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[903] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 13. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

325. Note that the aforementioned legal regulation established in the Implementation Law might contradict with Article 4(3) of the Regulation, which provides that unless a claimant, having received a notification that his claim is outside the scope of the Regulation, withdraws the claim, the court shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. It stems from the above provision that the Regulation does not require a claimant to lodge a new claim if he has already submitted a claim form A. Therefore, a more appropriate and more consistent with the EU law, we believe, would be regulation, such as that in, for example, Germany where it is established that in the case set out in Article 4(3) of the Regulation a court shall continue the investigation of a claim without applying Regulation 861/2007[904]. That is to say that a court should not require to lodge a new claim, but rather hold that the claim form A is the claim, meanwhile, if Lithuanian law establishes additional requirements for a claim and (or) its annexes, which the submitted form and its supporting documents do not meet, the court shall then set a time limit for curing those particular deficiencies.

326. Recital 13 of the Regulation establishes that the meaning of the concepts of "clearly unfounded" in rejecting a claim and "inadmissible" in rejecting an application shall be established by the national law. Therefore, no common criteria for all Member States is provided on these issues. It allows for unequal application and interpretation of these provisions, thereby, reducing the effectiveness of the Regulation and complicating the implementation of its objectives.

327. According to V. Vebraite, in Lithuania the concept of "inadmissible claim" shall be analyzed in accordance with Article 137 of the Code of Civil Procedure of the Republic of Lithuania. Whereas the concept of "clearly unfounded application" shall only be used in talking about the issue of a court order. The author believes that direct application of legislation governing the issue of a court order to the Small Claims Procedure is not allowed. Therefore, a lawmaker should supplement the Implementation Law with a provision that Article 435(2)(4) of the Code of Civil Procedure of the Republic of Lithuania [currently Art. 435(2) - researcher's note] shall apply to interpretation of the concept "clearly unfounded" in the European Small Claims Procedure. In any event, she believes that the interpretation of this concept shall be very narrow, ensuring the availability of judicial protection to all persons, encouraging use of simplified procedures[905]. Given the above, we believe that the concept of "clearly unfounded application" according to Regulation 861/2007 shall essentially be interpreted in the same way as Regulation 1896/2006. In this respect see Paragraph 546 of the Research.

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[904] *Code of Civil Procedure of Germany* [online]. [Accessed on 6 October 2012]. At: <http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html#p3693>.

[905] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 40.

328. Where the claim appears to be clearly unfounded or the application inadmissible, or where the claimant fails to complete or rectify the claim form within the specified time limit, the application shall, as the first clause of Article 4(4) of the Regulation provides for, be dismissed. The Regulation and the Implementation Law do not indicate if such procedural judgment is subject to appeal, yet given that a rejection of an application prevents proceedings under the Regulation, a judgment by which the application is rejected, we believe, shall be subject to appeal by a separate complaint (by analogy with the decision to consider a claim unplaced and return it to the claimant, also refuse to accept a claim). On the other hand, unlike established in Article 115(5) of the CCP, a judgment, documented by Form B (Annex No. II of the Regulation), to set a time limit for correcting or supplementing a claim form, we believe, should not be subject to appeal, as it is not provided for by the Regulation and it would not be consistent with the objective of making the procedure as fast as possible.

329. It is also unclear from the Regulation if a decision to reject an application as clearly unfounded has *res judicate* power. The Implementation Law does not regulate this issue either. We think that the aforementioned decision should not cause such legal effects, since a court can arrive at such judgment without even allowing the claimant to present additional explanations concerning the validity of the claim and without hearing from the defendant. However, an opposite position prevails in Geman legal doctrine[906].

330. Where an application is rejected due to a claimant not completing or correcting the form within the indicated time limit, such decision by its legal consequences is equivalent to considering a document unplaced and returning it, therefore re-applying to court in such case is not prohibited, besides, stamp duty may be refunded (Point 3, Par. 1, Art. 87 of the CCP). Where an application is rejected due to a claim being clearly unfounded or inadmissible, we believe, stamp duty shall also be refunded, since such decision by its consequences is equivalent to refusal of accepting a claim (Point 3, Par. 1, Art. 87 of the CCP).

331. A court can only reject an application on the grounds of indicated deficiencies not being cured within the established time limit, if he has informed the claimant of the consequences (Par. 1, Art. 14 of the Regulation). If only one of deficiencies is cured form the documents indicated by the court, setting of an additional time limit for curing the remaining deficiencies is not necessary[907].

332. If procedural consequences implying that a case cannot altogether be investigated in accordance with the Regulation (e.g. a claim falls outside the scope of the Regulation) only become known after commencing legal proceedings, and such

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[906] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 4, Par. 13 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[907] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 16. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

consequences are impossible to eliminate, we believe a court should usually inform the parties of it and switch to proceedings under the general national civil procedure (Par. 3, Art. 4 of the Regulation by analogy).

6.1.7. The Procedure (Art. 5, 6, 9–14, 16)

6.1.7.1. Oral hearing (Par. 1, Art. 5; Art. 8)

333. Article 5(1) of the Regulation establishes that the European Small Claims Procedure shall be a written procedure. A court shall hold an oral hearing if it considers it to be necessary or if a party so requests. A court may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

334. As stems from the above, Article 5(1) of the Regulation states that the European Small Claims Procedure is a written procedure. A court may hold an oral hearing if it considers it to be necessary or if a party so requests. However, unlike in, for example, the Code of Civil Procedure of the Republic of Lithuania, a court may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of proceedings. The reasons for such refusal shall be given in writing and it may not be contested separately from the judgment. Such legal regulation indicates that the Small Claims Procedure shall be carried out as fast as possible, minimum conditions for delaying proceedings shall be established. In addition, Article 8 of the Regulation emphasizes that a court a court may hold an oral hearing through video conference or other communication technology if the technical means are available. Therefore, both the preamble and the later text of the Regulation encourage Member States to use modern technologies in proceedings as widely as possible, even though they may not yet be used in it. We should expect that soon enough the use of these communication technologies will be possible in Lithuania as well, allowing to collect evidence in a Small Claims Procedure faster and easier[908]. Based on Article 175^2 of the Code of Civil Procedure, whose authorization is due on 1 March 2013, participation of parties to the proceedings in hearings, as well as the examination of a witness in his location will be ensured using information and electronic means of communication (via video conferences, teleconferences and other). Note that the Regulation does no provide for the right of a party to the proceedings to apologize for non-participation in a hearing via video conference or other means of communication[909], provided that such participation is feasible.

[908] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 41, 42–43.

[909] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2255.

335. It should be noted that if a party requests an oral hearing (indicating it in Point 8.3 of Form A), such request shall usually be granted, since the Regulation establishes that an application for an oral hearing may only be denied in cases where it is *obviously* unnecessary. In deciding this issue, both the necessity to ensure fair, as required by the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter EHRC), and cost-effective, concentrated proceedings shall be taken into account. For example, an application may be rejected with an aim to discourage the opposite party from any further proceedings that may cause additional expenses[910], when a defendant admits the claim[911].

336. The absence of an oral hearing in a first instance court, where no convincing arguments on such absence are provided, may be recognized as contradicting Article 6(1) of the EHRC. The European Court of Human Rights has repeatedly stated that Article 6(1) of the EHRC essentially guarantees an oral hearing in proceedings in a first and the only instance court, with the exception of cases where exceptional circumstances, justifying different proceedings, exist. The nature of exceptional circumstances that can justify proceedings without an oral hearing essentially depends on the issues that a national court with jurisdiction has to resolve, and not on the frequency of such situations. It is not to say that refusal to hold an oral hearing is a rare possibility. Naturally, national authorities may, among others, take into account economy and effectiveness of proceedings in this respect[912].

337. It should be noted that even though Point 8.3 of Form A does not require to indicate reasons for requesting an oral hearing, claimants are nevertheless recommended to include such information, otherwise, a court may find it difficult to decide on the validity of the application.

338. It should be emphasized that by denying an application for an oral hearing, a court must indicate reasons for such refusal in writing. We believe that it is not necessary and the Regulation does not require that such decision shall be drawn up immediately upon receiving an application to hold an oral hearing. A court may just as well state the arguments for rejecting an application for an oral hearing in the final court act, i.e. the judgment[913]. Especially, since by assessing all the material provided in the case during a written hearing, a court can best decide whether to nevertheless hold an oral hearing. In either case, the rejection of the aforementioned application may not be contested separately. Therefore, arguments for such procedural decision can only be included and

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[910] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 5, Par. 4 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[911] Vilnius 1st District Court ruling of 27 June, 2012 in a c.m. *R. O. D. v. Deutsche Lufthansa Aktiengesellschaft*, No. 2-5442-790/2012, cat. 35.4; 116. 1.

[912] European Court of Human Rights ruling of 12 April 2012 in *Erikssonvs.Sweden*, application No. 60437/08.

[913] See, for example, Vilnius 1st District Court ruling of 27 June, 2012 in a c.m. *R. O. D. v. Deutsche Lufthansa Aktiengesellschaft*, No. 2-5442-790/2012, cat. 35.4; 116. 1.

stated in an appeal or a separate complaint against the judgment or a ruling of a first instance court, concluding proceedings in this court (Par. 3, Art. 334 of the CCP).

339. In any case, if there is a necessity to examine a witness, an oral hearing shall not be considered unnecessary[914]. Yet, in this case, among others, the participation of a witness, if possible, can be ensured by use of video conference (Art. 8 of the Regulation).

340. Note that the practice of the European Human Rights Court essentially takes a position that if legal acts establish a possibility for requesting an oral hearing, yet a person does not use it, written proceedings usually do not violate the rights, granted by the Convention. In such case it is held that a party "tacitly" waived his right to an oral hearing[915]. However, the Regulation does not prohibit a court to hold an oral hearing on his own initiative, if, for example, a party to the proceedings has difficulties in expressing and presenting his position and arguments in writing[916], or the court provides that namely an oral hearing can contribute most to the implementation of objectives established in Article 1 of the Regulation. In either case, clearly the purpose of the Regulation is to investigate a case in writing, using modern means of communication and thereby ensuring a fast and cost-effective Small Claims Procedure.

341. Note that all judgments, delivered in accordance of the Regulation, that the researchers were able to find in publicly available databases were delivered by a written procedure. In addition, a survey showed that Lithuanian judges rarely hold an oral hearing in small claims, whereas advocates (assistants) essentially agree that an oral hearing in such proceedings is more often unnecessary than not. Therefore, there is a reason to believe that the general rule established in the Regulation, saying that proceedings shall be carried out in writing, in Lithuania was welcomed and did not cause issues in the application of law.

6.1.7.2. Applicable procedural law (Art. 19)

342. Article 19 of the Regulation establishes that subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted. In other words, procedural issues (e.g. stay of proceedings, adjournment, termination of proceedings, exclusion from examination, etc.), not regulated by the Regulation, shall be decided by the civil procedure law (*lex fori*), which, where applied, includes European Union civil procedure provisions (e.g. Regulation 44/2001), of the Member State in which the procedure is conducted. Of course, *lex fori* provisions in the considered case can only be applied

[914] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2253.

[915] European Court of Human Rights ruling of 21 February 1990 in *Håkansson and Sturesson* vs.*Sweden*, application No. 11855/85.

[916] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 5, Par. 3 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

inasmuch as they do not contradict with the Regulation. In addition, the discussed rule does no imply that the concepts used in the Regulation shall also be based on legal regulation, legal concepts and definitions existing in that Member State. Provisions of the Regulation shall usually be interpreted autonomously, i.e. not as those of national, but rather as those of European Union law.

343. Such legal regulation, by which national civil procedure law is an alternative, i.e. applicable inasmuch as the Regulation is inapplicable, is probably a result of struggling to unify Member State civil procedure laws. However, such regulation does not contribute to the effectiveness of the considered instrument. The more issues are left to national law, the more difficult it is for other Member State subjects to use this instrument, as they may not have information necessary for the implementation of their laws in accordance with the Regulation. Besides, the ESC Procedure can operate differently in different Member States, which can negatively affect the implementation of objectives sought by the Regulation. Therefore, a more detailed regulation of the ESC Procedure, we believe, would be preferable in the future.

344. It should be emphasized that the Regulation does not govern material law to be applied. It is determined by relevant international private laws.

6.1.7.3. Scope of court powers (Art. 12)

6.1.7.3.1. Limitation of powers (Par. 1, Art. 12 of the Regulation)

345. The Regulation sets out that a court shall not require the parties to make any legal assessment of the claim. It is also reflected in the claim form (Annex No. 1 of the Regulation). Such provision essentially complies with the legal regulation in Lithuania. The CCP requires that by applying to a court with a claim, the claimant indicates the legal cause of the claim. The court is familiar with the law (*iura novit curia*), therefore it is his function and obligation to apply the right provision in accordance with the claim lodged by the party, and to state its factual grounds. Lithuanian Supreme Court practice follows a provision that law does not obligate a claimant to indicate a legal cause of the claim in the application. Legal qualification, interpretation of legislation and application to the relationship of the dispute is a prerogative of the court investigating the matter, therefore, legal cause of the claim, indicated by the claimant in the application, is not mandatory and binding for the court[917]. However, in general the provision of legal qualification in a claim is not prohibited. This, we believe, can be done in Section 8.1 of a claim form.

6.1.7.3.2. Contingent powers: scope of information on proceedings (Par. 2, Art. 12)

[917] E.g. Lithuanian Supreme Court Civil Division ruling of 23 February 2005 in a civil matter *AB Ūkio bankas v. B. R. ir kt.*, No. K-3-124/2005, cat. 106.1.

346. Article 12(2) of the Regulation indicates that, were necessary, a court shall inform parties about procedural questions. The Regulation does not define in what cases and what information a court shall provide. In this respect, Member State traditions and legal regulation differ, therefore, it is impossible to ensure equal level of information of persons litigating in different Member States. For example, German Article 139 of German Code of Civil Procedure clearly lays out the content of a court's obligation of explanation. In civil proceedings in Lithuania the obligation of a court to explain procedural questions is not defined as clearly and in such a concentrated manner, certain aspects of explanation are set out in different provisions of the Code of Civil Procedure. This issue is addressed more widely in the legal doctrine[918]. In any case, we believe that the Regulation obliges Lithuanian judges to not only officially apply Lithuanian CCP provisions on the clarification of certain procedural questions, but also, if required by the situation and the imperative of fair proceedings, to ensure such awareness of parties to the proceedings, which would meet the standards set in the European Union (Germany here may be one of examples) and the goal of the Regulation to facilitate proceedings on small claims. For example, special efforts should be made to avoid procedural suprises where a judgment is founded on such procedural aspect, which the parties may have missed, held it irrelevant or due to which the judge had to decide on its powers *ex officio*, yet the judge did not inform the parties and provide them an opportunity to comment on it (Par. 2 and 3, Art. 139 of the Regulation by analogy). In any case it is clear that if a party is not represented by a processional lawyer, the court shall be more active than usual.

6.1.7.3.3. Court actions seeking to reach a settlement (Par. 3, Art. 12)

347. Whenever appropriate, the court or tribunal shall seek to reach a settlement between the parties (Par. 3, Art. 12). Hence, a court shall undertake measures to reconcile parties. Lithuanian civil procedure focuses on this issue quite a lot (e.g. Art. 231 of the CCP), reaching a settlement is one of the objectives of the civil procedure (Art. 2 of the CCP). Therefore, by properly applying Lithuanian CCP provisions, the obligation established in the Regulation, we believe, would be fully carried out.

6.1.7.4. Service of documents (Art. 13)

6.1.7.4.1. Direct service of documents (Par. 1, Art. 13)

348. Article 13(1) of the Regulation establishes that documents shall be served by postal service, attested by an acknowledgment of receipt including the date of receipt. Recital 18 of the Regulation also indicates that in order to reduce expenses and delays, documents shall first be served on parties by post, attested by an acknowledgment of

[918] E.g. NEKROSIUS, V. *Civilinis procesas: koncentruotumo principas ir jo įgyvendinimo galimybės*. Vilnius: Justitia, 2002.

receipt including the date of receipt. Note that before the effect of the considered Regulation no European Union regulation had established autonomous service methods for procedural documents. It was always indicated that documents shall be served by one of the methods established in the regulation, however, in accordance with the national legislation of the Member State in whose territory the documents are to be served. Regulation establishing Small Claims Procedure for the first time established a unified procedure for serving procedural documents. Article 13(1) of this legal act indicates that documents shall be served by postal service, attested by an acknowledgment of receipt including the date of receipt. In order to minimize document service expenses, it was decided to establish this service method, as each Member State is familiar with such a simple service method in its national law. It is important that this service method shall also be used for serving within a Member State, not only in another Member State[919].

349. Under the provision in question, service will be considered properly fulfilled only if the letter is served personally to the addressee who signs the acknowledgment of receipt. Service by post without acknowledgment of receipt is only possible as a subsidiary service method (Par. 2, Art. 13 of the Regulation) and only within the Member State in which the court effecting the service is located[920].

350. It should be emphasized that service directly by post to persons outside the EU can violate the sovereignty of third parties and their international agreements with Member States. Therefore, if a document is to be sent to a person residing in a country that is not a Member State, the service method established in Article 13(1) of the Regulation, we believe, shall only be applied where it is allowed by international provisions, for example, Hague Convention of the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters. European Union does not have jurisdiction to oblige third countries to allow serving procedural documents to their citizens under relevant methods established in the Regulation.

6.1.7.4.2. Indirect service of documents (Par. 2, Art. 13)

351. If service in accordance with Article 13(1) of the Regulation is not possible, service may be effected by any of the methods provided for in Articles 13 and 14 of Regulation (EC) No. 805/2004. Thus, Article 13(2) of the Regulation establishes subsidiary methods for serving procedural documents if a document cannot be served by post with attestation. These cases usually arise when a person cannot be found in the service location. In such cases other service methods, established in Articles 13 and 14 of Regulation (EC) No. 805/2004 creating a European Enforcement Order shall be applied.

[919] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teise*, 2011, No. 79(122), p. 44-45.

[920] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 13, Par. 3 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

Then, according to V. Vebraite, those methods that are not possible within the national law of a specific Member State cannot be applied[921]. However, it is debatable if this position is reasonable. Article 13 (2) of the Regulation may be interpreted not as referring to Articles 13 and 14 of Regulation 805/2004, concerning minimum requirements, which service under the national law shall meet if a direct service by post under Article 13(1) of the Regulation is not possible, but as establishing a unified service law throughout the European Union[922].

352. The above provisions imply that service by publication is not possible in the ESC procedure. We believe that service through a curator would also be incompatible with the objectives of the Regulation. It leads to conclude that if there are no possibilities to serve procedural documents by methods established in Article 13(1) of the Regulation or Articles 13–15 of Regulation 805/2004, proceedings cannot be continued under the Regulation. In such case, we believe, a court shall decide to switch to proceedings under Lithuanian CCP. It leads to the fact that the judgment cannot be certified under the considered Regulation and therefore, cannot be enforced without exequatur in all Member States.

353. It should be emphasized that the reference to Articles 13 and 14 of Regulation 805/2004 shall be interpreted as also referring to Article 15 of the Regulation, which provides for the possibility of serving a procedural document to a party's representative[923].

354. Where service in accordance with Paragraph 1 of the discussed Article is not possible, Member State court may, among others, use help of another Member State under Article 4 and other articles of Regulation 1393/2007, i.e. request that the document is served by the receiving agency of the other Member State, appointed by Article 2 of Regulation 1393/2007. This agency shall then serve the documents by methods indicated in Articles 13–15 of Regulation 805/2004[924].

355. Service to residents of non-EU countries shall be carried out in accordance with relevant international agreements or international civil procedure provisions of the state, whose court investigates the case, at the same time seeking that the service method meets one of the methods indicated in Article 13 of the Regulation.

356. Regulation 861/2007 does not provide for the cure of service deficiencies. Therefore, it can only continue by properly fulfilling service procedures. On the other

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[921] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 45.

[922] See, e.g., HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2256.

[923] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 13, Par. 4 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[924] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 13, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

hand, German doctrine indicates that Article 18 of the Regulation can nevertheless be interpreted as allowing to consider service deficiencies as having been cured if a person later had an effective possibility to defend his interests. Whether this position is reasonable can probably only be answered by the European Union Judicial Court. On the other hand, even if the Regulation cannot be interpreted in this way, it is worth considering if such provision should be established in this legal act (e.g. analogous to Art. 18 of Regulation 805/2004). It would ensure greater efficiency of this instrument without compromising the protection of interested parties' rights and legal interests.

6.1.7.5. Procedure language (Art. 6)

357. A claim form, a response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of a court (Par. 1, Art. 6 of the Regulation). Therefore, these procedural documents and data in Lithuania shall be served in Lithuanian or a translation into Lithuanian shall be added. It should be emphasized that this provision essentially implies that only a claim form and its information, as well as the description of relevant supporting documents shall be translated into *lex fori* language, yet translations of documents added to the claim form is not always required. The issue of translating these documents is regulated by Article 6(2) and (3) of the Regulation.

358. If any other document received by a court is not in the language in which the proceedings are conducted, the court may require a translation of that document only if the translation appears to be necessary for giving the judgment (Par. 2, Art. 6 of the Regulation). It should be noted that the Lithuanian version of the Regulation has omitted the word "other", therefore, it may be misunderstood that a claim or a response to a claim may also be presented in a different language[925].

359. German legal doctrine indicates that under Article 6(2) of the Regulation, translation into *lex fori* language may only be omitted if both the judge and the parties to the proceedings have sufficient knowledge of the language in which the documents are to be served[926]. Therefore, if a court decides that it knows the language, in which a document indicated in Article 6(1) of the Regulation is written, yet a claimant does not understand this language and justly refuses to accept the document or returns it in accordance with Article 6(3) of the Regulation, the court shall undertake measures to ensure that the defendant is served the documents in an appropriate language. On the other hand, if a translation of other documents is clearly unnecessary in order to sufficiently understand the essence of an application or a statement of defense and the data supporting them, as well as effectively implement procedural rights, the translation

[925] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 44.

[926] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2254.

of documents for the other party is essentially unnecessary. In such case rejection of untranslated documents by the other party is not possible either (see more Par. 363 of the Research). Of course, it does not prevent a court, seeking to deliver a fair judgment, given the necessity to ensure the proportionality of litigation costs, to request that the evidence is translated into a language that he understands.

360. Article 6(3) of the Regulation states that a party may refuse to accept a document if it is not in either of the following languages: the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or a language which the addressee understands. The court shall so inform the other party with a view to that party providing a translation of the document. Such regulation conforms with the latest European Court of Justice practice[927] and Regulation No. 1393/2007. Recital 19 of Regulation 861/2007 elaborates that a party may refuse to accept a document at the moment of its service or return it within one week if it is not drawn up in the official language of the Member State addressed or if a translation into such language or a language that the addressee understands is not enclosed. Naturally, it would be unreasonable to require a party to indicate that he does not understand the content of the procedural document right away during the service. The Regulation does not set a time limit within which a party shall serve a document in the official or understandable language[928]. It shall be decided by a court, establishing a time limit for curing the deficiencies (providing a translation) of a procedural document (Par. 2, Art. 115 of the CCP). This time limit should be as short as reasonably possible, since the aim of the Regulation, among others, is to speed up proceedings. German doctrine indicates that re-service shall be effected within a 30 day period[929].

361. In serving procedural documents in another Member State it is also important that the addressee is informed about the possibility of refusing to accept documents served in a language not provided for in Article 6(3) of the Regulation (see by analogy Par. 1, Art. 8 of Regulation 1393/2007)[930]. A form provided in Annex II of Regulation 1393/2007 may be used for this purpose, by filling it out in a language accepted in the Member State addressed. Refusal of accepting is also appropriate where because of this reason, documents are dispatched for return within one week, i.e. it is the moment of returning that is legally significant in this case. However, it is not required to return the

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[927] For example, European Court of Justice ruling of 8 May 2008 in a case No. C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin*, ECR 2008 I-03367.

[928] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 44.

[929] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 6, Par. 12 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[930] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2254.

documents themselves. A clear statement of refusing to accept them is sufficient. The refusal shall be forwarded to the court which has served the documents or any other transmitting authority indicated in the explanation of the right of refusal (Annex II of Regulation 1393/2007)[931].

362. If the right of refusal is not exercised during the established time limit, the service is held to be appropriate, even though the document is drawn up in a language not understood by the addressee. In such case the recipient himself shall take care of translating the document[932]. Yet, the time limit within which a person may refuse to accept a document drawn up in a language inconsistent with the requirements of legal acts is established by law, therefore it may be renewed (Par. 1, Art. 78 of the CCP)[933].

363. Note that European Court of Justice has explained that Article 8(1) of Council regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters shall be interpreted as not allowing the addressee of the document instituting the proceedings to refuse to accept this document, providing that it enables the addressee to exercise his rights in the proceedings in the transmitting State, if it includes supporting documents which are not drawn up in the official language of the Member State addressed or a language of the transmitting State that the addressee can understand, yet they only perform a supporting function and are not required in order to understand the cause and the matter of the claim. National court has to scrutinize if the content of the document instituting the proceedings is sufficient to allow the defendant to exercise his rights, or if the lack of a translation of the required supplement has to be cured by the sender. In addition, Article 8(1)(b) of Regulation No. 1348/2000 shall also be interpreted in a way that the circumstance that the addressee of the document being served, in performing his economic activities, has concluded an agreement with the claimant that the correspondence shall be handled in the language of the transmitting Member State, does not justify the presumption of knowing the language, yet is an indication which the court may take into account in assessing if the addressee understands the language of the transmitting Member State. Article 8(1) of Regulation No. 1348/2000 shall be interpreted in a way that the addressee of the document instituting the proceedings either way cannot, in accordance with this provision, refuse to accept those supplements to the document, which are not drawn up in the official language of the Member State addressed or a language of the transmitting Member State that is understood by the addressee, if, in performing his economic

[931] See NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 6, Par. 7, 8 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[932] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 6, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[933] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 10. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

activity, he concluded an agreement that the correspondence shall be handled in the language of the transmitting Member State, and the supplements are both related to this correspondence and drawn up in the agreed language[934]. The aforementioned provisions *mutatis mutandis* may only be referred to in applying provisions of Regulation 1393/2007. In addition, a person residing in Lithuania may not refuse to accept a document drawn up in Lithuanian, even if he does not understand Lithuanian language. It can be clearly seen in Article (6)(3)(a) of the Regulation which allows to forward documents in the official language of the Member State addressed. In such case the addressee himself has to take care of translating the document.

364. If the refusal to accept a document is unfounded, service is held to be effected appropriately, despite the refusal. Reservice is not required[935].

365. Refusal of accepting a document, drawn up without complying with the aforementioned language requirements, is also possible to both the claimant and the defendant in cases where the procedural document being served by the court is drawn up in the language of the Member State of the court[936].

6.1.7.6. Time limits (Art. 14)

366. The Regulation establishes varied time limits for both court and party actions. These time limits and consequences of failure to comply with them are discussed more widely in analyzing different provisions of the Regulation. Article 14(1) of the Regulation establishes a general rule that where a court sets a time limit, the party concerned shall be informed of the consequences of not complying with it. This is to ensure fair proceedings and avoid procedural contingencies.

367. Article 14(2) of the Regulation establishes that in exceptional circumstances a court may extend the time limits provided for in Article 4(4), Article 5(3) and (6) and Article 7(1), if it is necessary in order to safeguard the rights of parties. Hence, a court may extend the time limit for completing or rectifying a claim form or supplying supplementary information (Par. 4, Art. 4), replying to a claim or a counterclaim (Par. 3, Art. 5 and Par. 6), as well as providing further details concerning a claim (Point a, Par. 1, Art. 7). In terms of time limits established for courts, instead of the renewal of time limits provided for in Article 14(2) of the Regulation, Article 14(3) of the Regulation shall be applied.

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[934] For example, European Court of Justice ruling of 8 May 2008 in a case No. C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin*, ECR 2008 I-03367.

[935] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 6, Par. 13 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[936] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 6, Par. 3 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

368. Article 14(3) of the Regulation establishes that if, in exceptional circumstances, it is not possible for a court to respect the time limits provided for in Article 5(2) to (6) and Article 7, it shall take the steps required by those provisions as soon as possible. The Regulation does not indicate any negative legal consequences shall a court not comply with the time limits established in the Regulation. In other words, a judgment delivered in the ESC Procedure cannot be annulled because of failure to comply with the established time limits. On the other hand, however, a person is entitled to require to recover the damage caused by delayed proceedings, violating the requirements of Article 6(1) of EHRC. In addition, in accordance with Article 19 of the Regulation, if a Lithuanian court misses the time limits set for its procedural actions in the ESC procedure, an interested party is entitled to apply to an appellate court with a request to set a time limit for such procedural actions in accordance with the procedure established in Articles 72(3) and (4) of the CCP.

369. For the calculation of the time limits established in the Regulation, Regulation 1182/71 shall be applied (see more on this subject in Par. 604 of the Research).

6.1.7.7. Actions of a court and parties upon receiving a properly filled in claim

6.1.7.7.1. Filling in and serving of Part I of the standard answer Form C (Par. 2, Art. 5, Annex No. 3)

370. Article 5(2) of the Regulation establishes that after receiving a properly filled in claim form, a court shall fill in Part I of the standard answer Form C, as set out in Annex III. A copy of a claim form and, where applicable, of supporting documents, together with the answer form thus filled in, shall be served on a defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving a properly filled in claim form. Therefore, a court, having received a properly filled in claim form, within fourteen days shall dispatch a copy of the claim form and, if enclosed, of supporting documents, as well as the standard answer form to the defendant[937]. Documents shall be forwarded in accordance with Articles 6 and 13 of the Regulation.

371. Note that a court is unable to specify third parties to the proceedings in Part I of Form C. It is considered to be a deficiency.

6.1.7.7.2. Filling in and serving of Part II of the standard answer Form C (Par. 3, Art. 5, Annex No. III)

372. A defendant shall submit his response within 30 days of service of a claim form and answer form, by filling in Part II of standard answer Form C, accompanied,

[937] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 44.

where appropriate, by any relevant supporting documents, and returning it to the, or in any other appropriate way not using the answer form. Thus, a defendant shall submit a response to a claim or a counterclaim within thirty days of receiving a claim form and an answer form. It should be emphasized that a defendant is not required to fill in the standard answer form. A free-form response is possible. A defendant, just like a claimant, may describe evidence supporting the response, or provide relevant supporting documents (see also on this subject Par. 303 of the Research)

373. A response is considered to have been served on time if it was dispatched within the set time limit, despite the fact that it reached the court later[938]. However, different opinion exist on this subject that, among others, are based on Article 7(3) of the Regulation which establishes that a court shall give a judgment if it *has not received* a response within the set time limit[939]. We believe, since there is room for ambiguous interpretations, as long as the ECJ has not provided an answer, a position favoring a defendant, stating that it is enough if a response is dispatched within 30, shall be followed.

374. A time limit for serving a response may be extended (Par. 2, Art. 14 of the Regulation). After missing a time limit for serving a response, in exceptional circumstances it is also possible to request a review of a judgment in accordance with Article 18 of the Regulation.

375. As in case of a claim statement, in case of a response statement as well the Regulation does not establish an obligation to provide evidence supporting the response. See more on this subject in Paragraph 303 of the Research.

376. If in his response a defendant claims that the value of the non-monetary claim exceeds the amount set out in Article 2(1), the court shall within 30 days of dispatching the response to the claimant decide if the claim is within the scope of the Regulation. This decision may not be contested separately (Par. 5, Art. 5 of the Regulation). We believe that a court, having decided that the value of the claim exceeds the amount set out in Article 2(1) of the Regulation, shall order to switch to proceedings under the rules of the national civil procedure and forward this order to participants to the proceedings. Neither the Regulation, nor the Implementation Law establishes what form shall be used in deciding on the aforementioned objection, and whether the claimant should be heard. We believe that the above question should be decided by a written procedure, meanwhile the court shall not be required (although could) to allow the claimant to present his position. Neither the decision to continue proceedings under the Regulation, nor switch to proceedings under national civil procedure standards, the researchers believe, is subject to appeal.

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[938] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2253.

[939] VOIT, Wolfgang. §§ 1097□ff. Introduction, paragraph 19. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

377. It should be noted that a claimant may request litigation costs by filling out Point 4 of Form C. A counterclaim for this requirement is not necessary.

378. If a response is not submitted within the set time limit, a court shall give a judgment on the claim according to the information available in the case (Par. 3, Art. 7 of the Regulation). Hence, in principle, a defendant is not obliged to submit a response – it is his procedural right, which he may exercise if he believes it to be necessary.

379. A response shall be submitted in the official language of the court investigating the case or accompanied by a translation into this language. Shall it not be done, a court may set a time limit for curing this deficiency (Par. 2, Art. 115 of the CCP).

6.1.7.7.3. Dispatching a copy to a claimant (Par. 4, Art. 5)

380. After receiving a defendant's response, within 14 day a court shall dispatch a copy thereof, together with any relevant supporting documents to the claimant. Documents shall be forwarded in accordance with Articles 6 and 13 of the Regulation.

6.1.7.7.4. Service of a counterclaim (Par. 6 and 7, Art. 5).

381. In order to serve a counterclaim, it is mandatory to use a standard claim but indicate in the response that a counterclaim is being served. In such case Form C requires to enclose a standard Form A (see Point 5.3 of Form C). Besides, lodging of a counterclaim shall also meet other requirements for bringing a claim, which may be established both in the Regulation and national law (see more on this subject Chapter 6.1.6 of the Research).

382. A counterclaim and related supporting documents shall be served on a claimant in accordance with Article 13 of the Regulation. These documents shall be dispatched within 14 days of the date of receipt. A claimant shall respond to a counterclaim within 30 days of their service (Par. 6, Art. 5 of the Regulation). If a response to a counterclaim is not submitted within the set time limit, a court shall give a judgment on the counterclaim according to the information available in the case (Par. 3, Art. 7 of the Regulation).

383. If a counterclaim exceeds the set monetary limit, European Small Claims Procedure shall not be applied to the claim and the counterclaim and they should be investigated in accordance with appropriate national procedure law (Clause 1, Par. 7, Art. 5). Hence, the value of a claim may determine the litigation procedure. In the draft Regulation European Commission suggested governing a counterclaim with some flexibility – if a claim indicated in a counterclaim exceeds EUR 2000, to investigate it in accordance with a Small Claims Procedure, provided that the claim is related to the same legal relationship and the court considers it to be rational to investigate both claims together. Therefore, the European Commission suggested, taking into account the

principles of economy, concentration, to expand as much as possible the scope of this Procedure. Unfortunately, such position was unacceptable for Member States[940].

384. Article 28 of the Implementation Law establishes that in cases set out in Article 4(3) and Article 5(7) of Regulation 861/2007, a court must inform a claimant (defendant) that he, no later than fourteen days of the service of a court notification, is entitled to lodge a claim (counterclaim) complying with the requirements set out in the Code of Civil Procedure of the Republic of Lithuania. If a claimant (defendant) does not lodge a properly documented claim (counterclaim) to the court within the time limit established in Paragraph 1 of this Article, the application is held unplaced and returned to the claimant (defendant) by a court order. This court order may be contested by a separate dispute.

385. The content of the aforementioned provision is difficult to understand and may be irreconcilable with the Regulation. To begin with, it is unclear if after receiving a defendant's counterclaim, exceeding EUR 2000, Lithuanian court shall oblige both the claimant and the defendant to resubmit the claim and the counterclaim so that they meet formal CCP requirements. Second, even if such counterclaim is to be submitted only by the defendant, whose actions have led to the case being no longer possible to investigate in accordance with the Regulation, this legal regulation may contradict with Article 5(7) of the Regulation, which provides that if a counterclaim exceeds the limit set out in Article 2(1), the European Small Claims Procedure shall not be applied to the claim and the counterclaim, and they shall be investigated in accordance with appropriate procedural law, applied in the Member State in which the proceedings take place. It stems from the above provision that the Regulation does not require a claimant to lodge a new counterclaim if he has already submitted a counterclaim as claim Form A. Therefore, a more appropriate and more consistent with the EU law, we believe, would be regulation, such as that in, for example, Germany, where it is established that in the case set out in the first clause of Article 5(7) of the Regulation a court shall continue the investigation of a claim without applying Regulation 861/2007[941.] That is to say that a court should not require to lodge a new claim, but rather hold that the claim Form A is the counterclaim, meanwhile, if Lithuanian law establishes additional requirements for a claim and (or) its annexes, which the submitted form and its supporting documents do not meet, the court shall then set a time limit for curing those particular deficiencies. Therefore, if a counterclaim alters the claim investigation procedure, we recommend that Lithuanian courts order to switch to proceedings in accordance with national civil procedure rules and forward this order to the participants to the proceedings. Where necessary, a court can also set a time limit for curing deficiencies of appropriate procedural documents in this order.

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[940] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 41.

[941] *Code of Civil Procedure of Germany* [online]. [Accessed on 6 October 2012]. At: <http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html#p3693>.

386. If a defendant abuses his right and lodges a counterclaim, exceeding EUR 2000, only to avoid the application of the Regulation and and the enforcement of a judgment in the other Member States (with the exception of Denmark) without exequatur, the court may refuse such counterclaim as clearly unfounded (Clause 2, Par. 7, Art. 5 and Clause 1, Par., Art. 4 of the Regulation).

387. The Regulation altogether does not mention anything about the necessity of a counterclaim being in any way related to the initial claim. Yet, a counterclaim shall not only meet general requirements of a regulation, but also be sufficiently related to the case. Even Article 6(3) of Brussels I Regulation defines a counterclaim as a claim related to the same agreement or facts, on which the main claim is founded. If a court is unsure about the relationship of a counterclaim to the case, it is possible to allow the defendant to correct or supplement the counterclaim. Such position is supported by the preamble of the Regulation[942]. Recital 16 of the Regulation establishes that the concept of "counterclaim" shall be interpreted in accordance with Article 6(3) of Regulation (EC) No. 44/2001 as occurring due to the same agreement or facts, on which the initial claim is based. Therefore, the interpretation of acceptability requirements for a counterclaim shall be based on an autonomous interpretation of the EU law – a court cannot directly follow Article 143(2) of the CCP. If a counterclaim has insufficient relation to the claim, in accordance with Article 19 of the Regulation, a court may follow Article 143(4) of the CCP and refuse to accept such counterclaim straight away. Such conclusion, among others, may be arrived at by systematically interpreting Article 5(7) and the second clause of Article 4(4) of the Regulation, as such counterclaim may be considered as unacceptable in terms of the aforementioned provision. The above decision is not subject to a challenge by a separate complaint (Par. 3, Art. 143 of the CCP).

388. Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, mutatis mutandis, to counterclaims (Clause 2, Par. 7, Art. 5 of the Regulation). Hence, it is not allowed to investigate a counterclaim in the ESC Procedure, which is outside the material scope of the Regulation according to, for example, Article 2 of this legal act. Such claim shall be lodged separately, therefore, a court, having received such counterclaim in the ESC Procedure, we believe, should *mutatis mutandis* apply Article 4(3) of the Regulation. Therefore, if a claim falls outside the scope of this Regulation, the court shall inform the claimant to this effect. Unless a claimant withdraws the counterclaim, a court shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. If a counterclaim is clearly unfounded or inadmissible, also where information provided is insufficient or insufficiently clear or if a claim form is not filled in properly, Article 4(4) of the Regulation shall apply. See more on this subject in Paragraphs 323, 326–331 of the Research. Therefore, we believe that if deficiencies, provided for in Article 4(3) or (4) of

[942] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 41.

the Regulation, are identified in a counterclaim, Lithuanian courts cannot follow bluntly Article 28 of the Implementation Law, which should, seemingly, be applicable in this case, as it covers the second sentence of Article 5(7) of the Regulation, because a formal application of the aforementioned provision, we believe, may contradict with the Regulation.

389. A counterclaim, which, as mentioned above, should be related as provided for in Article 6(3) of Regulation 44/2001, shall be presented to a court that investigates the claim, since the aforementioned relation creates additional grounds for the Member State court's jurisdiction (Par. 3, Art. 6 of Regulation 44/2001).

390. The Regulation does not set any time limits within which a counterclaim is to be submitted. Therefore, in this case limitations established in Article 143(1) of the CCP are not applicable.

391. Recital 17 of the Regulation emphasizes that in cases where a defendant exercises his right to the inclusion of reciprocal claims during proceedings, this claim shall not be considered as a counterclaim in applying this Regulation. Therefore, a defendant, exercising such right, should not be obliged to use the standard Form A in Annex I. Consequently, the defendant is not required to present a counterclaim and may defend against the claim by an answer form, submitting arguments that both before the proceedings as well as during the proceedings an inclusion of reciprocal claims has been performed. A court, in investigating the claim, then essentially scrutinizes if the inclusion has been performed in accordance with the requirements set out in the applicable material law.

6.1.7.8. Taking of evidence (Art. 9)

392. Taking of evidence during the ESC Procedure is regulated by Article 9 of the Regulation. First paragraph of the Article states that a court shall determine the means of taking evidence and the extent of the evidence necessary for its judgment under the rules applicable to the admissibility of evidence. A court may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available. Therefore, the Regulation does not limit a court to giving a judgment by some specific means of proof, does not establish any strict rules for the form or assessment of evidence and so. A court is entitled to decide which method of proof is most appropriate, also the scope of the evidence to be collected at his own discretion[943].

[943] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 9, Par. 5 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

393. A substantiation process in the ESC procedure is largely based on a national civil procedure[944], limited by autonomously interpreted Regulation provisions. For example, the admissibility of evidence is essentially determined in accordance to *lex fori*[945]. In addition, the Regulation does not establish any rules for the assessment of evidence, therefore, in this case the principle of independent assessment shall be applied, established in Article 185 of the CCP on circumstances that do not have to be proved, etc. Legal consequences of failing to fulfill the burden of proof shall also be established by a national law[946].

394. In order to ensure the efficiency and economy of the Procedure, Article 9(2) and (3) of the Regulation emphasizes that a court may take expert evidence or oral testimony only if it is necessary for giving the judgment. In making this decision, a court shall take costs into account. In addition, a court shall use the simplest and least burdensome method of taking evidence. Since a Small Claims Procedure is mainly written, the evidence shall also be collected mainly in writing. Expert advice shall usually only be given if it is impossible to arrive at a judgment with the evidence collected or capable of being collected in the case. However, there is no reason to claim the Regulation establishes any economic limits for the costs of evidence collection, since it would contradict with the requirements of fair proceedings[947]. Even expert advice may be given without regard to the expenses that it might generate, provided that this evidence is essentially claimant's only means of proof. Nevertheless, a court, in accordance with Article 16 of the Regulation, may award the paying of expert expenses to the person who himself has initiated the obtainment of this evidence. A court may also refuse to accept certain evidence if it thinks that they are not necessary for resolving the dispute fairly.

395. The Regulation establishes no specific time limit for how long the taking of evidence may take. It also admits the taking of evidence through video conference or other communication technology if the technical means are available. In addition, Article 8 of the Regulation also emphasizes that a court a court may hold an oral hearing through video conference or other communication technology if the technical means are available. Therefore, both the preamble and the later text of the Regulation encourage Member States to use modern technologies in proceedings as widely as possible, even though they may not yet be used in it. We should expect that soon enough the use of these communication technologies will be possible in Lithuania as well, allowing to collect

[944] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 23. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[945] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 9, Par. 5 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[946] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 9, Par. 11 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[947] HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2255.

evidence in a Small Claims Procedure faster and easier[948]. E-Justice website currently indicates that Lithuanian courts are not equipped with video conference devices[949]. However, from 1 March 2013 Article 175^2 of the CCP comes into effect, providing for the use of video conferences and telecommunications in both ensuring the participation of parties in proceedings and taking evidence.

396. If evidence has to be collected in another Member State (with the exception of Denmark), Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters shall be applied[950].

397. By establishing a wide discretion of a court in a substantiation procedure, also by directing a court to consider expenses that might be incurred due to some evidence, as well as their importance in delivering a judgment (proportionality principle), the Regulation seeks to create a fast, cost-effective and straightforward litigation procedure.

398. Article 9 of the Regulation shall not be interpreted as reducing the standard of substantiation (sufficiency of evidence). If the formation of a judge's inner conviction requires an oral testimony of a witness, Article 9(2) of the Regulation should not prevent him from doing so[951]. Therefore, the circumstance that the Regulation encourages the use of modern means of communication nevertheless does not prevent a court from exercising its right to oblige a party to personally take part in the oral hearing.

399. Given that Article 9(1) of the Regulation mentions a written testimony of a witness, whereas Article 9(3) indicates to use the simplest and least burdensome method of taking evidence, we believe that a written explanation (testimony) of a witness, not presented before and unconfirmed by a notary, also on which there is no oath, as provided in Article 192(8) of the CCP, shall not be considered as inadmissible evidence. However, such evidence in a national civil procedure law should probably be classified directly as a simple written piece of evidence.

400. Written testimonies of third parties and third persons, who have not taken an oath, shall also not be considered as an inadmissible method in the ESC procedure. However, a court, we believe, where necessary, may request both the witness and the third party or person, submitting their testimonies in writing, to sign the text of the oath.

401. For late submission of evidence see also Paragraph 303 of the Research. For necessity of taking evidence see also Paragraph 408 of the Research.

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[948] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teise*, 2011, No. 79(122), p. 42-43.

[949] See <https://e-justice.europa.eu/content_information_on_national_facilities-151-EU-en.do> [Accessed on 1 November 2012].

[950] OL, Special edition in Lithuanian: Chapter 19, volume 04, p. 121 – 144.

[951] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 24. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

6.1.7.9. Representation and practical assistance for parties (Art. 10 and 11)

6.1.7.9.1. Representation (Art. 10)

402. Article 10 of the Regulation establishes that representation by a lawyer or another legal professional in the ESC procedure shall not be mandatory. See more on representation in Chapter 8.2.7.6 of the Research.

403. However, it should be noted that the Regulation essentially establishes a procedure in a first instance court, therefore, the considered provision of the Regulation does not affect, for example, Article 347(3) of the CCP, by which a cassation appeal should usually be signed by an advocate. That is to say that representation in appellate or cassation courts is established by *lex fori* rules[952].

6.1.7.9.2. Practical assistance (Art. 11)

404. Article 11 of the Regulation establishes that Member States shall ensure that parties can receive practical assistance in filling out forms. According to V. Vebraite, it stems from the preamble of the Regulation that practical assistance to be provided to parties shall include technical information about the availability and completion of forms. Court staff may also under the national law provide information on procedural issues[953]. German legal doctrine in this respect indicates that when a person comes to a court in order to submit a claim in accordance with the Regulation, a court clerk shall assist him in filling in and forwarding a claim form to a court with jurisdiction[954]. A mere indication that a person may apply to a lawyer is not an appropriate execution of Article 11 of the Regulation[955]. Article 4(5) of the Regulation establishes that Member States shall ensure that all courts, in which the European Small Claims Procedure may be commenced, have a claim form. However, after one of the researchers came to 1st, 2nd and 3rd Vilnius local courts, none of them presented the aforementioned forms; document admission department clerks indicated that the courts did not have them. In addition, Vilnius 1st local court admission department clerk, after being asked if anyone within the court could provide practical assistance in filling out the above forms, indicated that the court does not give advice. Of course, making general assumptions

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[952] VARGA, ISTVAN. Das europäische Verfahren für geringfügige Forderungen. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010, p. 476.

[953] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 39.

[954] VOIT, Wolfgang. §§ 1097□ff. Introduction, paragraph 7. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[955] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 11, Par. 1 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

from one instance is not possible, however, it shall be a warning for competent Lithuanian authorities and courts to start worrying that obligations arising from Regulation 861/2007 are fulfilled properly.

6.1.8. Conclusion of the Procedure (Art. 7, 9, 16)

6.1.8.1. Court actions after receiving a response from a claimant or a defendant (Par. 1, Art. 7)

405. Article 7(1) of the Regulation establishes that within 30 days of receipt of a response from a defendant or a claimant within the time limits laid down in Article 5(3) or (6), a court shall give a judgment, or: a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days; b) take evidence in accordance with Article 9; or c) summon the parties to an oral hearing to be held within 30 days of the summons. From the aforementioned provisions it is clear that after receiving written answers it is not necessary to continue proceedings, and a judgment can be given straight away, provided that the court is certain about everything. In such case the court is not required to wait for the whole 30 days to give and announce a judgment.

406. If such judgment cannot be given straight away, the court shall exercise its rights provided for in Article 7(1)(a)–(c) of the Regulation. In doing so, the court shall keep in mind the goal of the Regulation to establish a fast, straightforward and cost-effective Small Claims Procedure. In deciding which measure to select, it should also be considered that the discussed procedure shall usually be written, therefore an oral hearing shall be appointed when a demand (Point a, Par. 1, Art. 7 of the Regulation) for additional information would not be sufficient or is not likely to provide the expected results[956].

407. A court shall set a time limit, not exceeding 30 days (a shorter time limit may also be established), for providing additional information on the case (Point a, Par. 1, Art. 7), and may also grant an additional 30 day period for replying to the newly submitted information. German legal doctrine indicates, among others, that a court shall also consider late information[957]. For the refusal to assess late evidence see Paragraph 303 of the Research

408. A court shall undertake measures to collect evidence, if the information provided by the parties is insufficient to give a fair judgment (Point b, Par. 1, Art. 7 of the Regulation). This provision does not imply that a court must indicate what specific

[956] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 7, Par. 4 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[957] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 7, Par. 5 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

evidence each party shall provide and oblige the respective party to provide them. Even the ESC Procedure is based on the adversarial principle. Therefore, a court shall usually settle for an essentially general offer to provide evidence confirming or denying certain circumstances. However, a court may, for example, appoint an expertise and assign it for a particular expert. If evidence can and should be provided in writing, a court shall establish a time limit for their submission and at the end of it – give a judgment according to the information available in the case[958]. However, we believe that if it is necessary, the persons to the proceedings may be allowed to present their positions regarding the newly collected evidence.

409. A court shall notify parties that at the end of the time limit for providing evidence in writing, it may give a judgment according to the information available in the case. Such obligation, we believe, arises from Article 14(1) of the Regulation.

410. For the appointment of an oral hearing see Chapter 6.1.7.1 of the Research. It shall be held no later than within 30 days of the adoption of the decision to call it. The Regulation does not provide for a preparatory hearing, nor does it provide for the possibility of holding not one, but several hearings. However, we believe, it is not to say that proceedings cannot be postponed in accordance with national civil procedure rules.

411. We believe that Article 7(1) of the Regulation should not be interpreted as implying that a court may select only one of the measures provided for in this provision. In other words, a court may request additional information and written evidence, as well as appoint a hearing in writing for, for example, direct examination of a witness, which, in the court's opinion, is necessary in that specific case without any regard to the proportionality of the necessity of the respective measure, its importance in the proceedings and the expenses and costs incurred because of it. In exceptional cases, we believe, an oral hearing may also be appointed after the court receives information and evidence in accordance with Article 7(1)(b) of the Regulation.

6.1.8.2. Delivery and declaration of a judgment (Par. 2 and 3, Art. 7)

412. If an oral hearing is held, a court shall give a judgment within 30 days of it (Par. 2, Art. 7 of the Regulation). Hence, the court may postpone the delivery of a judgment in the ESC procedure for up to 30 days. A twenty day time limit established in Article 269(1) of the CCP is not applicable in this case, since priority is given to the Regulation.

413. If an oral hearing is not held, yet the court exercises the rights provided for in Article 7(1), a judgment shall be given within 30 days of having received all information necessary for giving a judgment (Par. 2, Art. 7 of the Regulation).

[958] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 7, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

414. Article 7(3) of the Regulation establishes that if a court has not received an answer from a relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim. Therefore, in such case the court is not entitled to use measures provided for in Article 7(1) of the Regulation and shall right away give a judgment according to the available information. However, it should be emphasized that Article 14(1) of the Regulation requires to notify a party of the consequences of not complying with procedural time limits and hence the possibility of giving a judgment without receiving a response. This court obligation shall essentially be fulfilled by dispatching to the relevant party an answer Form C, which clearly draws attention to the fact that failure to submit a response will lead to giving a judgment. The aforementioned information shall also be served on parties if a court issues summons to an oral hearing or establishes a time limit for providing additional information (Points a and c, Par. 1, Art. 7 of the Regulation), as a judgment can still be delivered according to available case material even in the case of absence at a hearing or without providing additional information[959]. If a court has information that the absence at a hearing was due to valid reasons, the court may appoint a new date for the hearing.

415. Time limits for delivering a judgment set out in Article 7(2) and (3) cannot be extended (Par. 2, Art. 14 of the Regulation), yet no particular negative legal consequences automatically arise if they are missed.

416. The Regulation does not provide for a possibility of a default judgment as it is understood in the Lithuanian law. As mentioned above, if responses are not received, a court shall give an ordinary judgment according to the material of the case[960]. Therefore, in such case a court assesses evidence on its merits, rather than formally. However, if a judgment is given when a time limit for providing responses, additional information or evidence has been missed or the absence at a hearing has occurred without the fault of a relevant party, and the conditions established in Article 18(1) of the Regulation have been fulfilled, the interested party may request to review the judgment by applying to the court that has given it (Art. 30 of the Implementation Law). On these grounds it is also possible to request the withdrawal of the judgment of the first instance court by lodging an appeal, as Lithuanian CCP and the Implementation Law do not limit a person's right to appeal when a case is investigated in the ESC procedure.

417. The Regulation does not establish a procedure for giving a judgment, also how a judgment is to be declared, as well as what shall be the content of a judgment. In this case, inasmuch as it complies with the Regulation, *lex fori* shall be applied (see Art. 268, Art. 269 and Par. 3, Art. 44 of the CCP).

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[959] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 14, Par. 2 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[960] VOIT, Wolfgang. §§ 1097□ff. Introduction, paragraph 26. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

418. By giving a judgment in accordance with the Regulation, courts are recommended to already in the introductory part indicate[961] that it is being given in the European Small Claims Procedure and so. The operative part of a judgment, we believe, shall indicate that the judgment is to become enforceable upon its delivery, that for the stay or limitation of its enforcement one may apply in accordance with Article 23 (Art. 15 of the Regulation). However, Lithuanian courts usually refrains from such actions. Lithuanian case law also shows that in giving a judgment, courts usually reasonably explain in the operative part the possibility of applying for the review of such judgment under the conditions provided for in Article 18 of the Regulation. However, some courts explain such right only by indicating this possibility in abstract terms[962], others by specifying the conditions of the very review[963]. Yet, sometimes the possibility of review is not referred to in a judgment at all[964]. A judgment shall be served on parties in accordance with Article 13 of the Regulation.

419. Considering the purpose of the Regulation to speed up proceedings, it is very important that the Regulation has established maximum time limit for performing procedural actions. Efficiency of the procedure is thereby ensured, and Member States are not allowed to set their own time limits. The European Commission in its draft Regulation had provided for a final six month time limit within which a procedure shall be closed. Yet, Member States did not agree with such suggestion. According to V. Vebraite, the establishment of such time limit would be appropriate for parties to a dispute to decide if the Procedure should be used altogether, and may also oblige courts to comply with time limits. Even though such provision does not exist, after taking into account currently established time limits for procedural actions, it is to say that it really is possible to resolve a small claim within half a year[965].

6.1.8.3. Litigation costs (Art. 16)

420. Article 16 of the Regulation establishes that the unsuccessful party shall bear the costs of proceedings. However, a court shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim. According to V. Vebraite, it is thus sought that a procedure is as economical as possible,

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[961] See, for example, Vilnius 1st District Court ruling of 25 February, 2011 in a c.m. *UAB Agentūra „Jungtinės spaudos paslaugos“ v. Beer Konzept*, No. 2-2874-790/2011, cat. 35.4; 116.1.

[962] E.g. Vilnius Region District Court ruling of February 11, 2011 in a c.m. *A. S. v. Air Baltic Corporation AS*, No. E2-390-855/2011, cat. 44.2.4.1.; 44.5.2.; 44.8.

[963] E.g. Vilnius 1st District Court ruling of 25 February, 2011 in a c.m. *UAB Agentūra „Jungtinės spaudos paslaugos“ v. Beer Konzept*, No. 2-2874-790/2011, cat. 35.4; 116.1.

[964] Vilnius 1st District Court ruling of Thursday, January 12, 2012 in a c.m. *A. K. v. „Hotel Fortina“*, No. 2-504-465/2012, cat. 116.1.

[965] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 42.

and parties do not unnecessarily spend money for litigation. However, the author says that reasonable representation costs shall be recovered, even though the Regulation establishes that participation of a lawyer in proceedings is not mandatory. One can agree that costs that shouldn't be recovered, are, for example, cross-border travel costs of lawyers and other persons, provided that there is a possibility to have a local representative, besides, expenses which shall be regarded as disproportionate to a claim include expertise not imposed by the court and so[966]. Recital 29 of the Regulation also indicates that given the objectives relating to simplicity and cost-effectiveness, a court shall oblige the unsuccessful party to recover only those litigation costs, including, for example, costs associated with the representation of the other party by a lawyer or any other legal professional, or costs associated with service and translation, which are proportionate to the value of the claim or which were incurred necessarily. Hence, expenses are to be covered by the unsuccessful party, however, only in the case where they were necessary or are proportionate to the value of a claim. This rule is particularly relevant when expenses associated with collecting evidence are too high[967]. For example, a court may refuse to recover translation costs incurred by a party unnecessarily and on its own initiative by translating documents, which were clearly unnecessary for giving a judgment and effectively exercising procedural rights. Especially, since a court itself can request to translate relevant documents (Par. 2, Art. 6 of the Regulation).

421. Litigation costs shall be established by national legislations (Recital 29 of the Regulation). Therefore, the scope of litigation costs, which may be distributed if proceedings take place in Lithuania, is primarily established by Article 79(1) and 88 of the CCP. In addition. in deciding on recoverable representation costs, Article 98 of the CCP shall be followed. However, if the value of litigation costs allowed in Article 98 of the CCP remains clearly disproportionate to the value of a claim, a court may, in accordance with Article 16 of the Regulation, reduce the amount of representation costs to be awarded to the successful party event further (e.g. if representation costs significantly exceed the value of the claim). Nevertheless, we believe that not recovering representation costs altogether based on the grounds that they were unnecessary, is usually no possible, given that in this case we are dealing with cross-border proceedings, meanwhile the ESC Procedure, despite attempts to simplify it as much as possible, is not clear enough to do without an advocate or any other legal professional.

422. Lithuanian CCP establishes that a court may deviate from usual rules of distributing litigation costs by considering if the procedural actions of parties were appropriate and evaluating the reasons due to which the litigation costs had occurred (Par. 4, Art. 93; Par. 1, Art. 94; Par. 5, Art. 96 of the CCP). Procedural actions of a party are

[966] VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Teisė*, 2011, nr. 79, p. 43.

[967] See NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 16, Par. 2 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

considered to be appropriate if he fairly exercised his procedural rights or fairly fulfilled his procedural obligations (Par. 4, Art. 93 of the CCP). The Regulation does not prohibit applying these rules. Quite the opposite, we believe that the aforementioned national civil procedure rules essentially comply with and express the requirements concerning the necessity and proportionality costs, established in the Regulation.

423. The aforementioned rules shall also apply to any appeal (Par. 2, Art. 17 of the Regulation). Besides, we believe that if a court itself has clearly caused the incurrence of certain disproportionate expenses, they should not be awarded to the unsuccessful party. These expenses shall essentially be covered by the court itself.

424. An application concerning litigation costs can be submitted in a claim Form A (Point 7.3) and an answer Form C (Point 4). In deciding on representation costs, in accordance with Article 19 of the Regulation, one may follow Article 98(1) of the CCP, according to which these expenses shall not be awarded if the application for their award and evidence supporting their amount were not submitted until the end of the investigation of a matter on its merits.

425. According to Lithuanian CCP, litigation costs shall usually be awarded only if they were actually incurred. Therefore, a court may not award expenses if there is no evidence supporting their validity, and interested parties are recommended to present them to a court in advance. However, Lithuanian court should not outrightly refuse to award litigation costs as not actually incurred if a person to have lodged the application for their awarding did not enclose evidence supporting their validity in the claim form, and the court did not undertake any measures to explain to the applicant what (negative) legal consequences it may cause, despite the fact that in this particular situation it was required (e.g, an application is lodged by a citizen of another Member State who does not have a professional representative). Such conclusion follows from Article 12(2) of the Regulation, besides, given that the Regulation does not specifically establish an obligation to submit evidence confirming that the expenses requested to be rewarded were actually incurred. A court shall not apply national civil procedure rules in such a way that would lead to an obvious procedural surprise for the participant to the proceedings. If there is a risk that such surprise committed, a court shall fulfill his obligation of explanation.

6.1.8.4. Enforceability of the judgment (Art. 15)

426. Article 15(1) of the Regulation indicates that a judgment given in the ESC Procedure shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required. Hence, all first instance judgments given in the ESC Procedure are immediately enforceable, and their effectiveness is not required. The aim is, among others, to discourage a defendant from lodging an appeal merely with the goal of delaying the enforcement of a judgment. Lithuanian courts are recommended to

indicate in giving a judgment in the ESC Procedure that the judgment is enforceable from the date of delivery. Yet, Lithuanian court usually do not present such information in the operative part of a judgment[968].

427. It should be emphasized that even though a judgment given in the ESC Procedure is enforceable regardless of whether it has been challenged, Article 23 of the Regulation provides for a possibility of applying (in Lithuania – to a local court in the location of enforcement (Par. 3, Art. 31 of the Implementation Law) for the stay or limitation of enforcement of this judgment. Such application may be lodged not only after an appeal has already been submitted, but also as long as the time limit for lodging an appeal has not expired.

428. Article 282(2) of the CCP establishes that challenging immediately enforceable judgments or orders does not suspend their enforcement. However, if a first instance judgment, given in the ESC Procedure, is challenged by *lex fori* civil procedure rules, or if an application for its review in accordance with Article 18 of the Regulation is lodged, a party, against whom the judgment is requested to be enforced, may apply to a local court in the location of enforcement (Par. 3, Art. 31 of the Implementation Law) with a request to stay or limit the enforcement of such judgment. Hence, Article 282(2) of the CCP concerning an enforceable first instance judgment, given in the ESC Procedure, shall not apply and the enforcement of such judgment may be suspended or limited.

429. Article 15(2) of the Regulation provides that Article 23 of the Regulation "Stay or limitation of enforcement" shall also apply in the event that a judgment is to be enforced in the Member State where the judgment was given. Therefore, the aforementioned provisions also apply in a case where Lithuanian judgment, given in the ESCP, is to be enforced in Lithuania.

6.1.9. Appeal and review of a judgment (Art. 17 and 18)

430. As mentioned above, a judgment, given in the ESC Procedure, is immediately enforceable. That is not to say that it is no longer possible to review and evaluate the legality and validity of such judgment. The Regulation indicates two possibilities of correcting the errors made by a first instance court – an appeal an review of a judgment.

6.1.9.1. Appeal (Art. 17)

431. Article 17(1) of the Regulation establishes that Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal

[968] See, for example, Vilnius 1st District Court ruling of Thursday, January 12, 2012 in a c.m. *A. K. v. „Hotel Fortina“*, No. 2-504-465/2012, cat. 116.1; Kaunas District Court ruling of 26 September 2011 in a c. m. *E. C. v. V. K.*, No. 2-13861-886/2011, cat. 116.1; 130.2.5.

shall be lodged. The Commission shall make that information publicly available. Hence, Member States are not obliged by the Regulation to entitle persons to an appeal against a first instance judgment, given in the ESC Procedure. Shall this right be granted is to be decided by the Member States themselves. If the right to an appeal is provided for, it shall be implemented in accordance with civil procedure rules of a relevant Member State, in which the challenged judgment was given. Information on whether judgments given in the ESC Procedure are subject to appeal is provided in the European Judicial Atlas[969]. However, based on the provided information, we believe that it would be quite difficult for a person residing in the State other than the State where appeal should be brought, to exercise his right to appeal without the assistance of a qualified lawyer – information is presented in the website rather laconically. Therefore, it is considered if a unified appeal form for all Member States shall be approved.

432. In Lithuania all judgment, given in the European Small Claims Procedure, can be challenged by appeal procedure (Art. 29 of the Implementation Law). However, we have to note that information provided on the European Judicial Atlas website on the time limit for appeal in Lithuania is misleading. Since 1 October 2011 all judgments shall be challenged within 30 days of their giving (Par. 1, Art. 307 of the CCP). However, the Atlas continues to provide information saying that when applicant's domicile or residence is in a foreign State, an appeal may be lodged within forty days within the delivery of a first instance judgment[970]. It once again demonstrates that information provided in the Atlas is unreliable, and competent Lithuanian authorities do not care to update this information in a timely manner.

433. An appellate judgment (order), given after investigating an appellate against a judgment, given in the ESC Procedure, may be challenged by a cassation appeal in accordance with the general procedure. Provisions of the Regulation in no way limit the possibility of submitting an application for review of proceedings provided for in Lithuanian civil procedure law.

6.1.9.2. Review of a judgment (Art. 18)

434. According to Article 18(1) of the Regulation, a defendant shall be entitled to apply for a review of a judgment given in the European Small Claims Procedure before the court with jurisdiction of the Member State where the judgment was given where: a) i) a claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and ii) service was not effected in sufficient time to enable him to arrange for his defense without any fault on his part, or b) the defendant was prevented from

[969] See http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lt.jsp?countrySession=20&#statePage0 [Accessed on 1 November 2012].

[970] *Ibid.*

objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly.

435. The purpose of the above provision is to ensure that a judgment, which can be enforced in another Member State without exequatur and scrutinizing if it does not violate the *ordre public* of the Member State of enforcement, is not given in a procedure, in which the fundamental civil procedure principles are violated without the fault of a defendant. This provision also demonstrates the aim to grant the right of correcting possible errors or deficiencies made during a decision making procedure only in that Member State, in which the judgment was given, thereby re-establishing and actually expressing the necessity for Member States to trust each other's court systems. It should be emphasized that the application for review can only be submitted by a defendant.

436. German case law indicates that the application of Article 18(1)(a) is more concerned with the moment of becoming aware of and familiarizing oneself with the served document, rather than the moment of service. It states that Article 18 of the Regulation shall be applied in those cases, where a person, without a fault on his part, becomes familiar of the content of the served document too late[971]. Therefore, even if in legal terms the service was timely, yet without a fault of his own the debtor became familiar with the content of the document too late, Article 18 of the Regulation shall be applied. In addition, it also indicates that there is a prevalent position that the considered provision of the Regulation may be applicable not just when the service was effected in accordance with Article 14 of the Regulation, but also when service was effected in accordance with Article 13 of the Regulation, yet, without any fault of his own, he still became familiar with the content of the document too late[972]. Nevertheless, there is no unanimous opinion on this subject.

437. Article 30 of the Implementation Law establishes:

- A judgment, given in the European Small Claims Procedure, in cases set out in Article 18(1) of Regulation (EC) No. 861/2007 shall be reviewed by the court which has given the judgment.
- After accepting the application for review of the judgment, the court shall forward a copy of the application and its supplements to the defendant and inform him that he shall, within fourteen days of dispatching the application, submit a written response to the application.
- The court shall investigate the application for review of the judgment in writing, no later than fourteen days of the end of the time limit for submitting a response to the

[971] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 18, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[972] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 18, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

application, and rule on one of the decisions set out in Article 18(2) of Regulation (EC) No. 861/2007.

- If in the same case on European small claims both an appeal and an application for review of a judgment are submitted, the appeal shall be investigated first.

438. If in the review procedure the court does not determine the grounds provided for in Article 18(1) of the Regulation, it shall reject the application for review and the judgment shall remain in force. If the court decides that the application for review is justified for one of the reasons established in Paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void (Clause 2, Par. 2, Art. 18 of the Regulation).

439. The Implementation Law does not establish whether a court order given in the review procedure is subject to appeal. We believe that given the absence of clear legal regulation, and the review procedure resembling in some ways the procedure for renewing proceedings set out in Chapter XVIII of the CCP, both the decision to reject an application for review and the decision to grant it shall be challenged by the general procedure, by analogy applying provisions of Chapter XVIII of the CCP (see also on this subject Par. 638 of the Research).

440. The Implementation Law also does not indicate whether after the annulment of a judgment on the grounds indicated in Article 18(1) of the Regulation, the ESC Procedure shall be considered closed and the claimant shall re-submit his claim, or whether the ESC Procedure shall be renewed and the court shall restart investigating the claim. For example, in Germany the ESC Procedure in such case is resumed, and the status of the case is returned to the situation that was before delivering the judgment (Par. 1, Art. 1104 of the German CCP). In our opinion, this is a reasonable provision. However, in Lithuanian in the considered case there is no legal grounds to resume proceedings. The Implementation Law indicates only that a court shall make a decision in accordance with Article 18(2) of the Regulation, and does not provide for any further obligations, such as resuming proceedings.

441. The Regulation does not provide for a possibility of requesting to review, in accordance with Article 18 of the Regulation, the decision (order), which an appellate court delivered after scrutinizing an appeal against a judgment in the ESC Procedure[973]. The Regulation also does not establish any time limits for annulment, upon the expiry of which it shall not be possible to apply for review. Nevertheless, the Regulation does establish that after learning about the circumstances allowing for a review, a person shall act immediately. Such provision is criticized (see Par. 632 of the Research).

[973] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 32. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

442. Article 18(1)(a)(ii) and (b) of Regulation 861/2007 are essentially identical to corresponding provisions of Regulation 805/2004 and 1896/2006, therefore also see Paragraphs 191, 631 and 632 of the Research.

443. Lodging of an application for review does not automatically suspend the enforcement of the judgment on which this application has been submitted. However, after lodging an application for review, a claimant may apply for the stay or limitation of enforcement of a judgment in accordance with Article 23 of the Regulation.

6.1.10. Recognition and enforcement of a judgment in another Member State (Art. 20, 21).

6.1.10.1. Automatic recognition and enforcement (Art. 20, Annex IV)

444. According to Article 20 of the Regulation, a judgment given in a Member State in the European Small Claims Procedure shall be recognized and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition. Hence, the provision in question establishes that in order to enforce a judgment, given in the ESCP, in another Member State (with the exception of Denmark), the exequatur procedure is not required, which gives the considered procedure a huge advantage. Article 31 of the Implementation Law establishes that a judgment given in the European Small Claims Procedure and certified using a standard Form D set out in Annex IV of Regulation (EC) No. 861/2007, shall be held as an enforcement document. A claimant, seeking to allow to enforce a judgment, given in the ESC Procedure, in Lithuania, shall apply directly to a bailiff (see more 6.1.10.2 of the Research). This allows for implementing one of the main objectives of the Regulation – eliminating intermediate proceedings necessary to enable recognition and enforcement, in the other Member States, of judgments given in one Member State in the European Small Claims Procedure.

445. Unlike established in Article 11 of Regulation 805/2004, certification of a judgment given in the ESCP as enforceable also implies that its legal consequences, as well as its *res judicata* power (automatic recognition) are automatically recognized in the other Member States (with the exception of Denmark), and it does not need to be certified in accordance with Brussels I Regulation. This allows for expressing the essence and nature of the ESCP as a distinctive civil procedure.

446. A court of a Member State of enforcement cannot refuse to enforce an ESCP judgment declared as enforceable event if it violates *ordre public* of the State of enforcement, as the protection from public order violations, which may create grounds for refusing to enforce an ESCP judgment, is entrusted to courts of the Member State of origin.

447. Article 20(2) of the Regulation establishes 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. Hence, a court shall not *ex officio* grant a certificate on an ESCP judgment – it is necessary to apply for it using a relevant application. It should be emphasized that this certificate is only necessary in enforcing a judgment in another Member State[974]. Such conclusion follows from, among others, Chapter III of the Regulation, which contains the analyzed Article 20 pf the Regulation, named "Recognition and enforcement in another Member State. Therefore, if a Lithuanian judgment given in the ESC Procedure is to be enforced in Lithuanian, the certificate is not necessary. In such case, an enforcement order may be obtained by general procedure.

448. An application for the granting of a certificate in accordance with Article 20(2) of the Regulation may be set out in claim Form A (Point 9).

449. Neither the Regulation, nor the Implementation Law establishes any procedure for granting a certificate. We believe that Article 646 of the CCP shall be *mutatis mutandis* applied in this case. Refusal to grant a certificate may be challenged by a separate appeal (see on this subject Par. 121 of the Research). Granting of a certificate, we believe, shall not be subject to a separate appeal. It is nor provided for in the Implementation Law, nor the Regulation, besides, it is not required by the situation either.

450. German legal doctrine indicates that in granting a certificate, a court shall not scrutinize if procedural rules set out in the Regulation were complied with in giving a judgment under it[975]. This can probably be explained by the fact that a claimant is entitled to apply for review of a judgment given in the ESCP, an may also lodge an appeal. These measures should be sufficient for a claimant to effectively protect his rights and legal interests.

451. Chapter III of this Regulation shall also be applied in determining costs associated with the judgment given by the procedure indicated in this Regulation, estimated by court officials (Recital 33 of the Regulation).

6.1.10.2. Enforcement procedure (Art. 21)

i) Law governing enforcement procedures (Par. 1, Art. 21)

452. Article 21(1) of the Regulation establishes that without prejudice to the provisions of Chapter III of the Regulation, the enforcement procedures shall be governed by the law of the Member State of enforcement. A judgment given in the

[974] VOIT, Wolfgang. §§ 1097 ff. Introduction, paragraph 36. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[975] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 20, Par. 5 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement. A judgment given in the European Small Claims Procedure and certified using a standard Form D set out in Annex IV of Regulation (EC) No. 861/2007, shall be held as an enforcement document (Par. 1, Art. 31 of the Implementation Law). Therefore, it shall be enforced in Lithuania under the same conditions and according to the same enforcement rules as other enforceable documents. A claimant may apply for the enforcement of a judgment certified by the certificate indicated in Annex IV directly to a bailiff. However, as mentioned above, an application for enforcement may only be submitted in another Member State. If a judgment is to be enforced in its Member State of origin, Chapter III of the Regulation shall not be applicable, and the enforceable document must be received in accordance with conditions and procedures established in the relevant State's law.

453. We believe that the Implementation Law uses inappropriate legal terminology. As an enforceable document within the meaning of Lithuanian civil procedure shall be recognized not a judgment given in the European Small Claims Procedure, but rather a certificate granted in accordance with standard Form D set out in Annex IV.

454. Actions of enforcement in relation to the judgment given in the ESC Procedure may be challenged in cases and by the procedure set out in the CCP. That is to say that means of defense established in the law of the Member State of enforcement may be used against the enforcement actions of the aforementioned judgment, however, only inasmuch as it complies with the Regulation. For example, it is possible to request the stay or termination of enforcement actions in accordance with relevant CCP provisions. It should be emphasized, however, that by using means of defense against the enforcement of a judgment given in the ESCP in the Member State of enforcement established by *lex fori*, the judgment itself cannot be reviewed on its merits – is prohibited by Article 22(2) of the Regulation.

ii) Documents to be submitted (Par. 2, Art. 21)

455. Article 21(2) of the Regulation indicates that the party seeking enforcement shall produce: a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and b) a copy of the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European Small Claims Procedure. The content of Form D shall be translated by a person qualified to make translations in one of the Member States.

456. For requirement to submit an authentic copy of a document see 4.1.6.1. It should be emphasized that the Regulation does not require to submit a translation of the judgment, given in the ESC Procedure, into the language of the Member state of enforcement. All information necessary for enforcement is essentially indicated in the certificate granted under Article 20(2) of the Regulation. A copy of the certificate provided shall also be authentic.

457. The Implementation Law does not indicate whether it is required to submit a translation of the certificate indicated in Article 20(2) of the Regulation into Lithuanian language. Nevertheless, a translation into Lithuanian language is required in Lithuanian, as the European Commission is informed so[976]. However, Article 21(2)(b) of the Regulation may be interpreted the same as Article 20(2) of Regulation 805/2004, i.e. the Regulation provides for the necessity to submit a translation of the certificate only where it is necessary (see also Par 241 of the Research) . It can, therefore, be said that given that Form D is a standard one (Annex No. IV of the Regulation), its translation cannot be required where this form is not supplemented by personal data, which may be incomprehensible for a competent enforcement official in the Member State of enforcement. However, practice of European countries even in this case demonstrates that such interpretation is not widespread and a full translation of the content of the certificate into the language used in that Member State is usually required. On the other hand, however, some Member States have notified that they will also accept documents in other Member State languages[977]:

State	Language in which documents may be accepted
Belgium	Belgium only accepts its official language or one of the official languages of the place of enforcement, as established in Belgium national law
Bulgaria	Bulgarian
Czech Republic	Czech, German, English
Germany	Only German language can be used. In Sorbian citizens' hometown regions Sorbs have the right to use Sorbian language in court.
Estonia	Estonian, English
Greece	Greek
Spain	Spanish
France	Acceptable languages according to Article 21(2)(b): French, English, German, Italian and Spanish
Ireland	Irish, English
Italy	Italian
Cyprus	Acceptable language in courts is Greek. However, in order to apply the Regulation, English language was added, which is also used in Cyprus.
Latvia	Latvian
Luxembourg	German, French
Hungary	Hungarian
Malta	Maltese, English

[976] See http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_communicationshtml_lt_lt.htm> [Accessed on 27 October 2012].

[977] See http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_communicationshtml_lt.htm> [Accessed at 27 October 2012].

Netherlands	Dutch
Austria	German
Poland	Polish
Portugal	Portuguese
Romania	Romanian
Slovenia	Official languages are Slovenian**,** also two national minority languages – Italian and Hungarian, used in courts in these minority regions
Slovakia	Slovak
Finland	Finnish, Swedish, English
Sweden	Swedish, English
United Kingdom	English

458. Article 25(1)(e) requires Member States to inform the European Commission of which public authorities have the power to act with regard to enforcement. Hence, this information can be accessed in European Judicial Atlas[978]. Yet, as usual, an in this case it is not always possible to find necessary information. For example, Luxembourg has not provided the above information.

459. It stems from Lithuanian court practice that persons are not always aware of the fact that they can apply directly to an officer with jurisdiction to perform enforcement actions for the enforcement of a judgment, certified by the certificate set out in Article 20(2) of the Regulation. For example, Lithuanian Court of Appeal has investigated an application to enforce such judgment. After scrutinizing the application, the court correctly pointed out that the Code of Civil Procedure of the Republic of Lithuania does not provide for the courts of the Republic of Lithuania to independently undertake measures to enforce foreign judgments in accordance with documents permitting enforcement provided together with these judgments. In order to enforce a judgment given by Willesden County Court of the United Kingdom of 20 May 2011 on awarding a small claim, the claimant is entitled to apply to a bailiff in the place of enforcement with a copy of the judgment, fulfilling all necessary conditions for determining its authenticity, and a certificate in accordance with standard Form D with its translation into Lithuanian language (Point 5, Par. 1, Art. 584; Par. 4, Art. 587; Art. 590 of the CCP; Par. 1, Art. 31 of the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure of the Republic of Lithuania; Par. 2, Art. 21 of the Regulation). Claimant's application has not been dealt with[979].

460. If documents provided for enforcement do not comply with the Regulation, also inasmuch as they do not violate requirements of the Regulation, the CCP and the Implementation Law, the bailiff may refuse to accept the certificate, granted under the Regulation, for enforcement *mutatis mutandis* in accordance with provisions of Chapter XLV of the CCP.

[978] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_lt_861.pdf> [Accessed on 28 October 2012].

[979] Lithuanian Court of Appeal Civil Division ruling of 5 September 2011 in a c. m. on M. M. D. M. application, No. 2T–149/2011, cat. 130.3.2.

iii) Other aspects of enforcement (Par. 3 and 4, Art. 21)

461. Article 21(3) of the Regulation provides that a party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have: a) an authorized representative; or b) a postal address in the Member State of enforcement, other than with agents having competence for the enforcement procedure.

462. Article 21(4) of the Regulation indicates that no security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement. This prohibition of discrimination applies not only to Member State citizens or residents, but also third party citizens and residents, providing for enforcement a judgment given in the ESCP[980].

6.1.10.3. Refusal of enforcement (Art. 22)

463. Article 22 of the Regulation establishes that enforcement shall, upon application by the person against whom enforcement is sought, be refused by a court with jurisdiction in the Member State of enforcement if a judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that: a) the earlier judgment involved the same cause of action and was between the same parties; b) the earlier judgment was given in the Member State of enforcement or fulfills the conditions necessary for its recognition in the Member State of enforcement; and c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given. A judgment given in the European Small Claims Procedure under no circumstances can be reviewed on its merits in the Member State of enforcement.

464. Article 31(2) of the Implementation Law establishes that applications for refusal to enforce judgments given in the European Small Claims Procedure, established in Article 22(1) of Regulation (EC) No. 861/2007 shall be investigated by Lithuanian Court of Appeal. These applications shall be investigated by *mutatis mutandis* applying provisions of Article 4(4), (5) and (6) of this law. Therefore, the decision of Lithuanian Court of Appeal three judge panel to refuse (or accept) to enforce a judgment given in the ESCP may be challenged by a cassation appeal. On the other hand, we believe that the

[980] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 21, Par. 12 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

procedure established in Article 4(4)–(6) of the Implementation Law is not entirely appropriate for investigating defendant's application for refusal of enforcement. As it stems from Article 4(4) and (5) of the Implementation Law, these provisions establish a simplified procedure for authorizing enforcement of a judgment. In turn, the procedure for refusing to authorize enforcement of an already enforceable judgment is essentially established in Article 4(6) of the Implementation Law. Therefore, we believe that it shall be sufficient to apply Article 4(6) of the Implementation Law for defendant's application concerning refusal to enforce a judgment given in the ESCP, i.e. his application shall be investigated by a three judge panel in accordance with procedural rules set for investigating separate complaints.

465. It is only possible to refuse to enforce a judgment given in the ESCP upon request of a person against whom the judgment is to be enforced. Neither the Regulation nor the Implementation Law establish any time limits for lodging such application. However, it would be beneficial if the Regulation established a time limit within which (since the finding out of the reason for the refusal) the defendant should apply to a court. In addition, the circumstance that a judgment given in the ESCP was refused to be enforced in one Member State, does not render it invalid, therefore, it may be continued to be enforced in the other Member States.

466. For the grounds of refusal of enforcement, provided for in Article 22(1) of the Regulation, *mutatis mutandis* see 4.1.6.3, as grounds established in Article 21(1) of Regulation 805/2004 and Article 22(1) of Regulation 861/2007 are very similar.

467. Thus, a court cannot refuse to enforce a judgment given in accordance with the Regulation on the grounds of *ordre public* clause. Only the irreconcilability of the judgment given in the ESC Procedure with an earlier judgment is subject to scrutiny.

6.1.10.4. Stay or limitation of enforcement (Art. 23)

468. Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, a court with jurisdiction or a competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought: a) limit the enforcement proceedings to protective measures; b) make enforcement conditional on the provision of such security as it shall determine; or c) under exceptional circumstances, stay the enforcement proceedings (Art. 23 of the Regulation).

469. Article 31(3) of the Implementation Law establishes that applications for the stay or limitation of enforcement of judgments given in the European Small Claims Procedure established in Article 23(1) of Regulation (EC) No. 861/2007 shall be investigated by a local court of the place where enforcement is sought. For possible issues in applying this jurisdictional rule see Chapter 4.1.6.2 of the Research. For the

application of measures concerning stay or limitation of enforcement also see Chapter 4.1.6.2 of the Research, since Article 23 of Research 805/2004 and Article 23 of Research 861/2007 on this subject are parallel. The only difference is that under Regulation 805/2004 certain measures in Lithuania may be applied by a bailiff, however, decisions on issues provided for in Article 23 of the Implementation Law on Regulation 861/2007 are left exclusively for the jurisdiction of a local court.

470. Local court orders delivered in accordance with Article 23 of the Regulation, we believe, shall be challenged by a separate appeal (see Chapter 4.1.6.2 of the Research). Yet, this issues shall be clearly regulated in the Implementation Law. Especially, since in Germany such orders are not subject to appeal (Par. 2, Art. 1105 of German CCP).

471. Stay of enforcement (Point c, Art. 23 of the Regulation) is only possible in exceptional cases, where competing interests are clearly in favor of a defendant (e.g. the claimant might incur irreversible damage), an application for review*prima facie* (at first) seems likely to be successful[981].

472. Article 23 of the Regulation shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given (Par. 2, Art. 15 of the Regulation). In other words, it is possible to apply for the stay or limitation of enforcement of a Lithuanian judgment given in the ESCP where such a challenge is still possible, or when it is challenged or an application for its review in accordance with Article 18 of the Regulation has been submitted.

473. Note that the concept of "where such a challenge is still possible" used in Article 23 of the Regulation is not sufficiently clear, i.e. it is not clear if it involves a time limit for lodging a cassation appeal and an application for renewing proceedings. We agree with the position that an effective judgment should not be considered to "still possible to challenge". Therefore, application for the stay or limitation of enforcement in this case shall only be possible to lodge where a cassation appeal or a request for renewing proceedings has been submitted and accepted, by holding that in such case a judgment is challenged within the meaning of Article 23 of the Regulation. However, Article 23 of the Regulation may be applied until the end of the time limit for lodging an appeal in accordance with Lithuanian CCP (30 days), since in a legal sense, a judgment has not yet come into effect and may be challenged by an ordinary judgment control form (appeal). The court deciding the stay of limitation of enforcement may set a reasonable time limit for submitting an appeal. If an appeal is not submitted within this time limit, imposed stay or limitation of enforcement measures are withdrawn[982].

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[981] By analogy: GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) Nr. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 23, Par. 8 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[982] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 23, Par. 6 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

474. Stay or limitation of enforcement can only be applied upon request of a party against which the judgment is to be enforced.

475. The limitation or stay of enforcement is only valid in the Member State in which the judgment to apply such measures was delivered. This judgments is not recognized in the other Member States. Therefore, for the limitation or stay of enforcement in the other Member States one should apply to competent authorities (courts) of these States[983].

476. Data regarding which authorities are applying Article 23 of the Regulation is provided in European Judicial Atlas[984] (Point e, Part. 1, Art. 25 of the Regulation).

7. Suggestions regarding Regulation 861/2007 and its application

477. Suggestions regarding Regulation 861/2007 and its application:

1) In investigating matters in accordance with the Regulation, Lithuanian courts shall primarily follow and apply provisions of Regulation 861/2007. National civil procedure rules shall be applied inasmuch as relevant issues are outside the scope of the Regulation. The main aspects of the application and interpretation of the Regulation to be considered in applying Regulation 861/2007, after taking into account presumable errors of Lithuanian courts, are listed in Table 7.1 below.

2) Lithuanian courts should not be afraid to use their right to contact European Court of Justice regarding explanation of certain provisions of Regulations. The Research has shown that on certain issues there is no unanimous opinion (see Table 7.2 below).

3) Regulation 861/2007 leaves some freedom of choice for a national lawmaker. However, a Lithuanian lawmaker has not bothered to regulate certain issues, which may inhibit effective operation of this legal instrument, as, to begin with, certain issues are debatable and there is no unanimous agreement on them in the legal doctrine, and also, courts, especially local ones, may find it difficult to resolve these issues by themselves. It is discussed whether the Implementation Law and other legislation should be supplemented with provisions, which would regulate the most controversial issues. Provisions of the Implementation Law should also be reviewed for their compliance with the Regulation. See more on these issues in Table 7.3 below.

4) Lithuanian Supreme Court has not yet investigated one matter related to the application of the Regulation. Therefore, it is thought that an overview of the application of the Regulation in lower courts would benefit the expansion of the application and interpretation of the Regulation. Especially, since Lithuanian Supreme Court has a Law Analysis and Synthesis Department, meanwhile, legal scholars, *inter alia* because of

[983] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 23, Par. 8 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[984] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_lt_861.pdf> [Accessed on 27 October 2012].

personal data protection, do not have full access to the information concerning the application of the Regulation stored in LITEKO system. Only by studying publicly available information it can be difficult to decide if the Regulation is interpreted and applied properly in Lithuanian court practice.

5) Even though the purpose of the objective has been to reduce costs related to small claims, an to simplify the Procedure, the Regulation does not regulate the structure (type) of stamp duty and other litigation or enforcement costs, essentially leaving it to the national law of civil procedure. In addition, allocation of litigation costs is also rather abstract, leaving considerable freedom for a judge dealing with the case. Many other relevant aspects are also left to national legal regulation (e.g. calculation of claim cost, possibility of appeal, court's obligation of explanation, representation characteristics, etc.). Regulation of the responsibility of a party of proceedings to provide proof is hard to comprehend even for legal professionals. Hence, first and foremost, due to different legal regulation and traditions in different Member States, operation of the Regulation in the European Union area becomes unequal and fragmented; secondly, achieving the goal to minizme the costs of the proceedings becomes extremely difficult; thirdly, to expect that nearly every member of the general population can use this Procedure, as was intended in adopting this Regulation, is apparently naive. Therefore, as the survey conducted by the researchers has demonstrated, the mechanism established by the Regulation is effective, yet should be improved. A more detailed regulation of the ESC Procedure, we believe, would be preferable in the future.

6) The Regulation establishes a quantitative criterion for small claim litigations, which essentially hinders the consideration of qualitative aspects of a claim. An extremely complex, in terms of legal application, claim may be investigated in pursuance of the Regulation, provided that it does not exceed EUR 2 000 and falls within the scope of the Regulation. Court cannot refuse to investigate a matter in pursuance of the Regulation if the conditions established in it have been fulfilled. Therefore, the simplified and accelerated procedure, which the Regulation has been aiming to establish, may also be applied in investigating such matters, which, according to their qualitative aspects (complexity, significance, etc.), should be investigated by the normal procedure. Hence, it is debatable if such legal regulation established in the Regulation is appropriate and adequate to the pursued objectives.

7) Forms established by the Regulation are not suitable neither for multiple claimants, nor multiple defendants. In addition, the standard form does not provide a space for indicating third parties, not bringing claims, whose participation in proceedings may be necessary (e.g. a guarantor). The standard form is still to be improved in this respect.

8) Even though Form A in Annex I of the Regulation indicates that details on stamp duty in the other Member States, as well as its payment methods, can be checked on the European Judicial Atlas in Civil Matters website, after opening the website, it

appears that information is being updated, whereas information on payment methods and procedure for calculating and paying stamp duty in Lithuania (e.g. to what account) is not available at all.

9) An obligation arises for Member States from Article 11 of the Regulation to ensure that interested parties can receive practical assistance in filling in the forms. The regulation does not make it clear what is sufficient for the fulfillment of this obligation (e.g. whether for this purpose assistance at courts, other authorities shall be provided), therefore States' position on these issues is likely to differ. In addition, Article 4(5) of the Regulation establishes that Member States shall ensure that all courts, in which the European Small Claims Procedure may be commenced, have a claim form. However, after one of the researchers came to 1st, 2nd and 3rd Vilnius local courts, none of them presented the aforementioned forms; document admission department clerks indicated that the courts did not have them. In addition, Vilnius 1st local court admission department clerk, after being asked if anyone within the court could provide practical assistance in filling out the above forms, indicated that the court does not give advice. Of course, making general assumptions from one instance is not possible, however, it shall be a warning for competent Lithuanian authorities and courts to start worrying that obligations arising from Regulation 861/2007 are fulfilled properly.

10) The European Judicial Atlas continues to provide information saying that when applicant's domicile or residence is in a foreign State, an appeal in Lithuania may be lodged within forty days within the delivery of a first instance judgment. It shows that information provided in the Atlas is not always reliable, and competent Lithuanian authorities do not care to update this information in a timely manner – since 1 October 2011 all appeals in Lithuania shall be lodged within 30 days of giving a judgment.

11) The Regulation does establish that after learning about the circumstances allowing for a review, a person shall act immediately. However, the fact that no time limit is set within which a defendant shall apply to a court for review is a deficiency of the Regulation, since Member States may have different interpretations regarding what is considered to be immediate action.

12) It is debatable if, in pursuance of specialization of judges and unified proceedings, claims under the Regulation, instead of being attached to all courts, should instead be attached to 5–10 largest Lithuanian local courts (e.g. one in each county or region), assigning to them, by the Implementation Law, the investigation of cases that are under the jurisdiction of other local courts.

13) Note that standard forms may be filled in at one's convenience directly online and later printed out on European Judicial Atlas in Civil Matters website (see http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_filling_lt_lt.htm) or on European E-Justice website (https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&plang=lt&init=true&refresh=1).

Table 7.1. – The main aspects to be considered in applying Regulation 861/2007 identified after taking into account presumable errors of Lithuanian courts	
Section in the Research	**Brief description of a main aspect**
6.1.7.3.2	We believe that the Regulation obliges Lithuanian judges to not only officially apply Lithuanian CCP provisions on the clarification of certain procedural questions, but also, if required by the situation and the imperative of fair proceedings, to ensure such awareness of parties to the proceedings, which would meet the standards set in the European Union and the goal of the Regulation to facilitate proceedings on small claims. Special efforts should be made to avoid contingencies where a judgment is founded on such procedural aspect, which the parties may have missed, held it irrelevant or due to which the had to decide on its powers *ex officio*, yet the court did not inform the parties and provide them an opportunity to comment on it.
6.1.7.4.2	Service by publication is not possible in the ESC procedure. We believe that service through a curator would also contradict with the requirements of the Regulation. It leads to conclude that if there are no possibilities to serve procedural documents by methods established in Article 13(1) of the Regulation or Articles 13–15 of Regulation 805/2004, proceedings cannot be continued under the Regulation.
6.1.7.6	Article 14(1) of the Regulation requires to notify a party of the consequences of not complying with procedural time limits and hence the possibility of giving a judgment without receiving a response. This court obligation shall essentially be fulfilled by dispatching to the relevant party an answer Form C, which clearly draws attention to the fact that failure to submit a response will lead to giving a judgment. The aforementioned information shall also be served on parties if a court issues summons to an oral hearing or establishes a time limit for providing additional information (Points a and c, Par. 1, Art. 7 of the Regulation), as a judgment can still be delivered according to available case material even in the case of absence at a hearing or without providing additional information.
6.1.8.2	The Regulation does not provide for a possibility of a default judgment as it is understood in the Lithuanian law.
6.1.8.2	By giving a judgment in accordance with the Regulation, courts are recommended to already in the introductory part indicate that it is being given in the European Small Claims Procedure and so. The operative part of a judgment, we believe, shall indicate that the judgment is to become enforceable upon its delivery, that for the stay or limitation of its enforcement one may apply in accordance with Article in accordance with Article 23 (Art. 15 of the Regulation). Lithuanian case law also shows that in giving a judgment, courts usually reasonably explain in the operative part the possibility of applying for the review of such judgment under the conditions provided for in Article 18 of the Regulation. However, some courts explain such right only by indicating this possibility in abstract terms,

	others by specifying the conditions of the very review. Yet, sometimes the possibility of review is not referred to in a judgment at all.

Table 7.2. – Main debatable issues (problems) with regard to the application of Regulation 861/2007

Section in the Research	Brief description of an issue
6.1.6.1	Provisions of the Regulation concerning submission of evidence to a court together with the claim are very unclear. In addition, no unanimous position on the possibility of applying rules concerning refusal of accepting late evidence, established by *lex fori*, exists (Ger. *Präklusion*).
6.1.6.3	It is unclear from the Regulation if a decision to reject an application as clearly unfounded has *res judicate* power. The Implementation Law does not regulate this issue either.
6.1.7.4.1	Service directly by post to persons outside the EU can violate the sovereignty of third parties and their international agreements with Member States. Therefore, if a document is to be sent to a person residing in a country that is not a Member State, the service method established in Article 13(1) of the Regulation, we believe, shall only be applied where it is allowed by international provisions, for example, Hague Convention of the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters.
6.1.7.4.2	Some authors claim that those methods of serving procedural documents that are not possible within the national law of a specific Member State cannot be applied. However, it is debatable if this position is reasonable. Article 13 (2) of the Regulation may be interpreted not as referring to Articles 13 and 14 of Regulation 805/2004, concerning minimum requirements, which service under the national law shall meet if a direct service by post under Article 13(1) of the Regulation is not possible, but as establishing a unified service law throughout the European Union.
6.1.7.7.2	A response is considered to have been served on time if it was dispatched within the set time limit, despite the fact that it reached the court later. However, different opinion exist on this subject that, among others, are based on Article 7(3) of the Regulation which establishes that a court shall give a judgment if it *has not received* a response within the set time limit.
6.1.10.4	Note that the concept of "where such a challenge is still possible" used in Article 23 of the Regulation is not sufficiently clear, i.e. it is not clear if it involves a time limit for lodging a cassation appeal and an application for renewing proceedings.

Table 7.3. – Main suggestions and comments regarding the Implementation Law

Section in the	Brief description of a suggestion/comment

Research	
6.1.6.3	Legal regulation established in the Implementation Law (Art. 28) might contradict with Article 4(3) of the Regulation, which provides that unless a claimant, having received a notification that his claim is outside the scope of the Regulation, withdraws the claim, the court shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.
6.1.7.7.4	If deficiencies, provided for in Article 4(3) or (4) of the Regulation, are identified in a counterclaim, Lithuanian courts cannot follow bluntly Article 28 of the Implementation Law, which should, seemingly, be applicable in this case, as it covers the second sentence of Article 5(7) of the Regulation, because a formal application of the aforementioned provision, we believe, may contradict the Regulation.
6.1.7.7.4	Article 28 of the Implementation Law establishes that in cases set out in Article 4(3) and Article 5(7) of Regulation 861/2007, a court must inform a claimant (defendant) that he, no later than fourteen days of the service of a court notification, is entitled to lodge a claim (counterclaim) complying with the requirements set out in the Code of Civil Procedure of the Republic of Lithuania. If a claimant (defendant) does not lodge a properly documented claim (counterclaim) to the court within the time limit established in Paragraph 1 of this Article, the application is held unplaced and returned to the claimant (defendant) by a court order. This court order may be contested by a separate dispute. The content of the aforementioned provision is difficult to understand and may be irreconcilable with the Regulation. To begin with, it is unclear if after receiving a defendant's counterclaim, exceeding EUR 2000, Lithuanian court shall oblige both the claimant and the defendant to resubmit a the claim and the counterclaim so that they meet formal CCP requirements. Second, even if such counterclaim is to be submitted only by the defendant, whose actions have led to the case being no longer possible to investigate in accordance with the Regulation, this legal regulation may contradict with Article 5(7) of the Regulation, which provides that if a counterclaim exceeds the limit set out in Article 2(1), the European Small Claims Procedure shall not be applied to the claim and the counterclaim, and they shall be investigated in accordance with appropriate procedural law, applied in the Member State in which the proceedings take place. Thus, the Regulation does not provide that it may be required to resubmit a counterclaim.
6.1.9.2	The Implementation Law does not indicate whether after the annulment of a judgment on the grounds indicated in Article 18(1) of the Regulation, the ESC Procedure shall be considered closed and the claimant shall re-submit his claim, or whether the ESC Procedure shall be renewed and the court shall restart investigating the claim.
6.1.9.2	The Implementation Law does not establish whether a court order given in the review procedure is subject to appeal.
6.1.10.3	Article 31(2) of the Implementation Law establishes that applications for

	refusal to enforce judgments given in the European Small Claims Procedure, established in Article 22(1) of Regulation (EC) No. 861/2007 shall be investigated by Lithuanian Court of Appeal. These applications shall be investigated by *mutatis mutandis* applying provisions of Article 4(4), (5) and (6) of this law. We believe that the procedure established in Article 4(4)–(6) of the Implementation Law is not entirely appropriate for investigating defendant's application for refusal of enforcement. It shall be sufficient to apply Article 4(6) of the Implementation Law for defendant's application concerning refusal to enforce a judgment given in the ESCP, i.e. his application shall be investigated by a three judge panel in accordance with procedural rules set for investigating separate complaints.
6.1.10.4	The rule concerning the jurisdiction of application for the stay or limitation of enforcement established in the Implementation Law should be corrected by establishing that the considered applications shall be lodged to the local court in the bailiff's, in charge of enforcing a judgment given in the ESCP, office location.
6.1.10.4	The Implementation Law does not regulate if judgments given (in their broadest sense) under Article 23 of the Regulation, are subject to appeal; also by what procedure the stay or limitation of enforcement under Article 23 of the Regulation shall be decided.

8. Review of the application of Regulation 1896/2006 and assessment of case law[985]

8.1. Purpose and subsidiary nature of the Regulation (Art. 1)

478. Article 1(1) of Regulation 1896/2006 (hereafter referred to as Regulation) establishes that the purpose of this Regulation is a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure; and b) to permit the free circulation of European orders for payment (hereafter EOP) throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

479. In analyzing the reasons for adopting this Regulation, V. Vebraite notes that nearly each Member State of the European Union has mechanisms in its national law on how to settle clear, undisputed pecuniary claims. Only the procedure for issuing a court order may differ. In some States (as in Lithuania or Austria) a court order is one-stage, whereas in others (as in Germany) – two-stage. In some States proving the validity of a

[985] In preparing this chapter, where appropriate, the researchers analyzed and used Lithuanian court and European Court of Justice practices relating to Regulation 1896/2006, which the researchers managed to retrieve on 1 October 2012 from publicly available Lithuanian court and European Court of Justice decision databases at www.infolex.lt/praktika; http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2; http://curia.europa.eu/juris/recherche.jsf?language=en.

pecuniary claim may not be required at all, while in others a creditor must provide evidence supporting the validity of a claim. Ways of facilitating the recovery of clear debts on a European scale have been considered for a long time, since the coming into effect of the Treaty of Amsterdam. First attempt to harmonize debt recovery among the European Union Member States and deal with delays in making international payments was Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions. Article 5 of this Directive states that the Member States shall ensure that an enforceable title can be obtained, irrespective of the amount of the debt, normally within 90 calendar days of the lodging of the creditor's action or application at the court or other competent authority, provided that the debt or aspects of the procedure are not disputed. This obligation was to be fulfilled by the Member States in accordance with national laws or other legislation. However, the Directive failed to produce desired results, as most Member States thought that national legal regulation was enough to ensure appropriate recovery of pecuniary claims. Due to this reason, the idea of creating a Community procedure for issuing a court order was launched. On 20 December 2002 the European Commission confirmed the Green Paper on a European Order for Payment Procedure and on measures to simplify and speed up small claims litigation. Moreover, on 25 May 2004 the Commission introduced a proposal for creating a European order for payment procedure. The Regulation itself was adopted on 12 December 2006 with significant changes, and came into force on 12 December 2008. It was the first time when a unified European Union procedure was created, under which a court order was to be issued for enforcement without exequatur procedure in the other Member States[986].

480. Therefore, it follows from the above that Regulation 1896/2006 is another step towards ensuring the free circulation of Member State judgments for enforcement in any other Member State without exequatur procedure. Unlike Regulation 805/2004, which only grants a judgment given in accordance with national procedure requirements a specific status, allowing to enforce it freely (without exequatur) in another Member State, Regulation 1896/2006 creates a distinctive procedure regulated by European Union law, which a creditor may decide to use along with legal defense mechanisms existing in national law. Use of this procedure allows a creditor to receive an EOP, which, after becoming enforceable in the Member State of origin, is recognized and enforced in the other Member States without the need for a declaration of its enforceability and without any possibility of opposing its recognition (Art. 19 of the Regulation). It creates preconditions for facilitating the recovery of uncontested international debts. It should be emphasized that the interpretation of the Regulation, as a European Union legal act,

[986] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 50-51.

should be autonomous, based on EU legal principles, and independent from Lithuanian civil procedure concepts and traditions[987].

481. In terms of the creditor, the discussed procedure is quite similar to the issue of a court order in accordance with Chapter XXIII of Lithuanian CCP (Peculiarities of investigating cases concerning the issue of a court order). However, there are significant differences related to additional protection of a defendant, etc., which will be discussed in other parts of this Research and which, compared to a national court order institute, create preconditions for additional disputes and delays in an EOP granting procedure. On the other hand, using the court order procedure established by national civil procedure, if a defendant resides outside of Lithuanian, is impossible (Point 3, Par. 2, Art. 431 of the CCP). In addition, in order to enforce a court order issued in accordance with Lithuanian CCP in another Member State, it would be necessary to either recognize it an obtain an authorization for its enforcement under Brussels I Regulation, or apply to a court for its certification as an EEO. Hence, the considered procedure allows for creditors who have relationships with EU Member State subjects to defend their rights and legal interests fast and efficiently.

482. Article 1(2) of the Regulation establishes that this Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law. This provision essentially reiterates the tenth recital of the Regulation, which indicates that the procedure established by this Regulation shall be additional to a claimant and shall be selected on his own discretion; he may decide to take action in accordance with a procedure provided for in national legislature. Due to this reason, existing mechanisms of recovering uncontested claims provided for in national law are neither changed, nor reconciled by this Regulation. V. Vebraite indicates that this procedure is optional and only the claimant can decide how he is going to defend his legal interests. A creditor may decide, providing that the claim right falls within the scope of this Regulation, to request the granting of a European order for payment, or bring an action in accordance with national laws and then, if necessary, apply for declaring a judgment enforceable in another Member State in accordance with Brussels I provisions. A creditor may also choose to certify the judgment (especially, if the court order has come into effect) as a European Enforcement Order in accordance with Regulation (EC) No. 805/2004[988]. Instead of the European order for payment procedure, a creditor may also apply to court in accordance with Regulation 861/2007, provided that the conditions established in it have been fulfilled.

483. According to V. Vebraite, a European order for payment procedure has several advantages compared to other procedures where a debt is clear and there is a very slight

[987] More on autonomous interpretation see NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009, p. 19-20.

[988] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 54.

possibility of a debtor contesting the claim. To begin with, it is a quite fast procedure, besides, it is not necessary to use foreign lawyer services, as the procedure is equal in all Community countries. At the same time, translation expenses are saved, since the procedure is based on established forms. Of course, the greatest advantage of European order for payment as compared to an ordinary procedure is the fact that it is enforceable throughout the Community without exequatur procedure[989].

8.2. Regulation scope (Articles 1, 2, 33)

8.2.1. Regulation material scope (Par. 1 and 2, Art. 2)

8.2.1.1. Concepts of civil and commercial matters (Par. 1, Art. 2)

484. Article 2(1) of the Regulation establishes that this Regulation shall apply to civil and commercial matters, whatever the nature of a court. Firs of all, it shall not extend to revenue, customs or administrative matters or the liability of a State for acts and omissions in the exercise of State authority (*"acta iure imperii"*).

485. As to what extent it is related to the concept of civil and commercial matters, also revenue, customs, administrative matters or the liability of a State for acts and omissions in the exercise of State authority (*acta iuere imperii*), see Paragraphs 74–82 of this Research, since on these subjects Regulation 1896/2006 is identical to Regulation 805/2004. For cross-border cases see 8.2.4.

486. Even though the Regulation indicates that it shall apply regardless of the nature of the court, due to the specificity of the procedure established by the Regulation, it is essentially impossible to lodge an and examine an application for an EOP in a criminal matter.

8.2.1.2. Matter categories outside of the scope of the Regulation (Par. 2, Art. 2)

487. Article 2(2) of the Regulation establishes that this Regulation shall not apply to: a) rights in property arising out of a matrimonial relationship, wills and succession; b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings; c) social security; d) claims arising from non-contractual obligations, unless: i) they have been the subject of an agreement between the parties or there has been an admission of debt, or ii) they relate to liquidated debts arising from joint ownership of property.

488. For Article 2(2)(a)–(c) of the Regulation see 4.1.1 of the Research, since matter categories listed in Article 2(2)(a)–(c) of Regulation 1896/2006 also fall outside the scope

[989] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 54.

of Regulation 805/2004. However, by comparing Regulation 805/2004 and 1896/2006, it is clear that it shall not apply to arbitration. Therefore, it is possible to request the granting of an European order for payment even if an agreement contains an arbitration clause. In such case a claimant shall be able to challenge the jurisdiction of a civil matter in his objections. It is also possible to request in accordance with the provisions of the Regulation to recover, for example, expenses agreed expenses incurred during an arbitration procedure[990]. If a debtor does not object to investigating the case in court, where there is an arbitration clause, and the EOP comes into effect, the issue cannot be raised in the review procedure (Art. 20 of the Regulation)[991].

489. It is very important for the application of the Regulation that its scope is limited by the fact that a European order for payment can normally be requested only on contractual obligations (Point d, Par. 2, Art. 2 of the Regulation). Therefore, non-contractual obligations, with the exception of cases provided for, are outside of the scope of the Regulation. According to V. Vebraite, such legal regulation can be mainly attributed to the fact that in the case of non-contractual obligations a lodging of an application to court is usually followed by the necessity to determine the value of the claim. However, V. Vebraite believes that such narrowing of the scope of the Regulation is unreasonable. After all, there is a possibility of a claimant not contesting the amount claimed in non-contractual legal relationships and, therefore, the claimant being able to defend his rights faster. In addition, national laws usually also allow to request the granting of a payment order concerning non-contractual obligations. Therefore, in this case the rights of a creditor having a non-contractual claim in a cross-border case are restricted. Under the current Regulation the request for granting a European order for payment on claims concerning the reward of maintenance is not possible either, unless a contract between the parties on the provision of maintenance is presented. Its is also not possible to recover in accordance with the European order for payment procedure damages incurred during an accident and so on. Such limitation also extends to cases where damage has been admitted, yet its value has not been agreed upon[992].

490. Non-contractual obligations shall be interpreted as in Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), i.e. shall include obligations concerning delict, strict liability, unjust enrichment or obtaining of property, management of another person's affairs (*negotiorum gestio*), and pre-existing relationships (*culpa in*

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[990] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 51-52.

[991] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 7. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[992] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 52.

contrahendo)[993]. Therefore, the scope of the Regulation does not include direct claims of victims against perpetrators' insurers[994], as well as claims arising from contracts benefiting third parties, where the claim is lodged by the third party himself[995]. However, if these obligations have been the subject of an agreement between the parties, such relationship does fall within the scope of the Regulation (Point d) i), Par. 2, Art. 2 of the Regulation). It is enough for the aforementioned cases to fall within the scope of the Regulation if the debtor has admitted the claim (and its amount) before the creditor's applying to the court for an EOP.

8.2.2. Geographic coverage of the Regulation (Par. 3, Art. 2; Art. 3)

491. Regulation 1896/2006 shall apply in all EU Member States, with the exception of Denmark (Par. 3, Art. 2 of the Regulation). See more on this subject in Paragraphs 84–85 of the Research. However, in applying the Regulation geographically, it is necessary to keep in mind that it is only applied to cross-border cases within the meaning in Article of the Regulation (see 8.2.4).

8.2.3. Regulation's applicability in time (Art. 33)

492. Regulation became applicable on 12 December 2008, with the exception of Articles 28, 29, 30 and 31 which became applicable on 12 June 2008. It should be emphasized that since 12 December 2008 applications for an EOP are possible even when events on which a claim has occurred took place before 12 December 2008.

8.2.4. The concept of a cross-border case (Art. 3)

493. As mentioned before, the Regulation shall apply only to cross-border cases. Article 3(1) of the Regulation establishes that a cross-border case, for the purposes of this Regulation, is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. V. Vebraite notes that the draft for creating a European order for payment procedure did not contain such limitation, therefore, the aim was also to allow to apply the procedure provided for in the Regulation to national pecuniary claims. A creditor would have been able to decide which procedure to use: the court order issue procedure provided for in national laws, or

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[993] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2232.

[994] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 6. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[995] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 2, Par. 5 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

the Regulation. Therefore, in the draft the Member States were not required to make any changes in their national codes of civil procedures after the coming into effect of the draft Regulation. Limitation to cross-border cases emerged as a compromise between the Member States and the European Commission. In addition, the European Commission's Legal Service in its conclusion also opposed such scope of the Regulation, since it believed it would contradict then in force Article 65 of the Treaty of Amsterdam[996].

494. V. Vebraite indicates that such narrowing of the Regulation is a step back in unifying the civil procedure on a European Union scale. Yet, creditors who are hardest hit by such limitation are those who do not have a procedure for granting a payment order at all in their Member State of domicile or residence (for example, the Netherlands). Thus, a natural or legal person who has an international claim right and can use the Regulation has greater rights. Meanwhile, in a national dispute only an ordinary settlement procedure is possible, in spite of a defendant not contesting a pecuniary claim. The definition of a cross-border case used in the Regulation does not allow for applying for a European order for payment where a creditor has a claim right against a debtor who resides in the same Member State as the creditor, yet his property is in another Member State, therefore, the judgment will also have to be enforced in another Member State. At large, one has to agree with the view that despite the Member States themselves seeking to protect their citizens' or companies' interests in the Regulation (especially debtors' rights), the selected scope of the Regulation makes it easier for foreign creditors to reach national debtors than national creditors to reach debtors in the other Member States. In addition, given the constant practice of the European Court of Justice that European Union civil procedure provisions are also valid in civil matters related to third parties, provided that the jurisdiction of a case complies with the provisions of the Regulations, it appears that this Regulation may also be applied in those cases where an applicant is a third party, yet the place of residence of the defendant is in one of the Community States[997].

495. It should be noted that where one of the parties resides in the Member State of the court seized for an EOP, meanwhile, the other party resides in Denmark or a non-EU country, such case shall not be held to be a cross-border case, since the concept of "in another Member State" used in the Regulation does not involve this (Denmark) State (Par. 3, Art. 2 of the Regulation), and Article 3(1) of the Regulation requires that at least one of the parties resides in *a Member state other than* the court seized. On the other hand, if a citizen of Denmark or a third country – party to the proceedings – resides in Germany or any other State, while the other party resides in Lithuania, such case shall be considered to be cross-border, if an application is to be submitted to, for example, a German court (provided that it has the jurisdiction over this case). The exact same

[996] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 52.

[997] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 52-53.

situation would be true if a German citizen or a company, whose location is in Germany, while the other party is Lithuanian or non-Lithuanian citizen, applied to a Lithuanian court for an EOP – such case shall be considered cross-border according to the Regulation. Therefore, a creditor whose domicile or habitual residence is in a Member State (with the exception of Denmark) other than that of the competent court, is entitled to apply for a European order for payment against a defendant who is domiciled or habitually resident outside of the European Union. In addition, if a debtor is domiciled or habitually resident in a Member State (with the exception of Denmark) other than that of the competent court, a non-EU applicant may decide to lodge an application for an EOP. An EOP granted during such procedure shall be enforced without exequatur throughout the EU, with the exception of Denmark. In any case, Danish courts do not examine applications for an EOP.

496. The aforementioned conclusions cannot be changed by the circumstance that a party obtained a claim or an obligation under claim or debt assignment contracts. The application of the discussed provision of the Regulation is only concerned with the fact that at least one of the parties is domiciled or habitually resident in a Member State other than the court seized, therefore, if the acquirer of the claim right (new creditor) resides in a Member State different than that of the court seized, the case is a cross-border one, even if the original creditor resides in the same Member State in which the addressed court is located. Therefore, international corporations may artificially create a cross-border nature of a case by transferring claims to their business units established in the other Member States.

497. Determination of a cross-border nature of a case is not concerned with the location of the fulfillment of a contractual obligation.

498. It should be noted that on 1 July 2013 Croatia is to become a European Union Member State. Therefore, the concept of Member State shall also involve Croatia from 1 July 2013. The application of the Regulation is also not concerned with the fact that an applicant does not reside in the Member State of the court seized for an EOP.

499. The nature of a cross-border case shall be determined during the moment of application for a European order for payment in accordance with this Regulation (Par. 3, Art. 3 of the Regulation), and not during the moment of the occurrence of the events on which this claim is based. In addition, later changing of a place of residence does not impact the applicability of the Regulation.

500. Article 3(2) of the Regulation establishes that a place of residence shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. It should be noted, however, that a case shall be considered to be cross-border in terms of the application of the Regulation not only if one of the parties is domiciled, but also habitually resident in a Member State other than

that of the court addressed. In Lithuania, we believe, this concept should be interpreted in accordance with Article 2.16 of the civil code[998] "Place of residence of a natural person".

8.2.4.1. *Habitual place of residence of a natural person*

501. See Paragraph 134. Practice guide for the application of Regulation creating a European order for payment emphasizes that in practice domicile or habitual residence of parties shall be determined by the information provided by a claimant in Form A. Since the initial investigation of an application can be performed by an automated procedure, it is enough to check if the address indicated by one of the parties is in a Member State different than that of the court addressed. On the other hand, if a court is unsure about the accuracy of information provided, it may ask the claimant to rectify the deficiencies of the application or to complete it[999].

8.2.4.2. *Location of a legal person*

502. See Paragraph 134.

8.2.5. The concept of European order for payment (Art. 4)

503. Article 4 of the Regulation establishes that the purpose of the European order for payment procedure is the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted. Therefore, a European order for payment (hereafter EOP) can only be issued on specific pecuniary claims. The procedure cannot be used for requesting to award, for example, movable property. In addition, the concept of "pecuniary claim" is subject to autonomous interpretation. The possibility to lodge an application for a European order for payment does not depend on the amount sought. Unlike most of the European Union Member States' national laws, the Regulation does not directly associate the possibility of using a European order for payment procedure with a the creditor's duty to fulfill his obligation for the debtor. Thus, when a debtor is entitled to require that a creditor fulfills his obligations, it is possible for the debtor to only submit objections against the application for a European order for payment. However, according to V. Vebraite, one should agree with many processualists' view that the concept of "pecuniary claim" within the meaning of the Regulation shall be interpreted more widely, including the fact that a pecuniary claim cannot be dependent upon the fulfilling of a counter obligation. In such case it would be possible to reduce the number of applications for a European order for payment: they are nonetheless contested later and a civil matter has to be investigated in

[998] The Gazette, 2000, No. 74-2262.
[999] *Practical guide to the Regulation on the application of European Order for Payments* [online]. P. 12 [Accessed on 28 September 2012]. At: <http://ec.europa.eu/justice/civil/document/index_en.htm>.

accordance with general provisions of civil procedure[1000]. German legal doctrine also indicates that the condition set out in Article 4 of the Regulation that a time limit for paying amounts has to be due is subject to autonomous interpretation and should be interpreted as requiring that a creditor's claim is not dependent upon the fulfillment of the creditor's counter obligations[1001].

8.2.5.1. *Pecuniary claim*

504. Claims arising from employment relationships fall within the concept of pecuniary claims. Time limit for paying the amount claimed during the submission of an application shall have fallen due. It is not possible to demand to recover, for example, a certain item or invalidate a contract.

8.2.5.2. *Specific amount*

505. Claimed amount shall be specifically defined. It is possible to request the awarding of interest (Point 7, Form A). It is enough to indicate an interest rate and the period (the start and end of interest calculation) for which they are demanded. Interest in such case is calculated by the court granting an EOP. Such conclusion follows from Article 7(1)(c) of the Regulation and is supported in legal doctrine[1002]. It should be noted that the European Court of Justice is currently dealing with the question of whether in granting an EOP it is possible to recover only that interest which has accrued and been calculated up to the issuing of an order, or it is still possible to also recover the interest up to the moment of repaying the principal debt (case C-215/11). This case has not been investigated yet. However, on 28 June 2012 Advocate General *Mengozzi* concluded that it should be allowed to claim interest until the complete repayment of the principal debt. As far as we know, Lithuanian courts do not shy away from recovering interest until the complete fulfillment of a claim.

8.2.6. Jurisdiction and its determination (Art. 6)

8.2.6.1. *General principles (Par. 1, Art. 6)*

506. In applying the Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No. 44/2001 (Par. 1,

[1000] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 53.
[1001] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2232.
[1002] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 4, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

Art. 6 of Regulation 1896/2006). Thus, a general rule is that Regulation 1896/2006 does not establish autonomous jurisdiction for a relevant Member State. In addition, each Member State is free to decide which specific court shall examine applications for an EOP, since Article 6 of the Regulation does not govern neither functional, nor specific, nor territorial jurisdiction within a Member State[1003]. Information on specific Member State courts who are entitled to issue an EOP is provided in European Judicial Atlas in Civil Matters[1004]. However, as far as Lithuania is concerned, we believe that this Atlas provides misleading information. Article 20 of the Implementation Law establishes that applications for a European order for payment shall be submitted in accordance with jurisdictional rules established in the Code of Civil Procedure of the Republic of Lithuania. Article 431(6) of the CCP establishes that cases shall be investigated by applications for a court order by local courts. This provision shall also be applied by analogy to the granting of an EOP. Therefore, all applications for an EOP since 1 October 2011, we believe, shall fall within the jurisdiction of local courts, while a specific local court shall be determined in accordance with jurisdictional rules set out in the CCP, with the exception of those cases where Regulation 44/2001, for example, its Article 5 provisions, establishes the jurisdiction of a specific local court. However, the Atlas still contains information that in those Lithuanian cases, in which the amount of a claim does not exceed one hundred thousand litas, an application for an EOP shall be lodged to a local court, while in the cases where it does exceed one hundred thousand litas – to a regional court.

507. If a defendant is not domiciled in a Member State, the possibility of bringing him to courts of the relevant Member State as a defendant shall be determined in accordance with the jurisdictional rules of that State.

508. It should be noted that in, for example, Germany all applications for an EOP[1005] fall within the jurisdiction of Local Court Berlin-Wedding, in Austria – Vienna Commercial Court, in Portugal – Porto local court, in Sweden – Swedish Executive branch, in Finland – Helsinki District Court, in the Netherlands applications are to be sent to 's-Gravenhage court[1006]. Such provision considerably facilitates the application for an

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[1003] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 15. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>. Recital 12 of Regulation 1896/2006 also provides that in deciding which courts have the jurisdiction to issue a European order for payment, the Member States should also properly consider the need to ensure the possibility of applying to courts.

[1004] See < http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsjurisd_lt.jsp?countrySession=20&#statePage0> [Accessed on 1 November 2012].

[1005] Even though the European Judicial Atlas indicates that all applications fall within the jurisdiction of a single local court, it is not entirely true, since in labor disputes applications for an EOP are not investigated by general competence, but rather labor courts. See GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 6, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1006] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsjurisd_en.jsp#statePage0> [Accessed on 16 September 2012].

EOP, since a creditor clearly knows which court he should address, and there is not need for understanding or being informed of relevant national jurisdictional rules, under which cases are allocated among the courts of the relevant Member State. Currently, application for an EOP without such information may be difficult, since, as it stems from the Atlas, in quite a few Member States applications for an EOP can be examined by more than one court, meanwhile, the determination of a specific court requires proper understanding and application of domestic provisions and jurisdictional rules of a Member State. Therefore, we believe that the example set by Germany and other States concentrating the granting of an EOP in one court should be followed, and the jurisdictional rule set out in the Implementation Law should be corrected by establishing exclusive jurisdiction over the investigation of applications for an EOP. Such decision would allow, among others, to ensure that the provisions of the Regulation are applied equally, and judges employed by the court appointed to examine the issues of the granting of an EOP could specialize in this area. This circumstance would also contribute to ensuring the effectiveness of this instrument. Yet, in implementing this proposition, it needs to be remembered that if a defendant lodges objections and the dispute shall transfer to the general proceedings, the case may be have to be transferred to a court with jurisdiction in accordance with the general jurisdictional rules, as the court with the special jurisdiction over investigating applications for an EOP may not always be competent to investigate a dispute in accordance with ordinary proceedings.

509. If an application for an EOP falls within the jurisdiction of several Member State courts, a creditor is entitled to choose a specific one[1007]. Proceedings for an EOP against several debtors, domiciled in different States, may only be initiated providing that they are connected by a common jurisdiction, i.e. both debtors can be sued in the same Member State in accordance with relevant jurisdictional rules (e.g. Art. 6 of Brussels I Regulation).

510. It should be emphasized that not in every Member State an EOP is issued by courts *stricto sensu*. As already mentioned, in Sweden it is done by Swedish Executive branch, while in Hungary – by notaries[1008].

511. Jurisdiction of a Member State court over investigating a dispute shall be substantiated in the application for an EOP (Point f, Par. 2, Art. 7 of the Regulation), for example, by indicating an agreement on the jurisdiction over the case.

512. It should be noted that the European Court of Justice (case C-144/12) is currently considering Austrian Supreme Court's request to give preliminary ruling on the following questions:

[1007] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 6, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1008] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsjurisd_en.jsp#statePage0> [Accessed on 16 September 2012].

1) Shall Article 6 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, be interpreted in a way that Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation No. 44/2001), under which the jurisdiction shall fall to the court to which a defendant arrives, should also be applicable in a European order for payment procedure?

2) If the answer to the first question was positive: shall Article 17 of Regulation No. 1896/2006 along with Article 24 of Regulation No. 44/2001 be interpreted in a way that says the lodging of an objection against a European order for payment leads to appearance in the court, provided that its jurisdiction is not contested?

3) If the answer to the second question was negative: shall Article 17 of Regulation No. 1896/2006 along with Article 24 of Regulation No. 44/2001 be interpreted in a way that says the lodging of an objection at the very most justifies jurisdiction by appearance at the court, provided that during it arguments on the merits of the case are provided, yet the jurisdiction is not contested?

513. Where an application for an EOP is lodged to a Lithuanian court which does not have jurisdiction over it, the court has the right to refuse to accept such application in accordance with Article 435(2) and Article 137(2)(2) of the CCP. It shall be done by using Form D (Art. 6; 8; Par. 1, Art. 9; Point a, Par. 1, Art. 11; Clause 2, Par. 1, Art. 11). A court shall verify jurisdiction over a case *ex officio*.

8.2.6.2. Consumers (Par. 2, Art. 6)

514. Article 6(2) of the Regulation establishes an exception from the aforementioned jurisdictional rules. If a claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No. 44/2001, shall have jurisdiction. Thus, if a claim arises from consumer legal relationships and the person sued is the consumer, Article 6(2) of the Regulation establishes a special jurisdictional rule which to this extent replaces the rules set out in Articles 15–17 of Brussels I Regulation. Therefore, in the considered case Article 15(1) of Brussels I Regulation and the concept of consumer contract set out therein are irrelevant. The jurisdictional rule set out in Article 6(2) of Regulation 1896/2006 is also applicable in those cases where a dispute arises between a consumer and another person carrying out non-commercial or non-professional trade activities[1009].

[1009] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2233.

515. The above rule implies that if during the time of concluding a contract the consumer resided in one Member State, and it was the place of execution of the contractual obligation, yet later he departed for another Member State, the application for the recovery of debt can only be lodged with the court in the place of the new habitual residence. Proceedings for an EOP cannot be brought against consumers residing outside of the Member States[1010]. If seeking that a case is investigated in Lithuanian courts, a creditor provides misleading information about the residence of the debtor-consumer, we believe the creditor shall bear the legal consequences of abusing the procedure established in Article 95 of the CCP.

516. More on the concept of consumer see Paragraph 134.

8.2.7. Initiation of a European order for payment procedure

517. The whole European order for payment procedure has approved forms. The aim is to simplify and reduce the costs of the procedure, and to prevent the Member States from making the procedure too bureaucratic. In addition, it is a stimulus for the Member States to automate the whole procedure as much as possible, even though it is not established in the Regulation[1011].

518. All forms can be conveniently filled out in various Member State languages by using dynamic forms available on E-justice website (https://e-justice.europa.eu/content_dynamic_forms-155-lt.do). It allows a creditor to use a form in a language that he understands and thereby fill in the form in the language that is used in the court addressed.

519. Note that on 23 October 2012 Commission Regulation (EU) No 936/2012 of 4 October 2012 on amending the Annexes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure, came into force. Therefore both parties to proceedings and courts shall begin to use new forms.

8.2.7.1. Submission of an application and Form A (Art. 7 and Annex I)

8.2.7.1.1. Application content (Par. 1-4, Art. 7)

520. Article 7(1) and (2) establishes that an application for granting a European order for payment shall be made by filling in Form A as set out in Annex I. The application shall state: a) the names and addresses of the parties, and, where applicable,

[1010] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 14. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1011] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 55.

their representatives, and of the court to which the application is made; b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs; c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded, unless statutory interest is automatically added to the principal under the law of the Member State of origin; d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded; e) a description of evidence supporting the claim; f) the grounds for jurisdiction; and g) the cross-border nature of the case within the meaning of Article 3.

521. As can be Seen from Annex I (Form A) to the Regulation, most of this form consists of codes which need to be properly drawn up. After indicating a relevant code, the condition to provide relevant information is usually considered fulfilled. For example, the condition indicated in Article 7(1)(f) of the Regulation requiring to state the grounds for jurisdiction shall be fulfilled by indicating a code 1 to 13 in Section 3 of Form A, and if any other grounds for jurisdiction exist, code 14 shall be indicated, which has to be further elaborated.

522. German legal doctrine indicates that a claimant may in principle use the form in a Member State language that he understands, and only individual information shall be drawn up in the language acceptable in the court of the Member State of origin[1012]. However, Lithuanian CCP clearly establishes that proceedings shall be carried out in Lithuanian courts in Lithuanian language (Par. 1, Art. 11 of the CCP), therefore, without a relevant establishment in the Regulation, we believe, Lithuanian courts have the right to require that the form is filled in and submitted in Lithuanian language. In addition, application Form A may have to be sent to a claimant (Par. 2, Art. 12 of the Regulation), therefore, Lithuanian courts may require its translation into a language that a defendant understands, or, where applicable, a language that meets the requirements of Article 8(1) of Regulation 1393/2007 or any other international agreement (e.g. Hague Convention of the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters) (Par. 3, Art. 113 of the CCP). However, in general courts are encouraged to avoid applying language rules formally and instead take into account specific circumstances, since the translation for forms submitted to a court may be unnecessary, as the court can easily understand its content by using analogous forms which are just as well provided in the Annex to the Regulation or on E-Justice website in Lithuanian. In addition, if evidence is presented in a foreign language together with an EOP, yet the description of evidence (in a language understood by the court) in Form A clearly suggests the validity and acceptability of the application, we believe it is unreasonable to require that a translation of the evidence is provided into a language that the court issuing

[1012] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 7, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

an EOP understands. An opposite interpretation is unlikely to be reconcilable with the objectives of the Regulation to reduce the costs and simplify debt recovery proceedings.

523. Bank account information, unlike provided for in Article 433(1) of the CCP, are not mandatory either, however if a claimant wishes, can be indicated in Section 5 of Form A. The guidelines for filling in Form A indicate that if interest until the day of judgment is claimed, the last date box shall not be used.

524. As already mentioned, the Regulation requires to state the cause of action, including a description of circumstances invoked as the basis of a claim and, where applicable, of the interest demanded, as well as a description of evidence supporting the claim. Recitals 13 and 14 of the Regulation note that a claimant should be required to provide sufficient information in the application for a European order for payment clearly defining and substantiating the claim, so that the defendant is able to make a well-considered decision whether to lodge an objection against the claim or to leave it uncontested; the claimant would be required to provide a description of the evidence supporting the claim. For this purpose the application form shall include as comprehensive list of evidence that is usually provided for substantiating pecuniary claims, as possible. However, V. Vebraite rightly points out that a description of evidence supporting a claim does not imply that the evidence has to be enclosed in the application. The claim itself shall only be described using the codes provided for in the form[1013]. A wider requirement for describing the cause of action would essentially invalidate the objective to simplify the procedures. Therefore, the description of evidence shall also be done by first entering a particular code in the form indicating the means of substantiation (written evidence, oral testimony, expert's report, etc.; See Section 10 of Form A), by which the applicant supports his claim. Given that in investigating an application for an EOP, a court only scrutinizes the probability of a claim (see more 8.2.7.2.2), the obligation to describe in the application the cause of a claim and its supporting evidence, as well as the grounds for jurisdiction shall not be overemphasized and applied too strictly – the provision of several keywords shall suffice. Otherwise, the automation of the procedure mentioned in the Regulation would become meaningless[1014]. On the other hand, practice guide for the application of the Regulation on the European order for payment indicates that a claimant, if he wishes to, may enclose evidence supporting the claims in the application[1015]. If this becomes a common practice, it is difficult to imagine how this procedure can become automated.

525. Note that in filling in the form, a claimant is not required to indicate the exact amount of stamp duty claimed. It is sufficient to enter in Section 9 of the Form [Code] a

[1013] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 55.

[1014] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 11. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1015] *Practical guide to the Regulation on the application of European Order for Payments* [online]. P. 16 [Accessed on 28 September 2012]. At: <http://ec.europa.eu/justice/civil/document/index_en.htm>.

code [01], while the amount is then specified by the court (see Section 9 of the guidelines for filling in the Application form provided for in Annex I to the Regulation). However, this provision does not exempt from the obligation arising in applying to Lithuanian courts to pay the amount of stamp duty calculated in accordance with relevant CCP provision, as well as enclose supporting evidence. If a claimant has incurred other expenses related to the investigation of a case (e.g. representation), such expenses shall be indicated in Section 9 of Form A, while also including their description and entering a specific amount. The Regulation does not indicate if it is possible to require to provide evidence supporting these expenses, or describe them in Section 10 of the Form. As it stems from the Form, only that evidence which is classified as "ID" and supports the principal (Section 6) or the interest (Section 7) shall be described in this section. However, if no descriptive information about other expenses related to the proceedings is provided, the court shall not even minimally control their validity, even though the control of obviously ungrounded claims is provided for in Articles 8 and 11 of the Regulation. In addition, in accordance with Lithuanian law, the recovery of representation expenses is limited (Art. 98 of the CCP). Therefore, we believe that a Lithuanian court should have the right to request to submit information describing other expenses related to proceedings, as well as evidence supporting them. On the other hand, if a claimant does not provide such information, it may be held as a reason for rejecting an application in the litigation costs part, yet not a reason for refusing to issue an order on the principal material legal claim (provided there are no other grounds for not granting it). A court could inform a claimant about such possibility (partial fulfillment) by a procedural document, by which he could ask to complete the claim form by information describing litigation costs, or by enclosing evidence supporting these costs. Where appropriate, Form C could probably be used as well (see more Chapter 8.2.7.4.1 of the Research).

526. It should be noted that Form A does not contain a specific section in which a claimant applying to a Lithuanian court could request to apply provisional protective measures. However, we believe that such request, which, among others, shall be valid (Point. 6, Par. 1, Art. 433 of the CCP), can be laid down in Section 11 [Additional statements and other information]. In deciding on the application of provisional protective measures, a court shall then follow the CCP (Par. 1, Art. 436; Art. 144–152) and draw up a separate ruling regarding this issue, since none of the forms set out in the Annexes to the Regulation provide any information on this matter.

527. Lithuanian CCP also imposes an obligation to attach to the procedural document, submitted to a court by a claimant, a document supporting representative's rights and obligations (Par. 5, Art. 111 of the CCP). Article 57(4) of the CCP establishes that the rights and obligations of an advocate or an advocate's assistant, as well as their scope shall be concluded with the client by a written contract or its extract.

528. Note that the European Court of Justice is currently dealing with the issue (case No. C-215/11) of whether formal requirements, which an application for an EOP has to meet, are exclusively set out in Article 7 of the Regulation, or a Member State court nevertheless is entitled to apply additional formal requirements for procedural documents established in national law. This case has not been settled yet, however, General Advocate Mengozzi gave his conclusion on 28 June 2012. The general advocate thinks that with the exception of cases when Regulation 1896/2006 specifically refers to national law, Article 7 of the Regulation shall be interpreted as providing a complete list of requirements that an application for an EOP shall meet. According to him, national courts cannot require, for example, that a claimant provides a copy of the application for the defendant. If this position of the general advocate is to be approved by the Court of Justice, the question will arise if national courts are allowed to demand from a claimant to provide along with his application a document supporting the payment of stamp duty, also documents supporting litigation costs or power of attorney, and the translation of the application into a language understood by the court or the defendant – none of the aforementioned issues are discussed in the Regulation and there are no specific references to national law, therefore, by following the logic of the general advocate, national courts could not demand such documents. Thus, the aforementioned decision of the Court of Justice will have significant impact on applying and interpreting the considered Regulation, as well as other Regulations to some extent.

529. Article 7(3) of the Regulation establishes that in the application, a claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin. Such acknowledgment shall be made and mandatory even when the applicant is not aware of the penalties provided for in the Member State of origin. If such acknowledgment is not provided in the form submitted to the court, it shall undertake measures for curing these deficiencies under Article 9 of the Regulation. If an EOP is granted in the absence of such acknowledgment, in principle its review can be sought under Article 20(2) of the Regulation.

530. Article 7(4) of the Regulation establishes that in an Appendix to the application the claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings within the meaning of Article 17 in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued. Therefore, unlike in Lithuanian CCP, if a claimant lodges an objection against the EOP, the case shall automatically transfer to ordinary proceedings, unless a claimant indicates in the Appendix to the application or thereof subsequently until the granting of an EOP that he opposes the transfer to ordinary proceedings. This provision allows a creditor to avoid additional costs in the event of opposition by the defendant. The defendant is not required to be informed about this

decision of the claimant. Therefore, he makes the decision on whether to lodge objections without knowing if the case will be subsequently transfered to ordinary proceedings.

531. It stems from the above that requirements of Article 7(1)–(3) are mandatory to a claimant, while the use of the possibility provided for in Paragraph for is optional.

532. The submission of an appropriate application for an EOP terminates the period for instituting proceedings (Par. 1, Art. 1.130 of the CCP), even though the Regulation does not provide for it.

533. It is possible to indicate bank information required for a claimant to pay court fees in Appendix 1 to Form A. However, non of the methods indicated in this Appendix (by credit card or the court charging claimant's account) are suitable for paying court fees in Lithuania, therefore, in applying to Lithuanian courts the filling of this Appendix is not required. Court fees shall be paid by the general procedure, i.e. stamp duty is to be paid by a method (Internet banking, payment by cash or a transfer, or other) selected by the person to an indicated revenue account of the State Tax Inspectorate under the Ministry of Finance (hereafter State Tax Inspectorate) (Point 5 of the rules of stamp duty calculation, payment, offsetting and refunding, established by the ruling of the Republic of Lithuania of 27 October 2011 No. 1240[1016]).

534. Kaunas Local Court, we believe, has reasonably indicated that the European Judicial Atlas in Civil Matters could provide information on what stamp duty payment forms are accepted by a relevant Member State, since experience shows that claimants may ask that a Lithuanian court charge stamp duty from, for example, an account in an Austrian bank (data provided by the National Courts Administration). However, Lithuanian courts cannot fulfill such request, meanwhile, curing of such deficiencies is not specifically provided for in Article 9 of the Regulation. On the other hand, in this case Lithuanian courts could look at the question on a wider level and in case of unpaid stamp duty follow Article 9 of the Regulation, by indicating the deficiency in Form B by a code [8 Expenses] and explaining that the stamp duty shall be paid by an appropriate method. In Estonia, Poland, Sweden, for example, Form B is used in cases of unpaid court fees[1017]. A survey of Lithuanian judges revealed that most of them issue a separate order for curing the deficiency (paying of stamp duty) in the discussed case.

535. Annex I to the Regulation provides guidelines for filling in the form, which should facilitate its use.

8.2.7.1.2. Application form and its details (Par. 5-6, Art. 7)

536. An application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and

[1016] The Gazette, 2011, No. 130-6171.

[1017] European Judicial Network in Civil and Commercial Matters. Summary of Replies to the Questionnaire for the Member States on the Application of the European Order for Payment, Regulation 1896/2006. Working Document no. 1/2010. P. 3.

available to the court of origin (Par. 5, Art. 7 of the Regulation). Therefore, submission of an application to a court clerk by entering into the record is not possible. The condition concerning whether an application may be submitted by electronic means is determined by considering if such possibility is provided for and accepted by a Member State. Information on the acceptability of electronic measures is provided in the European Judicial Atlas (see < http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_en.htm >; also see Chapter 8.2.7.12.2). So far, Lithuania has not notified about such possibility, despite the fact that its Electronic Application for a Court Order System has been active for some time now. However, this instrument is only suitable for obtaining court orders under Lithuanian CCP. Thus, less favorable conditions are created for exercising rights arising from European Union law than essentially analogous national laws. The situation is likely to change on 1 January 2013, when all procedural documents will be allowed to be served using electronic means of communication. However, as of yet applications for an EOP can only be submitted directly in a court (judicial custody) or by mail[1018].

537. Note that the European Judicial Atlas sometimes provide vague information concerning application methods accepted in some Member States (e.g. Bulgaria). It is considered to be a deficiency.

538. Lithuanian law (the Implementation Law), unlike, for example, that of Germany, does not establish that the application for an EOP needs to be submitted in a machine-readable form (, Ger. *maschinell lesbarer Form*). Therefore, in Lithuania only hand-filled forms are accepted.

539. Article 7(6) of the Regulation establishes that an application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with Paragraph 5, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements. However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. The Member States shall inform the Commission of such communications systems.

540. As already mentioned, submission of applications for an EOP by electronic means is currently unavailable in Lithuania. Information on systems existing in the other

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[1018] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_lt_en.htm#epo_communicationshtml2>[Accessed on 16 September 2012].

Member States should be provided in the European Judicial Atlas. See more on this subject in 8.2.7.12.2.

8.2.7.2. Examination of an application (Art. 8)

541. Article 8 of the Regulation establishes that a court seized of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure. As the data provided by the National Courts Administration suggests, an application for an EOP is usually examined within 5–8 days in Lithuania. We believe it meets the requirement of the Regulation to examine an application as soon as possible. On the other hand, however, the data provided by the National Courts Administration also shows that in 2010 and 2011 the granting of an EOP was examined on average within 17–19 days. It also follows from the aforementioned provision that a defendant is not informed about the examination of the application.

542. It should be emphasized that the above actions are not required to be performed by a judge (Recital 16 of the Regulation), besides, such examination may be conducted by an automated procedure, therefore, it implies that the procedure can be done without human interference, by creating an algorithm that allows to identify clearly unfounded claims[1019].

543. As it follows from Article 8 of the Regulation, in examining an application, a court shall, among others, scrutinize if it meets requirements set out in Article 2, i.e. if it falls within the material scope of the Regulation. If an application does net comply with Article 2 of the Regulation, is submitted to a wrong court, does not meet admissibility requirements, or is unacceptable due to any other reasons (see *mutatis mutandis* Par. 2, Art. 137), the court may refuse to accept it right away, i.e. reject the application for an EOP (Par. 1, Art. 9; Art. 11 of the Regulation; Par. 2, Art. 435 of the CCP, see also Chapter 8.2.7.5 of the Research).

8.2.7.2.1. Information examined by a court

544. As it follows from Article 8 of the Regulation, in examining an application, a court usually only examines information indicate in the filled application form, essentially considering them correct and reliable. This conclusion is supported by Recital 16 of the Regulation, which indicates that a court shall examine an application, including the issue of jurisdiction and description of evidence, on the basis of the information

[1019] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2234.

provided in the form. However, if a claimant, without prejudice to the rules established in the Regulation, enclosed additional documents, they shall be considered as well.

8.2.7.2.2. The concept of "a claim appears to be founded"

545. It should be noted that the considered Article (8 of the Regulation) is probably one of the most debatable in legal doctrine. The majority of theoretical and practical questions arise regarding the provision that a court shall examine if a claim appears to be founded. This provision can be interpreted and understood differently in different Member States. According to V. Vebraite, there are fears that such concept may lead to a court examining the validity of a claim on its merits, even though it is irreconcilable with the essence of the order for payment. V. Vebraite believes that the examination of an application for a European order for payment shall nonetheless be formal, it shall be scrutinized if the application meets all relevant requirements, and statements do not contradict one another. In addition, based on Article 14(4) of the Regulation, a defendant shall be informed in a European order for payment that the order has been issued based entirely on the information provided by the claimant, which was not examined by the court. V. Vebraite believes that the regulation of the examination of an application is the blind side of the Regulation, creating a risk that the European order for payment in itself may lose its effectiveness[1020].

546. However, we believe that in examining if a claim appears founded under Article 8 of the Regulation, the validity of the claim shall be scrutinized in such a way that would allow to reject at least clearly unfounded claims (Point b, Par. 1, Art. 11 of the Regulation). Therefore, at least a summary analysis of compliance with formal requirements shall be performed[1021], and verification that the validity of a claim is at least probable obtained. A different, i.e. more stringent examination of the validity of claims indicated in the form, which shall usually be filled in by entering relevant codes, and to which in which no evidence shall usually be enclosed, is hardly possible[1022]. Especially, since Recital 11 of the Regulation advocates for as automated procedure as possible, which, in turn, would be hard to reconcile with the requirement to examine the validity of a claim on its merits, as it may also require to perform an analysis of applicable material law. With regard to this aspect, Recital 16 of the Regulation also states that the

[1020] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 55.
[1021] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2234.
[1022] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 8, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

examination of an application shall allow for a court to *prima facie* examine the merits of a claim[1023] and, *inter alia*, reject clearly unfounded claims or unacceptable applications.

547. If a claim is clearly unfounded, the application shall be rejected (Point b, Par. 1, Art. 11 of the Regulation). Where it is submitted by breaching formal requirements set out in Article 7 of the Regulation, a claimant is allowed to complete the form or rectify its deficiencies (Art. 9 of the Regulation).

8.2.7.3. *Completion and rectification of an application: standard Form B (Art. 9 and Annex II)*

8.2.7.3.1. Grounds for completing and rectifying (Par. 1, Art. 9)

548. Article 9(1) of the Regulation establishes that if the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use standard form B as set out in Annex II.

549. The purpose of Article 9 is to reduce possible personal costs, if an application is rejected due to formal deficiencies and has to be resubmitted[1024].

550. Neither the Regulation, nor the Implementation Law, nor Form B itself provides that it is subject to appeal. The possibility of appeal, we believe, is also not required by the nature of this document.

551. As it follows from the considered article, it is only applicable where after examining an application, the court does not find any grounds to reject the claim as clearly unfounded or inadmissible (see more on this subject in 8.2.7.5). Therefore, a court shall primarily verify that an EOP is possible to issue at all. The considered provision shall be interpreted widely, so that an application for an EOP is not rejected on the grounds of correctable deficiencies. A court shall first examine if Form A is filled in properly (Par. 1 and 2, Art. 7 of the Regulation), if an application contains a declaration regarding the truthfulness of the information provided (Par. 3, Art. 7 of the Regulation), if the application is signed, and if it is submitted in a form or by means allowed (acceptable) in that Member State (Par. 6, Art. 7 of the Regulation). We believe that if an application is not submitted in Form A, but rather, for example, in a free form document, a court shall use the rectification procedure indicated in the discussed Article. In addition, if a court is unsure about the cause of the claim or the description of evidence provided,

[1023] Note that the German version of the Regulation does not refer here to the merits of a claim, but rather to the examination of the validity of a claim (Ger. <...> *schlüssig zu prüfen, ob die Forderung begründet ist* <...>").

[1024] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 9, Par. 1 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

yet there are no grounds to reject the application as clearly unfounded, the claimant shall be given a time limit for curing these deficiencies.

552. Since the Regulation provides that standard Form B shall be used in such case, a separate order on this matter is not required. Form B also indicates what information or deficiencies may usually be added (rectified) in accordance with Article 9 of the Regulation. Form B filled in by a Lithuanian court shall be dispatched and served on a claimant in accordance with CCP requirements, and where required and applicable – in accordance with Regulation 1393/2007. Regulation 1896/2006 does not govern the issue of serving the considered procedural documents (Art. 13–15 of the Regulation shall only be applicable to the service of an EOP), therefore, by following Article 26 of the Regulation, the law of the Member State of the court seized shall be applied.

553. The National Courts Administration provides information that Vilnius 2nd District Court judges have indicated that Section of Form B concerning rectifications contains insufficient space for specifying deficiencies (e.g. for listing deficiencies of enclosed evidence and indicating what documents the applicant had to include, yet did not). In this respect, it should first be noted that a claimant is generally not required to enclose evidence in the application for an EOP, therefore, a court would normally not examine the deficiencies of enclosed evidence in a formal legal sense. In addition, by using dynamic forms available on E-Justice website (https://e-justice.europa.eu/content_dynamic_forms-155-lt.do)one may provide far more additional information using Form B or other forms of the Regulation.

8.2.7.3.2. Time limits (Par. 2, Art. 9)

554. When a court requests a claimant to complete an application or rectify it, he shall set a time limit he considers appropriate under the circumstances. A court may extend this time limit at its own discretion (Par. 2, Art. 9 of the Regulation). In this case, Lithuanian courts shall *mutatis mutandis* follow Article 115(2) of the CCP, i.e. a time limit for curing deficiencies shall not be lesser than 7 days. In setting a time limit, of essential importance is the factor whether a defendant resides in the Member State of origin[1025]. If the defendant resides in a foreign State, a longer time limit shall be set, given that sending of procedural documents takes longer in this case. As it stems from Form B, a court shall specify a date (rather than a time limit) within which deficiencies identified by the court shall be cured. German legal doctrine indicates that a court may extend a time limit for rectifications at its own discretion, even in the absence of a relevant request from a claimant[1026].

[1025] According to Article 5(1) of the Regulation, "Member State of origin" is a Member State in which a European order for payment has been granted.

[1026] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 9, Par. 3 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

555. If deficiencies are cured within the given time limit, an EOP shall be granted. If deficiencies are not cured or cured improperly or insufficiently, the application shall be rejected (Art. 11 of the Regulation)[1027]. The Regulation does not provide for the possibility of repeated rectification of deficiencies.

8.2.7.4. *Modification of an application: standard Form C (Art. 10 and Annex III)*

8.2.7.4.1. Grounds and procedure for modification (Par. 1, Art. 10)

556. If the requirements referred to in Article 8 are met for only part of a claim, a court shall inform the claimant to that effect, using standard form C as set out in Annex III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form C sent by the court within a time limit specified by the court in accordance with Article 9(2).

557. The purpose of the legal regulation provided for in Article 10 of the Regulation is to allow for a claimant to obtain an EOP in those cases where it can only be granted for only part of a claim, thereby allowing the claimant to be heard and also ensuring the economy of the procedure[1028]. It is not cost-effective to reject the whole claim if only some part of it is defective, since that would result in a claimant having to reapply to the court for the appropriate part, which would lead to him incurring additional costs and the court – additional work.

558. The discussed provision shall be applicable where part of a claim meets formal or material criteria set out in Article 8 of the Regulation, while the other part is clearly unfounded or inadmissible due to different reasons (e.g. part of a claim does not arise from contractual legal relationships). Article 10 of the Regulation shall also applicable where a claimant has not rectified deficiencies identified by a court in accordance with Article 9 of the Regulation, and these deficiencies are related to only part of the claim. In such case the court shall invite the claimant to either accept or refuse the proposition for a European order for payment for the amount specified by the court and unrelated to the unrectified deficiencies. It should be emphasized that in filling in Form C, a court shall specify the amount (amounts) that meets the requirements of the Regulation and for

[1027] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 9, Par. 5 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1028] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 10, Par. 1 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

which an EOP may be granted[1029], otherwise a claimant could not properly decide whether to accept the proposition by the court.

559. Form C filled in by a Lithuanian court shall be dispatched and served on a claimant in accordance with CCP requirements, and where required and applicable – in accordance with Regulation 1393/2007. Regulation 1896/2006 does not govern the issue of serving the considered procedural documents (Art. 13–15 of the Regulation shall only be applicable to the service of an EOP), therefore, by following Article 26 of the Regulation, the law of the Member State of the court seized shall be applied. No other judicial document (e.g. an order) is required to be admitted in this case.

560. A claimant shall reply to a court's proposition using Form C, by specifically indicating (by crossing or ticking, etc.) his decision and signing at the end of Form C. The Regulation does not establish if replying to a court's proposition by other methods shall be deemed appropriate and admissible. We believe this situation should be interpreted in favor of the claimant, without formalizing the procedure too much. Time limit for submitting a reply is set by the court in accordance with Article 9(2) of the Regulation (see more in 8.2.7.3.2).

561. Under Article 10 of the Regulation, a court's proposition, as well as an EOP granted for only part of a claim are not subject to appeal (by analogy applying Par. 2, Art. 11 of the Regulation).

8.2.7.4.2. Claimant's actions and their consequences (Par. 2, Art. 10)

562. If a claimant accepts a court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law (Par. 2, Art. 10 of the Regulation). Article 22(1) of the Implementation Law states that in the case concerning the remaining part of a claim indicated in Article 10(2) of Regulation (EC) No. 1896/2006, the claimant may either bring an action to court in accordance with jurisdictional rules or lodge a new application for a European order for payment, provided that the barriers that have prevented the court from granting a European order for payment for the whole claim have been removed. Therefore, claimant's acceptance that an EOP is granted for only part of the amounts indicated in the initial application, does not imply, under Lithuanian law, that the claimant renounces the material legal claim submitted. However, it is worth noticing that in some States the acceptance that an EOP is granted for only part of a claim may have implications for time limits, within which an application for the part, in connection with

[1029] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 10, Par. 3 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

which an EOP was not issued, shall be made[1030]. Lithuanian law does not establish such rule, therefore, this amount may be claimed within the general limitation period. However, an application for the part, which the claimant decided not to support any longer in accordance with Article 10(3) of the Regulation, shall not be considered as terminating the limitation period (Par. 4, Art. 1.130 of the CCP by analogy), since by its legal consequences this situation most closely resembles withdrawal of a claim. The aforementioned rules shall only be applied if a limitation period falls within the application of Lithuanian and not another Member State's law.

563. Note that if a claimant accepts a court's proposition in accordance with Article 10(1) of the Regulation, thereby deciding not to support his application for an EOP for a specific amount any longer, he later may not only lodge a claim in accordance with ordinary proceedings for this unclaimed (unsupported) amount or submit a new application for an EOP as set out in Article 22(1) of the Implementation Law, but may also apply for a court order in accordance with the CCP or apply with the claim by a documentary procedure, provided that admissibility and acceptability conditions of these national authorities are fulfilled.

564. As mentioned above, if a claimant accepts a court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. Neither the Regulation, nor the Implementation Law provides that in such case a court shall accept any additional judicial document regarding the part of the claim that the claimant, after being invited by the court, no longer supports.

8.2.7.4.3. Claimant's passivity and its consequences (Par. 3, Art. 10)

565. If a claimant fails to send his reply within the time limit specified by the court or refuses a court's proposal, the court shall reject the application for a European order for payment in its entirety. This decision will, among others, mean that the submission of the application did not terminate the limitation period (Par. 4, Art. 1.130 of the CCP by analogy). This rule shall only be applicable if the limitation period falls within the scope of Lithuanian law. The rejection of an application for an EOP on the grounds considered shall not prevent a claimant from pursuing the claim by means of a new application on the same grounds (Par. 3, Art. 11 of the Regulation). However, for abuse of the right to apply to court a claimant may be subject to legal consequences provided for in Article 95 of the CCP.

[1030] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 20. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

8.2.7.5. Rejection of an application (Art. 11)

566. It should be noted that before a court rejects an application in accordance with Article 11 of the Regulation, an oral shall not be held, nor shall the defendant's position be heard. With regard to the latter aspect, defendant's rights are not violated, since the rejection of an application is essentially favorable for the defendant and imposes no negative legal consequences for him.

8.2.7.5.1. Grounds for rejecting an application (Par. 1, Art. 11)

567. A court shall reject an application if: a) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met; or b) the claim is clearly unfounded; or c) the claimant fails to send his reply within the time limit specified by the court under Article 9(2); or d) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Article 10. By using standard Form D as set out in Annex IV, the claimant shall be informed of the grounds for the rejection (Par. 1, Art. 11 of the Regulation).

568. Note that a court shall only reject an application in accordance with Article 11(1)(a) if there is no possibility to use rectification or application modification instruments provided for respectively in Articles 9 and 10. Article 11(1) of the Regulation provides a complete list of grounds for rejecting an application. Rejection of an application shall be formalized by filling in standard Form D. Grounds for rejection shall be indicated by appropriate codes, whereas other (individual) information shall only be indicated if necessary. Neither the Regulation, nor the Implementation Law provides that a court shall accept any other additional procedural document in accordance with national law other than Form D.

569. The National Courts Administration provides information that Vilnius 2nd District Court judges have indicated that Form D (decision to reject an application for a European order for payment) contains insufficient space for specifying reasons for rejecting to grant a European order for payment. This comment is partially acceptable, however, it should also be noted that in rejecting an application for granting a court order it is usually enough to indicate an appropriate code for the grounds of rejection and make a brief comment on the reasons of its application. This information should normally be enough to consider a rejection of an application for an EOP to be sufficiently reasoned.

8.2.7.5.2. Legal consequences of rejecting an application (Par. 2 and 3, Art. 11)

570. Article 11(2) and (3) establishes that rejection of an application shall not prevent a claimant from pursuing the claim by means of a new application for a European order for payment or of any other procedure available under the law of a Member State.

Therefore, even in the case where a court rejects an application as clearly unfounded, such decision has no *res judicata* power and the claimant is allowed to lodge an analogous claim on the same grounds. This rule can be explained by the fact that a court essentially makes the decision to reject an application without hearing the claimant (without hearing session), without having or examining evidence provided by the claimant, thereby without disposing material to such extent that would allow the court to examine the validity of the claim on its merits, as well as comprehensively and objectively. Challenging of a decision by which a court rejects an application is not provided due to the fact that such decision does not prevent from reapplying to a court with analogous or improved application. However, in case of abusing this right, a claimant may be subject to legal means of defense set out in national law.

571. Upon rejection of an application for an EOP by a Lithuanian court, the issue of paying litigation costs incurred by the claimant shall be resolved in accordance with the CCP. Thus, a claimant has to cover the costs related to the investigation of the case from his own account. For recovering stamp duty in such case see 8.2.7.7.

8.2.7.6. Legal representation (Art. 24)

572. Representation by a lawyer or another legal professional shall not be mandatory: a) for the claimant in respect of the application for a European order for payment; b) for the defendant in respect of the statement of opposition to a European order for payment (Art. 24 of the Regulation). This provision is, among others, based on the fact that procedural documents shall be drawn up by the procedure set out in the Regulation in a very simple manner, meanwhile, a profound analysis of factual circumstances is not required.

573. If a claimant or a defendant wishes to be represented, a person who can be elected as a representative by power of attorney is determined by the national law of the Member State of the court addressed. Therefore, Lithuanian courts shall primarily follow Article 56 of the CCP. However, it should be noted that Lithuanian Advocacy Law provides for, among others, the possibility for European Union lawyers to provisionally provide services in the Republic of Lithuania, as well as represent in court. In addition, Article 793 of the CCP establishes that legal capacity of foreigners and non-citizen nationals shall be examined in accordance with the provisions of this Code. Foreigners who under their national laws do not have or have a limited civil legal capacity, are considered to have a civil legal capacity if they meet the requirements set out in Article 38 of this Code. On reciprocal basis advocates may be allowed to represent foreigners, indicated in Paragraph 1 of this Article, in Lithuanian courts if they are citizens of relevant States.

574. Lithuanian CCP also imposes an obligation to attach to the procedural document, submitted to a court by a claimant, a document supporting representative's

rights and obligations (Par. 5, Art. 111 of the CCP). Article 57(4) of the CCP establishes that the rights and obligations of an advocate or an advocate's assistant, as well as their scope shall be concluded with the client by a written contract or its extract.

575. Note that we were unable to find in the European Judicial Atlas any specific information concerning who may be elected as representatives by power of attorney in relevant Member States. Some information on the matter can be found on E-Justice website. It should be noted that if a claimant lodges an objection and the case is transferred to ordinary proceedings, representation requirements set out in national legislations of the Member States shall be applied, i.e. in some cases the representation may be mandatory. Information regarding rules of representation in certain Member States can be found on the European Judicial Network in Civil and Commercial Matters website. However, it seems that it has been quite some time since information on this website has been last updated, therefore, difficulties may arise concerning its completeness or reliability.

576. Persons who may be elected as representatives under law and their authority shall be determined by the law applicable to legislative representation[1031]. Persons who may conduct cases on behalf of foreign legal persons (Art. 55 of the CCP) are determined by the law applicable to this legal person, i.e. the law of the State in which this legal entity is established (Par. 1, Art. 1.19; Points 4 an 6, Par. 1, Art. 1.20 of the CCP).

577. The discussed provision of the Regulation does not affect, for example, Article 347(3) of the CCP, under which a cassation appeal shall usually be drawn up and signed by an advocate. That is to say that representation in appellate and cassation courts (e.g. in a dispute concerning the application of Art. 22 of the Regulation) shall be determined in accordance with *lex fori* rules[1032].

8.2.7.7. Court fees (Art. 25)

578. Article 25 of the Regulation establishes that combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law. The purpose of the above provision is to make an EOP procedure appealing by establishing that combined court fees in a case where a claimant

[1031] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 15, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1032] GRUBER, URS PETER. EG-MahnVo. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010, p. 386.

sought to use the EOP possibility, yet the defendant lodged an objection, thereby leading to a transfer to ordinary proceedings, shall not exceed court fees in a case where the claimant would have attempted to recover the amount claimed by ordinary proceedings right away. Thus, a claimant is protected from the possibility in which by using an EOP procedure he would incur higher court fees.

579. The operation of the considered provision is ensured in Lithuanian law by Article 21 of the Implementation Law, which establishes that in cases for a European order for payment stamp duty calculation and payment rules established in Article 434(1)–(3) of the Code of Civil Procedure of the Republic of Lithuania shall be applied. Therefore, stamp duty paid for an application for an EOP shall be equal to a quarter of the amount which would have to be paid for the examination of a claim by dispute proceedings, yet no lesser than ten litas, with the exception of cases where a person is completely or partially relieved from paying stamp duty under law or a court order, or where the time limit for paying stamp duty is deferred. If the issue of a court order is followed the debtor stating an opposition and the creditor lodging a claim by general procedure, stamp duty provided for in Paragraph 1 of this Article shall be included in the stamp duty amount due for the claim. After recognizing the creditor's application as unplaced, where the creditor does not wish the case to be investigated further, after receiving the debtor's objection, by ordinary proceedings, the paid stamp duty is not refunded to the applicant. However, where an application for an EOP is rejected (Art. 11 of the Regulation), stamp duty, we believe, shall be refunded by applying Article 87(1)(3) of the CCP by analogy, since after refusing to accept an application for a court order in accordance with Lithuanian CCP, stamp duty, as it stems from Lithuanian case law, shall be refunded to the creditor on the grounds above[1033]. Court's refusal to admit an application for a court order and the refusal of an application for an EOP are analogous in nature and legal consequences, therefore, the issue of refunding stamp duty shall be resolved in the same way (Art. 26 of the Regulation). If an EOP cannot be declared enforceable due to the fact that it cannot be served on a defendant by one of the methods set out in Articles 13–15 of the Regulation, stamp duty paid may also be refunded to the claimant by applying Article 87(1)(5) of the CCP by analogy. We believe that if a claimant admits the proposition of a court to reduce the claimed amount (Art. 10 of the Regulation), the amount of paid stamp duty exceeding the amount which shall be paid under the new application, modified by the claimant's agreement, shall also be refunded to the claimant, as in such case it shall essentially be held that the claimant withdrew part of a claim before the investigation of the case on its merits (Art. 26; Point 2, Par. 1, Art. 87 of the CCP).

580. Note that Form D for formalizing the decision to reject an application for an EOP does not provide for a possibility of including the decision to refund stamp duty,

[1033] E.g., Vilnius Regional Court Civil Division ruling of 28 February 2011 in a c.m. *AB „Lietuvos dujos“ Vilniaus filialas v. UAB „PREN investicijos“*, No. L2-4496-340/2011, cat. 99.1.5.

therefore, a Lithuanian court shall issue a separate procedural document (order) on the matter. However, as it follows from Article 87 of the CCP, such decision shall be made upon request of a claimant. Claimant's request to refund stamp duty, we believe, among others, can be set out in Form A [Additional statements and other information]. It should be emphasized that the aforementioned rules are only applicable if the application for an EOP is submitted to Lithuanian courts. Different rules for paying and refunding stamp duty may exist in other States. Therefore, publication of information on these matters in European Judicial Atlas would be desirable. Nevertheless, such information is not provided.

581. Article 25(1) of the Regulation shall only be applicable to court fees, therefore, other costs related to the investigation of a case (including representation costs) shall be decided in accordance with *lex fori*, a claimant may require to recover them by filling in Section 9 of Form A. Given the governing established in Lithuanian CCP, awarding of such expenses, upon application for an EOP to a Lithuanian court, is possible in accordance with relevant CCP provisions, *inter alia* Article 98(2) of the CCP, under which expenses of a party related to counseling, given the complexity of that particular case and the advocate's or advocate's assistant's labor and time costs, shall be awarded no larger than provided for in recommendations concerning salaries approved by the Minister of Justice along with the chairman of Lithuanian Bar Association. Therefore, if a Lithuanian court sees that interest sought clearly exceeds the approved recommendations and thereby cannot be awarded, it may, in accordance with Article 10 of the Regulation, invite the claimant to modify the application on this matter, i.e. reduce the amount of representation expenses sought.

582. Article 25(1) of the Regulation shall also not be applicable to the serving of procedural documents performed off the court (Recital 26 of the Regulation).

583. Note that Form A of a European order for payment does not provide for a possibility of awarding in favor of the State any court fees (e.g. stamp duty) or procedural document sending expenses that the court incurred. Form E states "this decision obliges you to pay to the claimant the following amount <...>". Therefore, if a defendant does not lodge an opposition and the EOP comes into force, in accordance with with Article 26 of the Regulation, Lithuanian courts shall issue a separate order for awarding litigation costs in favor of the State as it is done in recovering unawarded litigation costs in favor of the State by issuing a court order in accordance with Lithuanian CCP[1034].

8.2.7.8. Issue of a European order for payment: standard Form E (Art. 12 and Annex V)

584. If the requirements referred to in Article 8 are met, a court shall issue, as soon as possible and normally within 30 days of the lodging of the application, a European

[1034] See NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 130.

order for payment using standard form E as set out in Annex V. The 30-day period shall not include the time taken by the claimant to complete, rectify (Art. 9 of the Regulation) or modify the application (Art. 10 of the Regulation).

585. As it follows from the data provided by the National Courts Administration, an EOP in Lithuania is usually issued within the set 30-day period. The missing of the above 30-day period does not affect the legality of an EOP, since the time limit set out in Article 12(1) of the Regulation only declares European Union lawmaker's desirable time limit within which an EOP shall be issued[1035].

586. The issue of an EOP, as in Lithuania, is based on one-stage procedure, the essence of which is that an EOP issued upon claimant's request becomes effective and enforceable if the defendant does not oppose it within the set time limit. Therefore, a defendant in principle has only one ordinary possibility of opposing an order. After declaring an EOP enforceable, a defendant can only apply for a review in exceptional cases (Art. 20 of the Regulation) and is not allowed to object it by appeal or a separate complaint.

8.2.7.8.1. EOP standard Form E (Par. 2, Art. 12, Annex V)

587. A European order for payment shall be issued together with a copy of an application form (Form A). However, it shall not comprise the information provided by the claimant in Appendices 1 and 2 to form A, i.e. bank information required by the claimant in paying court fees and the objection against transferring to ordinary proceedings. Therefore, a defendant does not know if the lodging of a statement of opposition will result in transferring to ordinary proceedings. Reasons for such confidentiality is related to the fact that a claimant would be completely unaffected by the information concerning whether the proceedings will continue after opposition, and would be able to make a fully independent decision. This allows to avoid defendant's tactical manipulations in lodging an opposition against an EOP[1036].

588. As it stems from standard Form E, an EOP shall first indicate separately amounts of initial claim, interest, contractual forfeiture or expenses awarded to a claimant, and then indicate total amount due. A copy of an application (Form A) (excluding Appendices 1 and (or) 2) and opposition Form F (Par. 1, Art. 16) shall be enclosed in the EOP form (Form E), all of which shall be dispatched to the claimant together with directions and information provided for in Article 12(3) and (4) of the Regulation, which is given in Form E itself.

[1035] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 12, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1036] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 12, Par. 4 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

8.2.7.8.2. Options and information provide to a claimant in an EOP (Par. 3 and 4, Art. 12)

589. In a European order for payment, a defendant shall be advised of his options to: a) pay the amount indicated in the order to the claimant; or b) oppose the order by lodging with the court of origin a statement of opposition, to be sent within 30 days of service of the order on him (Par. 3, Art. 12 of the Regulation). In the European order for payment, the defendant shall be informed that: a) the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court; b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16; c) where a statement of opposition is lodged, the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event (Par. 4, Art. 12 of the Regulation).

8.2.7.8.3. Service of an EOP on a defendant (Par. 5, Art. 12; Art. 13–15)

590. A court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15. Thus, the Regulation does not provide for any special procedure for serving a European order for payment on a debtor. It shall be performed in accordance with national law, however, minimum standards set out in Articles 13–15 of the Regulation shall be met in order for an EOP to become effective and enforceable. Minimum standards for serving a procedural document comply with the minimum standards laid down in Regulation 805/2004. Minimum standards for service established in the Regulation do not oblige the Member States to make any modifications in national law or expand the list of available service methods. Terminology used in the Regulation does not imply that the minimum standards for service can be considered as an independent service procedure. It should be noted that if a procedural document is to be served in a different Member State, the documents shall be transferred to that Member State in accordance with rules set out in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[1037]. If a document is to be served on a person outside of a Member State, relevant international agreements (e.g. Hague Convention) or international civil procedure provisions of the Member State of origin shall be applied. However, for service by the latter method to be appropriate in

[1037] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 57.

terms of the application of the Regulation, it shall comply with Articles 13–15 of the Regulation.

591. Regulation 1896/2006 does not establish in what language an EOP and any documents enclosed in it shall be served on a defendant. Therefore, in principle, it is possible to forward an EOP to a claimant in the language of the Member State of origin, by leaving him the possibility to refuse, where applicable, the admission of this judicial document in accordance with Article 8 of Regulation 1393/2007[1038]. Given that it is highly likely that the person residing in another Member State is going to refuse the admission of documents drawn up in a language he does not understand, courts are recommended to all at once dispatch documents in a language that meets the requirements set out in Article 8(1) of Regulation 1393/2007, and while sending documents in accordance with Regulation 1393/2007, an international agreement or *lex fori*, to undertake measures to ensure that the documents are served by one of the methods complying with the requirements laid down in Articles 13–15 of the Regulation (e.g. sending by registered mail with an acknowledgment of receipt (Art. 14 of Regulation 1393/2007) shall usually meet the method provided for in Art. 13 of Regulation 1896/2006). For service of procedural documents and language requirements also see *mutatis mutandis* Chapter 6.1.7.5 of the Research.

592. As it follows from Articles 12–15 of the Regulation, service methods indicated in the Regulation are only possible if they are provided for by national law of the Member State of service[1039]. Therefore, service violating requirements of national law may result in the service being ineffective even if it formally complies with Articles 13–15 of the Regulation[1040]. It should be emphasized that Articles 13–14 of the Regulation clearly state that the relevant service law is that of the State of service. The Regulation itself does not provide for any methods for serving procedural documents. The Regulation allows to serve procedural documents by methods laid down in national law, provided only that they do not violate Articles 13–15 of the Regulation[1041].

593. As mentioned above, the ECJ clarified in the ruling of 15 March 2012[1042] that European Union law shall be interpreted in a way that prohibits to certify a default judgment given against a defendant whose place of residence is unknown, as a European Enforcement Order within the meaning of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European

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[1038] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 22. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1039] NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 62.

[1040] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 22. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1041] NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 62.

[1042] European Court of Justice ruling in *G. v. Cornelius de Visser* of 15 March 2012, No. C–292/10, unpublished as of yet.

Enforcement Order for uncontested claims. Since such judgment was given in accordance with, among others, Article 14(2) of Regulation 805/2004, which is analogous to Article 14(2) of Regulation 1896/2006, it leads to conclude that an EOP may not be declared as enforceable in those cases where defendant's address is unknown. Service of an EOP by publication or other methods essentially based on legal fiction and not provided for in Regulation 1896/2006 will also be considered inappropriate (Recital 19 of Regulation 1896/2006). We believe that service through a curator should not be considered appropriate either.

594. Methods of service provided in Articles 13–15 of the Regulation are legally equal, i.e. service of an EOP by any one of the methods set out in Articles 13–15 of the Regulation shall be sufficient for acknowledging EOP's enforceability. If service of an EOP by one of the methods provided for on Articles 13–15 of the Regulation fails, the EOP cannot be declared enforceable. Neither the Regulation, nor the Implementation Law establishes that a court shall issue any additional procedural document in such case. However, in this case, we believe, under Article 26 of the Regulation, Lithuanian law may be followed and an EOP may be withdrawn, thereby leaving the application unexamined as provided for in Article 431(3) of Lithuanian CCP. Lithuanian case law also tends in this direction[1043]. The above decision shall not be subject to a challenge by a separate complaint (Par. 3, Art. 431 of the CCP). Upon issuing the aforementioned order, stamp duty paid shall be recovered[1044] (Point 5, Par. 1, Art. 87 of the CCP). However, before issuing the considered order, we believe, a Lithuanian court shall first set a time limit for a claimant to clarify his place of residence or to take actions allowing the court to serve procedural documents by other methods (Art. 26 of the Regulation; Par. 3, Art. 431 of the CCP).

i) Service with proof of receipt (Art. 13)

595. Since Article 13(a)–(d) of the Regulation by their nature are identical to Article 13(a)–(d) of Regulation 805/2004, see more on this subject in 4.1.4.4.6 and to the extent in 4.1.4.4.5 i).

ii) Service without proof of receipt (Art. 14)

596. Since Article 14 of the Regulation by its service methods and conditions is identical to Article 14 of Regulation 805/2004, see more on this subject in 4.1.4.4.7 and to the extent in 4.1.4.4.5 i). In addition, it should be noted that Recital 21 of the Regulation indicates that personal service on certain persons, with the exception of the

[1043] Vilnius Regional Court Civil Division ruling of 20 May 2011 in a c.m. *BUAB „SB Trans“ v. SIA „TMK Industry“*, No. L2-2014-560/2011, cat. 125.11.

[1044] See, for example, Vilnius 2nd District Court ruling of 2 September 2009 in a c.m. *UAB „TRANSIT CADR INTERNATIONAL“ v. SIA „O.A Simona“*, No. L2-8432-592/2009.

defendant himself, only complies with Article 14(1)(a) and (b) if these persons actually admitted (received) a European order for payment. Therefore, if the aforementioned persons refuse to accept the documents, the service cannot be held appropriate.

iii) Service on a defendant's representative (Art. 15)

597. Since Article 15 of the Regulation is identical to Article 15 of Regulation 805/2004, see more on this subject in 4.1.4.4.6 and to the extent in 4.1.4.4.5 i).

8.2.7.9. Opposition to a European order for payment: standard Form F (Art. 16, 17; Annex VI)

8.2.7.9.1. Opposition form, content and details (Par. 1, 3, 4, 5, Art. 16; Annex VI)

598. Article 16(1) of the Regulation establishes that a defendant may lodge a statement of opposition to a European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment. A defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this (Part. 3, Art. 16 of the Regulation). An opposition statement shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin (Par. 4, Art. 16 of the Regulation). A statement of opposition shall be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form in accordance with paragraph 4, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements. However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. The Member States shall inform the Commission of such communications systems (Par. 5, Art. 16 of the Regulation). Note that as in serving applications for an EOP, lodging a statement of opposition in Lithuania is not possible by electronic means, therefore, these documents shall be served on the court directly (in judicial custody) or by mail. For possibilities of using electronic means of communication in the other Member States see 8.2.7.12.2.

599. The discussed article provides for only one (ordinary) way how a defendant may avoid the effect and enforceability of an EOP. After the time limit for lodging a statement of opposition has expired, the only additional method for contesting a European order for payment is to apply for its review, however, it is associated with exceptional cases (Art. 20 of the Regulation).

600. It should be emphasized that a defendant is not required to use Form E for lodging a statement of opposition, which shall be dispatched to him together with an EOP. He is allowed to draw up an opposition in a free form. Recital 23 of the Regulation clearly indicates that a defendant may lodge his opposition by using the standard for as set out in this Regulation, yet courts shall consider an opposition in any other written form, provided that it reads clearly. Therefore, using of the form is optional in this case. The aim of this is to facilitate the lodging of a statement of opposition for a defendant as much as possible. A defendant shall indicate in the statement of opposition that he intends to contest the claim, yet the reasons for it, as usual under national laws, are not required[1045]. Thus, a defendant may oppose a European order for payment in respect of inappropriate jurisdiction over the case, the illegal issuing of the order, the invalidity of the material claim and so on. If the opposition is filled in sufficiently clearly by using, for example, a form drawn up in a language understood by the defendant instead of using Form F drawn up in a language of the court of the Member State of origin, we believe, the court shall consider such opposition. German legal doctrine also indicates that an opposition is not required to be drawn up in a language used by the court[1046].

601. An opposition shall be signed, yet the Regulation does not provide that the submission of a statement of opposition through a representative shall require evidence supporting the authorization. The Regulation does not provide for a possibility of opposing part of the amount indicated in the order and although such opposition is possible, it is considered to be an opposition against the whole EOP[1047]. It is considered to be a deficiency.

602. If after lodging an application for an EOP with a Lithuanian, the claimant withdraws it before receiving defendant's statement of opposition in court or before the end of the time limit set for lodging a statement of opposition, the court leaves the application unexamined. It does not prevent a claimant from re-submitting the application by the procedure established in the CCP. If a claimant declares the withdrawal of the claim after the issue of an EOP, Lithuanian courts shall resolve the issue in accordance with claim withdrawal rules set out in the CCP (Par. 6, Art. 435 of the CCP).

8.2.7.9.2. Time limits (Par. 2, Art. 16)

603. A statement of opposition with a court that has granted an EOP shall be sent within 30 days of service of the order on the defendant. (Par. 2, Art. 15 of the

[1045] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 57.

[1046] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 23. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1047] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 23. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

Regulation). If the document was served in accordance with Regulation 1393/2007, the date of service shall be determined in accordance with the rules set out in Regulation 1393/2007. If the documents are served on the defendant without complying with Articles 13–15 of the Regulation, the time limit for lodging a statement of opposition is held not yet commenced and the EOP cannot be declared enforceable. For a statement of opposition to be considered submitted within the time limit set, it is enough to dispatch them on time, in spite of them reaching the court later[1048]. However, if a statement of opposition is dispatched after the set time limit has expired, they shall have no legal effect[1049].

604. Instead o being counted in accordance with national law, the discussed 30-day period shall be counted in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits. Public holidays in the Member State of origin shall be included in this time limit[1050]. If the last day of this time limit coincides with public holidays, Saturday or Sunday, the time limit shall end at the last hour of the work day succeeding this day. Yet, in this case public holidays of the Member State of origin shall be considered rather than those of the Member State of defendant's residence[1051]. The concept of "public holidays" used in the aforementioned Regulation covers all days designated as such in the Member State or the Community institution in which action is to be taken (Par. 1, Art. 2 of Regulation 1182/71).

605. If a defendant missed the time limit for lodging a statement of opposition due to important reasons, he may use review procedure established in Article 20 of the Regulation. Given this provision, we believe that it should be established that the renewal of a time limit set for lodging a statement of opposition is not allowed, since important reasons due to which the time limit was missed can be examined in the procedure within Article 20 of the Regulation. Such provision is established in, for example, Article 1092(4) of the German Code of Civil Procedure. So far as such provision does not exist in Lithuanian laws, it is unclear if the aforementioned time limit may be renewed. On one hand, Article 26 of the Regulation and the fact that the time limits set by the law, including those for a statement of opposition against a court order in accordance with Lithuanian CCP (Par. 2, Art. 438 of the CCP), may be renewed, suggest that this time limit may be renewed and considered. On the other hand, however, Article 16(2) of the

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[1048] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2238.

[1049] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 24. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1050] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 23. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1051] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 16, Par. 7 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

Regulation may also be interpreted in a way that says this provision establishes a non-renewable time limit.

8.2.7.9.3. Effects of the lodging of a statement of opposition (Art. 17)

i) Termination of proceedings

606. Article 17(1) of the Regulation establishes that if a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. He may do this by filling in Appendix 2 to the application Form A, or by any other methods but not later than the issue of an EOP (Par. 4, Art. 7 of the Regulation). Note that the Implementation Law does not specify what procedural decision a court shall make if a claimant has declared his wish to discontinue the procedure by ordinary proceedings. We believe, in this case Article 439(6) of the CCP shall be followed by analogy, i.e. claimant's application shall be held unplaced and returned by a court order, while the EOP and provisional protective measures shall be withdrawn. Stamp duty paid, we believe, shall not be refunded, since the termination of a case without a judgment is determined by claimant's decision to discontinue the procedure. Therefore, there are no grounds, provided for in Article 87(1) of the CCP, to refund stamp duty, besides, the fact that in the case set out in Article 439(6) of the CCP stamp duty is not refunded, is established in Article 434(3) of the CCP.

ii) Transfer to general proceedings

607. Where a claimant has pursued his claim through a European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings (Par. 1, Art. 17 of the Regulation). The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin (Par. 2, Art. 17 of the Regulation). The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings (Par. 3, Art. 17 of the Regulation).

608. As it stems from the above, if a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. In Lithuania in such case Article 439(3), (5) and (6) of the Code of Civil

Procedure of the Republic of Lithuania[1052] shall be applied by analogy (Par. 2, Art. 22 of the Implementation Law). Therefore, after receiving debtor's statement of opposition, a Lithuanian court shall no later than within three work days inform the claimant that he shall submit a claim meeting the requirements set out in Article 135 of the CCP in accordance with the general rules of investigating cases by ordinary proceedings no later than within fourteen days of the date of the service of a court notice, as well as pay the additional amount of stamp duty (Par. 3, Art. 439 of the CCP). Such provision is, among others, explained by the fact that proceedings based solely on Form A submitted by the claimant, to which no evidence is required to be attached, would essentially be hardly possible, besides, the court addressed may not have jurisdiction over investigating the case by ordinary proceedings. German legal doctrine indicates that the Regulation does not provide for a documentary procedure in this case, yet by following Article 17(1)(2) of the Regulation, it shall not prevent a claimant from requesting his claim to be examined by a documentary procedure[1053].

609. If a claimant does not submit to the court a properly formalized claim within the set time limit, his application shall be held unplaced and shall be returned by a court order, while the EOP and provisional protective measures shall be withdrawn. This court order may be challenged by a separate dispute. In addition, the existence of such order does not prevent a claimant from lodging a claim by general procedure (Par. 6, Art. 439 of the CCP) or from using other simplified procedures, among others, reapplying for an EOP. Paid stamp duty shall not be refunded in the above case (Par. 3, Art. 434 of the CCP).

610. If a claim is submitted, the order of the court addressed, which resolves the issue of accepting this claim, also implies the withdrawal of the EOP or an appropriate part of it (Par. 5, Art. 439 of the CCP). Such order, we believe, shall not be subject to appeal. On the other hand, given that the Regulation does not provide for a possibility to transfer to dispute proceedings in another Member State, if upon receiving a statement of opposition, a Lithuanian court sees that Lithuanian courts do not have jurisdiction over investigating the case by dispute proceedings, the procedure shall be terminated[1054]. In such case, we believe, the court shall immediately issue a court order withdrawing the EOP and hold the application unplaced and return ir to the claimant (Par. 6, Art. 439 of the CCP by analogy). Refunding of stamp duty in the above case, we believe, would be possible under Article 87(1)(8) of the CCP, with the exception of cases where the

[1052] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 58.

[1053] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 27. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1054] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 23. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

impossibility of transferring to dispute proceedings is determined by the claimant's actions (e.g. conscious provision of incorrect address of the defendant).

611. If a claimant expresses no reluctance to transfer to ordinary proceedings, the transfer, after receiving defendant's statement of opposition, shall be effected even if the service of documents on the defendant did not comply with Articles 13–14 of the Regulation[1055].

8.2.7.10. Enforceability (Art. 18)

8.2.7.10.1. Declaring an EOP enforceable: standard Form G (Art. 18, Annex VII)

612. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service (Par. 1, Art. 18 of the Regulation). The court shall send the enforceable European order for payment to the claimant (Par. 3, Art. 18).

613. Expiration of the time limit for lodging a statement of opposition set out in the Regulation does not in itself imply that an EOP becomes enforceable. The court shall declare it enforceable[1056]. Decision to declare an EOP enforceable shall be made by the court to have issued it. It shall be done *ex officio*, i.e. the claimant is not required to submit a relevant request[1057].

614. As it follows from the provisions of the Regulation, after the time limit for lodging a statement of opposition has fallen due, a court shall wait for a reasonable amount of time until an EOP is declared enforceable, since it may take some time until defendant's statement of opposition reach the court, especially if the defendant resides in another Member State. The condition that the Regulation does not set a maximum time limit within which an EOP shall be declared enforceable hinders effective operation of this instrument. If a court declared an EOP enforceable, yet thereby subsequently received a statement of opposition, which were dispatched on time, the EOP could be reviewed in accordance with Article 20(2) of the Regulation, thereby ensuring the protection of defendant's rights.

615. It is argued that before declaring an EOP enforceable, a court shall first not only verify the date of service but also *ex officio* examine if the EOP and any documents

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[1055] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2238.

[1056] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 18, Par. 1 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1057] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 18, Par. 9 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

enclosed in it were served on the defendant in compliance with requirements set out in Articles 13–15 of the Regulation, as well as those in the national law of the Member State of service[1058]. However, a judge may find it difficult to examine if service effected in a different Member State, which is the Member State of service, complies with legal acts of that (another) Member State. Therefore, it may be debatable whether the Regulation reasonably states the requirement to serve an EOP in accordance with the law of the Member State of service. In this context, for example, Regulation 805/2004 does not provide for such condition in setting minimum standards for service.

616. Note that even though the Regulation does not directly consider the *res judicata* power of a European order for payment, as mentioned above, it shall be granted to this judicial document. Most of Community States grant this *res judicata* power for enforceable documents under their national law. Probably due to quite different time limit in different States it was decided not to directly include *res judicata* term in the Regulation[1059].

617. The Regulation does not directly govern the rectification of spelling or similar errors in an EOP or in a declaration on EOP enforceability, therefore, we believe, in this case Article 648(6) of the CCP shall be applied.

618. Lithuanian law does not govern if the refusal of a court to declare an EOP enforceable on the grounds that, for example, the EOP was issued unlawfully shall be subject to appeal despite the fact that defendant's statement of opposition were not received. By analogy applying Article 435(2) of the CCP, such refusal, we believe, shall be subject to appeal by a separate complaint. Article 11(2) of the Regulation in this case shall not be applicable, since it establishes that the refusal to issue an EOP shall not be subject to appeal, therefore, the issue of refusing to acknowledge an EOP in accordance with Article 26 of the Regulation shall be dealt with in accordance with the national law of the Member State of origin[1060]. However, it is obvious from the Regulation that the declaration of an EOP as enforceable in itself is not subject to appeal. If a claimant believes that an EOP was issued unlawfully, may in such case use means of legal defense provided for in Article 20 of the Regulation (review in exceptional cases).

619. In analyzing the data provided by the National Courts Administration (hereafter NCA) concerning how much time passes between the submission of an application and an EOP coming into force, it should be noted that the information of 2008 seems dubious and unreliable. According to the information provided by the NTA, it would only take 35 days for from the submission of an application for an EOP to come into force, which, given that a defendant has 30 days of the day of receiving an EOP to

[1058] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2239.

[1059] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 58.

[1060] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 18, Par. 12 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

dispatch his statement of opposition, means that Lithuanian courts either issued orders by violating defendant's interests and before the expiry of a time limit for lodging a statement of opposition, or the data provided are untrue. Far more convincing seems to be data of 2009 and 2012, according to which average 83,5 and 56 days respectively would pass from the issue of an EOP to its coming into force. Data of 2010 and 2011 also seems convincing. However, they cause concern, since an EOP procedure would take more than 4 months before coming into force. Given the above, the National Courts Administration is recommended to scrutinize the statistical data provided and upon identifying certain deficiencies, to undertake measures established in the legislation to avoid them (e.g. inform Court Presidents or the Council of Judges on the issues concerned).

620. After declaring an EOP enforceable, in the other Member States, with the exception of Denmark, it shall be enforced without exequatur procedure (see more in 8.2.7.11.1).

8.2.7.10.2. Formal requirements for enforceability (Par. 2, Art. 18)

621. Article 18(2) of the Regulation establishes that without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin. Thus, an EOP acquires enforceability characteristic in terms of the law of the Member State of origin and shall be enforceable to the extent that it is enforceable in the Member State of origin. Article 436(7) of the CCP establishes that a court order shall be come effective if within a set time limit a debtor does not lodge a statement of opposition against the application of the creditor. Article 24(1) of the Implementation Law establishes that a European order for payment acknowledged by standard Form G set out in Annex VII to Regulation (EC) No. 1896/2006, shall be held a document permitting enforcement. Therefore, in Lithuanian law a European order for payment acknowledged by standard Form G does not fall within the scope of requirements set for an enforcement order (Art. 648 of the CCP), and an enforcement order is not required to be issued.

8.2.7.11. Procedural actions with an EOP in the Member State of enforcement; EOP review (Art. 19–23)

8.2.7.11.1. Automatic EOP enforcement and abolition of exequatur (Art. 19 of the Regulation)

622. A European order for payment which has become enforceable in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. (Article 19 of the Regulation). Therefore, exequatur for a European order for

payment shall be abolished and a European order for payment enforceable in the Member State of origin under Article 19 of the Regulation shall be recognized and enforceable in the other Member States (with the exception of Denmark) without requiring a declaration of enforceability and without any possibility to oppose its recognition. Under Article 24(1) of the Law on Implementation of European Union and International Legal Acts Governing Civil Procedure of the Republic of Lithuania, a European order for payment declared by using standard Form G as set out in the Regulation in Lithuania shall also be recognized as a document permitting enforceability. In seeking to achieve the enforcement of a European order for payment in Lithuania, a creditor may apply directly to a bailiff (see more on this subject in 8.2.7.12)[1061]. This allows to achieve one of the main objectives of the Regulation – to allow for a free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

623. Unlike established in Article 11 of Regulation 805/2004, declaring an EOP as enforceable also implies that its legal consequences, as well as its *res judicata* power (automatic recognition) are automatically recognized in the other Member States (with the exception of Denmark), and it does not need to be declared in accordance with Brussels I Regulation. This allows for expressing the essence and nature of the issue of an EOP as a distinctive civil procedure.

624. A court of a Member State of enforcement cannot refuse to enforce an EOP declared as enforceable event if it violates *ordre public* of the State of enforcement, as the protection from public order violations, which may create grounds for refusing to enforce an EOP, is entrusted to courts of the Member State of origin. In this respect, Recital 27 of the Regulation emphasizes that an enforceable European order for payment issued in one Member State shall be held, for the purposes of enforcement, equivalent to being issued in the Member State of enforcement. Reciprocal trust in administering justice in the Member States justifies an evaluation by one Member State court that all conditions necessary for the issue of a European order for payment are fulfilled and that it shall be enforced without scrutinizing the proper application of minimum procedural standards in the Member State in which the legal review was performed, in the Member State of enforcement. Without violating the provisions of this Regulation, primarily minimum standards established in Article 22(1) and (2) and Article 23, a European order for payment procedure shall continue to be governed by national legal acts.

625. It should be noted that German legal doctrine points to the fact that difficulties may arise in recognizing or allowing the enforcement of an EOP in the other Member States (non-EU Member States) by bilateral and multilateral agreements, since an EOP

[1061] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 59.

may not be accepted as a judgment given in accordance with the law of the contracting State, thereby falling outside the scope of these contracts[1062].

8.2.7.11.2. Review of an EOP (Art. 20)

626. After the expiry of the time limit laid down in Article 16(2) a defendant shall be entitled to apply for a review of a European order for payment before the competent court in the Member State of origin where: a) i) the order for payment was served by one of the methods provided for in Article 14, and ii) service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part, or b) the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly (Par. 1, Art. 20 of the Regulation). After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances (Par. 2, Art. 20 of the Regulation).

627. Therefore, in order to do the best in protecting debtor's interests, Article 20 of the Regulation provides for an exceptional review of a European order for payment after the expiry of the time limit for lodging a statement of opposition. Conditions for such review are very limited. However, a defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances. There is an implication that incorrect information was provided, there were intentions to deceive the court. It can be understood from the requirement that an order has to be issued clearly wrongful, that this form of review shall be extremely limited not to become means for lodging a statement of opposition indefinitely. In addition, strong evidence in favor of the wrongfulness of an order shall be presented. Written evidence shall be the main source of proof, rather than, for example, requesting to appoint an expertize or referring to testimonies[1063].

628. We believe, it should be agreed with the position provided in legal doctrine that this shall be the grounds for reviewing an EOP in those cases where evidence is

[1062] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 5. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1063] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77, p. 58.

provided proving clear lack of validity of the claim on which an EOP is issued[1064], or evidence that it has already been effected[1065], or if it is determined that the EOP could not have been issued at all (i.e. violating Art. 12 of the Regulation), or if the declaration on enforcement was issued in spite of a statement of opposition being dispatched late (violating Art. 18 of the Regulation)[1066]. However, Recital 25 of the Regulation indicates that during the review procedure merits of a claim shall not be examined more than it is required by the exceptional circumstances indicated by the claimant. Other exceptional circumstances could include events where a European order for payment was founded on incorrect information provided in the application form.

629. Thus, an EOP shall not be reviewed on the grounds of Article 20(2) of the Regulation merely because some doubts arise regarding the truthfulness or legality of its issue. Information provided by a claimant shall be such that the illegality of an EOP "catches the eye", is obvious. Such attitude is essential, since during the review procedure *res judicata* power of an EOP is questioned[1067].

630. An application for the review of an EOP may only be made by a defendant and only after the expiry of the time limit set in Article 16(2) of the Regulation. If this time limit has not expired, a defendant shall submit his objections, rather than an application for review. It is not required for an EOP to be declared enforceable already.

631. Unlike objections against an EOP, an application for review of an EOP, which shall be submitted to a Lithuanian court, shall be reasoned and supported by relevant evidence, as well as comply with general requirements for procedural documents (Art. 111, 113 and 114). The doctrine indicates that Article 20(1)(a)(ii) is concerned with belated discovery, rather than the moment of service, therefore, the discussed ground shall also be applied when, for example, a defendant finds the letter in his mail box upon returning from a long outing or in other cases where there is no fault on the defendant's part for the lack of knowledge about an EOP issued against him[1068]. Article 20(1)(b) or Article 20(2) of the Regulation, given their exceptional nature, shall be applied narrowly[1069]. In addition, there is a prevailing opinion regarding Regulation 861/2007,

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[1064] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2240.

[1065] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 37. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1066] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No.□1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 20, Par. 7 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1067] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No.□1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 20, Par. 9 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1068] HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar***.** Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010, p. 2240.

[1069] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No.□1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 20, Par. 5, 8 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

which is similar to Regulation 1896/2006 on the discussed matter, that review in accordance with Paragraph 1(a) may be issued not only where the service was effected in accordance with Article 14 of Regulation 805/2004, but also where the service was effected in accordance with Article 13 of Regulation 805/2004, yet still, without any fault of his own, the person became familiar with the content of the document too late[1070]. Nevertheless, there is no unanimous opinion on this subject[1071].

632. Article 20(1) of the Regulation also establishes that a defendant shall act immediately, i.e. shall apply to the court for review as soon as possible after coming to know the circumstances allowing for a review in accordance with Article 20 of the Regulation. We believe, the fact that no time limit is set within which a defendant shall apply to a court for review is a deficiency of the Regulation, since the Member States may have different interpretations regarding what is considered to be immediate action. For example, German legal doctrine states, among others, that a reference point in interpreting the discussed issue is a period of two weeks[1072]. In addition, the Regulation does not require to act immediately in applying for review under Article 20(2) of the Regulation. It is considered to be a deficiency.

633. Since this review is like a renewal of proceedings, Article 23(1) of the Implementation Law reasonably establishes that a European order for payment shall be reviewed on the grounds set out in Article 20(1) and (2) of the Regulation by the court which has granted the European order for payment. Article 23(2) and (3) of the Implementation Law also indicates that after admitting an application for review of a European order for payment, the court shall forward a copy of the application and its supplements to the defendant and inform him that he shall, within fourteen days of dispatching the application, submit a written response to the application. - The court shall examine the application for review of the European order for payment in writing, no later than fourteen days of the expiry of the time limit for submitting a response to the application, and shall rule on one of the decisions set out in Article 20(3) of Regulation (EC) No. 1896/2006 – whether the application for review of an EOP shall be rejected or granted and thereby the EOP shall be withdrawn.

634. Thus, EOP review is not an appeal. An EOP shall be reviewed by the court that has issued it, rather than an appellate court. In addition, such review shall be based on exceptional circumstances making the issue of an EOP impossible, rather than the

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[1070] NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 18, Par. 7 [Accessed on 1 September 2012]. At: <http://beck-online.de>.

[1071] For opposite position see STÜRNER, MICHAEL. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuVTVO Article 19, Par. 6 [Accessed on 14 August 2012]. At: <http://beck-online.de>.

[1072] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 20, Par. 6 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

illegality of the EOP[1073]. Given that review procedure under Article 20 of the Regulation exists, we believe that lodging an application concerning the renewal of proceedings by the procedure established in Chapter XVIII of Lithuanian CCP shall not be allowed. Such provision could be established in the Implementation Law.

635. Information on the procedures of review in the other Member States is provided in the European Judicial Atlas. However, this information is not always clear. For example, it indicates that in Hungary a court having jurisdiction over reviewing an EOP shall be the one which issued a European order for payment in that particular event. However, information concerning Hungary also indicates that an EOP shall be issued by notaries, rather than courts.

636. Note that the European Court of Justice is currently investigating an application submitted to Vienna Commercial Court on making a preliminary decision in case *Novontech-Zala Kft* versus *LOGICDATA Electronic & Software Entwicklungs GmbH* (Case C-324/12). The Austrian court is asking:

- Shall the fact that the time limit for lodging a statement of opposition against a European order for payment is missed by an authorized advocate justify defendant's fault within the meaning of Article 20(1)(b) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure?
- If the violation made by the advocate shall not be considered the fault of the defendant, shall an incorrect entry concerning the time limit for lodging a statement of opposition against a European order for payment be interpreted as an exceptional circumstance within the meaning of Article 20(2) of this Regulation?

i) Legal effects of review (Par. 3, Art. 20)

637. If a court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force. If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void (Par. 3, Art. 20 of the Regulation). Therefore, if the grounds set out in Article 20(1) or (2) of the Regulation exist, a Lithuanian court shall withdraw the EOP and hold the procedure for issuing an EOP closed, transfer to ordinary proceedings is not effected. This does not prevent one from re-applying to court.

638. The Implementation Law does not govern the issue of whether a court order on the review of an EOP shall be subject to appeal. We believe that a decision to refuse to grant an application for review shall be subject to appeal in accordance with Article 370(3) of the CCP by analogy, under which a court order refusing to renew proceedings may be contested by a separate complaint. An order to grant an application for review,

[1073] NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 63.

we believe, shall be subject to appeal in accordance with Article 439(6) of the CCP by analogy, besides, a new judgment (order) in the case in which proceedings are renewed by procedure set out in Chapter XVIII of the CCP, shall also be subject to appeal by general procedure set out in the CCP. The above interpretation is *inter alia* also based on the fact that in the absence of clear legal regulation, legal provisions shall be interpreted as allowing for an appeal. Especially, since such order abolishes *res judicata* power of an already effective EOP. On the other hand, in, for example, Germany an order on the review of an EOP is not subject to appeal (Par. 1, Art. 1092 of the German CCP).

8.2.7.12. EOP enforcement (Art. 21)

8.2.7.12.1. Law applicable for enforcement (*lex loci executionis*)

639. Without violating the provisions of this Regulation, enforcement procedures shall be conducted in accordance with legal acts of the Member State of enforcement. An enforceable European order for payment shall be enforced under the same conditions as an enforceable judgment given in the Member State of enforcement (Par. 1, Art. 21 of the Regulation). In accordance with Article 24(1) of the Implementation Law, a European order for payment acknowledged by standard Form G as set out in Annex VII to Regulation (EC) No. 1896/2006, shall be held as a document permitting enforcement. Therefore, it shall be enforced in Lithuania under the same conditions and according to the same enforcement rules as other enforceable documents. A claimant may apply for the enforcement of an enforceable EOP directly to a bailiff.

640. Upon an EOP becoming an enforceable document, actions of enforcement in relation to it may be challenged in cases and by the procedure set out in the CCP. That is to say that means of defense established in the law of the Member State of enforcement may be used against the enforcement of an EOP, however, only inasmuch as they comply with the Regulation[1074]. For example, it is possible to request the stay or termination of enforcement actions in accordance with relevant CCP provisions. It should be emphasized, however, that by using means of defense against the enforcement of an EOP in the Member State of enforcement established by *lex fori*, the EOP cannot be reviewed on its merits – it is prohibited by Article 22(3) of the Regulation.

8.2.7.12.2. Documents to be submitted for enforcement

641. For enforcement in another Member State, a claimant shall provide competent enforcement authorities of that Member State with: a) a copy of the European order for

[1074] VOIT, WOLFGANG. §§ 1087□ff. Introduction, Paragraph 28. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

payment, as declared enforceable by the court of origin, b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States. (Par. 2, Art. 21).

642. For requirement to submit an authentic copy of a document see 4.1.6.1. It should be noted that the Implementation Law does not specify whether the translation of EOP into Lithuanian is required. Nevertheless, a translation into Lithuanian language is required in Lithuanian, as the European Commission is informed so[1075]. However, Article 21(2)(b) of the Regulation may be interpreted the same as Article 20(2) of Regulation 805/2004, i.e. the Regulation provides for the necessity to submit a translation of an EOP only where it is necessary. It can, therefore, be said that given that EOP form is a standard one (Form E), its translation cannot be required where the EOP is not supplemented by individual data, which may be incomprehensible for a competent enforcement official in the Member State of enforcement. However, practice of European countries even in this case demonstrates that such interpretation is not widespread and a full translation of the EOP into the language used in that Member State is usually required. On the other hand, however, some Member States have notified that they will also accept an EOP in other Member State languages[1076]:

Member State	Accepted language	Accepted means of communication (Par. 5 and 6, Art. 7; Par. 4 and 5, Art. 16 of the Regulation)
Bulgaria	Bulgarian	Information unclear
Belgium	Belgium only allows to use the official language (-s) of the Member State of enforcement	Submission directly to the court or sending by registered mail
Czech Republic	Czech, English, Slovak	The Czech Republic notifies that in accordance with Section 42 of the Code of Civil Procedure, the following means of communication are acceptable: a) e-mails using an advanced electronic signature pursuant to Act No. 227/2000 Coll. on electronic signature, as last amended, b) e-mails without advanced electronic signature, c) telefax.

[1075] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_lt_en.htm> [Accessed on 16 September 2012].

[1076] See <http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_lt.htm> [Accessed on 16 September 2012].

		By submitting documents by methods indicated in b and c, their original copies shall be dispatched no later than three days of their submission, otherwise the court shall not consider them.
Germany	German	Competent German authorities are currently working on an IT system through which applications for a European order for payment and oppositions may be submitted electronically. Applications shall be submitted in writing, since the project is not finished and applications cannot be submitted via the Internet yet. The procedure of submitting an application via the Internet will be announced. In Germany documents shall be served by mail, including private delivery services. In the other EU Member States they shall be served in accordance with Regulation (EC) No. 1393/2007.
Estonia	A European order for payment is enforceable in Estonia if it has been issued in Estonian or English languages, or if it is submitted with a translation into Estonian or English languages.	In applying the European order for payment procedure, the following means of communication are recognized by Estonian courts: service against receipt, by fax and electronic means of communication in compliance with form requirements and conditions provided for in the Code of Civil Procedure. More detailed information on the transfer of electronic documents to courts and form requirements can be found in the Regulation adopted by the Ministry of Justice.
Greece	Greek	Information unclear
Spain	Spanish	Directly, by mail or fax
France	French, English, German, Italian, Spanish.	By mail or e-mail
Ireland	Irish and English	Mail and fax
Italy	Italian	In writing
Cyprus	Greek, English	Means of communication acceptable in applying a European order for payment procedure and which a court may use: registered application submitted in person, by mail or other means of communication (fax, e-mail).
Latvia	Latvian	An application in Latvia may be submitted to a competent court in writing (on paper), in person or through an authorized agent, or by mail.
Lithuania	Lithuanian	Directly or by mail.
Luxembourg	French and German	By mail
Hungary	Hungarian	In Hungary documents may be sent by mail or served in person – directly to notaries (in Hungary the European order for payment procedure falls within the jurisdiction of civil law notaries).
Malta	–	–
Netherlands	Dutch	According to the Netherlands' civil procedure law (Art. 23 of the Code of Civil Procedure), applications for an European order for payment are allowed to be submitted by electronic means, if they are provided for in a court's procedural rules. Currently, none of the courts have provided for this possibility. Applications may only be submitted: by mail and to a court office.

Austria	German	In a European order for payment procedure documents may be submitted not only in paper, but also in electronic forms by using WebERV system (Ger. *webbasierter Elektronischer Rechtsverkehr*, electronic e-justice system). WebERV can essentially be used by all natural and legal persons. Special software and data transmitting authority are required. The list of the latest data transmitting authorities can be accessed at http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv Documents cannot be submitted using fax or e-mail.
Poland	Polish	An application for a European order for payment and any other procedural document may only be submitted in writing. Documents may only be lodged with a competent court either in person or by post.
Portugal	Portuguese	Means of communication accepted for a European order for payment procedure in Portugal are the following: i) submission to the registry in accordance with Article 150(2)(a) of the Code of Civil Procedure; ii) submission by registered letter in accordance with Article 150(2)(b) of the Code of Civil Procedure; iii) submission by fax in accordance with Article 150(2)(c) of the Code of Civil Procedure.
Romania	Romanian	Accepted means of communication that may be used by courts in a European order for payment procedure are mail and by fax.
Slovenia	Official languages are **Slovenian** and two national minority languages used officially by courts in these minority regions (Art. 6 and 104 of the Code of Civil Procedure). These two national minority languages are Italian and Hungarian.	Applications to courts may be lodged directly by mail, e-mail or other means of communication technologies, also by submitting documents in person or through a professional agent serving documents (Point b, Art. 105 of the Code of Civil Procedure).
Slovakia	Slovak	According to Article 29(1)(c) of the Regulation and Article 42 of the CCP (Code of Civil Procedure), the following means of communication are available: "An application may be submitted in writing, orally, on record, by using electronic means or fax. An electronically submitted application on the merits of a case or the application of provisional measures shall be complemented in writing or orally within three days; an application signed by a secure electronic signature is not necessary to complement. Where an application is submitted by fax, its original must be provided within three days. Applications not complemented within the time limit set shall not be considered".
Finland	Finnish, Swedish, English	The Electronic Services and Communication (Public Sector) Act No. 13/2003 includes provisions on sending documents to a Finnish court. Under this Act, means of communication accepted in a European order for payment procedure are mail, fax and e-mail.

Sweden	Swedish, English	Applications for a European order for payment shall be submitted in a paper form. Swedish enforcement authority may decide that applications shall be submitted by another method, which would allow for automatic data processing (Section 4 of the Regulation on a European Order for Payment Procedure).
United Kingdom	English	**1. England and Welsh** English and Welsh courts admit applications for instituting a European order for payment procedure by mail (concerning the necessity to collect a court fee in instituting proceedings). The possibility of submitting a claim form electronically is being considered. However, other documents, including all statements of opposition, may only be sent to a court by mail, fax or e-mail in accordance with Paragraph 5.5 of the rules of the civil procedure and practical guidelines setting out the rules of preparing and sending documents to a court. **2. Northern Ireland** Northern Ireland courts accept applications for instituting a European order for payment procedure sent by mail. The possibility of submitting a claim form electronically is being considered. **3. Scotland** Scottish first instance courts admit applications for instituting a European order for payment procedure by mail (concerning the necessity to collect a court fee in instituting proceedings). The possibility of submitting a claim form electronically is being considered. Other documents, including statements of opposition, may also be sent to a court by mail. **4. Gibraltar** Gibraltar admits applications for instituting a European order for payment procedure by mail (concerning the necessity to collect a court fee in instituting proceedings).

643. In submitting an EOP for enforcement, it is not required to include documents certifying that it has been properly served to the defendant. It shall be examined by the court of the Member State of origin before declaring an EOP enforceable.

644. The Regulation also does not specifically indicate that besides the EOP itself (Form E) a document formalizing its declaration as enforceable shall also be submitted (Form G). However, such conclusion follows logically from the fact that only an EOP declared enforceable may be submitted for enforcement. A copy of a document (Form G) formalizing the authentic declaration as enforceable shall be submitted.

645. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement (Par. 3, Art. 21 of the Regulation).

646. If documents provided for enforcement do not comply with the Regulation, also inasmuch as they do not violate requirements of the Regulation, the CCP and the Implementation Law, the bailiff may refuse to accept the EOP for enforcement *mutatis mutandis* in accordance with provisions of Chapter XLV of the CCP.

8.2.7.13. Stay and limitation of enforcement (Art. 23)

647. Article 23 of the Regulation establishes that where a defendant has applied for a review in accordance with Article 20, a competent court in the Member State of enforcement may, upon application by the defendant: 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. These measures may only be applied upon request from a defendant. Only applications for the stay or limitation of enforcement of an EOP that has already been declared enforceable are possible. Considered application shall be reasoned, comply with general CCP requirements for procedural documents (Art. 111 of the CCP, etc.).

648. In Lithuania the stay or limitation of enforcement shall be decided by local courts of the place of enforcement (Par. 3, Art. 24 of the Implementation Law). For possible issues in applying this jurisdictional rule see 4.1.6.2. For the application of measures concerning stay or limitation of enforcement also see 4.1.6.2, since Article 23 of Research 805/2004 and Article 23 of Research 1896/2006 on this subject are parallel. The only difference is that under Regulation 805/2004 certain measures in Lithuania may be applied by a bailiff, however, decisions on issues provided for in Article 23 of the Implementation Law on Regulation 1896/2006 are left exclusively for the jurisdiction of a local court. Lithuanian local courts wrongly refuse to admit applications for the stay of enforcement of an EOP in Lithuania, even though a defendant indicates that he has submitted an application for its review in the Member State of origin[1077].

649. German legal doctrine indicates that the stay of enforcement (Point c, Art. 23 of the Regulation) is only possible in exceptional cases, where competing interests are clearly in favor of a defendant (e.g. the claimant might incur irreversible damage), an application for review*prima facie* (at first) seems likely to be successful[1078].

650. It should be emphasized that only the lodging of an application for review in accordance with Article 20 to the court of the Member State of origin may be considered as grounds for the stay or limitation of enforcement. No other attempts by the defendant to contest a payment order provides grounds for the application of measures set out in Article 23 of Regulation 1896/2006. The discussed measures shall either ensure the repeal the enforcement of an EOP or prevent it from being enforced until it is legally clear whether or not it is to be withdrawn[1079]. Local court orders delivered in accordance

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[1077] See Kaunas Regional Court Civil Division ruling of 29 June 2011 in a c.m. *UAB „ Longlita“ v. M. L.*, No. 2S-1321-273/2011, cat. 122.2; 122.3.; 122.4.

[1078] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 23, Par. 8 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

[1079] NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007, p. 64-65.

with Article 23 of the Regulation, we believe, shall be challenged by a separate appeal (see 4.1.6.2). Yet, this issues shall be clearly regulated in the Implementation Law. Especially, since in Germany judgments delivered under Article 23 of the Regulation are not subject to appeal (Par. 1, Art. 1096 of the German CCP).

651. The limitation or stay of enforcement is only valid in the Member State in which the judgment to apply such measures was delivered. This judgments is not recognized in the other Member States. Therefore, for the limitation or stay of enforcement in the other Member States one should apply to competent authorities (courts) of these States[1080].

652. It should be noted that an EOP may also be enforced in the Member State of origin. In such case a question arises whether the lodging of an application for review in the Member State of enforcement, which is also the Member State of origin, may be considered as grounds for the stay or limitation of enforcement. German legal doctrine indicates that Article 23 of the Regulation is only applicable if an application for review is lodged in any Member State other than the Member State of enforcement[1081]. By following this position, the enforcement of an EOP issued by a Lithuanian court could not be suspended or limited in Lithuanian in accordance with Article 23 of the Regulation even if it an application for review was submitted. Indeed this issue should probably be governed by the law of the Member State of enforcement (as in Germany; Par. 1, Art. 1095 of the CCP), since the enforcement of judgments, given by the courts of a Member State, within the Member State itself is the concern of that Member State. Therefore, we believe, the Implementation Law shall be supplemented by a provision that if an application for an EOP issued and declared enforceable by a Lithuanian court is lodged, Article 23 of the Regulation shall also be *mutatis mutandis* applied when the EOP is enforced in Lithuania. Otherwise, Lithuanian residents would, to some extent, be in a less favorable situation than the residents of the other States.

8.2.7.14. Refusal of enforcement (Art. 22)

653. In order to protect debtor's interests in the Member State of enforcement, Article 22 of the Regulation provides for ground on which a European order for payment may be refused to enforce. Enforcement shall, upon application by a defendant, be refused by a competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that: a) the earlier decision or order involved the same cause of action between the same parties; and b) the earlier decision or

[1080] By analogy: NETZER, FELIX. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. EuBagatellVO, Art. 23, Par. 8. At: <http://beck-online.de>.

[1081] GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Auflage 2011 [online]. Art. 23, Par. 2 [Accessed on 15 September 2012]. At: <http://beck-online.de>.

order fulfills the conditions necessary for its recognition in the Member State of enforcement; and c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

654. As it follows from the aforementioned, cases for the refusal of enforcement of a European order for payment shall be rather rare. It is very important that there is no general provision that a European order for payment may be refused to be enforced if it contradicts public order of the Member State. It is perfectly logical that Article 22 of the Regulation also provides that upon request an order may just as well be refused for enforcement if a defendant has paid the claimant the amount indicated in a European order for payment. It shall be allowed no only by a payment slip, but also by all other means of proof[1082]. Article 22(2) of the Regulation, we believe, shall also be applicable when the amount claimed was paid during the issue of an EOP and the expiry of the time limit for lodging objections against it. However, the discussed provision shall not be applicable if the amount awarded during an EOP was paid before the lodging of an application for an EOP and the claimant was not aware of it. In this case the debtor may apply for the withdrawal of the EOP in accordance with Article 20(2) of the Regulation.

655. In Lithuania applications for the refusal of enforcement of European orders for payment shall be examined by Lithuanian Court of Appeal (Par. 2, Art. 24 of the Implementation Law). These applications shall be investigated by *mutatis mutandis* applying provisions of Article 4(4), (5) and (6) of the Implementation law. Therefore, the decision of Lithuanian Court of Appeal three judge panel to refuse (or accept) to enforce an EOP judgment may be challenged by a cassation appeal. On the other hand, we believe that the procedure established in Article 4(4)–(6) of the Implementation Law is not entirely appropriate for investigating defendant's application for refusal of enforcement. As it stems from Article 4(4) and (5) of the Implementation Law, these provisions establish a simplified procedure for authorizing enforcement of a judgment. In turn, the procedure for refusing to authorize enforcement of an already enforceable judgment is essentially established in Article 4(6) of the Implementation Law. Therefore, we believe that it shall be sufficient to apply Article 4(6) of the Implementation Law for defendant's application concerning refusal to enforce an EOP judgment, i.e. his application shall be investigated by a three judge panel in accordance with procedural rules set for investigating separate complaints.

656. The decision to refuse the enforcement of an EOP can only be made upon defendant's request. Neither the Regulation nor the Implementation Law establishes any time limits for lodging such application. It should be emphasized that under no circumstances may a European order for payment be reviewed as to its substance in the Member State of enforcement. (Par. 3, Art. 22 of the Regulation). However, it would be beneficial if the Regulation established a time limit within which (since the finding out of

[1082] VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, no. 77, p. 59.

the reason for the refusal) the defendant should apply to a court. In addition, the circumstance that the enforcement of an EOP was refused in one of the Member States does not automatically invalidate in another Member State, therefore, it can be further enforced in the other Member States[1083], unless the application for the refusal of enforcement is granted in them as well.

657. For the grounds of refusal of enforcement, provided for in Article 22(1) of the Regulation, *mutatis mutandis* see 4.1.6.3, as grounds established in Article 21(1) of Regulation 805/2004 and Article 22(1) of Regulation 1896/2006 are very similar. The only difference is that under Regulation 1896/2006, any judgment given in a Member State or any other third country may be considered irreconcilable with an EOP, provided that the earlier judgment or order fulfills the conditions for its recognition in the Member State of enforcement. Regulation 805/2004 also establishes that an earlier judgment given in a Member State of enforcement may also be considered irreconcilable with an EEO. However, it is not to say that if an earlier judgment given in a Member State of enforcement is irreconcilable with an EOP, it will not be possible to refuse its enforcement in accordance with Regulation 1896/2006. A judgment given in a Member State of enforcement does not require recognition in that Member State, therefore, it shall be considered complying with the condition set out *per se* in Article 22(1)(b) of the Regulation, and it shall be possible to refuse an EOP on its basis, provided that other conditions are fulfilled.

8.2.8. Regulation 1896/2006 in relation to other regulations

8.2.8.1. Relationship with national procedural law (Art. 26)

658. Article 26 of the Regulation establishes that all procedural issues not specifically dealt with in this Regulation shall be governed by national law. However, this provision does no imply that the concepts used in the Regulation shall also be based on legal regulation, legal concepts and definitions existing in that Member State. Provisions of the Regulation shall usually be interpreted autonomously, i.e. not as those of national, but rather as those of European Union law. In addition, it is held that certain issues, which are not covered in the Regulation, should nevertheless be established in it. The more issues are left to national law, the more difficult it is for other Member State subjects to use this instrument, as they may not have information necessary for the implementation of their laws in accordance with the Regulation. Besides, the EOP procedure can operate differently in different Member States, which can negatively affect

[1083] VOIT, WOLFGANG. §§ 1087 ff. Introduction, Paragraph 32. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

the implementation of objectives sought by the Regulation. Therefore, a more detailed regulation of the EOP procedure, we believe, would be preferable.

659. It should be emphasized that the Regulation does not govern material law to be applied. It is determined by relevant international private laws.

8.2.8.2. *Relationship with Regulation 44/2001 (Par. 2, Art. 6)*

660. See more on this subject in 8.2.6.

8.2.8.3. *Relationship with Regulation 1348/2000 (Art. 27)*

661. Regulation 1896/2006 shall not affect the application of Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (Art. 27 of the Regulation). Regulation 1348/2000 has been replaced by Regulation 1393/2007. Therefore, service methods set out in Articles 13–15 of the Regulation 1896/2006 do not imply that a court may not apply provisions of Regulation 1393/2007 in serving procedural documents in the other Member States (with the exception of Denmark). Indeed, it is exactly Regulation 1393/2007, inasmuch as the service of procedural documents in EU Member States in which this Regulation shall apply, that shall be applied first in this case, while issues outside of its scope shall be investigated in accordance with provisions of Regulation 1896/2006.

662. In the case considered the situation is slightly different from that of Regulation 805/2004. Regulation 805/2004 is not concerned with the fact that service rules of the relevant Member State were followed in serving procedural documents. Thus, Regulation 805/2004 does not formally obligate Member States to comply with Regulation 1393/2007 provisions in serving procedural documents. Meanwhile, Articles 13 and 14 of the Regulation already require the service to be effected in accordance with the law of the State of service, which Regulation 1393/2007 may be part of. Thus, the violation of Regulation 1393/2007 in certain cases may be insignificant for the application of Articles 13 and 14 of Regulation 805/2004, yet significant for the application of Articles 13 and 14 of Regulation 1896/2006.

663. The National Courts Administration provides information that the judges of Vilnius 2nd District Court have indicated that there is irreconcilability between Regulation establishing a European order for payment procedure and Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, since after issuing a European order for payment, document forms have to be filled out in accordance with Regulation No. 1393/2007, therefore, it is suggested to find

a way how to forward a European order for payment for service without filling in additional forms. In this respect, it should be noted that Article 14 of Regulation 1393/2007 allows to send procedural documents to a person in another Member State directly by registered mail with acknowledgment of receipt. In such case forms of Regulation 1393/2007 are not required to be filled in. However, if a procedural document is sent in another language, which does not meet the requirements of Article 8(1) of Regulation 1393/2007, the claimant shall be informed, by using form in Annex No. 2 to Regulation 1393/2007, about the possibility of refusing to accept the document.

9. Suggestions regarding Regulation 1896/2006 and its application

664. Suggestions regarding Regulation 1896/2006 and its application:

1) In investigating matters in accordance with the Regulation, Lithuanian courts shall primarily follow and apply provisions of Regulation 1896/2006. National civil procedure rules shall be applied inasmuch as relevant issues are outside the scope of the Regulation. The main aspects of the application and interpretation of the Regulation to be considered in applying Regulation 1896/2006, after taking into account presumable errors of Lithuanian courts, are listed in Table 9.1 below.

2) Lithuanian courts should not be afraid to use their right to contact European Court of Justice regarding explanation of certain provisions of Regulations. The Research has shown that on certain issues there is no unanimous opinion (see Table 9.2 below).

3) Regulation 1896/2006 leaves some freedom of choice for a national lawmaker. However, a Lithuanian lawmaker has not bothered to regulate certain issues, which may inhibit effective operation of this legal instrument, as, to begin with, certain issues are debatable and there is no unanimous agreement on them in the legal doctrine, and also, courts, especially local ones, may find it difficult to resolve these issues by themselves. It is discussed whether the Implementation Law and other legislation should be supplemented with provisions, which would regulate the most controversial issues. See more on these issues in Table 9.3 below.

4) Lithuanian Supreme Court has not yet investigated one matter related to the application of the Regulation. Therefore, it is thought that an overview of the application of the Regulation in lower courts would benefit the expansion of the application and interpretation of the Regulation. Especially, since Lithuanian Supreme Court has a Law Analysis and Synthesis Department, meanwhile, legal scholars, *inter alia* because of personal data protection, do not have full access to the information concerning the application of the Regulation stored in LITEKO system. Only by studying publicly available information it can be difficult to decide if the Regulation is interpreted and applied properly in Lithuanian court practice.

5) It is questionable if the narrowing of the scope of the Regulation, by essentially removing non-contractual obligations, is reasonable. Many discussions arise due to the

provision that a court has to examine if a claim appears to be founded. This provision can be interpreted and understood differently in different Member States.

6) Subsidiary nature of the Regulation (in relation to national procedures) and its application to cross-border matters only, leads to the fact that several different means (procedures) of protection of violated rights may exist in some Member State. The abundance of such measures may aggravate the exercise of violated rights and courts' work, rather than facilitate them.

7) All applications for an EOP in Lithuania since 1 October 2011, we believe, shall fall within the jurisdiction of local courts, while a specific local court shall be determined in accordance with jurisdictional rules set out in the CCP, with the exception of those cases where Regulation 44/2001, for example, its Article 5 provisions, establishes the jurisdiction of a specific local court. However, the European Judicial Atlas still contains information that in those Lithuanian cases, in which the amount of a claim does not exceed one hundred thousand litas, an application for an EOP shall be lodged to a local court, while in the cases where it does exceed one hundred thousand litas – to a regional court.

8) Kaunas Local Court, we believe, has reasonably indicated that the European Judicial Atlas in Civil Matters could provide information on what stamp duty payment forms are accepted by a relevant Member State, since experience shows that claimants may ask that a Lithuanian court charge stamp duty from, for example, an account in an Austrian bank.

9) Information regarding the admissibility of electronic means of submitting an EOP is provided in the European Judicial Atlas. So far, Lithuania has not notified about such possibility, despite the fact that its Electronic Application for a Court Order System has been active for some time now. This instrument is only suitable for obtaining court orders under Lithuanian CCP. Thus, less favorable conditions are created for exercising rights arising from European Union law than essentially analogous national laws.

10) Form E of a European order for payment does not provide for a possibility of awarding in favor of the State any court fees (e.g. stamp duty) or procedural document sending expenses that the court incurred. Form E states "this decision obliges you to pay to the claimant the following amount <...>". Thus, if a claimant does not lodge any objections and an EOP comes into force, by following Article 26 of the Regulation, Lithuanian courts shall issue a separate order for litigation costs in favor of the State. Therefore, it is questionable if the form could (should) be supplemented by a section in which a court could resolve the issue of expenses to be awarded to the State.

11) The Regulation does not provide for a possibility of opposing part of the amount indicated in the order and although such opposition is possible, it is considered to be an opposition against the whole EOP. It is considered to be a deficiency.

12) In analyzing the data provided by the National Courts Administration on how much time passes between the lodging of an application and the coming into force of an

EOP, it should be noted that the data of 2010 and 2011 is rather worrying, since an EOP procedure would take more than 4 months until the effect in those years. The National Courts Administration is recommended to scrutinize the statistical data provided and upon identifying certain deficiencies, to undertake measures established in the legislation to avoid them (e.g. inform Court Presidents or the Council of Judges on the issues concerned).

13) The Regulation does establish that after learning about the circumstances allowing for a review, a person shall act immediately. However, the fact that no time limit is set within which a defendant shall apply to a court for review is a deficiency of the Regulation, since Member States may have different interpretations regarding what is considered to be immediate action. In addition, the Regulation does not require to act immediately in applying for review under Article 20(2) of the Regulation. It is considered to be a deficiency. It would be beneficial if the Regulation established a time limit within which (since the finding out of the reason for the refusal) the defendant should apply to a court in accordance with Article 22 of the Regulation.

14) All forms related to the Regulation can be conveniently filled out in various Member State languages by using dynamic forms available on E-justice website (https://e-justice.europa.eu/content_dynamic_forms-155-lt.do). It allows a creditor to use a form in a language that he understands and thereby fill in the form in the language that is used in the court addressed. On the other hand, the National Courts Administration provides information that Vilnius 2nd District Court judges have indicated that Form D (decision to reject an application for a European order for payment) contains insufficient space for specifying reasons for rejecting to grant a European order for payment. This comment is partially acceptable, however, it should also be noted that in rejecting an application for granting a court order it is usually enough to indicate an appropriate code for the grounds of rejection and make a brief comment on the reasons of its application. This information should normally be enough to consider a rejection of an application for an EOP to be sufficiently reasoned.

15) The more issues are left to national law, the more difficult it is for other Member State subjects to use the EOP instrument, as they may not have information necessary for the implementation of their laws in accordance with the Regulation. Besides, the EOP procedure can operate differently in different Member States, which can negatively affect the implementation of objectives sought by the Regulation. Therefore, a more detailed regulation of the EOP procedure, we believe, would be preferable.

16) The Regulation does not require that all actions related to the examination, issue and declaration as enforceable of an EOP are performed *stricto sensu* by a judge in the Member State of origin. Therefore, it is considered whether some actions should be entrusted to, for example, judge assistants, by providing a possibility for a judge to review their actions.

17) Information provided by the European Judicial Atlas concerning electronic means of communication used by the Member States and acceptable under the Regulation is usually too laconic and concise for persons to be able to use the possibility of submitting documents by these means without additional search for information.

9.1. Table – The main aspects to be considered in applying Regulation 1896/2006 identified after taking into account presumable errors of Lithuanian courts	
Section in the Research	**Brief description of a main aspect**
8.2.5.1	It is enough to indicate in Form A of the application for an EOP an interest rate and the period (the start and end of interest calculation) for which they are demanded. Interest in such case is calculated by the court granting an EOP. Such conclusion follows from Article 7(1)(c) of the Regulation and is supported in legal doctrine.
8.2.7.1.1	Courts are encouraged to apply rules relating to the language of procedural documents not only formally, but rather by taking into account specific circumstances. For example, if evidence is presented in a foreign language together with an EOP, yet the description of evidence (in a language understood by the court) in Form A clearly suggests the validity and acceptability of the application, we believe it is unreasonable to require that a translation of the evidence is provided into a language that the court issuing an EOP understands. An opposite interpretation is unlikely to be reconcilable with the objectives of the Regulation to reduce the costs and simplify debt recovery proceedings.
8.2.7.1.1	Evidence supporting a claim are not required to be attached to the application for an EOP.
8.2.7.3.1	The National Courts Administration provides information that Vilnius 2nd District Court judges have indicated that Section of Form B concerning rectifications contains insufficient space for specifying deficiencies (e.g. for listing deficiencies of enclosed evidence and indicating what documents the applicant had to include, yet did not). In this respect, it should first be noted that a claimant is generally not required to enclose evidence in the application for an EOP, therefore, a court would normally not examine the deficiencies of enclosed evidence in a formal legal sense. In addition, by using dynamic forms available on E-Justice website (https://e-justice.europa.eu/content_dynamic_forms-155-lt.do)one may provide far more additional information using Form B or other forms of the Regulation.
8.2.7.8.3	Service of an EOP by publication or other methods essentially based on legal fiction and not provided for in Regulation 1896/2006 shall be considered inappropriate (Recital 19 of Regulation 1896/2006). We believe that service through a curator should not be considered appropriate either.
8.2.8.3	It should be noted that Article 14 of Regulation 1393/2007 allows to send

	procedural documents to a person in another Member State directly by registered mail with acknowledgment of receipt. Such service method is essentially reconcilable with the requirements of Regulation 1896/2006.

9.2. Table – Main debatable issues (problems) with regard to the application of Regulation 1896/2006

Section in the Research	Brief description of an issue
8.2.5	German legal doctrine indicates that the condition set out in Article 4 of the Regulation that a time limit for paying amounts has to be due is subject to autonomous interpretation and should be interpreted as requiring that a creditor's claim is not dependent upon the fulfillment of the creditor's counter obligations.
	The European Court of Justice is currently dealing with the question of whether in granting an EOP it is possible to recover only that interest which has accrued and been calculated up to the issuing of an order, or it is still possible to also recover the interest up to the moment of repaying the principal debt (case C-215/11). This case has not been investigated yet. However, on 28 June 2012 Advocate General *Mengozzi* concluded that it should be allowed to claim interest until the complete repayment of the principal debt.
	The European Court of Justice (case C-144/12) is currently considering Austrian Supreme Court's request to give preliminary ruling on the following questions: - Shall Article 6 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, be interpreted in a way that Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Regulation No. 44/2001), under which the jurisdiction shall fall to the court to which a defendant arrives, should also be applicable in a European order for payment procedure? - If the answer to the first question was positive: shall Article 17 of Regulation No. 1896/2006 along with Article 24 of Regulation No. 44/2001 be interpreted in a way that says the lodging of an objection against a European order for payment leads to appearance in the court, provided that its jurisdiction is not contested? - If the answer to the second question was negative: shall Article 17 of Regulation No. 1896/2006 along with Article 24 of Regulation No. 44/2001 be interpreted in a way that says the lodging of an objection at the very most justifies jurisdiction by appearance at the court, provided that during it arguments on the merits of the case are provided, yet the jurisdiction is not contested?

8.2.7.1.1	The Regulation does not indicate if it is possible to require to provide evidence supporting litigation expenses, or describe them in Section 10 of the Form. However, if no descriptive information about other expenses related to the proceedings is provided, the court shall not even minimally control their validity, even though the control of obviously ungrounded claims is provided for in Articles 8 and 11 of the Regulation. In addition, in accordance with Lithuanian law, the recovery of representation expenses is limited (Art. 98 of the CCP). Therefore, we believe that a Lithuanian court should have the right to request to submit information describing other expenses related to proceedings, as well as evidence supporting them. On the other hand, if a claimant does not provide such information, it may be held as a reason for rejecting an application in the litigation costs part, yet not a reason for refusing to issue an order on the principal material legal claim (provided there are no other grounds for not granting it). A court could inform a claimant about such possibility (partial fulfillment) by a procedural document, by which he could ask to complete the claim form by information describing litigation costs, or by enclosing evidence supporting these costs. In certain cases Form C could probably be used as well.
	The European Court of Justice is currently dealing with the issue (case No. C-215/11) of whether formal requirements, which an application for an EOP has to meet, are exclusively set out in Article 7 of the Regulation, or a Member State court nevertheless is entitled to apply additional formal requirements for procedural documents established in national law. This case has not been settled yet, however, General Advocate Mengozzi gave his conclusion on 28 June 2012. The general advocate thinks that with the exception of cases when Regulation 1896/2006 specifically refers to national law, Article 7 of the Regulation shall be interpreted as providing a complete list of requirements that an application for an EOP shall meet. According to him, national courts cannot require, for example, that a claimant provides a copy of the application for the defendant. The decision of the Court of Justice in this case will have significant impact on applying and interpreting the considered Regulation, as well as other Regulations to some extent.
8.2.7.9.2	Neither the Implementation Law, nor the Regulation clearly establishes if a time limit for submitting a statement of opposition against a claim may be renewed.
8.2.7.11.2	There is a prevailing position that review in accordance with Article 20(1)(a) may be applicable not only when the service was effected in accordance with Article 14 of Regulation 805/2004, but also when service was effected in accordance with Article 13 of Regulation 805/2004, yet, without any fault of his own, he still became familiar with the content of the document too late. Nevertheless, there is no unanimous opinion on this subject.
	The European Court of Justice is currently investigating an application submitted to Vienna Commercial Court on making a preliminary decision in case *Novontech-Zala Kft* versus *LOGICDATA Electronic & Software Entwicklungs GmbH* (Case C-324/12). The Austrian court is asking: - Shall the fact that the time limit for lodging a statement of opposition

	against a European order for payment is missed by an authorized advocate justify defendant's fault within the meaning of Article 20(1)(b) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure? - If the violation made by the advocate shall not be considered the fault of the defendant, shall an incorrect entry concerning the time limit for lodging a statement of opposition against a European order for payment be interpreted as an exceptional circumstance within the meaning of Article 20(2) of this Regulation.

9.3. Table – Main suggestions and comments regarding the Implementation Law

Section in the Research	Brief description of a suggestion
8.2.6.1	The example set by Germany and other States concentrating the granting of an EOP in one court should be followed, and the jurisdictional rule set out in the Implementation Law should be corrected by establishing exclusive jurisdiction over the investigation of applications for an EOP. Such decision would allow, among others, to ensure that the provisions of the Regulation are applied equally, and judges employed by the court appointed to examine the issues of the granting of an EOP could specialize in this area. This circumstance would also contribute to ensuring the effectiveness of this instrument.
8.2.7.10.1	Lithuanian law does not govern if the refusal of a court to declare an EOP enforceable on the grounds that, for example, the EOP was issued unlawfully shall be subject to appeal despite the fact that defendant's statement of opposition were not received.
8.2.7.11.2	Given that review procedure under Article 20 of the Regulation exists, we believe that lodging an application concerning the renewal of proceedings by the procedure established in Chapter XVIII of Lithuanian CCP shall not be allowed. Such provision could be established in the Implementation Law.
8.2.7.11.2 i)	The Implementation Law does not establish whether a court order given in the review procedure is subject to appeal.
8.2.7.13	The rule concerning the jurisdiction of application for the stay or limitation of enforcement established in the Implementation Law should be corrected by establishing that the considered applications shall be lodged to the local court in the bailiff's, in charge of enforcing an EOP judgment, office location.
8.2.7.13	The Implementation Law does not regulate if judgments of a court given (in their broadest sense) in accordance with Article 23 of the Regulation, shall be subject to appeal.
8.2.7.13	An EOP may also be enforced in the Member State of origin. In such case a question arises whether the lodging of an application for review in the Member State of enforcement, which is also the Member State of origin,

	may be considered as grounds for the stay or limitation of enforcement. German legal doctrine indicates that Article 23 of the Regulation is only applicable if an application for review is lodged in any Member State other than the Member State of enforcement. By following this position, the enforcement of an EOP issued by a Lithuanian court could not be suspended or limited in Lithuanian in accordance with Article 23 of the Regulation even if it an application for review was submitted. Indeed this issue should probably be governed by the law of the Member State of enforcement (as in Germany; Par. 1, Art. 1095 of the CCP), since the enforcement of judgments, given by the courts of a Member State, within the Member State itself is the concern of that Member State. Therefore, we believe, the Implementation Law shall be supplemented by a provision that if an application for an EOP issued and declared enforceable by a Lithuanian court is lodged, Article 23 of the Regulation shall also be *mutatis mutandis* applied when the EOP is enforced outside Lithuania.
8.2.7.14	Article 24(2) of the Implementation Law establishes that applications for refusal to enforce applications for the refusal to enforce a European order for payment, established in Article 22(1) of Regulation (EC) No. 1896/2006 shall be investigated by Lithuanian Court of Appeal. These applications shall be investigated by *mutatis mutandis* applying provisions of Article 4(4), (5) and (6) of this law. We believe that the procedure established in Article 4(4)–(6) of the Implementation Law is not entirely appropriate for investigating defendant's application for refusal of enforcement. It shall be sufficient to apply Article 4(6) of the Implementation Law for defendant's application concerning refusal to enforce an EOP judgment, i.e. his application shall be investigated by a three judge panel in accordance with procedural rules set for investigating separate complaints.

10. Assessment of the European Judicial Atlas in Civil Matters

665. First page of the European Judicial Atlas[1084] (hereafter Atlas) indicates that "This Atlas provides you with a user-friendly access to information relevant for judicial cooperation in civil matters. With the Atlas you can easily identify the competent courts or authorities to which you may apply for certain purposes. Furthermore, you can fill in online the forms that exist for some of these purposes, change the language of the form once you have filled it in and before printing it (so that the person receiving the form can read it in his own language), and transmit the forms electronically".

666. The Atlas consists of these major sections: Member States' Courts; Legal Aid (Directive 2003/8/EC); Mediation (Directive 2008/52/EC); Serving Documents (Regulation 1393/2007); European Cross-border Procedures: European Payment Order (Regulation 1896/2006) and Small Claims (Regulation 861/2007); Taking Evidence (Regulation 1206/2001); Recognizing and Enforcing Judgments: Judgments in civil and commercial matters (Regulation 44/2001) and European Enforcement Order (Regulation 805/2004); Family law: Matrimonial matters and matters of parental responsibility (Regulation 2201/2003) and Maintenance obligations (Regulation 4/2009); Compensation to Crime Victims (Directive 2004/80/EC). It is clear that already in the first page of the Atlas in Lithuanian there have been blunders made: European Enforcement Order (Regulation 805/2004) was translated as "Sprendimų vykdymo Europoje tvarka" [En. European judgment enforcement procedure], while "Santuoka ir tėvų pareigos" (En. *Matrimonial matters and matters of parental responsibility (Regulation 2201/2003*) was translated as "Santuoka ir tėvų pareigomis, pripažinimo bei vykdymo". Therefore, it appears that one of the issues with the Atlas is languages and translations. This conclusion is proved by the first section of the Atlas "Valstybių narių teismai" (http://ec.europa.eu/justice_home/judicialatlascivil/html/cc_information_lt.htm), in which information on law enforcement authorities in different Member States is not provided in each Member State's language. However, in any case it is clear that the Atlas provides considerable amount of useful information for persons seeking to use rights arising from the European Union law.

667. In order to find out if Lithuanian lawyers use the Atlas, what issues they face and what additional in the Atlas they would require, the researchers published (see more on this matter in Chapter 3 of the Research) surveys with relevant questions about the Atlas.

668. The following summarized data was derived from the questionnaire:

[1084] The assessment of the European Judicial Atlas was performed using the information that was presented in it on 29 October 2012.

Do you use the European Judicial Atlas in Civil Matters website http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm?

Answers	Graph	%	Sum
Yes	.	73,68	14
No	.	26,32	5
		Answers:	19
		Unanswered:	15

If the answer to the question above is "yes", do you encounter any problems while using the Atlas?

Answers	Graph	%	Sum
I do not encounter any problems	.	22,22	4
It is difficult to use the Atlas because of its strucure or similar reasons	.	16,67	3
Information in the Atlas is not thorough	.	5,56	1
The Atlas lacks some necessary information	.	11,11	2
Part of the relevant information is found in the Atlas, part in other sources - it is inconvenient	.	27,78	5
The information in the Atlas is outdated or have not been updated for a while and seems unreliable	.	11,11	2
Other:	.	5,56	1
some boxes to be filled out in the forms are inaccurately explained , it is unclear what the content of a box should be, for example, in filling in a certificate on a judgment, at the end there is a box for date defined as "the date when the judgment was given", yet it should be “the date of the completion of the certificate“			
		Answers:	14
		Unanswered:	20

In your opinion, should there be more trainings or additional information provided concerning the use of the Atlas?

Answers	Graph	%	Sum
Yes	.	75	15
No	.	5	1
Difficult to say	.	20	4
		Answers:	20
		Unanswered:	14

In your opinion, would it be useful to publish information about the practice of other Member State courts in applying EU civil procedure regulations in the Atlas?

Answers	Graph	%	Sum
We receive it anyway		0	0
Yes, it would be useful	.	70	14

No, it would not be useful		0	0
Difficult to say	.	30	6
		Answers:	20
		Unanswered:	14

Do you feel that the European Judicial Atlas should contain accurate information on how stamp duty is calculated and paid in a relevant Member State, including the cases where applications are made in accordance with Regulation 1896/2006 or 861/2007?

Answers	Graph	%	Sum
Yes	.	85	17
No		0	0
It is not to difficult to find such information on the Internet		0	0
No opinion	.	15	3
Your comments (if any):		0	0
		Answers:	20
		Unanswered:	14

In your opinion, should the Atlas provide detailed information concerning all legal provisions of the Member States, used to implement EU civil procedure regulations, including Regulations 805/2004, 1896/2006 and 861/2007?

Answers	Graph	%	Sum
Yes	.	70	14
No	.	5	1
Do not know	.	25	5
		Answers:	20
		Unanswered:	14

Additional observations regarding the Atlas (if any):

Answers			
		Answers:	0
		Unanswered:	34

669. After the survey on advocates (assistants) the results are as follow:

Do you use the European Judicial Atlas in Civil Matters website http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm?

Answers	Graph	%	Sum
Yes	.	34,62	9
No	.	65,38	17
		Answers:	26

		Unanswered:	22

If your answer to the previous question is "yes", do you encounter any problems while using the Atlas?

Answers	Graph	%	Sum
I do not encounter any problems		0	0
It is difficult to use the Atlas because of its strucure or similar reasons	.	13,33	2
Information in the Atlas is not thorough	.	20	3
The Atlas lacks some necessary information	.	40	6
Part of the relevant information is found in the Atlas, part in other sources - it is inconvenient	.	20	3
The information in the Atlas is outdated or has not been updated for a while and seems unreliable	.	6,67	1
Other:		0	0
		Answers:	8
		Unanswered:	40

In your opinion, should there be more trainings or additional information provided concerning the use of the Atlas?

Answers	Graph	%	Sum
Yes	.	84	21
No	.	4	1
Difficult to say	.	12	3
		Answers:	25
		Unanswered:	23

In your opinion, would it be useful if the Atlas provided information concerning the enforcement of the European order for payment, the European Enforcement Order or a decision in the European small claims procedure in the other Member States?

Answers	Graph	%	Sum
We receive it anyway		0	0
Yes, it would be useful	.	100	26
No, it would not be useful		0	0
Difficult to say		0	0
		Answers:	26
		Unanswered:	22

In your opinion, would it be useful to publish information about the practice of other Member State courts in applying EU civil procedure regulations in the Atlas?

Answers	Graph	%	Sum
We get it anyway		0	0

Yes, it would be useful	.	88,46	23
No, it would not be useful		0	0
Difficult to say	.	11,54	3
		Answers:	26
		Unanswered:	22

Do you feel that the European Judicial Atlas should contain accurate information (concerning methods of payment, accounts, rates, submission of evidence supporting a payment, etc.) on how stamp duty is calculated and paid in a relevant Member State, including the cases where applications are made in accordance with Regulation 1896/2006 or 861/2007?

Answers	Graph	%	Sum
Yes	.	92	23
No		0	0
It is not to difficult to find such information on the Internet		0	0
No opinion	.	8	2
Your comments (if any):		0	0
		Answers:	25
		Unanswered:	23

In your opinion, should the Atlas provide detailed information concerning all legal provisions of the Member States, used to implement EU civil procedure regulations, including Regulations 805/2004, 1896/2006 and 861/2007?

Answers	Graph	%	Sum
Yes	.	80	20
No	.	8	2
Do not know	.	12	3
		Answers:	25
		Unanswered:	23

Additional observations on Atlas (if any):

Answers			
		Answers:	0
		Unanswered:	48

670. After the survey on bailiffs (assistants) the results are as follow:

Do you use the European Judicial Atlas in Civil Matters website http://ec.europa.eu/justice_home/judicialatlascivil/html/in

dex_lt.htm?

Answers	Graph	%	Sum
Yes		0	0
No	.	100	7
		Answers:	7
		Unanswered:	3

If the answer to the question above is "yes", do you encounter any problems while using the Atlas?

Answers	Graph	%	Sum
I do not encounter any problems		0	0
It is difficult to use the Atlas because of its strucure or similar reasons		0	0
Information in the Atlas is not thorough		0	0
The Atlas lacks some necessary information		0	0
Part of the relevant information is found in the Atlas, part in other sources - it is inconvenient		0	0
The information in the Atlas is outdated or has not been updated for a while, therefore, it seems unreliable		0	0
Other:		0	0
		Answers:	0
		Unanswered:	10

In your opinion, should there be more trainings or additional information provided concerning the use of the Atlas?

Answers	Graph	%	Sum
Yes	.	100	7
No		0	0
Difficult to say		0	0
		Answers:	7
		Unanswered:	3

In your opinion, would it be useful to publish information about the practice of other Member State courts in applying EU civil procedure regulations in the Atlas?

Answers	Graph	%	Sum
Yes, it should	.	100	6
We get it anyway		0	0
No, this information is unnecessary.		0	0
Difficult to say		0	0
		Answers:	6
		Unanswered:	4

In your opinion, should the Atlas provide detailed information concerning concerning the enforcement of a European order for payment, a European Enforcement Order or a decision in a European Small Claims Procedure in a relevant Member State?

Answers	Graph	%	Sum
Yes, it should	.	100	7
We receive it anyway		0	0
No, this information is unnecessary.		0	0
Difficult to say		0	0
		Answers:	7
		Unanswered:	3

In your opinion, should the Atlas provide detailed information concerning all legal provisions of the Member States, used to implement EU civil procedure regulations?

Answers	Graph	%	Sum
Yes	.	85,71	6
No		0	0
Do not know	.	14,29	1
		Answers:	7
		Unanswered:	3

Additional observations on Atlas (if any):

Answers		
	Answers:	0
	Unanswered:	10

671. The results of the survey show that a considerable 74 percent[1085] of the judges use the Atlas. However, it should be noted that almost just as many judges (if considered in numbers) did not reply to this question. In addition, a staggering 65 percent of advocates (assistants) indicated they do not use it. Even more (if considered in numbers) advocates (assistants) did not reply to the question. None of the bailiffs (assistants) indicated that they use the Atlas. Therefore, *the Atlas is not very popular among Lithuanian lawyers-practitioners*. Due to this, it becomes very important to find out the reasons for it.

[1085] Percentages provided here and below are calculated from the number of replies to a specific question and not from the total number of surveyed respondents, unless indicated otherwise.

672. The survey showed that *one of the main reasons why the Atlas is rarely used is because there is a lack of information on it*. 75 percent of judges, 84 percent of advocates (assistants) and 100 percent of bailiffs (assistants) mentioned they would like to have additional trainings or additional information concerning the use of the Atlas. Probably due to this reason the survey also showed that a staggering 75 percent of advocates (assistants) were unaware of the electronic tools on European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm) or E-Justice (https://e-justice.europa.eu) websites for filling out Regulation forms.

673. The survey data shows that another important reason why the Atlas is not popular and convenient to use are significant problems faced by its users. *Only 22 percent of judges, 0 percent of advocates (assistants) indicated that they do not encounter any problems while using the Atlas.* All others who answered the question faced issues of some kind.

674. The main difficulty pointed out by the judges (28 percent) was that *part of the relevant information is found in the Atlas, part of it in other sources - it is inconvenient*. In fact, it should be noted that forms of Regulation 861/2007 may be filled either on E-Justice website or in the Atlas. This may complicate the use of these forms, it is not clear why the forms are provided in two pages, how they differ from each other, therefore, it may be difficult to decide which website to use. One of the respondents of the sociological survey conducted by the researchers also indicated that there are several versions of forms circulating in the public space, therefore, it is unclear which one to use. In addition, "Legal Aid (Directive 2003/8/EC)" section of the Atlas contains a comment that in order to rationalize the flow of information, in 2012 the content of the Atlas will be gradually transferred to the European E-Justice website. Therefore, the user may be confused whether the information provided in the Atlas is still relevant or whether it should be searched for on E-Justice website. What is more, certain information can still be found on the European Judicial Network in Civil and Commercial Matters website. Therefore, despite the fact that information is abundant, search results are aggravated due to its fragmented location on different websites.

675. The main issue indicated by the advocates (assistants) (40 per cent) is *the fact that there certain information, which is necessary, is not included in the Atlas at all.* Although the respondents did not indicate what information they actually lack. On the other hand, for example, in analyzing the Atlas, it is apparent that in Article 12(2) of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters provides that Member States shall inform the Commission on the text of national provisions adopted within the scope of this Directive. However, as it follows from "Mediation (Directive 2008/52/EC)" section of the Atlas, it does not contain the above information neither concerning Lithuania nor the other States. As shown by our Research on the Regulations, it is not the only case where certain information, which should be available publicly, is not provided

in the Atlas (e.g., information on Malta concerning Regulation 1896/2006 is not provided in the Atlas).

676. The answers of questions reveal information lack for advocates (assistants) in Atlas:

- 70 percent of judges, 88 percent of advocates (assistants) and 100 percent of bailiffs (assistants) respectively replied that it would be useful to publish information about the practice of other Member State courts in applying EU civil procedure regulations in the Atlas;
- 85 percent and 92 percent of advocates (assistants) respectively replied that they feel the Atlas should provide detailed information concerning all legal provisions of the Member States, used to implement EU civil procedure regulations, including Regulations 805/2004, 1896/2006 and 861/2007. There was a case in Lithuanian case law where an applicant requested to deduct stamp duty from his bank account in Austria, even though In Lithuania such form of paying stamp duty is not acceptable;
- 70 percent of judges, 80 percent of advocates (assistants), 86 of bailiffs (assistants) respectively replied that they feel the Atlas should provide detailed information concerning all legal provisions of the Member States, used to implement EU civil procedure regulations, including Regulations 805/2004, 1896/2006 and 861/2007;
- 100 percent of lawyers (assistants) and 100 percent of bailiffs (assistants) replied that they feel the Atlas should provide information concerning the enforcement of the European order for payment, the European Enforcement Order or a decision in the European small claims procedure in other Member States. In this respect, it should also be noted that one Lithuanian advocate (assistant) was worried that it is difficult to find a person who could perform the certification of a European Enforcement Order in another Member State, rules of distributing enforcement costs in other Member States are unknown, besides, for example, in Hungary application to a court shall first be made before undertaking any enforcement actions, which requires apostilling an EEO, a judgment, power of attorney. There were even suggestions to unify enforcement costs throughout the European Union.

677. Some respondents also replied that the information provided in the Atlas is outdated or has not been updated for a while and, therefore, looks unreliable. As our Research on the Research has demonstrated, some of the information concerning Lithuania provided in the Atlas is really outdated or misleading. In addition, for example, Claim Form A as set out in Regulation 861/2007 indicates that information concerning jurisdiction rules is presented on the European Judicial Atlas website http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm. However, such information on this website is not available.

678. The survey showed that Lithuanian advocates (assistants) find it difficult (66 percent) of very difficult (7 percent) to find practical information (on the Internet, in the legal doctrine or elsewhere) on how to apply to courts of other Member States in order to

use the possibilities provided by Regulation 805/2004, 1896/2006, 861/2007. For example, the Atlas does not contain information on who can represent by power of attorney in certain Member States, whether it is necessary to submit documents supporting the representation, whether or not these documents shall be apostilled, what institutions shall decide on the stay, limitation or refusal of enforcement of documents issued in accordance with Regulations 805/2004, 1896/2006, 861/2007 (except Regulation 861/2007, since it requires to submit such information), what is considered to be a challenge within the meaning of Article 23 of Regulations 805/2004 and 861/2007 in a relevant Member State, etc.

679. In summarizing the above, it is clear that the European Judicial Atlas is already quite useful and widely used as a source of information and reference. However, in order to make it more reliable and efficient, it is necessary to:

- Improve the quality of translations and to ensure access to relevant information in all Member State languages, or to provide information in several of the most popular Member State languages only;
- Ensure constant updating of information and controlling of its reliability;
- Provide more information relevant to law practitioners;
- Avoid dispersing information throughout different websites or to determine clear criteria for the limitation of the content of information provided in these pages, which would enable the user to easily decide which of the websites contains information relevant to his inquiry;
- Publish more information (brochures, trainings or other measures) regarding the Atlas, by pointing out its advantages for legal practitioners and residents.

Annex I. Inquiries concerning the statistical data on the activities of bailiffs

Regulation 861/2007; hereafter the European Small Claims Procedure is referred to as (ESP)

ESP accepted for enforcement by the bailiffs	2009	2010	2011	2012
ESP judgments submitted for a bailiff for enforcement				
ESP judgments accepted by a bailiff for enforcement				
ESP judgments enforced by a bailiff completely (number)				
The total amount of ESP judgments enforced by a bailiff completely or partially in litas				
Foreign ESP judgments submitted for a bailiff for enforcement				
Foreign ESP judgments accepted by a bailiff for enforcement				
Foreign ESP judgments enforced by a bailiff completely (number)				
The total amount of foreign ESP judgments enforced by a bailiff completely or partially in litas				

Regulation 1896/2006; hereafter a European order for payment is referred to as EPO

EOP accepted for enforcement by the bailiffs	2009	2010	2011	2012
EOP submitted for a bailiff for enforcement				
EOP accepted by a bailiff for enforcement				
EOP completely enforced by a bailiff (number)				
The value of EOP completely or partially enforced by a bailiff in litas				
Foreign EOP submitted for a bailiff for enforcement				
Foreign EOP accepted by a bailiff for enforcement				
Foreign EOP completely enforced by a bailiff				
The value of foreign EOP completely or partially enforced by a bailiff in litas				

Regulation 805/2004; European Enforcement order hereafter referred to as EEO

EEO accepted for enforcement by the bailiffs	2005	2006	2007	2008	2009	2010	2011	2012
EEO submitted for a bailiff for enforcement								
EEO accepted for enforcement by the bailiffs								
EEO completely enforced by a bailiff (number)								
The value of EEO completely or partially enforced by a bailiff in litas								
Foreign EEO submitted for a bailiff for enforcement								
Foreign EEO accepted by a bailiff for enforcement								
Foreign EEO completely enforced by a bailiff (number)								
The value of foreign EEO completely or partially enforced by a bailiff in litas								
Appeal to a bailiff regarding the stay or limitation of the enforcement of an EEO (Art. 23 of the Regulation)								
The enforcement of an EEO was suspended or limited by a bailiff order (Art. 23 of the Regulation)								

Annex II. Inquiry concerning the statistical data on the activities of Lithuanian notaries

Regulation 805/2004; European Enforcement order hereafter referred to as EEO

EEO issued by the notaries	2005	2006	2007	2008	2009	2010	2011	2012
Lithuanian notary contacted regarding the issue of an EEO (number)								
EEO issued by a Lithuanian notary (number, if possible, value in litas)								
Appeal regarding withdrawal of EEO issued by a Lithuanian notary (Part 1, (b) p, Article 10 of the Regulation.								
Withdrawn (fully or in part) EEO's issued by a Lithuanian notary (Part 1, (b) p, Article 10 of the Regulation.								

References

1. **Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.** *OL, 2009 L 007, p. 1.*
2. **Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000.** *OL, 2007 L 324, p. 79.*
3. Regulation (EC) No. 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure. OL, 2007 L 199, p. 1.
4. Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment Procedure. OL, 2006 L 399, p. 1.
5. Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. OL, 2004 Special Edition, Chapter 19, Vol. 7, p. 38.
6. Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. OL, *Special Edition in Lithuanian: Chapter 19, Vol. 04, p. 121.*
7. Council Decision of 30 November 2009 on the conclusion by the European Community of the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. *OL, 2009 L 331, p. 17.*
8. Code of Civil Procedure of the Republic of Lithuania (with amendments and supplements). The Gazette, 2002, No. 36-1340.
9. Civil Code of the Republic of Lithuania. The Gazette, 2000, No. 74-2262.
10. Lithuanian Republic Law on the Implementation Bill of Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. The Gazette, 2005, No. 58-2005.
11. Law on Advocacy of the Republic of Lithuania (with amendments and supplements). The Gazette, 2004, No. 50-1632.
12. Law on Bailiffs of the Republic of Lithuania (with amendments and supplements). The Gazette, 2002, No. 53-2042.
13. Law on Courts of the Republic of Lithuania (with amendments and supplements). The Gazette, 1994, No. 46-851.
14. Law on Notaries of the Republic of Lithuania (with amendments and supplements). The Gazette, 1992, No. 28-810.
15. Rules of the calculation, payment and refunding of stamp duty approved by the Government of the Republic of Lithuania by a ruling of 27 October 2011 No. 1240. The Gazette, 2011, No. 130-6171.

16. Lithuanian Republic legislative review procedure for annulling provisions of legal acts of the Republic of Lithuania transferring requirements of European Union Regulations and for ensuring their direct application, approved by the Government of the Republic of Lithuania by a ruling of 18 September 2003 No. 1180. The Gazette, 2003, No. 90-4077.
17. Bailiff qualifying examination program approved by the Minister of Justice of the Republic of Lithuania by a ruling of 22 August 2011 No. 1R-203. The Gazette, 2011, No. 107-5073.
18. Lawyer qualifying examination program approved by the Minister of Justice of the Republic of Lithuania by a ruling of 1 December 2008 No. 1R-458.
19. Notary qualifying examination program approved by the Minister of Justice of the Republic of Lithuania by a ruling of 10 January 2007 No. 1R-11 (with amendments). The Gazette, 2007, No. 7-300.
20. Notary Enforcement Order Procedure approved by the Government of the Republic of Lithuania by a ruling of 13 September 1999 No. 988. The Gazette, 1999, No. 78-2323.
21. Procedure judgment classification in civil matters approved by the Judicial Council by a ruling of 25 April 2008 No. 13P-50-(7.1.2) [online]. [Accessed on 5 August 2012]. At: <*www.teismai.lt/dokumentai/tarybos_nutarimai/20080425-50.doc*>.
22. Judicial candidates examination program approved by the Judicial Council on 8 October 2004 by resolution No. 279 [online]. [Accessed on 5 August 2012]. At: <http://www.teismai.lt/lt/siekiantiems-teisejo-karjeros/siekiantiems-teisejo-karjeros-pageidaujantiems-tapti-apylinkes-teismo-teiseju/siekiantiems-teisejo-karjeros-pageidaujantiems-tapti-apylinkes-teismo-teiseju-teises-aktai/>
23. *Code of Civil Procedure of Germany* [online]. [Accessed on 6 October 2012]. At: <http://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html#p3693>.
24. *Explanatory notes of the draft law of the Republic of Lithuania on "the implementation of European Union and international legal acts governing civil procedure"*[online]. [Accessed on 5 August 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=320649&p_query=&p_tr2=2>.
25. *Explanatory notes on Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims* [online]. [Accessed on 9 September 2012]. At: <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=250834&p_query=&p_tr2=2>.
26. *Committee Report on the Implementation Bill of Regulation (EC) No. 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims*[online]. [Accessed on 5 August 2012]. At:

<http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=254005&p_query=&p_tr2=2>.

Special literature

27. FENTIMAN, ROBERT. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007.
28. FRANCQ, STEPHANIE. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007.
29. GIERL, WALTER. Europäisches Mahnverfahren nach der Verordnung (EG) No. 1896/2006. In *Zivilprozessordnung*. Edited by Prof. Dr. Ingo Saenger. 4. Ed. 2011 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.
30. GRUBER, URS PETER. EG-MahnVo. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007, EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010.
31. GUMULIAUSKIENE, LAURA. Europos vykdomojo rašto procedūros įgyvendinimas – Lietuvos patirtis. *Jurisprudence*, 2010, No. 4(122).
32. GUMULIAUSKIENE, LAURA. *Užsienio teismų sprendimų vykdymas ir pripažinimas Lietuvoje*[online]. PhD thesis [accessed on 5 August 2012]. Vilnius: Mykolas Romeris University, 2008. At: *<https://mms.mruni.eu/DownloadFile.aspx?FileID=202>*.
33. HALFMEIER, AXEL. EuVTVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010.
34. HALFMEIER, AXEL. Annex to § 1109: EuGFVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010.
35. HALFMEIER, AXEL. Annex to § 1096: EuMVVO. In *ZPO Kommentar*. Edited by Prof. Dr. Hanns Prütting and Prof. Dr. Markus Gehrlein. 1. Edition. Köln: Luchterhand, 2010.
36. MANKOWSKI, PETER. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007.
37. NEKROSIUS, VYTAUTAS. *Europos Sąjungos civilinio proceso teisė*. Pirma dalis. Vilnius: Justitia, 2009.
38. NEKROSIUS, V. *Civilinis procesas: koncentruotumo principas ir jo įgyvendinimo galimybės*. Vilnius: Justitia, 2002.
39. NETZER, FELIX. EuBagatellVO. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. [Accessed on 1 September 2012]. At: <http://beck-online.de>.

40. NORKUS, RIMVYDAS. *Supaprastintas civilinis procesas*. Vilnius: Justitia, 2007.
41. NORKUS, RIMVYDAS. New legal instruments in the area of Civil Procedure: will a new European Union Civil Procedure be established? In *Right to legal defense and practical aspects of its realization:* material from international scientific–practical conference. Chief editor S. Velyvis. Vilnius: Visus plenus, 2006.
42. PABST, STEFFEN. Der Europäische Vollstreckungstitel. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010.
43. STORSKRUBB, EVA. *Civil Procedure and EU Law: A Policy Area Uncovered*. Oxford University Press, 2008.
44. STÜRNER, MICHAEL. EuVTVO. In *Gesamtes Recht der Zwangsvollstreckung*. Edited by Prof. Dr. Johann Kindl, Prof. Dr. Caroline Meller-Hannich, RiOLG a.D. Hans-Joachim Wolf. 1. Edition 2010 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.
45. VARGA, ISTVAN. Das europäische Verfahren für geringfügige Forderungen. In *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR*: Kommentar: Bearbeitung 2010: EG-VollstrTitelVO, EG-MahnVO, EG-BagatellVO, EG-ZustVO2007,EG-BewVO, EG-InsVO. Edited by Thomas Rauscher. Munich: Sellier, 2010.
46. VEKAS, LAJOS. In *Brussels I Regulation*. Edited by Ulrich Magnus and Peter Mankowski. Sellier European Law Publishers, 2007.
47. VEBRAITE, VIGITA. Bylų dėl nedidelių sumų nagrinėjimo procedūra Europos Sąjungoje. *Law*, 2011, No. 79.
48. VEBRAITE, VIGITA. Peculiarities of Application of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure. *Law*, 2010, No. 77.
49. VEBRAITE, VIGITA. Scope of Regulation (EC) No. 805/2004 of the European Parliament and the Council creating a European Enforcement Order for uncontested claims. *Justitia*, 2009, No. 1(71).
50. VISINSKIS, VIGINTAS Non-court issued instruments permitting enforcement. *Jurisprudence*, 2008, No. 7(109).
51. VOIT, WOLFGANG. §§ 1097 ff. Vorbemerkung. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.
52. VOIT, WOLFGANG. §§ 1087 ff. Vorbemerkung. In *Kommentar zur Zivilprozessordnung: ZPO*. Edited by Prof. Dr. Hans-Joachim Musielak. 9, revised edition 2012 [online]. [Accessed on 15 September 2012]. At: <http://beck-online.de>.

Case law

53. European Court of Justice ruling in *G. v. Cornelius de Visser* of 15 March 2012, No. C–292/10, unpublished as of yet.

54. European Court of Justice ruling of 8 May 2008 in a case No. C-14/07 *Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin*, ECR 2008 I-03367.

55. European Court of Justice judgment of 21 May 1980 in *Bernard Denilauler v SNC Couchet Frères*, No. 125/79.

56. European Court of Human Rights ruling of 12 April 2012 in *Eriksson*vs.*Sweden*, application No. 60437/08.

57. European Court of Human Rights ruling of 21 February 1990 in *Håkansson and Sturesson* vs.*Sweden*, application No. 11855/85.

58. Lithuanian Supreme Court Civil Division ruling of 23 February 2005 in a civil matter *AB Ūkio bankas v. B. R. ir kt.*, No. K-3-124/2005, cat. 106.1.

59. Lithuanian Court of Appeal Civil Division ruling of 26 January 2012 in *A. Š.* c.m., No. 2-73/2012, cat. 110.1.

60. Lithuanian Court of Appeal Civil Division ruling of 26 January 2012 in a c.m. *D. I. v A. Š.*, No. 2-73/2012, cat. 110.1.

61. Lithuanian Court of Appeal Civil Division ruling of 5 September 2011 in a c. m. on *M. M. D. M.* application, No. 2T–149/2011, cat. 130.3.2.

62. Lithuanian Court of Appeal Civil Division's ruling of 9 August 2011 *R. D.* c. b., No 2–1708/2011 cat. 94.2.1; 122.3; 129.14;130.1.

63. Lithuanian Court of Appeal Civil Division ruling of 14 July 2011 in a c.m. *bankrutavusi uždaroji akcinė bendrovė „Tagatis“ v. Lenkijos įmonė European Marketing Service Sp. Z.o.o.*, No. 2-1428/2011, cat. 129.14.

64. Lithuanian Court of Appeal Civil Division ruling of 16 October 2009 in a civil matter on *L.D.* application, No. 2T-193/2009, cat. 130.3.1.

65. Lithuanian Court of Appeal Civil Division's ruling of 9 August 2008 in *G. Š.* bankruptcy case, No. 2-769/2008, cat. 126.7; 121.6; 122.1.

66. Lithuanian Court of Appeal Civil Division ruling of 30 September 2008 in a c. m. on *L.D.* application, No. 2T–149/2008, cat. 130.3.1.

67. Lithuanian Court of Appeal Civil Division ruling of 22 April 2008 on application of *K. C. krovinių transportas*, No. 2T–70/2008.

68. Kaunas Regional Court Civil Division ruling of 28 September 2012 in a c.m. *DRJ REAL ESTATE BG ir R. D. v. A. B.*, No. 2A-1595-510/2012, cat. 22.3; 36.2; 129.14; 134; 121.14; 121.18; 121.21.

69. Kaunas Regional Court Civil Division ruling of 2 May 2012 in a c.m. *UAB „General Financing“ v. S. G.*, No. 2S-860-153/2012, cat. 122.1., 122.3, 122.5, 129.14.

70. Kaunas Regional Court Civil Division ruling of 29 June 2012 in a c.m. *UAB „ Longlita“ v. M. L.*, No. 2S-1321-273/2011, cat. 122.2; 122.3.; 122.4.
71. Kaunas Regional Court Civil Division ruling of 3 May 2011 in a c.m. *R. K. v A. K.*, No 2S-769-173/2011, cat. 122.4; 129.13.
72. Kaunas Regional Court Civil Division ruling of 20 October 2010 in a c.m. *J. K.*, No. 2S-1984-273/2010, cat. 122.2.;122.3.122.4.
73. Vilnius Regional Court Civil Division ruling of 15 November 2011 in a c.m. *O. S. v. E. S.*, No. 2S-773-212/2011, cat. 122.4.
74. Vilnius Regional Court Civil Division ruling of 8 September 2011 in a c.m. *J. P. v. R. V.*, No. 2S-591-198/2011, cat. 121.14; 122.4; 129.14.
75. Vilnius Regional Court Civil Division ruling of 25 November 2010 in a c.m. *A. P. v. UAB „Vekada“*, No. 2S-530-280/2010, cat. 116.10.1;121.14;122.3;122.4.
76. Vilnius Regional Court Civil Division ruling of 28 March 2011 in a c.m. *D. P. v. A. P.*, No. 2S-588-619/2012, cat. 129.1.; 129.4.
77. Vilnius regional court Civil division ruling of 26 January 2012 in c. c. *UAB „Ecolink Baltic“ v. Lenkijos bendrovė „Tagros Polska“ Kataryna Nieciecka*, No. 2S-516-611/2012, cat. 104.10; 106.3; 122.2; 122.4.
78. Vilnius Regional Court Civil Division ruling of 23 August 2011 in a c.m. *D. P. (D. P.) v. I. J. S. W.*, No. 2S-1467-520/2011, cat. 122.4.
79. Vilnius Regional Court Civil Division ruling of 20 May 2011 in a c.m. *BUAB „SB Trans“ v. SIA „TMK Industry“*, No. L2-2014-560/2011, cat. 125.11.
80. Vilnius Regional Court Civil Division ruling of 28 February 2011 in a c.m. *AB „Lietuvos dujos“ Vilniaus filialas v. UAB „PREN investicijos“*, No. L2-4496-340/2011, cat. 99.1.5.
81. Vilnius Regional Court Civil Division ruling of 19 January 2011 in a c.m. *UAB „Finansų rizikos valdymas“ v. K. O.*, No. 2S-78-56/2011, cat. 121.14; 121.18; 122.4; 129.15.
82. Vilnius regional court Civil division ruling of 17 November 2012 in c. c. *AB Ūkio bankas v. UAB „Joanos avialinijos“*, No. 2S-1185-56/2010, cat. 121.18; 122.4.
83. Vilnius Regional Court Civil Division ruling of 7 November 2011 in a c.m. *AB Ūkio bankas v. UAB „Joanos avialinijos“*, No. 2S-1185-56/2010, cat. 121.18; 122.4.
84. Druskininkai local court ruling of 7 May, 2012 in a c.m. *SIA GRAVIDUS v. UAB „Transtaja“*, No.2-404-182/2012, cat. 103.4.; 106.3.
85. Kaunas local court ruling of 26 September 2011 in a c. m. *E. C. v. V. K.*, No. 2-13861-886/2011, cat. 116.1; 130.2.5.
86. Vilnius 1st local court ruling of 27 June, 2012 in a c.m. *R. O. D. v. Deutsche Lufthansa Aktiengesellschaft*, No. 2-5442-790/2012, cat. 35.4; 116. 1.
87. Vilnius 1st local court ruling of Thursday, January 12, 2012 in a c.m. *A. K. v. „Hotel Fortina“*, No. 2-504-465/2012, cat. 116.1.

88. Vilnius 1st local court ruling of Friday, February 25, 2011 in a c.m. *UAB Agentūra „Jungtinės spaudos paslaugos“ v. Beer Konzept*, No. 2-2874-790/2011, cat. 35.4; 116.1.
89. Vilnius 2nd District Court ruling of 2 September 2009 in a c.m. *UAB „TRANSIT CADR INTERNATIONAL“ v. SIA „O.A Simona“*, No. L2-8432-592/2009.
90. Vilnius Region local court ruling of February 11, 2011 in a c.m. *A. S. v. Air Baltic Corporation AS*, No. E2-390-855/2011, cat. 44.2.4.1.; 44.5.2.; 44.8.

Other sources

91. *European E-justice website* [online]. At: <https://e-justice.europa.eu/home.do?action=home&plang=lt>.
92. *European Judicial Atlas in Civil Matters* [online]. At: <http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lt.htm>.
93. European Judicial Network in Civil and Commercial Matters. Summary of Replies to the Questionnaire for the Member States on the Application of the European Order for Payment, Regulation 1896/2006. Working Document no. 1/2010.
94. General Advocate's conclusion of 28 June 2012 in a case *Szyrocka*, C-215/11 [online]. At: <http://curia.europa.eu/juris/liste.jsf?pro=&nat=&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=c-215%252F11&td=ALL&pcs=O&avg=&page=1&mat=or&jge=&for=&cid=361722>.
95. *Annual Reports of Lithuanian Republic courts* [online]. [Accessed on 8 September 2012]. At: <http://www.teismai.lt/lt/teismu-savivalda/teismu-savivalda-veiklos-ataskaitos/>.
96. *Postal service providers in Lithuania* [online]. [Accessed on 26 August 2012]. At: <http://www.rrt.lt/lt/vartotojui_71/pasto-ir-pasiuntiniu-paslaugos/paslaugu-teikejai_93/pasto-paslaugu-teikejai.html>.
97. *Practical guide to the Regulation on the application of European Order for Payments* [online]. [Accessed on 28 August 2012]. At: <http://ec.europa.eu/justice/civil/document/index_en.htm>.
98. *Practical guide to the application of the Regulation on European Enforcement Order* [online]. [Accessed on 8 September 2012]. At: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lt.pdf>.
99. *Court statistics*[online]. [Accessed on 8 September 2012]. At: http://www.teismai.lt/lt/teismai/teismai-statistika/
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CHAPTER 3: ESTONIA

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1. Application of the Regulations in Estonian legal system

1.1. National legislation associated with the Regulations

1.1.1. Code of Civil Procedure

1. The Republic of Estonia joined the European Union on 1 May 2004. By that time, the European Enforcement Regulation was completed in the EU, and entered into force on 21 January 2005[1086], after Estonia had already joined the EU. Pursuant to implementing provisions of the Regulation, all courts in EU member states started to apply the Enforcement Regulation from 21 October 2005.[1087] European order for payment procedure regulation and European small claims procedure order regulation were also applied after Estonia joined European Union. European order for payment procedure regulation started to apply from 12 December 2008[1088] and European small claims procedure order regulation from 1 January 2009.[1089]

2. At the moment of joining European Union, an old code of civil procedure[1090], which did not contain legislative or regulatory provisions related to Regulations, was in effect in Estonia. However, after Estonia joined EU, one correction to an old code of civil procedure has been made. Namely, § 379¹ of an old code of civil procedure ("Competence of Ministry of Justice in regulating cross-border judicial cooperation in civil cases") provided from 1 May 2004 until the termination of validity period of the cited law, that according to regulations accepted on a basis of point c of article 61 of the Treaty Establishing the European Community, the Ministry of Justice executes all rights and regulations imposed upon a member state. One of these regulations is European enforcement order regulation, which was supposed to be applied in Estonian courts starting from 21 October 2005, i.e during the validity period of an old code of civil procedure. Despite the fact, provisions related to the European enforcement order regulation were not imposed in old code of civil procedure, the reason for that being, that

[1086] Hereby it must be noted, that in Art 33 of Estonian text of the European Enforcement Regulation, a mistake has been made. For comparison, see also a consolidated English version of the European enforcement order regulation (from 04.12.2008), where Art 33 provides 21.01.2005 as an effective date of the European enforcement order regulation and not 21.01.2004, as it erroneously states in the Estonian consolidated version of the European enforcement order regulation (from 04.12.2008). See more in p 4.1.3. of this Research.
[1087] European enforcement order regulation Art 33.
[1088] European order for payment procedure regulation Art 33.
[1089] European small claims procedure regulation Art 29.
[1090] Code of civil procedure. RT I 1998, 43, 666.

at the time a new code of civil procedure[1091], that took into account the European enforcement order regulation, was already accepted.

3. New code of civil procedure entered into force on 1 January 2006. Code of civil procedure is the main legal act, where all national provisions related to Regulations of Estonian law are currently included. Similarly to the old code of civil procedure, the new one also contained at the moment of its entry into force (and to this day) Regulation about the competence of the Ministry of Justice in relation to the EU regulations. Namely, subsection 15-7 of the Code of civil procedure prescribed at its entry into force, that he rights and obligations in the regulation of cross-boundary judicial cooperation in civil matters imposed upon Member States by regulations adopted on the basis of Article 61(c) the Treaty establishing the European Community are performed by the Ministry of Justice.

4. Specific provisions, more narrowly related to the Code of civil procedure entered into force in two stages. Firstly, alongside entry into force of the new Code of civil procedure, provisions that were appraised of entry into force of the European enforcement order regulation and that were contained in § 619 of the Code of civil procedure, took effect. For example, subsection 619-3 of the code of civil procedure provides, that in accordance with Article 20.2(c), certifications of European Enforcement Order Certificates which are prepared in Estonian or English are recognised in Estonia. Pursuant to Article 25.1 of the Regulation, Harju County Court certifies authentic instruments concerning claims as European Enforcement Order Certificates. Secondly, on 1 January 2009 provisions, related to the European order for payment procedure regulation and to the European small claims procedure regulation, entered into force. Provisions related to the order for payment procedure regulation are included in §490¹ of the Code of civil procedure. For example, subsection 490-3 prescribes, that in accordance with Art 21.2(b) of European order for payment procedure regulation, only European orders for payment which are prepared in Estonian or English, or have an added Estonian or English translation are recognised in Estonia. Provisions related to the European small claims procedure regulation are included in §404¹ of the Code of civil procedure. For example, subsection 405-3 of the Code of civil procedure prescribes, that in accordance with Art 21.2(b) of European small claims procedure order regulation, only decisions of judicial proceedings conducted on a basis of European small claims procedure order regulation which are prepared in Estonian or English, or have an added Estonian or English translation will be executed in Estonia.

5. Small number of provisions related to Regulations in the Code of civil procedure is explicable by two circumstances. Firstly, in Estonian courts Regulations are directly applicable. Secondly, it must be taken into account, that reformation of Estonian Code of civil procedure coincided with joining the EU, which means that the new Code of civil

[1091] New Code of Civil Procedure was adopted on 20 April 2005. Code of civil procedure. RT I 2005, 26, 197.

procedure already contained several modern updates, that conformed to the logic of Regulations and made it unnecessary to amend the Code of civil procedure after entry into force of the European small claims procedure regulation and the European order for payment procedure regulation. For example, with the new Code of civil procedure a possibility of expedited procedure for payment order[1092] was created in Estonia for the first time, and its logic is relatively similar to procedure stipulated in European order for payment procedure regulation.

6. Consequently, the new Code of civil procedure contains only those provisions related to the Regulations that are dealing with issues that Regulations leave up to the competence of national procedural rules. For example, Art 4(1) of the European small claims procedure order regulation provides a limited discretion for the member states on what type of transfer can be used for an applicant to begin the European small claims procedure. This possibility is specified by the Estonian legislators in § 405^1(2) of the Code of civil procedure according to which, an application for initiation of proceeding can be submitted in Estonia in the form provided by the §334-336 of the Code of civil procedure (i.e in writing (§ 334), in a format which can be reproduced in writing (§ 335) or in an electronic format (§ 336)). Legislative solution that allows to regulate in national legislation only those issues that the EU regulations leave up to the national law, is corresponding to past activity of the Estonian legislator in formulating national implementing provisions related to the EU private international law regulations.[1093]

7. Provisions related to Regulations of the valid Code of civil procedure are as follows (as at 01.10.2012):

Regulation	**Paragraph number and title**	**Paragraph text**	**Entry into force**
European enforcement order regulation	**§ 619.** Recognition of the judicial decision and other execution document of the EU member state	(1) The provisions of this Code apply to the recognition and enforcement in Estonia of judgments and other execution documents of EU member states to the extent that, Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial	RT I, 14.03.2011, 2 - entered into force 18.06.2011

[1092] Explanatory memorandum to the draft legislation of the Code of Civil Procedure. 208 SE I. Available at: http://www.riigikogu.ee/?op=emsplain2&content_type=text/html&page=mgetdoc&itemid=033370012 (01.10.2012).

[1093] However, Estonian legislator has not always been consistent here. See for example private international law subsection 48-2, according to which an injured party can use the right given by Art 7 of the regulation of the European Parliament and the Council (EC) no 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations OJ L 199, 31/07/2007, pp 0040-0049 (so-called Rome II Regulation) to choose application of the law of the country in which the damage occurs or the event giving rise to the damage occurred, only in the first instance until the ending of first hearing or until the end of written preliminary proceeding. Art 7 of the Rome II Regulation does not address the question about until what moment the injured party can make its decision, since the purpose of the Rome II Regulation is to determine legislation applicable in cross-border disputes and not to regulate the civil procedure of the member states. See also: International private law. RT I 2002, 35, 217.

		matters, Council Regulation 2201/2003/EC concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation 1347/2000/EC, Regulation 805/2004/EC of the European Parliament and the Council, creating a European Enforcement Order for uncontested claims (OJ L 143, 30.04.2004, pp. 15–39), Regulation no 1896/2006/EC, Regulation no 861/2007/EC, Council Regulation no 4/2009/EC on on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and other European Parliament and the Council regulations do not provide otherwise.	
	§ 619[1]. Implementation of Regulation (EC) No. 805/2004 of the European Parliament and the Council	(1) Confirmations based on the regulation of the European Parliament and the Council (EC) No 805/2004 Art 6, paragraphs 2 and 3, Art 9, paragraph 1, and Art 24, paragraph 1 are issued by the county courts that carried out the decision. According to Art 25(1) of the regulation an authentic instrument concerning a claim shall be certified as a European enforcement order by the Harju County Court. (2) Issuing of the confirmation referred to in the current paragraph section 1 is resolved in court by written procedure. Confirmation is delivered to the defending party or to the debtor and forwarded to the applicant. Withholding confirmation regulation will be delivered to the applicant and the applicant may file a complaint against such ruling. (3) In case described in Art 10(1)a of the regulation mentioned in section 1 of this paragraph, the court may amend a ruling on certification of a judgment as an EEO certificate on the same basis with Estonian court judgments. (4) In case described in Art 10(1)a	RT I 2008, 59, 330 - entered into force 01.01.2009

		of the regulation mentioned in section 1 of this paragraph, the court may withdraw such certification by a ruling in cases where the certification was clearly wrongly granted. Defendant or debtor can submit a confirmation withdrawal application within 30 days from delivery of the decision or any other enforcement order, in case of a delivery abroad within 2 months from delivery of the decision or any other enforcement order. An appeal against court ruling can be filed on withholding confirmation regulation or on confirmation withdrawal regulation. In accordance with Article 20.2(c) of the regulation mentioned in section 1 of this paragraph, certifications of EEO certificates which are prepared in Estonian or English or have an Estonian or English translation attached, are recognised in Estonia. (6) European enforcement order is subject to execution in Estonia and provisions on enforcement procedure will be applied to remedies available to the debtor to the extent not otherwise stated in the regulation mentioned in section 1 of this paragraph.	
The European order for payment procedure regulation	**§ 490[1].** Implementation of Regulation (EC) No. 1896/2006 of the European Parliament and the Council	(1) Provisions of this act on expedited procedure of the payment order will also be applied at conducting of expedited procedure of the payment order on a basis of the European Parliament and Council Regulation (EC) No 1896/2006 establishing a European order for payment procedure (OJ L 399, 30.12.2006, p 1-32) to the extent not otherwise regulated in the named regulation. (2) County court that made a decision on payment order is competent in declaring European order for payment possible to implement if not otherwise stated in in the regulation mentioned in section 1 of this paragraph. European order for payment procedure can be challenged as provided in § 489[1] of the code by filing an appeal against court ruling.	RT I 2008, 59, 330 - entered into force 01.01.2009

		(3) In accordance with Article 21.2(b) of the regulation mentioned in section 1 of this paragraph, the European order for payment which is prepared in Estonian or English or have an Estonian or English translation attached, will be executed in Estonia. (4) European order for payment is subject to execution in Estonia and provisions on enforcement procedure will be applied to remedies available to the debtor to the extent not otherwise stated in the regulation mentioned in section 1 of this paragraph.	
European Small Claims Procedure Regulation	**§ 405[1].** Implementation of Regulation (EC) No. 861/2007 of the European Parliament and the Council	(1) Provisions of this act on simplified proceeding will be applied in adjudication of a civil matter on a basis of the European Parliament and Council Regulation (EC) No 861/2007 establishing a European small claims procedure regulation (OJ L 199, 31.07.2007, pp 1-22) to the extent, not otherwise regulated in the named regulation. A competent county court can resolve a matter on a basis of the named regulation. (2) According to Art 4(1) of the regulation named in section 1 of this paragraph, application on initiation proceedings can be submitted in a form provided in §334-336 of this code. (3) According to Art 21(2)b of the regulation named in section 1 of this paragraph, a decision made in judicial proceeding on a basis of the regulation will be executed in Estonia only if it is in Estonian or English, or if confirmation has English or Estonian translation attached. (4) To foreign judicial decisions on execution of enforcement order in Estonia and on debtor's legal remedy, made on a basis of the regulation named in section 1 of this paragraph, provisions for enforcement order will be applied in Estonia to the extent that the regulation does not provide otherwise.	RT I 2008, 59, 330 - entered into force 01.01.2009

1.1.2. Other legal acts

8. Provisions related to Regulations, can be found in addition to the Code of civil procedures in some others national legal acts.

9. According to **State Fees Act**[1094] subsection 57-5, at submission of petition for issuing European enforcement order documentation, state fee of 25 euros must be settled. If the named application is submitted through the website www.e-toimik.ee the 10 euro fee must be settled. State fees act does not distinguish separately state fees in matters of the European order of payment and of national payment order- state fees act subsection 57-6 simply provides, that at submission of an application on matters of expedited procedure of payment order, a state fee of three percent of the claim, but not less then 45 euros, must be settled. Referenced provision must thus be applied to the matters of the European order of payment as well as to the national payment order. State fees act does not prescribe separate fees in matters of national simplified proceeding and of the European small claims procedure, which means that in case of those disputes a general regulation of state fees is valid.

10. **Code of enforcement order procedure**[1095] does not contain provisions that explicitly refer to Regulations. Which of course does not mean, that enforcement procedure cannot be carried out on a basis of the Code of enforcement procedure, for example consequently to existence of the European enforcement procedure, it just confirms the choice made by Estonian legislator to update national legislation as little as possible in terms of implementation of directly applicable regulations. This is confirmed by the Code of civil procedure subsection 619-6, according to which provisions of the European enforcement order and legal remedies of debtor are applied in Estonia to the extent not otherwise provided by the European enforcement regulation.

1.2. Trainings and publications related to the Regulations

1.2.1. Trainings

11. Within the training program of the Supreme Court, Estonian judges have undergone several trainings, concerning the Code of civil procedure, but none of them was specifically associated with the Regulations of the Code of civil procedure. During the period between 01.05.2004 and 15.11.2012, training department of the Supreme Court conducted trainings for judges in the fields related to Regulations (civil procedure, enforcement procedure, European Union law, private international law) on the following subjects:

[1094] State Fees Act. RT I 2010, 21, 107.
[1095] Code of enforcement order procedure. RT I 2005, 27, 198.

- Civil procedure – 18.10.2012, 01.11.2012, 15.11.2012.
- Enforcement procedure – 19.10.2012, 02.11.2012, 16.11.2012.
- Round Table – adjudication of civil matters in simplified procedure – 20.09.2012.
- Applicable law in Rome I and II Regulations – 09.03.2012, 16.03.2012.
- Topical problems of the civil procedure - 18.11.2011, 21.10.2011.
- EU civil procedural law and private international law - 18.02.2011, 04.02.2011.
- Topical problems of the civil procedure - 04.11.2010, 05.11.2010.
- Enforcement procedure- 18.02.2010, 19.02.2010, 04.02.2010.
- Topical problems of the Code of civil procedure - 19.11.2009, 20.11.2009, 05.11.2009, 06.11.2009.
- European law of civil procedure - 27.02.2009, 19.02.2009.
- Amendments to the Code of civil procedure - 05.12.2008, 07.11.2008.
- Application of the Code of civil procedure: Action procedure. Petition procedure, 20.11.2008, 21.11.2008.
- Application of the code of civil procedure - 06.12.2007, 22.11.2007, 08.11.2007.
- Application of the enforcement order procedure - 12.10.2007.
- EC law - 26.10.2007, 25.10.2007, 05.10.2007, 04.10.2007, 14.09.2007, 13.09.2007, 16.03.2007, 15.03.2007, 16.02.2007, 15.02.2007, 19.01.2007, 18.01.2007, 27.01.2005, 24.01.2005.
- Application of the Code of civil procedure - 31.05.2007, 17.05.2007, 03.05.2007.
- EC law. Advanced - 25.05.2007, 24.05.2007, 20.04.2007, 19.04.2007, 18.11.2005, 17.11.2005, 04.10.2005-07.10.2005, 11.04.2005-12.04.2005, 21.03.2005-24.03.2005.
- Basic course on the European Community law - 13.10.2006, 12.10.2006, 22.09.2006, 21.09.2006, 08.09.2006, 07.09.2006, 17.05.2006, 16.05.2006, 26.04.2006, 25.04.2006, 31.03.2006, 30.03.2006, 17.03.2006, 14.03.2006, 20.01.2006, 19.01.2006, 18.01.2006, 17.01.2006.
- Code of Civil Procedure - 25.05.2005.
- Civil procedure and enforcement procedure - 18.02.2005, 17.02.2005, 04.02.2005, 03.02.2005.

12. Lawyers Association have not conducted any specific training sessions related to Regulations. However, the Lawyers Association have conducted general trainings on the Order of civil procedure that briefly dealt with matters of Regulations. Among them, the following ones were conducted during recent years:

- About enforcement of judicial decisions and the enforcement procedure – 28.09.2012.
- Amendments in the civil procedure – 30.08.2012.
- About petition procedure – 18.04.2012.
- About the civil procedure – 15.04.2011.
- Practical issues of enforcement procedure – 11.02.2011.

13. Other organisations, trade associations and institutions (like Chamber of Notaries, University of Tartu) have not conducted any specific training sessions related to Regulations. Among private training providers, Preismann Koolitus conducted a general

training associated with international civil procedural law and private international law: “Practical issues in private international law” (27.05.2010).

1.2.2. Publications

14. Estonian law literature concerning Regulations is very scarce. Law literature in Estonian with Regulations as main object of study, is as follows:

- Kaur, M. Certification of European enforcement order: why and when? *Juridica 2012, no 2*, pp 122-126.
- Mulla, M. Exequatur procedure and its possible abolition under Brussels I Regulation. Master´s thesis, supervisor M. Torga. The Faculty of Law of the University of Tartu, 2012.
- Poola, M. Recognition and enforcement in Europe of enforcement instruments on uncontested claims Master´s thesis, supervisor K.Sein. The Faculty of Law of the University of Tartu, 2007.

15. Regulations have been treated as secondary questions in following manuals, articles, master´s theses and collections of works, regarding civil procedure law and private international law:

- Alekind, A. Enforcement proceeding law. Tallinn, Juura 2011.
- Estonian Association of Judges. Constitutional nuances of recognition and enforcement of court decisions in practice of different countries. Collection of reports. Estonian-Switzerland cooperation program 2010.
- Klimberg, E. Efficiency of order for payment procedure from creditor's perspective. Master´s thesis, supervisors Anna Markina and Kai Härmand. The Faculty of Law of the University of Tartu, 2012.
- Lõhmus, G. Recognition and enforcement of judgements in default of appearance rendered by the courts of Estonia - article 34(2) of the Brussels I Regulation and the Lugano II Convention. Master´s thesis, University of Tartu 2012.
- Lõhmus, G. Recognition and enforcement of judgements in default of appearance rendered by the courts of member states of the Brussels I Regulation and the Lugano II Convention *Juridica 2012, no 6*, pp 450-461.
- Nurmela, I. et al. Private International Law. Tallinn, Juura 2008.
- Pärsimägi, A. Action proceeding. Action and submission of applications. Tallinn, Juura 2011.
- Pärsimägi, A. Variable civil proceeding: procedural acts and deadlines, objection to court activities, securing an action. *Juridica 2009, no 7*, pp 439-454.
- Torga, M. Residence in Civil code act : the meaning in international civil procedure. *Juridica 2010, no 7*, pp 473-480.
- Vinni, M. Judgement as an object of recognition in civil and commercial matters. Master´s thesis, University of Tartu 2010.

16. In addition, the following guidance materials regarding correct application of Regulations and exercise of rights on the basis of Regulations, are available in Estonian on the web:

- A guidance in Estonian on the European enforcement order regulation, published by the European Commission: A practical guide on application of the European enforcement order regulation. European judicial network in civil and commercial matters. Available at: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_et.pdf (01.10.2012).
- Guidance on commencement of the European small claims procedure is available in Estonian at the European E-justice portal at http://www.consumer.ee/euroopa-vaiksemad-kohtuvaidlused/ and https://e-justice.europa.eu/content_small_claims-42-et.do.
- Guidance on commencement of the European payment order procedure is available in Estonian at the European E-justice portal at: https://e-justice.europa.eu/content_european_payment_order-41-EU-et.do.

1.3. Assessment of implementation of Regulations in Estonia

17. Although Estonia, similarly to the so-called old member states, has been bound to Regulations since their application in the European Union, Estonian law practice can be characterised by the cautious attitude towards options of adjudication of civil matters, prescribed by Regulations. This cautious attitude is reflected in small numbers of judicial decisions pursuant to Regulations, in shortage of literature concerning Regulations and in somewhat slow reaction of the legislator on entry into force of Regulations. For example, an obligation to apply the European order for payment procedure regulation emerged in Estonian courts on 12 December 2008,[1096] while changes in the Code of civil procedure,[1097] related to the European order of payment procedure regulation, entered into force only on 1 January 2009. On the same note- obligation to apply the European enforcement order regulation emerged in Estonian courts on 21 October 2005,[1098] while provisions, regarding the European enforcement order regulation entered legal order on 1 January 2006, i.e. with entry into force of the new Code of civil procedure.

18. The cautious attitude towards procedures imposed by Regulations, is for the most part explicable by the fact, that in connection with joining the European Union, Estonia had to transpose completely innovative system of international civil procedural law. Unlike so-called old member states, before joining the European Union Estonia has never been bound to any essential private international law regulations, that in the EU regulated issues concerning international jurisdiction, approval and declaration of enforceability of

[1096] European order for payment procedure regulation Art 33.
[1097] See the Code of civil procedure § 490¹.
[1098] European enforcement order regulation Art 33.

judicial decisions made in foreign states. The Brussels I regulation no 44/2001[1099]is worth hereby mentioning, because Regulations are greatly based on its logic and its predecessor – The Brussels Convention[1100] was signed in 1968. Not of less importance are other regulations, that regulated international jurisdiction determination and issues concerning approval and declaration of enforceability of judicial decisions made in foreign states in EU before accession of Estonia (primarily the Brussels II bis regulation no 2201/2003[1101] and insolvency proceedings regulation no 1346/2000).[1102]

19. Secondly, a cautious attitude of Estonian legal practicians towards Regulations is probably raised from historical peculiarity of the Estonian procedural law. Namely, according to the subsection 377-1 of the Code of civil procedure that applied until 31 December 2005, foreign judicial decisions were recognised only in accordance with Estonian international agreements, i.e bilaterally and only with the new Code of civil procedure unilateral recognition of decisions was introduced to the national procedural law. According to unilateral recognition of decisions, the Republic of Estonia recognises decisions carried out in foreign states, regardless of whether the foreign state entered international agreement on recognition and enforceability of judicial decisions, or whether this foreign state recognises and enforces judicial decisions carried out by the Republic of Estonia.

20. Thirdly, a cautious attitude towards Regulations and fewness of corresponding case-law in Estonia can be explained not only by historical peculiarity of the Estonian law, but also by individuality of the Estonian national procedural law. Namely, Estonian Code of civil procedure prescribes rather similar procedure to those of the European order for payment procedure and the European small claims procedure order. National provisions for expedited proceeding of the payment order are included in Chapter 49 of the Code of civil procedure ("Expedited procedure of the payment order") and simplified proceedings are provided in § 405 of the Code of civil procedure ("Simplified proceeding"). Consequently, creditors do not often need to invoke European code for payment procedure regulation or European small claims procedure order regulation in Estonian courts.

21. As a result of the analysis of Estonian case-law it became clear, that implementation of Regulations by Estonian courts has grown in rising trend, which suggests that in the future implementation of Regulations in Estonian courts will become more common. In particular, implementations of European enforcement order regulation and of European order for payment procedure regulation by Estonian courts have

[1099] Council regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 012, 16/01/2001, pp 0001-0023.

[1100] 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters. OJ L 299, 31/12/1972, pp 0032-0042.

[1101] Regulation of the Council (EC) no 2201/2003, of 27 November 2003, regarding jurisdiction, execution and approval of sentences in court cases related to matrimonial matters and parental responsibility, which invalidates regulation (EC) no 1347/2000. OJ L 338, 23/12/2003, pp 0001-0029.

[1102] Regulation of the Council (EC) No. 1346/2000 from 29 May 2000, regarding order for payment procedure. OJ L 160, 30/06/2000, pp 0001-0018

significantly increased in recent years. European small claims procedure order regulation has not really found a practical exploitation, since according to the data underlying this Research, only one judicial decision was made in Estonia on a basis of the referred regulation. On the other hand, Estonian bailiffs were presented several judicial decisions made within small claims procedure by foreign courts for execution in Estonia, which suggests that local lawyers have some experience with small claims procedure order regulations and that analysis of the mentioned regulations is necessary for local lawyers.

22. Analysis of implementation practices of the Regulations (especially of the European enforcement order regulation) is important for Estonian legal practicians also for a reason, that abolition of exequatur procedure may expand in the future not only to foreign decisions in the scope of application of the Regulations, but to all judicial decisions in civil and commercial disputes, due to planned amendments[1103] to Brussels I regulation.[1104] Previous has already partially taken place due to enforcement of the Maintenance obligation regulation No 4/2009[1105] in relevance to the maintenance support previously belonging in the scope of Brussels I Regulation No 44/2001. Namely the Maintenance obligation regulation eliminates[1106] exequatur proceedings in relation to the decisions on maintenance support carried out by those member states[1107] that are bounded with the Hague 2007 Protocol on the law applicable to maintenance obligations.[1108] Maintenance obligations regulation must be applied in Estonian courts from 18 June 2011.[1109] Previous illustrates that the analysis of the implementation practice of the Regulations is of big importance (especially of the European enforcement regulation) in future settlement of civil disputes, since other EU regulations that govern the enforceability of judicial decisions carried out in foreign states,may soon be converted to the logic of the European enforcement order regulation.

[1103] See remake of the regulation published by the Council of Europe on 30 November 2012: Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) Common Guidelines. The European Parliament, The Council. 2010/0383(COD). http://register.consilium.europa.eu/pdf/en/12/pe00/pe00056.en12.pdf (01.12.2012). See also previous proposals of amendment in Brussels I regulation No 44/2001 Amendment 121Jurisdiction and the recognition and enforcement of judgements in civil and commercial mattes (recast) Proposal for a regulation (COM(2010)0748) – C7-0433/2010 – 2010/0383 (COD), p 63.

[1104] For example, Art 3 of the European enforcement order regulation prescribes, that the European enforcement order regulation shall apply to judgements, court settlements and authentic instruments on uncontested claims This definition of requirements is given by Art3(1)a-d of the European enforcement order regulation.

[1105] Regulation of the Council (EC) no 4/2009 of 18 December 2008, regarding jurisdiction, applicable law, approval and execution of sentences and co-operation in a matter of maintenance obligations. OJ L 007, 10/01/2009, pp 0001-0079.

[1106] Maintenance obligations regulation Art 17(2).

[1107] At ratification of the Hague Protocol 2007, the European Community disclosed that Denmark and the United Kingdom are not considered as "European Community" in the context of the Hague Protocol 2007, since they are not bound by the Hague Protocol 2007. See corresponding information on the status of the Hague Protocol 2007 at the official website of the Hague Conference: http://www.hcch.net/index_en.php?act=status.comment&csid=1065&disp=type (01.11.2012).

[1108] Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations. http://www.hcch.net/index_en.php?act=conventions.text&cid=133 (01.10.2012).

[1109] Maintenance obligations regulation Art 76.

2. Statistical data on application of Regulations

2.1. Publicity and sources of statistical data

23. Separate official statistics on the decisions adopted in Estonia on a basis of Regulations is absent, which makes it difficult to obtain information on practices of implementation of Regulations Besides, judicial decision based on the Regulations are not available to the general public for the most part. Although in theory all judicial decisions in civil matters should be available to public viawww.riigiteataja.ee, it turned out that the majority of decisions made on a basis of the Regulations are not accessible to a regular user.

24. Since regular user does not have access to judicial decisions made on a basis of the Regulations, inquiries to the Ministry of Justice and to the department of case-law analysis of the Supreme Court were made within this Research. Response was received from the department of case-law analysis of the Supreme Court, on the basis of which was congregated the case-law available for official use in KIS database, used in this Research.

25. Due to the limited search system of database, it was not possible to collect data on regulations from the KOLA database. Taking into account the decisions included in the official database KIS, it can be assumed that the KOLA database does not contain decisions made on a basis of the Regulations. Reason for that being that KOLA contains only decisions included in public disclosure that entered into force until 31.12.2005. The European small claims procedure order regulation and the European order for payment procedure regulation started to apply in Estonian courts after the referred date. The European enforcement order regulation started to apply in Estonian courts from 21 October 2005,[1110] but taking into account the short time span during which these judicial decisions may have reached KOLA, inclusion of these decisions in KOLA database is not likely. Previous is also indirectly confirmed by the fact, that in database for official use KIS, the very first decision made on a basis of the European enforcement order regulation was carried out in November of 2009, suggesting that decisions made under the European enforcement order regulation are not included in the KOLA database.

2.2. Period of collected statistical data

26. Judicial decisions carried out by Estonian courts were used for this Research, which were time-defined as follows:

[1110] European enforcement order regulation Art 33.

- Judicial decisions on the European enforcement order regulation during the period from 21.10.2005 to 01.11.2012, i.e from the day when obligation to apply the European enforcement order regulation emerged in Estonian courts;
- Judicial decisions on the European order for payment procedure regulation during the period from 12.12.2008 to 01.11.2012, i.e from the day when obligation to apply the European order for payment procedure regulation emerged in Estonian courts;
- Judicial decisions on the European small claims procedure regulation during the period from 01.01.2009 to 01.11.2012, i.e from the day when obligation to apply the European small claims procedure regulation emerged in Estonian courts;

27. As the result of data collection revealed, the first decision based on the European enforcement order regulation was carried out in Estonian courts on 06.11.2009, based on the European order for payment procedure regulation on 31.03.2009 and based on the European small claims procedure regulation on 29.12.2011, which is the only decision carried out by Estonian courts on the European small claims procedure regulation.

2.3. Cases in the courts (pending cases)

28. Currently, there is no information on pending cases in publicly accessible databases. It is also not possible to access this type of information in KIS search system, which is meant for official use only.

29. Consequently, judicial problems emerging from resolving pending cases are taken into account in this Research only to the extent, that these problems are reflected in the answers given by legal practicioners to the questions asked within this Research.

2.4. Judicial decisions (decisions that entered into force)

30. According to the search system for official use KIS, on a basis of the European enforcement order regulation 50 judicial decisions were carried out in total by Estonian courts. Among them 25 were carried out by the Tartu County Court, 20 were carried out by the Harju County Court, 3 were carried out by the Pärnu County Court, 1 was carried out by the Tallinn Circuit Court and 1 by the Supreme Court.

31. According to the database for official use KIS, there are 9 judicial cases, where Estonian courts were proceeding the European enforcement order certificate issued in a foreign state. Other 41 court cases were dealing with questions related to issuing the European enforcement order certificate, among them 9 dealt with correction of an error in the enforcement order certificate issued by an Estonian court.

32. According to the search system for official use KIS, on a basis of the European enforcement order regulation the following decisions were carried out by Estonian courts (starting from the latest):

- Tartu County Court regulation of 22.10.2012 of civil matter no 2-07-60972
- Tartu County Court regulation of 21.09.2012 of civil matter no 2-12-5758
- Harju County Court regulation of 29.06.2012 of civil matter no 2-11-12243
- Tartu County Court regulation of 25.06.2012 of civil matter no 2-07-10608
- Tartu County Court regulation of 08.05.2012 of civil matter no 2-10-67384
- Harju County Court regulation of 02.05.2012 of civil matter no 2-09-57819
- Harju County Court regulation of 23.04.2012 of civil matter no 2-10-310
- Tartu County Court regulation of 11.04.2012 of civil matter no 2-03-972
- Pärnu County Court regulation of 14.02.2012 of civil matter no 2-11-63497
- Tartu County Court regulation of 27.12.2011 of civil matter no 2-08-73391
- Tartu County Court regulation of 08.12.2011 of civil matter no 2-08-11712
- Tartu County Court regulation of 28.11.2011 of civil matter no 2-08-19249
- Harju County Court regulation of 26.10.2011 of civil matter no 2-11-12565
- Harju County Court regulation of 19.10.2011 of civil matter no 2-11-10763
- Harju County Court regulation of 29.09.2011 of civil matter no 2-11-42862
- Tartu County Court regulation of 29.09.2011 of civil matter no 2-06-16176
- Harju County Court regulation of 21.09.2011 of civil matter no 2-10-64391
- Harju County Court regulation of 20.09.2011 of civil matter no 2-10-23703
- Tartu County Court regulation of 28.07.2011 of civil matter no 2-09-25029
- Tartu County Court regulation of 26.07.2011 of civil matter no 2-09-25029
- Tartu County Court regulation of 22.07.2011 of civil matter no 2-08-21254
- Pärnu County Court regulation of 29.06.2011 of civil matter no 2-10-26034
- Tartu County Court regulation of 03.06.2011 of civil matter no 2-10-52785
- Pärnu County Court regulation of 19.04.2011 of civil matter no 2-11-12347
- Tartu County Court regulation of 05.04.2011 of civil matter no 2-06-15481
- Tartu County Court regulation of 05.04.2011 of civil matter no 2-08-1662
- Tartu County Court regulation of 30.03.2011 of civil matter no 2-07-50322
- Tartu County Court regulation of 30.03.2011 of civil matter no 2-07-46247
- Tartu County Court regulation of 30.03.2011 of civil matter no 2-08-10767
- Tartu County Court regulation of 25.03.2011 of civil matter no 2-08-58760
- Tartu County Court regulation of 10.02.2011 of civil matter no 2-10-48347
- Tartu County Court regulation of 10.02.2011 of civil matter no 2-10-58585
- Harju County Court regulation of 07.12.2010 of civil matter no 2-10-60829
- Civil Chamber of the Supreme Court regulation no 3-2-1-117-10 of 01.12.2010
- Tartu County Court regulation of 12.11.2010 of civil matter no 2-08-82230
- Harju County Court regulation of 02.11.2010 of civil matter no 2-09-27694
- Tartu County Court regulation of 28.09.2010 of civil matter no 2-08-9576
- Harju County Court regulation of 30.08.2010 of civil matter no 2-10-37892
- Harju County Court regulation of 30.06.2010 of civil matter no 2-10-17052
- Tartu County Court regulation of 09.06.2010 of civil matter no 2-08-63701
- Tallinn Circuit Court regulation of 18.05.2010 of civil matter no 2-09-25113
- Harju County Court judgement of 13.04.2010 of civil matter no 2-9-30971
- Harju County Court regulation of 25.03.2010 of civil matter no 2-05-10106

- Harju County Court regulation of 23.03.2010 of civil matter no 2-10-7996
- Harju County Court regulation of 18.02.2010 of civil matter no 2-10-7996
- Harju County Court regulation of 29.01.2010 of civil matter no 2-09-25113
- Harju County Court regulation of 07.01.2010 of civil matter no 2-10-310
- Harju County Court regulation of 23.12.2009 of civil matter no 2-09-69962
- Harju County Court regulation of 17.11.2009 of civil matter no 2-09-59669
- Harju County Court regulation of 06.11.2009 of civil matter no 2-09-58039

33. According to the search system for official use KIS, on a basis of the European order for payment procedure regulation 94 judicial decisions were carried out in total by Estonian courts. Among them, 82 were carried out by the Harju County Court, 5 were carried out by the Pärnu County Court, 5 were carried out by the Tartu County Court and 2 were carried out by the Tallinn Circuit Court. The majority of these decisions are regulations, that decided to transition to general civil proceedings.

34. According to the search system for official use KIS, on a basis of the European order for payment procedure regulation the following decisions were carried out by Estonian courts (starting from the latest):

1. Harju County Court regulation of 23.08.2012 of civil matter no 2-12-23834
2. Tartu County Court regulation of 05.07.2012 of civil matter no 2-12-16357
3. Tartu County Court regulation of 22.05.2012 of civil matter no 2-12-16357
4. Harju County Court regulation of 14.05.2012 of civil matter no 2-11-15139
5. Harju County Court regulation of 04.05.2012 of civil matter no 2-11-45777
6. Harju County Court regulation of 12.04.2012 of civil matter no 2-11-47220
7. Harju County Court regulation of 03.04.2012 of civil matter no 2-11-45776
8. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-45777
9. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-47220
10. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-45776
11. Harju County Court regulation of 28.02.2012 of civil matter no 2-12-8067
12. Harju County Court regulation of 21.02.2012 of civil matter no 2-11-63194
13. Harju County Court regulation of 17.02.2012 of civil matter no 2-11-45777
14. Harju County Court regulation of 17.02.2012 of civil matter no 2-11-45776
15. Harju County Court regulation of 14.02.2012 of civil matter no 2-11-45779
16. Harju County Court regulation of 14.02.2012 of civil matter no 2-11-47220
17. Harju County Court regulation of 18.01.2012 of civil matter no 2-10-30503
18. Harju County Court regulation of 16.01.2012 of civil matter no 2-11-47202
19. Harju County Court regulation of 27.12.2011 of civil matter no 2-11-47202
20. Harju County Court regulation of 02.12.2011 of civil matter no 2-11-46112
21. Harju County Court regulation of 22.11.2011 of civil matter no 2-11-29527
22. Harju County Court regulation of 14.11.2011 of civil matter no 2-11-25347
23. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-47220
24. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-47202
25. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-45779
26. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-46112
27. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-45776
28. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-45777
29. Harju County Court regulation of 02.11.2011 of civil matter no 2-11-46112

30. Harju County Court regulation of 01.11.2011 of civil matter no 2-11-2262
31. Harju County Court regulation of 10.10.2011 of civil matter no 2-11-17890
32. Harju County Court regulation of 30.09.2011 of civil matter no 2-11-25347
33. Harju County Court regulation of 23.09.2011 of civil matter no 2-11-25347
34. Harju County Court regulation of 07.09.2011 of civil matter no 2-11-15139
35. Harju County Court regulation of 05.09.2011 of civil matter no 2-11-17890
36. Harju County Court regulation of 01.09.2011 of civil matter no 2-11-26046
37. Harju County Court regulation of 01.08.2011 of civil matter no 2-11-17890
38. Harju County Court regulation of 28.07.2011 of civil matter no 2-11-26046
39. Harju County Court regulation of 28.07.2011 of civil matter no 2-11-25347
40. Harju County Court regulation of 30.06.2011 of civil matter no 2-11-29527
41. Harju County Court regulation of 28.06.2011 of civil matter no 2-10-15766
42. Harju County Court regulation of 02.06.2011 of civil matter no 2-11-25653
43. Harju County Court regulation of 19.05.2011 of civil matter no 2-11-15139
44. Harju County Court regulation of 05.05.2011 of civil matter no 2-11-17890
45. Harju County Court regulation of 18.04.2011 of civil matter no 2-10-30503
46. Harju County Court regulation of 08.04.2011 of civil matter no 2-11-15139
47. Tartu County Court regulation of 01.04.2011 of civil matter no 2-11-12970
48. Harju County Court regulation of 30.03.2011 of civil matter no 2-11-2262
49. Harju County Court regulation of 28.03.2011 of civil matter no 2-11-12781
50. Harju County Court regulation of 14.03.2011 of civil matter no 2-11-2262
51. Harju County Court regulation of 24.01.2011 of civil matter no 2-10-61061
52. Harju County Court regulation of 13.01.2011 of civil matter no 2-10-61061
53. Harju County Court regulation of 13.12.2010 of civil matter no 2-10-61061
54. Harju County Court regulation of 01.12.2010 of civil matter no 2-10-59781
55. Harju County Court regulation of 16.11.2010 of civil matter no 2-10-54576
56. Harju County Court regulation of 11.11.2010 of civil matter no 2-10-52509
57. Harju County Court regulation of 09.11.2010 of civil matter no 2-10-30503
58. Harju County Court regulation of 05.10.2010 of civil matter no 2-10-30503
59. Harju County Court regulation of 07.09.2010 of civil matter no 2-10-30503
60. Harju County Court regulation of 03.09.2010 of civil matter no 2-10-30504
61. Harju County Court regulation of 02.09.2010 of civil matter no 2-10-15766
62. Harju County Court regulation of 12.08.2010 of civil matter no 2-10-31662
63. Harju County Court regulation of 05.08.2010 of civil matter no 2-10-30503
64. Harju County Court regulation of 02.07.2010 of civil matter no 2-10-31435
65. Harju County Court regulation of 30.06.2010 of civil matter no 2-10-30504
66. Harju County Court regulation of 20.05.2010 of civil matter no 2-09-61610
67. Harju County Court regulation of 17.05.2010 of civil matter no 2-10-19237
68. Harju County Court regulation of 05.05.2010 of civil matter no 2-10-19811
69. Harju County Court regulation of 05.05.2010 of civil matter no 2-10-19809
70. Harju County Court regulation of 27.04.2010 of civil matter no 2-09-66261
71. Harju County Court regulation of 23.04.2010 of civil matter no 2-10-8038
72. Harju County Court regulation of 23.04.2010 of civil matter no 2-10-8377
73. Harju County Court regulation of 15.04.2010 of civil matter no 2-10-14879
74. Harju County Court regulation of 05.04.2010 of civil matter no 2-10-66261
75. Harju County Court regulation of 01.04.2010 of civil matter no 2-10-12008
76. Harju County Court regulation of 29.01.2010 of civil matter no 2-09-66261
77. Harju County Court regulation of 22.01.2010 of civil matter no 2-09-67440
78. Tartu County Court regulation of 12.01.2010 of civil matter no 2-09-45230

79. Harju County Court regulation of 06.01.2010 of civil matter no 2-09-67440
80. Tartu County Court regulation of 16.12.2009 of civil matter no 2-09-45230
81. Harju County Court regulation of 02.12.2009 of civil matter no 2-09-61911
82. Harju County Court regulation of 01.12.2009 of civil matter no 2-09-12183
83. Tallinn District Court regulation of 12.10.2009 of civil matter no 2-09-12183
84. Harju County Court regulation of 08.10.2009 of civil matter no 2-09-45006
85. Harju County Court regulation of 14.09.2009 of civil matter no 2-09-67440
86. Harju County Court regulation of 10.09.2009 of civil matter no 2-09-44783
87. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33374
88. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33385
89. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33392
90. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33394
91. Harju County Court regulation of 22.07.2009 of civil matter no 2-09-12183
92. Harju County Court regulation of 10.07.2009 of civil matter no 2-09-26618
93. Harju County Court regulation of 08.07.2009 of civil matter no 2-09-12183
94. Pärnu County Court regulation of 31.03.2009 of civil matter no 2-09-12401

35. According to the search system for official use KIS, on a basis of the European small claims procedure regulation only 1 judicial decision was carried out by Estonian courts. This decision was carried out by the Harju County Court:

- Harju County Court judgement of 29.12.2011 of civil matter no 2-11-40908

2.5. Currently enforceable court decisions and court decisions already enforced

36. Currently, there is no information on currently enforceable cases in publicly accessible databases. It is also not possible to access this type of information in KIS search system, which is meant for official use only.

37. It must be noted that according to the §157 section 1 of the General part of the civil code act[1111] the limitation period for a claim recognised by a court judgment in force or arising from an agreement approved by a court or from another execution document is 10 years. Consequently, decisions made on a basis of the Regulations carried out immediately after those decisions may not always reach the enforcement. However, in practice the issue of whether the mentioned limitation period should apply to judicial decisions carried out in foreign states, has not been resolved.[1112] Since foreign states may provide different limitation periods, the legislator could specify in order to avoid misunderstandings, whether the limitation period mentioned in §157 subsection 1 of the General part of the civil code act is applicable to decisions of foreign states as well.

[1111] General part of the Civil code act. RT I 2002, 35, 216.

[1112] See also: Torga, M. Characterisation in Estonian Private International Law – a Proper Tool for Achieving Justice between the Parties? *Juridica International XVIII 2011*, p 84, 91. The commentators of the General part of the civil code act think that it is disputable, whether a foreign execution document, in terms of enforcement in Estonia, is subjected to the same limitation period as Estonian documents or it must base on the limitation period valid in that foreign state. See also: Varul, P. et al. General part of the Civil code act. Commented edition. Tallinn 2010, § 157, p 3.1.4.

38. Consequently, judicial problems emerging from resolving currently enforceable court decisions and court decisions already enforced, are taken into account in this Research only to the extent, that these problems are reflected in the answers given by legal practitioners to the questions asked within this Research.

3. Practical problems of implementation of Regulations for legal practitioners: results of the empirical research

3.1. Responded legal practitioners- judges and their willingness to answer

39. Within this Research 21 judges or assistant judges were sent the Questionnaire, 1 of whom was judge of the Supreme Court, 4 were judges of the District Court (2 from the Tartu Circuit Court and 2 from the Tallinn Circuit Court), 12 were judges of first instance (8 from the Harju County Court, 2 from the Tatru County Court, 1 from the Pärnu County Court, 1 from the Viru County Court) and 4 assistant judges (from the Centre of Payment Orders of the Pärnu County Court). Before sending the Questionnaire to judges, every judge was contacted on the phone and asked about his/hers exposure to implication of the international private law regulations, was explained the essence of the Questionnaire and the goals of this Research. In addition, before sending out the Questionnaire to the judges, every judge was asked for a consent to send the Questionnaire and to respond to the questions. Answering the questionnaire was anonymous. 18 judges answered the Questionnaire.

40. Putting together the sample of judges was based on the judicial decisions published in the KIS database, in the hope of that the judges who carried out the decisions based on the Regulations would be more aware of problems of implementation of these Regulations and thus, more willing to answer the Questionnaire. In addition, the search was based on a principle, that Estonian courts from different regions and of different levels would be represented. Consequently, among the interviewed judges were judges form the Harju County Court, from the Tartu county Court, from the Pärnu County Court, from the Viru County Court, from the Tallinn Circuit Court, from the Tartu Circuit court and from the Supreme Court.

41. In addition to the judges, the Questionnaire was sent out to the four assistant judges from the Centre of Payment Orders of the Pärnu County Court, since these assistant judges are presumably more often exposed to the EU private international law regulations in their daily work, than any others assistant judges.

42. Since 18 judges out of 21 answered definitively to the Questionnaire, the judges' willingness to answer was very good. Previously conducted phone interview with the judges suggests, that 3 judges who did not respond to the Questionnaire did so due to a large workload and also due to the fact, that the particular judge has never been exposed to the Regulations or did not feel competent enough in their implementation.

3.2. Responded legal practitioners- attorneys/law firms, lawyers and their willingness to answer

43. Within this Research 15 attorneys/lawyers were sent the Questionnaire, 8 of whom were sworn advocates, 2 were clerks of sworn advocate, 3 were lawyers in Law Offices and Law Firms and 1 was a lawyer from Estonian Union of Lawyers. Before sending out the Questionnaire to attorney/lawyer, every attorney/lawyer was asked on the phone for a consent to send the Questionnaire and to respond to the questions. Answering the questionnaire was anonymous. 8 lawyers/attorneys answered the Questionnaire.

44. Putting together the sample of attorneys/lawyers was based on the judicial decisions published in the KIS database. It must be noted, that in proceedings conducted on the basis of the Regulations, representatives of the parties are often not used, leading to the main criteria of sample selection being that the questioned lawyers worked in different Law Firms, Law Offices and other agencies. The work areas of the surveyed lawyers were Tartu and Tallinn. It wasn't possible to find any lawyers from other areas who would be willing to respond to the questionnaire. Mainly those lawyers who have had previous experience in resolving disputes related to the international private law, were willing to respond to the questionnaire Several debt collection services were also contacted on the phone in order to respond to the Questionnaire, but none of their workers was willing to respond to the Questionnaire. The main reasoning for that being, that the potential respondent did not have any experience with the Regulations and that the debt collection services were mainly carried out in relation to the national disputes.

45. Since 12 attorneys/lawyers out of 15 to whom the Questionnaire was sent responded to the Questionnaire, the attorneys'/lawyers' willingness to answer was very good. At the same time, during the preceding phone conversation the majority of lawyers refused to respond to the Questionnaire. Mostly they were lawyers who worked in debt collection agencies, thus it can be said that the willingness to answer was bigger among attorneys/lawyers who worked in different Law Offices. Also, the willingness to answer was a lot higher among those lawyers who have previously in their work encountered problems related to the international private law, or have passed the course on the international private law or the international judicial proceedings in the recent years.

3.3. Responded legal practitioners- bailiffs and their willingness to answer

46. Within this Research 16 bailiffs, who were chosen by the principle that bailiffs from different work areas would be represented, were sent the Questionnaire. Before sending out the Questionnaire to bailiffs, every bailiff was asked on the phone for a consent to send the Questionnaire and to respond to the questions. In addition, the essence of the Questionnaire and the goals of this Research were explained on the phone. Answering the questionnaire was anonymous. The Questionnaire was sent out to 3

bailiffs in Tallinn, to 5 bailiffs in Tartu, to 1 bailiff in Kärdla, to 1 bailiff in Haapsalu, to 1 bailiff in Võru, to 1 bailiff in Paide, to 1 bailiff in Rapla, to 2 bailiffs in Pärnu and to 1 bailiff in Saaremaa. Only 7 bailiffs out of 16 responded to the Questionnaire.

47. Bailiffs' willingness to answer was probably affected by the fact that in practice, there aren't that many enforcement procedures carried out based on the Regulations. Currently there is no database of enforcement orders issued by a foreign country for execution in Estonia, which makes it impossible to assess how often Estonian bailiffs deal for example with the execution of European enforcement orders issued in foreign countries on a basis of the European enforcement order regulations. Indirectly, the bailiffs' experience with the Regulations can be assessed by analysing judicial decisions published in the database for official use KIS. Namely, the majority of the decisions carried out by Estonian courts are based on the European order for payment procedure, and mostly consist of regulations determining state fee, which are not in bailiffs' competence. The majority of the decisions based on the European enforcement regulation never reach bailiffs' desk (for example regulations correcting an enforcement order carried out by Estonian court or regulations for not issuing the enforcement order). Based on the previous it can be assumed that Estonian bailiffs encounter implementation of Regulations very rarely in their practice. However, from the preceding phone conversations with bailiffs became clear, that in their practice they quite often encounter disputes with foreign elements (especially international maintenance support) and in their opinion they could definitely use a training on the Regulations.

48. Since only 7 bailiffs out of 16 to whom the Questionnaires were sent out responded to the Questionnaire, it must be noted that the willingness to answer was significantly lower among bailiffs than among judges or lawyers. Based on the preceding phone conversation with bailiffs it can be assumed that not responding to the Questionnaire could be explained by the heavy workload of bailiffs and also by the fact that bailiffs' experiences with the Regulations are very poor.

4. Review and analysis of judicial decisions: European enforcement order regulation No 805/2004

4.1. Scope of application of the European enforcement order (Art 2, Art 26 and Art 33)

4.1.1. Substantive scope of application (Art 2(1-2))

49. Art2(2) of the European enforcement order regulation governs the substantive scope of application of the European enforcement order regulation. Control over substantive scope of application of the European enforcement order regulation is two-staged. Firstly, a court must be convinced that it is a "civil or commercial matter" i.e it is not a "revenue, custom or administrative matter" nor the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii"). Secondly, a court must verify, that a particular civil and commercial matter is not excluded from a scope of application of the European enforcement order i.e it is not one of the disputes described in Art2(2) of the European enforcement order regulation.

(a) Civil and commercial matters

50. Concept "civil and commercial matter" is used in the EU international private law regulations in order to delimit civil disputes from disputes in public law. The same concept is included in Art 1(1) of the Brussels I regulation[1113] , in Art 1(1) of the Rome I regulation[1114] , in Art 1(1) of the Rome II regulation, in Art 2(1) of the European small claims procedure regulation and in Art 2(1) of the European order for payment procedure regulation. Within the context of all these legal acts, the concept "civil and commercial matter" has the same meaning. Analogous concept is actually also used in the parallel instrument of Brussels I regulation- in the Lugano II convention (Art 1(1)).[1115] Since courts of the Lugano II Convention member states Norway, Island and Switzerland are basing their decisions on the Lugano II Convention, and since decisions of the European Court of Justice do not have the same meaning for the courts of mentioned states as they do for courts of the EU member states, it is not excluded that in the future a concept "civil and commercial matter" will have somewhat different interpretation within

[1113] You can read more about the concept ''civil and commercial matters" in the context of Brussels I regulation in: Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, pp 54-72.

[1114] European Parliament and Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I). OJ L 177, 04/07/2008, pp 0006-00016

[1115] Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 147, 10/06/2009, pp 0005-0043

contexts of the EU regulations and the Lugano II Convention. This possibility however, is very unlikely.

51. In the context of the European private international law regulations, a concept "civil and commercial matter" must be considered autonomous i.e it is a concept that does not depend on the national law, and its final interpretation is provided by the European Court of Justice. The European Court of Justice have interpreted a concept "civil and commercial matter" mostly in judicial decisions made on a basis of the Brussels I regulation and its precursor Brussels Convention. Estonia has not joined the Brussels Convention, because the Brussels convention[1116] was replaced with Brussels I regulation before Estonia joined the European Union. This does not mean that decisions of the European Court of Justice made on a basis of the Brussels Convention cannot be used in Estonian courts for interpretation of the Brussels I regulation.[1117]

52. The European Court of Justice has repeatedly emphasized in its decisions the necessity of autonomous interpretation of concepts contained in the EU private international law regulations.[1118] The purpose of these autonomous interpretations is to ensure application of the EU regulations in the same manner in all EU member states, therefore increasing legal certainty of the participants in civil disputes. Only in exceptional cases, the concepts contained in regulations can be interpreted according to the internal law and only if the corresponding international private law regulation explicitly permits it.[1119] Therefore, theoretically a "civil and commercial matter" in the context of the European enforcement order regulation could be a dispute that is not considered a "civil matter" according to Estonian internal law.

53. In distinguishing administrative and general court's competence, Estonian internal law is guided by a nature of a disputable legal relationship- administrative courts resolve disputes arising from public law relations and general courts resolve disputes arising from private law relations, if not otherwise provided by law. [1120] In practice, determination of a concept "civil and commercial matter" for the purposes of the European enforcement

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[1116] 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters. OJ L 299, 31/12/1972, 32-42

[1117] For example, according to point 19 of preamble of the Brussels I regulation continuity between the Brussels Convention and the Brussels I regulation should be ensured in the interpretation of the Brussels Convention by the European Court of justice. This principle has also been emphasized by the Supreme Court of the Republic of Estonia: Civil Chamber of the Supreme Court regulation no 3-2-1-130-08 of 09.12.2008. In addition, the Supreme Court emphasized that decisions made on a basis of the Brussels Convention can be used in interpretation of concepts contained in the European enforcement order regulation, see: Civil Chamber of the Supreme Court regulation no 3-2-1-117-10 of 01.12.2010

[1118] For example, concepts "contract" and "tort" used in the Brussels I regulation Art 5 must be interpreted autonomously. See also: *Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des surfaces SA*, Case C-26/91 (1992) ECR I-3967, *Anastasios Kalfelis v Bankhaus Schröder Münchmeyer Hengst& Cie*, Case 189/97 (1988) ECR5565.

[1119] For instance, according to the Brussels I regulation Art 59 a domicile (permanent residence) of a party is determined by internal law. See also: Torga, M. Residence in Civil code act : the meaning in international civil procedure, Juridica 2010, no 7, pp 473-480

[1120] Civil Chamber of the Supreme Court regulation no 3-2-1-63-07 of 05.06.2007 See also: CCP § 1 and Code of administrative court procedure (CACP) § 4 section 1 - RT I, 23.02.2011,

order regulation should not be difficult for Estonian lawyers, because a concept "civil and commercial matter" used in the EU regulations (taking into account practice of the European Court of Justice) is quite similar to internally developed resolutions. For instance, the European Court of Justice has found that disputes, where one of the parties is a public authority who performed his public law duties[1121] within the relationship of authority or was exercising an official authority, are not considered as "civil and commercial matters".[1122] This resolution is in accordance with current practice of the Supreme Court in distinction between administrative and civil cases. [1123] Also, according to the European Court of Justice practice, a dispute where a person is claiming a compensation for damage related to the activities of the armed forces is not considered to be a "civil and commercial matter".[1124] A similar resolution would probably be achieved in case of internal dispute between the Republic of Estonia and a person in private law that would be solved on a basis of the State liability act. [1125] The mere fact, that one party of a disputed legal relationship is a public authority is not sufficient, according to decisions carried out by the European Court of Justice (unlike in Estonian case-law[1126]) in determining that it is not a "civil or commercial matter" — according to case-law of the European Court of Justice, a public authority can enter into private law relationship as well as enter into a private law contract.[1127] The fact that a dispute reached an administrative court, does not exclude application of private law provisions by an administrative court in accordance with the European enforcement order regulation[1128] or the principles established in Estonian law[1129] .

54. Despite the fact that a foreign court has issued a EEO certificate for its decision, Estonian bailiffs or judges (in case if a dispute over execution of the EEO reaches to Estonian court) should have the right to verify, whether a dispute handled in the decision

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[1121] *Netherlands State v Rüffer*, Case 814/79 (1980) ECR 3807

[1122] *LTU v Eurocontrol*, Case 29/76 (1976) ECR 1541.

[1123] See also: Supreme court en banc regulation no 3-2-4-1-10 of 15.06.2010, Civil Chamber of the Supreme Court regulation no 3-2-1-55-08 of 20.06.2008, Civil Chamber of the Supreme Court regulation no 3-2-1-63-07 of 05.06.2007, Civil Chamber of the Supreme Court regulation no 3-2-1-133-06 of 17.01.2007, Special Panel of the Supreme court regulation no 3-2-4-1-05 of 20.04.2005, Special Panel of the Supreme court regulation no 3-2-4-2-04 of 18.10.2004, Special Panel of the Supreme court regulation no 3-2-4-1-04 of 01.07.2004, Civil Chamber of the Supreme Court regulation no 3-2-1-49-04 of 27.04.2004, Civil Chamber of the Supreme Court regulation no 3-2-1-149-03 of 12.01.2004, Civil Chamber of the Supreme Court regulation no 3-2-1-105-03 of 11.11.2003, Civil Chamber of the Supreme Court regulation no 3-2-1-60-03 of 26.05.2003, Civil Chamber of the Supreme Court regulation no 3-2-1-17-03 of 10.03.2003.

[1124] *Lechouritou v Greece*, Case C-292/05 (2007) ECR I-1519.

[1125] State liability act. RT I 2001, 47, 260. See also War-time national defence act § 6 section 1, according to which a material damage caused by military activities in the time of war for national defence purposes, will be compensated "on the basis of and pursuant to procedure established by law". – RT I 1994, 69, 1194.

[1126] Civil Chamber of the Supreme Court regulation no 3-2-1-71-97 of 29.05.1997

[1127] *Préservatrice foncière TIARD SA v Staat der Nederlanden*, Case C-266/01 (2003) ECR I-4867.

[1128] According to Art 2(1) of European enforcement order regulation, the European enforcement order regulation is applicable in "all types" of courts and specialised courts.

[1129] See also: Special Panel of the Supreme Court regulation no 3-2-1-100-08 of 27.10.2009

was a "civil or commercial matter" in the first place. Hereby, Estonian judges and bailiffs have nothing to do with an opinion of a foreign court, who issued the EEO certificate, on the nature of a dispute. Although this conclusion is not derived from direct wording of the European enforcement order regulation, it is arising from its logic. Similar power of audit is affirmed for example in English[1130] and German[1131] legal literature on the recognition and enforcement of decisions on a basis of the Brussels I regulation, according to which a court conducting a proceeding on recognition and enforcement, has the right to verify if a dispute was a "civil or commercial matter", regardless what a foreign court who carried out the decision decided, and despite the fact that according to the Brussels I regulation, courts cannot audit a substance of the decision carried out by a foreign state.[1132] In addition, Estonian judges and bailiffs should always have the right to verify if a dispute (which is a "civil or commercial matter") is excluded from the scope of application of the European enforcement order regulation on a basis of Art 2(2) of the EEO regulation.

55. In Estonian court decisions analysed within this Research, a concept "civil or commercial matter" in the meaning of the EEO regulation have not been looked into.

(b) Excluded legal relationships

56. Art 2(2) of the European enforcement order regulation excludes certain civil and commercial matters from a scope of application of the EEO regulation. The reason for such exclusions have, in the context of the EU private international law regulations, been a fact that other EU or international instruments are dealing with the mentioned disputes, or that there is no uniform regulations in substantive and international private law of the member states for the excluded legal relationships.[1133]

57. Despite the fact that the EEO regulation does not explicitly provide this, a large number of support disputes are left out of the European enforcement order regulation. Namely, Art 68(2) of the new Maintenance obligations regulation provides, that this regulation shall replace provisions of the EEO regulation in matters relating to maintenance obligations except with regard to European enforcement orders on maintenance obligations issued in a member state not bound by the 2007 Hague Protocol (i.e the United Kingdom courts; the EEO regulation does not extend to Denmark, but Danish judicial decisions move freely around the EU on a basis of the Maintenance obligations regulation, despite the fact that Denmark has not joined the 2007 Hague

[1130] Fawcett J, Carruthers J and North P, Cheshire, North & Fawcett: Private International Law 14th edition, OUP 2008, p 601.
[1131] H von, Europäisches Zivilprozessrecht 8 Aufl, Heidelberg 2005, § 32, Nr 3.
[1132] Brussels I regulation Art 36.
[1133] E.g similar exclusions from a scope of application of the Brussels I regulation were justified this way: Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, p 60.

Protocol[1134]). As to other member states, replacement of provisions of the EEO regulation is also fully justified, since the Maintenance obligations regulation loses the requirement for so-called exequatur procedure from decisions made on support matters. Thus, if a EEO certificate is issued from Estonian court in relation to Estonian judicial decision ordering support from one party to benefit of the other, Estonian court should refuse to issue that EEO certificate, since these types of decisions are not confirmed by the EEO certificate. For such applications, courts should explain to the applicants, that an application for issuing an extract of the corresponding judicial decision must be submitted in a form set out in Annex I of the Maintenance obligations regulation.

(aa) The status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession

58. Art 1(2) of the European enforcement order regulation excludes from its scope of application disputes, that are related to the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession. The latter (wills and succession) belongs to the scope of application of the European succession regulation[1135] , that must be applied by Estonian courts starting from 17 August 2015.[1136] Questions concerning rights in property arising out of a matrimonial relationship should also be regulated by the EU regulation in the future, at least there is currently a proposal for the respective regulation.[1137] Questions related to the status or legal capacity of natural persons are touched on in the Brussels I bis regulation, that is applied in case of a divorce, legal separation or marriage annulment, in determination of international jurisdiction and in recognition of decisions on the respective matters. [1138]

59. Estonian translation of Art1(2)a of the European enforcement order regulation is somewhat unsuccessful. For example a concept "status or legal capacity" in the English version of the regulation, has been translated into Estonian simply as "legal capacity of persons", while the status of persons also encompasses questions on parentage, or marital status. This translation error have already caused confusion in Estonian courts, e.g in the

[1134] Denmark decided to join the Maintenance obligations regulation only in part, where it replaces provisions of the Brussels I regulation (i.e provisions on jurisdiction, recognition and enforcement of decisions of the Maintenance obligations regulation). See: Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 149, 12/6/2009, pp 80-80.

[1135] European Parliament and Council Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession. OJ L 201, 27/7/2012, pp 107-134

[1136] Succession regulation Art 84.

[1137] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. COM(2011)126 final 2011/0059(CNS).

[1138] Brussels II bis Art 1(1)a.

context of the Brussels I regulation.[1139] Presumably, this translation error will not cause problems in the context of the EEO regulation, because decisions carried out by foreign courts on status of persons are topical in Estonian courts only in proceedings on recognition of foreign decisions (e.g if a person wants to certify that a divorce procedure cannot be initiated in Estonia, because the parties have already been divorced by the foreign judicial decision). These qualification problems should not arise in issuing or execution of the European enforcement order regulation.

60. In Estonian case-law only one of the Art 2(1) exceptions in the context of the EEO regulation was emphasised. Namely, Harju County court has confirmed in one of its decisions, that the EEO regulation is not applied to rights in property arising out of a matrimonial relationship (Art 2(2)a) i.e Estonian court cannot issue a EEO certificate for decision made on a matter of division of joint property.[1140] In this case a court was asked to issue a EEO certificate for Estonian judicial decision resolving a proprietary dispute between the applicant and his spouse (according to resolution of the decision a certain sum was sentenced in benefit of the applicant from his spouse for obtaining more property), therefore a court rightfully denied the application for issuing a EEO certificate. This decision is fully consistent with the practice of the European Court of Justice in interpretation of the mentioned exception in the context of the Brussels I regulation (and its precursor Brussels Convention).[1141]

(bb) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings

61. Art 2(2) of the European enforcement order regulation excludes from its scope of application disputes, that fall into a scope of application of the Insolvency proceedings regulation.[1142] This regulation provides specific provisions for recognition of decisions to

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[1139] See: Harju County Court regulation of 16.05.2007 of civil matter no 2-05-16150 In this case, the court determined jurisdiction in dispute on parentage on a basis of the Brussels I regulation, although according to Art 1(2) of the Brussels I regulation these types of disputes are excluded from a scope of application of that regulation. Basing on Art 2 of the Brussels I regulation and on the fact that the defendant was domiciled in Finland, Estonian court found, that the dispute did not belong to Estonian court's competence. If international jurisdiction of this case was determined on a basis of the Code of civil procedure, according to § 103 section 2 Estonian court would have had an obligation to conduct proceeding, if an applicant was Estonian citizen or was domiciled in Estonia.

[1140] Harju County Court regulation of 02.05.2012 of civil matter no 2-09-57819.

[1141] See also: *Jacques de Cavel v Louise de Cavel*, Case 143/78 (1979) ECR 1055, *C.H.W. v H.J.H.*, Case 25/81 (1982) ECR 1189. For more information on recognition of disputes related to support and marital property matters see: *Louise de Cavel v Jacques de Cavel*, Case 120/79 (1989) ECR 731 ning *Antonius van den Boogaard v Paula Laumen*, Case C-220/95 (1997) ECR I-1147.

[1142] The European Court of Justice has made several decisions on the mentioned exclusions in the context of the Brussels I regulation, see: *Henri Gourdain v Franz Nadler*, Case 133/78 (1979) ECR 733; *Eric Coursier v Fortis Bank and Martine Coursier,née Bellami*, Case C-267/97 (1999) ECR I-2543; *SCT Industri AB i likvidation v Alpenblume AB*, Case C-111/08 (2009) ECR I-5655; *German Graphics*

initiate proceedings made in these disputes,[1143] which makes it unnecessary to issue a EEO certificate for decisions made in relation to these disputes.

62. Official Estonian translation of Art 2(2)b of the European enforcement order regulation is not the best one. Official Estonian translation of the regulation is referring to "judicial compromise", giving the impression that all decisions confirming a compromise, are being excluded from a scope of application of the EEO regulation. This error is being also confirmed by Art 3(1), where Estonian translation states that regulation shall apply to "judgments" and "authentic instruments", while in English version alongside "judgments" and "authentic instruments" a concept "court settlements" is used. It must be noted, that Art 2(2)b of the EEO regulation considers under "judicial compromises" left out from the scope of application of the regulation, only agreements with creditors in proceedings related to declaration of insolvency of legal persons, to liquidation and similar procedures, but does not consider regulations that confirm judicial compromise in regular civil matters.

63. Taking into account, that English version of Art 2(2)b of the EEO regulation refers to creditors' agreement ("compositions"), it can be assumed that decisions made by Estonian courts during reorganization proceeding (for example confirmation of a plan of reorganization made on a basis of § 28 section 2 of the reorganization law[1144] or a reorganization regulation made on a basis of § 10 of the same law) are excluded from a scope of application of EEO regulation although Art 2(2)b of the EEO regulation does not explicitly mention the "reorganization proceeding". The reason for that being, creditors' agreement play a big role in organization proceeding, since the creditors accept the plan of reorganization (§ 24(1) of the reorganization law), after what a court confirms the plan of reorganization with a regulation (§ 28 and 37 of the reorganization law).

64. Estonian judicial decisions used for this Research have not encountered exceptions referred to in Art 2(2)b of the EEO regulation.

(cc) Social security

65. Art 2(2)c of the European enforcement order regulation excludes an application of the EEO regulation to any decisions related to disputes on social security matters. The fact that the EU legislator considers these disputes as a civil law, complies with current legal practice in Estonia- e.g the Supreme Court explained that a partial reimbursement of restitutions paid to employee by the Health insurance fund on a basis of the Health

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Graphische Maschinen GmbH v Alice van de Schee, Case C-292/08 (2009) I-8421; *Seagon v Deko Marty Belgium NV*, Case C-339/07 (2009) ECR I-767; *F-Tex SIA v Lietuvos-Anglijos UAB "Jadecloud-Vilma"*, Case C-213/10, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-213/10 (01.11.2012).

[1143] Insolvency proceedings regulation Art 16(1).

[1144] Reorganization law. RT I 2008, 53, 296.

insurance act[1145] against the defendant is a civil claim, regardless that the right of such claim is provided in the health insurance act.[1146] In addition, the Supreme Court explained that disputes over the amount of compensation for causing health damage must be resolved in the general court, regardless whether the compensation payer is an employer or a social security authority.[1147] The Supreme Court have reached the opposite solutions in disputes determining state pension. [1148]

66. Although these disputes are considered "civil or commercial matters" within the context of the EEO regulation, they are excluded from a scope of application of the EEO regulation in Art 2(2)c of that regulation. However, this does not apply to all disputes related to social security matters. For example in case when a public authority claims compensation from a person who caused damage for sums that the state has paid to aggrieved party, this dispute would belong to a scope of application of the European private law regulations[1149] i.e it wouldn't be a "social security" matter in the meaning of Art 2(2)c of the EEO regulation. It follows, that Estonian courts could issue EEO certificates to decisions made on these disputes.

67. Estonian judicial decisions used for this Research have not encountered exceptions referred to in Art 2(2)c of the EEO regulation.

(dd) Arbitral proceedings

68. Exclusion of arbitral proceedings from the EU private law regulations can be explained by the fact, that questions on recognition of arbitration awards and declaration of enforceability are successfully regulated on international level by the New York 1958 Convention ,[1150] which Estonia has also joined. Therefore there is no need in additional regulation of arbitration awards and issuing the EEO certificate, since these decisions are executed in foreign states on a basis of the New York 1958 convention.

69. The European Court of Justice has interpreted rather widely the exclusion of arbitration contained in the EU private international law regulation- e.g proceedings on appointment of arbitrators would be encompassed by this exclusion and would belong to national court.[1151] The European Court of Justice have mostly faced problems concerning determining the nature of decisions made to ensure compliance of arbitral proceedings or

[1145] Health insurance act, RT I 2002, 62, 377.
[1146] Civil Chamber of the Supreme Court regulation no 3-2-1-133-06 of 17.01.2007
[1147] Civil Chamber of the Supreme Court regulation no 3-2-1-140-09 of 06.01.2010
[1148] Civil Chamber of the Supreme Court regulation no 3-2-1-105-03 of 11.11.2003 Special Panel of the Supreme Court regulation no 3-2-4-2-04 of 18.10.2004 and Special Panel of the Supreme Court regulation no 3-2-4-3-11 of 06.12.2011.
[1149] At least the European Court of Justice have reached that conclusion in context of application of the Brussels I regulation precursor- the Brussels Convention, see: *Gemeente Steenberg v Luc Baten*, Case C-271/00 (2002) ECR I-10489.
[1150] Convention on the recognition and enforcement of foreign arbitral awards. RT II 1993, 21, 51.
[1151] See: *Marc Rich & Co AG v Società Italiana Impanti PA*, Case C-190/89 (1991) ECR I-3855.

arbitral agreements.[1152] However, because these disputes are not considered as "uncontested claims", an exception of arbitration in the context of the EEO regulation should not cause practical problems for Estonian courts.

70. Estonian judicial decisions used for this Research, have encountered exceptions referred to in Art 2(2)d of the EEO regulation only once. Namely, Harju County court confirmed in one of its decisions,[1153] that the EEO regulation is not applied in arbitration (Art 2(2)d). In this case the applicant asked Estonian court to issue a EEO certificate for a decision of foreign (!) arbitral court and Estonian court correctly refused.

4.1.2. Geographic scope of application (Art 2(3))

71. According to Art 2(3) of the European enforcement order regulation, the term "member state" shall apply to all member states with the exception of Denmark. Thus, all European enforcement orders issued by other EU member states are subject to enforcement in Estonia as the European enforcement orders. If a European enforcement order is originated from Bulgaria or Romania, it can be issued only after 1 January 2007, i.e after these countries had joined the European Union.

72. European enforcement orders on matters relating to maintenance obligations can originate only from the United Kingdom, since in matters relating to maintenance obligations the EEO regulation is replaced by the Maintenance obligations regulation, as stated in Art 68(2) of the Maintenance obligation regulation. If for some reason Estonian court will receive a European enforcement order on decision made in relation to a matter of maintenance obligations, a court must demand from claimant a submission of documents referred to in Art 20 of the Maintenance obligations regulation, including the extract from the decision issued by the court of origin (Maintenance obligations regulation Art 20(1)b). Hereby, it is also not important when a foreign court carried out the decision on a matter relating to maintenance obligations- it is only important that enforcement of the decision in Estonia is applied for after 18 September 2010, i.e after the date on which the EU member states had an obligation to apply the Maintenance obligations regulation.[1154]

73. Estonian court can issue the European enforcement order only in relation to decision made in Estonia. The country of origin of the parties to a dispute, that Estonian court carried out a decision for, is also not a determining factor. Thus, Estonian court must issue a EEO certificate regardless, if one of the parties to a dispute is a natural- or legal person from Denmark or any third country. Hereby, it must be noted that Art 6(1) of

[1152] See: *Van Uden Maritime BV, trading as Van Uden Africa Lince v Kommanditgesellschaft in Firma Deco-Line*, Case C-391/95 (1998) ECR I-7091; *Allianz Spa, Generali Assicurazioni Generali Spa v West Tankers Inc, The Front Comor*, Case C-185/07 (2009) ECR I 663.
[1153] Harju County Court regulation of 29.09.2011 of civil matter no 2-11-42862.
[1154] Maintenance obligations regulation Art 75(2) and 76.

the European enforcement order regulation provides a list of conditions, that must be performed before a court would be able to issue a EEO certificate for Estonian decisions. Some of these conditions may be related to a country, where a person involved in the proceedings is from. For example, Art 6(1) of the European enforcement order regulation provides, that a decision to be certified as a EEO should not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Brussels I regulation, concerning jurisdiction in matters relating to insurance and exclusive jurisdiction, respectively. Art 12(1) of the Brussels I regulation substantially reduces insurer's opportunities to bring proceedings to the courts, allowing insurer to do so only in the state in which the defendant is domiciled.[1155] Thus, if during determination of international jurisdiction in insurance dispute a principle from Art 12(1) of the Brussels I regulation was violated and the defendant was not domiciled in Estonia, but Estonian court settled the dispute regardless, a EEO certificate can not be issued for that decision. In addition, according to Art 6(1) of the European enforcement order regulation, debtor's domiciling in Estonia is important in disputes where the debtor is the consumer.

74. In case if an applicant is applying for issuing of the EEO certificate in order to later execute Estonian judgment in Denmark or a third country, according to Art 6 of the EEO regulation Estonian court does not have a reason to refuse to issue a certificate, although an applicant won´t be able to apply that certificate in these countries, because they are not bound to the EEO regulation. In Denmark, judgments given by Estonian courts are executed on a basis of the Brussels I regulation, since Denmark has concluded a separate agreement on extension of Brussels I regulation provisions to Denmark.[1156] Corresponding agreement on the European enforcement order regulation have not been concluded between Denmark and the EU. Estonian courts should explain to the applicants who apply for issuing of the EEO certificate for its further execution in Denmark, to instead apply for a certificate named in Art 54 of the Brussels I regulation. An applicant of the EEO certificate does not have an obligation to attest in which country he is planning to use that European enforcement order.

75. Estonian courts have not looked into geographic scope of application of the European enforcement order regulation in their decisions. Courts have however denied an application (correctly) on issuing the EEO certificate in relation to a judgment given in a foreign country (Latvia).[1157]

[1155] For more information on determining domicile of natural and legal persons in the context of the EU private law regulations see: Torga, M. Residence in Civil code act : the meaning in international civil procedure, Juridica 2010, no 7, pp 473-480

[1156] Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 299, 16/11/2005, pp 0062-0067.

[1157] Harju County Court regulation of 29.09.2011 of civil matter no 2-11-42862.

4.1.3. Temporal scope of application (Art 26 and 33)

4.1.3.1. Entry into force (Art 33)

76. According to Art 33 of the European enforcement order regulation, the EEO regulation entered into force on 21 January 2005. In Bulgaria and Romania the EEO regulation entered into force on 1 January 2007, since these countries joined the EU on this date.

77. It must be noted, that Estonian texts of the European enforcement order regulation contain an error in effective date of the EEO regulation – according to Estonian texts (including consolidated version)[1158] the European enforcement order regulation entered into force on 21 January 2004. Factually, the European enforcement order regulation entered into force a year later, i.e on 21 January 2005, as a result of corresponding amendment by the European Commission.[1159] In comparison, for example in English[1160] and German[1161] consolidated versions of the European enforcement order, this mistake has been fixed.

78. European enforcement order regulation started to apply in the EU, including Estonia, from 21 October 2005 as stated in the second sentence of Art 33. Bulgarian and Romanian courts started to apply the European enforcement order regulation from 1 January 2007. Therefore, European enforcement orders originating from Bulgaria and Romania are issued only after 1 January 2007.

4.1.3.2. Transitional provisions (Art 26)

79. European enforcement order regulation Art 26 regulates, in relation to what judgments, court settlements and authentic instruments the EEO regulation can be applied. According to Art 26 of the European enforcement order regulation the EEO regulation shall apply only to judgments given, to court settlements approved or concluded and to documents formally drawn up or registered as authentic instruments after the entry into force of the EEO regulation. Official Estonian translation of the EEO is a little misleading on that part, referring to the possibility of application of the EEO to

[1158] See for example a consolidated version of 04.12.2008: European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims. 2004R0805 – OJ – 04.12.2008 – 002.001 – 1.

[1159] Corrigendum to Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. OJ L 143, 40/4/2004, 0064-0064.

[1160] See for example a consolidated English version of 04.12.2008: Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. 2004R0805 – EN – 04.12.2008 – 002.001 – 1.

[1161] Verordnung (EG) no. 805/2004 des Europäischen Parlaments und des Rates vom 21. April 2004 zur Einführung eines europäischen Vollstreckungstitels für unbestrittene Forderungen. 2004R0805 – DE – 04.12.2008 – 002.001 – 1.

all judgments and court settlements approved or concluded, regardless of the time they were given.

80. It is important to distinguish in the context of temporal scope of application of the regulation on the one hand judgments given,court settlements approved or concluded and documents formally drawn up or registered as authentic instruments in Estonia, and on the other hand European enforcement orders from the other member states.

81. Since the European enforcement order regulation entered into force in Estonia on 21 January 2005,[1162] judgments given by Estonian court and confirmed as the EEO must be given after that date, court settlements made in Estonia must be approved or concluded after that date and document issued in Estonia must be formally drawn up or registered as authentic instruments after that date, so that they can be confirmed as a European enforcement order.[1163] The right to issue European enforcement orders emerged in Estonian courts from 21 October 2005. [1164]

82. If the EEO originates from another EU member state, where similarly to Estonia, the EEO regulation entered into force on 21 January 2005,[1165] this EEO can be issued only after 21 October 2005.[1166] Also, that European enforcement order can only be issued in relation to judgments made after 21 January 2005, or to a court settlement concluded or approved after 21 January 2005 or to documents formally drawn up or registered as authentic instruments after 21 January 2005.[1167] If the EEO from foreign country was issued for example in relation to earlier judgments or court settlements, or if this order was issued before 21 October 2005, this order cannot be considered as a EEO in the context of the European enforcement order regulation, which results in absence of an enforcement instrument that would allow Estonian bailiffs to conduct an execution proceeding.[1168]

83. If the European enforcement order originates from Bulgaria or Romania, where the EEO regulation entered into force on 1 January 2007 i.e on the date when these countries joined the EU, that European enforcement order can be issued only after the mentioned date, because prior to that Bulgarian and Romanian courts did not have an obligation to apply the EEO regulation. Also, that European enforcement order can only be issued in relation to judgments made after 1 January 2007, or to court settlements concluded or approved after 1 January 2007 or to documents formally drawn up or registered as authentic instruments after 1 January 2007.[1169] If the EEO from Bulgaria or Romania was issued for example in relation to earlier decisions or court settlements, this order cannot be considered as a EEO in the context of the European enforcement order

[1162] See more in p 4.1.3.1 of this Research.
[1163] European enforcement order regulation Art 26.
[1164] European enforcement order regulation Art 33 second sentence.
[1165] European enforcement order regulation Art 33 first sentence.
[1166] European enforcement order regulation Art 33 second sentence.
[1167] European enforcement order regulation Art 26.
[1168] Code of enforcement procedure § 23 section 1.
[1169] European enforcement order regulation Art 26.

regulation, which results in absence of an enforcement instrument that would allow Estonian bailiffs to conduct an execution proceeding.[1170]

84. Estonian case-law of implementation of transitional provisions of the EEO regulation has been somewhat misleading. Although as a general rule courts have found that the European enforcement order regulation can be applied to decisions carried out in Estonia after entry into force of the EEO regulation[1171] (i.e after 21 January 2005), in some decisions courts have emphasised that the EEO regulation could be applied to Estonian decisions carried out after joining the EU i.e after 1 May 2004[1172] or that the EEO regulation could be "implemented"[1173] to decisions carried out after 21 October 2005, or that the European enforcement order could be applied for decisions made after 21 October 2005[1174] . As it was explained in the previous sections, the EEO regulation certificate can only be issued for those decisions that were carried out after the EEO regulation entered into force in Estonia, i.e after 21 January 2005. It must be noted, that as a final result Estonian courts have not issued the EEO regulation certificate to decisions of the referred cases, since these decisions were carried out before 21 January 2005.

85. It seems that correlation between Art 26 and 33 of the European enforcement order regulation causes a lot of confusion among Estonian judges. To resolve this, European Commission should impose a correction to Art 33 of the consolidated version of the EEO regulation and replace the erroneous date 21 January 2004 with 21 January 2005.

4.1.4. Documents to be certified as a European enforcement order (Art 3, Art 4(1-3) and (6), Art 7, Art24, Art 25)

4.1.4.1. Nature of documents to be certified as a European enforcement order

4.1.4.1.1. Judicial decisions (Art 3(3), Art 4(1))

86. Definition of "judgment"[1175] provided in Art 3(3) of the European enforcement order, conforms to the definition contained in Art 32 of the Brussels I regulation, therefore according to legal literature, interior fittings of the concept "judgment" in Art

[1170] Code of enforcement procedure § 23 section 1.
[1171] See: Tartu County Court regulation of 11.04.2012 of civil matter no 2-03-972.
[1172] See: Harju County Court regulation of 07.12.2010 of civil matter no 2-10-60829.
[1173] Harju County Court regulation of 30.06.2010 of civil matter no 2-10-17052. Compare with: Harju County Court regulation of 30.08.2010 of civil matter no 2-10-37892
[1174] Pärnu County Court regulation of 19.04.2011 of civil matter no 2-11-12347.
[1175] In Estonian legal literature definition of "judgment" within the context of European Union private law regulations is discussed further in Master's thesis by M.Vinni, see: Vinni, M. Judgement as an object of recognition in civil and commercial matters. Master´s thesis, University of Tartu 2010.

3(3) of the EEO regulation should be guided by definition given in the context of the Brussels I regulation.

87. Definition of "judgment" provided in Art 3(3) of the European enforcement order, conforms to the definition contained in Art 32 of the Brussels I regulation, therefore according to legal literature, interior fittings of the concept "judgment" in Art 3(3) of the EEO regulation should be guided by definition given in the context of the Brussels I regulation. [1176] Needless to say that hereby, certain differences between the two regulations must be taken into account. For example, within the context of Brussels I regulation Art 32, judgment means any judgment including the one, that does not impose money payments, but obligates one party to the proceedings do something in the benefit of the other party. [1177] According to European enforcement order regulation Art 3(1) in conjunction with Art 4(2), the European enforcement order regulation can be applied only to judgments on uncontested claims i.e a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment.

88. "Judgment" according to definition of European enforcement order regulation (and Brussels I regulation) is any judgment given by a court or a tribunal. However, it is important to note that dispute being resolved by a court must fall into material scope of application of European enforcement order, i.e it has to be a "civil or commercial" matter within the meaning of European enforcement order regulation,[1178] that is not excluded from the scope of application of the European enforcement order regulation. For example, it cannot be a decision made by the general court on arbitration case[1179] e.g securing of an action regulation made by Estonian court in relation to the arbitration procedure on a basis of § 720 of the Code of civil procedure, if one party is ordered to pay a certain sum to ensure execution. In that case the dispute would not belong to a scope of application of the EEO regulation. On the other hand, if Estonian administrative court should adjudicate a dispute, that in the context of the EEO regulation could be considered as "civil or commercial matter", this administrative court decision could be confirmed as a EEO, under condition that other prerequisites for issuing a EEO certificate were also completed (e. g that the decision is made on an uncontested claim in the meaning of Art 3(1) of the EEO regulation) and that regardless to the fact that according to § 6191section 1 of the Code of civil procedure the enforcement order certificates[1180] are issued by the county courts. In practice these problems probably will not occur in Estonian law, because established allocation between administrative and general courts is

[1176] Rauscher T (Hrs), Europäisches Zivilprozeβrecht Kommentar 2. Auf. Sellier.European Law Publishers 2006, S 1470.

[1177] Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, p 622.

[1178] European enforcement order regulation Art 2(1).

[1179] European enforcement order regulation Art 2(2)d.

[1180] Altough § 6191 section 1 of the COCP uses a concept "confirmation" of the enforcement order, in present Research a concept "certeficate" of the enforcement order is used, basing on the official Estonian translation of Art 9 of the EEO regulation.

in correspondence with the European Court of Justice practice in distinguishing administrative and civil matters. [1181]

89. In confirmation of a "judgment" as a EEO is also not important if a judgment was made by Estonian general court on a criminal matter, on condition that during a hearing of a criminal matter a civil case was solved, i.e civil action of injured party against a person who caused damage, which is allowed by § 310 of the law of criminal procedure[1182] . In case when only a part of judgment meets the conditions of the EEO regulation, i.e if only one part of judgment is engaged in solving a civil action, for a judgment made on a criminal matter a partial EEO certificate should be issued (Art 8 of the EEO regulation). Estonian case-law, according to which the EEO certificates were issued on judgments made in criminal matters, is therefore in accordance with this solution.[1183]

90. In confirmation of a "judgment" as the EEO, the title of judgment made by Estonian court is also not important, so basically it is possible to issue a EEO certificate to judgments as well as to regulations. Hereby it must be noted that "regulations" considered as "judgments" in the meaning of the Brussels I regulation and the EEO regulation are not purely court organized. According to practice of the European Court of Justice[1184] only a judgment made as a result of inter partes proceeding, or where a party who was a subject to this judgment was given a chance to take part in the proceeding, must be considered as "judgment" in the meaning of the Brussels I regulation. Thus, regulation on securing of an action made by Estonian court where without hearing the defendant is ordered to pay a certain sum, would no be considered a "judgment" in the meaning of the Brussels I regulation and the EEO regulation. Also a regulation where a court asks plaintiff to pay an additional state fee would not be considered a "judgment" in the meaning of the Brussels I regulation and the EEO regulation, nor would it be considered as a "civil or commercial matter", because a state fee is paid to the state and not to a private law party.[1185] Distinction of decisions made *inter partes* or *ex parte* should not cause practical problems in the context of the EEO regulation due to the need to follow minimum standards set out in Art 12 of the EEO regulation in issuing the EEO certificate, which means that the EEO certificate cannot be issued on *ex parte* judgments.

91. Art 4(1) of the EEO regulation does not require that decision confirmed as EEO must be entered into force in Estonia, but it is important that a decision is possible to implement in Estonia. [1186] Decisions that have not yet entered into force, but that are possible to implement in Estonia are decisions that have been declared immediately enforceable by Estonian court, on a basis of § 467 section 1 of the Code of civil

[1181] See more in p 4.1.1. of this Research.
[1182] Law of criminal procedure. RT I 2003, 27, 166.
[1183] Pärnu County Court regulation of 14.02.2012 of civil matter no 2-11-63497.
[1184] *Bernard Denilauler v SNC Couchet Frères*, Kohtuasi 125/79 (1980) ECR 1533.
[1185] Rauscher T (Hrs), Europäisches Zivilprozeβrecht Kommentar 2. Auf. Sellier.European Law Publishers 2006, S 1470.
[1186] European enforcement order regulation Art 6(1)a.

procedure. Some decisions must be declared as immediately enforceable on Estonian courts´ own initiative, e.g judgments based on admitting the claim and judgments by default.[1187]

92. If the European enforcement order arrives to Estonia from a foreign country, Estonian bailiffs should have the right to verify if it is indeed the EEO (i.e execution document), if an order was issued on decision made by institution executing a judicial function, and if an order was issued by a court who carried out or approved that decision.[1188] As follows, Estonian bailiffs should have the right to verify if a decision was made on a civil or commercial matter. Hereby it is not important what the title of the decision is or if the decision was made by administrative or criminal court, on condition that pursuant to substance of the decision a "civil or commercial matter" in the meaning of the EEO regulation was resolved. If the debtor finds that a properly issued EEO i.e execution document is absent, he can file a complaint against bailiffs´ actions.[1189] In that case it will not be a substantive law dispute over a claim documented in execution document, but over absence of a prerequisite to commencement of execution proceeding i.e execution document (e.g if the European execution document does not meet the formal requirements).[1190]

93. In Estonian judicial decisions analysed for the purposes of this Research, a definition of "judgment" in the meaning of Art 3(3) and Art 4(1) of the EEO regulation was not covered.

4.1.4.1.2. Judgement regarding the expenses related to the court proceedings (Art 4(1), Art 7)

i) Decision regarding expenses as a part of the judgement (Art 7)

94. According to Art 7 of the European Enforcement Order Regulation (EEOR), if a judgement includes an enforceable decision regarding the expenses related to the judicial proceedings, including interest rates, it is approved as an European enforcement order, considering expenses, unless the debtor has submitted a separate objection in regard to his obligation of covering the relevant expenses during the judicial proceedings and in accordance with the legislation of the country of origin. The above provision does not concern judgements by which a suggestion of paying additional state duty was made to the plaintiff, as the EEOR is applied only to civil and commercial matters, but the establishment and collection of state duties is a matter of public law.

[1187] See also: Code of civil procedure § 468 section 1.
[1188] This conclusion is derived from Art24(1) of the European enforcement order regulation.
[1189] This decision is derived from two decisions of the Supreme Court: Civil Chamber of the Supreme Court regulation no 3-2-1-42-08 of 02.06.2008 and Civil Chamber of the Supreme Court regulation no 3-2-1-117-10 of 01.12.2010
[1190] Civil Chamber of the Supreme Court regulation no 3-2-1-117-10 of 01.12.2010, p 12.

95. According to § 173/1 of CCP (CCP), the court registers the division of the procedure expenses between the parties to a proceeding in a judgement or a ruling terminating the proceeding, including the ruling by which a statement of proceedings on petition or a statement of review is solved, or an action or a statement of proceedings on petition or a statement of review is not accepted or reviewed, or the proceeding of a case is terminated. In regard to the division of procedure expenses, according to § 173/4 of CCP the court does not prescribe the monetary amount of the expenses, due to which the decision regarding the cost cannot be approved, as such events do not constitute claims under Article 4(2) of the European Enforcement Order, i.e. claims for payment of certain monetary amounts payable under, or the payment date of which is determined by a judgement. In addition, it must be noted that CCP includes a special regulation about judgements made on so-called uncontested claims. Namely, if a proceeding was terminated due to a compromise or withdrawal from an action, or if a decision was made based on the admission of the respondent, according to § 174^1/1 of CCP, in addition to the division of the procedure expenses the court shall also provide the monetary amount of the procedure expenses to be compensated for. Estonian courts could issue European enforcement order certificates for judgements where the monetary amounts are provided. In such disputes, also the prerequisites under Article 3 of the EEOR would be fulfilled.

96. Article 4(1) of the EEOR provides a so-called "court official's decision on judicial expenses" as a type of judgement for which the court may issue a European enforcement order. In the Estonian legislation, the competence of the assistant judge or another court official is governed by § 22^1 of CCP. According to section 3 of the above document, such persons may issue injunctions for preparation of solution of a matter or other organisational injunctions that cannot be appealed, including, *inter alia*, injunctions on refraining from hearing a matter and injunctions on provision and extension of terms. Thus, assistant judges or other court officials cannot make decisions in regard to judicial expenses as a part of the judgement. In § 174^1 section 1 of CCP it is also not provided that assistant judges or other court officials may issue injunctions on terminating procedures under the provision.

97. The present survey did not explore the nature of a judicial matter under Article 7 of the EEOR and the possibilities for a debtor to challenge such a decision.

ii) Separate judgement (Art 4(1))

98. According to § 174 section 1 of CCP, a party in the procedure may request determination of the monetary amount of the procedure expenses from the 1st level court based on the division of expenses specified in the decision within 30 days from the entry of the decision regarding the division of the expenses into force. But it must be noted that according to § 174 section 1 of CCP, in the event of uncontested claims, the decision on monetary amount of judicial expenses is generally included in the ruling terminating the procedure.

99. Provision of a term for payment of the missing state duty under court ruling cannot be regarded as a court decision under the EEOR, and thus such a ruling cannot be approved as a European enforcement order.[1191]

100. In principle, in the Estonian case-law it is considered possible to issue a European enforcement order for the ruling on the determination of procedure expenses. But courts have refrained from issuing such a certificate e.g. because it was not an uncontested claim under Art 3(1) of the EEOR, as the debtor never agreed to determination of the procedure expenses in the way applied for by the applicant.[1192]

4.1.4.1.3. Court settlements (Art 3(1), Art 24)

101. Article 3(1) of the EEOR does not mention "court settlements" next to "court decisions" and "authentic instruments", even though e.g. the English version of the Regulation refers to "court settlements". Also Article 24 of the EEOR titled "Court Settlements" in the English version has been translated into Estonian simply as "Court Decisions". Such a translation is somewhat inappropriate as it is not excluded that in some other member state of the European Union the court is merely approving court settlements without issuing a separate court decision (e.g. a ruling). A similar translation mistake is included in the Estonian translation of Brussels I Regulation Art 58, which is somewhat problematic, as the term "court settlement" should be interpreted autonomously under Brussels I Regulation (and probably also under the EEOR),[1193] but the above term has been completely removed from the Estonian translations of the EEOR and Brussels I Regulation. Separation of "court settlements" from "court decisions" is not only a theoretical problem, as can be seen from the replies provided to the Questionnaires by judges – in practice, separation of those terms and the fact that the Estonian translation of the EEOR is misleading have caused problems to judges. For example, Estonian judges have erroneously issued European enforcement orders according to the form in Annex 2 (which has a similar title – "court decision" with the form of Annex I), even though the target of Annex 2 is to govern court settlements.

102. In the context of Brussels I Regulation, also the separation of court settlements from regular court decisions has caused problems in practice. The European Court of Justice finds that in order to be able to understand a decision as a "court settlement" it should have the nature of contract law, but if the court determines the terms of a court settlement or if the court checks the correspondence of terms agreed between the parties to legal standards, it is a "judgement" not a "court settlement" according to the practice of

[1191] Rauscher T (Hrs), Europäisches Zivilprozeβrecht Kommentar 2. Auf. Sellier. European Law Publishers 2006, S 1470.
[1192] Judgement of Tartu County Court dated June 25th, 2012 on civil matter No. 2-07-10608.
[1193] Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, p 805.

the European Court of Justice.[1194] In the context of Brussels I Regulation, such separation is necessary because in the event of "court settlements" the control obligation of the court is smaller if such instruments are deemed executable.[1195] Also in the context of the EEOR the fulfilment of "court settlements" is somewhat easier than that of so-called general "judgements".[1196]

103. According to § 430 section 1 of CCP, the Estonian court approves a compromise with a ruling by which it also terminates the procedure, noting the terms of the compromise in the confirmation ruling of the compromise. As according to § 430 section 1 of CCP the Estonian court shall check the content of the compromise to be confirmed, i.e. to verify that the compromise does not contradict good practice or the law, the relevant ruling on the termination of a procedure by the Estonian court should probably be understood not as a "court settlement" under Art 3(1) and Art 24 of the EEOR but as a "judgement" under Art 4(1).

104. If the procedure was terminated with a compromise by the Estonian court, according to § 174^1/1 of CCP the court shall note the monetary amount of the procedure costs to be compensated in the ruling of termination of a proceeding. If based on the compromise one party does not have an uncontested claim against the other party under the EEOR, e.g. if it is not a claim for payment of a certain monetary amount,[1197] the Estonian court can issue a certificate of partial European enforcement order for such a ruling terminating a proceeding under Article 8 of the European Enforcement Order. However, such a certificate should be issued based on the form of "judgement" (Annex 1), not "court settlement" (Annex 2).

105. In the judgements analysed within the present Research, the term "court settlement" according to Articles 3(1) and Article 24 of the EEOR was not discussed in greater detail. However, the judges answering the Questionnaires specified that they had had problems with application of Annex 2 to the EEOR, as the above annex is titled "Judgement" while it is actually only applicable to court settlements.

4.1.4.1.4. Authentic instruments (Art 3(1), Art 4(3), Art 25)

106. The term "official legal document" has been defined in Article 4(3) of the EEOR. The Estonian translation of the article is a complete failure. For example, "settlement regarding maintenance obligation" has been translated as "settlement regarding continuation of obligations", and also the remainder of the Estonian version of Article 4(3) of the EEOR is not completely understandable.

107. Similarly to "court settlement", in addition to the EEOR the term "official legal document" has been used in several other regulations of private law, including e.g.

[1194] *Solo Kleinmotoren GmbH v Emilio Boch*, Case C-414/93 (1994) ECR I-2237.
[1195] Brussels I Regulation Art 58 in conjunction with Art 57(1).
[1196] See the EEOR Art 24(3) in conjunction with Art 21(1).
[1197] Art 4(2) of the EEOR.

Brussels I Regulation.[1198] Probably the term "official legal document" should be the same in the context of all regulations – the European Court of Justice has given the term "official legal document" a meaning not depending on the internal legislation.[1199]

108. According to the definition in Article 4(3) of the EEOR, the following two types of documents should be considered to be "authentic instruments".

a) **First** – documents drafted or registered as authentic instruments the authenticity verification of which is related to the signatures and the contents of such documents, and issued by an administrative institution of the country of origin of the document or another institution with such competence under the legislation of the country of origin.

b) **Second** – settlements related to maintenance obligation with an administrative institution or settlements related to maintenance obligation approved by such an authority.

109. Of instruments known as "authentic instruments" in Estonia, notarised transactions should be regarded as such under the EEOR. Merely an approval of a notary is not sufficient, as according to § 81/1 of the General Part of the Civil Code Act (GPCCA), approval includes confirmation of the signature of the person carrying out the transaction, but according to Article 4(3) of the EEOR, the verification of authenticity of an "official legal document" shall also be related to the contents of such a document. A legal basis for checking the content of transactions is given to Estonian notaries by GPCCA § 82 according to which in events provided in the legislation or an agreement between the parties a transaction must be notarised, and the second sentence of the paragraph establishes a right of an Estonian notary to certify a transaction. Out of such notarised transactions that can be regarded as "authentic instruments", under the EEOR notarised settlements regarding financial claims could be mentioned according to which a debtor has given a consent to submit to immediate compulsory execution after the obligation falls due.[1200] Even though § 2/1/18[1] of the Code of Enforcement Procedure (CEP) considers also a notarised settlement by which a debtor has given a consent to submit to immediate compulsory execution as an enforcement document, it is not possible to issue European enforcement orders for such settlements under the EEOR, as

[1198] See e.g. Brussels I Regulation Art 57.

[1199] *Unibank A/S vFlemming G. Christensen*, Case C-260/97 (1999) ECR I-3715. It is worth mentioning that the *Unibank* decision was made by the European Court of Justice before the entry of the EEOR based on the Brussels Convention. In the above decision, the European Court of Justice emphasized that the authenticity of an "official legal document" must be checked by an administrative body of the country of origin or another institution with relevant competence under the legislation of the country of origin. EU legislator has taken into account the definition given by the European Court of Justice, in formulating the wording of ART 4(3) of the EEOR. A possibility to consider the practice of the European Court of Justice under the Brussels Convention in interpretation of the EEOR has also been emphasized by the Supreme Court of the Republic of Estonia, see: Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010.

[1200] According to CEP § 2/1/18 such settlements are also enforcement documents.

such settlements, while being "authentic instruments" fall into the scope of application of the Maintenance Obligations Regulation.[1201]

110. In their judgements, Estonian courts have applied the term of "official legal document" but thereby the courts have mostly just rewritten the relevant provisions of the EEOR. In order to regard a document as an "official legal document" under the EEOR, according to the Estonian case-law two conditions need to be filled: firstly, the document must be drafted by a competent institution (e.g. a notarial deed drafted by a notary of a foreign country). Secondly, the debtor must have provided his consent to the claim in such a legal document.[1202] The request of fulfilment of such terms by Estonian courts meets the idea and wording of the EEOR. However, in the questionnaires it was pointed out that in practice it is difficult for judges to estimate which notarial deeds fall into the scope of the EEOR.

111. Estonian courts have regarded notarial deeds issued by foreign notaries as "authentic instruments".[1203] Also, Estonian courts have repeatedly needed to explain (by procedure) that a "certificate" regarding the debt of a debtor issued by e.g. an Estonian bailiff cannot be considered an "official legal document" under the EEOR.[1204] Clearly, in the event of such "certificates", the terms provided in Article 4(3) of the EEOR for regarding a document as an "official legal document" under the EEOR are not fulfilled. Such "authentic instruments" could not possibly include e.g. also invoices of notary fee for notary procedures and the conducting thereof, invoices of sworn translator for the fee provided in [1205] § 8/1 and 8/2 of the Sworn Translators Act, or a decision of a bailiff regarding the bailiff's fee, enforcement expenses and penalty payment, regardless of the fact that such documents are considered to be enforcement documents under the Estonian internal legislation.[1206]

4.1.4.2. Term of uncontested claims (Art 3(1), Art 4(2))

4.1.4.2.1. Term of claim (Art 4(2))

112. According to Article 4(2) of the EEOR, a "claim" under the EEOR means only claims of payment of certain monetary amounts payable or the payment of which has been determined by a judgement or an official legal document. The term "claim" is important in order to determine which judgements, court settlements or authentic

[1201] See e.g. Article 48 of the Maintenance Obligations Regulation.
[1202] Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010, judgement of Harju County Court in civil matter No. 2-10-60829 dated December 7th, 2010, judgement of Harju County Court in civil matter No. 2-09-25113 dated January 29th, 2010.
[1203] E.g. judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010 regarded a notarial deed drafted in Lithuania as an "official legal document".
[1204] Judgement of Harju County Court in civil matter No. 2-10-17052 dated June 30th, 2010, judgement of Harju County Court in civil matter No. 2-10-37892 dated August 30th, 2010.
[1205] Sworn Translators Act RT I 2001, 16, 70.
[1206] See CEP § 2/1 clauses 16, 17 and 17[1].

instruments may be approved as European enforcement orders. For example, a judgement by which one party was obliged to hand a thing over or stop the activity that was causing harm does not belong in the scope of the EEOR, as from such judgements no "claims" are derived under Article 4(2) of the EEOR. Also notarised settlements referred to in CEP § 2/1 clauses 19, 19^1 and 19^2 [1207] would not belong in the scope of the EEOR, as such settlements do not involve financial claims under Article 4(2) of the EEOR.

113. The Supreme Court of the Republic of Estonia has referred to a possibility that a contract for the establishment of a mortgage could also be regarded as an "official legal document" under the EEOR.[1208] Probably it would be necessary here to rely on the content of the particular "official legal document" and look at the content of such a settlement, i.e. whether one party undertook a financial obligation to pay a certain fee for the mortgage under the contract for the establishment of a mortgage. According to Article 3(1) in conjunction with Article 4(2) it is possible to approve only such "authentic instruments" as European enforcement orders that have been created for uncontested monetary claims. In the event of a notarised contract for the establishment of a mortgage such conditions may not be fulfilled.

4.1.4.2.2. Term of "uncontested" claim (Art 3(1))

114. The definition of "uncontested claims" has been provided in Article 3(1)a of the EEOR. The Estonian translation of the above provision is not very successful. For example, in Article 3(1) of the Estonian translation of the EEOR "judgements" are not distinguished from "court settlements" and "court hearing" from "court proceedings", even though such distinguishing is present in the English version of the EEOR.

115. According to Article 3(1) of the EEOR uncontested claims include claims:

a) the debtor has explicitly expressed his consent by admission in court proceedings or by a court settlement approved by the court or drafted during the court proceedings, or

b) the debtor has never submitted an objection in accordance with the procedures established by the legislation of the country of origin, or

c) after submitting an initial objection the debtor has not participated in a court hearing discussing the relevant claim either in person or through a representative,

[1207] According to CEP § 2/1/19, an enforcement document is a notarised settlement establishing an obligation of the owner of a real estate or a ship registered in a ship's registration book or an object encumbered with register pledge to submit to immediate compulsory execution for satisfaction of a claim guaranteed by a mortgage, maritime mortgage or register pledge.
According to CEP § $2/1/19^1$ an enforcement document is a notarised settlement providing an obligation of the owner of a building or a part thereof as a movable to submit to immediate compulsory execution for satisfaction of a claim guaranteed by a pledge agreement of the building or a part thereof.
According to CEP § $2/1/19^2$ an enforcement document is a notarised settlement providing an obligation of the owner of a real estate to submit to immediate compulsory execution for satisfaction of a monetary claim guaranteed by real encumbrance.

[1208] Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010.

provided that the above behaviour equals an admission of the claim or the alleged facts presented by the debtor, or

d) the debtor has explicitly expressed his/her consent in an official legal document.

116. A need to verify the clear consent of a debtor upon issuing of a European enforcement order certificate has been emphasized also in the Estonian case-law. For instance, courts have refrained from issuing a European enforcement order certificate for a ruling of determining procedure expenses because the debtor did not express his/her consent to determining procedure expenses in the manner applied for by the applicant.[1209] In the event of "authentic instruments", according to the Estonian case-law the "consent" of the debtor has been explicitly expressed if the debtor agrees to submit to immediate compulsory execution, which may have taken place either before or after the obligation falls due.[1210]

117. Estonian courts have not (duly) checked whether the confirmations of European enforcement orders issued abroad have been issued in relation to judgements pertaining to uncontested claims or authentic instruments where the debtor explicitly expressed his/her consent. If the enforcement order document has been issued by a competent person and meets the standard form appended to the EEOR, it has been sufficient for the Estonian courts even if the enforcement order has been challenged, relying on the statement that it was not an uncontested claim.[1211] If the European enforcement order has been issued abroad for a claim that is not an "uncontested claim" under Article 3(1) of the EEOR, a European enforcement order still exists and the situation differs from a situation where a European enforcement order is issued for a so-called claim under public law (which does not fall into the scope of material application of the EEOR), or for e.g. judgements issued before the EEOR entered into force (i.e. for judgements not falling under the period of application of the EEOR).

118. If a debtor finds that the European enforcement order has been issued for a judgement pertaining to a claim that is not an "uncontested claim" under Article 3(1) of the EEOR, the legal remedies of the debtor can be found in Article 10 of the EEOR. According to Article 10(1)1 of the EEOR, it is allowed to correct a European enforcement order certificate based on an application of the debtor, if there are discrepancies between the certificate and the judgement due to a substantial mistake. According to Article 10(1)b of the EEOR a European enforcement order certificate may be withdrawn it has been clearly issued in the wrong way considering the requirements provided in the EEOR. Thus, if a European enforcement order certificate has been issued

[1209] Judgement of Tartu County Court dated June 25th, 2012 on civil matter No. 2-07-10608.

[1210] Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010.

[1211] See: Ruling of Tallinn Court of Appeal No. 2-09-25113 dated May 18th, 2010. The above ruling was cancelled by judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010 but it was done due to the lack of a duly filled European enforcement order certificate, i.e. an enforcement document.

for a judgement the claim based on which is not an "uncontested claim" under Article 3(1) of the EEOR, it gives the debtor a reason to address the court having issued the European enforcement order certificate and request the withdrawal of the certificate. However, if such a European enforcement order certificate arrives at Estonia, an Estonian bailiff does not have a right to refuse from execution thereof, and Estonian courts cannot verify the correctness of the content of such European enforcement order certificates while solving complaints related to the activities of a bailiff. The above stand has also been confirmed by the Supreme Court of the Republic of Estonia.[1212]

i) Activity of a debtor (Art 3(1)a)

119. Under Article 3(1)a of the EEOR, uncontested claims include, *inter alia*, claims in the event of which a debtor has explicitly expressed his/her consent by admission (in court proceedings) or by court settlement that has been approved by court or drafted in the course of court proceedings.

120. The so-called "active admission" in court proceedings means that the respondent has expressed his/her consent to the action either by a statement submitted to the court or in clear words during a court hearing. Such a statement may be a reply of the respondent. According to CCP § 394/2/2, the respondent shall note in his/her reply whether he/she admits the action, agreeing to the claims against him/her provided in the statement of claim. Regardless whether the admission has been expressed during a court hearing or in a statement submitted to the court, the outcome is the same – according to CCP § 440 if the respondent admits the claim of the plaintiff in a court hearing or a statement submitted to the court, the court shall satisfy the action.

121. "Active" admission of a claim takes place also if the respondent agrees to satisfy the claim of the plaintiff as a consequence of a compromise. According to § 430 section 1 of CCP, the Estonian court approves a compromise with a ruling by which it also terminates the procedure, noting the terms of the compromise in the confirmation ruling of the compromise. Also in such an event the ruling for confirmation of a compromise can be regarded as a judgement regarding an "uncontested" claim.

ii) Inactivity of a debtor (Art 3(1)b and c)

122. Article 3(1)b and c govern the so-called "inactive" admission of a claim. According to CCP § 440, based on the Estonian legislation, as a rule, admission of an action is possible in active manner, i.e. in a statement submitted to the court or by admission of an action during a court hearing recorded in minutes according to CCP § 440/2. At the same time, CCP § 407/1 also provides a possibility to regard the so-called inactive admission as admission by the respondent.

[1212] Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010.

123. According to Article 3(1)b of the EEOR uncontested claims under the EEOR are claims that the debtor has never objected to in accordance with the procedures established by the legislation of the country of origin. In the Estonian legislation, a judgement passed in regard to such a claim is based on a judgement by default passed according to CCP § 407/1. According to CCP § 470/1 the court may satisfy an action based on a relevant application of the plaintiff in the extent noted in the statement of claim and justified by the circumstances, if the respondent for whom the court has provided a term for submission of a reply has not replied in timely manner, even if the action was delivered to the respondent abroad or if it was delivered publicly. In such an event the factual statements of the plaintiff shall be regarded as admitted by the respondent under CCP § 407/1. If it can be presumed that it is necessary to acknowledge or execute the judgement passed as a result of the proceedings abroad (e.g. if the debtor lives or has the main property abroad) and if due to public delivery of the action it is likely that the judgement might not be acknowledged or executed abroad, the Estonian court should seriously consider a possibility to refuse to make a decision by default. Such a possibility is provided to the court under CCP § 407/5[1]. The decision of a judge should thereby be based on whether the creditor has a possibility to address the court abroad.

124. Under Article 3(1)c of the EEOR, uncontested claims also include the claims where the debtor has not participated in a court hearing discussing the relevant claim after the initial objection, neither personally nor through a representative, provided that the above behaviour equals an admission of the claim or the alleged facts presented by the debtor. According to the first sentence of CCP § 410, if the respondent does not attend a court hearing, including the preliminary hearing, the court shall either pass a decision by default, solve the matter substantially or postpone the discussion of the matter, based on the application of the plaintiff who is present. An Estonian judge may pass a decision by default in connection with the absence of the respondent if the prerequisites provided in CCP § 413 are fulfilled. Without the presence of the respondent, the court can solve the matter substantially according to the procedure provided in CCP § 414.

125. According to the judgements of Estonian courts analysed for the present Research, matters related to interpretation of the EEOR Article 3(1)b and c have been discussed in the Estonian case-law only by reference. For example, Tartu County Court has explained in a judgement that the uncontested nature of a claim means that the debtor has never submitted an objection in accordance with the procedures established by the legislation of the country of origin.[1213] Substantially, this was a quote from EEOR Article 3(1)b.

[1213] Judgement of Tartu County Court No. 2-10-52785 dated June 3rd, 2011.

4.1.4.3. Country of origin and country of execution (Art 4(4)-(5))

4.1.4.4. Requirements to issuing of European enforcement order certificate (Art6(1) and Chapter III: Art 12-19)

4.1.4.4.1. Explanation of the application for a European enforcement order certificate (Art 6(1))

126. The court cannot issue a European enforcement order certificate by own initiative.[1214] According to Article 6(1) of the EEOR, in Estonia an application for issuing a European enforcement order certificate for a judgement shall be submitted to the court having passed the judgement for which the European enforcement order certificate is desired.[1215] Article 6(1) of the EEOR should also cover the rulings of the Estonian courts passed in connection with a compromise between the parties. As according to § 430 section 1 of CCP the Estonian court shall check the content of the compromise to be confirmed, i.e. to verify that the compromise does not contradict good practice or the law, the relevant ruling on the termination of a procedure by the Estonian court should probably be understood not as a "court settlement" under Art 3(1) and Art 24 of the EEOR but as a "judgement" under Art 4(1),[1216] for which the application for a European enforcement order certificate is governed by Art 6(1) of EEOR.

127. Applications for issuing a European enforcement order certificate for authentic instruments are governed by Article 25(1) of the EEOR. According to CCP § 619^1/1, European enforcement order confirmations for such authentic instruments are issued by Harju County Court and not e.g. an Estonian notary who drafted the relevant official legal document. As such, the solution does not contradict Article 25(1) of the EEOR, but in practice it may be easier for an Estonian notary to issue a relevant enforcement order certificate.

128. The EEOR or CCP do not establish the form of application to be submitted to the Estonian court for obtaining a European enforcement order certificate. Therefore, such applications do not follow a certain obligatory form; however, the general principles of CCP shall be considered upon the submission of an application, e.g. the application must be submitted in written form, as in accordance with CCP § 619^1/2 the court solves the issuing of a European enforcement order certificate in written proceeding. As according to CCP § 1/1 the court procedures are held in Estonian, the application for issuing of a European enforcement order certificate must be submitted in Estonian. Otherwise,

[1214] Zilinsky, M. Abolishing Exequatur in the European Union: the European Enforcement Order. *Netherlands International Law Review LIII 2006*, pp 471, 478.

[1215] Even though such a conclusion is not directly based on Article 6(1) of the EEOR, it is confirmed by CCP § 619^1/1 for Estonian court judgements. If it is desired to obtain a European enforcement order certificate from abroad, it is necessary to rely on the rules established in the relevant country in order to determine which courts issue European enforcement order certificates.

[1216] See details in Article 4.1.4.1.3. of the present Research.

according to CCP § 33/1 the court requests a translation of the application into Estonian from the applicant. If the translation is not submitted in time, the court may disregard the application according to CCP § 33/3.

129. In addition it must be noted that according to § 57/5 of the State Fees Act state duty in the amount of 25 euros must be paid upon the submission of an application for a European enforcement order certificate. If the application is submitted electronically through web page www.e-toimik.ee, state duty of 10 euros must be paid.

4.1.4.4.2. Jurisdiction (Art 6(1)b)

i) International jurisdiction

130. Article 6(1)b of the EEOR places a requirement to the Estonian court to check whether the jurisdiction was determined in accordance with the rules established in Sections 3 and 6 of Chapter II of Brussels I Regulation for the court case for the judgement of which a European enforcement order certificate is required.

131. The Brussels I Regulation Chapter II Section 3[1217] governs the jurisdiction in insurance disputes, but Section 6[1218] exclusive jurisdiction (e.g. jurisdiction governing rental agreements related to real estate). Thus, the court does not have to check, for example, if the jurisdiction was determined according to the rules of jurisdiction in the event of labour disputes in the Brussels I Regulation (Brussels II Regulation, Chapter II, Section 5). However, the court must check whether in disputes with a consumer as debtor the domicile of such a debtor was in Estonia at the beginning of the court procedure.[1219]

132. Article 6(1)b of the EEOR does not require that the Estonian court should check other provisions of international jurisdiction upon issuing of an EEOR. Thus, in principle it is possible that the European enforcement order certificate must be issued for a judgement passed in a dispute that did not fall under the jurisdiction of the Estonian court according to the provisions of international jurisdiction. Such a solution is in accordance with the logic of Brussels I Regulation, which limits the jurisdiction checks in the event of judgements of foreign origin also with the provisions of sections 3, 4 and 6.[1220] Evidently the legislator of the European Union has not considered the remaining grounds for international jurisdiction important enough to justify so-called double-check both at

[1217] See details regarding such jurisdiction: Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, pp 330-362.

[1218] See details regarding such jurisdiction: Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, pp 413-435.

[1219] Such an obligation of the court is based on Article 6(1)d of the EEOR. Thereby it is not important where the actual address (domicile) of the consumer was at the moment of judgement or conclusion of the contract in regard to which the action was filed against the consumer in the Estonian court – it only matters that the consumer's permanent place of residence (domicile) was in Estonia at the time of filing the action. Please see in detail: Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, pp 385-386.

[1220] See Brussels I Regulation Art 35(1).

the moment of accepting the dispute for processing and later in the phase of acknowledgement of the judgement or issuing of a European enforcement order certificate.

133. According to the KIS database (strictly for internal use), Estonian courts have passed several judgements where during the process of issuing a European enforcement order certificate the court checked whether the matter fell under the jurisdiction of the Estonian court according to the international jurisdiction provisions. For instance, Estonian courts have refused to issue a European enforcement order because the domicile of the debtor was not in Estonia at the beginning of the court procedure.[1221] But such a checking obligation for courts is not based on Article 6(1)b of the EEOR but Article 6(1)d of the EEOR. Thereby, when determining the domicile of the debtor, the Estonian courts have mainly relied on the information in the Estonian population register. But it must be noted that the information in the Estonian population register can only have the power of evidence, i.e. it is possible that the domicile of a debtor is in Estonia regardless of other information in the population register. However, under the Brussels I Regulation, the domicile of a person must be determined according to the internal legislation, based on the country where the person is believed to be a resident of. [1222] Thus, in order to check whether the domicile of a debtor was in Estonia at the beginning of the procedure, the Estonian court must apply the GPCCA § 14 and thus identify in which country the debtor (consumer) permanently or mainly lived at the time of starting the procedure.[1223] Thereby, according to[1224] § 6 Section 1 of the Population Register Act, information entered into the population register only bears informative and statistical meaning.

ii) National jurisdiction

134. Article 6(1)b of the EEOR does not provide that courts should check whether the dispute for which a judgement was passed fell under the jurisdiction of the particular court also according to the provisions of national jurisdiction. In the Estonian legislation, provisions regarding national jurisdiction can be found in Chapter 11 of the 2nd part of the CCP. The provisions are also regarded as provisions of international jurisdiction in a situation where no regulation of the European Union or an international agreement concluded by the Republic of Estonia governs international jurisdiction.

[1221] Judgement of Tartu County Court No. 2-08-63701 dated June 9th, 2010, judgement of Tartu County Court No. 2-08-82230 dated November 12th, 2010, judgement of Harju County Court No. 2-05-10106 dated March 25th, 2010, judgement of Tartu County Court No. 2-08-9576 dated September 28th, 2010, judgement of Tartu County Court No. 2-10-52785 dated June 3rd, 2011, judgement of Tartu County Court No. 2-10-48347 dated February 10th, 2011, judgement of Tartu County Court No. 2-10-58585 dated February 10th, 2011, judgement of Tartu County Court No. 2-08-58760 dated March 25th, 2011, judgement of Tartu County Court No. 2-10-67384 dated May 8th, 2012.

[1222] See the details from Brussels I Regulation Art 59.

[1223] Please see in detail: Torga, M. Elukoht tsiviilseadustiku üldosa seaduse tähenduses, *Juridica 2010 No 7*, pp 473-480.

[1224] Population Register Act RT I 2000, 50, 317.

135. In principle, it is possible that a judgement for which issuing of a European enforcement order certificate is applied for, was passed for a dispute where the court determined correctly the international jurisdiction but made a mistake in determination of the national jurisdiction. This may happen, for instance. when an insurance provider files an action against a person whose domicile is in Estonia but under the jurisdiction of another Estonian court. According to CCP § 79/1 an action against a natural person must be filed based on his/her address. Even though according to CCP § 79/1 the court should mark on the receipt of an application whether the case falls under the jurisdiction of the court where the application was submitted, and even though according to CCP § 79/2, in the event that the case does not fall under the jurisdiction of that particular court, the application should be forwarded to the correct one, it is not impossible that the mistake in determination of national jurisdiction is discovered only after the judgement has been passed. [1225] However, according to Article 6(1)b of the EEOR, such a mistake is not a reason to refuse from issuing a European enforcement order certificate – Article 6(1)b only governs the determination of international and not national jurisdiction by the court judging the case.

136. According to Article 6(1) of the EEOR, an application for issuing a European enforcement order certificate shall be submitted to the court of the so-called country of origin. In Estonia, in order to obtain a European enforcement order certificate, an application shall be submitted to the court that passed the judgement for which it is necessary to obtain the European enforcement order certificate. Even though such a conclusion is not directly based on Article 6(1) of the EEOR, it is confirmed by CCP § 619^1 /1 for Estonian court judgements, as well as judgements passed by Estonian courts.[1226] Even if according to the provisions of national jurisdiction another court should have passed a judgement in the dispute, issuing of a European enforcement order certificate can be requested only from the court having passed the judgement for which the issuing of a European enforcement order certificate is requested.

4.1.4.4.3. Enforceability of judgement

137. According to Article 6(1)a of the EEOR, a court judgement must be "executable" in its country of origin, so that a European enforcement order certificate can be issued for it. A court issuing a certificate for a judgement according to Annex I to the EEOR (*European enforcement order – judgement*) shall separately confirm in clause 6 of the certificate that the judgement is executable in its country of origin. Thus, the

[1225] If after accepting the application but before passing of judgement the court discovers that the case does not fall under the jurisdiction of the court, according to CCP § 76/1 the court shall pass a ruling for transferring the case according to the jurisdiction.

[1226] See e.g. judgement of Harju County Court in civil matter No. 2-09-27694 dated November 2nd, 2010, judgement of Harju County Court in civil matter No. 2-11-10763 dated October 19th, 2011, judgement of Harju County Court in civil matter No. 2-10-23703 dated September 20th, 2011, judgement of Harju County Court in civil matter No. 2-11-12565 dated October 26th, 2011.

"enforceability" of a judgement in its country of origin is a matter to be checked by a judge issuing a European enforcement order certificate and not a judge in a country where it is wished to execute the European enforcement order. The above means that the non-enforceability of a court judgement in the country of origin is not a reason the absence of which would give grounds for a debtor to challenge e.g. in Estonia the activities of a bailiff upon the execution of a European enforcement order originating from abroad. However, a debtor can challenge the activities of an Estonian bailiff if the bailiff did not have a duly filled European enforcement order certificate upon the initiation of the execution proceeding, including the event when clause 6 of the certificate did not specify that the judgement is executable in its country of origin.[1227]

138. Article 6(1) of the EEOR does not require that a judgement approved by the Estonian court as a European enforcement order should have entered into force in Estonia – the only important thing is that the judgement is executable in Estonia. Judgements that have not yet entered into force but are executable in Estonia are judgements that the Estonian court has declared as immediately executable under CCP § 467/1. The Estonian court must declare certain judgements as immediately executable by its own initiative, e.g. judgements based on admission of action and decisions by default.[1228] Such judgements fall in the scope of application of the EEOR, regardless of the fact that they may not have been entered into force at the moment of issuing of the European enforcement order under the Estonian legislation.

4.1.4.4.4. Domicile of a debtor

i) Domicile of natural persons

139. Article 6(1)d of the EEOR places an obligation on court to check the domicile of a natural person, if the debtor of a claim based on a judgement is a consumer, who is a natural person. Thereby, the domicile of such a debtor must be determined according to Article 59 of the Brussels I Regulation. According to the opinion of the judges having answered the questionnaires consumer disputes are a type of disputes in the event of which the application of the EEOR is considered complicated – in such an event it is problematic to determine the international jurisdiction.

140. According to Article 59 of the Brussels I Regulation, in order to determine whether the domicile of a person is in the particular member state, it is necessary to apply the national legislation of the relevant country. Probably the substantive law of the particular country is referred to without the regulations of international private law.[1229] Thus, if the court wishes to determine whether the domicile of a person is in Estonia, the

[1227] Please see in detail: Judgement No. 3-2-1-117-10 of the Civil Chamber of the Supreme Court dated December 1st, 2010.
[1228] See in greater detail: CCP § 468/1.
[1229] Magnus U and Mankowski P (ed), Brussels I Regulation. Sellier. European Law Publishers 2007, pp 700-701.

court really has to rely on the Estonian GPCCA and the practice of interpretation thereof, not the Private International Law Act (PILA) § 10 (which would still direct the court to the same result). Thus, the Estonian court should determine whether the debtor (consumer) lived permanently or mainly in Estonia at the time of starting the court procedure.

141. But if the Estonian court wishes to determine whether the domicile of a person is in another member state of the EU, according to the Brussels I Regulation Article 59(2) the court should analyse the substantive law of the relevant country (and not the standards of the private international law of the country), which the Estonian courts often do not do in practice.[1230] Namely, in population of the term of domicile in a foreign country, Estonian courts often mistakenly rely on the GPCCA[1231] or entry in the Estonian population register.[1232] In fact, based on Article 6(1) of the EEOR, courts have no obligation to check whether a debtor has a domicile abroad – courts merely have to establish whether the debtor (consumer) had or did not have a domicile in Estonia at the time of starting the procedure. If the debtor (consumer) did not have a domicile in Estonia at the time of starting the procedure, the Estonian court issuing a European enforcement order should not have interest in the country where the actual domicile of the debtor was at the moment of starting the procedure. If the debtor did not have a domicile in Estonia at the time of starting the procedure, according to Article 6(1)d of the EEOR it is not possible to issue a European enforcement order certificate for a judgement passed as a result of such proceedings regardless of the foreign country where the domicile of the consumer was at the time of starting the procedure.

142. According to judgements of the Estonian courts passed under the EEOR, Estonian courts did not deal with the problem of determining the domicile of natural persons in those disputes. The prevailing practice in the judgements analysed was that the address of a party at the header of court judgement was marked simply as the Republic of Estonia or a foreign country. The domicile of a natural person is exceptionally checked during the procedure of issuing a European enforcement order certificate only if a question was raised in the process whether the matter fell under the jurisdiction of Estonian court when solving the matter in consumer dispute. In such an event, Estonian courts determined the domicile of a person correctly under Article 59 of the Brussels I Regulation.[1233] However, courts were careful when determining the domicile of a natural person if it was believed to be abroad (e.g., if domicile of a person is abroad according to the Estonian population

[1230] See e.g. Judgement of Pärnu County Court on civil matter No. 2-08-61327 dated March 10th, 2009.

[1231] See details on determination of the place of residence in international civil court procedure: Torga, M. Elukoht tsiviilseadustiku üldosa seaduse tähenduses, *Juridica 2010 No 7*, pp 473-480.

[1232] See e.g. judgement of Tartu County Court No. 2-08-63701 dated June 9th, 2010.

[1233] See e.g. judgement of Tartu County Court in civil matter No. 2-08-63701 dated June 9th, 2010, judgement of Tartu County Court in civil matter No. 2-10-52785 dated June 3rd, 2011, judgement of Tartu County Court in civil matter No. 2-10-67384 dated May 8th, 2012.

register); in such an event courts rather (correctly) noted that the person did not have a domicile in Estonia.[1234]

ii) Domicile of legal persons

143. Upon application of Article 6(1)d of the EEOR, the determination of the domicile of a legal person is not important. That is the case because the person whose domicile had to be in Estonia at the time of starting the procedure can only be a consumer. However, according to the practice of the European Court, under the Brussels I Regulation, a consumer can only be a natural person concluding the transaction in order to satisfy individual need of consumption.[1235] According to the definition in Article 15(1) of Brussels I Regulation, a consumer is a person concluding a transaction with a purpose not related to his/her economic and professional activities. If a person concludes a transaction for both purposes, i.e. for satisfaction of an individual need of consumption and in connection with economic and professional activities, the person is usually not regarded as a "consumer" in the context of the European private international law, unless the economic and professional purpose was of very low importance for the person upon conclusion of the transaction.[1236]

144. However, determination of the domicile of a legal person may be of importance upon checking of the rules of jurisdiction referred to in Article 6(1)b of the EEOR. For instance, if the policyholder was a legal person, under the Brussels I Regulation Article 12(1) it is possible to file an action against him only in the country where was his domicile at the beginning of the process.

145. Differently from the domicile of a physical person, the domicile of a legal person is not determined according to the national legislation of the presumable domicile of the legal person but according to Article 60 of the Brussels I Regulation. The above provision includes an autonomous definition of domicile of legal persons and provides that the domicile of a business venture or another legal person or an association of natural persons is at the location of such a person according to the statutes, location of the board or the main location of business operations. Relying on the above, it is possible that a legal person has a domicile simultaneously in several member states of the European Union. If such a legal person is a policyholder, according to Article 12(1) of the Brussels I Regulation it is thus possible to file an action against him in every country of his domicile at the time of starting the procedure.

146. In judgements analysed within the scope of the present Research, as a rule, Estonian courts did not deal with the problem of determining the domicile of legal persons. The prevailing practice in the judgements analysed was that the address of a party at the header was marked simply as Estonia or a foreign country. As no analysed

[1234] Judgement of Tartu County Court No. 2-08-63701 dated June 9th, 2010.
[1235] *Francesco Benincasa v Dentalkit SrL*, Case C-269/95 (1997) ECR I-3767.
[1236] *Johann Gruber v Bay Wa AG*, Case C 464/01 (2005) ECR I-439.

judgement concerned a dispute where the jurisdiction was determined under the international jurisdiction rules provided in Article 6(1)b of the EEOR for a judgement for which issuing of a European enforcement order certificate was applied for, the determination of the domicile of a legal person by Estonian courts was also not necessary.

iii) Consumers

147. According to the practice of the European Court, under the Brussels I Regulation, a consumer can only be a natural person concluding the transaction in order to satisfy individual need of consumption.[1237] The population of the term "consumer" in the EEOR should be based on the same definition. In principle, the above meets the term of consumer prevalent in the Estonian legislation. According to the Law of Obligations Act[1238] (LOA) § 34, for the purposes of LOA, a consumer is a person who conducts a transaction not related to independent economic or professional operations. This definition directly corresponds to the definition in Article 15(1) of Brussels I Regulation, according to which a consumer is a person concluding a transaction with a purpose not related to his/her economic and professional activities.

148. If a person concludes a transaction for both purposes, i.e. for satisfaction of an individual need of consumption and in connection with economic and professional activities, the person is usually not regarded as a "consumer" in the context of the European private international law, unless the economic and professional purpose was of very low importance for the person upon conclusion of the transaction.[1239]

149. In the judgements passed by Estonian courts analysed in the present Research, the term "consumer" was not discussed in greater detail. However, courts often admitted that a particular dispute involved consumers,[1240] without explaining in which legal capacity the person behaved as a consumer, i.e. what kind of agreement the natural person concluded as a consumer.[1241]

4.1.4.4.5. Procedural minimum requirements to uncontested claims

i) Scope of application of minimum claims

[1237] *Francesco Benincasa v Dentalkit SrL*, Case C-269/95 (1997) ECR I-3767.
[1238] Law of Obligations Act. RT I 2001, 81, 487.
[1239] *Johann Gruber v Bay Wa AG*, Case C 464/01 (2005) ECR I-439.
[1240] See e.g. judgement of Tartu County Court No. 2-12-5758 dated September 21st, 2012.
[1241] Also in court judgements for which they refused to issue European enforcement order certificates, Estonian courts often did not explain why one or other was considered a consumer. For instance, by the judgement referred to above, the court refused to issue a European enforcement order certificate for a decision of Tartu County Court passed by default where it was simply noted that it had been a ''loan agreement" concluded by the debtor. Judgement of Tartu County Court No. 2-12-5758 dated April 13th, 2012.

150. The III chapter of the EEOR prescribes so-called minimum requirements that have to be fulfilled if the court judgement desired to be approved as a European enforcement order was passed for a so-called passive uncontested claim[1242] i.e. in the event that the consent to the claim was not expressed explicitly in an application submitted to the court or in a court hearing or in judicial compromise (so-called active consent).[1243] Limitation to the issuing of a European enforcement order in such events is based on Article 6(1)c of the EEOR. The purpose of minimum requirements is to ensure that the inactivity of the debtor (failure to reply to the claim) was not caused by unawareness of the debtor about the claim or insufficient period of time provided for replying to the claim. Also, the purpose of minimum requirements is to provide relevant information to the debtor of the procedural requirements for disputing the claim and about the consequences of failure to submit objections or absence from a court hearing.[1244]

151. It must be noted that Chapter III of the EEOR only governs minimum requirements that need to be observed in the event of service of procedural documents of so-called passive uncontested claims, so that it is possible to issue a European enforcement order certificate for the judgement passed as a result of the proceedings. Chapter III of the EEOR does not give the court separate grounds for delivering documents in a certain way. That means the court must still deliver the procedural document according to the national procedural standards, and the fact that a certain way of service has been described in Chapter III of the EEOR does not give a reason to use such a method of service, unless the method has been prescribed by the national procedural law. However, the above does not mean that judges cannot rely on the minimum requirements established in Chapter III of the EEOR in situations where one of the parties is from abroad and it may be predicted that issuing of a European enforcement order certificate may be requested for the judgement later on. In such an event courts should choose a method of service consistent with the methods provided in Chapter III of the EEOR.

152. According to the Estonian case-law, the respondent must have been capable of attending the procedure to enable the approval of European enforcement orders for court judgements passed on so-called passive uncontested claims. For example, courts have checked whether the necessary documents were delivered to the respondent in the main procedure against a signature, which would meet the minimum standards of procedures for uncontested claims under Article 13(1)c of the EEOR.[1245] However, according to the Estonian case-law, the minimum requirements are not followed if the document starting the procedure was delivered to the debtor through the official publication Ametlikud

[1242] See details in Article 4.1.4.2.2. ii) of the present Research ‘‘Inactivity of the Debtor”.
[1243] See details in Article 4.1.4.2.2. i) of the present Research ‘‘Activity of the Debtor”.
[1244] Art 17 of the EEOR.
[1245] Judgement of Pärnu County Court on civil matter No. 2-10-26034 dated July 29th, 2011.

Teadaanded.[1246] If the minimum requirements have not been followed, Estonian courts (correctly) refuse to issue a European enforcement order certificate. [1247]

4.1.4.4.6. Service with confirmation of receipt by the debtor (Art 13 and 15)

i) Personal service and forms thereof (Art 13(1)a and b)

153. One possibility to inform a debtor of a claim against him/her is personal service of the document starting the procedure. According to Article 13(1)a of the EEOR, a document starting the procedure or a document with equal value may be delivered to the debtor personally, so that the service is confirmed by an advice of receipt bearing the date of receipt and the signature of the debtor. In the Estonian legislation, such service is ensured e.g. by service through registered mail under CCP § 313.

154. According to Article 13(1)b of the EEOR, a document starting the procedure or a document with equal value may be delivered to the debtor personally, so that the service is confirmed by a document issued and signed by a competent person where it is noted that the debtor received the document or refused to accept the document without a legitimate reason, and which also bears the service date. In the Estonian legislation, such service is ensured e.g. by the service of the procedural document by a bailiff, court official, another person and institution (CCP § 315), provided that the requirements of CCP § 315/5 and 313/3 have been followed when filling the advice of receipt.

ii) Service by mail (Art 13(1)c))

155. According to Article 13(1)c of the EEOR, a document starting the procedure or a document with equal value may be delivered to the debtor by mail, provided that the service is confirmed by an advice of receipt bearing the date of receipt and the signature of the debtor, which is returned. In the Estonian legislation, such service is ensured by CCP § 314/1 according to which a procedural document may be delivered as a regular letter if a notice has been enclosed with the letter stating the obligation to immediately return an advice of receipt, and including the name and address of the sender and the name of the court official having sent the document. In order to follow the requirements of Article 13(1)c of the EEOR, the date of receipt must be noted in the confirmation and it must be signed (CCP § 314/5).

156. Article 13(1)c of the EEOR does not provide whether the confirmation may be signed and returned also by a representative of the debtor. But that question is answered by Article 15 of the EEOR, where it is stated that a document under Article 13 may also be delivered to a representative of the debtor.

[1246] Judgement of Tartu County Court on civil matter No. 2-07-10608 dated June 25th. 2012.
[1247] See e.g. judgement of Tartu County Court No. 2-11-12243 dated June 29th, 2012.

iii) Electronic service (Art 13(1)d)

157. According to Article 13(1)d of the EEOR, a document starting the proceedings or a document with equal value may be delivered to the debtor by using electronic means (e.g. fax, e-mail), provided that the debtor returns an advice of receipt showing the date of receipt and bearing the signature of the debtor. In the Estonian legislation, such service is ensured by a possibility to deliver the procedural document by fax or electronically under CCP § 314.

4.1.4.4.7. Service without confirmation of receipt by the debtor (Art 14 and 15)

158. In addition to personal service of a document to the debtor, the EEOR provides a possibility to deliver the document to the debtor without a relevant confirmation of the debtor. Such service options are provided in Articles 14 and 15 of the EEOR.

i) Personal service to other persons except the debtor, and methods of such service (Art 14(1)a and b)

159. According to Article 14(1) of the EEOR a document starting the proceedings or a document with equal value, or a summons may be delivered to the debtor personally at the address of the debtor to persons who live in the same household with the debtor or work there. In the Estonian legislation, such service is ensured e.g. by CCP § 322/1 enabling under special circumstances (if the recipient of the procedural document cannot be reached in his/her place of residence) to regard the document as delivered to the recipient also by service thereof to a person of at least fourteen years of age living in his/her premises or serving the family.

160. According to Article 14(1)b of the EEOR, in the event of a debtor engaging in economic or professional activity or a legal person, a document starting the proceedings or a document with equal value, or a summons may be delivered also by personal service in the business premises of the debtor to an employee of the debtor. In the Estonian legislation such service is ensured under CCP § 323. Even though the official Estonian translation of Article 14(1)b of the EEOR speaks of a "self-employed entrepreneur", it would be more correct here to refer to a "natural person engaging in economic and professional activity", as the term "self-employed entrepreneur" under § 3 of the Commercial Code[1248] does not suit into the context of the EEOR, where the terms must be interpreted autonomously, regardless of national legislation.

ii) Leaving documents in the mailbox of the debtor (Art 14(1)c, d and e)

[1248] Commercial Code. RT I 1995, 26, 355.

161. According to Article 14(1)c of the EEOR, a document starting the proceedings or a document with equal value, or a summons may be delivered also by leaving the document in the mailbox of the debtor. In the Estonian legislation, such service is ensured under CCP § 326 (service of procedural document by putting it in mailbox).

162. Article 14(1)d makes it possible to leave the document in the post office or a competent institution, including the mailbox of the debtor and leaving a relevant written notice, provided that the notice informs the debtor in understandable way of the judicial nature of the document or legal consequences of leaving the notice as a proof of service and of the relevant periods of time calculated from the moment of service in such manner. In the Estonian legislation, such service is ensured under CCP § 327 (service of procedural document with storage), provided that the debtor is informed of the circumstances described in Article 14(1)d of the EEOR.

iii) Electronic means (Art 14(1)f)

163. Article 14(1)f enables service of a document starting the proceedings or a document with equal value, or a summons also by electronic means with automatic confirmation of receipt, provided that the debtor has previously explicitly agreed to such a method of service. The above method differs from the one described in Article 13(1)d of the EEOR, where the debtor must confirm the receipt of an electronically delivered document in person, with a signature.

4.1.4.4.8. Remedy of non-conformity to minimum requirements (Art 18)

164. Article 18 of the EEOR provides an option to remedy the non-conformity to minimum requirements in certain events before a European enforcement order certificate is issued. Such a remedy must eliminate faults in previous service. Essentially the above remedy means that the debtor is informed of the court judgement passed for him/her, and he/she is given an opportunity to challenge the judgement. For that, certain circumstances must be observed.

a) **First,** the judgement must be delivered to the debtor, whereas the service must conform to the minimum requirements provided in Chapter III of the EEOR. For example, in connection with remedy of minimum requirements, it has been explained by the Estonian courts that it is not a remedy if the judgement is delivered to the debtor by publishing it in the official publication Ametlikud Teadaanded, i.e. in the manner not conforming to the minimum requirements provided in Chapter III of the EEOR.[1249]

b) **Second,** the debtor must have an opportunity to challenge the judgement in full. For that, the debtor must be informed of the opportunity in the judgement according to Article 18(1)b of the EEOR, including the details of the court that he/she must

[1249] Judgement of Tartu County Court on civil matter No. 2-07-10608 dated June 25th. 2012.

address in order to challenge the judgement, and the period of time within which he/she must do it. In the Estonian legislation, such a way of disputing would be a petition to set aside the default judgement (CCP § 415) and in the event of other judgements a review which is justified because a party of the procedure was not informed of the procedure according to the law, including non-service of the statement of claim, or the party of the procedure was not summoned to the court, even though the judgement was passed for him/her (CCP § 702/1/2).

165. If a debtor to whom a judgement has been duly delivered and who has been informed of the opportunity to challenge the judgement does not challenge the judgement within the prescribed period of time, the non-conformity to the minimum requirements in the initial judgement shall be regarded as remedied under Article 18 of the EEOR.

166. Under Article 18(2) of the EEOR, a remedy can also be the fact that based on the operations of the debtor it has been verified that the debtor to whom the court document was not delivered under Chapter III of the EEOR actually received the procedural document soon enough in order to protect himself/herself in the court proceedings. Even though the Estonian version of the EEOR states an obligation of the debtor to "prove" that he/she received the procedural document, it is clear that the message in Article 18(2) is that the debtor does not have to prove anything but the judge can determine based on the behaviour of the debtor that he/she actually received the procedural document in the initial procedure.

4.1.4.4.9. Additional minimum requirements (Art 19)

167. Article 19 of the EEOR provides an additional requirement that must be fulfilled so that the court can issue a European enforcement order certificate for a judgement. Namely, according to Art 19(1) of the EEOR, a prerequisite for issuing an enforcement order is that the debtor could apply for a review of the case according to the procedural standards of the court[1250] for the following reasons: a) a document starting the proceedings or a document with equal value, or a summons was not delivered to the debtor personally[1251] and b) the document was not delivered to the debtor in time to enable him/her to defend his/her rights, or due to force majeure circumstance the debtor could not challenge the claim, provided that he/she did not delay the use of his/her procedural rights. Hereby, Article 19(2) of the EEOR allows a member state to establish so-called milder terms for disputing a judgement. In Estonia, the possibility to challenge a judgement has been provided through the submission of a petition to set aside the default judgement (CCP § 415) and through a review (CCP § 702/1/2) – both provide a

[1250] The English version of Article 19 of the EEOR speaks of a ''review" of a court judgement, which is ''teistmine" in the context of the Estonian legislation (CCP Chapter 68). For comparison: Article 18 of the EEOR speaks of ''challenge" of a judgement, which under the Estonian legislation should mainly be ensured by submission of a petition to set aside the default judgement.

[1251] I.e. it was delivered by method provided in Article 14 of the EEOR.

milder regulation for a debtor in comparison to Article 19(1), due to which the fulfilment of the prerequisites in Article 19 should not be problematic in the event of Estonian court judgements.

4.1.5. Documents to be certified as a European Enforcement Order

4.1.5.1. Court judgements to be certified as a European Enforcement Order (Art 8 and 9)

4.1.5.1.1. Application and Annex 1 standard form (Art 9(1))

168. According to the European Enforcement Order Regulation Art 9(1), a court will issue a European Enforcement Order on the basis of Annex I of the Regulation. The court may use the European Judicial Atlas, which enables automatic translation of forms to the language accepted in the country where the person is willing to make use of the European Enforcement Order. For example, case-law has been researched in Estonia in respect to issuing European Enforcement Orders in Finnish in case the domicile of the defendant is abroad.[1252]

169. An Estonian court issuing a European Enforcement Order according to Annex I of the Regulation ("*European Enforcement Order certificate – judgement*") has to confirm separately under p 6 that the judgement is enforceable in Estonia. In case there is no statement under p 6 of the European Enforcement Order issued in a foreign country mentioning that the judgement is enforceable in the Member State of origin, it is a good reason enough to contest the activities of an Estonian bailiff.[1253]

170. The judges answering the questions had had practical problems with filling in European Enforcement Orders, when they had to fill in the sum of money according to the judgement and especially fines and interest on judgement. The form in the annex to the European Enforcement Order Regulation was also regarded as confusing by the answerers. Furthermore, it was pointed out that the Estonian translation of p 13 Form 1 differs from the English version causing confusion in practice.

4.1.5.1.2. Language of a European Enforcement Order certificate (Art 9(2))

171. According to the Regulation Art 9(2), the European Enforcement Order certificate shall be issued in the language of the judgment. Estonian courts have issued certificates in foreign languages (Finnish) if the address of the defendant is abroad.[1254]

[1252] See for example: court ruling in civil matter No 2-09-25029 of 28.07.2011 by Tartu County Court.
[1253] See for more details: Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.
[1254] Court ruling in civil matter No 2-09-25029 of 28.07.2011 by Tartu County Court.

172. Referring to the Regulation Art 9(2), Estonian courts should obviously issue European Enforcement Order certificates in the Estonian language, but in case of request by the creditor, the judge could provide him also with translation into the requested language with the help of the automatic translation device available in the European Judicial Atlas.

4.1.5.1.3. Problems about European Enforcement Order certificate service with proof receipt by debtors

173. Problems with servicing of European Enforcement Order certificates arise under two types of circumstances: (a) when an Estonian judge issues a European Enforcement Order certificate and (b) when a European Enforcement Order certificate is enforced in Estonia by a local bailiff.

(a) Issue of a European Enforcement Order certificate in Estonia

174. It is not settled in the European Enforcement Order Regulation whether the certificate is to be serviced to the debtor with proof receipt in the issuing member state. According to Art 619[1] section 2 of the Estonian Code of Civil Procedure a European Enforcement Order certificate issued in Estonia shall be serviced to the defendant or the debtor with proof receipt. Still, the Estonian Code of Civil Procedure would not solve the issue in case of failure of servicing a European Enforcement Order certificate. For example, if the debtor in not residing is Estonia (any more), the certificate cannot be serviced to him. A court should apparently still issue a European Enforcement Order certificate. Otherwise it would be too easy for debtors to avoid fulfilment of their obligations by leaving the country or rejecting summons to appear to court. Furthermore, the Regulation does not explicitly allow a European Enforcement Order certificate be unissued.

(b) Implementation of a European Enforcement Order issued by a foreign country in Estonia

175. Pursuant to the Regulation Art 20(1), a European Enforcement Order certificate shall be implemented according to the enforcement procedures of the country where enforcement is sought. Implementation of European Enforcement Orders issued by foreign countries is governed by provisions of the Estonian Code of Enforcement Procedure. Referring to the above mentioned, an Estonian bailiff shall service the enforcement documents to the debtor according to the general rules of the Code of Enforcement Procedure.

176. According to paragraph 24 section 1 of the Code of Enforcement Procedure, if the requirements for the commencement of enforcement proceedings are met, a bailiff shall

service an enforcement notice to a debtor. Pursuant to paragraph 24 section 4 a copy of the Code of Enforcement Procedure, a copy of the enforcement instrument shall also be appended to an enforcement notice. Thus according to the Estonian law, a debtor has the right to learn about the content of a European Enforcement Order certificate. In practice, there might be some problems for the debtor if he does not know the English language well enough, because a European Enforcement Order certificate is issued only in English.[1255] It is also somewhat problematic that copy of a court decision issued by a foreign country need not be added to a copy of a European Enforcement Order certificate issued to a debtor. If a foreign court, despite the minimum standards referred to in Chapter III of the European Enforcement Order Regulation, had issued a European Enforcement Order certificate on a court decision on a dispute and the debtor was not summoned to the court session according to the demands, the court decision of the foreign country (as well as the European Enforcement Order certificate) may be an absolute unexpectedness. As there is not obligation according to paragraph 24 of the Code of Enforcement Procedure to provide the debtor with a copy of a foreign country court order, the debtor might not understand at all what exactly the claim against him is. In order to avoid the above described situation, the Estonian bailiffs should enclose a copy of a foreign country court decision to the European Enforcement Order certificate, although there is no such obligation in the Code of Enforcement Procedure. A copy of a court decision will be submitted to a bailiff according to Art 20(2) of the European Enforcement Order Regulation anyway.

4.1.5.1.4. European Enforcement Order certificate servicing to a creditor (Art 20(2)b)

177. It is not settled in the European Enforcement Order Regulation how (or within which period) a European Enforcement Order certificate is to be serviced to the petitioner. Paragraph 619^1 section 2 of the Code of Civil Procedure is rather laconic mentioning that a European Enforcement Order certificate shall be serviced to the requesting person and in case the certificate is not to be serviced, a court ruling will be sent to the petitioner, and the petitioner may file an appeal against the ruling.

4.1.5.1.5. Problems arising from refusal of issuing a European Enforcement Order certificate

178. It is not settled in the European Enforcement Order Regulation whether and how a petitioner may appeal if a European Enforcement Order certificate is not issued. Paragraph 619^1 section 2 of the Code of Civil Procedure is rather laconic mentioning that

[1255] Pursuant to paragraph 619^1 section 5, only European enforcement order certificates in English (apart from those in Estonian) may be accepted in Estonia.

a court ruling about refusal of issuing a European Enforcement Order certificate shall be serviced to the petitioner and he may file an appeal against the ruling. Obviously according to paragraph 696 section 3 of the Code of Civil Procedure, an appeal against the ruling can be made if the ruling was issued by a county court or a circuit court.

4.1.5.1.6. Repeated applications to issue of European Enforcement Order certificates

179. European Enforcement Order Regulation allows repeated submission of applications to issue European Enforcement Order certificates. There is no limitation either according to paragraph 619[1] of the Code of Civil Procedure. As it is the "county courts" that issue European Enforcement Order certificates, it is possible that an application may be submitted to a judge who has not issued any similar European Enforcement Order certificates. On the other hand, it not purposeful to prohibit issuing a European Enforcement Order certificate several times, because a debtor may be interested in fulfilment of the European Enforcement Order in another EU member state.

4.1.5.2. Court settlements and legal documents certified as European Enforcement Orders (Art 8, Art 24(1), Art 25(1))

180. As according to paragraph 430 section 3 of the Code of Civil Procedure it is the obligation of a court to reach a compromise and ensure that the compromise is not contrary to good morals or the law, an Estonian court ruling about discontinuance of action should not be regarded as "court settlement" in the meaning of Art 3(1) and Art 24 of the European Enforcement Order Regulation but as "court judgement" in the meaning of Art 4(1). So, a European Enforcement Order certificate will be issued according to "court judgement" of Annex 1 not according to "court judgement" of Annex 2. [1256]

181. Authentic instruments of European Enforcement Order certificates are settled pursuant to Art 25(1) of the European Enforcement Order regulation. According to paragraph 619[1] section 1 of the Code of Civil Procedure, it is Harju County Court, not an Estonian Notary preparing a legal document that certifies authentic instruments concerning claims as European Enforcement Order certificates. Such a solution is not contrary to Art 25(1) of the European Enforcement Order Regulation. Still in practice, it would be easier for an Estonian notary to issue a European Enforcement Order certificate.

182. According to the definition given in Art 4(3) of the European Enforcement Order Regulation, the following two types of documents should be regarded as "authentic instruments":

[1256] See p 4.1.4.1.3 of this Research.

a) **Firstly** – a document which has been formally drawn up or registered as an authentic instrument and the authenticity of which relates to the signature and the content of the instrument and has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates.

b) **Secondly** - an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them.

183. Amongst instruments available according to Estonian legislation, transactions certified by notaries should also be regarded as "authentic instruments" in the framework of the European Enforcement Order Regulation. Simply a notary certification is insufficient according to paragraph 81 section f of the General Part of the Civil Code Act, because a notary is certifying only the signature of a person entering into a transaction. According to Art 4(3) of the European Enforcement Order, certification of "an authentic instrument" by a notary should also relate with the content. Legal basis of certification of the content of transactions by Estonian notaries is granted according to paragraph 82 of the General Part of Civil Code Act as follows: In the cases prescribed by law or an agreement between the parties, a transaction shall be certified by a notary, and Estonian notaries have the right to certify transactions. First and foremost, it is agreements on financial claims certified by notaries that can be regarded as "authentic instruments" in respect to the European Enforcement Order Regulation, according to which a debtor has agreed to yield to immediate execution when obligation falls due up to the point of fulfilment of the claim. [1257] Although paragraph 2 section 1 p 18 of the Code of Enforcement Procedure says that a notarised agreement concerning financial claims according to which a debtor has consented to be subject to immediate compulsory enforcement after the claim falls due, such agreements cannot be regarded as basis for issuing European Enforcement Order certificates. Such agreements are "authentic instruments" on the one hand, but on the other hand they are subordinated to the Maintenance Obligations Regulation. [1258]

184. Estonian courts have interpreted the concept of "an authentic instrument" in court judgements for several times, but in majority of the cases, provisions of the European Enforcement Order Regulation have been copied. In order to regard a document as "an authentic instrument" within the meaning of the European Enforcement Order Regulation, two conditions have to be met pursuant to the Estonian case-law: firstly, the document has to be drawn up by a competent authority (e.g. notarial deed drawn up by a notary of a foreign country). Secondly, the debtor must express his agreement with the

[1257] Pursuant to paragraph 2 section 1 p 18, such agreements are also enforcement documents.
[1258] See for example: Art 48 of the Maintenance Obligations Regulation

claim in this legal document.[1259] Demanding of meeting of such conditions on behalf of Estonian Courts is conforming to the meaning and wording of the European Enforcement Order Regulation.

185. In fact, Estonian courts have regarded notarial deeds drawn up by notaries of foregn countries as "authentic instruments".[1260] In addition to that, Estonian courts have repeatedly (correctly) explained that for example "a certificate" about some debt of a debtor can never be regarded as "an authentic instrument" in the meaning of the European Enforcement Order Regulation.[1261] It is absolutely certain that "a certificate" like that fails to meet the demands set by Art 4(3) of the European Enforcement Order Regulation, so such a document cannot be regarded as "an authentic instrument" in the meaning of the European Enforcement Order Regulation. Even notary fee invoices that cover the costs of notarial acts, fees charged by sworn translators according to paragraph 8 sections 1 and 2 of the Sworn Translators Act [1262] or bailiff's decision about bailiff's fee, enforcement expenses and penalty payment cannot be regarded as "authentic instruments" although according to the Estonian legislation these documents are considered as enforcement documents (execution documents).[1263] Referring to the above mentioned such documents cannot be approved as European Enforcement Orders.

4.1.5.3. Certificates and forms in Annexes 2 and 3

186. An application for issuing a European Enforcement Order certificate concerning a court judgement shall be submitted in Estonia according to Art 6(1) of the European Enforcement order Regulation to the court that made the court judgement to which the European Enforcement Order certificate is requested for.[1264] Art 6(1) should cover also rulings ending proceedings that have come about through compromises between the parties. As according to paragraph 430 section 3 of the Code of Civil Procedure, it is the obligation of a court to reach a compromise and ensure that the compromise is not contrary to good morals or the law, an Estonian court ruling about discontinuance of action should not be regarded as "court settlement" in the meaning of Art 3(1) and Art 24

[1259] Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court, court ruling in civil matter No 2-10-60829 of 07.12.2010 by Harju County Court, court ruling in civil matter No 2-10-60829 of 29.09.2010 by Harju County Court.

[1260] For example, the court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court regarded a notary act of Lithuania as ''an authentic instrument".

[1261] The court ruling in civil matter No 2-10-17052 of 30.06.2010 by Harju County Court, the court ruling in civil matter No 2-10-37892 of 30.08.2010 by Harju County Court.

[1262] Sworn Translators Act. RT I 2001, 16, 70.

[1263] See paragraph 2 section 1 pp 16, 17 and 17^1 of the Code of Enforcement Procedure.

[1264] Although such conclusion is not arising directly from Art 6(1) of the European Enforcement Order Regulation, it is affirmed by paragraph 619^1 section 1 of the Code of Civil Procedure in respect to Estonian court judgements. If a European enforcement order certificate is requested from another member state, the rules valid in the other member state should be followed, concerning which courts issue European enforcement order certificates.

of the European Enforcement Order Regulation but as "court judgement" in the meaning of Art 4(1). [1265] So, courts issuing such European Enforcement Order certificates should not use forms from Annex 2 but from Annex 1.

187. Art 25(1) of the European Enforcement Order Regulation settles also application for issuing a European Enforcement Order certificate. According to paragraph 619[1] section 1 of the Code of Civil Procedure, it is Harju County Court, not an Estonian Notary preparing a legal document, that certifies authentic instruments concerning claims as European Enforcement Order certificates. Such a solution is not contrary to Art 25(1) of the European Enforcement Order Regulation. Still in practice, it would be easier for an Estonian notary to issue a European Enforcement Order certificate. A relevant enforcement order certificate is issued by Harju County Court according to the European Enforcement Order Regulation Annex 3.

4.1.5.4. Effect of a European Enforcement Order certificate and absence of right of appeal (Art 10(4), Art 11)

188. A European Enforcement Order is an enforcement document with the help of which a debtor can apply for the same rules that are valid for judgements under the national law. Thus, a European Enforcement Order coming from abroad is regarded as an enforcement document in Estonia. This conclusion is based on Art 5 of the European Enforcement Order Regulation according to which a judgment that has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

189. Based on Art 11 of the European Enforcement Order Regulation, a European Enforcement Order certificate cannot expand the effect of a court judgement.

190. According to paragraph 619[1] section 2 of the Code of Civil Procedure issuing a European Enforcement Order certificate is solved in written procedure. According to Art 10(4) of the European Enforcement Order Regulation, neither the debtor nor any other third person can appeal against issuing of a European Enforcement Order certificate.

4.1.5.5. Rectification or withdrawal of a European Enforcement Order

4.1.5.5.1. Rectification of a European Enforcement Order and Annex VI

191. According to Art 10(1) of the European Enforcement Order Regulation, it is possible to rectify a European Enforcement Order certificate if, due to a material error, there is a discrepancy between the judgment and the certificate. In addition to that the

[1265] See p 4.1.4.1.3 of this Research.

Code of Civil Procedure settles that a court with a court ruling may correct, at all times, spelling or calculation mistakes or obvious inaccuracies in a judgment if such corrections do not affect the content of the judgment.

192. Estonian courts, according to KIS database, have corrected errors in European Enforcement Order certificates issued by Estonian courts 9 times. These errors were due to incorrect sum of the debt [1266] or incorrect sum of fine for delay.[1267]

193. If a person is willing to correct a discrepancy in an issued European Enforcement Order certificate, he shall submit his application to the court issuing the European Enforcement Order certificate making use of the form in Annex VI of the European Enforcement Order Regulation. In this application, it should be described what the discrepancy between the judgement and the European Enforcement order certificate is (Annex VI p 5).

4.1.5.5.2. Withdrawal of a European Enforcement Order and Annex VI

194. Having received a relevant application, the court issuing the European Enforcement Order certificate shall withdraw it if the certificate is obviously erroneous taking into account demands of the European Enforcement Order Regulation (Art 10(1)b of the European Enforcement Order Regulation). There would for example be basis of such withdrawal if a court had not checked up meeting the demands of minimum standards according to Chapter III of the European Enforcement Order Regulation in the course of provisional procedure or a European Enforcement Order was issued upon a claim that was not in the meaning of "uncontested" claim. If a European Enforcement Order was issued about a court judgement that was not in "civil or commercial matters" or a civil matter that is excluded from the scope of the European Enforcement Order (for example dispute about support), it is impossible to talk about meeting the minimum standards of the European Enforcement Order Regulation. In such cases the European Enforcement Order Regulation (including Art 10(1)b) cannot be applied and such certificates cannot be regarded as "European Enforcement Order certificates".

195. If a person is willing to withdraw a European Enforcement Order certificate, he shall submit his application to the court issuing the European Enforcement Order certificate using the form in Annex VI of the European Enforcement Order Regulation. In this application, amongst other matters it should be described why according to the

[1266] See for example: Court ruling in civil matter No 2-06-15481of 05.04.2011 by Tartu County Court, court ruling in civil matter No 2-08-1662 of 05.04.2011 by Tartu County Court, court ruling in civil matter No 2-08-11712 of 08.12.2011 by Tartu County Court, court ruling in civil matter No 2-08-19249 of 28.11.2011 by Tartu County Court, court ruling in civil matter No 2-07-50322 of 30.03.2011 by Tartu County Court, court ruling in civil matter No 2-07-46247 of 30.03.2011 by Tartu County Court, court ruling in civil matter No 2-08-10767 of 30.03.2011 by Tartu County Court.

[1267] Court ruling in civil matter No 2-08-73391 of 27.12.2011 by Tartu County Court.

petitioner's opinion the European Enforcement Order certificate was issued on clearly wrong basis (Annex VI p 6).

4.1.6. European Enforcement Order certificate enforceability in the county of enforcement

4.1.6.1. Enforcement procedure and its theoretical scope (art 20, Art 24(2), Art 25(2), Art 5 and 11)

196. Pursuant to the Regulation Art 20(1), a European Enforcement Order certificate shall be implemented according to the enforcement procedures of the country where enforcement is sought. Implementation of European Enforcement Orders issued by foreign countries is governed by provisions of the Estonian Code of Enforcement Procedure. For example, the Estonian Code of Enforcement Procedure established which are the legal remedies of a debtor in a procedure, how to give a debtor information about an enforcement document, what are the procedure terms of an enforcement procedure, etc.

197. A European Enforcement Order is an enforcement document with the help of which a debtor can apply for enforcement according to the same rules that are valid for judgements under the national law of his member state. Thus, a European Enforcement Order coming from abroad is regarded as an enforcement document in Estonia. This conclusion is based on Art 5 of the European Enforcement Order Regulation according to which a judgment that has been certified as a European Enforcement Order in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. Art 24(2) of the European Enforcement Order Regulation as well as Article 25(2) of the Regulation concerning authentic instruments envisage a similar regulation for European Enforcement Order certificates on court settlements.

198. Based on Art 11 of the European Enforcement Order Regulation, a European Enforcement Order certificate cannot expand the effect of a court judgement.

4.1.6.2. Applicable law for enforcement procedure (Art 20(1))

199. Pursuant to the Regulation Art 20(1), a European Enforcement Order certificate shall be implemented according to the enforcement procedures of the country where enforcement is sought. Implementation of European Enforcement Orders issued by foreign countries is governed by provisions of the Estonian Code of Enforcement Procedure. For example, the Estonian Code of Enforcement Procedure established which are the legal remedies of a debtor in a procedure, how to give a debtor information about

an enforcement document, what are the procedure terms of an enforcement procedure, etc.

4.1.6.3. Documents submitted for enforcement procedure (Art 20(2) and (3))

200. Pursuant to Art 20(2) of the European Enforcement Order Regulation, a creditor willing to enforce a European Enforcement Order in Estonia shall be required to provide the Estonian bailiff with a copy of the judgment which satisfies the conditions necessary to establish its authenticity and a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity and also (if needed) translation of the European Enforcement Order certificate into Estonian or English.

201. Pursuant to Art 20(3) of the European Enforcement Order Regulation, no security, bond or deposit, however described, shall be required by an Estonian bailiff for enforcement of a judgment certified as a European Enforcement Order in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in Estonia. The above mentioned is no obstacle according to paragraph 40 section 1 of the Code of Enforcement Procedure to demand advance payment of enforcement costs from a claimant if the enforcement costs are particularly high.

202. If the standard form of a European Enforcement Order certificate pursuant to the Regulation is not filled in according to the demands, it will mean for an Estonian court that a European Enforcement Order certificate is missing.[1268]

4.1.6.4. Suspension or limitation of enforcement (Art 23)

4.1.6.4.1. Basis for suspension of enforcement

203. Art 23 of the European Enforcement Order Regulation sets special norms to suspend an enforcement procedure. Namely, if a debtor has challenged a judgment certified as a European Enforcement Order in the Member State of origin or has applied in Estonia for the rectification or withdrawal of a European Enforcement Order certificate, an Estonian court may limit or suspend the enforcement proceedings according to Art 23 of the European Enforcement Order Regulation.

204. Estonian courts have met problems in suspension of enforcement procedure in several judgements. Harju County Court was solving civil matter No 2-09-58039 on 06.11.2009 and drew attention to the demand that precondition to suspend an enforcement procedure pursuant to Art 23 of the European Enforcement Order Regulation, is that a debtor should have challenged the judgement certified as a European Enforcement Order in the member state of origin. The court did not take the statement of

[1268] Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.

the debtor into account that in order to challenge a judgement the debtor needs to gather more material in the member state of origin. The debtor could not confirm the court that he had made efforts aiming to rectify or withdraw the European Enforcement Order certificate. Similar conclusions were reached by Harju County Court while solving civil matter No 2-09-59669 of 17.11.2009 and while solving civil matter No 2-09-69962 of 23.12.2009. It has to be mentioned as well that in all the three cases, it was one and the same person who submitted his three applications on different court matters.

205. Talking about substantive monitoring of suspension of enforcement procedures, there have been less judgements. Concerning the dispute referred to above, the application was approved within a couple of months when the person had challenged the judgement by default certified by European Enforcement Order in the member state of origin (Harju County Court civil matter No 2-10-310 of 07.01.2010). The Estonian judge referred to Art 23 of the European Enforcement Order Regulation according to which court of the member state of enforcement may, upon application by the debtor, suspend the enforcement proceedings "under exceptional circumstances". In the case referred to, exceptional circumstances were defined by the applicant as follows – if enforcement proceedings had continued, they would have brought about unreasonably large costs that would have been impossible to cover in full extent. In this case, the applicant was both shareholder and member of board. According to the applicant, sales of the shares would have brought along a situation where the applicant could not have had any possibility to direct his business in a positive way; furthermore, the applicant would have never had a chance to get his shares back, if enforcement proceedings had continued. Judgement by Harju County Court in civil matter No 2-10-310 of 23.04.2012 to suspend the proceedings was also rightful, because later on the court of the member state annulled the judgement by default that was certified by a European Enforcement Order certificate.

206. In addition to that, Estonian courts have to some extent worked with the question, what documents should be submitted and in what form they should be that would convey information about the debtor having challenged the judgement in the member state of origin. The European Enforcement Order Regulation fails to give answers about it, there is no application form of suspension of proceedings in the Regulation. Judgement in civil matter No 2-10-7996 by Harju County Court of 18.02.2010 demanded from the applicant to produce "evidence" and referred to the need to submit "an application according to the form". A similar conclusion was reached by Harju County Court in civil matter No 2-10-7996 of 23.03.2010.

207. While checking up basis for suspension of enforcement proceedings, Estonian courts (at least formally) follow parallels from provisions of the Estonian Code of Enforcement Procedure. Harju County Court, for example, in civil matter No 2-09-58039 of 06.11.2009 checked up possibility to apply paragraph 45 of the Code of Enforcement Procedure referred to by the applicant and came to the conclusion that there is no ground to apply the provisions referred to. Obviously, application of paragraph 45 of the Code of

Enforcement Procedure alongside with the European Enforcement Order Regulation is incorrect, because the European Enforcement Order Regulation provides possibilities for suspension.

4.1.6.4.2. Ways of suspension or limitation of enforcement

208. According to Art 23 of the European Enforcement Order Regulation, it is possible for a court to: a) limit the enforcement proceedings to protective measures, b) make enforcement conditional on the provision of such security as it shall determine or c) under exceptional circumstances, suspension of the enforcement proceedings.

209. Estonian courts have interpreted Art 23 of the European Enforcement Order Regulation rather widely concerning "limitation" of enforcement. Referring to Art 23(1) of the European Enforcement Order Regulation, Estonian courts have satisfied an action to regard compulsory execution as inadmissible. It was submitted inter alia because court documents were not serviced to the debtor in member state of origin according to the requirements and the issued European Enforcement Order certificate was not filled in properly.[1269] Such a solution is far from the view points explicitly expressed by the Supreme Court about the European Enforcement Order Regulation and it fail to correspond to the logics of the Regulation. Referring to the statements of the Supreme Court, a debtor may appeal against measures taken by a bailiff, if he is of the opinion that there is no correctly filled in European Enforcement Order certificate.[1270] In this case the dispute is not about the claim, but about one of the preconditions to start enforcement proceedings, which is the enforcement document.[1271] The question whether the court document was serviced correctly to the debtor in the member state of origin should be solved in the court issuing the European Enforcement Order certificate, So, it can work as no document that can be used for enforcement proceedings implemented in Estonia. This practical confusion obviously arises from paragraph 221 section 1^1 of the Code of Enforcement Procedure according to which in the case of another compulsory execution besides a judicial decision, a debtor can also submit, in the action for declaration of compulsory enforcement to be inadmissible, all objections to the existence and validity of the claim arising from the enforcement instrument. As the aim of the European Enforcement Order Regulation is to ensure equality between domestic court decisions and court decisions originating from another member state,[1272] using of paragraph 221 section 1^1 of the Code of Enforcement Procedure should be excluded in case of court

[1269] Court ruling in civil matter No 2-0-30971 by Harju County Court of 13.04.2010. It must be pointed out that the European enforcement order certificate was not filled in according to the demands either.
[1270] Such solution can be derived from two judgements by the Supreme Court: [1270] Ruling in civil matter No 3-2-1-42 of 02.06.2008 by Civil Chamber of the Supreme Court, ruling in civil matter No 3-2-1-117 of 01.12.2010 by Civil Chamber of the Supreme Court.
[1271] Ruling No 3-2-1-117-10 p12 of 01.12.2010 by Civil Chamber of the Supreme Court.
[1272] See p 8 of the Preamble of the European Enforcement Order Regulation.

decisions and court agreements by another member state. Still, the question of applying this provision in case of European Enforcement Order certificates issued in other member states is not solved. Perhaps such a solution is not conforming to the logics of the European Enforcement Order Regulation.[1273]

4.1.6.5. Refusal of enforcement (Art 21)

4.1.6.5.1. Application by the debtor

210. Pursuant to Art 21 of the European Enforcement Order regulation an Estonian court may exceptionally refuse of enforcement on the precondition that the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in Estonia (or in a third country recognised by Estonia) and the conditions referred to in Art 21(1) are fulfilled.

211. An Estonian court may refuse of enforcement only if the debtor has submitted his relevant application according to Art 21 of the European Enforcement Order Regulation. Still, the European Enforcement Order regulation would neither describe the procedure of examining the application nor determine the form of the application according to which it should be submitted to the court. Submission of such application is not described in the Code of Enforcement Procedure either. On the occasion that there is no better solution, provisions about regarding an action of compulsory execution as inadmissible would be made use of (paragraph 221 of the Code of Enforcement Procedure). According to the view point of the Supreme Court, the aim of an action of compulsory execution to be regarded as inadmissible is removal of enforceability from an enforcement document, not removal of an enforcement document itself.[1274]

212. In the framework of this research, no application of Art 21 of the European Enforcement Order regulation was found in the analysed judgements.

4.1.6.5.2. Basis for refusal of enforcement

213. Pursuant to Art 21 of the European Enforcement Order regulation an Estonian court may exceptionally refuse of enforcement on the precondition that the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in Estonia (or in a third country recognised by Estonia) and the conditions referred to in Art 21(1) are fulfilled.

214. In the framework of this research, no application of Art 21 of the European Enforcement Order regulation was found in the analysed judgements.

[1273] See: Art 25(2) of the European Enforcement Order Regulation.

[1274] Court ruling No 3-2-1-26-11 of 28.04.2011 by Civil Chamber of the Supreme Court.

4.1.7. Connections of the European Enforcement Order Regulation with other acts of law

4.1.7.1. Connections with agreements with third countries (Art 22)

215. Pursuant to Art 22 of the European Enforcement Order Regulation, this Regulation shall not affect agreements by which Member States undertook, prior to the entry into force of the Brussels Convention, pursuant to Article 59 of the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third country where, in cases provided for in Art 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Art 3 of that Convention.

216. The Republic of Estonia has no agreements with third countries, so application of Art 22 of the European Enforcement Order Regulation would not create practically any problems (although the translation into Estonian of the Article is rather unsuccessful).

4.1.7.2. Relationship with the Brussels I Regulation No 44/2001 (Art 27)

217. Pursuant to Art 27 of the European Enforcement Order Regulation, a creditor may choose whether the Brussels I Regulation or the European Enforcement Order Regulation procedures will be used for enforcement of a judgement in a foreign country.

218. Enforcement of judgements in a foreign county seem to be implemented in an easier way, because there is no need for prior declaration of enforceability of a judgement or the so-called *exequatur* procedure. Compared to the scope of the Brussels I Regulation, the cope of the European Enforcement Order regulation is considerably narrower. For example a court judgement, a court settlement or an authentic instrument that a European Enforcement Order certificate is applied for must concern only a so-called "uncontested claim", which practically is limitation that does not exist in the Brussels I Regulation. Abrogation of the so-called *exequatur* procedure in the future due to changes planned in the Brussels I Regulation [1275] may extend to all court judgements of civil and commercial disputes,[1276] there is no need to have difference in the two Regulations.

[1275] See hereby last amendment proposals to Brussels I Regulation No 44/2001: Amendment 121Jurisdiction and the recognition and enforcement of judgments in civil and commercial mattes (recast) Proposal for a regulation (COM(2010)0748) – C7-0433/2010 – 2010/0383 (COD), p 63.

[1276] For example Art 3 of the European Enforcement Order Regulation shall apply to judgments, court settlements and authentic instruments on uncontested claims. It is Art 3(1)a of the European Enforcement Order Regulation that defines the claims.

219. The Brussels I regulation plays an important role in interpretation of the definitions in the European Enforcement Order Regulation. The Supreme Court has pointed out that judgements under the Brussels Convention can be used in interpretation of definitions of the European Enforcement Order Regulation [1277] and is quite logical because the European Enforcement Order Regulation and the Brussels I Regulation use continuously similar definitions (e.g. "domicile" of a natural person[1278] , "consumer"[1279] , "authentic instrument"[1280] , etc).

4.1.7.3. Relationship with the Regulation No 1348/2000 (Art 28)

220. Pursuant to Article 28 of the European Enforcement Order Regulation, the Regulation would not affect the application of the so-called Service Regulation II[1281]. Although the text of the Regulation refers to Service Regulation I[1282] , reference to Service Regulation II should be appropriate.[1283]

221. The above-mentioned means that nothing in the European Enforcement Order regulation impedes a court make use of provisions of the Service Regulation II for international servicing of court documents. There is no obligation for a court to service documents pursuant to the Regulation, although referring to the preamble of the European Enforcement Order Regulation it should be recommended.

222. Relationship of the European Enforcement Order Regulation with Service Regulation I or Service Regulation II has not been surveyed in the framework of this research about Estonian court judgements. Still, courts have refused to issue a European Enforcement Order certificate if a court document had been serviced to the debtor living abroad via Eesti Ametlikud Teadaanded (Official Announcements of Estonia)[1284] i.e. without the possibilities offered by Service Regulation II.[1285]

[1277] Ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.
[1278] See p 4.1.4.1.4 of this Research.
[1279] See p 4.1.4.1.4 of this Research.
[1280] See p 4.1.4.1.4 of this Research.
[1281] Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000. ELT L 324, 10/12/2007, 79-120.
[1282] Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters**.** ELT L 160, 30/6/2000, 37-52.
[1283] See for more details: Art 25(2) of the Documents Service Regulation.
[1284] Court ruling in civil matter No 2-07-10608 of 25.06.2012 by Tartu County Court.
[1285] There is no possibility according to the Documents Service Regulation II to service a court document of an Estonian court procedure abroad via Eesti Ametlikud Teadaanded (Official Announcements of Estonia). An announcement via Eesti Ametlikud Teated can be regarded as received only pursuant to paragraph 317 of the Code of Civil Procedure.

5. Recommendations for implementation of the European Enforcement Order Regulation No 805/2004

223. It is characteristic to the Estonian case-law that Estonian courts trust European Enforcement Order certificates issued in other members states. For example, Estonian courts have deliberately left unchecked whether a European Enforcement Order certificate was issued for the authentic document that was prepared for the same "uncontested claim". The reason is that obligation to determine "uncontested claims" lies on the court or notary of the member state that issued the European Enforcement Order certificate for the authentic instrument.[1286] Such an approach is in full conformity with the purpose and logics of the European Enforcement Order regulation.[1287] As the Supreme Court has mentioned in civil matter No 3-2-1-117-10,[1288] the aim of the European Enforcement Order regulation is to create a system based on mutual trust that makes it possible to recognise and enforce judgements and authentic instruments of one member state easily in another member state.

224. Even issuing European Enforcement Order certificates in foreign languages speaks about liberal attitude in Estonian courts.[1289] Trust towards European Enforcement Order certificates issued in other member states is also shown by the fact that in case of need Estonian courts issue forms of European Enforcement Order certificates filled in different languages. For example, the Supreme Court has in addition to the Estonian language also checked up a form filled in Lithuanian.[1290] Such an approach is (in case of availability) very much appreciated because there might be mistakes in translation the forms into Estonian.

225. In the course of the analysis of the Estonian court judgements, there were found some mistakes by Estonian judges implementing the European Enforcement Order Regulation. The mistakes were mainly in relation to determining the timely scope of the European Enforcement Order Regulation.[1291] In addition to that, another drawback occurred: the judgements were rather laconic in their argumentation containing only rewriting of some provisions of the Regulation. But it is a general problem in Estonian court judgements.

226. Some specific recommendation about implementation of the European Enforcement Order Regulation were presented in different sub-chapters of the research

[1286] See for example: Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court. See also the decision about the same dispute by the circuit court: Court ruling in civil matter No 2-09-25113 of 18.05.2010 by Tallinn Circuit Court.
[1287] Pursuant to Art 10 of the European Enforcement Order Regulation, such verification is responsibility of the court of the member state of origin.
[1288] Ruling No 3-2-1-117-10 p11 of 01.12.2010 by Civil Chamber of the Supreme Court.
[1289] Court ruling in civil matter No 2-09-25029 of 28.07.2011 by Tartu County Court.
[1290] Court ruling in civil matter No 2-09-25029 of 28.07.2011 by Tartu County Court.
[1291] See p 4.1.3 of this Research.

hereby taking into account answers given by judges, lawyers/solicitors and bailiffs to the questionnaire. A general recommendation is to have additional training sessions in practical implementation of the European Enforcement Order regulation for Estonian lawyers. Referring to the answers given by lawyers, such training sessions should be both in Estonian and English. Such training sessions would enhance the local lawyers' knowledge about possibilities offered by the European Enforcement Order Regulation and avoid mistakes by the judges while filling in Annexes to the European Enforcement Order regulation (for example there should be more explanation to the notion in Estonian "kohtulahend" (court judgement) in the Estonia versions of the annexes, in Annex 2 the definition of "kohtulahend" should obviously be "court agreement").

227. Additional training sessions would also contribute to having more motivated judgements by Estonian courts in case of European Enforcement Order Regulation. In order to gain more understandable judgements and make them more checkable, the Estonian courts should motivate batter the following issues: why a claim in a dispute was regarded as "uncontested claim" in the meaning of the European Enforcement Order regulation, why it was decided that the debtor's domicile was not in Estonia, why it was decided that "minimum standards" in the meaning of the European Enforcement Order Regulation were met, or why it really was "an authentic instrument" issued in another member state. As case-law in Estonia based on the European Enforcement Order Regulation is being formed right now, such explanations would be useful for judgements later on. Referring to the above mentioned, initiative by the Supreme Court to interpret the definitions of "uncontested claims" and "authentic instruments" is very much appreciated in the meaning of the European Enforcement Order Regulation.[1292]

228. Concerning improvement of only Estonian legislation in relationship with the European Enforcement Order Regulation, some questioned lawyers/solicitors suggested to improve the Code of Civil Procedure so that it could be easily seen which judgements by the Estonian courts would be judgements about "uncontested claims" in the meaning of the European Enforcement Order regulation. Preparing some training materials for judges may be enough and perhaps changing the law is not urgently needed at all. Still, some thought should be given to the suggestion by a judge that the Code of Civil Procedure should be improved about servicing documents in other member states. For example servicing documents to persons participating in proceedings and residing abroad via "Ametlikud Teadaanded" (Official Announcements of Estonia) can be interpreted in different ways.

[1292] Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.

6. Overview and analysis of judgements: Regulation No 861/2007 of the European Small Claims Procedure

6.1. Scope of the European Small Claims Procedure (Art 2)

6.1.1. Definition of "small claims" (Art 2(1))

229. Regulation of the European Small Claims Procedure establishes alternative simplified proceedings to procedure under national law. Referring to the above mentioned, creditors do not have to make use of the procedure rules set by the European Small Claims Procedure, they may submit their claims pursuant to general procedure.[1293] Such claims can be solved by Estonian courts either as ordinary proceeding of action or as simplified procedure depending on fulfilment of preconditions set by paragraph 405 ("Simplified proceeding") of the Code of Civil Procedure. The Regulation of the European Small Claims Procedure fails to solve the issue if the person, against whom proceedings of the European Small Claims Procedure were started, is willing to have the dispute solved according to either provisions of the simplified procedure set by the national legislation or provisions of general procedure. As according to Estonian procedural law, there is no need for agreement of the parties in case of simplified procedure, the party in the procedure cannot demand solving through general procedure. There is another question, too: would it be possible for a court, in case of demand by a party, to disregard the Regulation of the European Small Claims Procedure and solve the dispute only pursuant to provisions of simplified proceeding of the Code of Civil Procedure.[1294]

230. Pursuant to Art 2(1) of the Regulation of the European Small Claims Procedure, provisions of the Regulation are made use of only in case of "smaller disputes". Such smaller disputes are those where the value of a claim does not exceed € 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements.

231. According to KIS database search system, which is created for restricted using by the Estonian courts, the Regulation of the European Small Claims Procedure has been used only once by Tartu County Court judgement No 2-11-40908 of 29.12.2011. In this one and only judgement based on the Regulation of the European Small Claims Procedure, it was the sum of money that was claimed, € 250, that was the reason of using this Regulation. Still, the judgement by the court was not based on Art 2(1) of the Regulation but on paragraph 405 section 1 of the Estonian Code of Civil Procedure according to which in justified cases, an action with a value not more than € 2000 (and

[1293] Art 1(2) of the European Small Claims Procedure Regulation.

[1294] See in addition: Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 223.

not more than € 4000 with collateral claims) may be adjudicated by way of simplified proceedings at the discretion of the court, taking account of only the general procedural principles provided by the Code of Civil Procedure. Similarly to paragraph 405 section 1 of the Code of Civil Procedure, Art 2(1) of the Regulation of the European Small Claims Procedure shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed € 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. As the Regulation of the European Small Claims Procedure establishes alternative proceedings to procedure under national law, it is not right in such procedure to make use of the limitation to collateral claims pursuant to paragraph 405 section 1 of the Code of Civil Procedure if an application has been submitted to institute proceedings according to the Regulation of the European Small Claims Procedure.

6.1.2. Material scope (Art 2(1) and (2))

232. Similarly to the European Enforcement Order Regulation, the Regulation of the European Small Claim Procedure is only used in case of "civil and commercial matters". Check-up of the material scope of the Regulation of the European Small Claims Procedure has two stages. Firstly, the court must be sure that it is "civil or commercial matter", which means that it shall not extend, in particular, "to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (the so-called *acta iure imperii* matters)". Secondly, the court has to verify that the civil or commercial matter is not excluded from the scope of the Regulation of the European Small Claims Procedure, which means that the civil or commercial matter is not in the list mentioned under Art 2(2) of the Regulation of the European Small Claim Procedure.

233. In the one and only judgement based on the Regulation of the European Small Claims Procedure[1295] , the applicant claimed for covering of losses due to delay of a flight. Such claims are not excluded according to Art 2(2) of the Regulation of the European Small Claims Procedure. There is no deeper analysis of the material scope of the Regulation of the European Small Claims Procedure in the referred judgement.

(a) Civil and commercial matters

234. "Civil and commercial matters" are defined in the international private law regulations of the EU distinct civil matters from disputes in public law. There are similar definitions in the Brussels I Regulation (Art 1(1), in the Rome I Regulation (Art 1(1)), in the Rome II Regulation (Art 1(1), in the European Enforcement Order Regulation (Art

[1295] Decision No 2-11-40908 of 29.12.2011 by Tartu County Court.

2(1)) and in the Regulation of Creating a European Order for Payment Procedure (Art 2(1)). In the context of all the mentioned regulations, the definitions of "civil and commercial matters" are similar. An analogous definition is actually used in the parallel instrument of the Brussels I Regulation – the Lugano II Convention (Art 1(1)) – but as on the basis of the Lugano II Conventions judgements are made also by the courts of Norway, Iceland and Switzerland that are members of the Lugano II Convention and the judgements of these countries do not have the same meaning as judgements of the member states, it is not excluded in the future that the definition of "civil and commercial matters" may become different in the context of the European Union regulations and the Lugano II Convention.

235. In the context of regulations of the European Union international private law, "civil and commercial matters" should be regarded as autonomous, which is to say that the definition is not depending on national legislation and the final interpretation of the definition is given by the European Court of Justice. "Civil and commercial matters" have mainly been interpreted by the European Court of Justice on the basis of judgements according to the Brussels I Regulation and its predecessor the Brussels Convention. Estonia is not a member of the Brussels Convention because the Brussels Convention [1296] was replaced by the Brussels I Regulation before Estonia joined the European Union. The above-mentioned is no obstacle for the Estonian courts to use judgements by the European Court of Justice based on the Brussels Convention in order to interpret the Brussels I Regulation.[1297]

236. The European Court of Justice has repeatedly pointed out the need to interpret the definitions in the regulations of the EU international private law autonomously.[1298] The purpose of such autonomous interpretations is to ensure that EU regulations will be enforced similarly in all the member states and consequently legal certainty for parties of disputes in civil matters will also be enhanced. It is only in exceptional cases that the definitions may be interpreted on the basis of national legislation and it is allowed only if the relevant international private law explicitly gives the possibility.[1299] Theoretically, it

[1296] 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. OJ L 299, 31/12/1972, 32-42.

[1297] For example pursuant to p 19 of the Preamble of the Brussels I Regulation, consistency between the Brussels Convention and the Brussels I Regulation must also be ensured in interpretation by the European Court of Justice. This principle is pointed out by the Supreme Court of the Republic of Estonia: Ruling in civil matter No 3-2-1-130-08 of 09.12.2008 by Civil Chamber of the Supreme Court. The Supreme Court has pointed out that judgements under the Brussels Convention can be used in interpretation of definitions of the European Enforcement Order Regulation, see: Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.

[1298] For example, such definitions as ''contract" and ''non-contractual losses" in Art 5 of the Brussels I Regulation should be interpreted autonomously. See for example: *Law Office Tark & Co GmbH v Traitements Mécano-chimiques des surfaces SA*, Court matter C-26/91 (1992) ECR I-3967, *Anastasios Kalfelis v Bankhaus Schröder Münchmeyer Hengst& Cie*, Court matter 189/97 (1988) ECR5565.

[1299] For example, pursuant to Art 59 of the Brussels I Regulation it is possible to determine where a natural person is domiciled according to national legislation. See for more details: Torga, M. Elukoht

is only a dispute that is not "a civil matter" according to Estonian national legislation that can be regarded as "a civil and commercial matter" in the meaning of the Regulation of the European Small Claim Procedure.

237. The Estonian legislation defines the competences of administrative courts and general courts on the basis of the character of legal relationship of the dispute: administrative courts solve disputes based on public law and general courts solve disputes on private law unless not provided otherwise by legislation.[1300] Actually, the definition of "civil and commercial matters" in the meaning of the Regulation of the European Small Claims Procedure should not cause any big problems for Estonian lawyers, because referring to the practice of the European Court of Law, the definition of "civil and commercial matters" used in the EU regulations is similar to judgements according to the national legislation. For example, the European Court of Justice does not regard a matter as "a civil and commercial matter" if one of the parties in the dispute is a public authority fulfilling its public commitments in the framework legal relationship[1301] or executing public power.[1302] Such solution is also in conformity with the practice by the Supreme Court in making distinctions between administrative and civil matters.[1303] According to practice by the European Court of Justice for example, a dispute where a person is claiming for compensation from the state to cover losses arising from activities by the military is not "a civil or commercial matter".[1304] An Estonian solution to a similar dispute between the state and a private person would be solved most probably on the basis of the national State Liability Act.[1305] In the Estonian case-law similarly to the judgements by the European Court of Justice, it is not enough that one of the parties in a dispute is a public authority when decisions are made whether it is "a civil or commercial

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tsiviilseadustiku üldosa seaduse tähenduses (Place of residence in the meaning of the General Part of the Civil Code Act), *Juridica 2010 No 7*, pp 473-480.

[1300] Court ruling No 3-2-1-63-07 of 05.06.2007 by Civil Chamber of the Supreme Court. See also: Paragraph 1 of the Code of Civil Procedure and paragraph 4 section 1 of the Code of Administrative Court Procedure - RT I, 23.02.2011, 3.

[1301] *Netherlands State v Rüffer*, Court matter 814/79 (1980) ECR 3807.

[1302] *LTU v Eurocontrol*, Court matter 29/76 (1976) ECR 1541.

[1303] See for example: Ruling No 3-2-4-1-10 of 15.06.2010 by the Supreme Court en banc, ruling No 3-2-1-55-08 of 20.06.2008 by Civil Chamber of the Supreme Court, ruling No 3-2-1-63-07 of 05.06.2007 by Civil Chamber of the Supreme Court, ruling No 3-2-1-133-06 of 17.01.2007 by Civil Chamber of the Supreme Court, ruling No 3-2-4-1-05 of 20.04.2005 by Special Panel of the Supreme Court, ruling No 3-2-4-2-04 of 18.10.2004 by Special Panel of the Supreme Court, ruling No 3-2-4-1-04 of 01.07.2004 by Special Panel of the Supreme Court, ruling No 3-2-1-49-04 of 27.04.2004 by Civil Chamber of the Supreme Court, ruling No 3-2-1-149-03 of 12.01.2004 by Civil Chamber of the Supreme Court, ruling No 3-2-1-105-03 of 11.11.2003 by Civil Chamber of the Supreme Court, ruling No 3-2-1-60-03 of 26.05.2003 by Civil Chamber of the Supreme Court, ruling No 3-2-1-17-03 of 10.03.2003 by Civil Chamber of the Supreme Court.

[1304] *Lechouritou v Greece*, Court matter C-292/05 (2007) ECR I-1519.

[1305] State Liability Act. RT I 2001, 47, 260. For more details see paragraph 6 section 1 of the War-Time National Defence Act pursuant to which material losses caused by military activities during war-time national defence will be compensated ''on the basis of and in accordance with the valid legislation". – RT I 1994, 69, 1194.

matter" or not,[1306] according to practice of the European Court of Justice, a public authority may step into relationship governed by private law and sign private law contracts.[1307] Solving of a dispute in administrative court would not exclude, according to practice of Estonian courts, [1308] using norms of private law by administrative courts.

238. Despite a court of another member state regarded the case as "civil or commercial matter" while making the judgement according to the Regulation of the European Small Claim Procedure, the Estonian bailiff having received the relevant certificate according to Form D of Annex IV of the Regulation of the European Small Claim Procedure must be able to determine whether the judgement by the court of the other member state is "civil or commercial matter" or not. The Estonian bailiff (and later on even the judge going through an appeal against the bailiff) is not bound to the judgement by the court of the other member state about the character of the dispute. Although the conclusion above is not coming from the exact words in the text of the Regulation of the European Small Claims Procedure, it is derived from the logic of the Regulation. A similar right of verification is also affirmed in English and German literature on legislation concerning declaration of enforceability of judgements pursuant to the Brussels I Regulation so that the court responsible for enforcement of a judgement should also have the right to verify whether the judgement is on "a civil or commercial matter" at all or not regardless of the judgement by the court of the other member state [1309] and in spite of the fact that according to the Brussels I Regulation there is no authority to verify the content of the judgement of the other member state.[1310]

(c) Excluded legal relationship

239. Art 2(2) of the Regulation of the European Small Claims Procedure excludes some civil and commercial matters from the scope of the Regulation. There are the following main reasons for such exclusions: in the context of the EU international private law regulations, there are other EL or international instruments concerning such disputes; or there ate no unified regulations in the substantive and international private law of the member states.[1311]

(aa) Issues of status or legal capacity of natural persons

[1306] Court ruling No 3-2-1-71-97 of 29.05.1997 by Civil Chamber of the Supreme Court.
[1307] *Préservatrice foncière TIARD SA v Staat der Nederlanden*, Court matter C-266/01 (2003) ECR I-4867.
[1308] See for more details: Decision No 3-2-1-100-08 of 27.10.2009 by Special Panel of the Supreme Court.
[1309] See for example: Fawcett J, Carruthers J and North P, Cheshire, North & Fawcett: Private International Law 14th edition, OUP 2008, p 601; Kropholler H von, Europäisches Zivilprozessrecht 8 Aufl, Heidelberg 2005, § 32, Nr 3.
[1310] Art 36 of the Brussels I Regulation.
[1311] For example, similar exceptions are justified by the scope of the Brussels I Regulation: Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, p 60.

240. The Regulation of the European Small Claim Procedure is not applied pursuant to Art 2(2) of the Regulation concerning proceedings about their status or legal capacity and judgements on results of such proceedings.

241. The English version of Art 2(2) of the Regulation of the European Small Claim Procedure uses the word "status" and it is translated into Estonian as "seisund" ("status") including also such issues as who is he descending from or whether he is married or divorced. Such translation is quite exceptional because in the Estonian versions of the other regulations of the European Union international private law, such definition is usually unused speaking about a natural person's "legal capacity". For example, it has been translated in the same way in the Estonian versions of the European Enforcement Order Regulation and in the Brussels I Regulation, which in the context of the Brussels I Regulation has brought about some confusion for Estonian courts.[1312] So, it is very much appreciated that in the Estonian translation of the Regulation of the European Small Claims Procedure, there is separately the notion of "seisund" (status) of a natural person.

242. On the level of the European Union, it is partially the Brussels I bis Regulation that deals with the status of natural persons, which is applied in recognition and determination of international jurisdiction as well as recognition of judgements concerning divorce, living separately or repealing a marriage.[1313]

(bb) Rights in property arising out of matrimonial relationship, maintenance obligations, wills and succession

243. The Regulation of the European Small Claim Procedure is not applied pursuant to Art 2(2)b of the Regulation concerning proceedings about rights in property arising out of matrimonial relationships, maintenance obligations, wills and succession. There are (or there will be) some other European Union instruments to be applied in case of such matters.

244. The issues of matrimonial property will be solved in the future by a special regulation of the European Union. At least there is currently a proposal for regulation [1314] available. In addition to that disputes on maintenance obligation are excluded from the Regulation of the European Small Claims Procedure. Such disputes are in the scope of maintenance obligations regulation. The issues of succession and wills are in the scope

[1312] See court ruling No 2-05-16150 of 16.05.2007 by Harju County Court. In this dispute on filiation, the court determined jurisdiction according to the Brussels I Regulation although such disputes are excluded from the scope of the Brussels I Regulation pursuant to Art 1(2)a of the Regulation. Based on Art 2 of the Brussels I Regulation and the fact that the defendant was domiciled in Finland, the Estonian court decided that the dispute was outside of the jurisdiction of Estonia. If international jurisdiction had been determined according to paragraph 103 section 2 of the Code of Civil Procedure, the Estonian court should have been obliged to adjucate the filiation matter because the person applying for filiation was citizen of Estonia or domiciled in Estonia.

[1313] Brussels II bis Art 1(1)a.

[1314] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. COM(2011)126 final 2011/0059(CNS).

the European Union succession regulation [1315] that the Estonian court will apply from August 17, 2015.[1316]

(cc) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, agreements with creditors, compositions and analogous proceedings

245. Article 2(2) of the Regulation of the European Small Claim Procedure excludes from the scope of the Regulation even such disputes that are included in the scope of the regulation on insolvency proceedings.[1317] The regulation referred to includes some special provisions about recognition of starting the procedure.[1318]

246. The official translation of Art 2(2)c of the Regulation of the European Small Claims Procedure into Estonian is not most successful one. In the official translation into Estonian, there is reference to "juridical agreements" (*kohtulik kokkulepe*) as if all judgements certifying compromises are excluded from the scope of the regulation on litigation procedure, It should also be pointed out that Art 2(2)c of the Regulation of the European Small Claims Procedure regards only such juridical agreements with creditors as "court settlements", which are excluded from the scope of the Regulation, that are about declaring a legal person insolvent, liquidation procedures or other similar procedures and not regulations that certify a compromise as court settlement through general disputes on civil matters.

247. Taking into account that the English version of Art 2(2) of the Regulation of the European Claims Procedure refers to "compositions", which is translated into Estonian as "võlausaldajate kokkulepe" (agreement of creditors), it might be assumed that the judgements by Estonian courts during reorganisation proceedings (for example approval of reorganisation plan according to paragraph 28 section 2 of the Reorganisation Act [1319] or reorganisation ruling of paragraph 10 of the same Act) have also been excluded from the scope of the Regulation of the European Small Claims Procedure although Art 2(2)c

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[1315] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession ELT L 201, 27/7/2012, pp 107-134.

[1316] Art 84 of the Succession regulation

[1317] The European Court of Justice has made several judgements in the context of the exception in the Brussels I Regulation referred to, see also: *Henri Gourdain v Franz Nadler*, Court matter 133/78 (1979) ECR 733; *Eric Coursier v Fortis Bank and Martine Coursier,née Bellami*, Court matter C-267/97 (1999) ECR I-2543; *SCT Industri AB i likvidation v Alpenblume AB*, Court matter C-111/08 (2009) ECR I-5655; *German Graphics Graphische Maschinen GmbH v Alice van de Schee*, Court matter C-292/08 (2009) I-8421; *Seagon v Deko Marty Belgium NV*, Court matter C-339/07 (2009) ECR I-767; *F-Tex SIA v Lietuvos-Anglijos UAB "Jadecloud-Vilma"*, Court matter C-213/10, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-213/10 (01.11.2012).

[1318] Art 16(1) of the Regulation on insolvency proceedings.

[1319] Reorganisation Act. RT I 2008, 53, 296.

does not mention it explicitly, The reason for that is the fact that an agreement between the creditors plays an important role in reorganisation procedure and it is the creditors that accept the reorganisation plan (paragraph 24(1) of the Reorganisation Act) and only after that it is the court that approves the reorganisation plan (paragraph 28 and 37 of the Reorganisation Act).

(dd) Social security

248. Art 2(2)d of the Regulation of the European Small Claims Procedure excludes matters of social insurance and disputes of solving claims related to social insurance from the scope of the Regulation. Such disputes on behalf of the European Union legislative body in civil matters conform to the Estonian case-law. For example, the Supreme Court has explained that partial reclaim of social benefits against the defending party is a civil matter according to the Health Insurance Act [1320] in spite of the fact that right to submit such claim is included in the Health Insurance Act.[1321] In addition to the above mentioned, the Supreme Court has also explained that disputes about benefits of compensation for health damages should be settled in general court regardless whether the payer of benefits is an employer or a social insurance authority.[1322] The Supreme Court has come to contradicting conclusions only in case of disputes about state pensions.[1323]

(ee) Arbitration

249. Exclusion of arbitration from the European Union private law regulations can be explained by the fact that issues on recognition of arbitration judgements and declaring them enforceable have been solved on the international level rather successfully according to the New York 1958 Convention,[1324] and Estonia has joined the membership of the Convention as well. Thus, there is no need for application of additional instruments in case of arbitration on the level of European Union regulations.

250. The European Court of Justice has interpreted the arbitration procedure exception included to the EU international private law regulations rather widely. For example, procedures to appoint arbitrators covering such exceptions would be carried through in national courts.[1325] Determining of the character of arbitration procedures or ensuring of

[1320] Health Insurance Act, RT I 2002, 62, 377.
[1321] Decision No 3-2-1-133-06 of 17.01.2007 by Civil Chamber of the Supreme Court.
[1322] Decision No 3-2-1-140-09 of 06.01.2010 by Civil Chamber of the Supreme Court.
[1323] Ruling in civil matter No 3-2-1-105-03 of 11.11.2003 by Civil Chamber of the Supreme Court, ruling in civil matter No 3-2-4-2-04 of 18.10.2004 by Special Panel of the Supreme Court and ruling No 3-2-4-3-11 of 06.12.2011 by Special Panel of the Supreme Court.
[1324] Convention on the Recognition and Enforcement of Foreign Arbitral Awards. RT II 1993, 21, 51.
[1325] See: Marc Rich & Co AG v Società Italiana Impanti PA, Kohtuasi C-190/89 (1991) ECR I-3855.

enforcement of arbitration judgements has caused problems to the European Court of Justice most of all.[1326]

(ff) Employment law

251. Art 2(1)f of the Regulation of the European Small Claims Procedure excludes labour law disputes from the scope of the Regulation. As contrast, such disputes are included in the scope of the Brussels I Regulation.[1327]

(gg) Tenancies of immovable property, with the exception of actions on monetary claims

252. Art 2(1)g of the Regulation of the European Small Claims Procedure excludes a large part of claim issues on tenancy contracts labour law from the scope of the Regulation. As contrast, such disputes are included in the scope of the Brussels I Regulation.[1328]

(hh) Violations of privacy and of rights relating to personality, including defamation

253. Art 2(1)g of the Regulation of the European Small Claims Procedure excludes claims on violations of privacy and of rights relating to personality from the scope of the Regulation. For example, it is impossible to solve issues on compensation of losses from defamation on the basis of the Regulation of the European Small Claims Procedure. As contrast, such disputes are included in the scope of the Brussels I Regulation. The reason of excluding such issues from the scope of the regulation seem to be the fact that a court solving such issues has to analyse large volumes of expertise and simplified procedures are unsuitable for that.[1329]

6.1.3. Geographical scope (Art 2(3))

254. Pursuant to Art 2(3) of the Regulation of the European Small Claims Procedure, an Estonia court can conduct a procedure according to the Regulation only if one of the parties is domiciled (has permanent place of residence or registered address) or has

[1326] See: Van Uden Maritime BV, trading as Van Uden Africa Lince v Kommanditgesellschaft in Firma Deco-Line, Court matter C-391/95 (1998) ECR I-7091; Allianz Spa, Generali Assicurazioni Generali Spa v West Tankers Inc, The Front Comor, Court matter C-185/07 (2009) ECR I 663.
[1327] See Art 18-21 of the Brussels I Regulation.
[1328] See Art 22(1) of the Brussels I Regulation.
[1329] Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 224.

habitual dislocation from another EU member state. Pursuant to Art 2(3) of the Regulation of the European Small Claims Procedure, the term EU member state in the meaning of the Regulation includes all the member states of the European Union with the exception of Denmark.

255. As the Regulation of the European Small Claims Procedure is binding for all the EU member states except for Denmark, all the person coming from Estonia according to the Regulation may contact courts in all the other EU member states except for in Denmark.

256. Even judgements made pursuant to the Regulation of the European Small Claims Procedure, which have to be conducted through simplified procedure according to Art 20(1) of the Regulation of the European Small Claims Procedure, may arrive from all the other EU member states except for Denmark.

6.1.4. Temporal scope (Art 3(3) and Art (29))

257. Pursuant to Art 29 of the Regulation of the European Small Claims Procedure, the Regulation is valid from January 1, 2009. The relevant moment for determining whether there is a cross-border case in the meaning of the Regulation of the European Small Claims Procedure is the date on which the claim form is received by the court or tribunal with jurisdiction (Art 3(3) of the Regulation of the European Small Claims Procedure).

6.1.5. Definition of "cross-border cases" (Art 3)

258. The Regulation of the European Small Claims Procedure shall apply in cross-border cases. Pursuant to Article 2(3) of the Regulation, a "cross-border case" is one in which at least one of the parties is domiciled or habitually resident in a member state other than the member state of the court or tribunal seised. The definition referred to is equivalent to the definition of "cross-border cases" in the European payment order simplified procedure regulation.[1330]

6.1.5.1. Domicile of natural persons

259. Pursuant to Art 3(2) of the Regulation of the European Small Claims Procedure, basis for determining a domicile of a natural person is Article 59 of the Brussels I Regulation. In order to determine whether the domicile of a natural person really is in the member state according to Art 59 of the Brussels I Regulation, provisions of relevant national legislation must be applied. Evidently provisions of substantive law of a member

[1330] Art 3(1) of the European Order for Payment Procedure Regulation. See in addition: Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 221.

state is meant here without regulations of international private law.[1331] So, if a court is willing to make clear whether the person's domicile is in Estonia, the court shall proceed from the Estonian General Part of the Civil Code Act and its interpretation practice not from paragraph 10 of the Private International Law Act (which actually would lead the court to the same final result). Thus, an Estonian court should make sure whether the debtor was permanently or habitually residing in Estonia on the moment of start of the procedure.

260. In case an Estonian court is willing to make sure whether the domicile of a natural person is in another EU member state, the court should analyse substantive law of the member state according to Art 59(2) of the Brussels I Regulation (and not the norms of international private law of the member state), which is something that Estonian courts fail to do in daily practice.[1332] To be more exact, Estonian courts proceed from interpreting the domicile of the defending party residing abroad erroneously on the basis of the Estonian General Part of the Civil Code Act [1333] or on the basis of entry of the population register.[1334]

261. According to judgements analysed within this Research it can be concluded that it is characteristic to Estonian case-law that courts do not work very thoroughly with determination of domiciles of natural persons. They simply fill in the header of a judgement that the address of the person is in a foreign country. It was exactly like that in the one and only Estonian court judgement according to the Regulation of the European Small Claim Procedure where one of the parties was a natural person having his legal address in Italy.[1335]

6.1.5.2. Domicile of legal persons

262. Pursuant to Art 3(2) of the Regulation of the European Small Claims Procedure, a basis for determining a domicile of legal person is Article 60 of the Brussels I Regulation. Contrary to determining domiciles of natural persons, it is not pursuant to national legislation that domiciles of legal persons are determined. The basis for determining domiciles of legal persons is Art 60 of the Brussels I Regulation. The provision referred to includes an autonomous definition for domicile of a legal person. A company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business. Referring to the above mentioned, it is possible that a legal person has

[1331] Magnus U and Mankowski P (ed), Brussels I Regulation. Sellier. European Law Publishers 2007, pp 700-701.
[1332] See for example: Court ruling in civil matter No 2-08-61327 of 10.03.2009 by Pärnu County Court.
[1333] See about determination of domiciles in international civil procedures: Torga, M. Elukoht tsiviilseadustiku üldosa seaduse tähenduses (Place of residence in the meaning of the General Part of the Civil Code Act), *Juridica 2010 No 7*, pp 473-480.
[1334] See for example Court ruling in civil matter No 2-08-63701 of 09.06.2010 by Tartu County Court.
[1335] Decision No 2-11-40908 of 29.12.2011 by Tartu County Court.

domiciles simultaneously in several different EU member states: the statutory seat is in one member state, the central administration is in another member state and the principal place of business is in a third member state. If that is the case, to file an action in any member state where the domicile is.

263. According to judgements analysed within this Research it can be concluded that it is characteristic to Estonian case-law that courts do not work very thoroughly with determination of domiciles of legal persons. They simply fill in the header of a judgement that the address of the person is in a foreign country. It was exactly like that in the one and only Estonian court judgement according to the Regulation of the European Small Claim Procedure where one of the parties was a natural person having his legal address in Ireland.[1336]

6.1.6. Commencement of the procedure (Art 4)

6.1.6.1. Submission of standard claim Form A (Annex I)

264. Pursuant to Article 4 of the Regulation of the European Small Claim Procedure, the claimant shall commence the European Small Claims Procedure by filling in standard claim Form A (as set out in Annex I). An application is lodged with the court or tribunal with jurisdiction directly, by post or by any other means of communication (such as fax or e-mail) acceptable to the member state in which the procedure is commenced. As it is a claimant that makes the decision, commencement of a European Small Claims Procedure depends on the wish of the claimant. The Regulation of the European Small Claims Procedure does not solve the issue whether the person, against whom proceedings of the European Small Claims Procedure were commenced, is willing to have the dispute solved according to the Estonian provisions of the simplified procedure or provisions of general procedure of proceeding of action.[1337]

265. Pursuant to paragraph 405^1 section 2 of the Code of Civil Procedure, a petition to commence a European Small Claim Procedure shall be submitted in the form set by paragraphs 334-336 of the Code of Civil Procedure, i.e. in writing, in a form that enables reproduction in written form or electronically.

6.1.6.2. Communication means and availability of forms (Art 4(2) and (5))

266. The claim form to start a European Small Claim Procedure must be accessible in all the Estonian first level courts, which means all the courts in Estonia where it is possible to commence a European Small Claims Procedure (Art 4(5) of the Regulation of

[1336] Decision No 2-11-40908 of 29.12.2011 by Tartu County Court.

[1337] See for more details: Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 223.

the European Small Claim Procedure. According to paragraph 405[1] section 1 of the Code of Civil Procedure, it the county courts that are competent to solve European Small Claims issues.

6.1.6.3. Completion or rectifying a claim or application with additional information: standard Form B (Annex II) (Art 4(4))

267. Where the court considers the information provided by the claimant to be inadequate or insufficiently clear to commence a European Small Claim Procedure or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim. The court shall use standard Form B, as set out in Annex II, for this purpose

6.1.6.4. Withdrawal or waiver of claim (Art 4(3) and (4))

6.1.6.4.1. Basis for withdrawal of claim

i) Claim is outside the scope of the Regulation

268. Pursuant to Art 4(3) of the Regulation of the European Small Claims Procedure, if a claim is outside the scope of the Regulation, the court shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court shall proceed with it in accordance with the relevant procedural law applicable in the member state in which the procedure is conducted. This would be the case, if the claim exceeded € 2000 or if the claim was to compensate personal injury. Both the cases are outside the scope and the Regulation cannot be applied according to Art 2(2)h of the mentioned Regulation.

ii) Other basis

269. The Regulation of the European Small Claims Procedure does not prohibit the claimant to withdraw the claim on any other basis. Pursuant to paragraph 428 section 3 of the Code of Civil Procedure, a court shall terminate a proceeding without a decision if the claimant has discontinued the action. Pursuant to paragraph 423 of the Code of Civil Procedure, a claimant cannot submit the same claim against the same person if he has withdrawn it earlier.

270. The Estonian judgements analysed in the framework of this Research did not handle the issue of other basis for withdrawal a European Small Claim Procedure in the meaning of the Regulation.

6.1.6.4.2. Basis for waiver of claim

i) Clearly unfounded claim

271. Pursuant to Art 4(4) of the Regulation of the European Small Claims Procedure, if the court considers the claim to be clearly unfounded, it shall give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents within such period as the court specifies or to withdraw the claim.
272. The Estonian judgements analysed in the framework of this Research did not handle claims that "clearly unfounded" in the meaning of Article 4(4) of the Regulation of the European Small Claims Procedure.

ii) Inadmissible application

273. Pursuant to Art 4(4) of the Regulation of the European Small Claims Procedure, if the court considers the claim application inadmissible, the court shall give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents within such period as the court specifies or to withdraw the claim.
274. The Estonian judgements analysed in the framework of this Research did not handle claim applications that "inadmissible" in the meaning of Article 4(4) of the Regulation of the European Small Claims Procedure.

iii) Other basis

275. Pursuant to paragraph 428 section 3 of the Code of Civil Procedure, a court shall terminate a proceeding without a decision if the claimant has discontinued the action. Pursuant to paragraph 423 of the Code of Civil Procedure, a claimant cannot submit the same claim against the same person if he has withdrawn it earlier.
276. The Estonian judgements analysed in the framework of this Research did not handle the issue of "other basis" for withdrawal a European Small Claim Procedure in the meaning of the Regulation.

6.1.7. Conduct of the procedure (Art 5, 6, 9, 10, 11, 12, 13, 14, 16)

6.1.7.1. Written and oral procedure (Art 5(1), Art 8)

6.1.7.1.1. Written procedure as general rule (Art 5(1), Art 8)

277. Pursuant to Art 5(1) of the Regulation of the European Small Claims Procedure, the European Small Claims Procedure is a written procedure. The court holds an oral

hearing if it considers this to be necessary or if a party so requests. The court may refuse such a request if it considers that with regard to the circumstances of the case, an oral hearing is obviously not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately.

278. The issue was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.1.2. Oral procedure as exception (Art 5(1), Art 8)

6.1.7.2. Applicable procedural law (Art 19)

279. The European Small Claims Procedure is governed by the procedural law of the member state in which the procedure is conducted. So in case the procedure is conducted in an Estonian court, the general procedure rules provided by the Code of Civil Procedure will be applied except for provisions of the Regulation of the European Small Claims Procedure provide otherwise.

280. In the judgement of civil matter No 2-11-40908 of 29.12.2011 Harju County Court stated that simplified procedure provisions are to be applied according to paragraph 405 section 1 of the Code of Civil Procedure if the sum of the claim is less than that mentioned under paragraph 405 section 1 of the Code. In fact, it is according to Art 19 of the Regulation that the Regulation of the European Small Claims Procedure is to be applied in case of European small claims. The issue referred to has not found any more detailed analysis within the framework of this research on judgements by Estonian courts.

6.1.7.3. Remit of the court (Art 12)

6.1.7.3.1. Not binding the parties (Art 12(1))

281. According to Art 12(1) of the European Small Claim Procedure regulation, court shall not require the parties to make any legal assessment of the claim. Referring to the above mentioned, the claimant has no obligation to justify legally his claim, according the Regulation of the European Small Claims Procedure. Still, a claimant submitting his claim should be able to give oral explanations without the help by a lawyer, the claim form of European Small Claims is also prepared like that.[1338]

282. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

[1338] Kramer, X, E. The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation. *Zeitschrift für europäisches Privatrecht No 2 2008*, pp 355, 361.

6.1.7.3.2. Optional tasks: rendering information on procedural issues (Art 12(2))

283. According to Art 12(2) of the Regulation of the European Small Claim Procedure, the court informs to the parties about procedural questions. The above mentioned is explained by the fact that participation of legal representatives in small claims is unpractical, so the court's obligation to give information and explanations is bigger than in ordinary actions.[1339]

284. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.3.3. Role of the court in seeking for settlements (Art 12(3))

285. Pursuant to Art 12(3) of the Regulation of the European Small Claim Procedure, the court shall seek to reach a settlement between the parties whenever appropriate. Such an obligation is in conformity of paragraph 4 section 4 of the Estonian Code of Civil Procedure according to which the court shall take all possible measures to settle the case or a part thereof by compromise or in another manner by agreement of the parties if this is reasonable in the opinion of the court.

286. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.4. Service of documents: additional procure (Art 12(3))

6.1.7.4.1. Service of EU documents by the court directly (Art 13(1))

287. Pursuant to Art 13(1) of the Regulation of the European Small Claim Procedure, documents are served by postal service attested by an acknowledgement of receipt including the date of receipt. In the Estonian legislation system, similar servicing methods are provided by paragraphs 313 and 314 of the Code of Civil Procedure. Paragraph 313 of the Code of Civil Procedure sets provisions on service of procedural documents by registered letters. According to paragraph 314 of the Code of Civil Procedure, procedural documents may be served by sending an unregistered letter provided that a notice concerning the obligation to immediate return the confirmation of receipt is annexed to the letter and the names and addresses of the sender and the name of the court official who transmitted the document are indicated in the letter.

288. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

[1339] See Art 10 of the European Small Claims Procedure Regulation, which states explicitly that representation by a lawyer or another legal professional shall not be mandatory in case of a European small claim procedure.

6.1.7.4.2. Service of EU documents by help of courts of other member states (Art 13(2))

289. In case a court fails to service a procedural document to a party in the procedure by mail directly attested by an acknowledgement of receipt including the date of receipt, service may be effected by any of the methods provided for in Articles 13-14 of the Regulation. Even sending by E-mail or leaving the document in the recipient's mail box in possible, for example.

290. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.5. Language of procedure (Art 6)

6.1.7.5.1. Language of the state of the court – language of the procedure (Art 6(1))

291. According to Art 6(1) of the Regulation of the European Small Claims Procedure, the claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents are submitted in the language or one of the languages of the court. Thus, claim form for an Estonian court shall be written in the Estonian language. This provision has brought about a problem that was reflected even in answers to the questionnaire. Namely, who will take translation costs if a party in the procedure has no command in the Estonian language.

292. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.5.2. Translation obligation (Art 6(2) and (3))

293. According to Art 6(2) of the Regulation of the European Small Claims Procedure, in case any other document received by the court is not in the language in which the proceedings are conducted, the court may require a translation of that document only if the translation appears to be necessary for giving the judgment.

294. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.6. Temporary limitations (Art 4(4) and 4)

6.1.7.6.1. Autonomous terms and consequences for failure of fulfilment included in the Regulation

i) Terms for the court (Art 5(2)(4)-(6), Art 7(1)c, Art 14(3))

295. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

ii) Terms for the parties (Art 5(3) and (6), Art 7(3))

296. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.6.2. Court terms and consequences if not followed (Art 4(4), Art 7(1)a and (2), Art 14(1))

297. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.6.3. Counting of terms and extension of terms(Art 14(2), Art 19)

298. The issue referred to was not handled in more detail within this Research on judgements by Estonian courts.

6.1.7.7. Activities taken by the court and the parties after correct submission of a claim

6.1.7.7.1. Filling in Part I standard answer Form C and service to the respondent (Art 5(2), Annex III)

299. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.7.2. Filling in Part II of standard answer Form C by the respondent and submission to the court (Art 5(3), Annex III)

300. According to Tartu County Court judgement No 2-11-40908 of 29.12.2011, the respondent had 30 days to submit his answer pursuant to Art 5(3) of the Regulation of the European Small Claims Procedure. As the respondent gave no answer, the court regarded the circumstances by the claimant as affirmed.

301. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.7.3. Service of a copy to the claimant (Art 5(4) and (5))

302. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.7.4. Submission of counterclaim (Art 5(6) and (7))

303. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.8. Taking of evidence (Art 9)

6.1.7.8.1. Free certification principle (Art 9(1))

304. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.8.2. Exceptional proof methods according to the Regulation (Art 9(2))

305. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.8.3. Easier and least burdensome method of taking evidence as aim of the Regulation (Art 9(3))

306. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.7.9. Representation of parties and practical help to parties (Art 10 and 11)

i) Representation of parties (Art 10)

307. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

ii) Practical help to parties: filling in forms (Art 11)

308. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.8. Conclusion of the procedure (Art 7, Art 9 and Art 19)

6.1.8.1. Activities of court after receiving an answer from the respondent or the claimant (Art 7)

6.1.8.1.1. Basis and methods of demanding further details (Art 7(1)a)

309. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.8.1.2. Other possibilities (Art 7(1)b and c)

i) Taking of evidence (Art 7(1)b, Art 9)

310. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

ii) Summoning to oral hearing (Art 7(1)c and Art 8)

311. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.8.2. Disclosure and announcement of judgement (Art 7(2) and (3))

312. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.8.3. Costs of procedure (Art 16)

313. In Tartu County Court judgement No 2-11-40908 of 29-12-2011, the court referred to Article 16 of the Regulation of the European Small Claims Procedure according to which the court does not have to award costs to the successful party if the costs are unnecessarily incurred or disproportionate to the claim. Despite referring to the provision, the court did not use it. Most probably, the judge simply copied the text of the Regulation without paying attention to it.

314. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.8.4. Enforceability of the judgment (Art 15)

315. Pursuant to Art 15(1) of the Regulation of the European Small Claims Procedure, judgements according to the Regulation shall be enforceable in Estonia notwithstanding any possible appeal.

316. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.9. Appeal and minimum standards for review of the judgment (Art 17 and Art 18)

6.1.9.1. Appeal (Art 17)

317. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.9.2. Minimum standards for review of the judgement (Art 18)

6.1.9.2.1. Right to apply for review of judgment

318. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.9.2.2. Where to submit

319. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.9.2.3. Basis for review

320. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.9.2.4. Activities by court while reviewing

i) Rejection of review and its consequences

321. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

i) Validity of review and its consequences

322. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10. Recognition and declaration of enforceability in another member state (Art 20 and 21)

6.1.10.1. Automatic recognition and enforceability without any need for declaration of enforceability (Art 20, Annex IV)

323. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.2. Procedure of recognition of enforceability

6.1.10.2.1. Applicable law for enforcement (Art 21(1))

324. Pursuant to Art 21(1) of the Regulation of the European Small Claims Procedure, judgement of a European Small Claims Procedure is enforced according to national legislation. In case of Estonia and similarly to the European Enforcement Order Regulation, it is the Code of Enforcement Procedure that shall apply first and foremost.

325. Art 21(1) a judgment given in a member state in the European Small Claims Procedure shall be recognised and enforced in Estonia without the need for a declaration of enforceability and without any possibility of opposing its recognition. So, such judgements have similar effect to these of the European Enforcement Order certificates.

326. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.2.2. Documents to be submitted (Art 21(2))

327. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.2.1. Other issues (Art 21(3) and (4))

328. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.3. Rejection of recognition of enforceability (Art 22)

6.1.10.3.1. Rejection of recognition of enforceability (Art 22(1))

329. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.3.2. Restriction to review substance

330. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

6.1.10.4. Suspension or limitation of enforcement (Art 23)

331. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

7. Recommendations for implementation of the Regulation of the European Small Claims Procedure No 805/2004

332. Some specific recommendations concerning implementation of the Regulation of the European Small Claims Procedure were presented in sub-chapters of this Research. As general recommendation, it is advisable to have additional training sessions on practical implementation of the European Small Claims Procedure Regulation for Estonian lawyers. Referring to the answers given by lawyers, such training sessions should be held in both Estonian and English. In addition to that, the Estonian version of the Regulation of the European Small Claims Procedure should be improved, because the current Estonian version is rather clumsy and confusing.

333. According to KIS database search system, which is created for restricted using by the Estonian courts, the Regulation of the European Small Claims Procedure has been made use of only once by Tartu County Court judgement No 2-11-40908 of 29.12.2011. In practice, the Regulation is obviously used more by the Estonian lawyers, but such disputes need not reach Estonian courts at all. For example, some bailiff giving answers to the questionnaire have received documents of European Small Claims Procedures to be enforced in Estonia from Latvia, Lithuania and Finland.

334. It may only be guessed why making use of European Small Claim Procedures has been so rare in the Estonian case-law. There might be several reasons. Firstly, according to paragraph 405 ("Simplified proceeding") of the Code of Civil Procedure, there is no need for creditors to make use of the Regulation of the European Small Claims Procedure in Estonian courts at all. Secondly, rare using of the Regulation of the European Small Claims Procedure may also explained by little knowledge about the Regulation by Estonian creditors and lawyers. For example according to European Small Claims Procedure Report, September 2012, issued by European Consumer Centres Network,[1340] there have been practical problems for the Estonian Consumer Protection Board that claims for European Small Claims Procedures were refused, because the judge was unaware of the Regulation of the European Small Claims Procedure.[1341]

335. Referring to the above mentioned, it is necessary to have additional training sessions amongst Estonian lawyers to gain more consciousness about the possibilities offered by the Regulation of the European Small Claims Procedure. Answers to the questionnaire show that knowledge about the Regulation is rather low among judges, lawyers/solicitors as well as bailiffs, so training sessions on topics of the Regulation of European Small Claim Procedure would be necessary for all the mentioned groups.

[1340] European Consumer Centres Network, ECC-Net European Small Claims Procedure Report September 2012. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf (01.11.2012).

[1341] European Consumer Centres Network, ECC-Net European Small Claims Procedure Report September 2012. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf (01.11.2012) p 25. Within the framework of this research, an inquiry was sent to EU information centre of the Consumer Protection Board. In the answer, it came out that it was not an Estonian court that the consumer wanted to get contact with.

8. Overview and analysis of judgements: European Order for Payment Procedure Regulation No 1896/2006

8.1. The purpose and collateral character of the European Order for Payment Procedure Regulation (Art 1)

336. With the European Order for Payment Procedure Regulation similarly to the European Small Claims Procedure, an optional alternative procedure is created in addition to the Estonian national (payment order) procedure. This is assured by Art 1(2) of the European Order for Payment Procedure Regulation according to which the Regulation does not prevent a claimant to submit his expedited procedure by making use of another procedure available under the law of a Member State or under Community law. In case of Estonia such procedure is according to Chapter 49 of the Code of Civil Procedure, an expedited procedure of payment order.

337. The European Order for Payment Procedure Regulation fails to explain what to do in case an application for European Order for Payment Procedure is submitted, but the opposing party wants to apply the national payment order procedures.[1342]

8.2. Scope of the European Order for Payment Procedure Regulation (Art 1, Art 2 and Art 33)

8.2.1. Material scope (Art 2(1) and (2))

338. Art 2 of the European Order for Payment Procedure Regulation specifies the material scope of the Regulation. Examination of the material scope of the European Order for Payment Procedure Regulation has two stages. Firstly, the court must be sure that it is "civil or commercial matter", which means that it shall not extend, in particular, "to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (the so-called *acta iure imperii* matters)". Secondly, the court has to verify that the specific civil or commercial matter is not excluded from the scope of the Regulation of the European Order for Payment Procedure Regulation, which means that the civil or commercial matter is not listed in the Art 2(2) of the European Order for Payment Procedure Regulation.

[1342] As the European Order for Payment Procedure Regulation would not explicitly allow transfer to national order for payment proceedings, provisions of the European Order for Payment Procedure Regulation should be applied. The above mentioned will not apply if the requirements of the European Order for Payment Procedure Regulation are not met and the debtor draws attention to it.

8.2.1.1. Definition of "civil and commercial matters" (Art 2(1))

339. "Civil and commercial matters" are defined in the international private law regulations of the EU to distinct civil matters from disputes in public law. There are similar definitions in the Brussels I Regulation (Art 1(1), in the Rome I Regulation (Art 1(1)), in the Rome II Regulation (Art 1(1), in the European Small Claims Procedure Regulation (Art 2(1)) and in the European Enforcement Order Regulation (Art 2(1)). In the context of all mentioned regulations, the definitions of "civil commercial matters" are similar. An analogous definition is actually used in the parallel instrument of the Brussels I Regulation – the Lugano II Convention (Art 1(1)) – but as on the basis of the Lugano II Conventions judgements are made also by the courts of Norway, Iceland and Switzerland that are members of the Lugano II Convention and the judgements of these countries do not have the same meaning as judgements of the member states, it is not excluded that in the future that the definition of "civil and commercial matters" may differ in the context of the EU regulations and the Lugano II Convention.

340. In the context of regulations of the European Union international private law, "civil and commercial matters" should be regarded as autonomous, i.e the definition is not depending on national legislation and the final interpretation of the definition is given by the European Court of Justice. "Civil and commercial matters" have mainly been interpreted by the European Court of Justice on the basis of judgements according to the Brussels I Regulation and its predecessor the Brussels Convention. Estonia is not a member of the Brussels Convention because the Brussels Convention was replaced by the Brussels I Regulation before Estonia joined the European Union. The above-mentioned is no obstacle for the Estonian courts to use judgements by the European Court of Justice based on the Brussels Convention in order to interpret the Brussels I Regulation.[1343]

341. The European Court of Justice has repeatedly pointed out the need to interpret the definitions in the regulations of the EU international private law autonomously.[1344] The purpose of such autonomous interpretations is to ensure that EU regulations will be enforced similarly in all the member states and consequently legal certainty for parties of disputes in civil matters will also be enhanced. It is only in exceptional cases that the definitions may be interpreted on the basis of national legislation and it is allowed only if

[1343] For example pursuant to p 19 of the Preamble of the Brussels I Regulation, consistency between the Brussels Convention and the Brussels I Regulation must also be ensured in interpretation by the European Court of Justice. This principle is pointed out by the Supreme Court of the Republic of Estonia: Ruling in civil matter No 3-2-1-130-08 of 09.12.2008 by Civil Chamber of the Supreme Court. The Supreme Court has pointed out that judgements under the Brussels Convention can be used in interpretation of definitions of the European Enforcement Order Regulation, see: Court ruling No 3-2-1-117-10 of 01.12.2010 by Civil Chamber of the Supreme Court.

[1344] For example, such definitions as ''contract" and ''non-contractual losses" in Art 5 of the Brussels I Regulation should be interpreted autonomously. See for example: *Law Office Tark & Co GmbH v Traitements Mécano-chimiques des surfaces SA*, Court matter C-26/91 (1992) ECR I-3967, *Anastasios Kalfelis v Bankhaus Schröder Münchmeyer Hengst& Cie*, Court matter 189/97 (1988) ECR5565.

the relevant international private law explicitly gives the possibility.[1345] Theoretically, it is only a dispute that is not "a civil matter" according to Estonian national legislation that can be regarded as "a civil and commercial matter" in the meaning of the European Order for Payment Procedure Regulation.

342. The Estonian legislation defines the competences of administrative courts and general courts on the basis of the character of legal relationship of the dispute: administrative courts solve disputes based on public law and general courts solve disputes on private law unless not provided otherwise by legislation.[1346] Actually, the definition of "civil and commercial matters" in the meaning of the European Order for Payment Procedure Regulation should not cause any major problems for Estonian lawyers, because referring to the practice of the European Court of Law, the definition of "civil and commercial matters" used in the EU regulations is similar to judgements according to the national legislation. For example, the European Court of Justice does not regard a matter as "a civil and commercial matter" if one of the parties in the dispute is a public authority fulfilling its public commitments in the framework legal relationship[1347] or executing public power.[1348] Such solution is also in conformity with the practice by the Supreme Court in making distinctions between administrative and civil matters.[1349] For example according the European Court of Justice practice, a dispute where a person is claiming for compensation from the state to cover losses arising from military activity is not "a civil or commercial matter".[1350] An Estonian solution to a similar dispute between the state and a private person would be solved most probably on the basis of the national State Liability Act.[1351] In the Estonian case-law similarly to the judgements by the European Court of Justice, it is not enough that one of the parties in a dispute is a public

[1345] For example, pursuant to Art 59 of the Brussels I Regulation it is possible to determine where a natural person is domiciled according to national legislation. For more details: Torga, M. Place of residence in the meaning of the General Part of the Civil Code Act, *Juridica 2010 No 7*, pp 473-480.

[1346] Court ruling No 3-2-1-63-07 of 05.06.2007 by Civil Chamber of the Supreme Court. See also: Paragraph 1 of the Code of Civil Procedure and paragraph 4 section 1 of the Code of Administrative Court Procedure - RT I, 23.02.2011, 3.

[1347] *Netherlands State v Rüffer*, Court matter 814/79 (1980) ECR 3807.

[1348] *LTU v Eurocontrol*, Court matter 29/76 (1976) ECR 1541.

[1349] See for example: Ruling No 3-2-4-1-10 of 15.06.2010 by the Supreme Court en banc, ruling No 3-2-1-55-08 of 20.06.2008 by Civil Chamber of the Supreme Court, ruling No 3-2-1-63-07 of 05.06.2007 by Civil Chamber of the Supreme Court, ruling No 3-2-1-133-06 of 17.01.2007 by Civil Chamber of the Supreme Court, ruling No 3-2-4-1-05 of 20.04.2005 by Special Panel of the Supreme Court, ruling No 3-2-4-2-04 of 18.10.2004 by Special Panel of the Supreme Court, ruling No 3-2-4-1-04 of 01.07.2004 by Special Panel of the Supreme Court, ruling No 3-2-1-49-04 of 27.04.2004 by Civil Chamber of the Supreme Court, ruling No 3-2-1-149-03 of 12.01.2004 by Civil Chamber of the Supreme Court, ruling No 3-2-1-105-03 of 11.11.2003 by Civil Chamber of the Supreme Court, ruling No 3-2-1-60-03 of 26.05.2003 by Civil Chamber of the Supreme Court, ruling No 3-2-1-17-03 of 10.03.2003 by Civil Chamber of the Supreme Court.

[1350] *Lechouritou v Greece*, Court matter C-292/05 (2007) ECR I-1519.

[1351] State Liability Act. RT I 2001, 47, 260. For more details see paragraph 6 section 1 of the War-Time National Defence Act pursuant to which material losses caused by military activities during war-time national defence will be compensated ''on the basis of and in accordance with the valid legislation". – RT I 1994, 69, 1194.

authority when decisions are made whether it is "a civil or commercial matter" or not,[1352] according to practice of the European Court of Justice, a public authority may step into relationship governed by private law and sign private law contracts.[1353] Solving of a dispute in administrative court would not exclude, according to practice of Estonian courts, [1354] using norms of private law by administrative courts.

343. Despite a court of another member state has issued a European Order for Payment, an Estonian judge (in case the European Order for Payment reaches an Estonian court) must be able to verify whether the judgement by the court of the other member state about a "civil or commercial matter" or not. Neither Estonian bailiff nor judge are bound to the opinion of the court of the other member state issuing the European Order for Payment. Although the conclusion above is not coming from the exact words in the text of the European Order for Payment Procedure Regulation, it is derived from the logic of the Regulation. A similar right of verification is also affirmed in English and German literature on legislation concerning declaration of enforceability of judgements pursuant to the Brussels I Regulation, so that the court responsible for enforcement of judgement should also have the right to verify whether the judgement is a "civil or commercial matter" at all or not regardless of the judgement by the court of the other member state [1355] and in spite of the fact that according to the Brussels I Regulation there is no authority to verify the content of the judgement of the other member state.[1356]

344. Within the framework of this research, the definition of "civil and commercial matters" in the meaning of the European Order for Payment Procedure Regulation was not analysed in more detail.

8.2.1.2. Categories excluded from the scope of the Regulation (Art 2(2))

345. Art 2(2) of the European Order for Payment Procedure Regulation excludes some civil and commercial matters from the scope of the Regulation. There are the following main reasons for such exclusions: in the context of the EU international private law regulations, there are other EU or international instruments concerning such disputes; or there are no unified regulations in the substantive and international private law of the member states.[1357]

[1352] Court ruling No 3-2-1-71-97 of 29.05.1997 by Civil Chamber of the Supreme Court.
[1353] *Préservatrice foncière TIARD SA v Staat der Nederlanden*, Court matter C-266/01 (2003) ECR I-4867.
[1354] See for more details: Decision No 3-2-1-100-08 of 27.10.2009 by Special Panel of the Supreme Court.
[1355] See for example: Fawcett J, Carruthers J and North P, Cheshire, North & Fawcett: Private International Law 14th edition, OUP 2008, p 601; Kropholler H von, Europäisches Zivilprozessrecht 8 Aufl, Heidelberg 2005, § 32, Nr 3.
[1356] Art 36 of the Brussels I Regulation.
[1357] For example, similar exceptions are justified by the scope of the Brussels I Regulation: Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012, p 60.

346. Although contrary to the European Enforcement Order Regulation and the European Small Claims Procedure Regulation, the European Regulation is not explicitly excluding disputes about legal status of natural persons. Such general disputes on civil matters won't still be in the scope of the European Order for Payment Regulation because, according to Art 1(a) of the Regulation, it will only be applied in case of pecuniary claims. On the level of the European Union, it is partially the Brussels I bis Regulation that deals with the status of natural persons and it is applied in recognition and determination of international jurisdiction as well as recognition of judgements concerning divorce, living separately or repealing a marriage.[1358]

(aa) Rights in property arising out of matrimonial relationship, wills and succession

347. Art 2(2) of the European Order for Payment Procedure Regulation excludes issues of rights in property arising out of matrimonial relationship, wills and succession from the scope of the Regulation. The last two (wills and succession) belong to the scope of the European Union Succession Regulation[1359] , which Estonian courts will apply from August 17, 2015.[1360] The issues of matrimonial property will be solved in the future by a special regulation of the European Union, at least there is currently a proposal for regulation available.[1361]

(bb) Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, agreements with creditors, compositions and analogous proceedings

348. Art 2(2)b of the European Order for Payment Procedure Regulation excludes such disputes, which are within the scope of the European insolvency proceedings' regulation, from the scope of this Regulation.

349. The official translation of Art 2(2)b of the European Order for Payment Procedure Regulation into the Estonian language is far from the most successful one. In the official translation into Estonian, there is reference to "juridical agreements" (*kohtulik kokkulepe*) as if all judgements certifying compromises are excluded from the scope of the European Order for Payment Procedure Regulation. Such a mistake seems to be confirmed by Art 3(1); the Estonian translation of the Article states that the Regulation is applied to

[1358] Brussels II bis Art 1(1)a.

[1359] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession ELT L 201, 27/7/2012, pp 107-134.

[1360] Art 84 of the Succession regulation

[1361] Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. COM(2011)126 final 2011/0059(CNS).

"judgements" and "authentic instruments" on uncontested claims whereas in the English version the Regulation shall apply in addition to "judgements" and "authentic instruments" also to "court settlements". It should also be pointed out that Art 2(2)b of the Regulation of the European Order for Payment Procedure Regulation regards only such juridical agreements with creditors as "court settlements", which are excluded from the scope of the Regulation, that are about declaring a legal person insolvent, liquidation procedures or other similar procedures and not regulations that certify a compromise as court settlement through general disputes on civil matters.

350. Taking into account that the English version of Art 2(2)b of the European Order for Payment Procedure Regulation refers to "compositions", which is translated into Estonian as "võlausaldajate kokkulepe" (agreement of creditors), it might be assumed that judgements by Estonian courts during reorganisation proceedings (for example approval of reorganisation plan according to paragraph 28 section 2 of the Reorganisation Act [1362] or reorganisation ruling of paragraph 10 of the same Act) have also been excluded from the scope of the European Order for Payment Procedure Regulation although Art 2(2)b does not mention it explicitly, The reason for it is the fact that an agreement between the creditors plays an important role in reorganisation procedure and it is the creditors that accept the reorganisation plan (paragraph 24(1) of the Reorganisation Act) and only after that it is the court that approves the reorganisation plan (paragraphs 28 and 37 of the Reorganisation Act).

351. It is still not too likely that the issues referred to in the last few section turn to be very topical while applying the European Order for Payment Procedure in Estonian courts, because the precondition for applying the submission of pecuniary claim

(cc) Social security

352. Art 2(2)c of the European Order for Payment Procedure Regulation excludes matters of social insurance and disputes of solving claims related to social insurance from the scope of the Regulation. Such disputes on behalf of the European Union legislative body in civil matters conform to the Estonian case-law. For example, the Supreme Court has explained that partial reclaim of social benefits against the defending party is a civil matter according to the Health Insurance Act [1363] in spite of the fact that right to submit such claim is included in the Health Insurance Act.[1364] In addition to the above mentioned, the Supreme Court has also explained that disputes about benefits of compensation for health damages should be settled in general court regardless whether the payer of benefits is an employer or a social insurance authority.[1365] The Supreme

[1362] Reorganisation Act. RT I 2008, 53, 296.
[1363] Health Insurance Act, RT I 2002, 62, 377.
[1364] Decision No 3-2-1-133-06 of 17.01.2007 by Civil Chamber of the Supreme Court.
[1365] Decision No 3-2-1-140-09 of 06.01.2010 by Civil Chamber of the Supreme Court.

Court has come to contradicting conclusions only in case of disputes about state pensions.[1366]

353. Although the disputes referred to are "civil and commercial matters" in the meaning of the European Order for Payment Procedure Regulation, such disputes are excluded from the scope of the European Order for Payment Procedure Regulation according to Art 2(2)c of the mentioned Regulation. The above mentioned is still not applied to all disputes about social security issues. For example if a public authority claims from the party causing damage compensation that the state has paid to the party suffering from the damage, the dispute will be in the scope of the European private law regulations,[1367] which means that it is not an issue of "social insurance" in the meaning of Art 2(2)c of the European Order for Payment Procedure Regulation.

(dd) Claims arising from non-contractual obligations

354. Pursuant to Art 2(2)d of the European Order for Payment Procedure Regulation, the Regulation is not applied to claims arising from non-contractual obligations unless the parties have been the subject of an agreement between them or there has been an admission of debt or the claims relate to liquidated debts arising from joint ownership of property. Other claims arising from non-contractual debts are excluded from the scope of the European Order for Payment Procedure Regulation. In such cases, simplified procedure is unreasonable because the claims are very often unclear.[1368]

8.2.2. Geographical scope (Art 2(3), Art 5)

355. Pursuant to Art 3(1) of the European Order for Payment Procedure Regulation, an Estonian court can conduct a procedure according to the Regulation only if one of the parties is domiciled (has permanent place of residence or registered address) or has habitual dislocation from another EU member state. Pursuant to Art 2(3) of the European Order for Payment Procedure Regulation, the term EU member state in the meaning of the Regulation includes all the member states of the European Union with the exception of Denmark.

356. As the European Order for Payment Procedure Regulation is binding for all the EU member states except for Denmark, all the persons coming from Estonia according to

[1366] Ruling in civil matter No 3-2-1-105-03 of 11.11.2003 by Civil Chamber of the Supreme Court, ruling in civil matter No 3-2-4-2-04 of 18.10.2004 by Special Panel of the Supreme Court and ruling No 3-2-4-3-11 of 06.12.2011 by Special Panel of the Supreme Court.

[1367] At least the European Court of Justice has come to such conclusion in the context of the predecessor of the Brussels I Regulation – the Brussels Convention, see: *Gemeente Steenberg v Luc Baten*, Court matter C-271/00 (2002) ECR I-10489.

[1368] Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 208.

the Regulation may contact courts in all the other EU member states except for in Denmark.

357. Even judgements made pursuant to the European Order for Payment Procedure Regulation, which have to be conducted through simplified procedure according to Art 19(1) of the European Order for Payment Procedure Regulation, may arrive from all the other EU member states except for Denmark.

8.2.3. Temporal scope (Art 33)

358. The European Order for Payment Procedure Regulation was applied in the European Union from December 12, 2008. As Estonia had joined the European Union by that point of time already, the issue of temporal scope of the European Order for Payment Procedure Regulation should not create any problems to Estonian judges.

8.2.4. Definition of cross-border issues (Art 3)

359. Pursuant to Art 2(1) of the European Order for Payment Procedure Regulation, provisions of the Regulation are applied of only in case of cross-border disputes. Pursuant to Art 3(1) of the European Order for Payment Procedure Regulation, a cross-border issue is one in which at least one of the parties is domiciled or habitually resident in another member state of the European Union.

8.2.4.1. Domicile of natural persons

360. Pursuant to Art 3(2) of the European Order for Payment Procedure Regulation, basis for determining a domicile of a natural person is Article 59 of the Brussels I Regulation. In order to determine whether the domicile of a natural person really is in the member state according to Art 59 of the Brussels I Regulation, provisions of relevant national legislation must be applied. Evidently provisions of substantive law of a member state is meant here without regulations of international private law.[1369] So, if a court is willing to make clear whether the person's domicile is in Estonia, the court shall proceed from the Estonian General Part of the Civil Code Act and its interpretation practice not from paragraph 10 of the Private International Law Act (which actually would lead the court to the same final result). Thus, an Estonian court should make sure whether the debtor was permanently or habitually residing in Estonia on the moment of start of the procedure.

[1369] Magnus U and Mankowski P (ed), Brussels I Regulation. Sellier. European Law Publishers 2007, pp 700-701.

361. In case an Estonian court is willing to make sure whether the domicile of a natural person is in another EU member state, the court should analyse substantive law of the member state according to Art 59(2) of the Brussels I Regulation (and not the norms of international private law of the member state), which is something that Estonian courts fail to do in daily practice.[1370] To be more exact, Estonian courts proceed from interpreting the domicile of the defending party residing abroad erroneously on the basis of the Estonian General Part of the Civil Code Act [1371] or on the basis of entry of the population register.[1372]

362. According to judgements analysed within this Research it can be concluded that it is characteristic to Estonian case-law that courts do not work very thoroughly with determination of domiciles of natural persons. They simply fill in the header of a judgement that the address of the person is in a foreign country.

8.2.4.2. Domicile of legal persons

363. Pursuant to Art 3(2) of the European Order for Payment Procedure Regulation, basis for determining a domicile of a legal person is Article 60 of the Brussels I Regulation. Contrary to determining of domiciles of natural persons, it is not pursuant to national legislation that domiciles of legal persons are determined. The basis for determining domiciles of legal persons is Art 60 of the Brussels I Regulation. The provision referred to includes an autonomous definition for domicile of a legal person. A company or other legal person or association of natural or legal persons is domiciled at the place where it has its statutory seat, central administration, or principal place of business. Referring to the above mentioned, it is possible that a legal person has domiciles simultaneously in several different EU member states: the statutory seat is in one member state, the central administration is in another member state and the principal place of business is in a third member state. If that is the case, it is possible to file an action in any member state where the domicile is.

364. According to judgements analysed within this Research it can be concluded that it is characteristic to Estonian case-law that courts do not work very thoroughly with determination of domiciles of legal persons. They simply fill in the header of a judgement that the address of the person is in a foreign country.

[1370] See for example: Court ruling in civil matter No 2-08-61327 of 10.03.2009 by Pärnu County Court.

[1371] See about determination of domiciles in international civil procedures: Torga, M. Elukoht tsiviilseadustiku üldosa seaduse tähenduses (Place of residence in the meaning of the General Part of the Civil Code Act), *Juridica 2010 No 7*, pp 473-480.

[1372] See for example Court ruling in civil matter No 2-08-63701 of 09.06.2010 by Tartu County Court.

8.2.5. Definition of a European order for payment (Art 4)

8.2.5.1. Pecuniary claims

365. Pursuant to Art 4 of the European Order for Payment Procedure Regulation, the European order for payment procedure can be applied for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

366. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.5.2. Amount of the claim

367. According to paragraph 490[1] section 1 of the Code of Civil Procedure, provisions of Code concerning simplified procedure will be applied in case of European order for payment simplified procedure in the extent that is not regulated in the European Order for Payment Procedure Regulation. The European Order for Payment Procedure Regulation does not set a maximum sum necessary for initiating an European order for payment.[1373] It does not mean that the limit (€ 6400) set by paragraph 481 section 2[2] of the Code of Civil Procedure can be applied in the case of European orders for payment. National legislation cannot limit the scope of EU regulations – national procedural laws can only regulate such issues that are insufficiently defined in the relevant EU regulation. Pursuant Art 4 of the European Order for Payment Procedure Regulation, any defined pecuniary claim can be subject of the Regulation, which means that the European legislator has not left the issue open.

368. There have been errors made in the Estonian case-law and European orders for payment have been rejected due to exceeding the maximum limit for domestic simplified procedures set by the Code of Civil Procedure (see for example: Harju County Court regulation in civil matter No 2-11-12781 of 14.03.2011, Harju County Court regulation in civil matter No 2-10-59781 of 01.12.2010, Harju County Court regulation in civil matter No 2-10-54576 of 16.11.2010, Harju County Court regulation in civil matter No 2-10-12008 of 01.05.2010, Harju County Court regulation in civil matter No 2-10-8377 of 23.10.2010, Harju County Court regulation in civil matter No 2-10-8038 of 23.04.2010, Harju County Court regulation in civil matter No 2-10-14879 of 15.04.2010, Harju County Court regulation in civil matter No 2-09-26618 of 10.07.2009). Such practice is not in line with the aims of the European Order for Payment Procedure Regulation.

[1373] For more details see: Fiorini, A. Facilitating cross-border debt-recovery: the European payment order and small claims regulations. *International Commercial Law Quarterly, 57(2), 2008*, pp 449, 455.

8.2.6. Jurisdiction issues (Art 6)

8.2.6.1. General principles (Art 6(1))

369. Jurisdiction should be checked up by the initiative of the court according to recognised general principles of the Estonian procedural law, because pursuant to paragraph 75 section 1 of the Code of Civil Procedure, the court which receives a petition shall verify whether, pursuant to the provisions concerning international jurisdiction, the petition can be filed with an Estonian court. According to Art 6(1) of the European Order for Payment Procedure Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular the provisions of the Brussels I Regulation. The courts have been rather liberal in determining jurisdiction according to the Brussels I Regulation. For example, a court regarded it sufficient if the applicant stated that the parties have agreed upon an Estonian court concerning jurisdiction (see; court ruling in civil matter No 2-09-12401 of 31,03,2009 by Pärnu County Court).

370. Neither the Brussels I Regulation nor other rules of Community law regulate national jurisdiction.[1374] According to paragraph 108 section 2 of the Code of Civil Procedure, if a person against whom a petition is filed for application of expedited procedure in a matter of a payment order has no general jurisdiction in Estonia, the petition shall be filed with the court with which an action with an equivalent claim could be filed. In case the matter belongs under the jurisdiction of an Estonian court, but it is impossible to determine which one, the matter shall be adjudicated by Harju County Court pursuant to paragraph 72 section 1 of the Code of Civil Procedure (see also: court ruling in civil matter No 2-09-12401 of 31.03.2009 by Pärnu County Court).

371. Estonian courts make also use of the Juridical Atlas in order to determine jurisdiction. It can bee seen in both the case-law (see for example: court ruling in civil matter No 2-09-44783 of 10.09.2009 by Harju County Court) as well as answers to the Questionnaire given by the judges.

372. In case a claim relates to a contract concluded by a consumer and if the defendant is the consumer, only the courts in the member state in which the defendant is domiciled shall have jurisdiction for the European order for payment procedure.[1375]

8.2.6.2. Consumers (Art 6(2))

373. "Consumer" can be interpreted in the meaning of the European Order for Payment Procedure Regulation on the basis of definitions given in other European Union international private law regulations.

[1374] See for example Art 5(3) of the Brussels I Regulation that regulates in addition to international jurisdiction also national jurisdiction.

[1375] Art 6(2) of the European Order for Payment Procedure Regulation.

374. According to European Court of Justice practice and in the meaning of the Brussels I Regulation, a consumer can be only a natural person who makes a deal to satisfy his individual needs.[1376] The definition of consumer should be similar on case of interpretation of "consumer" in case of the European Order for Payment Procedure Regulation. The above mentioned is applies also to the definition of consumer in the Estonian legislation. According to paragraph 34 of the Law of Obligation Act[1377] a consumer is a natural person who performs a transaction not related to an independent economic or professional activity. Such definition is in direct correspondence with Art 15(1) of the Brussels I Regulation according to which a consumer is a person who performs a transaction not related to his economic or professional activity.

375. If the person performs a transaction with both the aims to satisfy his personal consuming needs and related to his economic or professional activity, he is not regarded as a "consumer" as a rule in the context of the European international private law regulations except for cases where the share of his economic and professional activity was absolutely marginal.[1378]

376. The definition of "consumer" was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7. Application for a European order for payment (Art 7)

8.2.7.1. Application and standard form A (Art 7 and Annex 1)

8.2.7.1.1. Application parts (Art 7(1)-(4))

377. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.1.2. Application form and requisites (Art 7(5)-(6))

378. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.2. Examination of the application (Art 8)

8.2.7.2.1. Information examined by the court

[1376] *Francesco Benincasa v Dentalkit SrL*, Court matter C-269/95 (1997) ECR I-3767.
[1377] Law of Obligations Act. RT I 2001, 81, 487.
[1378] *Johann Gruber v Bay Wa AG*, Court matter C 464/01 (2005) ECR I-439.

379. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.2.2. Definition of founded claim and meeting the requirements

380. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.3. Completion and rectification of the application: standard Form B (Art 9 and Annex II)

8.2.7.3.1. Basis for Completion and rectification (Art 9(1))

381. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.3.2. Time limits (Art 9(2))

382. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.4. Modification of the application: standard Form C (Art 10 and Annex III)

8.2.7.4.1. Basis for modification and procedure (Art 10(1))

383. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.4.2. Activities by the Claimant and its consequences (Art 10(3))

384. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.4.3. Inactivity by the Claimant and its consequences (Art 10(3))

385. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.5. Rejection of the application (Art 11)

8.2.7.5.1. Basis for rejection (Art 11(1))

386. Art 11 of the European Order for Payment Procedure Regulation sets provisions when a court may reject a European order for payment. The provisions set no limits concerning sum of a claim. Pursuant to paragraph 481 section 2^2 of the Code of Civil Procedure there will be no simplified procedure if the sum exceeds € 6400. The sum includes both basic claims and collateral claims. Referring to the above mentioned, courts have rejected European orders for payment that have exceeded the limits set by paragraph 481 section 2^2 of the Code of Civil Procedure (court ruling in civil matter No 2-10-12008 of 01.04.2010 by Harju County Court, court ruling in civil matter No 2-1059781 of 01.12.2010 by Harju County Court). Such practice is not in line with the European Order for Payment Procedure Regulation.

387. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.5.2. Consequences of rejection (Art 11(2) and (3))

388. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.6. Legal representation (Art 24)

389. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.7. Court fees (Art 25)

390. 36 judgements analysed within the framework of this research concerned the problems of determining court fees. To be more exact, it was mainly about giving more time to the claimants to pay fees in situations when the procedure was continued as ordinary action due to the fact that the alleged debtor objected the European order for payment (for example: court ruling in civil matter No 2-10-61061 of 24.01.2001 by Harju County Court). When Estonian courts continue proceedings as ordinary actions, they follow the principle of Art 25 of the European Order for Payment Procedure Regulation according to which the fee by the claimant shall not exceed the court fees of ordinary

civil proceedings without a preceding European order for payment procedure in the member state.

391. Article 25 of the European Order for Payment Procedure Regulation has not been interpreted in judgements by Estonian courts.

8.2.7.8. Issue of a European order for payment: standard Form E (Art 12 and Annex V)

8.2.7.8.1. European order for payment standard Form E (Art 12(2), Annex V)

392. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.8.2. Advisable consultation on European order for payment and information to the claimant (Art 12(3) and (4))

393. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.8.3. Servicing of a European order for payment to the defendant (Art 12(5), Art 13, Art 14 and Art 15)

i) Service with proof of receipt by the defendant (Art 13)

394. Within the framework of this research concerning judgements, provisions about servicing of European orders for payment were not analysed specifically. Still, it is possible to draw some conclusions about servicing. Estonian courts service European orders for payment mainly by regular mail services and in case of need also with help from courts of other member states (for example: court ruling in civil matter No 2-09-12183 of 08.07.2009 by Harju County Court). If they fail to service the order for payment to the debtor, the Estonian courts refuse to hear the action on the order for payment pursuant to paragraph 423 section 1 p 8 of the Code of Civil Procedure (for example: court ruling in civil matter No 2-09-12183 of 08.07.2009 by Harju County Court).

395. Service with proof of receipt by the defendant according to Art 13 of the European Order for Payment Procedure Regulation is also enabled according to the Estonian national legislation pursuant to paragraph 313 (service of procedural documents by registered letter) and paragraph 314 (service of procedural documents by unregistered letter with notice concerning the obligation to immediate return the confirmation of receipt) of the Code of Civil Procedure.

ii) Service without proof of receipt by the defendant (Art 14)

396. The European order for payment may also be served on the defendant by several methods (e.g. deposit of the order in the defendant's mailbox, electronic means of servicing, etc). Concerning different means of servicing see pp 4.1.4.4.6-4.1.4.4.7 of this Research. If they fail to service the order for payment to the debtor, the Estonian courts refuse to hear the action on the order for payment pursuant to paragraph 423 section 1 p 8 of the Code of Civil Procedure (for example: Harju County Court regulation in civil matter No 2-09-12183 of 08.07.2009).

397. The issue of servicing methods was not analysed in more detail within this Research on judgements by Estonian courts.

iii) Service on a representative of the defendant (Art 15)

398. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.9. Opposition to European order for payment: standard Form F (Art 16 and Art 17, Annex VI)

8.2.7.9.1. Application form, content and requisites (Art 16(1) and (2)-(5), Annex VI)

399. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.9.2. Terms (Art 16(2))

400. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.9.3. Consequences of a statement of opposition (Art 17)

i) Conclusion of the procedure

401. In case the alleged debtor opposes a European order for payment procedure within the time limit, the court shall continue the proceedings pursuant to Art 17(1) of the Regulation in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event.

402. There were no judgements found, where an Estonian court terminated proceedings because of opposing alleged debtor's relevant request, in the framework of this Research on judgements by Estonian courts. Still, there was a case of refusal by the court to accept a statement of opposition to a European order for payment by the debtor pursuant to paragraph 487 section 3 of the Code of Civil Procedure, because the person initiating the European order for payment procedure failed to submit his claim within the time limits of ordinary civil proceedings (see: court ruling in civil matter No 2-10-15766 of 28.06.2011 by Harju County Court).

ii) Transfer to ordinary civil proceedings

403. Pursuant to Art 17 section 1 of the European Order for Payment Procedure Regulation and providing that the statement of opposition was lodged within the time limits set by Art 16 section 2 of the Regulation, the proceedings shall continue before the competent courts of the member state of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Estonian courts have made several judgements where the European order for payment procedure was transferred to ordinary civil procedure – an Estonian court continues the dispute with ordinary civil proceedings (see: court ruling in civil matter No 2-11-45777 of 01.03.2012 by Harju County Court, court ruling in civil matter No 22-11-45776 of 01.03.2012 by Harju County Court, court ruling in civil matter No 2-11-47220 of 01.03.2012 by Harju County Court, court ruling in civil matter No 2-11-11-17890 of 01.08.2011 by Harju County Court, court ruling in civil matter No 2-11-15766 of 02.09.2010 by Harju County Court, court ruling in civil matter No 2-11-46112 of 02.11.2011 by Harju County Court, court ruling in civil matter No 2-11-30504 of 03.09.2010 by Harju County Court, court ruling in civil matter No 2-11-45777 of 04.05.2011 by Harju County Court, court ruling in civil matter No 2-10-30503 of 07.09.2010 by Harju County Court).

8.2.7.10. Enforceability (Art 18)

8.2.7.10.1. Declaration of a European order for payment enforceable: standard Form G (Art 18, Annex VII)

404. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.10.2. Formal requirements of enforceability (Art 18(2))

405. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.11. Proceedings of a European order for procedure in country of enforcement (Art 19-23)

8.2.7.11.1. Automatic or de plano enforcement and abolition of exequatur (Art 19)

406. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.11.2. Review of European order for payment (Art 20)

i) When can review be applied for (Art 20(1) and (2))

407. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

ii) Who can apply for review (Art 20(1) and (2))

408. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

iii) Where can review be applied for (Art 20(1) and (2))

409. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

iv) In which disputes can review be applied for (Art 20(1) and (2))

410. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

v) Legal consequences of review (Art 20(3))

411. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.12. Enforcement of a European order for payment (Art 21)

8.2.7.12.1. Applicable law for enforcement (lex loci executionis)

412. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.12.2. Documents produced for enforcement procedure

413. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.13. Suspension or limitation of enforcement of a European order for payment procedure (Art 23)

414. Estonian courts have met problems in suspension of enforcement of European order for payment procedure in several judgements.[1379] Estonian courts regard suspension justified, in case the enforcement brings about serious obstacles for the debtor's everyday economic activities (for example seizure of accounts) and ability to manage, which might harm both the debtor and even the claimant (for example: Harju County Court regulation in civil matter No 2-11-25653 of 02.06.2011). Estonian courts have erroneously analysed suspension in European order for payment procedure on the basis of the Code of Civil Procedure instead of Art 23 of the European Order for Payment Procedure Regulation. For example, enforcement was suspended because the debtor failed to provide security, referred to in paragraph 472 section 1 of the Code of Civil Procedure (see: Harju County Court regulation in civil matter No 2-09-67440 of 14.12.2009). Such security is not in line with the European Order for Payment Procedure Regulation.

8.2.7.14. Refusal of enforcement

8.2.7.14.1. Who can oppose enforcement (Art 22(1))

415. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

[1379] See for example: Harju County Court regulation in civil matter No 2-11-25653 of 02.06.2011, Harju County Court regulation in civil matter No 2-09-67440 of 22.01.2010, Harju County Court regulation in civil matter No 2-09-67440 of 06.01.2010, Harju County Court regulation in civil matter No 2-09-67440 of 14.12.2009.

8.2.7.14.2. Where can application of opposition be submitted to (Art 22(1) and (2))

416. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.14.3. Basis for refusal (Art 22(1) and (2))

417. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.7.14.4. Restriction to verify the content of a European order for payment (revision au fond) (Art 22(3))

418. The issue referred to was not analysed in more detail within this Research on judgements by Estonian courts.

8.2.8. Relationship of the European Order for Payment Procedure Regulation with other acts of law

8.2.8.1. Relationship with national procedural law (Art 26)

419. Pursuant to Art 26 of the European Order for Payment Regulation, Estonian courts apply national procedural law in the extent that is not regulated in the European Order for Payment Procedure Regulation. The provisions of the Code of Civil Procedure shall be valid. The above mentioned does not mean at all that with the help of national norms additional rules will be set to the European order for payment procedure. For example it is impossible to set maximum limits to European orders for payment on the basis of the Code of Civil Procedure (although there have been such cases in Estonian case-law)[1380] or set demands about securities concerning European orders for payment (which has also occurred in Estonian case-law).[1381]

8.2.8.2. Relationship with the Brussels I Regulation No 44/2001 (Art 6(2))

[1380] See for example: Harju County Court regulation in civil matter No 2-11-12781 of 14.03.2011, Harju County Court regulation in civil matter No 2-10-59781 of 01.12.2010, Harju County Court regulation in civil matter No 2-10-54576 of 16.11.2010, Harju County Court regulation in civil matter No 2-10-12008 of 01.05.2010, Harju County Court regulation in civil matter No 2-10-8377 of 23.04.2010, Harju County Court regulation in civil matter No 2-10-8038 of 23.04.2010, Harju County Court regulation in civil matter No 2-10-14879 of 15.04.2010, Harju County Court regulation in civil matter No 2-09-26618 of 10.07.2009.
[1381] Harju County Court regulation in civil matter No 2-09-67440 of 14.12.2009.

420. Pursuant to Art 1(2) of the European Order for Payment Procedure Regulation, the procedure according to the Regulation is optional. So, it is possible to submit a claim according to the rules of an ordinary proceeding of action in Estonian courts. If this is the case, the Estonian court shall take into consideration the provisions of the Brussels I Regulation while determining jurisdiction. Even if the creditor decides to file a European order for payment procedure, he has to follow the provisions of the Brussels I Regulation while determining jurisdiction (Art 6(1) of the European Order for Payment Procedure Regulation). Jurisdiction regulations are also specified in the Brussels I regulations in respect to Art 6(2) of the European Order for Payment Procedure Regulation. In case the claim by the applicant is about a contract that is concluded by a consumer and the defendant is consumer, the matter shall be solved only by a court of the country the defendant is domiciled regardless of the fact that the Brussels I Regulation makes it possible for consumers to agree upon jurisdiction of other countries.[1382]

421. Enforcement of orders for payment in a foreign county on the basis of the European Order for Payment Procedure Regulation seems to be implemented in an easier way, because there is no need for prior declaration of enforceability of the order or the so-called *exequatur* procedure. Compared to the scope of the Brussels I Regulation, the scope of the European Order for Payment Procedure Regulation is considerably narrower. European orders for payment procedure apply only to pecuniary claim (Art 1(1)a of the European Order for Payment Procedure Regulation), which is limitation as compared to provisions of the Brussels I Regulation.

422. The Brussels I regulation plays an important role in interpretation of the definitions in the European Order for Payment Procedure Regulation, because definitions of either of the regulations must be interpreted unitarily.

8.2.8.3. Relationship with the Regulation No 1348/2000 (Art 27)

423. Pursuant to Article 27 of the European Order for Payment Procedure Regulation, the Regulation would not affect the application of the so-called Service Regulation II. Although the text of the Regulation refers to Service Regulation I, reference to Service Regulation II should be appropriate.[1383]

424. The above-mentioned is to day that nothing in the European Order for Payment Procedure Regulation impedes a court makes use of provisions of the Service Regulation II for international servicing of court documents. There is no obligation on behalf of a court to service documents pursuant to the Regulation, although it should be recommended.

[1382] Art 17 of the Brussels I Regulation.
[1383] See for more details: Art 25(2) of the Documents Service Regulation.

425. Relationship of the European Order for Payment Procedure Regulation with Service Regulation I or Service Regulation II has not been surveyed in the framework of this Research on Estonian court judgements.

8. Recommendations for implementation of the European Order for Payment Procedure Regulation No 1896/2006

426. Some specific recommendations concerning implementation of the European Order for Payment Procedure Regulation were presented in sub-chapters of the Research. A general recommendation is to have additional training sessions in practical implementation of the European Order for Payment Procedure Regulation for Estonian lawyers. Referring to the answers given by lawyers, such training sessions should be both in Estonian and English. In addition to that, the Estonian version of the European Order for Payment Procedure Regulation should be improved, because the current Estonian version is rather clumsy and confusing.

427. A large part of judgements where the European Order for Payment Procedure Regulation was applied by Estonian courts had too much to do with determining of court fees, it is judgements with which applications for European order for payment procedure by claimants were disregarded up to the point of payment of the court fees. It has been four times when Estonian courts have received European orders for payment procedure from other member states. In case other the other matters based on the European order for payment procedures, many were terminated by the courts and transferred to ordinary civil proceedings because the debtor had submitted his statement of opposition. Referring to the above mentioned, there were no cases where the provisions of the European Order for Payment Procedure Regulation were interpreted very much, the judgements were mainly about arrangement issues (termination of order for payment, setting state fee).

428. In case of the European Order for Payment Procedure Regulation, interpretation issues were mainly about suspension of European order for payment procedure and determining limits of pecuniary claims. According to the Estonian Code of Civil Procedure, there is a maximum claim limit set for the procedures pursuant to domestic legislation, the European Order for Payment Procedure sets no pecuniary limits. Concerning suspension of a European order for payment procedure, the Estonian courts have not decided yet what exactly the circumstances are that would bring about suspension of proceedings in European order for payment procedure.

429. Similarly to the European Enforcement Order Regulation and the European Small Claim Procedure Regulation, its also necessary to offer special training to Estonian lawyers on implementation of the European Order for Payment Procedure Regulation. It can be seen from answers given to the questionnaire and the analysed case-law, where provisions of the Regulation are often left without interpretation and even unapplied. In comparison with application of the European Small Claims Procedure Regulation, the European Order for Payment Procedure Regulation is applied more in Estonian courts. So according to the answers to the questionnaire given by judges, filling in forms of this Regulation causes more problems than filling in those of the European Small Claims Procedure Regulation. So, even the judges are in need for more training on the European Order for Payment Procedure Regulation.

10. Opinion about the European Judicial Atlas in Civil Matters

430. According to the welcoming text of the website of the European Judicial Atlas[1384] it provides "with a user-friendly access to information relevant for judicial cooperation in civil matters". With the Atlas the users can "easily identify the competent courts or authorities to which one may apply for certain purposes. Furthermore, one can fill in on-line the forms that exist for some of these purposes, change the language of the form once one has filled it in and before printing it (so that the person receiving the form can read it in his own language), and transmit the forms electronically."

431. The translation of the European Judicial Atlas into Estonian is rather clumsy. For example in the sub-division of the European Enforcement Order it is explained about the Order that it: *"dispenses, under certain conditions, with all intermediary measures in the member state in which enforcement is sought that have been necessary so far for decisions serviced in another member state in the verifiable absence of a dispute over the nature or extent of a debt. Those conditions mainly concern the service of default documents in the case of judgments. Abolishing exequatur will enable creditors to obtain quick and efficient enforcement abroad without involving the courts in the member state where enforcement is applied for in time-consuming and costly formalities"*. It is complicated for a lawyer having enough experience and knowing the logic of the European Enforcement Order Regulation to guess the meaning, to say nothing about an ordinary user for whom the European Judicial Atlas should be meant. Furthermore, the terminology used is not corresponding to that of the official translation into Estonian of the European Enforcement Order Regulation (for example the used Estonian word for "exequatur" (eksekvaator) is unknown in the official Estonian version of the Regulation and in the national Code of Civil Procedure. Estonian legislation does not know the term of "freelance bailiffs" (vabakutselised kohtutäiturid) used in the sub-division of the European Small Claims Procedure Regulation of the European Judicial Atlas.

432. From time to time, the translation of the European Judicial Atlas into Estonian is really confusing. On the first page of the European Judicial Atlas in Estonian, there is "court competence" (kohtu pädevus) mentioned although "jurisdiction" (kohtualluvus) is most probably meant. For Estonian lawyers "court competence" should mean something like whether the matter should be solved in a general or an administrative court or even in an arbitral tribunal. In case of "jurisdiction" the issue is which country's court and which kind of national court should solve the civil or commercial matter. As in addition to lawyers the European Judicial Atlas is also meant to be used by ordinary people, such mistakes might remain unnoticed for an Estonian ordinary user.

[1384] See: European Judicial Atlas in Civil Matters. Accessible at: http://ec.europa.eu/justice_home/judicialatlascivil/html/index_et.htm (01.11.2012).

433. There is even wrong information (at least about Estonia) in the European Judicial Atlas. According to the Judicial Atlas for example, European Enforcement Order certificates are issued by Tallinn City Court (in fact they are issued by Harju County Court pursuant to paragraph 619^1 section 1 of the Code of Civil Procedure). Another example is information in the sub-section about the European Small Claims Procedure Regulation and judgement making in the county court level according to paragraph 405 section 1 of the Code of Civil Procedure. The correct source is paragraph 405^1 section 1 of the Code of Civil Procedure.

434. In addition to substantial mistakes, there are linguistic errors and wrong translation in the Estonian version of the European Judicial Atlas. For example, the European Enforcement Order Regulation has been translated into Estonian as "Euroopa täitmiskorraldus (Regulation 805/2004)" instead of "Euroopa täitekorralduse määrus" as it stands in the official translation of the Regulation.

435. Concerning user-friendliness of the Judicial Atlas, there are also problems with links to websites of third persons. For example, the European Judicial Atlas states that the list of Estonian bailiff offices can be accessed at: http://www.just.ee/4293. Clicking on this link open the general website of the Ministry of Justice of Estonia so that the user has to go on searching for information about bailiffs throughout the website of the Ministry.

436. An undoubted advantage of the European Judicial Atlas is the Annexes to the Regulations (under "Filling in Forms") that can be translated into different languages enabling an Estonian court to issue European Enforcement Order certificates in some other language except for Estonian.

437. In the judgements found in the KIS database, which is created for restricted using by Estonian courts, the European Judicial Atlas was mentioned only in one judgement (see: court ruling in civil matter No 2-09-44783 of 10.09.2009 by Harju County Court). According to answers to the Questionnaire, it can be stated that Estonian lawyers do not use the European Judicial Atlas very much at all while applying the European Small Claims Procedure Regulation, the European Enforcement Order Regulation and the European Order for Payment Procedure Regulation in practice. Still, some judges mentioned the need for additional training in using the Atlas as they admitted that they cannot always find necessary information in the Atlas just now.

438. Referring to the above mentioned, the European Judicial Atlas has not yet reached the goals amongst the Estonian practitioners that the creators of the Judicial Atlas had expected. It seems to be of necessity to have additional training sessions amongst Estonian lawyers in order to demonstrate the possibilities offered by the European Judicial Atlas. The first task would still be removing obvious errors from the Estonian version of the European Judicial Atlas and improve the clumsy and confusing expressions and wording.

11. Abbreviations used

Brussels I Regulation	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
Brussels II bis Regulation	Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000
European order for payment procedure	European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006 creating a European order for payment procedure
European enforcement order regulation	European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004 creating a European enforcement order for uncontested claims
European small claims procedure regulation	European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007 establishing a European small claims procedure
The Hague 2007 Protocol	The Hague 2007 Protocol on the law applicable to maintenance obligations
CACP	Code of administrative court procedure.
Judicial atlas	European judicial atlas in civil matters. Available at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/index_et.htm
KIS	Information system of Estonian judicial decisions (decisions from 2006). Available at the following address: https://www.riigiteataja.ee/kohtuteave/maa_ringkonna_kohtulahendid/main.html
KOLA	Database of court decisions (decisions until 2006). Available at the following address: https://www.riigiteataja.ee/kohtuteave/kohtulahendite_otsing/haldusasjad.html
Service regulation I	Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters
Service regulation II	European Parliament and Council Regulation (EC) No 1393/2007 of 13

	November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
Insolvency proceeding regulation	Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
1958 New York convention	Convention on the recognition and enforcement of foreign arbitral awards
Succession regulation	European Parliament and Council Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession
IPL	International private law
Rome I regulation	European Parliament and Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I)
Rome II regulation	European Parliament and Council Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
CCP	Code of civil procedure
GPCCA	General part of the civil code act
LOA Law of obligations act	
Maintenance obligations regulation	Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

12. Sources used

12.1. Legal literature used

1. Alekind, A. Enforcement proceeding law. Tallinn, Juura 2011.
2. Estonian Association of Judges. Constitutional nuances of recognition and enforcement of court decisions in practice of different countries. Collection of reports. Estonian-Switzerland cooperation program 2010.
3. Fawcett J, Carruthers J and North P, Cheshire, North & Fawcett: Private International Law 14th edition, OUP 2008
4. Fiorini, A. Facilitating cross-border debt-recovery: the European payment order and small claims regulations. *International Commercial Law Quarterly, 57(2), 2008*, pp 449-465.
5. Kaur, M. Certification of European enforcement order: why and when? *Juridica 2012, no 2*, pp 122-126.
6. Klimberg, E. Efficiency of order for payment procedure from creditor's perspective. Master´s thesis, supervisors Anna Markina and Kai Härmand. The Faculty of Law of the University of Tartu, 2012.
7. Kramer, X, E. The European Small Claims Procedure: Striking the Balance between Simplicity and Fairness in European Litigation. *Zeitschrift für europäisches Privatrecht No 2 2008*, pp 355-373.
8. Kropholler H von, Europäisches Zivilprozessrecht 8 Aufl, Heidelberg 2005
9. Lõhmus, G. Recognition and enforcement of judgements in default of appearance rendered by the courts of Estonia - article 34(2) of the Brussels I Regulation and the Lugano II Convention. Master´s thesis, University of Tartu 2012.
10. Lõhmus, G. Recognition and enforcement of judgements in default of appearance rendered by the courts of member states of the Brussels I Regulation and the Lugano II Convention *Juridica 2012, no 6*, pp 450-461.
11. Magnus U and Mankowski P (ed), Brussels I Regulation. Sellier. European Law Publishers 2007
12. Magnus U and Mankowski P. (eds) Brussels I Regulation 2nd Revised edition. Sellier European Law Publishers 2012
13. Mulla, M. Exequatur procedure and its possible abolition under Brussels I Regulation. Master´s thesis, supervisor M. Torga. The Faculty of Law of the University of Tartu, 2012.
14. Nurmela, I. et al. Private International Law. Tallinn, Juura 2008.

15. Poola, M. Recognition and enforcement in Europe of enforcement instruments on uncontested claims Master´s thesis, supervisor K.Sein. The Faculty of Law of the University of Tartu, 2007.
16. Pärsimägi, A. Action proceeding. Action and submission of applications. Tallinn, Juura 2011.
17. Pärsimägi, A. Variable civil proceeding: procedural acts and deadlines, objection to court activities, securing an action. *Juridica 2009, no 7*, pp 439-454.
18. Rauscher T (Hrs), Europäisches Zivilprozeβrecht Kommentar 2. Auf. Sellier.European Law Publishers 2006
19. Storskrubb E, Civil Procedure and EU Law A Policy Area Uncovered. Oxford University Press 2008, p 208
20. Torga, M. Residence in Civil code act : the meaning in international civil procedure, Juridica 2010, no 7, pp 473-480
21. Torga, M. Characterisation in Estonian Private International Law – a Proper Tool for Achieving Justice between the Parties? *Juridica International XVIII 2011*, p 84, -93.
22. Torga, M. Residence in Civil code act : the meaning in international civil procedure. *Juridica 2010, no 7*, pp 473-480.
23. Varul, P. et al. General part of the Civil code act. Commented edition. Tallinn 2010
24. Vinni, M. Judgement as an object of recognition in civil and commercial matters. Master´s thesis, University of Tartu 2010.
25. Zilinsky, M. Abolishing Exequatur in the European Union: the European Enforcement Order. *Netherlands International Law Review LIII 2006*, pp 471-492.

12.2 Legislation used

26. 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters. OJ L 299, 31/12/1972, pp 32-42.
27. European Parliament and Council Regulation (EU) No 650/2012 of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European certificate of succession. OJ L 201, 27/7/2012, pp 107-134
28. European Parliament and Council Regulation (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 OJ L 324, 10/12/2007, pp 79-120.
29. European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006, creating European order for payment procedure. Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032
30. European Parliament and Council Regulation (EC) No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I). OJ L 177, 04/07/2008, pp 0006-0016

31. European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims. Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039
32. European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims (consolidated version). 2004R0805 – OJ – 04.12.2008 – 002.001 – 1
33. European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007, establishing a European small claims procedure. Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022
34. European Parliament and Council Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to contractual obligations. OJ L 199, 31/07/2007, pp 0040-0049
35. Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 149, 12/6/2009, pp 80-80.
36. Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 299, 16/11/2005, pp 0062-0067
37. Code of administrative court procedure. RT I, 23.02.2011, 3
38. Law of criminal procedure. RT I 2003, 27, 166
39. Regulation of the Council (EC) No 1346/2000 from 29 May 2000, regarding the insolvency proceeding. OJ L 160, 30/06/2000, pp 0001-0018
40. Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters. OJ L 160, 30/06/2000, pp 37-52
41. Council regulation (EC) No 2201/2003, of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. OJ L 338, 23/12/2003, pp 0001-0029.
42. Council regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations. OJ L 007, 10/01/2009, pp 0001-0079.
43. Council regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 012, 16/01/2001, pp 0001-0023.
44. Population register act. RT I 2000, 50, 317
45. International private law. RT I 2002, 35, 217
46. Health insurance act, RT I 2002, 62, 377
47. Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. 2004R0805 – EC – 04.12.2008 – 002.001 – 1

48. State Fees Act. RT I 2010, 21, 107
49. State liability act. RT I 2001, 47, 260
50. War-time national defence act. RT I 1994, 69, 1194
51. Code of enforcement order procedure. RT I 2005, 27, 198
52. Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. OJ L 147, 10/06/2009, pp 0005-0043
53. Code of civil procedure. RT I 1998, 43, 666
54. Code of civil procedure. RT I 2005, 26, 197
55. General part of the Civil code act. RT I 2002, 35, 216
56. Convention on the recognition and enforcement of foreign arbitral awards. RT II 1993, 21, 51
57. Sworn translators act. RT I 2001, 16, 70
58. Verordnung (EG) nr. 805/2004 des Europäischen Parlaments und des Rates vom 21. April 2004 zur Einführung eines europäischen Vollstreckungstitels für unbestrittene Forderungen. 2004R0805 – DE – 04.12.2008 – 002.001 – 1
59. Law of obligations act. RT I 2001, 81, 487
60. Commercial code. RT I 1995, 26, 355

12.3. Case-law used

12.3.1. Decisions of Estonian courts

61. Tartu County Court regulation of 22.10.2012 of civil matter no 2-07-60972
62. Tartu County Court regulation of 21.09.2012 of civil matter no 2-12-5758
63. Harju County Court regulation of 23.08.2012 of civil matter no 2-12-23834
64. Tartu County Court regulation of 05.07.2012 of civil matter no 2-12-16357
65. Harju County Court regulation of 29.06.2012 of civil matter no 2-11-12243
66. Tartu County Court regulation of 25.06.2012 of civil matter no 2-07-10608
67. Tartu County Court regulation of 22.05.2012 of civil matter no 2-12-16357
68. Harju County Court regulation of 14.05.2012 of civil matter no 2-11-15139
69. Tartu County Court regulation of 08.05.2012 of civil matter no 2-10-67384
70. Harju County Court regulation of 04.05.2012 of civil matter no 2-11-45777
71. Harju County Court regulation of 02.05.2012 of civil matter no 2-09-57819
72. Harju County Court regulation of 23.04.2012 of civil matter no 2-10-310
73. Tartu County Court judgement of 13.04.2012 of civil matter no 2-12-5758
74. Harju County Court regulation of 12.04.2012 of civil matter no 2-11-47220
75. Tartu County Court regulation of 11.04.2012 of civil matter no 2-03-972
76. Harju County Court regulation of 03.04.2012 of civil matter no 2-11-45776
77. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-45777
78. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-47220

79. Harju County Court regulation of 01.03.2012 of civil matter no 2-11-45776
80. Harju County Court regulation of 28.02.2012 of civil matter no 2-12-8067
81. Harju County Court regulation of 21.02.2012 of civil matter no 2-11-63194
82. Harju County Court regulation of 17.02.2012 of civil matter no 2-11-45777
83. Harju County Court regulation of 17.02.2012 of civil matter no 2-11-45776
84. Pärnu County Court regulation of 14.02.2012 of civil matter no 2-11-63497
85. Harju County Court regulation of 14.02.2012 of civil matter no 2-11-45779
86. Harju County Court regulation of 14.02.2012 of civil matter no 2-11-47220
87. Harju County Court regulation of 18.01.2012 of civil matter no 2-10-30503
88. Harju County Court regulation of 16.01.2012 of civil matter no 2-11-47202
89. Harju County Court judgement of 29.12.2011 of civil matter no 2-11-40908
90. Tartu County Court regulation of 27.12.2011 of civil matter no 2-08-73391
91. Harju County Court regulation of 27.12.2011 of civil matter no 2-11-47202
92. Tartu County Court regulation of 08.12.2011 of civil matter no 2-08-11712
93. Special Panel of the Supreme Court regulation no 3-2-4-3-11 of 06.12.2011
94. Harju County Court regulation of 02.12.2011 of civil matter no 2-11-46112
95. Tartu County Court regulation of 28.11.2011 of civil matter no 2-08-19249
96. Harju County Court regulation of 22.11.2011 of civil matter no 2-11-29527
97. Harju County Court regulation of 14.11.2011 of civil matter no 2-11-25347
98. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-47220
99. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-47202
100. Harju County Court regulation of 10.11.2011 of civil matter no 2-11-45779
101. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-46112
102. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-45776
103. Harju County Court regulation of 09.11.2011 of civil matter no 2-11-45777
104. Harju County Court regulation of 02.11.2011 of civil matter no 2-11-46112
105. Harju County Court regulation of 01.11.2011 of civil matter no 2-11-2262
106. Harju County Court regulation of 26.10.2011 of civil matter no 2-11-12565
107. Harju County Court regulation of 19.10.2011 of civil matter no 2-11-10763
108. Harju County Court regulation of 10.10.2011 of civil matter no 2-11-17890
109. Harju County Court regulation of 30.09.2011 of civil matter no 2-11-25347
110. Harju County Court regulation of 29.09.2011 of civil matter no 2-11-42862
111. Tartu County Court regulation of 29.09.2011 of civil matter no 2-06-16176
112. Harju County Court regulation of 23.09.2011 of civil matter no 2-11-25347
113. Harju County Court regulation of 21.09.2011 of civil matter no 2-10-64391
114. Harju County Court regulation of 20.09.2011 of civil matter no 2-10-23703
115. Harju County Court regulation of 07.09.2011 of civil matter no 2-11-15139
116. Harju County Court regulation of 05.09.2011 of civil matter no 2-11-17890
117. Harju County Court regulation of 01.09.2011 of civil matter no 2-11-26046
118. Harju County Court regulation of 01.08.2011 of civil matter no 2-11-17890

119. Harju County Court regulation of 28.07.2011 of civil matter no 2-11-26046
120. Harju County Court regulation of 28.07.2011 of civil matter no 2-11-25347
121. Tartu County Court regulation of 28.07.2011 of civil matter no 2-09-25029
122. Tartu County Court regulation of 26.07.2011 of civil matter no 2-09-25029
123. Tartu County Court regulation of 22.07.2011 of civil matter no 2-08-21254
124. Harju County Court regulation of 30.06.2011 of civil matter no 2-11-29527
125. Pärnu County Court regulation of 29.06.2011 of civil matter no 2-10-26034
126. Harju County Court regulation of 28.06.2011 of civil matter no 2-10-15766
127. Tartu County Court regulation of 03.06.2011 of civil matter no 2-10-52785
128. Harju County Court regulation of 02.06.2011 of civil matter no 2-11-25653
129. Harju County Court regulation of 19.05.2011 of civil matter no 2-11-15139
130. Harju County Court regulation of 05.05.2011 of civil matter no 2-11-17890
131. Civil Chamber of the Supreme Court regulation no 3-2-1-26-11 of 28.04.2011
132. Pärnu County Court regulation of 19.04.2011 of civil matter no 2-11-12347
133. Harju County Court regulation of 18.04.2011 of civil matter no 2-10-30503
134. Harju County Court regulation of 08.04.2011 of civil matter no 2-11-15139
135. Tartu County Court regulation of 05.04.2011 of civil matter no 2-06-15481
136. Tartu County Court regulation of 05.04.2011 of civil matter no 2-08-1662
137. Tartu County Court regulation of 01.04.2011 of civil matter no 2-11-12970
138. Harju County Court regulation of 30.03.2011 of civil matter no 2-11-2262
139. Tartu County Court regulation of 30.03.2011 of civil matter no 2-07-50322
140. Tartu County Court regulation of 30.03.2011 of civil matter no 2-07-46247
141. Tartu County Court regulation of 30.03.2011 of civil matter no 2-08-10767
142. Harju County Court regulation of 28.03.2011 of civil matter no 2-11-12781
143. Tartu County Court regulation of 25.03.2011 of civil matter no 2-08-58760
144. Harju County Court regulation of 14.03.2011 of civil matter no 2-11-2262
145. Tartu County Court regulation of 10.02.2011 of civil matter no 2-10-58585
146. Tartu County Court regulation of 10.02.2011 of civil matter no 2-10-48347
147. Harju County Court regulation of 24.01.2011 of civil matter no 2-10-61061
148. Harju County Court regulation of 13.01.2011 of civil matter no 2-10-61061
149. Harju County Court regulation of 13.12.2010 of civil matter no 2-10-61061
150. Harju County Court regulation of 07.12.2010 of civil matter no 2-10-60829
151. Civil Chamber of the Supreme Court regulation no 3-2-1-117-10 of 01.12.2010
152. Harju County Court regulation of 01.12.2010 of civil matter no 2-10-59781
153. Harju County Court regulation of 16.11.2010 of civil matter no 2-10-54576
154. Tartu County Court regulation of 12.11.2010 of civil matter no 2-08-82230
155. Harju County Court regulation of 11.11.2010 of civil matter no 2-10-52509
156. Harju County Court regulation of 09.11.2010 of civil matter no 2-10-30503
157. Harju County Court regulation of 02.11.2010 of civil matter no 2-09-27694
158. Harju County Court regulation of 05.10.2010 of civil matter no 2-10-30503

159. Tartu County Court regulation of 28.09.2010 of civil matter no 2-08-9576
160. Harju County Court regulation of 07.09.2010 of civil matter no 2-10-30503
161. Harju County Court regulation of 03.09.2010 of civil matter no 2-10-30504
162. Harju County Court regulation of 02.09.2010 of civil matter no 2-10-15766
163. Harju County Court regulation of 30.08.2010 of civil matter no 2-10-37892
164. Harju County Court regulation of 12.08.2010 of civil matter no 2-10-31662
165. Harju County Court regulation of 05.08.2010 of civil matter no 2-10-30503
166. Harju County Court regulation of 02.07.2010 of civil matter no 2-10-31435
167. Harju County Court regulation of 30.06.2010 of civil matter no 2-10-30504
168. Harju County Court regulation of 30.06.2010 of civil matter no 2-10-17052
169. Supreme Court en banc regulation no 3-2-4-1-10 of 15.06.2010
170. Tartu County Court regulation of 09.06.2010 of civil matter no 2-08-63701
171. Harju County Court regulation of 20.05.2010 of civil matter no 2-09-61610
172. Tallinn District Court regulation of 18.05.2010 of civil matter no 2-09-25113
173. Harju County Court regulation of 17.05.2010 of civil matter no 2-10-19237
174. Harju County Court regulation of 05.05.2010 of civil matter no 2-10-19811
175. Harju County Court regulation of 05.05.2010 of civil matter no 2-10-19809
176. Harju County Court regulation of 27.04.2010 of civil matter no 2-09-66261
177. Harju County Court regulation of 23.04.2010 of civil matter no 2-10-8038
178. Harju County Court regulation of 23.04.2010 of civil matter no 2-10-8377
179. Harju County Court regulation of 15.04.2010 of civil matter no 2-10-14879
180. Harju County Court judgement of 13.04.2010 of civil matter no 2-9-30971
181. Harju County Court regulation of 05.04.2010 of civil matter no 2-10-66261
182. Harju County Court regulation of 01.04.2010 of civil matter no 2-10-12008
183. Harju County Court regulation of 25.03.2010 of civil matter no 2-05-10106
184. Harju County Court regulation of 23.03.2010 of civil matter no 2-10-7996
185. Harju County Court regulation of 18.02.2010 of civil matter no 2-10-7996
186. Harju County Court regulation of 29.01.2010 of civil matter no 2-09-66261
187. Harju County Court regulation of 29.01.2010 of civil matter no 2-09-25113
188. Harju County Court regulation of 22.01.2010 of civil matter no 2-09-67440
189. Tartu County Court regulation of 12.01.2010 of civil matter no 2-09-45230
190. Harju County Court regulation of 07.01.2010 of civil matter no 2-10-310
191. Harju County Court regulation of 06.01.2010 of civil matter no 2-09-67440
192. Civil Chamber of the Supreme Court regulation no 3-2-1-140-09 of 06.01.2010
193. Harju County Court regulation of 23.12.2009 of civil matter no 2-09-69962
194. Tartu County Court regulation of 16.12.2009 of civil matter no 2-09-45230
195. Harju County Court regulation of 02.12.2009 of civil matter no 2-09-61911
196. Harju County Court regulation of 01.12.2009 of civil matter no 2-09-12183
197. Harju County Court regulation of 17.11.2009 of civil matter no 2-09-59669
198. Harju County Court regulation of 06.11.2009 of civil matter no 2-09-58039

199. Special Panel of the Supreme Court regulation no 3-2-1-100-08 of 27.10.2009
200. Tallinn District Court regulation of 12.10.2009 of civil matter no 2-09-12183
201. Harju County Court regulation of 08.10.2009 of civil matter no 2-09-45006
202. Harju County Court regulation of 14.09.2009 of civil matter no 2-09-67440
203. Harju County Court regulation of 10.09.2009 of civil matter no 2-09-44783
204. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33374
205. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33385
206. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33392
207. Pärnu County Court regulation of 28.07.2009 of civil matter no 2-09-33394
208. Harju County Court regulation of 22.07.2009 of civil matter no 2-09-12183
209. Harju County Court regulation of 10.07.2009 of civil matter no 2-09-26618
210. Harju County Court regulation of 08.07.2009 of civil matter no 2-09-12183
211. Pärnu County Court regulation of 31.03.2009 of civil matter no 2-09-12401
212. Pärnu County Court regulation of 10.03.2009 of civil matter no 2-08-61327
213. Civil Chamber of the Supreme Court regulation no 3-2-1-130-08 of 09.12.2008
214. Civil Chamber of the Supreme Court regulation no 3-2-1-55-08 of 20.06.2008
215. Civil Chamber of the Supreme Court regulation no 3-2-1-42-08 of 02.06.2008
216. Civil Chamber of the Supreme Court regulation no 3-2-1-63-07 of 05.06.2007
217. Harju County Court regulation of 16.05.2007 of civil matter no 2-05-16150
218. Civil Chamber of the Supreme Court regulation no 3-2-1-133-06 of 17.01.2007
219. Special Panel of the Supreme Court regulation no 3-2-4-1-05 of 20.04.2005
220. Special Panel of the Supreme Court regulation no 3-2-4-2-04 of 18.10.2004
221. Special Panel of the Supreme Court regulation no 3-2-4-1-04 of 01.07.2004
222. Civil Chamber of the Supreme Court regulation no 3-2-1-49-04 of 27.04.2004
223. Civil Chamber of the Supreme Court regulation no 3-2-1-149-03 of 12.01.2004
224. Civil Chamber of the Supreme Court regulation no 3-2-1-105-03 of 11.11.2003
225. Civil Chamber of the Supreme Court regulation no 3-2-1-60-03 of 26.05.2003
226. Civil Chamber of the Supreme Court regulation no 3-2-1-17-03 of 10.03.2003
227. Civil Chamber of the Supreme Court regulation no 3-2-1-71-97 of 29.05.1997

12.3.2. Decisions of the European Court of Justice

228. *Anastasios Kalfelis v Bankhaus Schröder Münchmeyer Hengst& Cie*, Case 189/97 (1988) ECR5565
229. *Jakob Handte & Co. GmbH v Traitements Mécano-chimiques des surfaces SA*, Case C-26/91 (1992) ECR I-3967
230. *Francesco Benincasa v Dentalkit SrL*, Case C-269/95 (1997) ECR I-3767
231. *Lechouritou v Greece*, Case C-292/05 (2007) ECR I-1519
232. *Van Uden Maritime BV, trading as Van Uden Africa Lince v Kommanditgesellschaft in Firma Deco-Line*, Case C-391/95 (1998) ECR I-7091

233. *Allianz Spa, Generali Assicurazioni Generali Spa v West Tankers Inc, The Front Comor*, Case C-185/07 (2009) ECR I 663
234. *Marc Rich & Co AG v Società Italiana Impanti PA*, Case C-190/89 (1991) ECR I-3855
235. *LTU Lufttransportunternehmen GmbH & Co v Eurocontrol*, Case 29/76 (1976) ECR 1541
236. *Netherlands State v Rüffer*, Case 814/79 (1980) ECR 3807
237. *Préservatrice foncière TIARD SA v Staat der Nederlanden*, Case C-266/01 (2003) ECR I-4867
238. *Jacques de Cavel v Louise de Cavel*, Case 143/78 (1979) ECR 1055
239. *C.H.W. v H.J.H.*, Case 25/81 (1982) ECR 1189
240. *Louise de Cavel v Jacques de Cavel*, Case 120/79 (1989) ECR 731
241. *Antonius van den Boogaard v Paula Laumen*, Case C-220/95 (1997) ECR I-1147
242. *Henri Gourdain v Franz Nadler*, Case 133/78 (1979) ECR 733
243. *Eric Coursier v Fortis Bank and Martine Coursier,née Bellami*, Case C-267/97 (1999) ECR I-2543
244. *SCT Industri AB i likvidation v Alpenblume AB*, Case C-111/08 (2009) ECR I-5655
245. *German Graphics Graphische Maschinen GmbH v Alice van de Schee*, Case C-292/08 (2009) I-8421
246. *Seagon v Deko Marty Belgium NV*, Case C-339/07 (2009) ECR I-767; *F-Tex SIA v Lietuvos-Anglijos UAB "Jadecloud-Vilma"*, Case C-213/10, available at: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-213/10 (01.11.2012)
247. *Gemeente Steenberg v Luc Baten*, Case C-271/00 (2002) ECR I-10489
248. *Bernard Denilauler v SNC Couchet Frères*, Case 125/79 (1980) ECR 1533
249. *Solo Kleinmotoren GmbH v Emilio Boch*, Case C-414/93 (1994) ECR I-2237
250. *Unibank A/S vFlemming G. Christensen*, Case C-260/97 (1999) ECR I-3715

12.4. Other sources used

251. European Consumer Centres Network, ECC-Net European Small Claims Procedure Report September 2012. http://ec.europa.eu/consumers/ecc/docs/small_claims_210992012_en.pdf (01.11.2012)
252. A practical guide on application of the European enforcement order regulation. European judicial network in civil and commercial matters. Available at: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_et.pdf (01.11.2012)
253. Guidance in Estonian on commencement of the European small claims procedure is available at http://www.consumer.ee/euroopa-vaiksemad-kohtuvaidlused/ and https://e-justice.europa.eu/content_small_claims-42-et.do (01.11.2012).

254. Guidance in Estonian on commencement of the European order for payment procedure. Available at the following address: https://e-justice.europa.eu/content_european_payment_order-41-EU-et.do (01.11.2012)
255. Corrigendum to Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. OJ L 143, 40/4/2004, 0064-0064
256. Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. COM(2011)126 final 2011/0059(CNS)
257. Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) Common Guidelines. The European Parliament, The Council. 2010/0383(COD). http://register.consilium.europa.eu/pdf/en/12/pe00/pe00056.en12.pdf (01.12.2012).

13. Appendixes

13.1. Appendix 1 (Questionnaire for judges)

Questionnaire for judges bounded with the Research:
"Practical Application of EU Regulations to EU Level Procedure in Civil Cases: the Experience in Baltic States"
(No. TM 2012/04/EK)

I. Introduction

1. Have you ever been exposed to the following EU regulations during the course of your work:

1.1. *European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims.* Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: **European enforcement regulation**)?
Yes ___
No ___

1.2. *European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007, establishing a European small claims procedure.* Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: **European small claims procedure regulation**)?
Yes ___
No ___

1.3. *European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006, creating European order for payment procedure.* Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032 (further: **European order for payment procedure regulation**)?
Yes ___
No ___

2. If you answered "Yes" to any previous question- have you ever had issues with determining the scope of application of these regulations?
Yes ___
No ___

2.2. If you have encountered any issues, then write them here please:
_____

II. Questions about the European enforcement order regulation No. 805/2004
[Please, answer the questions in this Chapter only if you have implemented the European enforcement order regulation No. 805/2004]

3. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?
Yes ___
No ___

3.1. If you answered "No"- In Your opinion, should the Estonian translation of the European enforcement order regulation be improved?

Yes ___

No ___

4. Have you had any difficulties defining whether a claim is "uncontested" within the meaning of Art 3(1) of the European enforcement order regulation No 805/2004?

Yes ___
No ___

4.1. If you answered "Yes"- what kind of difficulties? _____

5. When you were adjusting the European enforcement order, did you previously verify the application of minimum criteria in judicial proceedings where corresponding decision was carried out (Art 6(1)c and Art 12-17))?

Yes ___
No ___

5.1. If you answered "Yes"- have you encountered any difficulties in interpretation of articles related to minimum criteria regulations? (Art 12-17)?

Yes ___
No ___

5.1.1. If you answered "Yes"- what kind of difficulties?
_____

5.2. Have you ever had to make adjustments to judicial decision in order for it to conform to minimum criteria, before confirming it as a European enforcement order (Art 18)?
Yes ___
No ___

6. Do you think it is necessary to harmonise procedural prerequisites of minimum criteria (Art 12-19) with rules on service of documents of the Code of civil procedure?

Yes ___
No ___
Don't know ___

7. Have you ever had to deny an application of the debtor to comply decision as European enforcement order (Art 21)?

Yes ___
No ___

7.1. If you answered "Yes"- of what member state?
_____.

7.2. Do you find Art 21 clear enough to be successfully implemented in practice?

Yes ___
No ___

8. Have you ever adjusted or withdrew the European enforcement order confirmation (Art 10)?

Yes ___
No ___
Can't remember _____

8.1. If you answered “Yes”- have you encountered any issues with implementation or with adjustment of the European enforcement order regulation?

Yes ___
No ___
Can't remember _____
8.1.1. If you answered “Yes”- what kind of issues?
_____.

9. Have you encountered any difficulties with filling out the form of Annex I “European enforcement order certificate- judgment” on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex I ___
9.1. If you answered “Yes”- what kind of difficulties?

10. Have you encountered any difficulties with filling out the form of Annex II “European enforcement order certificate- court settlement” on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex II ___
10.1. If you answered “Yes”- what kind of difficulties?

11 Have you encountered any difficulties with filling out the form of Annex III “European enforcement order certificate- authentic instrument” on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex III ___
11.1. If you answered “Yes”- what kind of difficulties?

12. Have you encountered any difficulties with filling out the form of Annex IV “Certificate of lack or limitation of enforceability” on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex V ___
12.1. If you answered “Yes”- what kind of difficulties?

13. Have you encountered any difficulties with filling out the form of Annex V “European enforcement order replacement certificate following a challenge” on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex V ___
13.1. If you answered “Yes”- what kind of difficulties?

14. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?

Yes ___

No ___

14.1. Why? _____.

15. Do you have any additional suggestions on how the European enforcement order regulation No 805/2004 and/or the Code of civil procedure regulations should be altered or supplemented?

_____.

III. Questions about the European order for payment procedure regulation No. 1896/2006

[Please, answer the questions in this Chapter only if you have implemented the European order for payment procedure regulation No. 1896/2006].

16. Should form A of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?

Yes ___
No ___

16.1. If you answered "No"- do you think that Estonian translation of the European order for payment procedure regulation should be improved?

Yes ___
No ___

17. Have you refused to issue the European order for payment procedure?

Yes ___
No ___

18. Have you had any difficulties defining what "cross-border case" means (European order for payment procedure regulation No. 1896/2006 Art 3)?

Yes ___
No ___

18.1. If you answered "Yes"- what kind of difficulties?

19. Have you had any difficulties defining what "uncontested pecuniary claim" means (European order for payment procedure regulation No. 1896/2006 Art 1(1)a)?

Yes ___
No ___

19.1. If you answered "Yes"- what kind of difficulties?

20. Have you had any difficulties defining jurisdiction (European order for payment procedure regulation No. 1896/2006 Art 6)?

Yes ___
No ___

20.1. If you answered "Yes"- what kind of difficulties?

21. Do you think that the transfer to ordinary civil proceeding (European order for payment procedure No. 1896/2006 Art 17(1)) should be easier on the basis of the Code of civil procedure (faster, less complicated etc.)?

Yes ___
No ___
Don't know _____

22. Would European order for payment procedure become simpler if the European order for payment procedure regulation No. 1896/2006 contained an autonomous law, which would require the petitioner to pay legal costs (state fees etc.), if it is required by national law? Should the following information be disclosed on the European level: 1) the principles of calculating legal costs (state fees, other costs) of every member state and 2) bank account numbers, where to pay the state fee?

Yes ___
No ___
Don't know _____

23. Should form A of the European order for payment procedure regulation No. 1896/2006 contain a compartment where the petitioner could apply for a refund of legal costs (state fee) in case court refuses to accept an application of the European order for payment procedure, returns the application or terminates the proceeding?

Yes ___
No ___
Don't know _____

24. When you rejected the application to issue an European order for payment procedure, did you also fill out standard form D set out in Annex IV of the European order for payment procedure regulation No. 1896/2006 and sent it to the applicant (Art 11(1)d)?

Yes ___
No ___
Don't remember _____

25. Have you had any difficulties filling out form B ("Application to petitioner to supplement or correct European order for payment procedure") set out in Annex II?

Yes ___
No ___
Have never filled it ____

26. Have you had any difficulties filling out form C ("Proposal to petitioner to amend European order for payment procedure application") set out in Annex III of the European order for payment procedure regulation No. 1896/2006?

Yes ___
No ___
Have never filled it ____

27. Have you had any difficulties filling out form D ("Decision to reject European order for payment procedure application") set out in Annex IV of the European order for payment procedure regulation No. 1896/2006?

Yes ___
No ___
Have never filled it ____

28. Have you had any difficulties filling out form E ("European order for payment") set out in Annex V of the European order for payment procedure regulation No. 1896/2006?
Yes ___
No ___
Have never filled it ____

29. Have you had any difficulties filling out form G ("Certification of enforceability") set out in Annex VII of the European order for payment procedure regulation No. 1896/2006?

Yes ___
No ___
Have never filled it ____

30. Are provisions of the Estonian Code of civil procedure related to the European order for payment procedure regulation No. 1896/2006 satisfactory in you opinion?

Yes ___
No ___
30.1. If you answered "No" - why not?_____

31. Do you think that the European order for payment procedure regulation No. 1896/2006 functions well in Estonian practice of resolving cross-border disputes?

Yes ___
No ___
Don't know _____

32. Do you have any additional proposals for improvement of the European order for payment procedure regulation No. 1896/2006 or the part concerning payment order of the Estonian civil proceeding?

_____

IV. Questions about the European small claims procedure regulation No. 861/2007
[Please, answer the questions in this Chapter only if you have implemented the European small claims procedure regulation No. 861/2007]

33. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?
Yes ___
No ___

33.1. If you answered "No"- do you think that Estonian translation of the European small claims procedure regulation should be improved?

Yes ___
No ___

34. How have you been calculating deadlines referred in the European small claims procedure regulation No 861/2007:

I haven't calculated the deadlines ___.
According to the Estonian Code of civil procedure ___.
According to the European Council regulation No. 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits _____.

35. If the defendant is domiciled in another member state would you, adjudicating on a basis of the European small claims procedure regulation No. 861/2007 determine jurisdiction on a basis of Brussels I regulation No. 44/2001 (of 22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?

Yes ___
No ___
Don't know _____

36. Have you encountered any difficulties filling out form B ("Court's requirement to supplement and/or amend the proof of claim") set out in Annex II of the European small claims procedure regulation No. 861/2007?

Yes ___
No ___
Have never filled it ____
36.1. If you answered "Yes"- what kind of difficulties?

37. Have you encountered any difficulties filling out form D ("Confirmation of the judgment in the European small claims procedure") set out in Annex IV of the European small claims procedure regulation No. 861/2007?

Yes ___
No ___
Have never filled it ____
37.1. If you answered "Yes"- what kind of difficulties?

38. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

Yes ___
No ___
Don't know ___

39. You adjudicated European small claims procedure mostly in:

Written procedure ___
Oral procedure ___

40. Are provision of the Estonian Code of civil procedure related to the European small claims procedure regulation No. 861/2007 satisfactory in you opinion?
Yes ___
No ___
40.1. If you answered "No" - why?_____

41. Do you think that the European small claims procedure regulation No. 861/2007 functions well in resolving cross-border disputes in Estonia?

Yes ___
No ___
Hard to say ___

42. Do you have any additional suggestions on how provisions related to the European small claims procedure regulation No 861/2007 or to the Estonian Code of civil procedure regulation should be altered or supplemented?

V. Summary questions

43. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?

Yes ___
No ___

43.1. If you answered "Yes" – were you satisfied with the quality of the training?

Yes ___
No ___

43.2. Would you participate, if the training was carried out in a foreign language?

Yes ___
No ___

43.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

44. Do you use the European Judicial Atlas in civil matters in your work?

Yes ___
No ___

44.1. If you answered "Yes" – did you encounter any difficulties while using the Atlas?
Yes ___
No ___

44.1.1. If you answered "Yes"- what kind of difficulties? _____

44.2. Do you think it is necessary to conduct trainings on the use of the Atlas?

Yes ___
No ___

46. In what court and courthouse do you work?

47. For how many years have you worked as a judge?

48. What type of judge are you?

49. Does your court specialize in adjudication of cross-border civil matters?

Yes ___
No ___

50. If you have any additional commentaries concerning implementation of the aforementioned EU regulations, then write them here, please.

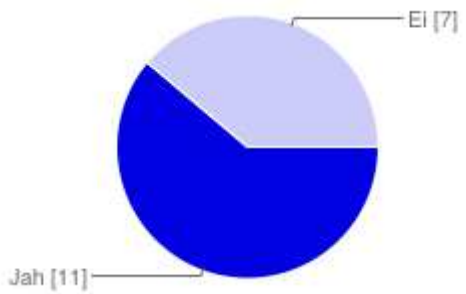
Thank you for answering!

13.2. Appendix 2 (Answers of judges)

(Answers to the questions, that judges answered)

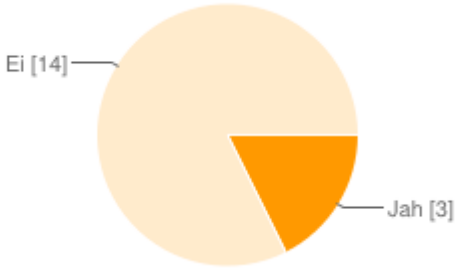
I. Introduction

1.1. Have you ever been exposed to the following EU regulation during the course of your work: European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims. Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: European enforcement order regulation)?



Yes	11	61%
No	7	39%

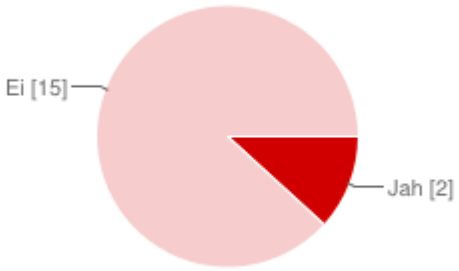
1.2. Have you ever been exposed to the following EU regulation during the course of your work: European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007, establishing a European small claims procedure. Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: European small claims procedure regulation)?



Yes	3	17%
No	14	78%

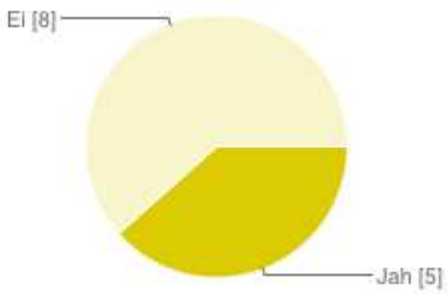
1.3. Have you ever been exposed to the following EU regulation during the course of your work: European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006, creating European order for payment procedure. Official Journal of the

European Union L 399, 30/12/2006, pp 0001-0032 (further: European order for payment procedure regulation)?



Yes	2	11%
No	15	83%

2.1. If you answered "Yes" to any previous question- have you ever had issues with determining the scope of application of these regulations?



Yes	5	28%
No	8	44%

2.2. If you have encountered any issues, then write them here please:

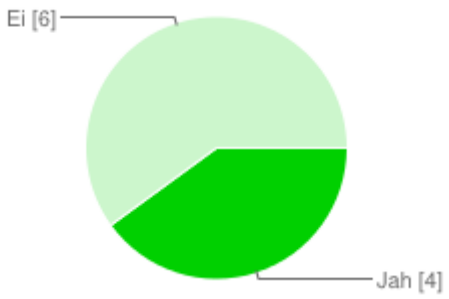
- Respondent: As things tend to pass out of mind, the specifics must be constantly revised.
- Respondent: Applicability of 805/2004 to notary's enforcement instrument.
- Respondent: So far, the biggest problem with issuing the European enforcement order certificate on payment order prepared in expedited procedure of the payment order has been, that formulation of Annex I of the regulation no.805 does not allow to pass on the exact text of the payment order regulation, particularly the part concerning collateral claim. We have issued to applicants the enforcement order certificates with our own different interpretations (so far, all certificates must have gone under execution). The total amount of a collateral claim is probably not reflected in this certificate. A claimant must juxtapose a court ruling and the enforcement order certificate in order to understand the collectable sum.
- Respondent: Problems in issuing the European enforcement order certificate were encountered in relation to questions of jurisdiction in case of a consumer contract

and also in marking the adjudged sums on the certificate, especially interests and fines for delay.

- Respondent: Whether a claim falls under 805/2004 or not.

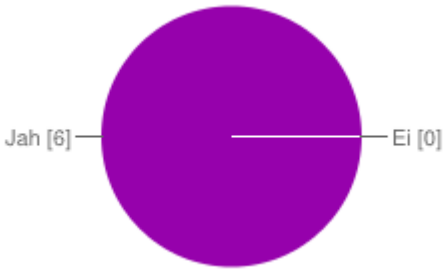
II. Questions about the European enforcement order regulation No. 805/2004

3. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?



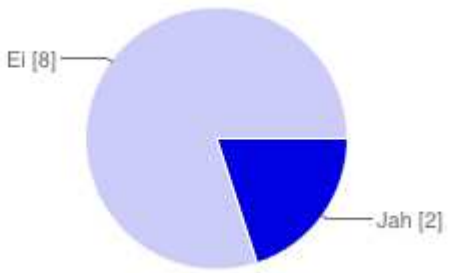
Yes	4 22%
No	6 33%

3.1. If you answered "No"- do you think that the Estonian translation of the European enforcement order regulation should be improved?



Yes	6 33%
No	0 0%

4. Have you encountered any difficulties defining whether a claim is "uncontested" within the meaning of Art 3(1) of the European enforcement order regulation No 805/2004?

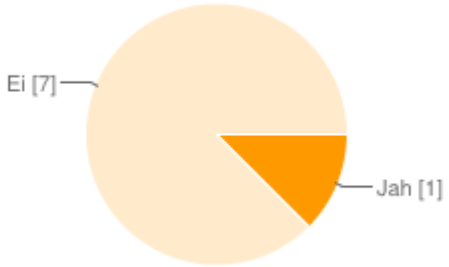


Yes	2 11%
No	8 44%

4.1. If you answered “Yes”- what kind of difficulties?

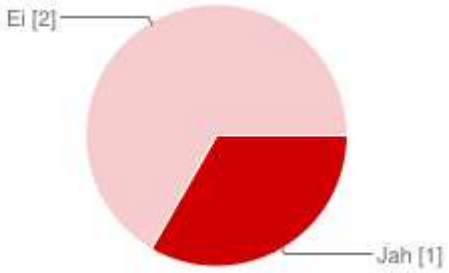
Respondent: To determine whether it is a consumer contract and the debtor's place of residence
Respondent: Specification of a consumer contract and determining the debtor's place of residence.

5. When you were adjusting the European enforcement order, did you previously verify the application of minimum criteria in judicial proceedings where corresponding decision was carried out (Art 6(1)c and Art 12-17))?



Yes	1 6%
No	7 39%

5.1. If you answered “Yes”- have you encountered any difficulties in interpretation of articles related to minimum criteria regulations? (Art 12-17)?

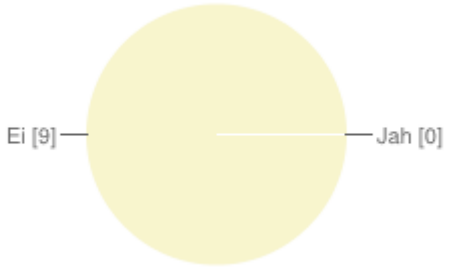


Yes	1 6%
No	2 11%

5.1.1. If you answered “Yes”- what kind of difficulties?

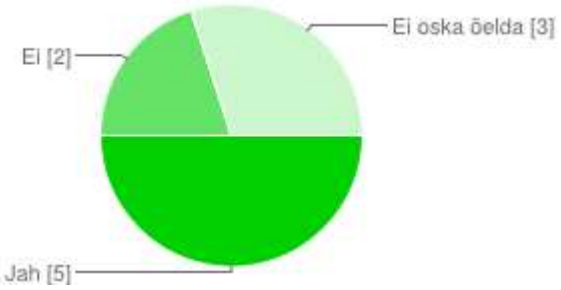
Respondent: have never adjusted the European enforcement order

5.2. Have you ever had to make adjustments to judicial decision in order for it to conform to minimum criteria, before confirming it as a European enforcement order (Art 18)?



Yes	0	0%
No	9	50%

6. Do you think it is necessary to harmonise procedural prerequisites of minimum criteria (Art 12-19) with rules on service of documents of the Code of civil procedure?

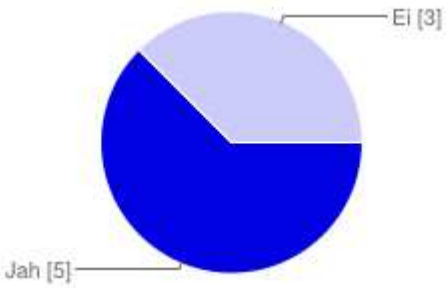


Yes	5	28%
No	2	11%
Don't know	3	17%

7. Have you ever had to deny an application of the debtor to comply decision as European enforcement order (Art 21)?

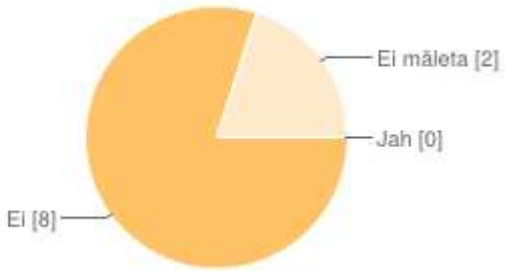
Yes	1	6%
No	9	50%

7.2. Do you find Art 21 clear enough to be successfully implemented in practice?



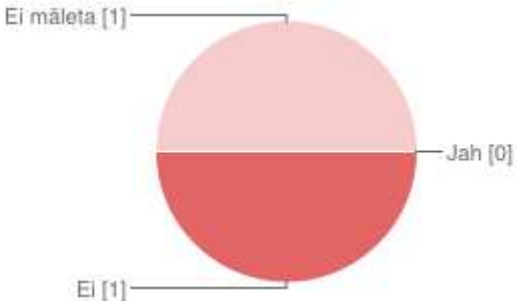
Yes	5	28%
No	3	17%

8. Have you ever adjusted or withdrew the European enforcement order confirmation (Art 10)?



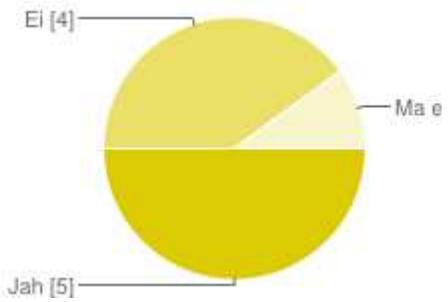
Yes	0	0%
No	8	44%
Don't remember	2	11%

8.1. If you answered “Yes”- have you encountered any issues with implementation or with adjustment of the European enforcement order regulation?



Yes	0	0%
No	1	6%
Don't remember	1	6%

9. Have you encountered any difficulties with filling out the form of Annex I “European enforcement order certificate- judgment” on a basis of the European enforcement order regulation No. 805/2004?

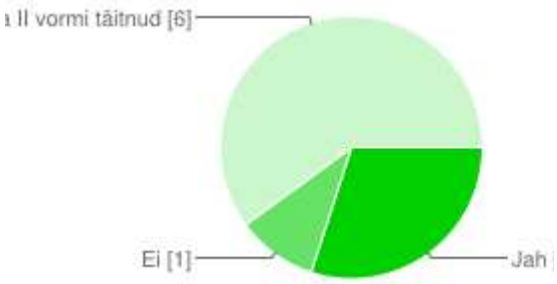


Yes	528 %
No	422 %
I have never filled out a form of Annex I	16%

9.1. If you answered “Yes”- what kind of difficulties?

- Respondent: answered in section 2.2
- Respondent: the European enforcement certificate is very confusing in the section concerning the fixation of debtor's order payments to the European enforcement order, especially collateral claims.
- Respondent: the necessity of implementation of section 13 due to differences in Estonian and English texts.
- Respondent: It is difficult to write out a financial claim of the Estonian payment order on a provided form. The differences are quite large.
- Respondent: It is difficult to add order payment sums to the form, for example there is no space to write interests or fines for delay, in section 5.2.1.1. I write a percentage, but claimants are not content, they want to see a sum written out. There is also a current fine for delay, wrote about that in section 3.2.1.3.
- Respondent: Have encountered difficulties with fixation of periodic payments and of procedure expenses. It is also not entirely clear what currency should be noted on the form when in the decision, claims are indicated in kroons but certificate is issued during euro time.

10. Have you encountered any difficulties with filling out the form of Annex II “European enforcement order certificate- court settlement” on a basis of the European enforcement order regulation No. 805/2004?

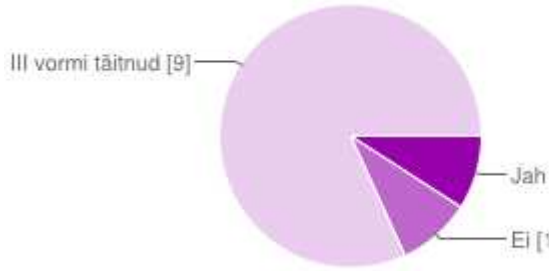


Yes	317 %
No	16%
I have never filled out a form of Annex II	633 %

10.1. If you answered “Yes”- what kind of difficulties?

- Respondent: Since the title of Annex II contained the word "decision", we initially issued on its basis, because our decision is a regulation not a judgment. Later it turned out, that this Annex concerns court settlements.
- Respondent: Since in the translation of the regulation words "decision" and "court settlement" are used alternately, it is very difficult to understand without clarification, what exactly is meant in the regulation.
- Respondent: Same difficulties as with the Annex I.

11. Have you encountered any difficulties with filling out the form of Annex III “European enforcement order certificate- authentic instrument” on a basis of the European enforcement order regulation No. 805/2004?

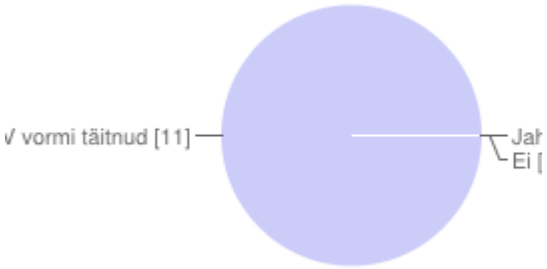


Yes	16%
No	16%
I have never filled out a form of Annex III	950 %

11.1. If you answered “Yes”- what kind of difficulties?

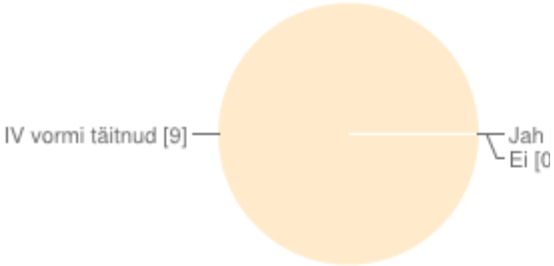
Respondent: The problem has been in ambiguity of official documents (e.g notarised agreements). Haven't had any difficulties with the form itself.

12. Have you encountered any difficulties with filling out the form of Annex IV “Certificate of lack or limitation of enforceability” on a basis of the European enforcement order regulation No. 805/2004?



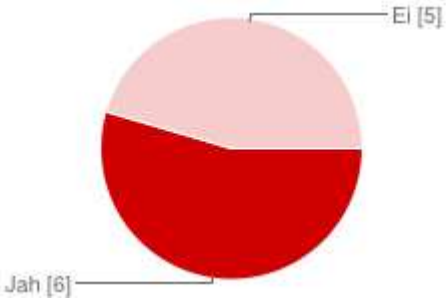
Yes	0 0%
No	0 0%
I have never filled out a form of Annex IV	1 61 1 %

13. Have you encountered any difficulties with filling out the form of Annex V "European enforcement order replacement certificate following a challenge" on a basis of the European enforcement order regulation No. 805/2004?



Yes	00%
No	00%
I have never filled out a form of Annex V	950 %

14. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?



Yes	6 33%
No	5 28%

14.1. Why?

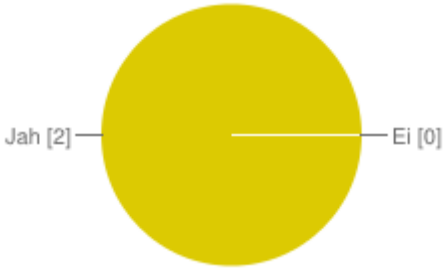
- Respondent: It could also be commented.
- Respondent: There is only one § concerning 805.
- Respondent: Regulation is needed rather in questions of service, appeal etc. of certificate issued on a basis of the Brussels I regulation
- Respondent: Up to the present have not encountered circumstances, that weren't regulated either by the Code of civil procedure or by the regulation no. 805/2004.
- Respondent: The part concerning the payment order is regulated, but has some problems. Currently, there is a certain discord between them.
- Respondent: In my opinion, the regulation contained in the enforcement order regulation is sufficient. There is probably no point in recapitulation of the regulation provisions in the Code of civil procedure.

15. Do you have any additional suggestions on how provisions of the European enforcement order regulation No. 805/2004 and/or of the Code of civil procedure regulation should be altered or supplemented?

- Respondent: The Code of civil procedure could be supplemented in section, regarding execution of the enforcement order certificate.

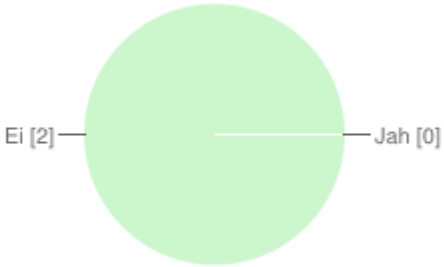
III. Questions about the European order for payment procedure regulation No. 1896/2006

16. Is Estonian translation of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?



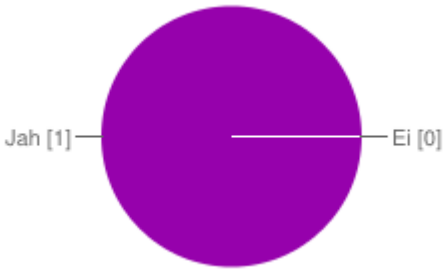
Yes	2	11%
No	0	0%

17. Have you refused to issue the European order for payment procedure?



Yes	0	0%
No	2	11%

18. Have you encountered any difficulties defining what "cross-border case" means (European order for payment procedure regulation No. 1896/2006 Art 3)?

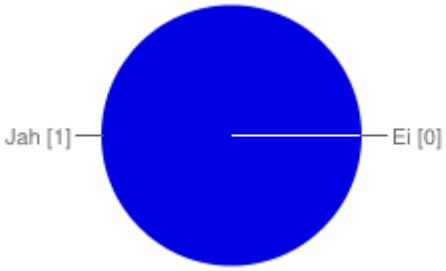


Yes	1	6%
No	0	0%

18.1. If you answered "Yes"- what kind of difficulties?

- Respondent: Determining a permanent residence of a party is intricate (according to articles 59 and 60 of the Brussels I regulation it cannot be determined basing solely on the Estonian law).

20. Have you had any difficulties defining jurisdiction? (European order for payment procedure regulation No. 1896/2006 Art 6)?

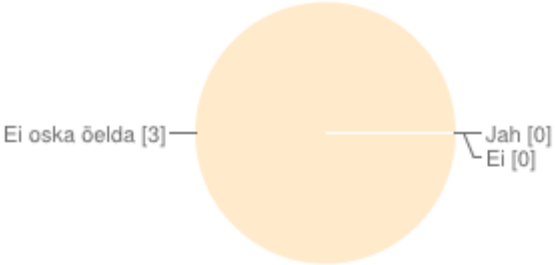


Yes	1	6%
No	0	0%

20.1. If you answered "Yes"- what kind of difficulties?

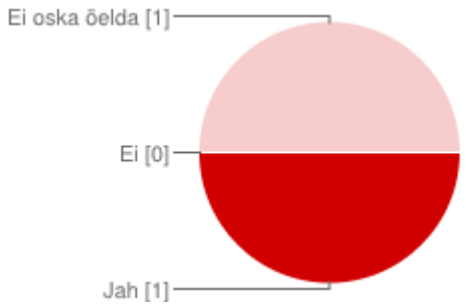
- Respondent: Determining the defendant's place of residence / location.

21. Do you think that the transfer to ordinary civil proceeding (European order for payment procedure No. 1896/2006 Art 17(1)) should be easier on the basis of the Code of civil procedure (faster, less complicated etc.)?



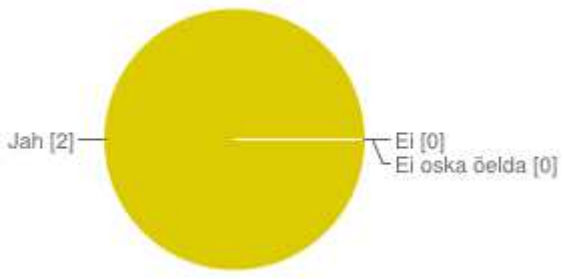
Yes	0	0%
No	0	0%
Don't know	3	17%

22. Would European order for payment procedure become simpler if the European order for payment procedure regulation No. 1896/2006 contained an autonomous law, which would require the petitioner to pay legal costs (state fees etc.), if it is required by national law? Should the following information be disclosed on the European level: 1) the principles of calculating legal costs (state fees, other costs) of every member state and 2) bank account numbers, where to pay the state fee?



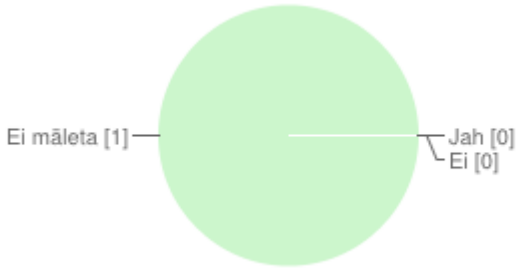
Yes	1 6%
No	0 0%
Don't know	1 6%

23. Is Estonian translation of the European order for payment procedure regulation No. 1896/2006 contain a compartment where the petitioner could apply for a refund of legal costs (state fee) in case court refuses to accept an application of the European order for payment procedure, returns the application or terminates the proceeding?



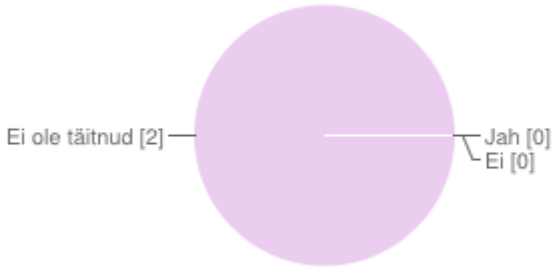
Yes	2 11%
No	0 0%
Don't know	0 0%

24. When you rejected the application to issue an European order for payment procedure, did you also fill out standard form D set out in Annex IV of the European order for payment procedure regulation No. 1896/2006 and sent it to the applicant (Art 11(1)d)?



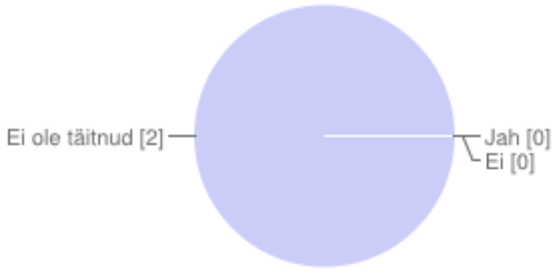
Yes	0 0%
No	0 0%
Don't remember	1 6%

25. Have you had any difficulties filling out form B “Application to petitioner to supplement or correct European order for payment procedure” set out in Annex II?



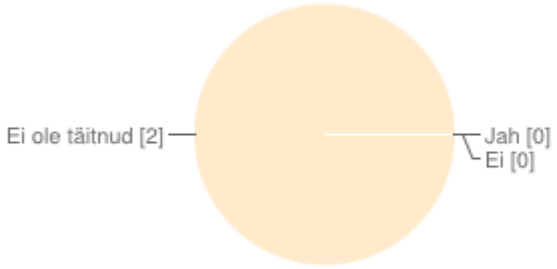
Yes	0 0%
No	0 0%
Have never filled it	2 11%

26. Have you had any difficulties filling out form C ("Proposal to petitioner to amend European order for payment procedure application") set out in Annex III of the European order for payment procedure regulation No. 1896/2006?



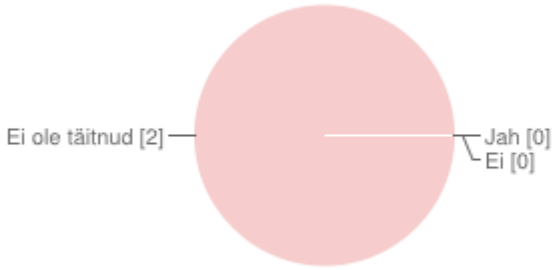
Yes	0 0%
No	0 0%
Have never filled it	2 11%

27. Have you had any difficulties filling out form D ("Decision to reject European order for payment procedure application") set out in Annex IV of the European order for payment procedure regulation No. 1896/2006?



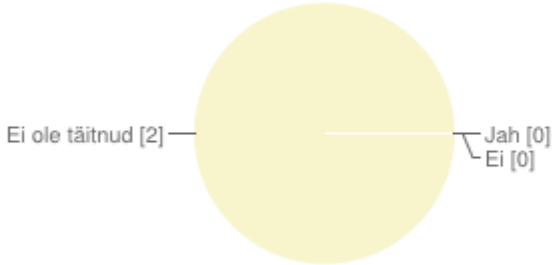
Yes	0 0%
No	0 0%
Have never filled it	2 11%

28. Have you had any difficulties filling out form E ("European order for payment") set out in Annex V of the European order for payment procedure regulation No. 1896/2006?



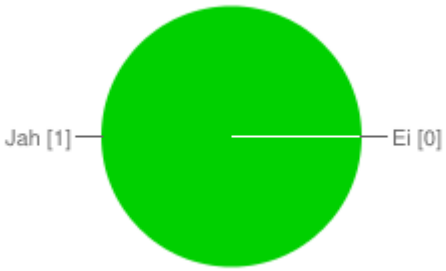
Yes	0	0%
No	0	0%
Have never filled it	2	11%

29. Have you had any difficulties filling out form G ("Certification of enforceability") set out in Annex VII of the European order for payment procedure regulation No. 1896/2006?



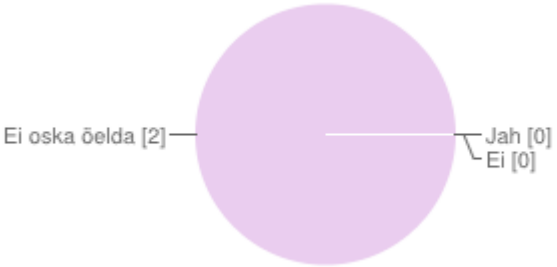
Yes	0	0%
No	0	0%
Have never filled it	2	11%

30. Are provisions of the Estonian Code of civil procedure related to the European order for payment procedure regulation No. 1896/2006 satisfactory in you opinion?



Yes	1	6%
No	0	0%

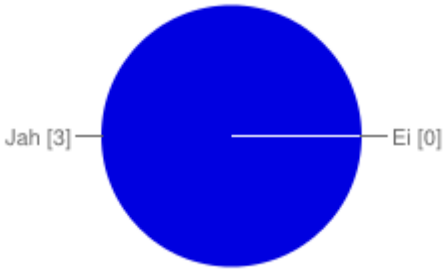
31. Do you think that the European order for payment procedure regulation No. 1896/2006 functions well in Estonian practice of resolving cross-border disputes?



Yes	0	0%
No	0	0%
Don't know	2	11%

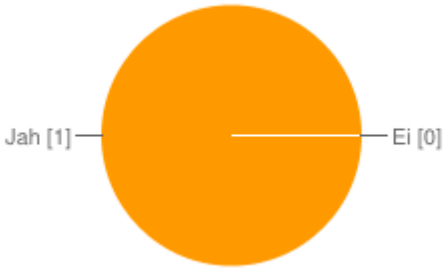
IV. Questions about the European small claims procedure regulation No. 861/2007

33. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?



Yes	3	17%
No	0	0%

33.1. If you answered "No"- do you think that Estonian translation of the European small claims procedure regulation should be improved?

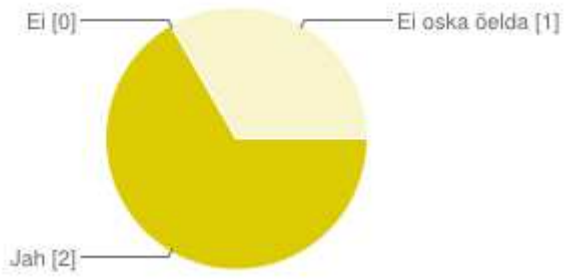


Yes	1	6%
No	0	0%

34. How have you been calculating deadlines referred in the European small claims procedure regulation No 861/2007:

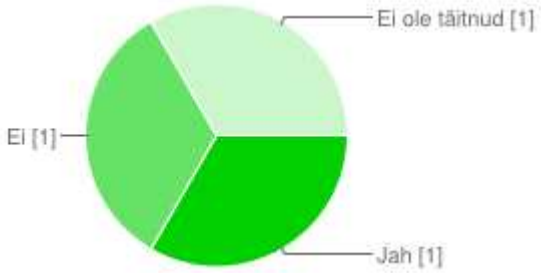
Have never calculated them	317 %
According to the Estonian Code of civil procedure	16 %
According to the European Council regulation No. 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits	0 %

35. If the defendant is domiciled in another member state would you, adjudicating on a basis of the European small claims procedure regulation No. 861/2007 determine jurisdiction on a basis of Brussels I regulation No. 44/2001 (of 22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?



Yes	2 11%
No	0 0%
Don't know	1 6%

36. Have you encountered any difficulties filling out form B (“Court's requirement to supplement and/or amend the proof of claim”) set out in Annex II of the European small claims procedure regulation No. 861/2007?

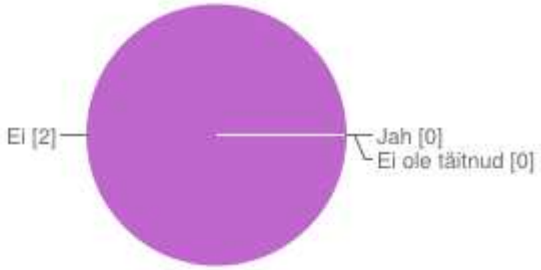


Yes	1 6%
No	1 6%
Have never filled it	1 6%

36.1. If you answered “Yes”- what kind of difficulties?

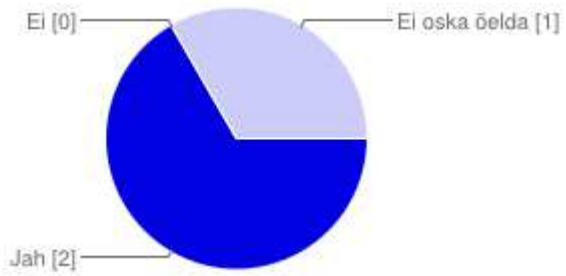
- Respondent: If the deficiency is non-payment of state fee on claims, then this deficiency is not foreseen in the form. Therefore it must be explained in a separate letter to claimant, that a state fee must be paid.

37. Have you encountered any difficulties filling out form D (“Confirmation of the judgment in the European small claims procedure”) set out in Annex IV of the European small claims procedure regulation No. 861/2007?



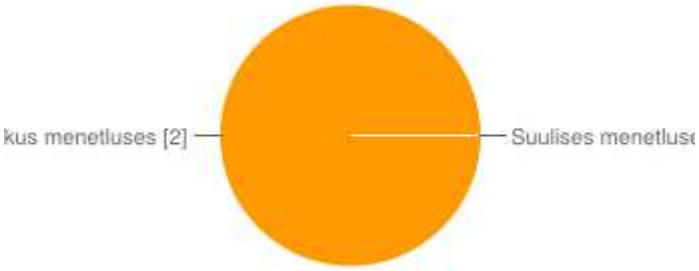
Yes	0 0%
No	2 11%
Have never filled it	0 0%

38. Is form A set out in Annex I (“Proof of claim”) of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?



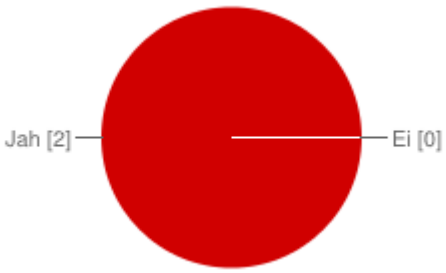
Yes	2	11%
No	0	0%
Don't know	1	6%

39. You adjudicated European small claims procedure mostly in:



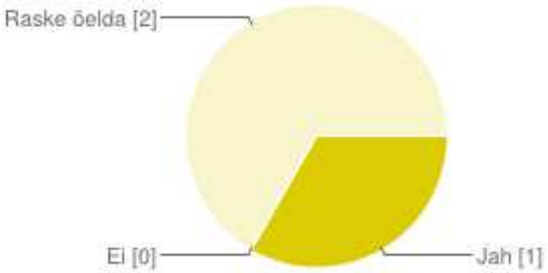
Written procedure	2	11%
Oral procedure	0	0%

40. Are provision of the Estonian Code of civil procedure related to the European small claims procedure regulation No. 861/2007 satisfactory in you opinion?



Yes	2	11%
No	0	0%

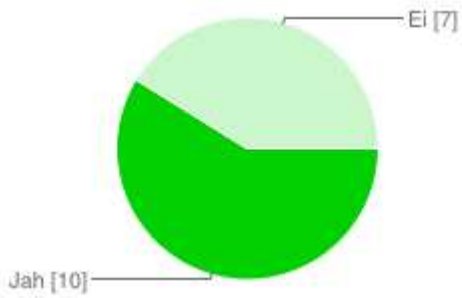
41. Do you think that the European small claims procedure regulation No. 861/2007 functions well in resolving cross-border disputes in Estonia?



Yes	1	6%
No	0	0%
Hard to say	2	11%

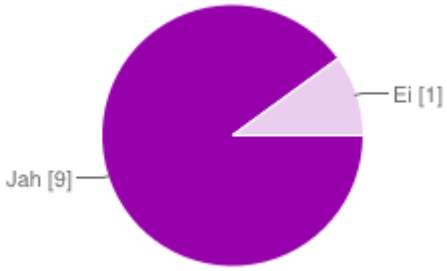
V. Summary questions

43. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?



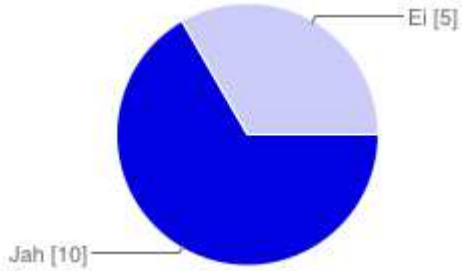
Yes	10	56%
No	7	39%

43.1. If you answered "Yes" – were you satisfied with the quality of the training?



Yes	9	50%
No	1	6%

43.2. Would you participate, if the training was carried out in a foreign language?

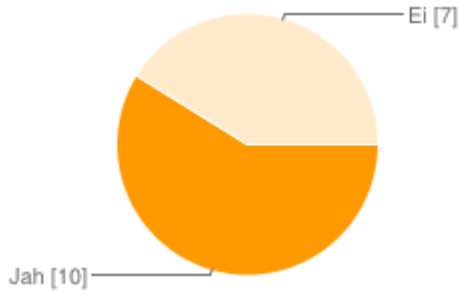


Yes	10	56%
No	5	28%

43.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

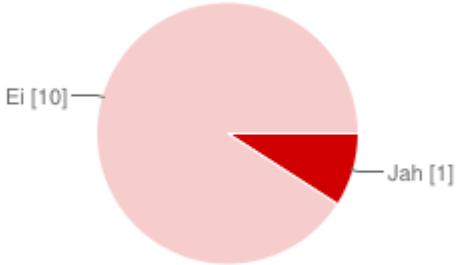
- Respondent: English
- Respondent: English
- Respondent: English
- Respondent: English, German
- Respondent: English
- Respondent: English
- Respondent: English or German
- Respondent: language training
- Respondent: English, Russian
- Respondent: English

44. Do you use the European Judicial Atlas in civil matters in your work?



Yes	10	56%
No	7	39%

44.1. If you answered "Yes" – did you encounter any difficulties while using the Atlas?

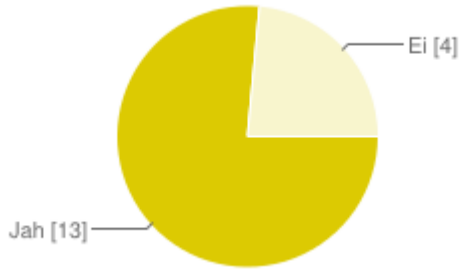


Yes	1	6%
No	10	56%

44.1.1. If you answered "Yes"- what kind of difficulties?

- Respondent: I use the Judicial atlas to fill out necessary forms or to look up some regulations needed in my work. A training would be good, because probably not everybody knows how to find useful/essential information from there.
- Respondent: Mainly, I've had some doubts about the relevance of the data contained in the Atlas.

44.2. Do you think it is necessary to conduct trainings on the use of the Atlas?



Yes	13	72%
No	4	22%

46. In what court and courthouse do you work?

- Respondent: Kuressaare courthouse of the Pärnu County Court

- Respondent: Kentmanni courthouse of the Harju County Court
- Respondent: The Supreme Court
- Respondent: Haapsalu courthouse of the Pärnu County Court
- Tallinn Circuit Court
- Respondent: Centre of Payment Orders of the Pärnu County Court
- Respondent: Kentmanni courthouse of the Harju County Court
- Respondent: Tartu courthouse of the Tartu County Court
- Respondent: Kentmanni courthouse
- Respondent: Tartu mnt courthouse of the Harju County Court
- Respondent: Narva courthouse of the Viru County Court
- Respondent: Tartu Circuit Court
- Respondent: Pärnu County Court
- Respondent: Haapsalu courthouse of the Pärnu County Court
- Respondent: Tallinn Circuit Court
- Respondent: Tartu mnt courthouse of the Harju County Court
- Respondent: Tartu mnt courthouse of the Harju County Court

47. For how many years have you worked as a judge?

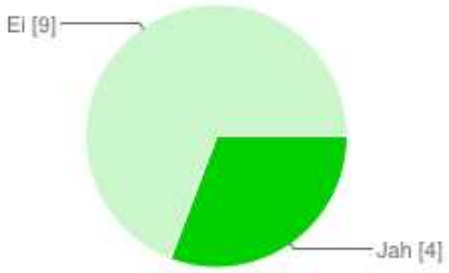
- Respondent: 17
- Respondent: 20
- Respondent: 10
- Respondent: assistant judge since 1997
- Respondent: 19
- Respondent: assistant judge in the Centre of Payment Orders for 4 years
- Respondent: 1
- Respondent: 19
- Respondent: 14
- Respondent: 8,5
- Respondent: 1,5
- Respondent: 3
- Respondent: 16
- Respondent: 16 years as an assistant judge
- Respondent: 15
- Respondent: 11 years
- Respondent: 7 years

48. What type of judge are you?

- 10 respondents: first instance judge
- 4 respondents: court of appeals judge

- 1 respondent: The Supreme Court judge

49. Does your court specialize in adjudication of cross-border civil matters?



Yes	4	22%
No	9	50%

50. If you have any additional commentaries, concerning implementation of the aforementioned EU regulations, then write them here please.

- Respondent: We will begin implementing regulation no. 1896/2006 next year and then it will certainly raise some questions.
- Respondent: There is always a problem of covering translation costs. Implementing regulation no. 861/2007 the language of proceedings is Estonian. If parties to a proceeding don't speak that language, they won't understand directions of the court nor the substance of decision. A question about who will be covering the translation costs always arises.
- At the moment, a training on the regulation (EC) no. 4/2009 is most needed.

13.3. Appendix 3 (Questionnaire for attorneys and lawyers)

Questionnaire for attorneys and lawyers bound to the Research:
"Practical Application of EU Regulations to EU Level Procedure in Civil Cases: the Experience in Baltic States"
(No. TM 2012/04/EK)

I. Introduction

1. Have you ever been exposed to the following EU regulations during the course of your work:

1.1. *European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims.* Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: **European enforcement regulation**)?

Yes ___
No ___

1.2. *European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007, establishing a European small claims procedure.* Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: **European small claims procedure regulation**)?

Yes ___
No ___

1.3. *European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006, creating European order for payment procedure.* Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032 (further: **European order for payment procedure regulation**)?

Yes ___
No ___

2. If you answered "Yes" to any previous question- have you ever had issues with determining the scope of application of these regulations?
No ___
Yes ___

2.1. If you answered "Yes"- what kind of issues?
_____

II. Questions about the European enforcement order regulation No. 805/2004

[Please, answer the questions in this Chapter only if you have implemented the European enforcement order regulation No. 805/2004]

3. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?
Yes ___
No ___

3.1. If you answered "No"- do you think that the Estonian translation of the European enforcement order regulation should be improved?

Yes ___

No ___

4. Have you encountered any difficulties defining whether a claim is "uncontested" within the meaning of Art 3(1) of the European enforcement order regulation No 805/2004?

Yes ___
No ___

4.1. If you answered "Yes"- what kind of difficulties?

5. If you are a lawyer- have you ever tried to certify the costs for legal assistance with European enforcement order?

Yes ___
No ___

6. Do you think it is necessary to harmonise procedural prerequisites of minimum criteria (Art 12-19) with rules on service of documents of the Code of civil procedure?

Yes ___
No ___
Don't know ___

7. Have you encountered any difficulties filling out the form of Annex VI "Application for rectification or withdrawal of the European enforcement order certificate" on a basis of the European enforcement order regulation No. 805/2004?

Yes ___
No ___
I have never filled out a form of Annex I ___

7.1. If you answered "Yes"- what kind of difficulties?

8. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?

Yes ___
No ___
Why? _____.

9. Do you have any additional suggestions on how provisions of the European enforcement order regulation No. 805/2004 and/or of the Code of civil procedure regulation should be altered or supplemented?

_____

III. Questions about the European order for payment procedure regulation No. 1896/2006

[Please, answer the questions in this Chapter only if you have implemented the European order for payment procedure regulation No. 1896/2006].

10. Is Estonian translation of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?

Yes ___
No ___

10.1. If you answered "No"- do you think that Estonian translation of the European order for payment procedure regulation should be improved?

Yes ___
No ___

11. Have you encountered any difficulties defining what "cross-border case" means (European order for payment procedure regulation No. 1896/2006 Art 3)?

Yes ___
No ___
11.1. If you answered "Yes"- what kind of difficulties?

12. Have you had any difficulties defining what "uncontested pecuniary claim" means (European order for payment procedure regulation No. 1896/2006 Art 1(1)a)?

Yes ___
No ___
12.1. If you answered "Yes"- what kind of difficulties?

13. Have you had any difficulties defining jurisdiction? (European order for payment procedure regulation No. 1896/2006 Art 6)?

Yes ___
No ___
13.1. If you answered "Yes"- what kind of difficulties?

14. Do you think that the transfer to ordinary civil proceeding (European order for payment procedure No. 1896/2006 Art 17(1)) should be easier on the basis of the Code of civil procedure (faster, less complicated etc.)?

Yes ___
No ___
Don't know _____

15. Would European order for payment procedure become simpler if the European order for payment procedure regulation No. 1896/2006 contained an autonomous law, which would require the petitioner to pay legal costs (state fees etc.), if it is required by national law? Should the following information be disclosed on the European level: 1) the principles of calculating legal costs (state fees, other costs) of every member state and 2) bank account numbers, where to pay the state fee?

Yes ___
No ___
Don't know _____

16. Is Estonian translation of the European order for payment procedure regulation No. 1896/2006 contain a compartment where the petitioner could apply for a refund of legal costs (state fee) in case court refuses to accept an application of the European order for payment procedure, returns the application or terminates the proceeding?

Yes ___
No ___
Don't know _____

17. Have you had any difficulties filling out form A ("Application for a European order for payment") set out in Annex I of the European order for payment procedure regulation No. 1896/2006?

Yes ___
No ___
Have never filled it ____

18. Do you think that some amendments should be made to the form A ("Application for a European order for payment") set out in Annex I of the European order for payment procedure regulation No. 1896/2006?
Yes ___
No ___
Don't know ____
18.1. If you answered "Yes"- what kind of amendments?

19. Have you had any difficulties filling out form F ("Objection to European order for payment") set out in Annex VI of the European order for payment procedure regulation No. 1896/2006?

Yes ___
No ___
Have never filled it ____
19.1. If you answered "Yes"- what kind of difficulties? _____

20. Have you had any difficulties filling out form G ("Declaration of enforceability") set out in Annex VII of the European order for payment procedure regulation No. 1896/2006, which has been issued in another member state?

Yes ___
No ___
Don't remember ____
20.1. If you answered "Yes"- what kind of difficulties? _____

21. Are provisions of the Estonian Code of civil procedure related to the European order for payment procedure regulation No. 1896/2006 satisfactory in you opinion?

Yes ___
No ___
21.1 If you answered "No" - why not?_____

22. Do you think that the European order for payment procedure regulation No. 1896/2006 functions well in Estonian practice of resolving cross-border disputes?

Yes ___
No ___
Don't know _____

23. Do you have any additional proposals for improvement of the European order for payment procedure regulation No. 1896/2006 or the part concerning payment order of the Estonian civil proceeding?

_____

IV. Questions about the European small claims procedure regulation No. 861/2007
[Please, answer the questions in this Chapter only if you have implemented the European small claims procedure regulation No. 861/2007]

24. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?
Yes ___

No ___

24.1. If you answered “No”- do you think that Estonian translation of the European small claims procedure regulation should be improved?

Yes ___
No ___

25. If the defendant is domiciled in another member state would you, adjudicating on a basis of the European small claims procedure regulation No. 861/2007 determine jurisdiction on a basis of Brussels I regulation No. 44/2001 (of 22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?

Yes ___
No ___
Don't know ___

26. Is form A (“Proof of claim”) set out in Annex I of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

Yes ___
No ___
Don't know ___

26.1 If you answered “No” - why?

27. Is form C set out in Annex III (“Reply form”) of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

Yes ___
No ___
Don't know ___

27.1 If you answered “No” - why?

28. Are provision of the Estonian Code of civil procedure related to the European small claims procedure regulation No. 861/2007 satisfactory in you opinion?
Yes ___
No ___

28.1 If you answered “No” - why?

29. Do you think that the European small claims procedure regulation No. 861/2007 functions well in resolving cross-border disputes in Estonia?

Yes ___
No ___
Don't know ___

30. Do you have any additional suggestions on how provisions related to the European small claims procedure regulation No 861/2007 or to the Estonian Code of civil procedure regulation should be altered or supplemented?

V. Summary questions

31. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?

Yes ___
No ___

31.1. If you answered "Yes" – were you satisfied with the quality of the training?

Yes ___
No ___
31.1.1. Why?

31.2. Would you participate, if the training was carried out in a foreign language?

Yes ___
No ___

31.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

32. Are you satisfied with implementation of these regulations by Estonian judges?
Yes ____
No ____
Hard to say ___

33. Do you use the European Judicial Atlas in civil matters in your work?

Yes ___
No ___

33.1. If you answered "Yes" – did you encounter any difficulties while using the Atlas?
Yes ___
No ___
33.1.1. What kind of difficulties? _____

33.2. Do you think it is necessary to conduct trainings on the use of the Atlas?
No ___
Yes ___

34. Are you a:
Attorney _____
Lawyer in a Lawyer Firm _____
Lawyer in a General Counsel office _____
Lawyer in a bank _____
Other ___

35. Does your place of work specialize in resolving cross-border civil and commercial matters?
Yes ___
No ___

36. If you have any additional commentaries concerning implementation of the aforementioned EU regulations, then write them here, please.

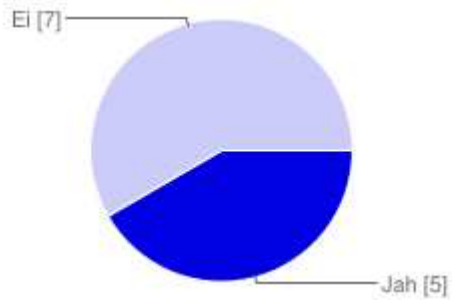
Thank you for answering!

13.4. Appendix 4 (Answers of attorneys and lawyers)

(Answers to the questions, that attorneys and lawyers answered)

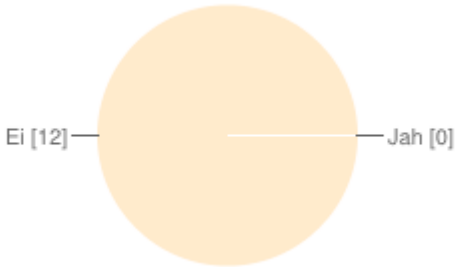
I. Introduction

1.1. Have you, during the course of your work been exposed to the European Parliament and Council Regulation (EC) No. 805/2004 of 21 April 2004, creating the European enforcement order for uncontested claims. Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: European enforcement order regulation)?



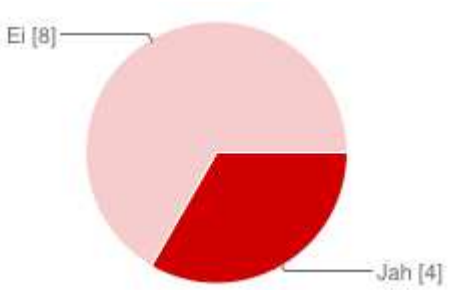
Yes	5	42%
No	7	58%

1.2. Have you, during the course of your work been exposed to the regulation no. 861/2007 of the European Parliament and the Council (EC) of 11 July 2007, establishing the European small claims procedure. Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: European small claims procedure regulation)?



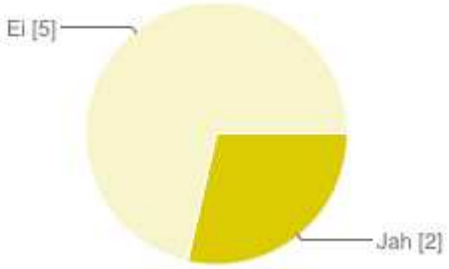
Yes	0	0%
No	12	100%

1.3. Have you, during the course of your work been exposed to the regulation no.1896/2006 of the European Parliament and the Council (EC) of 12 December 2006, creating the European order for payment procedure. Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032 (further: European order for payment procedure regulation)?



Yes	4 33%
No	8 67%

2. If you answered “Yes” to any previous question- have you ever had issues with determining the scope of application of these regulations?



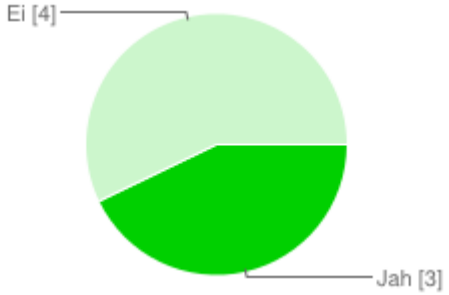
Yes	2 17%
No	5 42%

2.1. If you answered “Yes”- what kind of issues?

- Respondent: There is no overview of further course of the proceeding.
- Respondent: To some extent, without the detailed examination, a mutual scope of application of regulations no. 805/2004 and no. 1896/2006 is very confusing, primarily in a context of understanding meaning of "uncontested claim".

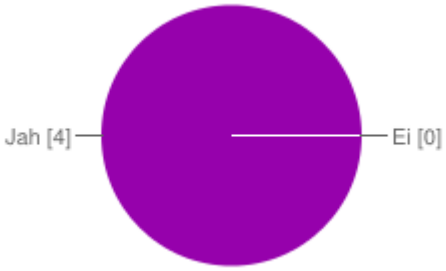
II. Questions about the European enforcement order regulation No. 805/2004

3. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?



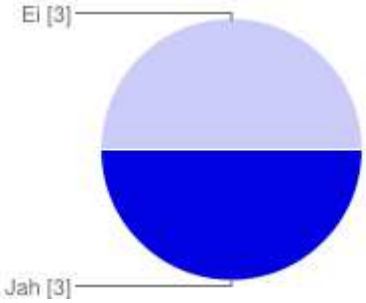
Yes	3 25%
No	4 33%

3.1. If you answered “No”- In Your opinion, should the Estonian translation of the European enforcement order regulation be improved?



Yes	4 33%
No	0 0%

4. Have you had any difficulties defining whether a claim is “uncontested” within the meaning of Art 3(1) of the European enforcement order regulation No 805/2004?

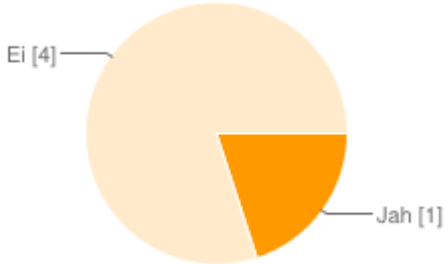


Yes	3 25%
No	3 25%

4.1. If you answered “Yes”- what kind of difficulties?

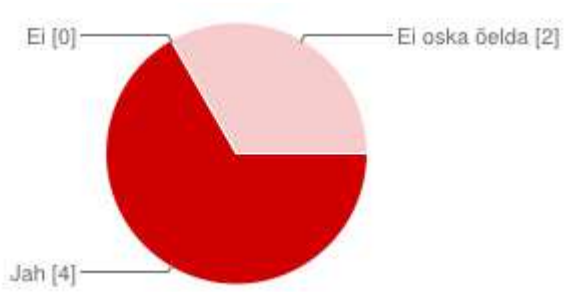
- Respondent: As a result of a classical dispute, a decision on satisfaction of an action was made, despite the objections of the defendant. This decision is not covered in any point of an art 3(1), however, by trial-and-error method I have submitted an application to a court on obtaining enforcement order (being completely sure it will not be acceded to), but a court acceded to this application. This decision has been successfully executed in foreign state.
- Respondent: In one court action, procedural documents were not delivered as required, so the client didn't understand they were litigation documents and didn't respond to them. He was not aware of any court action either. Therefore he did not contest until receiving the enforcement order, but since the documents were not delivered as required, he was not able to contest in the first place. The question arose on whether that was an uncontested claim.

5. If you are a lawyer- have you ever tried to certify the costs for legal assistance with European enforcement order?



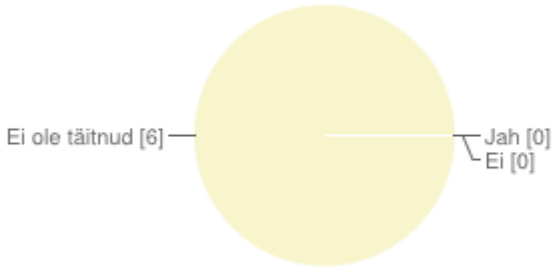
Yes	1 8%
No	4 33%

6. Do you think it is necessary to harmonise procedural prerequisites of minimum criteria (Art 12-19) with rules on service of documents of the Code of civil procedure?



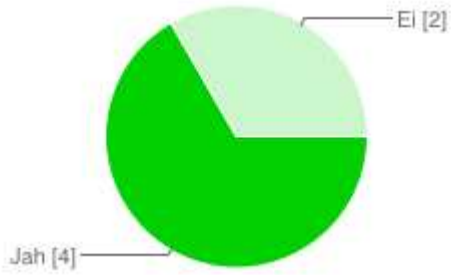
Yes	4	33%
No	0	0%
Don't know	2	17%

7. Have you encountered any difficulties filling out the form of Annex VI "Application for rectification or withdrawal of the European enforcement order certificate" on a basis of the European enforcement order regulation No. 805/2004?



Yes	0	0%
No	0	0%
Have never filled it	6	50%

8. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?



Yes	4	33%
No	2	17%

8.1. Why?

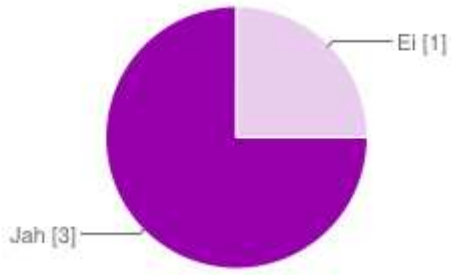
- Respondent: Implementation of Regulations would be much easier if the Code of civil procedure contained a regulation on what types of final settlements listed in the CCP have been addressed with decisions of uncontested claim (e.g compromise, judgment by default, etc.)
- Respondent: Regulation itself should contain enough information, no need to double adjust.

9. Do you have any additional suggestions on how the European enforcement order regulation No 805/2004 and/or the Code of civil procedure regulations should be altered or supplemented?

- Respondent: Basing on the described case, it must be clearly regulated whether general language requirements on service of judicial documents also extend to this regulation. It would be logical, but it cannot be clearly ascertained, thus creating a controversy. In continuation to the same case, for three years different court instances (in XXX countries) have been debating over how a revocation of the European enforcement order works, which courts have a competence to do that and what is the state of proceeding, if the existing enforcement order cannot be implemented, because judicial documents were not delivered as required. In dispute is also a question about what happens after revocation of an enforcement order- whether it will be possible to issue a new enforcement order after eliminating formal imperfections (which occurred), or a new court action should be held. In my opinion it is a bit confusing as a whole, both in regulations as well as in Estonian national legal acts.

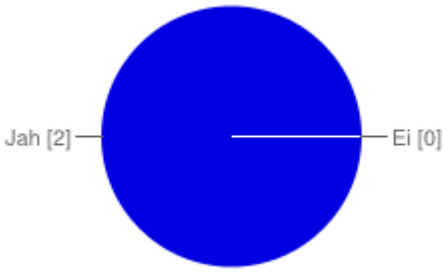
III. Questions about the European order for payment procedure regulation No. 1896/2006

10. Is Estonian translation of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?



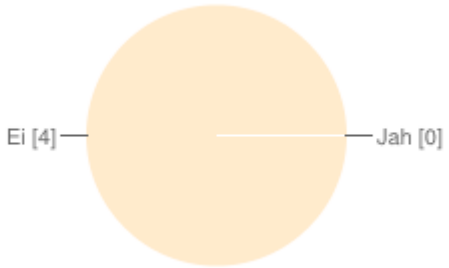
Yes	3 25%
No	1 8%

10.1. If you answered "No"- do you think that Estonian translation of the European order for payment procedure regulation should be improved?



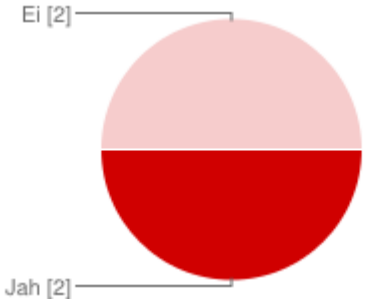
Yes	2 17%
No	0 0%

11. Have you had any difficulties defining what "cross-border case" means (European order for payment procedure regulation No. 1896/2006 Art 3)?



Yes	0	0%
No	4	33%

12. Have you had any difficulties defining what "uncontested pecuniary claim" means (European order for payment procedure regulation No. 1896/2006 Art 1(1)a)?

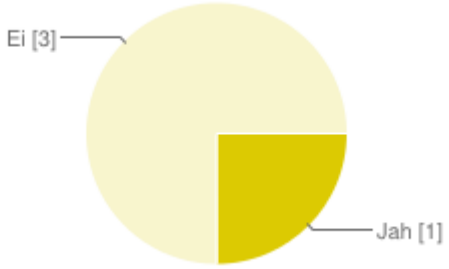


Yes	2	17%
No	2	17%

12.1. If you answered "Yes"- what kind of difficulties?

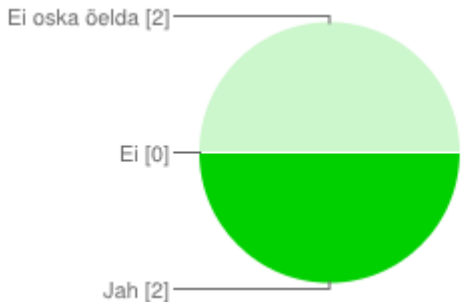
- Respondent: Once, I had to analyse at what stage the contestation is needed in order to be uncontested, i.e whether it is enough if a person has contested a claim extrajudicially.

13. Have you had any difficulties defining jurisdiction (European order for payment procedure regulation No. 1896/2006 Art 6)?



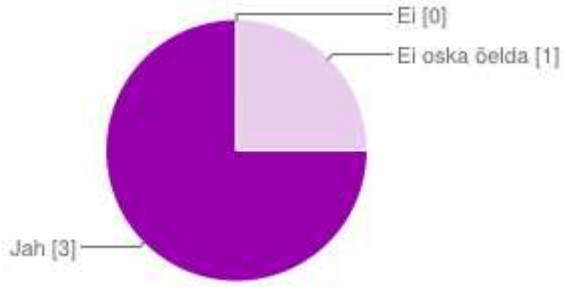
Yes	1	8%
No	3	25%

14. Do you think that the transfer to ordinary civil proceeding (European order for payment procedure No. 1896/2006 Art 17(1)) should be easier on the basis of the Code of civil procedure (faster, less complicated etc.)?



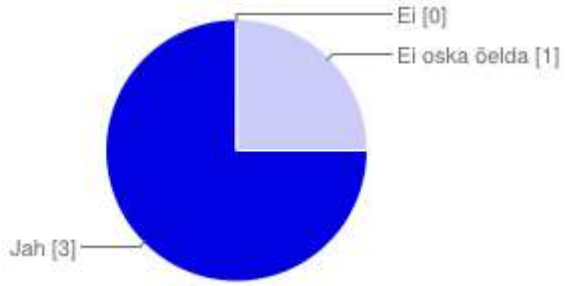
Yes	2 17%
No	0 0%
Don't know	2 17%

15. Would European order for payment procedure become simpler if the European order for payment procedure regulation No. 1896/2006 contained an autonomous law, which would require the petitioner to pay legal costs (state fees etc.), if it is required by national law? Should the following information be disclosed on the European level: 1) the principles of calculating legal costs (state fees, other costs) of every member state and 2) bank account numbers, where to pay the state fee?



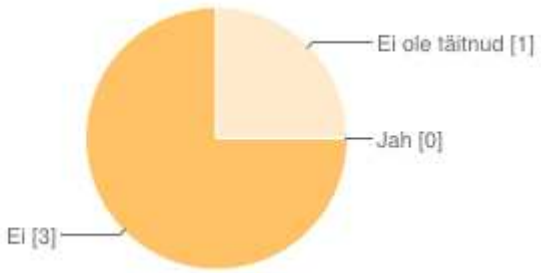
Yes	3 25%
No	0 0%
Don't know	1 8%

16. Should form A of the European order for payment procedure regulation No. 1896/2006 contain a compartment where the petitioner could apply for a refund of legal costs (state fee) in case court refuses to accept an application of the European order for payment procedure, returns the application or terminates the proceeding?

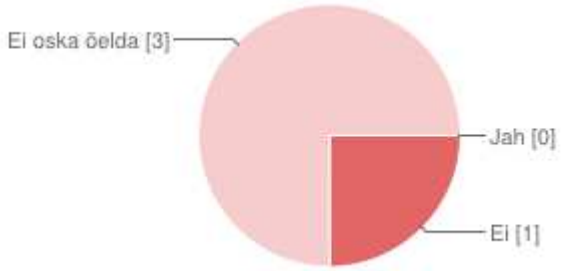


Yes	3 25%
No	0 0%
Don't know	1 8%

17. Have you had any difficulties filling out form A ("Application for a European order for payment") set out in Annex I of the European order for payment procedure regulation No. 1896/2006?

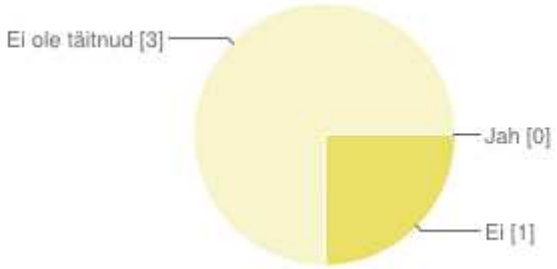


8. Do you think that some amendments should be made to the form A ("Application for a European order for payment") set out in Annex I of the European order for payment procedure regulation No. 1896/2006?



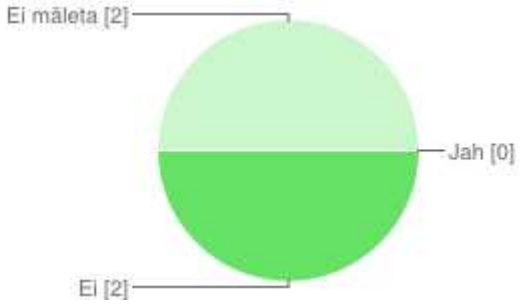
Yes	0 0%
No	1 8%
Don't know	3 25%

19. Have you had any difficulties filling out form F ("Objection to European order for payment") set out in Annex VI of the European order for payment procedure regulation No. 1896/2006?



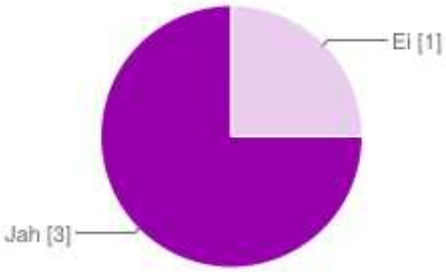
Yes	0 0%
No	1 8%
Have never filled it	3 25%

20. Have you had any difficulties filling out form G ("Declaration of enforceability") set out in Annex VII of the European order for payment procedure regulation No. 1896/2006, which has been issued in another member state?



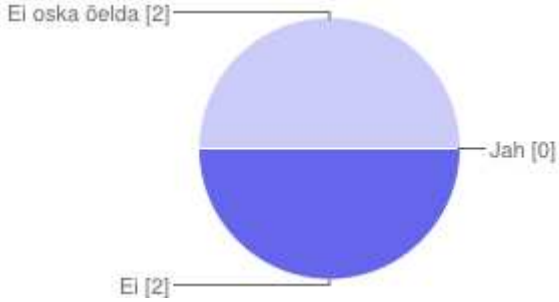
Yes	0 0%
No	2 17%
Don't remember	2 17%

21. Are provisions of the Estonian Code of civil procedure related to the European order for payment procedure regulation No. 1896/2006 satisfactory in you opinion?



Yes	3	25%
No	1	8%

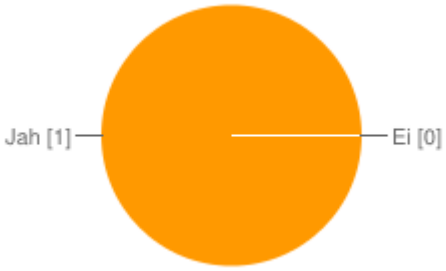
22. Do you think that the European order for payment procedure regulation No. 1896/2006 functions well in Estonian practice of resolving cross-border disputes?



Yes	0	0%
No	2	17%
Don't know	2	17%

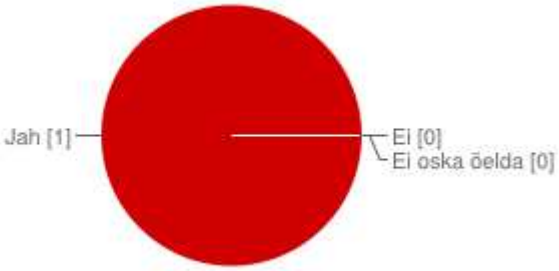
IV. Questions about the European small claims procedure regulation No. 861/2007

24. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?



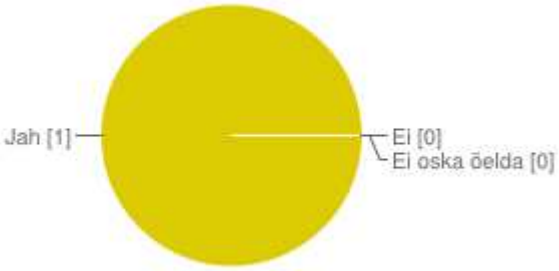
Yes	1	8%
No	0	0%

25. If the defendant is domiciled in another member state would you, adjudicating on a basis of the European small claims procedure regulation No. 861/2007 determine jurisdiction on a basis of Brussels I regulation No. 44/2001 (of 22 December 2000) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters?



Yes	1	8%
No	0	0%
Don't know	0	0%

26. Is form A set out in Annex I ("Proof of claim") of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

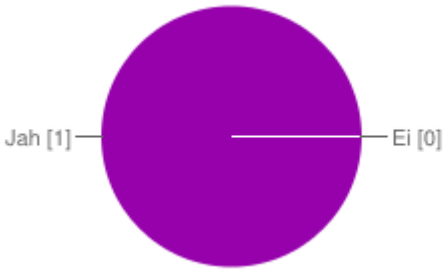


Yes	1	8%
No	0	0%
Don't know	0	0%

27. Is form C set out in Annex III ("Reply form") of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

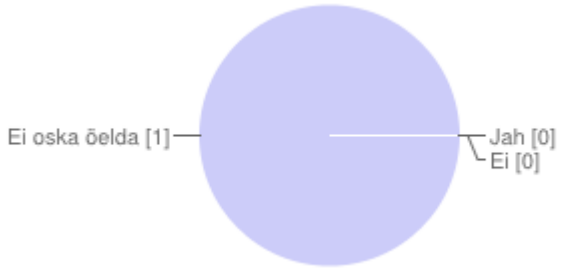
Yes	1	8%
No	0	0%
Don't know	0	0%

28. Are provision of the Estonian Code of civil procedure related to the European small claims procedure regulation No. 861/2007 satisfactory in you opinion?



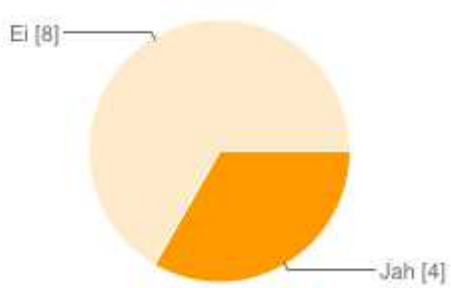
Yes	1	8%
No	0	0%

29. Do you think that the European small claims procedure regulation No. 861/2007 functions well in resolving cross-border disputes in Estonia?



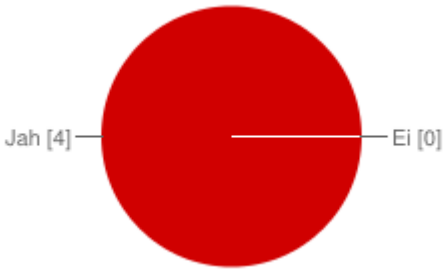
V. Summary questions

31. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?



Yes	4	33%
No	8	67%

31.1. If you answered "Yes" – were you satisfied with the quality of the training?

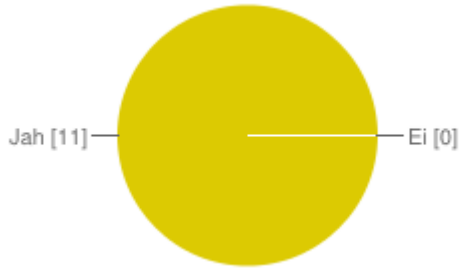


Yes	4	33%
No	0	0%

31.1.1. Why?

- Respondent: Training/conference was very interesting, diverse and handled practical questions on implementation from several member states.
- Respondent: It was a subject and therefore it was more in depth than a training for example.

31.2. Would you participate, if the training was carried out in a foreign language?

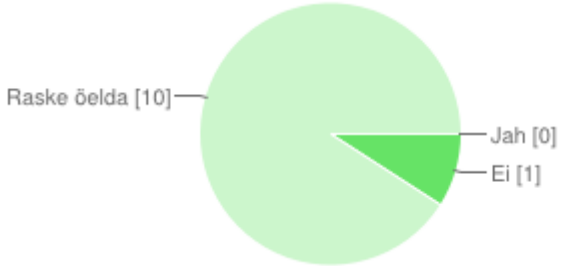


Yes	11	92%
No	0	0%

31.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

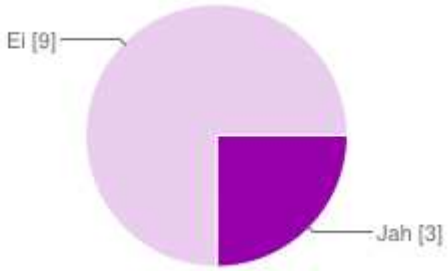
- Respondent: English
- Respondent: Estonian
- Respondent: English
- Respondent: English
- Respondent: English
- Respondent: English
- Respondent: English
- Respondent: English
- Respondent: Estonian, English
- Respondent: English
- Respondent: English

32. Are you satisfied with implementation of these regulations by Estonian judges?



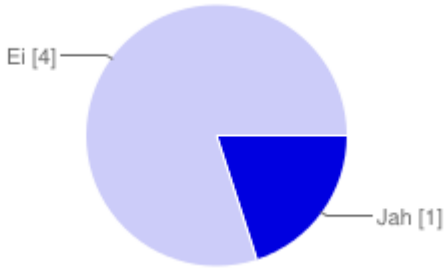
Yes	0	0%
No	1	8%
Hard to say	10	83%

33. Do you use the European Judicial Atlas in civil matters in your work?



Yes	3	25%
No	9	75%

33.1. If you answered "Yes" – did you encounter any difficulties while using the Atlas?

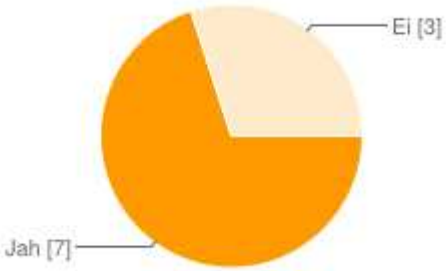


Yes	1	8%
No	4	33%

33.1.1. What kind of difficulties?

- Respondent: Just haven't stumbled across it, during the course of my work. Aware of the existence, but haven't had the direct need for using.

33.2. Do you think it is necessary to conduct trainings on the use of the Atlas?

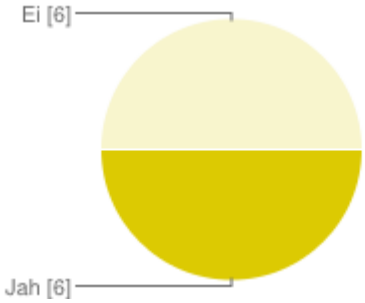


Yes	7	58%
No	3	25%

34. Are you a:

Lawyer	8	67%
Lawyer in a Lawyer Firm	3	25%
Lawyer in a General Counsel office	1	8%
Lawyer in a bank	0	0%
Other	0	0%

35. Does your place of work specialize in resolving cross-border civil and commercial matters?



Yes	6	50%
No	6	50%

36. If you have any additional commentaries, concerning implementation of the aforementioned EU regulations, then write them here please.

- Respondent: Maybe I'm not being fair, but it seems to me, that the knowledge of judges of cross-border legal relationships and their regulation is very limited, primarily from its practical aspects. These regulations are probably occurring not that often for judges to keep up with them. Some judges have clearly faced the regulations and do understand them.

13.5. Appendix 5 (Questionnaire for bailiffs)

Questionnaire for bailiffs bounded with the Research:
"Practical Application of EU Regulations to EU Level Procedure in Civil Cases: the Experience in Baltic States"
(No. TM 2012/04/EK)

I. Introduction

1. Have you ever been exposed to the following EU regulations during the course of your work:

1.1. *European Parliament and Council Regulation (EC) No 805/2004 of 21 April 2004, creating a European enforcement order for uncontested claims.* Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: **European enforcement regulation**)?

Yes ___
No ___

1.2. *European Parliament and Council Regulation (EC) No 861/2007 of 11 July 2007, establishing a European small claims procedure.* Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: **European small claims procedure regulation**)?

Yes ___
No ___

1.3. *European Parliament and Council Regulation (EC) No 1896/2006 of 12 December 2006, creating European order for payment procedure.* Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032 (further: **European order for payment procedure regulation**)?

Yes ___
No ___

II. Questions about the European enforcement order regulation No. 805/2004

[Please, answer the questions in this Chapter only if you have implemented the European enforcement order regulation No. 805/2004]

2. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?

Yes ___
No ___

2.1. If you answered "No"- In Your opinion, should the Estonian translation of the European enforcement order regulation be improved?

Yes ___
No ___

3. Do you know if creditors from other EU member states submit decisions confirmed by the European enforcement order (Art. 20(2) of the European enforcement order regulation No. 805/2004)?

Yes ___
No ___

Don't know

4. Do creditors from other EU member states submit documents confirmed by the European enforcement order (Annex I, II, or III of the European enforcement order regulation No. 805/2004) for execution in Estonia with added Estonian translation?

Yes ___
No ___
Not always ____

5. Is the information about judgments included in confirmation of the European enforcement order (Annex I of the European enforcement order regulation No. 805/2004) sufficient?

Yes ___
No ___
Don't know _____
Don't have any experience with it _____

5.1. If you answered "No"- what other information should be included in the confirmation of the European enforcement order (Annex I of the European enforcement order regulation No. 805/2004)?

_____

6. Is the information about judicial agreements included in confirmation of the European enforcement order (Annex II of the European enforcement order regulation No. 805/2004) sufficient?

Yes ___
No ___
Don't know _____
Don't have any experience with it _____

6.1. If you answered "No"- what other information should be included in the confirmation of the European enforcement order (Annex II of the European enforcement order regulation No. 805/2004)?

_____

7. Is the information about legal instruments included in confirmation of the European enforcement order (Annex III of the European enforcement order regulation No. 805/2004) sufficient?

Yes ___
No ___
Don't know _____
Don't have any experience with it _____

7.1. If you answered "No"- what other information should be included in the confirmation of the European enforcement order (Annex III of the European enforcement order regulation No. 805/2004)?

_____

8. European enforcement orders of what other countries have been presented to you (Annexes I, II or III of the European enforcement order regulation No. 805/2004)?

_____

9. Have you ever been presented certificates of absence or restriction of enforceability, issued by the courts of other member states (Annex IV of the European enforcement order regulation No. 805/2004)?

Yes ___
No ___

9.1. If you answered "Yes"- do you think that the enforcement order provides enough information about operations carried out by bailiffs?

Yes ___
No ___
Don't know ___
9.1.1. Why?

10. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?

Yes ___
No ___
10.1. Why?

11. Do you have any additional suggestions on how the European enforcement order regulation No 805/2004 and/or the Code of civil procedure regulations should be altered or supplemented?

_____

III. Questions about the European order for payment procedure regulation No. 1896/2006

[Please, answer the questions in this Chapter only if you have implemented the European order for payment procedure regulation No. 1896/2006].

12. Should form A of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?

Yes ___
No ___

12.1. If you answered "No"- do you think that Estonian translation of the European order for payment procedure regulation should be improved?

Yes ___
No ___

13. Do creditors from other EU member states submit European orders for payment and declarations of enforceability for execution in Estonia in accordance with Art. 21(2) of the European order for payment procedure regulation No. 1896/2006)?

Yes ___
No ___
Don't know _____

14. Do creditors submit European orders for payment (Annex V, form E of the European order for payment procedure regulation No. 1896/2006) and declarations of enforceability (Annex VII, form G

of the European order for payment procedure regulation No. 1896/2006) with added Estonian translation?

Yes ___
No ___
Don't know _____

15. European enforcement orders of what other countries have been presented to you (Annexes I, II or III of the European enforcement order regulation No. 1896/2006)?

_____

16. Is the information included in the European order for payment (Annex V, form E of the European order for payment procedure regulation No. 1896/2006) and in declaration of enforceability (Annex VII, form G of the European order for payment procedure regulation No. 1896/2006) sufficient in your opinion?

Yes ___
No ___
Don't know _____
Don't have any experience with it _____

16.1. If you answered "No"- what was missing?

_____

17. Do you think that the questions concerning the European order for payment procedure regulation No. 1896/2006 are regulated enough in the Code of civil procedure?

Yes ___
No ___
17.1. Why? _____.

18. Do you think that the European order for payment procedure regulation No. **1896/2006 functions well in resolving Estonian cross-border disputes?**

Yes ___
No ___
Don't know ___

19. Do you have any additional proposals for improvement of the European order for payment procedure regulation No. 1896/2006 or the part concerning payment order of the Estonian civil proceeding?

_____

IV. Questions about the European small claims procedure regulation No. 861/2007

[Please, answer the questions in this Chapter only if you have implemented the European small claims procedure regulation No. 861/2007]

20. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?

Yes ___
No ___

24.1. If you answered “No”- do you think that Estonian translation of the European small claims procedure regulation should be improved?

Yes ___
No ___

21. Do applicants submit the “European small claims procedure regulation approval” (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) that was issued in another member state, for execution in Estonia in accordance with Art 21(2)?

Yes ___
No ___
Not always ____

22. Do applicants submit the “European small claims procedure regulation approval” (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) for execution in Estonia with Estonian translation?

Yes ___
No ___
Not always ____

23. From what countries have you gotten confirmations of judgments of the European small claims procedure (Annex IV, Form D, the European small claims procedure regulation No. 861/2007)?

_____

24. Is the information included in the European small claims procedure judgment confirmation (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) sufficient in your opinion?

Yes ___
No ___
Don't know _____
Don't have any experience with it _____

24.1. If you answered “No”- what else should be included?

25. Do you think that the questions related to the European small claims procedure order regulation No. 861/2007 are regulated enough in the Estonian Code of civil procedure?

Yes ___
No ___
25.1. Why? _____.

26. Do you think that the European small claims procedure order regulation No. 861/2007 functions well in Estonian practice of resolving cross-border disputes?

Yes ___
No ___
Don't know _____

27. Do you have any suggestions for how the European small claims procedure order regulation No. 861/2007 and/or the Code of civil procedure regulations should be altered or supplemented?
_____

V. Summary questions

28. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?

Yes ___
No ___

28.1. If you answered "Yes" – were you satisfied with the quality of the training?

Yes ___
No ___
28.1.1. Why? ____

28.2. Would you participate, if the training was carried out in a foreign language?

No ___
Yes ___

28.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

29. Do you use the European Judicial Atlas in civil matters in your work?

Yes ___
No ___

29.1. If you answered "Yes" – did you encounter any difficulties while using the Atlas?
Yes ___
No ___
29.1.1. What kind of difficulties? _____

29.2. Do you think it is necessary to conduct trainings on the use of the Atlas?
Yes ___
No ___

30. Where do you work?
-in Tallinn
-in Tartu
-Elsewhere
30.1. If you answered "Elsewhere" - please specify

31. For how many years have you worked as a bailiff?

32. If you have any additional commentaries concerning implementation of the aforementioned EU regulations, then write them here, please.

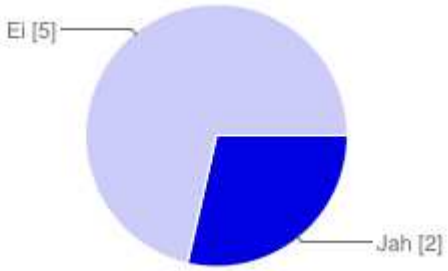
Thank you for answering!

13.6. Appendix 6 (Answers of bailiffs)

(Answers to the questions, that bailiffs answered)

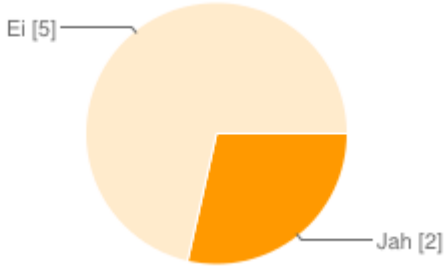
I. Introduction

1.1. Have you, during the course of your work been exposed to the regulation no. 805/2004 of the European Parliament and the Council (EC) of 21 April 2004, creating the European enforcement order for uncontested claims. Official Journal of the European Union L 143, 30/04/2004, pp 0015-0039 (further: European enforcement order regulation)?



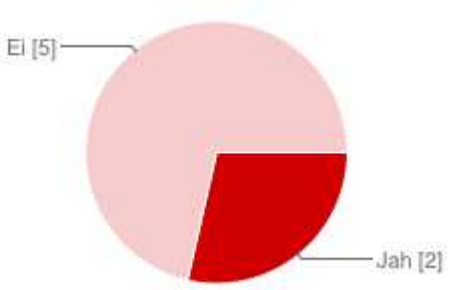
Yes	2 29%
No	5 71%

1.2. Have you, during the course of your work been exposed to the regulation no. 861/2007 of the European Parliament and the Council (EC) of 11 July 2007, establishing the European small claims procedure. Official Journal of the European Union L 199, 31/07/2007, pp 0001-0022 (further: European small claims procedure regulation)?



Yes	2 29%
No	5 71%

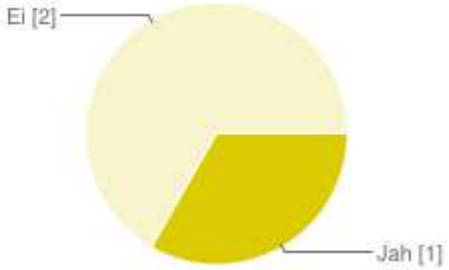
1.3. Have you, during the course of your work been exposed to the regulation no.1896/2006 of the European Parliament and the Council (EC) of 12 December 2006, creating the European order for payment procedure. Official Journal of the European Union L 399, 30/12/2006, pp 0001-0032 (further: European order for payment procedure regulation)?



Yes	2 29%
No	5 71%

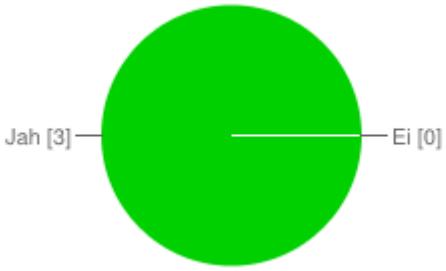
II. Questions about the European enforcement order regulation No. 805/2004

2. Is the Estonian translation of the European enforcement order regulation No. 805/2004 satisfactory in your opinion?



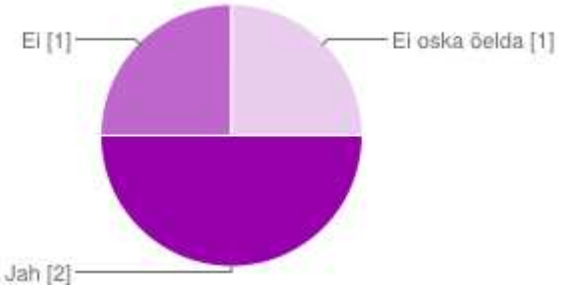
Yes	1 14%
No	2 29%

2.1. If you answered “No”- do you think that the Estonian translation of the European enforcement order regulation should be improved?



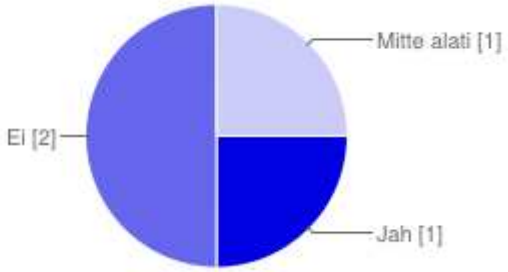
Yes	3 43%
No	0 0%

3. Do you know if creditors from other EU member states submit decisions confirmed by the European enforcement order (Art. 20(2) of the European enforcement order regulation No. 805/2004)?



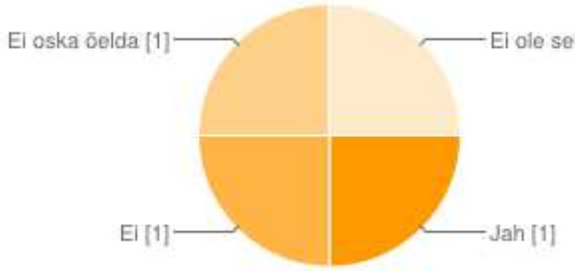
Yes	2 29%
No	1 14%
Don't know	1 14%

4. Do creditors from other EU member states submit documents confirmed by the European enforcement order (Annex I, II, or III of the European enforcement order regulation No. 805/2004) for execution in Estonia with added Estonian translation?



Yes	1	14%
No	2	29%
Not always	1	14%

5. Is the information about judgments included in confirmation of the European enforcement order (Annex I of the European enforcement order regulation No. 805/2004) sufficient?

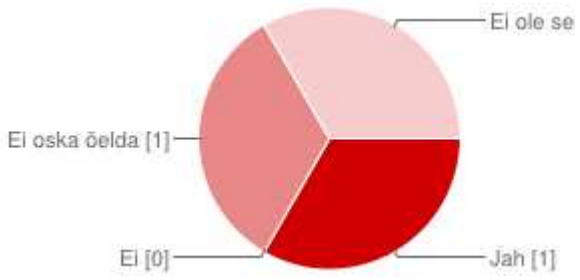


Yes	1	14 %
No	1	14 %
Don't know	1	14 %
Don't have any experience with it.	1	14 %

5.1. If you answered “No”- what other information should be included in the confirmation of the European enforcement order (Annex I of the European enforcement order regulation No. 805/2004)?

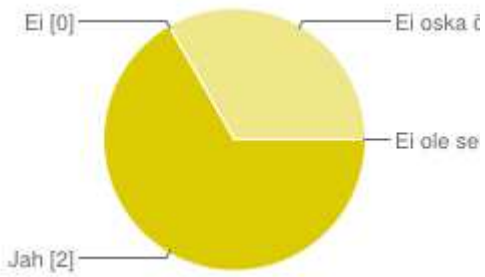
- Respondent: procedure of registration of collateral claims is incomplete

6. Is the information about judicial agreements included in confirmation of the European enforcement order (Annex II of the European enforcement order regulation No. 805/2004) sufficient?



Yes	1 14 %
No	0 0%
Don't know	1 14 %
Don't have any experience with it.	1 14 %

7. Is the information about legal instruments included in confirmation of the European enforcement order (Annex III of the European enforcement order regulation No. 805/2004) sufficient?

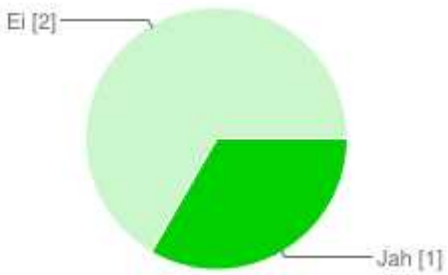


Yes	2 29 %
No	0 0%
Don't know	1 14 %
Don't have any experience with it.	0 0%

8. European enforcement orders of what other countries have been presented to you (Annexes I, II or III of the European enforcement order regulation No. 805/2004)?

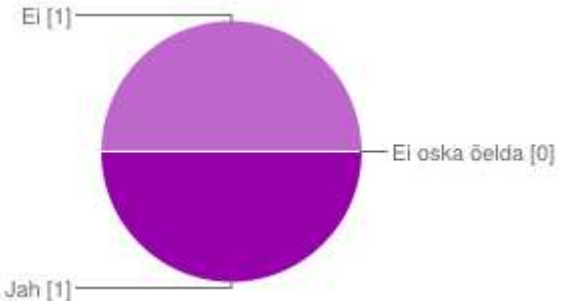
- Respondent: Finland, Lithuania, Latvia
- Respondent: Germany, Sweden, Latvia

9. Have you ever been presented certificates of absence or restriction of enforceability, issued by the courts of other member states (Annex IV of the European enforcement order regulation No. 805/2004)?



Yes	1 14%
No	2 29%

9.1. If you answered “Yes”- do you think that the enforcement order provides enough information about operations carried out by bailiffs?

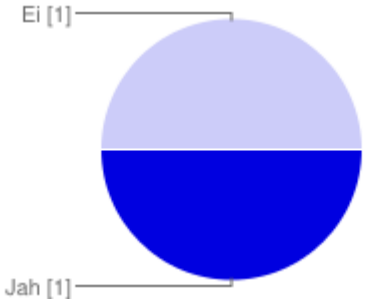


Yes	1	14%
No	1	14%
Don't know	0	0%

9.1.1. Why?

- Respondent: Enforcement proceeding cannot be initiated due to lack of underlying conditions.
- Respondent: Wasn't clear enough.

10. Do you think that the questions concerning the European enforcement order regulation No. 805/2004 are sufficiently regulated in the Estonian Code of civil procedure?



Yes	1	14%
No	1	14%

10.1. Why?

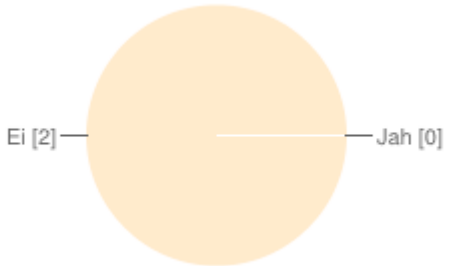
- Respondent: The law is deficient.

11. Do you have any additional suggestions on how the European enforcement order regulation No 805/2004 and/or the Code of civil procedure regulations should be altered or supplemented?

- Respondent: This presumes a profound knowledge of regulation/don't have that knowledge unfortunately.
- Respondent: the Parliament legislates.

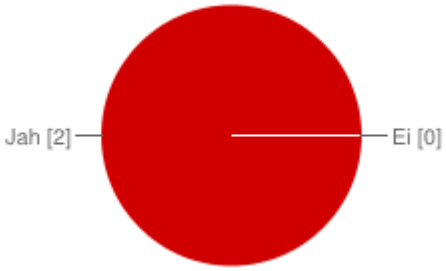
III. Questions about the European order for payment procedure regulation No. 1896/2006

12. Should form A of the European order for payment procedure regulation No. 1896/2006 satisfactory in your opinion?



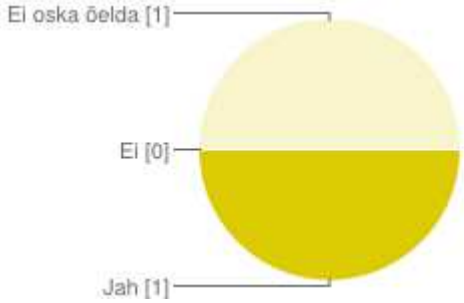
Yes	0	0%
No	2	29%

12.1. If you answered “No”- do you think that Estonian translation of the European order for payment procedure regulation should be improved?



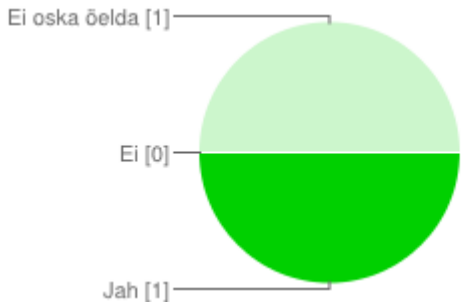
Yes	2	29%
No	0	0%

13. Do creditors from other EU member states submit European orders for payment and declarations of enforceability for execution in Estonia in accordance with Art. 21(2) of the European order for payment procedure regulation No. 1896/2006)?



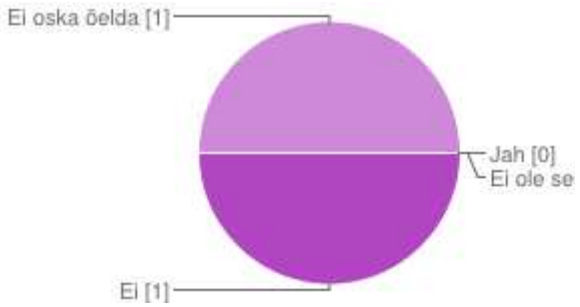
Yes	1	14%
No	0	0%
Don't know	1	14%

14. Do creditors submit European orders for payment (Annex V, form E of the European order for payment procedure regulation No. 1896/2006) and declarations of enforceability (Annex VII, form G of the European order for payment procedure regulation No. 1896/2006) with added Estonian translation?



Yes	1 14%
No	0 0%
Don't know	1 14%

16. Is the information included in the European order for payment (Annex V, form E of the European order for payment procedure regulation No. 1896/2006) and in declaration of enforceability (Annex VII, form G of the European order for payment procedure regulation No. 1896/2006) sufficient in your opinion?

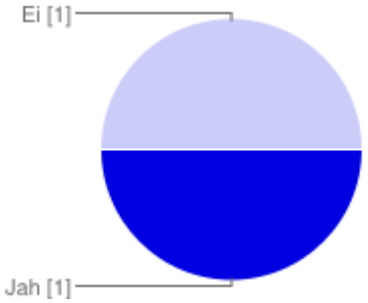


Yes	0 0%
No	1 14 %
Don't know	1 14 %
Don't have any experience with it.	0 0%

16.1. If you answered “No”- what was missing?

- Respondent: Explanations were obscure.

17. Do you think that the questions concerning the European order for payment procedure regulation No. 1896/2006 are regulated enough in the Code of civil procedure?

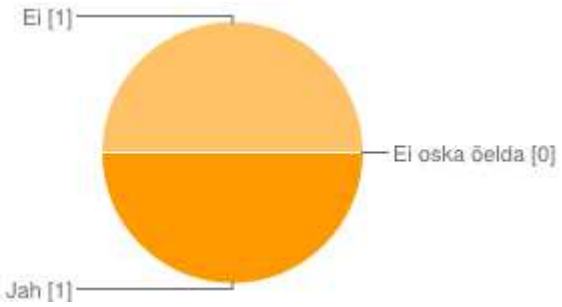


Yes	1 14%
No	1 14%

17.1. Why?

- Respondent: lack of regulation.

18. Do you think that the European order for payment procedure regulation No. 1896/2006 functions well in resolving Estonian cross-border disputes?



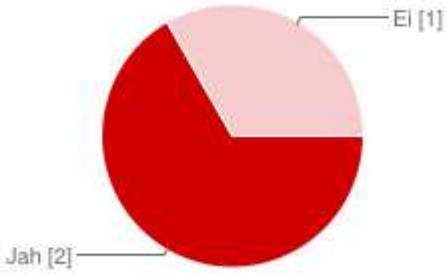
Yes	1	14%
No	1	14%
Don't know	0	0%

19. Do you have any additional proposals for improvement of the European order for payment procedure regulation No. 1896/2006 or the part concerning payment order of the Estonian civil proceeding?

- Respondent: Legislator will improve it.

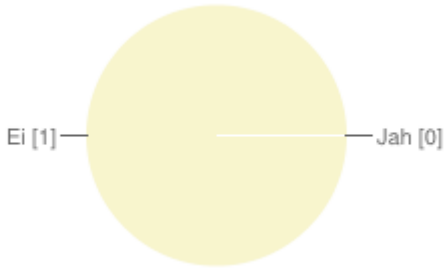
IV. Questions about the European small claims procedure regulation No. 861/2007

20. Is Estonian translation of the European small claims procedure regulation No 861/2007 satisfactory in your opinion?



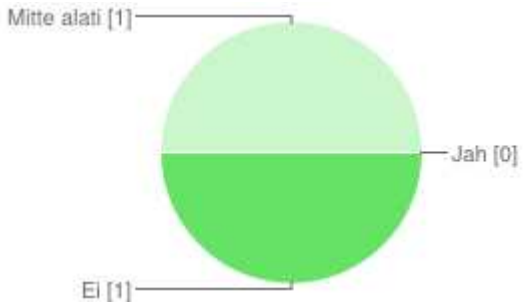
Yes	2	29%
No	1	14%

24.1. If you answered "No"- do you think that Estonian translation of the European small claims procedure regulation should be improved?



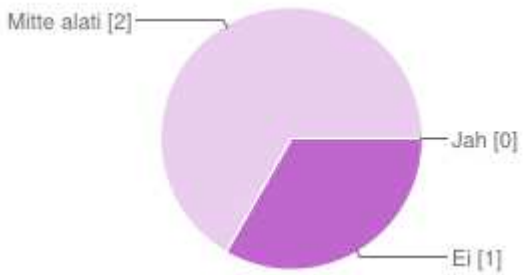
Yes	0	0%
No	1	14%

21. Do applicants submit the "European small claims procedure regulation approval" (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) that was issued in another member state, for execution in Estonia in accordance with Art 21(2)?



Yes	0 0%
No	1 14%
Not always	1 14%

22. Do applicants submit the "European small claims procedure regulation approval" (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) for execution in Estonia with Estonian translation?

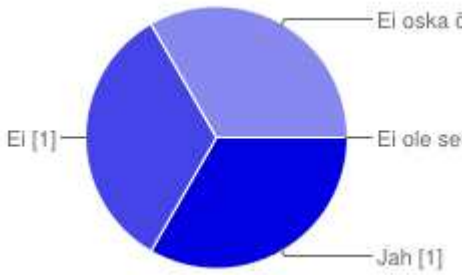


Yes	0 0%
No	1 14%
Not always	2 29%

23. From what countries have you gotten confirmations of judgments of the European small claims procedure (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) for execution in Estonia?

- Respondent: Latvia, Lithuania, Finland
- Respondent: Finland

24. Is the information included in the European small claims procedure judgment confirmation (Annex IV, Form D, the European small claims procedure regulation No. 861/2007) sufficient in your opinion?



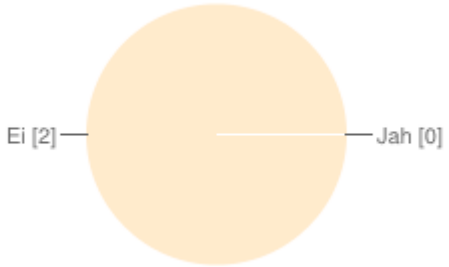
Yes	1 14 %
No	1 14 %
Don't know	1 14 %
Don't have any experience	0 0%

with it.

24.1. If you answered “No”- what else should be included?

- Respondent: conclusion of judicial decision could be translated word for word, since purely naming a sum may not be sufficient.

25. Do you think that the questions related to the European small claims procedure order regulation No. 861/2007 are regulated enough in the Estonian Code of civil procedure?

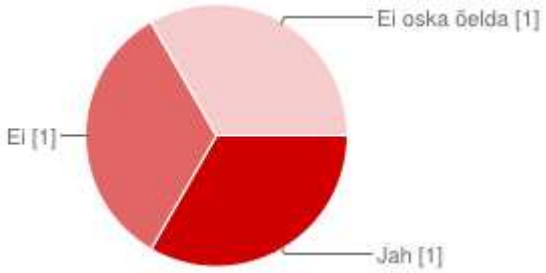


Yes	0	0%
No	2	29%

25.1. Why?

- Respondent: this question must be asked from legislators.

26. Do you think that the European small claims procedure order regulation No. 861/2007 functions well in Estonian practice of resolving cross-border disputes?



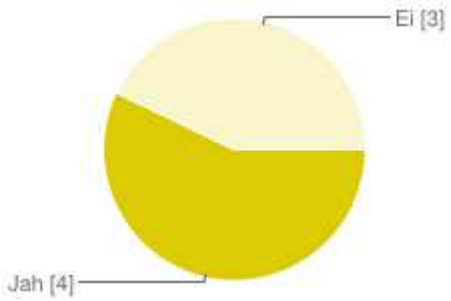
Yes	1	14%
No	1	14%
Don't know	1	14%

27. Do you have any suggestions for how the European small claims procedure order regulation No. 861/2007 and/or the Code of civil procedure regulations should be altered or supplemented?

- Respondent: Probably more bailiff trainings, since knowledge of Estonian legislation is not sufficient anymore in contemporary Europe.

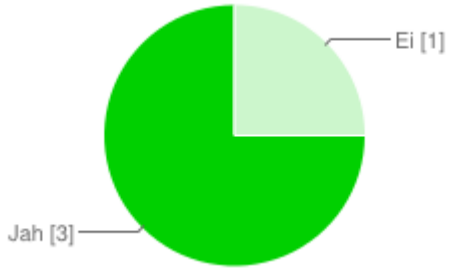
V. Summary questions

28. Have you participated in any trainings, workshops or conferences concerning regulations No. 805/2004, No. 1896/2006 or No. 861/2007?



Yes	4 57%
No	3 43%

28.1. If you answered "Yes" – were you satisfied with the quality of the training?

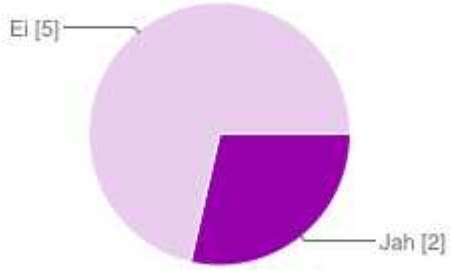


Yes	3 43%
No	1 14%

28.1.1. Why?

- Respondent: Haven't found these types of training offers.
- Respondent: Lecturer was not proficient in the subject matter.

28.2. Would you participate, if the training was carried out in a foreign language?

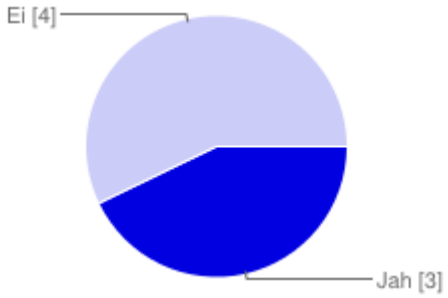


Yes	2 29%
No	5 71%

28.3. If you answered "Yes" – in what language should the training be carried out, in order for you to participate?

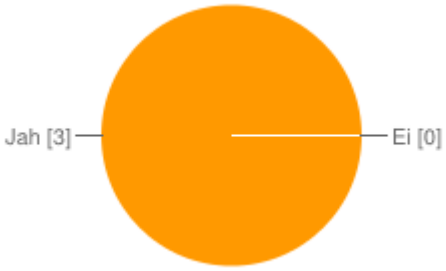
- Respondent: Estonian
- Respondent: Any language, as long as simultaneous translation is provided.
- Respondent: English
- Respondent: Estonian

29. Do you use the European Judicial Atlas in civil matters in your work?



Yes	3 43%
No	4 57%

29.1. If you answered “Yes” – did you encounter any difficulties while using the Atlas?

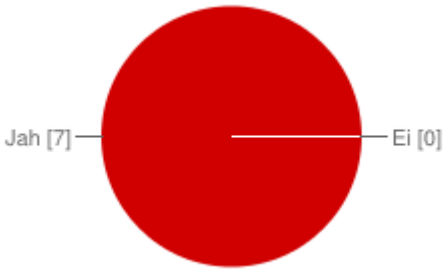


Yes	3 43%
No	0 0%

29.1.1. What kind of difficulties?

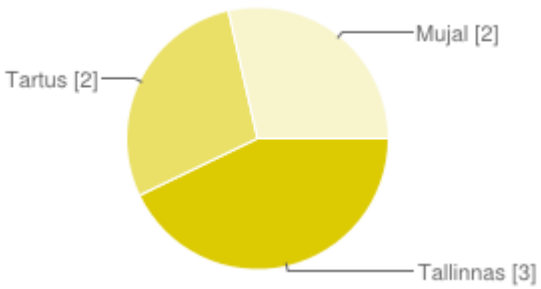
- Respondent: Deficient translation to Estonian, difficult to find a required material, too many references which leads to loosing sequel.
- Respondent: Any novelty is difficult at first and takes up a lot of time. Finding the right legal acts has been very time-consuming.
- Respondent: with orientation- the structure doesn't seem very logical.

29.2. Do you think it is necessary to conduct trainings on the use of the Atlas?



Yes	7 100%
No	0 0%

30. Where do you work?



in Tallinn	3	43%
in Tartu	2	29%
Elsewhere	2	29%

30.1. If you answered “Elsewhere” - please specify

- Respondent: Pärnu work area
- Respondent: Haapsalu

31. For how many years have you worked as a bailiff?

- Respondent: 11
- Respondent: 17
- Respondent: 14
- Respondent: 11
- Respondent: 11
- Respondent: 14.5
- Respondent: less than 1 year

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