

PRO BONO SPECIAL

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ULC Čarnogurský PRO BONO Special brings to you a brief résumé of the European Parliament and Council Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims. The regulation significantly simplifies and shortens the enforcement of judgments on uncontested claims against debtors in other EU Member States. This issue of the bulletin contains a detailed description of the new regulation.



A EUROPEAN ORGANIZATION OF ATTORNEYS EWIV

More than one year and a half has elapsed since the adoption of the Regulation of the European Parliament and of the Council (EC) No 805/2004 (hereinafter the “Regulation”) creating a European Enforcement Order for uncontested claims (hereinafter “EEO”). The Regulation has recently (on **21st October**) entered into force.

Philosophy of the Regulation

The Regulation represents a significant step towards proper functioning of the internal market in the field of judicial cooperation in civil and commercial matters in that it facilitates the free circulation of judgements, court settlements and other instruments on uncontested claims within EU Member States with the exception of Denmark. The improved efficiency of enforcement in the case of uncontested claims thus goes beyond the earlier **Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters**, which introduced a general mechanism for the recognition and enforcement of judgements. The main advantage is that the procedure set out in the new Regulation no longer requires **approval or recognition of supporting documents by the court** in the Member State of enforcement. However, the new Regulation does not prevent creditors from choosing the procedure of recognition and enforcement under the earlier regulation.

Scope of the Regulation The **Regulation applies** to civil and commercial matters regardless of the type of court. It does not, in particular, apply to revenue, custom or administrative matters, nor does it cover the liability of the State for acts and omissions in the exercise of state authority (*acta iure imperii*). The Regulation also does not apply to the status or capacity of natural persons or the rights in property arising out of matrimonial relationships, wills and successions. It does not apply to bankruptcy, compositions and other analogous proceedings, social security and arbitration.

The enforcement titles, which may be

certified as EEO, are **judgements, court settlements and authentic instruments on uncontested claims**. For the purposes of the Regulation, **judgment** means any judgement given by a court of a Member State, irrespective of whether such judgment is called a decree, order, decision or writ of execution, including the determination of costs or expenses by an officer of the court. **Authentic instrument** means any 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, that is the Member State in which the authentic instrument has been drawn up or registered and certified as EEO. The Regulation also applies to **decisions delivered following challenges to judgments**, court settlements or authentic instruments certified as European Enforcement Orders.

Enforcement titles to be certified as EEO

The **subject** of a judgement, court settlement or authentic document must be an **uncontested claim**. For the purposes of the Regulation, a claim is deemed uncontested if **(1)** 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. A claim is also regarded as uncontested if **(2)** the debtor has never objected to it in the course of the court proceedings in compliance with the relevant procedural regulations of the Member State of origin, or **(3)** the debtor has expressly agreed to it in an authentic document. A claim is also deemed uncontested if **(4)** the debtor has not appeared or been represented at a hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such a 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.

Stipulation of an uncontested claim

EEO certification

For a judgment on uncontested claim to be enforceable as EEO, the judgment must first be certified as EEO. A judgment which has been certified as EEO in the Member State of origin must be recognised and enforced in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition – **the judgment thus abolishes the exequatur requirement.** The EEO certification is effective only within the limits of enforceability of the judgment.

A judgment shall be certified as EEO provided that the following conditions laid down in the Regulation are met: (1) the claim must be uncontested, (2) the judgment is enforceable in the Member State of origin, (3) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 to 6 of Chapter II of Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and (4) the court proceedings in the Member State of origin met the minimum procedural standards laid down in the Regulation.

If a claim is deemed uncontested because the debtor has never objected to it in the course of the court proceedings in compliance with the relevant procedural requirements under the law of the Member State of origin, or the debtor has not appeared or been represented at a hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such a 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 and the claim relates to a contract concluded by a person, the consumer, for a purpose that cannot be regarded as being outside his trade or profession and the debtor is consumer, there is one additional requirement under which (5) 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.

Whether a party is domiciled in the Member State whose court is seised of the matter is determined in accordance

with the law of the state where the court is located. If a party is not domiciled in the Member State whose court is 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. Domicile is a place where the natural or legal person has its statutory seat, central administration or principal place of business.

A judgment to be certified as EEO may be **certified in whole** or **in part**. If only a part of the judgment meets the requirements of the Regulation, a partial EEO certificate is issued for that part. The Regulation pays specific attention to the costs related to the court proceedings. Where a judgment includes an enforceable decision on the amount of costs related to the court proceedings, including the interest rates, it must be certified as EEO also with regard to such 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.

EEO certificate is issued, using a standard form, **in the language of the judgment**. It is effective within the limits of the enforceability of the judgment. There is no appeal against the issuing of an EEO certificate. The only exception to this rule is the application for the rectification or withdrawal of certificate. If, due to a material error, there is a discrepancy between the judgment and certificate, the certificate shall, **upon application**, be **rectified**. If a certificate has been wrongly granted having regard to the requirements laid down in the Regulation, it shall be **withdrawn**, also upon **application**.

A judgment that has been certified as EEO by the court of origin should, for enforcement purposes, be treated as if it had been issued in the Member State in which enforcement is sought. Arrangements for the enforcement of judgments should be governed by national law. Nevertheless, for the proceedings leading to the enforcement of judgments the Regulation stipulates certain requirements, referred to as **minimum standards**, aimed at ensuring that the debtor is **informed** about the court acti-

Partial certification of European Enforcement Order and costs related to court proceedings

Issue of the EEO certificate

Procedural minimum standards

on 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 so as to enable him to arrange for his defence**. The process of decision making in the Member State of origin and the judgment on the claim must, at all times, meet the requirements set out as minimum standards. **If the proceedings in the Member State of origin did not meet the procedural requirements set as minimum standards**, such non-compliance may still be **cured** and the judgment certified as EEO if the judgment has been served on the debtor in compliance with the provisions of the Regulation governing the service of documents and 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 the time limit for so doing) and the debtor has failed to challenge the judgment in compliance with the relevant procedural requirements. **Where the requirements were not met due to errors in the service of documents**, such non-compliance may be cured if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document in sufficient time to arrange for his defence. The Regulation contains fairly detailed provisions on the minimum standards for the service of documents. It distinguishes three ways of document service: service with proof of receipt by the debtor, service without proof of receipt by the debtor and service on the debtor's representatives.

receive it without any legal justification, and the date of the service, **(3) postal service** where the debtor signs and returns acknowledgement of receipt, including the date of receipt, **(4) service by electronic means** such as fax or e-mail, where the debtor signs and returns acknowledgement of receipt, including the date of receipt. Any summons to a court hearing may be served on the debtor also **(5) orally** in a previous court hearing on the same claim and stated in the minutes of that previous hearing. The proof of receipt by the debtor is a document signed by the competent person who effected the service. Such a person must also indicate the method and date of service and, where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor. The person served may acknowledge the receipt under the same conditions.

Service without proof of receipt by the debtor may be used for documents instituting the proceedings or equivalent documents and for summons to a court hearing and may be effected by one of the following methods: **(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, **(2)** if the debtor is a self-employed or legal person, personal service at the debtor's business premises on persons who are employed by the debtor, **(3)** deposit of the document in the debtor's mailbox, **(4)** 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 the legal effect of the notification as effecting service and setting in motion the running of the time for the purposes of time limits, **(5)** postal service without proof of delivery where the debtor has his address in the Member State of origin, and **(6)** service by electronic means attested by automatic confirmation of delivery, provided that the debtor has expressly consented to this method of service in advance. Both methods of service may also be used in situations where the document must be served

Service and procedural minimum standards

Service with proof of receipt by the debtor is typically used for documents instituting the proceedings or for equivalent documents and may be effected by one of the following methods: **(1) personal service** where the debtor signs acknowledgement of receipt, including the date of receipt, **(2) personal service** where the competent person who effected the service signs a document stating that the debtor has received the document or refused to

on the **debtor's representatives**. This is particularly the case when the debtor cannot represent himself in court, as in the case of a legal person, and where a person to represent him is determined by law, as well as situations where the debtor has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.

any fault on his part, or if **(2)** 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 Regulation nevertheless provides that in either of the two cases the debtor must act promptly.

As mentioned above, the **enforcement procedure is governed by the law of the Member State of enforcement**.

A judgment certified as EEO must be enforced under the same conditions as a judgment handed down in the Member State of enforcement. The person seeking enforcement of a judgment certified as EEO in another Member State is not required, on the grounds of being a foreign national or not being domiciled or resident in the Member State of enforcement, to provide any security, bond, deposit or any other surety, however described.

In connection with the commencement of the procedure, the Regulation requires the debtor to provide the competent enforcement authorities of the Member State of enforcement with certain documents, specifically: **(1)** a copy of the judgment which satisfies the conditions necessary to establish its authenticity, **(2)** a copy of the EEO certificate which satisfies the conditions necessary to establish its authenticity, **(3)** where necessary, a transcription of the EEO certificate or a translation thereof into the official language of the Member State of enforcement; the translation must be certified by a person qualified to do so in that Member State.

The Regulation also provides for a possibility to refuse enforcement. Enforcement may be refused, solely upon application, if the judgment certified as EEO is irreconcilable with an earlier judgment given in any Member State or in a third country, and: **(1)** the earlier judgment involved the same cause of action and was between the same parties, **(2)** 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 **(3)** the irreconcilability was not and could not have been raised as an objection in the court proceedings

Due information and procedural minimum standards

In order to ensure that the debtor is provided with **due information**, the document instituting the proceedings or equivalent document, or summons or advice attached to such documents, must contain the following due information prescribed by the Regulation. In respect of the **claim**, the debtor must be informed in such documents about the names and addresses of the parties, the amount of the claim, a statement of the reason for the claim and, 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. The Debtor must be provided with due information **about the procedural steps necessary to contest the claim**. This applies, in particular, to information on the procedural requirements necessary to contest the claim, including the time limit for contesting the claim or the time for the court hearing, as applicable, the name and 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. The consequences of an **absence of objection or default of appearance**, in particular, and the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings, must, where applicable, also be a part of such information.

Minimum standards for review in exceptional cases

If the minimum standards for proceedings are not met, a judgment may be certified as EEO only in two cases: **(1)** if the debtor is entitled, under the law of the Member State of origin, to apply for a review of the judgment, the document instituting the proceedings or an equivalent document or the summons to a court hearing was served without proof of receipt by the debtor or its service was not effected in sufficient time to enable him to arrange for his defence without

Enforcement procedure

Refusal of enforcement

Stay or limitation of enforcement

in the Member State of origin. **Under no circumstances may the judgment or its certification as European Enforcement Order be reviewed as to their substance.**

If the debtor has challenged a judgment certified as EEO, including application for review, or applied for the rectification or withdrawal of EEO certificate,

the competent court or authority in the Member State of enforcement may, upon application by the debtor, **limit the enforcement proceedings to protective measures, make enforcement conditional on the provision of a security** it determines or, under exceptional circumstances, **stay the enforcement proceedings.**

The information contained in this bulletin does not constitute legal advice, nor does it substitute for legal advice. It is presented for information purposes only and its application will always be specific depending on circumstances. The legal arrangements and implications of specific transactions should always be discussed with a lawyer.

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