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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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## Introduction

1. 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.
2. The Research was conducted by researchers of the Baltic States: in Latvia — *Doc. Dr. iur. Inga Kačevska, Dr. iur. cand. Baiba Rudevska*, in Lithuania — *Prof. Dr. iur. Vytautas Mizaras, Dr. iur. Aurimas Brazdeikis* and in Estonia — *Dr. iur. cand. Maarja Torga* (further — Researchers).
3. The Ministry of Justice and the European Commission do not take any responsibility for the content of the Research.

## Aim of the Research

4. The aim of the Research is to evaluate and analyse the practical application of European Union regulations in Latvia, Lithuania, and Estonia:
  - **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*),<sup>1</sup>
  - **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*) (further all Regulations — *Regulations*),<sup>2</sup>
  - **Regulation (EC) 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*).<sup>3</sup>
5. 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 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

6. 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,

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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.

7. 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**

8. Research methodology has been described in detail in Appendix No. 1 of the present Research.

### **Research structure**

9. 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.

10. There are eight parts in the Latvian part of the Research that are subdivided into several sub-parts. Chapter I provides a general insight into the historical development of Regulations and the application thereof, as well as specifies the main differences thereof. Chapter II features a detailed analysis of Regulation 805/2004, whereas Chapter III — of Regulation 861/2007 and Chapter IV — of Regulation 1896/2006. Furthermore, Chapter V offers an evaluation of scholars regarding the use of the Atlas. Chapter VI includes an analysis of the statistics of Regulation application in Latvia, whereas the seventh section — results of an empirical study regarding the application of Regulations in Latvia. Chapter VIII provides a detailed description of the introduction of Regulations within the legal system of Latvia.

# CHAPTER 1 LATVIA

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## 1. General insight into the application of Regulations<sup>4</sup>

**11.** 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.<sup>5</sup>

**12.** 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).<sup>6</sup> 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<sup>7</sup>).

**13.** 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"<sup>8</sup> 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

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<sup>4</sup> 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 komercietās 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?!=1&fn=F885910470/Baiba%20Rudevska%202012.pdf>.

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

<sup>6</sup> 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].

<sup>7</sup> 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.

<sup>8</sup> *Ibid.*, p. 5, 6.



minimum procedural standards (see Regulation 805/2004, p. 12-19; Recital 9 of the preamble to Regulation 1896/2006).

**14.** 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*<sup>9</sup>). **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.

**15.** 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*),<sup>10</sup> 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).

**16.** 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.<sup>11</sup> 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.*<sup>12</sup>

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Ibid, p. 6, 10.

17. The principle of mutual recognition has been mentioned repeatedly in the report of the Commission "*Implementation of The Hague Programme: Further Action*"<sup>13</sup> 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<sup>14</sup>; 2) Green Paper on efficient enforcement of judgments in the European Union: transparency of debtors assets.<sup>15</sup>

18. *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.<sup>16</sup>

19. 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.

20. Thus from 2000, documents of the "first generation" rights,<sup>17</sup> regulating jurisdiction and the recognition of judgments in civil and commercial matters,<sup>18</sup> family matters,<sup>19</sup> as well as issues on insolvency,<sup>20</sup> issue of court and out-of-court documents<sup>21</sup> and taking of evidence in cross-border civil and commercial matters were adopted in the EU.<sup>22</sup>

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<sup>13</sup> Ibid, p. 26, 27.

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

<sup>15</sup> Green Paper on efficient enforcement of judgments in the European Union: transparency of debtors assets. COM(2008) 128 final.

<sup>16</sup> 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.

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

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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

21. The Joint Programme of Measures of 30 November 2000<sup>23</sup> 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"<sup>24</sup> 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.

22. 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.<sup>25</sup> Both Regulations 805/2004 and 1896/2006, as well as Regulation 861/2007 may be regarded as documents of this generation.

23. 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).

24. 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.<sup>26</sup> 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.

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

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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.

<sup>22</sup> 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.

<sup>23</sup> 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*).

<sup>24</sup> *Ibid.*, p. 5, 6.

<sup>25</sup> 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.

<sup>26</sup> 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.

**26. 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).

**27.** Meanwhile recognition and exequatur processes are cancelled in Regulation 805/2004, Regulation 1896/2006, and Regulation 861/2007.<sup>27</sup>

**28.** Regulation 805/2004, for instance, specifies that the basis for the cancellation of the recognition and exequatur process is a principle of mutual trust,<sup>28</sup> principle of mutual recognition<sup>29</sup> 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).

**29.** 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<sup>30</sup> 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.<sup>31</sup> 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;<sup>32</sup> 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.<sup>33</sup>

**30. 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".

**31.** Table:

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<sup>27</sup> 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.

<sup>28</sup> See: Recital 18 of the Preamble to Regulation 805/2004 and Recital 27 of the Preamble to Regulation 1896/2006.

<sup>29</sup> See: Recital 4 of the Preamble to Regulation 805/2004.

<sup>30</sup> See: Recital 29 of the Preamble to Regulation 1896/2006.

<sup>31</sup> See: Recital 10 of the Preamble to Regulation 1896/2006 and Recital 8 of the Preamble to Regulation 861/2007.

<sup>32</sup> See: Recital 9 of the Preamble to Regulation 1896/2006.

<sup>33</sup> See: Recitals 7, 8 and 25 of the Preamble to Regulation 861/2007.

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			
<b>Regulation is not broadened in respect of</b>			
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").
<b>Regulation does not apply to</b>			
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.

**32.** At the same time one must observe that Regulation 1896/2006<sup>34</sup> and Regulation 861/2007<sup>35</sup> 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.<sup>36</sup> 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.

**33.** 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).

**34.** 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<sup>37</sup> for financial claims.<sup>38</sup> 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.<sup>39</sup> 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<sup>40</sup>).

**35.** Table:

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<sup>34</sup> See Recitals 9 and 10 of the Preamble to the Regulation.

<sup>35</sup> See Recital 8 of the Preamble to the Regulation.

<sup>36</sup> See also Article 26 of Regulation 1896/2006 and Article 19 of Regulation 861/2007.

<sup>37</sup> Article 3 (1) of Regulation 805/2004, Article 1 (1) (a) of Regulation 1896/2006.

<sup>38</sup> Article 4 (2) of Regulation 805/2004, Article 1 (1) (a) of Regulation 1896/2006.

<sup>39</sup> Article 5 (5) and (6) of Regulation 861/2007.

<sup>40</sup> Zivilprozessordnung (ZPO). Available at: [www.gesetze-im-internet.de](http://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."

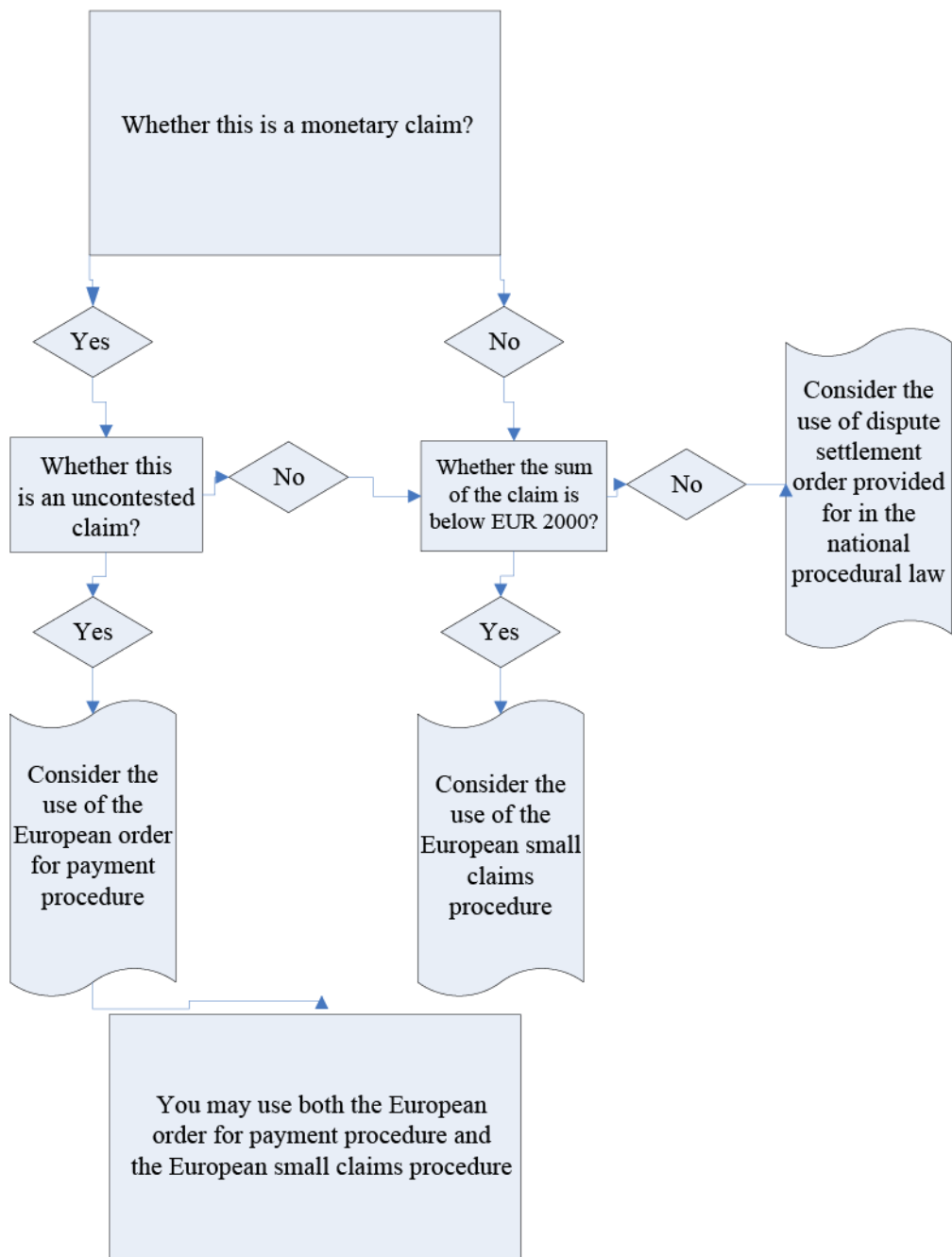
Regulation 805/2004	Regulation 1896/2006	Regulation 861/2007
-	Cross-border cases	Cross-border cases
Claims for the payment of a specific sum of money	Financial claims	Monetary claim and other claim (not exceeding EUR 2000)
Uncontested claims	Uncontested claims	Uncontested and contested claims

**36.** 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		

**37.** 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.





## 2. Regulation 805/2004

### 2.1. Introduction

38. 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).

39. 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.

40. 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.

41. Forms of the Regulation are available here:

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_eeo\\_information\\_lv.htm](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](http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_lv.pdf).

### 2.2. Field of material application

42. 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,<sup>41</sup> because understanding about these terms differs in the legal systems of Member States.<sup>42</sup>

**43.** 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.<sup>43</sup> 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.

**44.** 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<sup>44</sup> 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,<sup>45</sup> 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).

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

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*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*

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<sup>41</sup> 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.

<sup>42</sup> 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.

<sup>43</sup> 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.

<sup>44</sup> 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.

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

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*Member State where the employee was permanently working). The court applied the Labour Law of Latvia<sup>46</sup> 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)<sup>47</sup>, 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.*

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**46.** 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.*

**47.** 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

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<sup>46</sup> Labour Law of 20 June 2001: Law of the Republic of Latvia. Latvian Herald, No. 105, 06.07.2001.

<sup>47</sup> 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.

outside his trade or profession (an identical formulation may be found also in Article 15 (1) of Brussels I Regulation).

**48.** 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 § 82 and further). For instance, EEO approval may be requested 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.

**49.** 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.<sup>48</sup>

**50.** 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.<sup>49</sup> At present the CJEU has clearly specified that such issues are not within the scope of Brussels I Regulation,<sup>50</sup> 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,<sup>51</sup> 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<sup>52</sup> or other disputes in which the State exercises its authority.<sup>53</sup>

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<sup>48</sup> 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.

<sup>49</sup> 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.

<sup>50</sup> 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](http://www.curia.eu).

<sup>51</sup> See 15 February 2007 ECJ judgment in the case: C-292/05 *Lechouritou u.c. v Dimosio tis Omospondiakis Demokratias 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.

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

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

**51.** 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<sup>54</sup> or there exist non-contractual, but private relations. The CJEU has 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.<sup>55</sup>

**52.** 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<sup>56</sup> or other EU legal enactments.<sup>57</sup>

**53.** 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.

**54.** 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.<sup>58</sup> 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.<sup>59</sup>

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<sup>54</sup> See 14 November 2002 ECJ judgment in the case: C-271/00 *Gemeenter Steenberg 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.

<sup>55</sup> 21 April 1993 ECJ judgment in the case: C-172/91 *Volker Sonntag v. Weidmann* ECR 1993, p. I-01963.

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

<sup>57</sup> 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.

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

<sup>59</sup> 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.

55. 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<sup>60</sup> came into force, also judgments in **matters relating to maintenance obligations** cannot be approved as EEO. 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.<sup>61</sup> Among EU Member States Denmark and the United Kingdom have not joined the referred to Hague Protocol.<sup>62</sup> 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<sup>63</sup> (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.<sup>64</sup> 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

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<sup>60</sup> 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.

<sup>61</sup> 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](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.

<sup>62</sup> 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.

<sup>63</sup> 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.

<sup>64</sup> 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.

4/2009. 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.<sup>65</sup>

**56.** 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). 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.

**57.** 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.<sup>66</sup> 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.<sup>67</sup>

**58.** 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.<sup>68</sup> 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

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<sup>65</sup> 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.

<sup>66</sup> 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.

<sup>67</sup> 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.

<sup>68</sup> 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.



27 September 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters<sup>69</sup> (further: *Brussels Convention*) (thus — the reference currently applies also to Brussels I Regulation).<sup>70</sup> This regards exequatur or enforcement permit proceedings of judgments in insolvency matters. Regulation 805/2004 shall be applicable also for insolvency administrator asset proceedings.<sup>71</sup>

**59.** 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 274. § 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.

**60.** Article 2 (2) (c) of Regulation determines that it is not applicable also in **social security** matters. In case *Gemeente Steenbergen v Luc Baten*<sup>72</sup> the CJEU indicated that also this term should be interpreted irrespectively from the national law and in accordance with Regulation on social security,<sup>73</sup> therefore issues related with illness, maternity, disability, age, unemployment, etc. benefits are not within the scope of Regulation 805/2004.<sup>74</sup> 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.<sup>75</sup>

**61.** 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,<sup>76</sup>

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<sup>69</sup> 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.

<sup>70</sup> See Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München: Sellier, 2010, Art. 2 EG-VollstrTitelIVO (Pabst S.) S. 37

<sup>71</sup> *Ibid.*

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

<sup>73</sup> 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.

<sup>74</sup> 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.*

<sup>75</sup> 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.

<sup>76</sup> 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.

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*).<sup>77</sup> Several European countries have joined also the European Convention on International Commercial Arbitration<sup>78</sup> (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.

**62.** 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,<sup>79</sup> 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.

**63.** 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<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> 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

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However, the convention did not gain the desired responsiveness (only Austria and Belgium joined the convention) and it still has not come into force.

<sup>77</sup> 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.

<sup>78</sup> 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&msgid=XXII-2&chapter=22&lang=en> (accessed 9 July 2012).

<sup>79</sup> 10 February 2009 ECJ judgment in case: C-185/07 *Allianz SpA v. Tanakars Inc.* ECR 2009, p. I-00663.

<sup>80</sup> 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].

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

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

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.<sup>83</sup> 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 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.

**64.** 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.<sup>84</sup> 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.<sup>85</sup>

**65.** 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.<sup>1</sup>, Paragraph six of CPL.

**66.** 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.

### **2.3. Field of geographical application**

**67.** Regulation 805/2004 is applicable in all EU Member States,<sup>86</sup> **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

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

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

<sup>85</sup> 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.

<sup>86</sup> 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.

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).

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

**69.** 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<sup>87</sup> (further — *TFEU*), the Regulation **shall be applicable in the following territories:**

- 69.1. Overseas departments of **France** — Guadeloupe, Martinique, Guiana, Réunion, Saint Barthélemy, and Saint Martin;
- 69.2. The Canary Islands within the composition of **Spain** (in accordance with Article 349 of TFEU);
- 69.3. The Azores (**Portugal**) and MadEEOa (**Portugal**);
- 69.4. 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;
- 69.5. In territories of Europe if any of the Member States is responsible for the external affairs thereof, for instance, in Gibraltar.

**70.** Meanwhile the Regulation **shall not be applicable** in the following territories 9see Article 355 (2) (5) of TFEU):

- 70.1. French Polynesia, New Caledonia and adjacent territories, Southern and the Antarctic Region territories of France, Wallis and Futuna, Saint Pierre and Miquelon, Mayotte (**France**);
- 70.2. The Antilles and Aruba (**the Netherlands**);
- 70.3. 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

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<sup>87</sup> Consolidated version of the Treaty on the European Union. L 83, Official Journal of the European Union, 30.03.2010, p. 47.

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<sup>88</sup>).

## 2.4. Application on time

### 2.4.1. Enactment

71. Latvian version of Article 33 of Regulation 805/2004 states the following:  
*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.*
72. 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<sup>89</sup>. The official version of the Latvian text should be corrected accordingly as well.
73. 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.
74. **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**.
75. **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**.
76. Finally, **Article 32** of the Regulation defines the Committee that shall assist the European Commission.
77. 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

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<sup>88</sup> 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.

<sup>89</sup> 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.

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.*<sup>90</sup>

**78. 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.

#### **2.4.2. Transitional provisions**

**79.** 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.*

**80.** 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.

**81.** 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).<sup>91</sup> 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.

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

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

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

### 2.5.1. Notion of an executive document to be approved as EEO

**82.** 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.*

**83.** 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" (117. § and further).

**84.** 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.

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

- 85.1. court judgments (including decrees, orders, decisions or court orders, as well as decisions adopted by a court secretary regarding expense or cost determination);
- 85.2. court settlement;
- 85.3. authentic instruments;
- 85.4. decisions adopted after contesting of such judgments, court settlements or authentic instruments that have been approved as European Enforcement Orders.

#### 2.5.1.1. Court judgments

**86. 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.*

**87.** 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:<sup>92</sup>

87.1. 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.<sup>93</sup>

87.2. 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.<sup>94</sup>

87.3. 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

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<sup>92</sup> Gaudemet-Tallon, H. *Compétence et exécution des jugements en Europe*. 4<sup>e</sup> 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.

<sup>93</sup> 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.

<sup>94</sup> 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.



(*kronofogdemyndighet*).<sup>95</sup> According to authors, the understanding of the expression "court" defined in 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 Brussels 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".<sup>96</sup> 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.<sup>97</sup>

**88. 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.

**89.** 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.<sup>98</sup> 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.

**90.** 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"<sup>99</sup> (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."<sup>100</sup>

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<sup>95</sup> 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*)."

<sup>96</sup> 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](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CC0461:LV:HTML).

<sup>97</sup> *Ibid*, para. 41.

<sup>98</sup> 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.

<sup>99</sup> Apparently the Latvian version of Regulation 805/2004 was based only on the text in English.

<sup>100</sup> For comparison see: German: "[...] wie Urteil, Beschluss, Zahlungsbefehl oder Vollstreckungsbescheid, einschließlich des Kostenfestsetzungsbeschlusses eines Gerichtsbediensteten"; French: "[...] telle qu'arrêt,

**91.** The notion "decree" also includes separate types of enforcement orders. Taking into account the CJEU jurisprudence (see case *Kloms v. Michel*, 166/80), **decisions** by the judges of the Land Register departments of the Latvian regional (city) courts **regarding compulsory execution of obligations** (Section 406.<sup>9</sup> 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.<sup>6</sup>, 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.<sup>1</sup> 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.<sup>1</sup>, Paragraph two, Clause 3 and Section 406.<sup>2</sup>, 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).

**92.** A "judgment" must not obligatory be in force; enforceability thereof is most important. More detailed information is available in sub-section "Judgment enforceability" (see 152. § and further).

**93.** Also **default judgments** are part of the notion "judgment",<sup>101</sup> 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.<sup>102</sup> 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<sup>103</sup> 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

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jugement, ordonnance ou mandat d'exécution, ainsi que la fixation par le greffier du montant des frais du procès."

<sup>101</sup> 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.

<sup>102</sup> 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](http://www.europa.eu).

<sup>103</sup> Gaudemet-Tallon H., *Compétence et exécution des jugements en Europe*. 4<sup>e</sup> édition. Paris: L.G.D.J., 2010, p. 376.

Brussels I Regulation in the country of enforcement may not be 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 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.<sup>104</sup>

**94.** The default judgment of Latvian courts provided for in Chapter 22.<sup>1</sup> of CPL<sup>105</sup> 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.<sup>1</sup> 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).

#### *2.5.1.2. Orders on costs related to court proceedings*

**95. 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.*

**96.** 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

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

<sup>105</sup> In accordance with Section 208.<sup>1</sup> 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.

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

**97.** 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.<sup>107</sup> 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):

- 97.1. whether the main action regarding the recovery of monetary means has been contested or not;
- 97.2. whether costs related to court proceedings in particular have been contested or not; or
- 97.3. whether both elements have been contested.

**98.** 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

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

<sup>107</sup> *Ibid.*, (Art. 7 EG-VollstrTitel, Pabst S.), S. 94, 95.

			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).

**99. 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.<sup>108</sup> 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 costs 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

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

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.

**100. A partial EEO approval** is possible in several situations:<sup>109</sup>

- 100.1. if not all claims resolved in the judgment are pecuniary claims;
- 100.2. if not all claims resolved in the judgment are uncontested;
- 100.3. if not all claims resolved in the judgment are within the material scope of *ratione materiae* of Regulation 805/2004; or
- 100.4. if not all claims resolved in the judgment conform to the other claims set forth in Regulation 805/2004.

**101.** 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.<sup>1</sup>, Paragraph one of CPL) regarding what parts of the judgment issue of EEO is requested.<sup>110</sup> Section 541.<sup>1</sup>, 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.

**102. 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).<sup>111</sup> 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).<sup>112</sup> 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

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<sup>109</sup> *Ibid.*, (Art. 8 EG-VollstrTitel, Pabst S.), S. 99.

<sup>110</sup> *Ibid.*, (Art. 8 EG-VollstrTitel, Pabst S.), S. 100.

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

<sup>112</sup> Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München, Heidelberg: Sellier, 2004, S. 22.

minimum procedural standards have been observed when the debtor has not participated in the process of the review of the issue of additional judgment).<sup>113</sup>

### 2.5.1.3. Court settlements

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

*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.*

**104.** 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.<sup>114</sup> 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 of the matter. **Second**, a settlement has the nature of an agreement, because the content thereof depends on the will of the parties.<sup>115</sup>

**105.** 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:

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

105.2. 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;<sup>116</sup>

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<sup>113</sup> 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, n° 3 (Juillet-Août-Septembre), p. 646.

<sup>114</sup> 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.

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

<sup>116</sup> Riedel, E. *Europäischer Vollstreckungstitel für unbestrittene Forderungen*. Köln: Deubner Verlag, 2005, S. 5.

- 105.3. 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;
- 105.4. the claim must be within the material scope of Regulation 805/2004 (see Article 2 of the Regulation);
- 105.5. the claim must be enforceable.
- 106.** The following is not necessary for the approval of a court settlement as EEO:
- 106.1. observance of minimum procedural standards (the latter arises from Article 12 (1) of the Regulation);
- 106.2. 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;
- 106.3. 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.<sup>1</sup>, Paragraph one of CPL) by writing out the form appended in Appendix II of Regulation 805/2004.

#### 2.5.1.4. *Authentic instruments*

- 107.** 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.*

- 108.** 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:**

- 108.1. a document which has been formally drawn up or registered as an authentic instrument, and the authenticity of which
- 108.1.1. relates to the signature and the content of the instrument; and
- 108.1.2. has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;



or

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

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

**109.** 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*<sup>117, 118</sup>. Three cumulative criteria were defined by the CJEU in the referred to case:

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

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

109.3. the document (instrument) must be enforceable in the State of origin thereof.<sup>119</sup>

**110.** 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, consuls 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.<sup>120</sup> Neither a notarial deed,<sup>121</sup> nor documents certified by Orphan's Courts,<sup>122</sup> nor also the notarial deeds drawn up by the consuls of Latvia<sup>123</sup> 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

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<sup>117</sup> 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.

<sup>118</sup> 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.

<sup>119</sup> 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.

<sup>120</sup> 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.

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

<sup>122</sup> Law On Orphan's Courts: Law of the Republic of Latvia, Latvian Herald, No. 107, 07.07.2006 (see Section 61).

<sup>123</sup> Consular Rules: Law of the Republic of Latvia, Latvian Herald, No. 72, 18.06.1994 (see Section 14).

in accordance with warning procedures regulated by Section CPL 50.<sup>1</sup> of CPL (see Section 406.<sup>1</sup>, Paragraph one of the Latvian CPL).<sup>124</sup> However, in such cases enforceability will be in cases mentioned for decisions of Latvian courts (see Section 540, Paragraph four of CPL).

**111.** 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.<sup>125</sup>

**112.** However, a draft law "Amendments to the Notariate Law", which is planned to be supplemented with a new Division D<sup>1</sup> "Notarial Deeds with Power of Authentic Instruments" is being reviewed at the second reading the *Saeima* during the elaboration of the present Research.<sup>126</sup> Division 107.<sup>3</sup> 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.<sup>1</sup> of the present law,<sup>127</sup> 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*

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<sup>124</sup> 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>

<sup>125</sup> The statement of Latvia is available at: [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)

<sup>126</sup> 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>.

<sup>127</sup> The following has been specified as notarial deeds in Section 107.<sup>1</sup> 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.<sup>1</sup> 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.*

107.<sup>1</sup> 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.<sup>1</sup> of the present law, at the request of any 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.

- 113.** 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 44/2001 of 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 law enforcement officers 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.<sup>128</sup>*

**114.** 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

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<sup>128</sup> 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>.

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.<sup>129</sup> 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:

114.1. 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;

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

**115.** 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 possess 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.

**116.** For comparison: A notary is entitled to approve authentic instruments as EEO in **Lithuania**, whereas in **Estonia** — Tallinn City Court (*Tallinna Linnakohus*).<sup>130</sup> 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:

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

<sup>130</sup> 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](http://www.ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm).

### 2.5.2. *Notion of an uncontested claim*

**117.** 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.

**118.** 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 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.

**119.** 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.

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

120.1. **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).

120.2. 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.

**121.** 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.

**122.** 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.

122.1. 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.

122.2. 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.

**123.** 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<sup>131</sup> 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*).<sup>132</sup> 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).

**124.** 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

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<sup>131</sup> 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.

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

position,<sup>133</sup> 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.<sup>134</sup>

**125.** These CJEU guidelines partly correspond with the norms defined in the Latvian CPL regarding default judgments;<sup>135</sup> however, in accordance with Section 208.<sup>1</sup>, 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 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.

**126.** 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.<sup>136</sup> 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.

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<sup>133</sup> 21 April 1993 ECJ judgment in the case: C-172/91 *Volker Sonntag v. Weidmann* ECR 1993, p. I-01963., para. 27.

<sup>134</sup> 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.

<sup>135</sup> Section 208.<sup>1</sup> 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.*

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



**127.** 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.<sup>137</sup> 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.<sup>138</sup>

**128.** 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."

**129.** 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.<sup>139</sup>

**130.** 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.<sup>1</sup> of CPL. This is due to the reason that Section 208.<sup>1</sup>, 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.<sup>1</sup>, Paragraph one of CPL shall apply to the situations referred to in Article 3 (1) (b) of the Regulation.

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<sup>137</sup> 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](http://www.europa.eu).

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

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

**131.** 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.<sup>140</sup> 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).

**132. 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 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.<sup>141</sup> 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.

**133.** 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 is 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.

**134.** 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.<sup>142</sup> 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.

## **2.6. Concept of the Member States of origin and enforcement and their understanding**

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<sup>140</sup> 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=0CCIOFjAA&url=http%3A%2F%2Fwww.studiobiavati.it%2Findex\\_file%2Fbiavati%2520volume%2520kerameus.doc&ei=hUhQUObKI-qO4gSLs4GwBw&usg=AFQjCNFwNlqsdgm00dM5B8Km6E90aa7KA&cad=rja](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=0CCIOFjAA&url=http%3A%2F%2Fwww.studiobiavati.it%2Findex_file%2Fbiavati%2520volume%2520kerameus.doc&ei=hUhQUObKI-qO4gSLs4GwBw&usg=AFQjCNFwNlqsdgm00dM5B8Km6E90aa7KA&cad=rja).

<sup>141</sup> 9 December 2010 decision of Jūrmala City Court in case No. C17132509 [not published].

<sup>142</sup> 15 May 2012 decision of Jūrmala City Court in case No. C17098009 [not published].

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

**136. 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.

**137.** 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 refused to substantially issue the EEO.<sup>143</sup> 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.

**138. 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.

**139.** 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).

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<sup>143</sup> 7 March 2011 decision of Riga City Vidzeme Suburb Court in case No. C30528011 [not published].

## 2.7. Preconditions for the approval of a judgment as EEO

### 2.7.1. Notion of an application/request regarding EEO enforcement

#### 2.7.1.1. Court competence

**140.** 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.

**141.** 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.

**142.** 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<sup>144</sup> and Regulation 805/2004<sup>145</sup>. Furthermore, it is being considered that Section 3 of Brussels I Regulation shall not apply to disputes between insurers.<sup>146</sup>

**143.** 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,<sup>147</sup> 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

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<sup>144</sup> See Article 1 (2) (c).

<sup>145</sup> See Article 2 (2) (c).

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

<sup>147</sup> 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.

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.

**144.** 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.

**145.** 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.

**146.** 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.

**147.** 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.

**148.** 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.

**149.** 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.

**150.** 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.

**151.** 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.

#### 2.7.1.2. Enforceability of judgment

**152.** 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?

**153.** 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.<sup>148</sup> In civil proceedings enforceability is explained as a feature of a court judgment, but not as the legal effects of the judgment.<sup>149</sup> 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

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

<sup>149</sup> 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.

judgment possesses legal effects in relation to intellectual action of the judge in delivering a judgment (it is the internal content of the judgment).<sup>150</sup>

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

154.1. **First**, the judgment as to the substance and content is in the form it may be submitted for enforcement at compulsory execution institutions. Compulsory enforcement procedure may be applied for the judgment in such case. The latter shall be judgments in imposition or enforcement claims.<sup>151</sup>

154.2. **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).

154.3. **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<sup>152</sup>). However, in separate cases the law may provide for that a judgment that has not yet come into force is handed over for enforcement.<sup>153</sup>

**155.** 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*).<sup>154</sup> 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.

**156.** Thus, such judgments possess enforceability that:

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

156.2. 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).

### 2.7.1.3. Domicile of debtor

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<sup>150</sup> Bureau, D., Muir Watt, H. Droit international privé. Tome I. Partie générale. Paris: PUF, 2007, p. 237.

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

<sup>152</sup> 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.

<sup>153</sup> See, for instance, Section 204, Section 205, and Section 538 of the Latvian CPL.

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

**157.** 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

- 157.1. - a claim is uncontested within the meaning of Article 3(1)(b) or (c);
- 157.2. - 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
- 157.3. - the debtor is the consumer.

**158.** 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.

**159.** **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.

**160.** **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.

**161.** 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.



**162.** Also the Declaration of Place of Residence Law<sup>155</sup> defines the notion "place of residence";<sup>156</sup> however, this norm by its legal nature and purpose is more appropriate to 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<sup>157</sup> 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.<sup>158</sup>

**163.** 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.<sup>159</sup> 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.

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<sup>155</sup> Declaration of Place of Residence Law of 20 June 2002: Law of the Republic of Latvia. Latvian Herald, No. 104, 10.07.2002.

<sup>156</sup> 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.*

<sup>157</sup> 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.*

<sup>158</sup> Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucājumi*. Jurista Vārds Nr. 24/25, 2009. gada 16. jūnijs.

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

**164.** 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.

**165.** 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 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.

**166.** 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".

**167.** The notion "**contract**" is being widely analysed within the CJEU practice<sup>160</sup> 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.<sup>161</sup>

**168.** 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

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<sup>160</sup> 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.

<sup>161</sup> 20 January 2005 ECJ judgment in case: C-464/01 *Johann Gruber v. Bay Wa Ag* ECR, 2005, p. I-439.

interpretation thereof.<sup>162</sup> Understanding of the notion of a consumer is important especially when determining international jurisdiction.

**169.** 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-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.

**170.** 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)).

#### 2.7.1.4. Minimum procedural standards for uncontested claims

**171. 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.

**172.** 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

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<sup>162</sup> 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.

<sup>163</sup> 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.<sup>164</sup> 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.<sup>165</sup> However, it will not be possible to get along without the harmonisation of the national civil procedural norms,<sup>166</sup> because they *de facto* cannot conflict with the minimum procedural standards.<sup>167</sup> Legal scientists even refer to minimum procedural standards as extraordinary and peculiar directive that has been transposed into the Regulation.<sup>168</sup>

**173.** 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<sup>169</sup> must be careful and even farseeing by

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<sup>163</sup> Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München: Sellier, 2004, S. 42.

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

<sup>165</sup> 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.

<sup>166</sup> 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*. 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.

<sup>167</sup> 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."

<sup>168</sup> 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.

<sup>169</sup> 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 the EEO 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

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 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<sup>170 171</sup>. 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.

**174.** According to the text of the Regulation<sup>172</sup> it is visible that cross-border matters may have various combinations.<sup>173</sup> 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).

**175. 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,<sup>174</sup> 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

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within the context of civil proceedings: Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

<sup>170</sup> 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).

<sup>171</sup> 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.

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

<sup>173</sup> 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 problēmjaucājumi. Jurista Vārds, 2009, 16. jūnijs, Nr. 24/25, . 36.

<sup>174</sup> 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.

origin; in this case it is the verification of the notification fact of the debtor. As it is known, 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<sup>175</sup>). 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 Regulation 805/2004; Article 22 of Regulation 1895/2006 and Article 22 of Regulation 861/2007).

**176.** 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<sup>176</sup>. 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: *CPHRFF*)<sup>177</sup>. 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 *CPHRFF* (because only incompatibility control of judgments and debtor's notification fact regarding legal proceedings control remain).

**177.** 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

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<sup>175</sup> 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."

<sup>176</sup> More detailed information about *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.

<sup>177</sup> 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).

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.

**178.** 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 claims could be approved as EEO in case action of the debtor in proceedings has been passive.<sup>178</sup>

**179. 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).

**180. 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.<sup>179</sup> What these *documents to be issued*? Articles 16 and 17 of Regulation 805/2004 specify the following as documents to be issued:

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

180.2. summons to a court hearings.

**181.** 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

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<sup>178</sup> Rudevskā, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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%20Rudevsk%C3%A1%202012.pdf>.

<sup>179</sup> See Article 15 of Regulation 805/2004, Article 15 of Regulation 1896/2006 and Articles 10 and 19 of Regulation 861/2007.

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.<sup>180</sup>

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

- 182.1. the names and the addresses of the parties;
- 182.2. the amount of the claim;
- 182.3. a statement of the reason for the claim; and
- 182.4. 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;
- 182.5. 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;
- 182.6. 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.

**183.** 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 referred to information would be specified for the debtor in the documents to be delivered in relation to instituting the proceedings,

**184.** 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:

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<sup>180</sup> 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.



- 184.1. the date and time of court hearing;
- 184.2. the name and the address of the institution (court);
- 184.3. the consequences of an absence.

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

**186.** 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.<sup>181</sup> 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.

**187. 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).<sup>182</sup>

**188. 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

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

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

substantiation of the claim are not an integral part of the document instituting the proceedings.<sup>183</sup> 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).

**189. 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 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.<sup>2</sup>, Paragraph two and Section 664, Paragraph two of CPL); the contrary must be proved by the defendant (addressee) itself.

**190.** 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".

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

#### *2.7.1.5. Service with proof of receipt by the debtor*

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

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

**193. Personal service and types thereof** (Article 13 (1) (a) and (b)). Personal service means the delivery of documents to the addressee in person.<sup>184</sup> Such service may be attested:

- 193.1. acknowledgement of receipt, specifying the date of receipt and signature of the defendant; or
- 193.2. 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 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,<sup>185</sup> sworn notary<sup>186</sup> or court authority in the premises of the court.<sup>187</sup> 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

<sup>184</sup> 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.

<sup>185</sup> 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).

<sup>186</sup> 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.

<sup>187</sup> Section 56, Paragraph three of CPL.

		judge].
<b>Reason for a refusal to accept a document</b>	<b>Refusal with legal justification</b> (for instance, Article 8 of the Service Regulation).	<b>Refusal</b>

**194.** 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.<sup>1</sup>, Paragraph one of CPL). The latter corresponds with the moment of cross-border service of documents in Latvia (see Section 56.<sup>2</sup>, 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 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<sup>188</sup> (see the new Section 56.<sup>1</sup>, Paragraph two of CPL that will come into force on 01.01.2013).<sup>189</sup> 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.<sup>2</sup>, 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

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

<sup>189</sup> 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](http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/webAll?SearchView&Query=%28[Title]=*Civilprocesa*%29&SearchMax=0&SearchOrder=4).

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.<sup>2</sup>, Paragraph 2.<sup>1</sup> 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.<sup>1</sup>, 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).

**195.** 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.

**196. Postal service.** Postal service<sup>190</sup> is attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the debtor (not another 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.<sup>1</sup>, 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.<sup>2</sup>, Paragraph two of CPL or — with the new Section 56.<sup>2</sup>, Paragraph 2.<sup>1</sup> of CPL from 1 January 2013. It should be reminded that in accordance with Section 56.<sup>2</sup>, 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<sup>191</sup> 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."

**197. Service by electronic means.** According to Article 13 (1) (d) of the Regulation, service by electronic means<sup>192</sup> 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

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<sup>190</sup> 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.

<sup>191</sup> 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.

<sup>192</sup> 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.

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.<sup>193</sup>

#### 2.7.1.6. Service without proof of receipt by the debtor

**198.** This method of the service of documents may be used only if the address of the debtor is definitely known.<sup>194</sup> According to the latter, a default judgment against a debtor whose address is not known may not be certified as EEO.<sup>195</sup> The same also applies to summons to a court hearing with a publication in the official edition Latvian Herald provided for in Section 59 of CPL<sup>196</sup> — 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.<sup>197</sup> So far in six cases the issue of EEO in Latvia was refused due to this reason.<sup>198</sup> What are the receipt methods of service without proof?

**199. Personal service** shall mean the following.<sup>199</sup>

199.1. 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

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

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

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

<sup>196</sup> 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."

<sup>197</sup> 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].

<sup>198</sup> 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].

<sup>199</sup> 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.

document. The respective procedure corresponds to Section 56, Paragraph eight of CPL.

199.2. 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.

199.3. 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.

**200. Postal service.** Postal service shall mean the following:<sup>200</sup>

200.1. 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.*<sup>201</sup> 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.

200.2. 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).

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<sup>200</sup> 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.

<sup>201</sup> 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.

**201. Service by electronic means.** Service by electronic means<sup>202</sup> 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<sup>1</sup> of the Latvian CPL does not provide for such attestation of service.

**202. 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:

202.1. the method of service used;

202.2. the date of service; and

202.3. where the document has been served on a person other than the debtor, the name of that person and his relation to the debtor.<sup>203</sup>

**203.** A summary of minimum procedural standards may be depicted in the following scheme.<sup>204</sup>

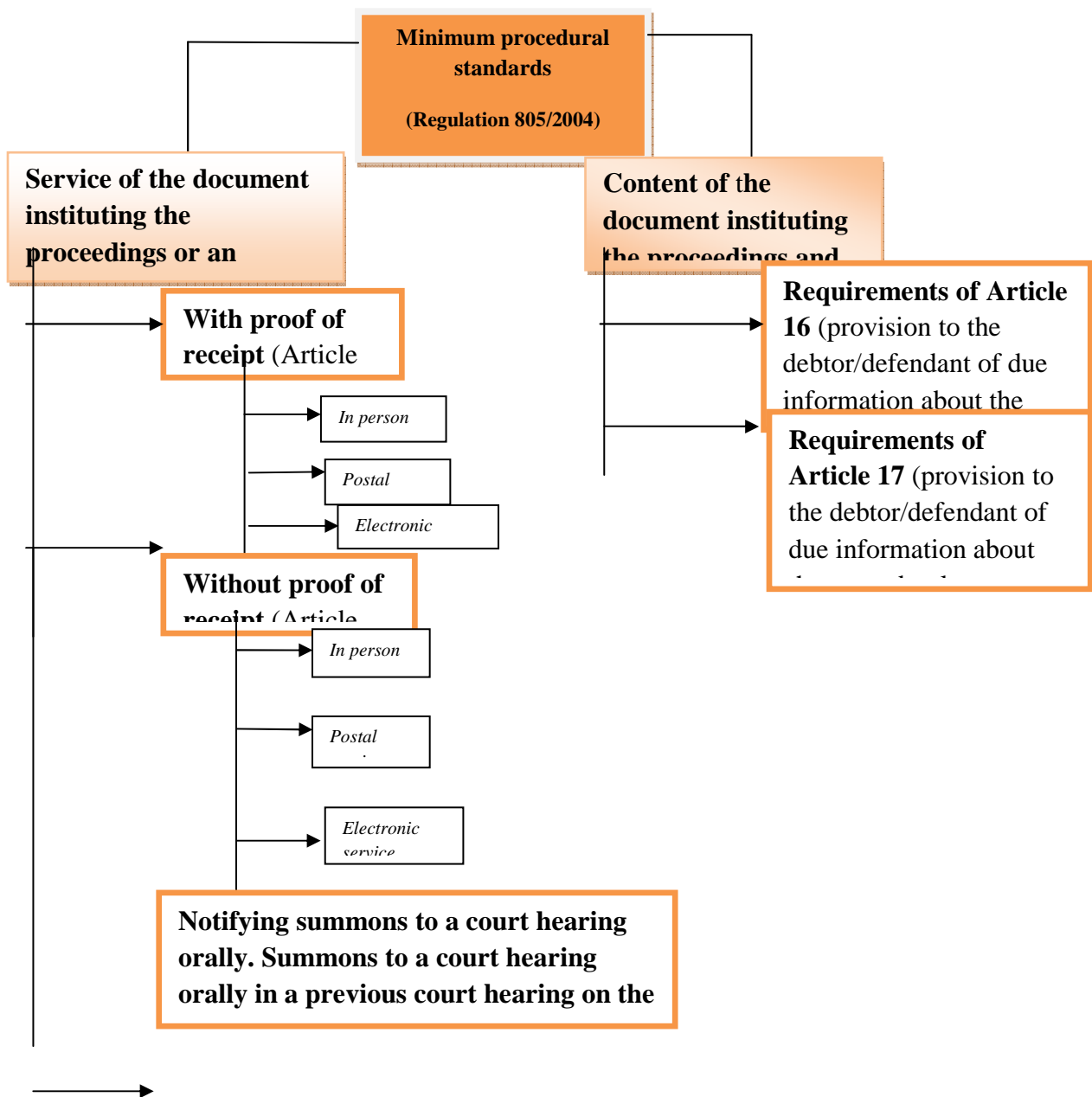
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<sup>202</sup> See Article 14 (1) (f) of Regulation 805/2004; Article 14 (1) (f) of Regulation 1896/2006 and Article 13 (2) of Regulation 861/2007.

<sup>203</sup> 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.

<sup>204</sup> Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.





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

**204.** 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.<sup>205</sup> 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 standards should be solved within the scope of Regulation 805/2004 (and not the Service Regulation).

**205.** 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:

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

205.2. the notification of the debtor must take place **according to specific procedures** with the purpose to ensure his rights to defence.<sup>206</sup>

**206.** In the case of Brussels I Regulation, notification of the defendant **according to specific procedures** arises from the Service Regulation or the Hague Convention of 15

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<sup>205</sup> Rudevskā, 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.

<sup>206</sup> Ibid.

November 1965 regarding a judicial or extrajudicial document for service abroad in civil or commercial matters.<sup>207</sup> (see Article 26 of the Brussels I Regulation).

**207. 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 indication 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"<sup>208</sup>

**208.** 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:<sup>209</sup>

- 208.1. if the debtor (defendant) has been aware of the fact that a claim has been submitted against him (document instituting the proceedings); and
- 208.2. if the debtor (defendant) has not been aware of the fact that a claim has been submitted against him (document instituting the proceedings).

**209. 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.<sup>210</sup> The latter means that the term should be counted from the moment the respective application has been notified or served to the debtor (defendant).<sup>211</sup>

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<sup>207</sup> 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).

<sup>208</sup> Rudevskā, 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.

<sup>209</sup> Gaudemet-Tallon, H. *Compétence et exécution des jugements en Europe*. 4<sup>e</sup> édition. Paris: L.G.D.J., 2010, p. 430.

<sup>210</sup> 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 December 2007 ECHR judgment in the case: 11724/04 and 13350/04 *Nikoghosyan and Melkonyan against Armenia*, § 38., 39., 40.

<sup>211</sup> 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 *Kloms v. Michel*, ECR [1981], p. 01593, para.

**210. 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.<sup>212</sup>

**211.** 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.<sup>213</sup>

**212.** 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",<sup>214</sup> the *expected term* should be still specified. Such terms are not specified in Regulation 805/2004.

**213.** 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 CPHRFF. However, it is recommendable for the EU legislator to introduce autonomously defined terms in the field of minimum procedural standards within Regulation 805/2004.<sup>215</sup>

#### 2.7.1.8. Evaluation of non-compliance with minimum procedural standards

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19; Magnus, U., Mankowski, P. Brussels I Regulation. München: Sellier, 2007, Art. 34 (2) (Francq S.), p. 586.

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

<sup>213</sup> 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 *Kloms 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.

<sup>214</sup> See Recital 12 of the Preamble to Regulation 805/2004.

<sup>215</sup> 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.

**214.** 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.*

**215.** 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,<sup>216</sup> 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.

**216.** 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:

- 216.1. service of the document instituting the proceedings (or an equivalent document) to the debtor;
- 216.2. service of summons to a court hearing to the debtor;

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

216.3. 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.

**217.** 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).

**218.** 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.

**219.** 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.<sup>217</sup> 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*).

**220.** 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 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).

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

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.

**221.** Latvian courts in their practice try to eliminate non-compliance with minimum standards. For instance: 1) 18 February 2011 Riga Regional Court judgment,<sup>218</sup> 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,<sup>219</sup> 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,<sup>220</sup> 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".

**222.** 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.

#### 2.7.1.9. Minimum standards for review in exceptional cases

**223.** 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 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*

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<sup>218</sup> See 18 February 2011 Riga Regional Court judgment in civil case No. C33324809 [not published].

<sup>219</sup> 20 August 2010 Kuldīga Regional Court judgment in civil case No. C19070309 [not published].

<sup>220</sup> 7 June 2010 Jūrmala Regional Court judgment in civil case No. C17182908 [not published].

*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.*

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

**225.** 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.<sup>221</sup> 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.

**226.** 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).

**227.** 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.<sup>1</sup> 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*.

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



**228. 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.<sup>1</sup>, Paragraph one of CPL).

**229.** 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.<sup>1</sup>, 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.

**230.** 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.<sup>1</sup>, Paragraph one, Clause 1 of the Latvian CPL, an application shall be submitted:

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

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

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

**231.** 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.<sup>1</sup>, Paragraph two of CPL). However, lapsed cases must be taken into account here as well, thus, 10 years (See Section 485.<sup>1</sup>, Paragraph three and Section 546, Paragraph one of CPL).

**232.** 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).

**233. Notifications of Member States regarding review procedures:**<sup>222</sup>

No.	EU Member State	Review procedure
1.	<b>Belgium</b>	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 ( <a href="http://www.just.fgov.be">www.just.fgov.be</a> ).

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See: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_eeo\\_communications\\_lv\\_lv.htm#rc\\_eeo\\_communications2](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_lv.htm#rc_eeo_communications2).

2.	<b>Bulgaria</b>	Substantiation for the review of a default judgment in exceptional cases has been described in Article 240 (1) of the Civil Procedure Code.
3.	<b>Czech Republic</b>	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.	<b>Germany</b>	<p>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).</p> <p>a) Default judgments and enforcement orders.</p> <p>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.</p> <p>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.</p> <p>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,</p>

		<p>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.</p> <p>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).</p> <p>b) Judgments in accordance with the materials of legal proceedings</p> <p>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.</p>
5.	<b>Estonia</b>	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.	<b>Greece</b>	In cases when a debtor does not attend the court hearing due to belated summons or force majeure circumstances, for instance, unaffordable

		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.	<b>Spain</b>	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.	<b>France</b>	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.	<b>Ireland</b>	Provision 11 of Order No. 13 of the <b>Supreme Courts</b> 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 <b>Regional Court</b> 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 <b>Regional Court</b> 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.	<b>Italy</b>	Simple and extraordinary review measures defined in Italian laws correspond to the review procedure specified in Article 19 (1) of the Regulation,
11.	<b>Cyprus</b>	[ <i>Not indicated yet</i> ]
12.	<b>Latvia</b>	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.

		<p>Section 53. Procedures regarding Extension and Renewal of Procedural Time Periods</p> <p>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.</p> <p>(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.</p> <p>(3) A time period specified by a judge may be extended by a judge sitting alone.</p> <p>(4) An ancillary complaint may be submitted regarding a refusal by a court or a judge to extend or renew a time period.<sup>223</sup> <b>[False information!!!]</b></p>
13.	<b>Lithuania</b>	<p>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").</p> <p>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</p>

<sup>223</sup> **As it may be observed, this information provided by Latvia is false and should be replaced with information regarding Chapter 60.<sup>1</sup> 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 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>.

	<p>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.</p> <p>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.</p> <p>Article 287 of the Code:</p> <p>"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.</p> <p>2. The following shall be specified in such application:</p> <ol style="list-style-type: none"> <li>1) court in which the judgment has been made;</li> <li>2) applicant;</li> <li>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 circumstances;</li> <li>4) circumstances that may influence the lawfulness and effectiveness of the judgment and proof of the referred to circumstances;</li> <li>5) more detailed information regarding the claim of the applicant;</li> <li>6) certifying documents attached to the application; and</li> <li>7) signature of the applicant and date the application has been drawn up.</li> </ol> <p>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.</p> <p>4. Errors in the application shall be eliminated in accordance with the procedures for the elimination of errors in claims.</p> <p>5. If judicial reviews and application regarding the review of a default judgment are submitted in relation to the same matter, the application</p>
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		<p>regarding default judgment and any court decisions in respect of the respective judgment shall be reviewed the first."</p> <p>Article 430 (5) of the Code:</p> <p>"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.</p> <p>Article 439 (2) of the Code:</p> <p>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.</p> <p>Article 78 (1) of the Code:</p> <p>"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."</p>
14.	<b>Luxembourg</b>	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.	<b>Hungary</b>	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.	<b>Malta</b>	Review measures have been described in Article 19 (1), and they are resolved by the Civil Court (First Hall) of Malta.
17.	<b>The Netherlands</b>	<p>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.</p> <p><b>Article 8 of the European Enforcement Order Implementing Act</b></p> <p>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.</p> <p>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.</p>

		<p>3. If the application on review applies to the overall decision, it must be drawn up as a simple submission.</p> <p>4. Applications must be submitted:</p> <p>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;</p> <p>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;</p>
18.	<b>Austria</b>	<p>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;</p> <p>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).</p>
19.	<b>Poland</b>	<p>Review procedure: exemption from the submission of appeals in accordance with Articles 168-172 of the Code of Civil Procedure.</p> <p>"<b>Article 168 (1)</b>. 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.</p> <p>§ 2. The exemption is not intended if unfavourable procedural consequences are caused to any of the parties in the delayed period.</p> <p><b>Article 169 (1)</b>. 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.</p> <p><b>Article 169 (2)</b>. Reasons for application must be substantiated in the letter.</p> <p><b>Article 169 (3)</b>. The party must act after the submission of the application.</p> <p><b>Article 169 (4)</b>. After a year has passed after the end of the term, an exemption may be permissible only in extraordinary circumstances.</p> <p><b>Section 172</b>. 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."</p>
20.	<b>Portugal</b>	<p>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.</p> <p>Review procedure referred to in Article 19 (1) (b) of the Regulation has been incorporated in Article 146 of the Code of Civil Procedure.</p>
21.	<b>Romania</b>	<p>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.</p>



22.	<b>Slovakia</b>	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.	<b>Slovenia</b>	In Slovenia — review of a judgment in accordance with Articles 394-405 of the Code of Civil Procedure Law ( <i>obnova postopka po členih 394 - 405 Zakona o pravnem postopku</i> ).
24.	<b>Finland</b>	<p>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.</p> <p>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.</p>
25.	<b>Sweden</b>	<p>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).</p> <p><b>"Chapter 50, Section 1 of the Code of Judicial Procedure</b>  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.</p> <p><b>Chapter 44, Section 9 of the Code of Judicial Procedure</b></p>

		<p>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.</p> <p>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.</p> <p><b>Chapter 58, Section 11 of the Code of Judicial Procedure</b></p> <p>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.</p> <p><b>Chapter 59, Section 1 of the Code of Judicial Procedure</b></p> <p>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:</p> <ol style="list-style-type: none"> <li>1. if the case was entertained although a procedural impediment existed that a superior court is obliged to notice on its own volition,</li> <li>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,</li> <li>3. if the judgment is so vague or incomplete that the court's adjudication on the merits cannot be ascertained therefrom, or</li> <li>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.</li> </ol> <p>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.</p> <p><b>Section 52 of Act (1990:746) on payment orders and assistance</b></p> <p>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."</p>
26.	<b>United Kingdom</b>	<p><b>England and Wales</b></p> <p>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.</p> <p>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.</p> <p>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</p>

	<p>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.</p> <p>Full version of Part 13 is available at:  <a href="http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm">http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm</a></p> <p>There are no definite requirements for the preparation of an application for the postponement or change of a judgment. Usually applicants use Form N244 (<a href="http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf">http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf</a>). 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.</p> <p><b>Scotland</b></p> <p>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: <a href="http://www.scotcourts.gov.uk">www.scotcourts.gov.uk</a>.</p> <p><b>Rules of the court of first instance (Sheriff Court)</b></p> <p><u>Small claims</u></p> <p>Small Claims Rules of 2000 regulate procedures in matters in which the amount of the claim does not exceed GBP 750.</p> <p>Review of a judgment:</p> <p>There exist three types of reviews — withdrawal of a decision, appeal and request to change etc. a judgment.</p> <p>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.</p> <p>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.</p> <p>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</p>
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	<p>judgment, which includes a claim regarding the substance of the matter and legal basis for the appeal.</p> <p>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.</p> <p>Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) <a href="http://www.scotcourts.gov.uk">www.scotcourts.gov.uk</a>, <a href="http://www.scotcourts.gov.uk/sheriff/small_claims/index.asp">www.scotcourts.gov.uk/sheriff/small_claims/index.asp</a> and section provided for in the law on small claims (Act of Sederunt). Forms are available in next chapter.</p> <p><u>Simplified procedure</u></p> <p>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.</p> <p>Review of a judgment:</p> <p>There exist three types of reviews — withdrawal of a decision, appeal and request to change etc. a judgment. Furthermore, these are special rules for an appeal in respect of the enforcement of a judgment on repayment of means.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) <a href="http://www.scotcourts.gov.uk">www.scotcourts.gov.uk</a>, <a href="http://www.scotcourts.gov.uk/sheriff/summary_cause/index.asp">www.scotcourts.gov.uk/sheriff/summary_cause/index.asp</a> and section provided for in the law on small claims (Act of Sederunt). Forms are available in next chapter.</p>
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	<p><u>Normal procedure</u></p> <p>Normal Procedure Rules of 1993 regulate procedures in matters in which the amount of the claim exceeds GBP 1500.</p> <p>Review of a judgment:</p> <p>There exist two types of appeal methods at sheriff principal and Court of Session, as well as reponing procedure.</p> <p>In accordance with 8.1 rule, the defendant may submit an application regarding recalling of a judgment by submitting a reponing 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.</p> <p>Full version of the rules is available on the homepage, section of the court of first instance (Sheriff Court) <a href="http://www.scotcourts.gov.uk">www.scotcourts.gov.uk</a>, <a href="http://www.scotcourts.gov.uk/library/rules/ordinarycause/index.asp">www.scotcourts.gov.uk/library/rules/ordinarycause/index.asp</a> and section provided for in the law on small claims (Act of Sederunt).</p> <p><b>1994 Court of Session Rules</b></p> <p>Review of a judgment:</p> <p>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.</p> <p>Full version of the rules is available on the homepage, section of the Court of Session <a href="http://www.scotcourts.gov.uk">www.scotcourts.gov.uk</a>, <a href="http://www.scotcourts.gov.uk/session/rules/index.asp">www.scotcourts.gov.uk/session/rules/index.asp</a></p> <p><b>Northern Ireland</b></p> <p>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.</p> <p>Article 19 (1) envisages that the debtor must have the right to submit an</p>
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	<p>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.</p> <p>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.</p> <p>Furthermore, Order 12, Rule 12 of 1981 Magistrates' Court does allow 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.</p> <p>Both courts postpone or change the judgment according to their own discretion, and there are no rules that would define the execution thereof.</p> <p><b>Gibraltar</b></p> <p>In accordance with the rules of the Supreme Court of Gibraltar, Rules of the courts of England and Wales are in force in Gibraltar.</p> <p>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.</p> <p>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.</p> <p>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:</p> <p><a href="http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm">http://www.dca.gov.uk/civil/procrules_fin/contents/parts/part13.htm</a></p> <p>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 (<a href="http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf">http://www.hmcourts-service.gov.uk/courtfinder/forms/n244_eng.pdf</a>). 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.</p>
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**234.** 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.<sup>2</sup> of CPL).

**235. 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.<sup>224</sup>

**236.** 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.

**237.** 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.

**238.** 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.

**239.** 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

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<sup>224</sup> 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.

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.**

**240.** 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:

- 240.1. cases where the due date for arranging for the defence has been missed;
- 240.2. 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.<sup>225</sup>

**241. 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<sup>3</sup> of the CPL**, a Latvian court examining application for review of adjudication has the undermentioned opportunities.

**242.** 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<sup>3</sup> 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<sup>226</sup> (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<sup>1</sup> of the CPL what happens not only with the 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.**

**243.** 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).<sup>227</sup> 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**

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<sup>225</sup> 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.

<sup>226</sup> 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.

<sup>227</sup> 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).



**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.

**244.** 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<sup>1</sup> 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<sup>228</sup>. 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.

**245.** 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.

**246.** 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<sup>3</sup> Paragraphs three and four of the CPL).

**247.** From the Section 485<sup>3</sup> Paragraphs one, three, and four of the CPL, it is **not clear**:

247.1. *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 <sup>1</sup> of the CPL). If 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.

247.2. *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.

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

247.3. *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.

## **2.8. Certification of the enforceable document as EEO**

### **2.8.1. Issuing of EEO certification to judgements**

#### **2.8.1.1. Request and standard form in the Appendix I**

**248.** According to Section 541<sup>1</sup> 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.

**249.** 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.<sup>229</sup> According to Article 9 (1) of the Regulation, the Latvian court shall issue the EEO in the language of the judgement, namely, Latvian.

**250.** 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 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.

**251.** 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

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<sup>229</sup> The European Judicial Atlas in Civil Matters can be found at:  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm).

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.

**252.** 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.

*2.8.1.2. Language of EEO*

**253.** 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<sup>1</sup> Paragraph one of the CPL, EEO in Latvia shall be drawn up by court in Latvian.

**254.** 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.

**255.** 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,<sup>230</sup> for example:

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

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

<sup>230</sup> See the current information in the European Judicial Atlas in Civil Matters, available: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm).

**257.** 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"<sup>231</sup>, 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.

2.8.1.3. Problem of servicing EEO to the debtor

**258.** 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).

**259.** 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.<sup>232</sup>

**260.** Section 541<sup>1</sup> Paragraph one of the CPL of Latvia does not stipulate that an EEO certificate issued in Latvia should also be issued to the debtor.

**261.** 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.

**262.** **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.**

2.8.1.4. Service of EEO to the creditor

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<sup>231</sup> Cabinet Regulation No. 291 "Procedures for the Certification of Document Translations in the Official Language" *Latvian Herald*, No. 302, 29.08.2000

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

**263.** 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.

**264.** Pursuant to Section 541.<sup>1</sup> 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.<sup>1</sup> of the CPL.

**265.** **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.<sup>1</sup> of the CPL of Latvia should clearly provide for such an opportunity.**

#### *2.8.1.5. Problem of challenging refusal to issue EEO certificate*

**266.** 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<sup>1</sup> 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.<sup>233</sup> 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 does not stipulate anything like that in relation to EEO.<sup>234</sup> It is not even stated that a Latvian court could have a possibility to leave an application (request) on certifying a

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<sup>233</sup> See: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 197.

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

decision as EEO not proceeded with (see Section 541.<sup>1</sup> 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.<sup>235</sup> These, however, are not regarded material drawbacks, since they can be resolved by using analogy of legal norms and systematic interpretation.

**267.** 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 is 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.<sup>2</sup> of the CPL). The mentioned measures shall also be applied in cases provided for by Article 19 of the Regulation 805/2004.

**268.** 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<sup>1</sup> 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.

**269.** 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.

**270.** 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).

#### 2.8.1.6. Repeated submission of application for issuing of EEO certificate

**271.** 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 [..].*

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

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<sup>235</sup> Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

**273.** However, national laws of Member States may limit possibilities of such repeated submission of applications.<sup>236</sup> The CPL of Latvia does not provide for such clear and explicit restriction. Pursuant to Section 541<sup>1</sup> 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.

### ***2.8.2. Issuing of EEO certificate for court settlements and authentic instruments***

#### ***2.8.2.1. For court settlements***

**274.** Previously this Study established that the Regulation 805/2004 defines notions "court settlements" (§ 103 and further) and "authentic instruments" (§ 107 and further). EEO can give these court settlements and authentic instruments the force of an enforcement title.<sup>237</sup>

**275.** 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<sup>238</sup>, 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.<sup>239</sup>

**276.** 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.

**276.1. 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).

**276.2. 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

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

<sup>237</sup> 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.

<sup>238</sup> 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.

<sup>239</sup> Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 798.

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 of the CPL, which almost matches the exceptions of the scope of the Regulation.<sup>240</sup>

**276.3. 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.<sup>241</sup> 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.

**277. 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.

**278. 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 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.

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<sup>240</sup> 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.*

<sup>241</sup> 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).



**279.** 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<sup>1</sup> Paragraph one of the CPL.<sup>242</sup>

**280.** 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:

- 280.1. 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<sup>1</sup> Paragraph one of the CPL);
- 280.2. if the decision taken falls into the scope of the Regulation;
- 280.3. why is it considered, that the claim is uncontested.

**281.** 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.

**282.** 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.

**283.** Standard form in Appendix II, as well as all other standard forms can be drawn up in the European Judicial Atlas.<sup>243</sup> 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.

**284.** 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 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,

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<sup>242</sup> The Regulation uses the term “application” (Article 24 (1)).

<sup>243</sup> The European Judicial Atlas in Civil Matters can be found at:  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm).

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.

**285.** 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.

**286.** 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.

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

#### 2.8.2.2. *For authentic instruments*

**288.** 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.

**289.** **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.

**290.** 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<sup>244</sup>, 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.

**291.** Currently the Saeima of Latvia examines the draft law "Amendments to the Notariate Law" which is supplemented with Division D<sup>1</sup> "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

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<sup>244</sup> The European Judicial Atlas in Civil Matters, available at:  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_eeo\\_communications\\_lv\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv_en.htm).

of court judgements as stipulated by the CPL.<sup>245</sup> The draft law also states that a sworn notary upon request of the lender shall draw up EEO pursuant to the Regulation 805/2004.<sup>246</sup> 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 must 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.<sup>247</sup> 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.

**292.** 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*."<sup>248</sup> Similarly reasoned decision is in another matter regarding issuing of EEO.<sup>249</sup> 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.

**293.** **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*<sup>250</sup>, 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.<sup>251</sup> In this case advocates are not authorised for that.

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

<sup>246</sup> Ibid, Section 107<sup>3</sup>

<sup>247</sup> 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<sup>1</sup>, available at: <http://mk.gov.lv/lv/mk/tap/?pid=40249389>.

<sup>248</sup> Decision of 31.08.2010 in matter No. C30589310 by Riga City Vidzeme Suburb Court [not published].

<sup>249</sup> Decision of 05.02.2010 in matter No. C30385610 by Riga City Vidzeme Suburb Court [not published].

<sup>250</sup> 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.

<sup>251</sup> 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 Advocacy Law of the Republic of Latvia.<sup>252</sup>

**295.** 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.

**296.** 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.

**297.** Appendix III is similar to Appendix II, meaning that it can be drawn up similarly, like mentioned before (see § 278 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.

### ***2.8.3. Effect and non-appealability of EEO certification***

**298. 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.<sup>253</sup> On the notion of enforceability of judgement, please refer to the sub-section "Enforceability of judgement" (see § 152 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

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<sup>252</sup> Advocacy Law of the Republic of Latvia of 27 April 1993. Law of the Republic of Latvia, *Ziņotājs*, No. 28, 19.08.1993

<sup>253</sup> 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).

Member State of origin<sup>254</sup> (do not mistake with compulsory enforcement measures!<sup>255</sup>). 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.<sup>256</sup>

**299.** 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 be 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).<sup>257</sup> Thus, if the enforceability of a decision is modified or withdrawn, also the enforceability of EEO changes correspondingly.<sup>258</sup> 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**<sup>259</sup> 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.<sup>1</sup> 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

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

<sup>255</sup> 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).

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

<sup>257</sup> 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.

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

<sup>259</sup> 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<sup>1</sup> 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<sup>1</sup> 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.

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:

- 299.1. "decision **has ceased to be enforceable**";
- 299.2. "enforceability has been **stayed** for time";
- 299.3. "enforceability has been **limited to protective measures** for time";
- 299.4. "enforceability has been **suspended** for time until submission of security".

**300.** 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**.

**301.** 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.<sup>260</sup> 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<sup>2</sup>). 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).

**302.** 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).

**303.** In relation to **limitation to protective measures** of the enforcement of EEO issued by a foreign court, Section 644<sup>2</sup> 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.<sup>261</sup> 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

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<sup>260</sup> Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

<sup>261</sup> Ibid, 113. lpp.

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).

**304.** 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 § 359 and further) of this Study.

**305.** **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<sup>262</sup> 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<sup>263</sup>, 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<sup>264</sup>, but also to replace the national writs of execution 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.<sup>265</sup>

**306.** 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.<sup>266</sup> However, here it

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<sup>262</sup> 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).

<sup>263</sup> See also: Riedel, E. *Europäischer Vollstreckungstitel für unbestrittene Forderungen*. Köln: Deubner Verlag, 2005, S. 1.

<sup>264</sup> On replacing the process of exequatur, refer to Riedel, E., *Ibid.*, S. 10.

<sup>265</sup> 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".

<sup>266</sup> 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.

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 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.<sup>267</sup>

**307. 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.<sup>268</sup> It follows from Article 1<sup>269</sup> 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<sup>270</sup>, including appeal.<sup>271</sup>

**308.** 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

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<sup>267</sup> See also: Seidl, S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena: Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.

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

<sup>269</sup> 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."

<sup>270</sup> 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.

<sup>271</sup> Rudevska, B. *Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.



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 Latvian court of first instance based on Article 5 of the Regulation 805/2004.<sup>272</sup> 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.<sup>273</sup> In both cases the Latvian court based on different articles of the Regulation 805/2004 and took different decisions:

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

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

**309.** 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).

**310.** 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".<sup>274</sup> Thus, we must agree to the conclusion of the French legal scientist *L. D'Avout* on the fact

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<sup>272</sup> Decision of 22.06.2011 in civil matter No. C29657411 by Riga City Latgale Suburb Court [not published].

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

<sup>274</sup> Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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".<sup>275</sup>

**311.** 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<sup>276</sup> enforceability<sup>277</sup> 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.<sup>278</sup>

**312.** 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.<sup>279</sup> EEO operates in the whole territory of the EU (except for Denmark). But the decisions of

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<sup>275</sup> 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.

<sup>276</sup> 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.

<sup>277</sup> 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.

<sup>278</sup> Rudevskā, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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%20Rudevsk%C3%A1%202012.pdf>.

<sup>279</sup> 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<sup>280</sup> 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.<sup>281</sup>

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

**314. In relation to judgements:**<sup>282</sup>

**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 processes 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.

**315. In relation to court settlements and authentic instruments:**<sup>283</sup>

EEO in uncontested claims is a procedural institute (also a document), which:

is issued as document on the basis of a court settlement of authentic instrument certified by court of the Member State of origin;<sup>284</sup>

abolishes the process of exequatur in the Member State of enforcement of court settlement or authentic instrument;<sup>285</sup>

<sup>280</sup> 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").

<sup>281</sup> Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

<sup>282</sup> Rudevska, B. Ārvalsts tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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.

<sup>283</sup> Rudevska, B. Eiropas izpildu raksts (II). *Likums un tiesības*, 2007, 9. sēj., Nr. 2 (90), p.60.

<sup>284</sup> See Article 24 (1) and Article 25 (1) of the Regulation 805/2004.

<sup>285</sup> See Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

replaces the decision of exequatur of the Member State of enforcement of court settlement or authentic instrument;<sup>286</sup>

contains notions of automatic and absolute self-exequatur, thus communicating the enforceability of court settlement or authentic instrument of the Member State of origin automatically in the whole territory of the EU (except for Denmark); and

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).

**316. 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).

**317.** 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<sup>1</sup> 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.<sup>287</sup> For more on this issue refer to sub-section "Problem of challenging refusal to issue EEO certificate" of this Study (see § 366 and further).

#### **2.8.4. Rectification or withdrawal of the EEO certification**

**318.** 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.*

<sup>286</sup> See Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

<sup>287</sup> See: Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*, 2005, Heft 3, S. 197.

**319.** 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 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<sup>1</sup> Paragraph five and Section 545.<sup>1</sup> 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.

**320.** 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."<sup>288</sup> It would be more precisely to state that these measures have been introduced in Sections 543<sup>1</sup> and 545<sup>1</sup> of the CPL.

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

**322. Rectification of EEO certificate and standard form in Appendix VI.** Pursuant to Section 543<sup>1</sup> 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<sup>1</sup> Paragraph two of the CPL).<sup>289</sup> 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.

**323.** Issue of rectification of errors shall be adjudicated in a court sitting, previously

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<sup>288</sup> See The European Judicial Atlas in Civil Matters:  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/rc\\_eeo\\_communications\\_lv\\_lv.htm](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.

<sup>289</sup> 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<sup>1</sup> Paragraph two of the CPL of Latvia stipulates a mandatory use of this standard form in Latvia.

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<sup>1</sup> 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<sup>1</sup> Paragraphs four and five of the CPL). Apparently, in such event the Latvian court has to issue also a new EEO certificate (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.

**324.** 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 § 359 and further) of this Study.

**325.** 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.<sup>290</sup> 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:

325.1. 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);

325.2. if the judge has made a misspelling or miscalculation error in the judgement which has been then transferred also to the EEO certificate

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<sup>290</sup> Skat. Riedel, E. *Europäischer Vollstreckungstitel für unbestrittene Forderungen*. Köln: Deubner Verlag, 2005, S. 25.

(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.

**326.** 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 EEO certificate, but for its withdrawal.<sup>291</sup>

**327. 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.

**328. Withdrawal of EEO certificate and standard form in Appendix VI.** Pursuant to Section 545<sup>1</sup> 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<sup>292</sup>, 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.

**329.** 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.

**330.** 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<sup>1</sup> 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<sup>1</sup> 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.

**331. 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**

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<sup>291</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 10 EG-VollstrTitelVO (Pabst S.), S. 114.

<sup>292</sup> 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<sup>1</sup> Paragraph one of the CPL of Latvia stipulates a mandatory use of this standard form in Latvia.

**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 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!).

**332.** 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 § 359 and further) of this Study.

**333.** 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).

**334.** 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.<sup>293</sup> 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.

**335.** **If court or competent authority of another Member State withdraws EEO,** then execution proceedings upon request of an interested party shall be terminated in

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<sup>293</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 10 EG-VollstrTitelVO (Pabst S.), S. 114.



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.

**336.** Article 10 of the Regulation 805/2004 is also applicable to **court settlements and authentic instruments**. A draft law "Amendments to the Notariate Law", which is planned to be supplemented with a new Division D<sup>1</sup> "Notarial Deeds with Power of Authentic Instruments" currently is being reviewed at the second reading by the Saeima.<sup>294</sup> **Section 107<sup>3</sup>** 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<sup>295</sup> indicated in Section 107<sup>1</sup> 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<sup>1</sup> 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*

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<sup>294</sup> 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>.

<sup>295</sup> Section 107<sup>1</sup> 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<sup>1</sup> 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.*

notary upon request of the interested person. The sworn notary who has made the notarial deeds mentioned in Section 107<sup>1</sup> 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.

**337.** 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.**

## **2.9. Enforcement of EEO**

### ***2.9.1. Process and theoretical framework of enforcement***

**338.** 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<sup>296</sup> 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.<sup>297</sup>

**339.** 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

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<sup>296</sup> See also Article 24 (2) and (3) and Article 25 (2) and (3) of the Regulation 805/2004.

<sup>297</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 161.

Latvia (see the second sentence of Article 20 (1) of the Regulation, as well as Section 540 Paragraph seven of the CPL).

**340.** 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 § 152359 and further).

### ***2.9.2. Law applicable to enforcement proceedings***

**341.** 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.

**342.** However, Regulation 805/2004 stipulates:

- 342.1. what documents shall be submitted by the creditor to the competent authorities of compulsory enforcement of the Member State of enforcement (Article 20 (2));
- 342.2. prohibition of *cautio judicatum solvi* (Article 20 (3)); and
- 342.3. basis and types of stay or limitation of enforcement (Article 23).

### ***2.9.3. Documents to be submitted to enforcement authority***

**343.** 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.

- 343.1. a copy of the judgement (court settlement or authentic instrument) which satisfies the conditions necessary to establish its authenticity (Article 20 (1) (a));
- 343.2. a copy of the EEO certificate which satisfies the conditions necessary to establish its authenticity (Article 20 (1) (b));
- 343.3. 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.

**344.** Submission of a photocopy of the mentioned documents is not permitted — it has to be either true copy<sup>298</sup>, 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.<sup>299</sup>

**345.** 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).<sup>300</sup> For example, if a Latvian bailiff is submitted an EEO issued in Malta, then the copy thereof shall conform with the requirements set in the laws of Malta. Of course, in most cases it will be difficult for Latvian bailiffs to verify it.

**346.** 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.

**347.** 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.<sup>301</sup> 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

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<sup>298</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

<sup>299</sup> Rauscher, T. *Der Europäische Vollstreckungstitel für unbestrittene Forderungen*. München : Sellier, 2004, S. 67, 68.

<sup>300</sup> *Ibid.*, S. 68.

<sup>301</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

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.<sup>302</sup>

**348.** 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm)

**349.** 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	<b>Belgium</b>	Flemish, French, or German
2	<b>Bulgaria</b>	Bulgarian
3	<b>The Czech Republic</b>	Czech, English, German
4	<b>Germany</b>	German
5	<b>Estonia</b>	Estonian or English
6	<b>Greece</b>	Greek and English
7	<b>Spain</b>	Spanish
8	<b>France</b>	French, English, German, Italian, or Spanish
9	<b>Ireland</b>	Irish or English
10	<b>Italy</b>	Italian
11	<b>Cyprus</b>	[not indicated yet]
12	<b>Latvia</b>	Latvian
13	<b>Lithuania</b>	Lithuanian
14	<b>Luxembourg</b>	German and French
15	<b>Hungary</b>	Hungarian and English
16	<b>Malta</b>	Maltese
17	<b>The Netherlands</b>	Dutch, or any other language mastered by the debtor
18	<b>Austria</b>	German
19	<b>Poland</b>	Polish
20	<b>Portugal</b>	Portuguese
21	<b>Romania</b>	Romanian
22	<b>Slovakia</b>	Slovakian
23	<b>Slovenia</b>	Slovenian
24	<b>Finland</b>	Finnish, Swedish, or English
25	<b>Sweden</b>	Swedish or English
26	<b>United Kingdom</b>	English

<sup>302</sup> On notifications of Lithuania and Estonia see:

[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).

**350. Transcription** of EEO certificate shall be submitted only when the Member States of enforcement has different writing than in the Member State of origin.<sup>303</sup> In Latvia such transcriptions could be required for EEO certificates issued in Bulgaria or Greece (where the writing is different).

**351. 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.<sup>304</sup>

#### **2.9.4. Enforcement proceedings**

**352.** 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).

**353.** 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).

**354.** 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).

**355.** 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"<sup>305</sup>) 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.<sup>306</sup> In such events, the bailiff shall set a time period for rectification of deficiencies which shall not be less than 10 days (Section 552<sup>1</sup> 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<sup>1</sup> 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<sup>1</sup> Paragraph four of the CPL).

**356.** The bailiff is not entitled to verify:

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<sup>303</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

<sup>304</sup> *Ibid.*

<sup>305</sup> Similar see: Seidl, S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena: JWV, 2010, S. 245, 246.

<sup>306</sup> See also: Seidl, S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena: JWV, 2010, S. 245.

- 356.1. if the claim is uncontested in the sense of the Regulation 805/2004;<sup>307</sup>
- 356.2. if the EEO certificate has been issued pursuant to the substantive matter, geographical application, and application in time of the Regulation;<sup>308</sup>
- 356.3. if the minimum procedural standards for issuing EEO have been complied with by the Member State of origin;<sup>309</sup>
- 356.4. if the EEO certificate has been issued by a court which is internationally competent according to Article 6 (1) of the Regulation 805/2004;
- 356.5. if the decision to be enforced and/or EEO certificate has been sent to the debtor.<sup>310</sup>

**357.** 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).

**358.** 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.

#### ***2.9.5. Stay or limitation of the enforcement***

**359.** 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.*

**360.** The legislator has stipulated in Section 644<sup>2</sup> of the CPL of Latvia, that district (city) court in the territory of which an EEO issued in another Member State is to be

<sup>307</sup> Wagner, R. Die neue EG-Verordnung zum Europäischen Vollstreckungstitel. *IPRax*. 2005, Heft 3, Mai/Juni, S. 199.

<sup>308</sup> *Ibid.*; Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 165, 166.

<sup>309</sup> 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.

<sup>310</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 168.

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:

360.1. 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;

360.2. vary the form or procedures for the execution of the adjudication;

360.3. suspend the execution of the adjudication.

**361.** Upon submitting the application provided for in Section 644<sup>2</sup> of the CPL, the debtor does not have to pay the State fee.

**362.** 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<sup>2</sup> Paragraph three of the CPL). An ancillary complaint may be submitted regarding this decision of the court (Section 644<sup>2</sup> Paragraph four of the CPL).

**363.** 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.

**364. 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:

364.1. 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

364.2. where the debtor has applied for the rectification or withdrawal of an EEO certificate in accordance with Article 10 of the Regulation.

**365.** 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.<sup>311</sup>

**366.** 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 decision (or authentic instrument). The German legal literature also implies that the mentioned types of appeal include appeals to the ECHR.<sup>312</sup>

**367.** 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<sup>1</sup> 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", § 359171 and further.

**368.** 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 (§ 318 and further).

**369.** 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:

369.1. application by the debtor (Article 23 of the Regulation 805/2004 and Section 644<sup>2</sup> of the CPL of Latvia; the content of the application and the documents to be attached thereto are stipulated in Section 644<sup>4</sup> of the CPL of Latvia);

369.2. 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<sup>4</sup> Paragraph two Clause 3 of the CPL of Latvia stipulates that such

<sup>311</sup> 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, n° 3 (juillet-août-septembre), p. 673.

<sup>312</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelIVO (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.

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;

369.3. 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.

### 370. 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)
<b>Article 6 (2) of the Regulation</b>	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).  <b>Basis — application</b>	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 <sup>1</sup> 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.	<i>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</i>

	<p>of the debtor (see Article 6 (2) of the Regulation and Section 541<sup>1</sup> 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).</p>				<p><i>issue. See also the respective sub-section of the Study.</i></p> <p><i>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)).</i></p>
<p><b>Article 23 of the Regulation</b></p>	<p>1) where the debtor has challenged a judgement (court settlement or authentic instrument) certified as EEO in the Member State of origin;</p> <p>2) where the debtor has submitted an application for review within the meaning of Article 19 in the Member State of origin;</p> <p>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;</p> <p>4) basis shall be an application of the debtor that has been addressed to the</p>	<p>Member State of enforcement of EEO.</p>	<p>1) Limit the enforcement proceedings to protective measures (in Latvia — varying of the form or procedures for the enforcement); or</p> <p>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</p> <p>3) under</p>	<p>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).</p>	<p><i>It follows from the current regulation of the CPL of Latvia, that in case of appeal of <b>authentic instruments</b> 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<sup>2</sup> Paragraph one</i></p>

	competent court or authority of the Member State of enforcement.		exceptional circumstances, stay the enforcement proceedings of decision (or authentic instrument) (in Latvia — stay the enforcement of the decision).		<i>of the CPL).</i>
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**371. 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<sup>2</sup> Paragraph one of the CPL of Latvia):

- 371.1. 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;
- 371.2. varying of the form or procedures for the execution of the adjudication;
- 371.3. suspending of the execution of the adjudication.

**372.** 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<sup>313</sup>) in the event if the decision (or authentic instrument) later is withdrawn in the Member State of origin.<sup>314</sup> At the same time, compulsory enforcement is still performed in the Member State of enforcement.

**373.** 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

<sup>313</sup> 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).

<sup>314</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 180;

means of securing claim (for example, attachment of movable property owned by the debtor).

**374.** 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<sup>315</sup> of the CPL, Section 644<sup>2</sup> allows the court to decide the respective issue only upon the application of the debtor (not creditor).

**375.** Unlike in the event of applying Section 206 of the CPL, Section 644<sup>2</sup> the Latvian court shall assess 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.

**376.** Unlike in the event of applying Section 206 of the CPL, Section 244<sup>2</sup> 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).

**377.** Unlike in the event of applying Section 206 of the CPL, Section 644<sup>2</sup> 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<sup>1</sup> and Section 644<sup>2</sup>. Correspondingly, the word "judgement" should be replaced with the word "adjudication" in Section 554.**

**378.** Stay of the enforcement of decision. Section 644<sup>2</sup> 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).

**379.** 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

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<sup>315</sup> 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.

enforcement.<sup>316</sup> 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 CPHRFF.

**380.** 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).

**381.** 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<sup>2</sup> Paragraph one Clause 1, Sections 229, 230, and 441 of the CPL refused to accept this application.<sup>317</sup> The court reasoned this as follows:

**382. 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).

**383. 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.

**384.** 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.

**385. This decision by the Latvian court has to be regarded as incorrect case law** due to the following reasons:

385.1. The judge had to assess if the submitted application complies with the official criteria provided for in Section 644<sup>4</sup> of the CPL and if the documents stipulated in this Section have been appended to the application.

385.2. If the judge established that the documents appended to the application do not comply with Section 644<sup>4</sup> Paragraph two of the CPL, a decision regarding **leaving the application not proceeded with** (Section 644<sup>5</sup> of the CPL) and

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<sup>316</sup> 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.

<sup>317</sup> Decision of 16.02.2009 in matter No. 3-10/0093/2009 by Riga City Zemgale Suburb Court [not published].

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<sup>318</sup>).

385.3. 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).

385.4. 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.

**386. Deficiencies of CPL norms.** 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.

**387. Section 644<sup>2</sup> 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<sup>1</sup> (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<sup>2</sup> 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<sup>2</sup> of the CPL should be improved regarding this issue.**

**388. Section 644<sup>2</sup> 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.<sup>319</sup> However, if it may be

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<sup>318</sup> For example, which of the cases provided for in Section 132 of the CPL has been established in the matter.

<sup>319</sup> *Zivilprozessordnung*. Available: [www.gesetze-im-internet.de](http://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.

appealed in civil proceedings in Latvia, the range of the subjects of appeal should be limited.

**389.** Certain doubts arise on the usefulness of the possibility included in Section 644<sup>2</sup> 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<sup>2</sup> 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.

**390.** Section 644<sup>2</sup>, 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 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<sup>2</sup> 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<sup>2</sup> 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:

390.1. 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

390.2. 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<sup>2</sup> of the CPL.

### ***2.9.6. Refusal of enforcement***

**391.** 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.*

**392.** 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).

**393.** 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.

**394.** Until now there has not been any matter regarding the application of Article 21 of the Regulation in Latvian courts.

**395. 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<sup>3</sup> Paragraph one of the CPL. The application of the debtor shall be formed according to Section 644<sup>4</sup> of the CPL.

**396.** 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.

**397.** The debtor has to submit the application to the competent court of Latvia, which, according to Section 644<sup>3</sup> 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.

**398.** 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<sup>3</sup> 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.

**399. 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<sup>320</sup> 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 "protection filter" of the legal system of the Member State of enforcement.<sup>321</sup> 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.<sup>322</sup> 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.

**400.** 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*).<sup>323</sup> The notions "between the same parties" and "the same subject matter and cause of action" has to be 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.<sup>324</sup>

**401.** Irreconcilable decisions, **from the geographical point of view**, may have been taken:

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<sup>320</sup> Kropholler, J. Internationales Privatrecht. 5. Aufl. Tübingen : Mohr Siebeck Verlag, 2004, S. 651.

<sup>321</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), p.165.

<sup>322</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), p.164.

<sup>323</sup> 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, n° 3 (juillet-août-septembre), p. 671.

<sup>324</sup> See 19 May 1998 ECJ judgement in the case: C-351/96 *Drouot Assurances*, ECR [1998], p. I-03075, para. 19.

401.1. **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.

401.2. **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.

401.3. **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 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.

**402.** 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<sup>325</sup>, 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.<sup>326</sup>

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<sup>325</sup> 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.

<sup>326</sup> 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 exécutoire européen pour les créances incontestées. *Journal du droit international*. 2005, n° 3 (juillet-août-septembre), p. 672.

**403.** 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<sup>4</sup> 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.

**404.** 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)<sup>327</sup>, nor the EEO (in the international civil procedure this is also called the prohibition of *révision au fond*<sup>328</sup>). 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 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.**

## **2.10. Relations of the Regulation 805/2004 with other laws**

**405. 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.

**406. 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").<sup>329</sup>

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<sup>327</sup> 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).

<sup>328</sup> French — review as to the substance.

<sup>329</sup> 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.

**407. 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.

**408.** 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, 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.

**409.** 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*, assess 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.

**410. 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.

### 3. Regulation 861/2007

#### 3.1. Introduction

**411.** 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<sup>330</sup>, by exploring and examining the content of the Regulation being developed at that time. In 2005 proposals to Regulation<sup>331</sup> were adopted, but in 2007 the Regulation 861/2007 was adopted.

**412.** 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.

**413.** 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).

**414.** Further, each article of the Regulation and its application have been analysed.

**415.** Standard forms of the Regulation are available here: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_filling\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_lv.htm).

#### 3.2. Notion of small claim

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<sup>330</sup> 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.

<sup>331</sup> 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.

**416.** 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 the court. This amount excludes all interest, expenses, and disbursements. Thus, it is possible that larger amount is shown in the operative part of the judgement.

**417.** 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.

**418.** In the draft regulation there were many discussions regarding the amount and if it has to be indicated at all.<sup>332</sup> 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.<sup>333</sup> 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.<sup>334</sup>

**419.** 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.<sup>335</sup> 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.

**420.** 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

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<sup>332</sup> 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.

<sup>333</sup> 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.

<sup>334</sup> EU Citizenship Report 2010: Dismantling the Obstacles to EU citizens' rights COM [2010] COM (2010) 603 final p.13.

<sup>335</sup> Judgement of 13.03.2012 in matter No. C12292211 by Daugavpils City Court [not published].

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 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).

**421.** 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.

**422.** Example:

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*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](http://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.*

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**423.** 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.

**424.** 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.

**425.** 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.

**426.** Example

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*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— 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*

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*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<sup>336</sup>, chose to apply the interest rate stipulated in Article 7.4.9 of the UNIDROIT Principles of International Commercial Contracts.<sup>337</sup>*

*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.*

### 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.*

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**427.** 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.

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<sup>336</sup> See Schlechtriem & Schwenger, Commentary on The UN Convention on the International Sale of Goods (CISG) (3rd edition, ed. Schwenger I.), Oxford University Press, 2010, p. 1057-1060.

<sup>337</sup> 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 of 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](http://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.

**428.** 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.<sup>338</sup> 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.*

**429.** 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.

**430.** 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 autonomous and simple system, therefore it should not be compared to the national proceedings as it has been done in the aforementioned decision.

**431.** 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.

**432.** 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

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<sup>338</sup> Judgement of 27.01.2012 in matter No. C15285811 by Jelgava City Court [not published].

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.

**433.** 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.

**434.** 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.

**435.** 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.

**436.** 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.

**437.** 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.

**438.** 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.<sup>339</sup> 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 subsection of the Study.

**439.** 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 805/2004. Since the interest<sup>340</sup> according to their legal nature cannot be compared to contractual penalty<sup>341</sup>, the authors do not support of the practice that instead of interest at item 7.4.1 in the form of the Regulation 805/2004 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.

### **3.3. Material scope of application**

**440.** 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.<sup>342</sup>

**441.** **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*).

**442.** 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**

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<sup>339</sup> 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

<sup>340</sup> 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.

<sup>341</sup> 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.

<sup>342</sup> It must be added that the English text of the Regulation mentions not only the court, but also tribunals — “the court or tribunal”.

**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 § 61 on the Regulation 805/2004.

**443.** 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.<sup>343</sup>

**444.** 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.

**445. 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.

**446.** 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 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.<sup>344</sup> 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.

**447.** 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

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<sup>343</sup> 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>.

<sup>344</sup> 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.

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.

**448.** 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.<sup>345</sup> 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.

**449.** 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.<sup>346</sup> 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.<sup>347</sup>

**450.** 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<sup>348</sup> 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.

**451.** 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

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<sup>345</sup> Decision of 06.02.2012 in matter No. 3-10/004 by Jēkabpils District Court [not published].

<sup>346</sup> 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.

<sup>347</sup> Law on Residential Tenancy: Law of the Republic of Latvia, *Latvian Herald*, No. 19, 29.04.1993

<sup>348</sup> See 15 January 1985 ECJ judgement in the case: No. 241/83 *Erich Rösler v Horst Rottwinkel* ECR 1985, p. 00099.

decided differently in each Member State and possibly even by special courts.<sup>349</sup> So, also such cases do not fall within the scope of the Regulation.

**452.** 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.

**453.** 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.

### **3.4. Geographical scope of application**

**454.** 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.

### **3.5. Application in time**

**455.** 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.*

**456.** 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.

**457.** 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<sup>350</sup>, it enters into force on the next day, i.e., **1 August 2007**.

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<sup>349</sup> 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/>.

<sup>350</sup> 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.



**458.** *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:

458.1. 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:

458.1.1. which courts or tribunals have jurisdiction to give a judgement in the European Small Claims Procedure;

458.1.2. 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);

458.1.3. whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;

458.1.4. which languages are accepted pursuant to Article 21 (2) (b); and

458.1.5. which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.

458.2. 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.

**459.** 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.*

**460.** 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<sup>351</sup>, but not earlier.

**461.** **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.<sup>352</sup>

<sup>351</sup> Similar see also: Rauscher, T. (Hrgs.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 29 EG-BagatellVO (Varga I.), S. 544

<sup>352</sup> [http://europa.eu/justice\\_home/judicialatlascivil/](http://europa.eu/justice_home/judicialatlascivil/).

### 3.6. Notion "cross-border case"

**462.** 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.<sup>353</sup>

**463.** 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.

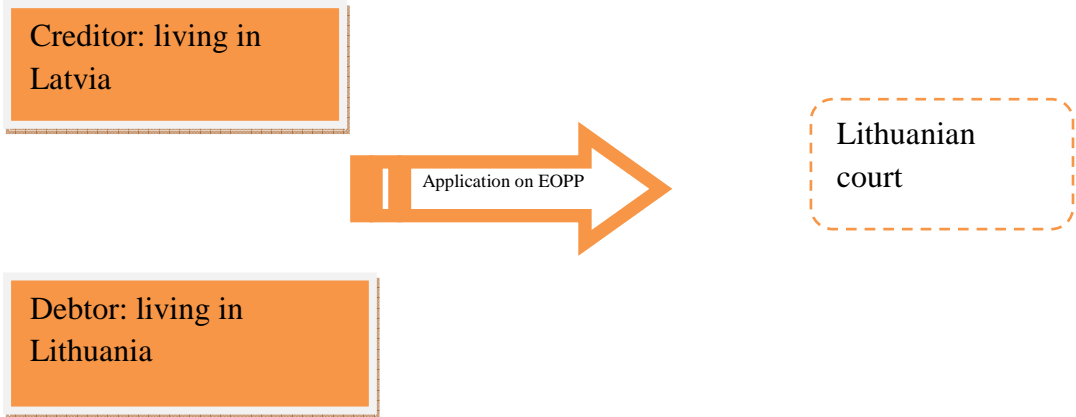
**464.** Thus, from Article 3 of the Regulation 861/2007 it can be concluded at least one of the parties has to be domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised. It follows from the aforementioned that also domiciles of both parties (and not only one party) may be in this another Member State, except Denmark.<sup>354</sup> 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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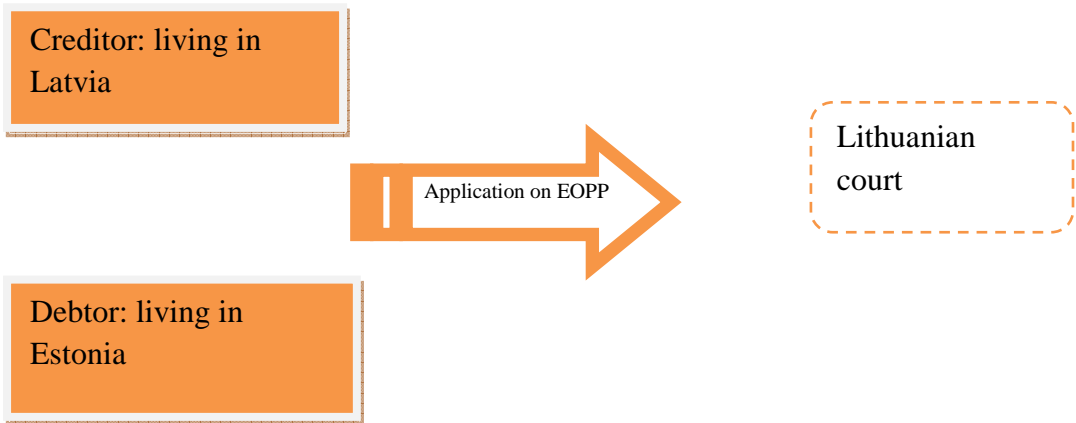
<sup>353</sup> Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes [2003], L 026, Official Journal of the European Union.

<sup>354</sup> See Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucājumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

1. example



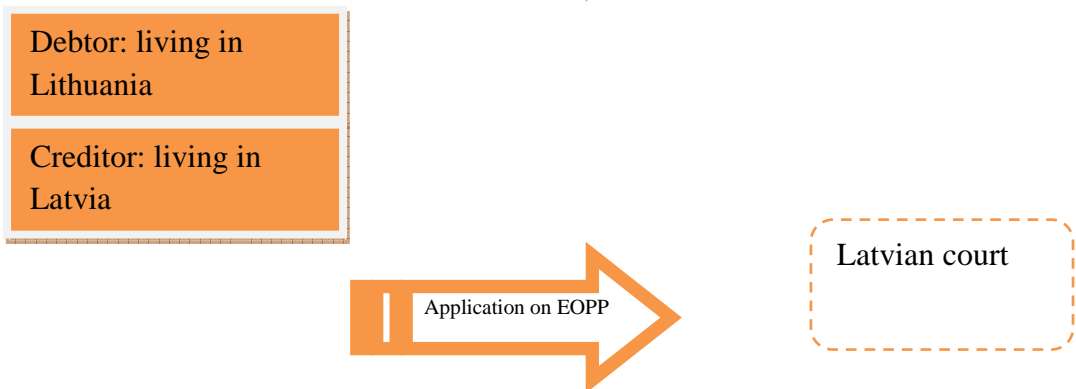
2. example



3. example



4.



Debtor: living in  
Australia

5. example

Creditor: living in  
Latvia

Application on EOPP

Estonian court

Debtor: living in  
Australia

6. example

Creditor: living in  
Australia

Application on EOPP

Lithuanian  
court

Debtor: living in Latvia

7. example

Creditor: living in  
Latvia

Application on  
EOPP

Lithuanian  
court

Debtor: living in  
Latvia

**465.** 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.

**466.** 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<sup>355</sup> across Member States, which can cause certain problems in establishing it.

**467.** 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.<sup>356</sup> 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.

**468.** 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.<sup>357</sup> 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.<sup>358</sup> It must be noted that also the latter does not give a concrete answer on how to

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<sup>355</sup> 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.

<sup>356</sup> Civil Procedure Law: Law of the Republic of Latvia, *Latvian Herald*, No. 1, 14.01.1993

<sup>357</sup> Declaration of Place of Residence Law: Law of the Republic of Latvia, *Latvian Herald*, No. 104, 07.07.2002

<sup>358</sup> 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.<sup>359</sup>

**469.** 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.

**470.** 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.

**471.** 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. For 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.<sup>360</sup> Thus, the phrase "place of habitual residence" shall be interpreted as the place where the person has strong

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<sup>359</sup> Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucējumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

<sup>360</sup> 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.<sup>361</sup>

**472. 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.*

**473.** "Company or other legal person" means legal persons of any form and organisations without the status of a legal person.

**474.** 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.<sup>362</sup> These criteria shall be applied equally, not subsidiary. Moreover, the Regulation does not stipulate hierarchy of these elements; they are exhaustive.

**475.** 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.

**476.** 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

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<sup>361</sup> Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucējumi*. Jurista Vārds, Nr. 24/25, 19.06.2009

<sup>362</sup> Article 54: Companies or firms formed in accordance with the law of a Member State and having their 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.

Member States.<sup>363</sup> Such norm gives comparatively wide range of possibilities to creditors to use the tactics of *forum shopping*.

**477.** "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<sup>364</sup>, 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.

**478.** 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.

**479.** 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.<sup>365</sup>

**480.** Principal place of business is the place where the main commercial activities take place, which can also be established according to the actual conditions.

**481.** Article 60 (3) of Brussels I Regulation clearly stipulates that in order to determine whether a trust<sup>366</sup> 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<sup>367</sup> 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.

**482.** 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

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<sup>363</sup> Magnus, U., Mankowski, P. (ed). *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 811.

<sup>364</sup> Commercial Law: Law of the Republic of Latvia. *Latvian Herald*, No. 158/160, 04.05.2000

<sup>365</sup> Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p.812.

<sup>366</sup> **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".

<sup>367</sup> Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition, available: [http://www.hcch.net/index\\_en.php?act=conventions.text&cid=59](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.



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. 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.

**483.** 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 § 660 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*.

### **3.7. Commencement of procedure**

**484.** 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.*

### **3.7.1. Claim form — standard form A**

**485.** 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_lv_lv.htm).

**486.** 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).

**487.** 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_lv.jsp?countrySession=19&#statePage0)

**488.** 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 (\*):

**489.** 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.

**490.** 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.

**491.** 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).

**492.** 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.<sup>368</sup>

**493.** 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 (\*):

<sup>368</sup> Mayer/Lindemann/Haibach. Small Claims Verordnung. München : C.H.Beck, 2009, S. 52.

**494.** 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.

**495.** 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.<sup>369</sup>

**496.** 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.

**497.** 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.

**498.** 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):

**499.** 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.

**500.** 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

<sup>369</sup> Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 53.

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.<sup>370</sup>

**501.** 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:

**502.** 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.

**503.** In item 5.1, the claimant indicates the Member State of the domicile — the same as in item 2.5 (for example, Estonia).

**504.** 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).

**505.** 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.

**506.** 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 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.

**507.** 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:

<sup>370</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010, Art. 4 EG-BagatellVO (Varga I.), S. 457.

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:

**508.** 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).

**509.** In Latvia, **costs of adjudication** are: 1) court costs; and 2) costs related to conducting a matter (Section 33 Paragraph 1 of the CPL).

**510.** **Court costs** are: State fees, office fees, and costs related to adjudicating a matter (Section 33 Paragraph 2 of the CPL).

**511.** **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).

**512.** 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.<sup>371</sup>

**513.** In Latvia, the State fee shall be transferred to the following account:<sup>372</sup> **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

**514. Office fee shall be calculated as follows (Section 38 of the CPL):**

For issuing a true copy of a document in a matter, as well as for reissuing a court judgement or decision	5 lats
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<sup>371</sup> See: <http://www.tiesas.lv/index.php?id=26>

<sup>372</sup> Information available here: <http://www.tiesas.lv/index.php?id=26>

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

**515.** Office fees shall be paid into the State basic budget (Section 38 Paragraph two of the CPL) by transferring to the following account:<sup>373</sup> **Office fee at court institution**

Receiver: The Treasury

Registration No. 90000050138

Account No. LV39TREL1060190911100

Receiving bank: The Treasury

BIC: TRELLV22

Purpose of the payment: here data has to be provided for the identification of the matter

**516.** 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](http://ec.europa.eu/civiljustice/case_to_court/case_to_court_gen_lv.htm)

**517.** 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.<sup>374</sup>

**518.** 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.

**519.** 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 "other claim", i.e. claim that cannot be expressed in monetary terms (for example, on the delivery of goods, replacement of goods, etc.).

<sup>373</sup> Information available here: <http://www.tiesas.lv/index.php?id=26>

<sup>374</sup> 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

**520.** 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).

**521.** 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.

**522.** Example.

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*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.*

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**523.** 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.)

**524.** **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).

**525.** 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.<sup>375</sup>

**526.** 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.<sup>376</sup>

**527.** Jelgava City Court in its judgement of 06.07.2011<sup>377</sup> 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<sup>378</sup>.

**528.** 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<sup>379</sup>

*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*

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<sup>375</sup> 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>

<sup>376</sup> 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>

<sup>377</sup> Judgement of 06.07.2011 in civil matter No. [no number] by Jelgava City Court [not published].

<sup>378</sup> Judgement of 27.01.2012 in civil matter No. C15285811 by Jelgava City Court [not published].

<sup>379</sup> Consumer Rights Protection Law: Law of the Republic of Latvia. Latvian Herald, No. 104/105, 01.04.1999

*ensured; or 4) revocation of the contract and repayment to the consumer of the amount paid for the goods.*

**529.** 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 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.

**530.** 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.

**531.** 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.

**532.** 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.

**533.** Example:

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*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*

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*interest shall be calculated starting from the date of the last payment (for example, 15.08.2012).*<sup>380</sup>

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**534.** 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 CL) per year, but in contractual relations in a consumer participates — six per cent per year (Section 1765 Paragraph two of the CL).

**535.** 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 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").

**536.** 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.

**537.** 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

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<sup>380</sup> See also: Mayer/Lindemann/Haibach. Small Claims Verordnung. München : C.H.Beck, 2009, S. 76.

(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.

**538.** 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.

**539.** 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).

**540.** 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<sup>1</sup> Paragraph 4<sup>1</sup> 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).

**541.** 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:

**542.** 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).

### 3.7.2. Means of communication

**543.** 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.

#### **544. Notifications of Member States regarding means of communication**<sup>381</sup>

No.	EU Member States	Means of communication
1	<b>Belgium</b>	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 <b>direct submission</b> 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 <b>in registered mail</b> to the office of the court of first instance having the territorial jurisdiction.
2	<b>Bulgaria</b>	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	<b>The Czech Republic</b>	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 or 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	<b>Germany</b>	In all events the following means of communication may be used: mail, including private courier services, fax. In <i>Brandenburg</i> electronic access to all local courts of lower level ( <i>Amtsgericht</i> ) and Brandenburg District Court ( <i>Oberlandesgericht</i> ) is possible. Pursuant to Article 130 a of the Civil Procedure Code ( <i>Zivilprozessordnung, ZPO</i> ), there is a possibility to submit electronic documents on the web page <a href="http://www.gerichtsbriefkasten.de">www.gerichtsbriefkasten.de</a> 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 <a href="http://www.erv.brandenburg.de">www.erv.brandenburg.de</a> , 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 ( <i>Amtsgerichte</i> ) and Hansa District Court ( <i>Hanseatischen Oberlandesgericht</i> ) is possible. Technical provisions for submission of data pursuant to the procedural requirements are available on the web pages of the specific courts In <i>Hessen</i> , pursuant to Article 130 a of the Civil Procedure Code (ZPO), electronic submission of documents is possible to all local courts of lower level ( <i>Amtsgerichte</i> ). Technical provisions for submission of data

<sup>381</sup> See: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_communicationshtml\\_lv\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_communicationshtml_lv_lv.htm).

		pursuant to the procedural requirements are available on the web page <a href="http://www.hmdj.hessen.de">www.hmdj.hessen.de</a>
5	<b>Estonia</b>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
6	<b>Greece</b>	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	<b>Spain</b>	Application for claim may be submitted either directly, or by mail or fax.
8	<b>France</b>	Application for initiation of proceedings may be sent to the court by mail or electronically.
9	<b>Ireland</b>	Means of communication are mail and fax.
10	<b>Italy</b>	For the purposes of the European Small Claims Procedure, the acceptable mean of communication is mail.

11	<b>Cyprus</b>	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	<b>Latvia</b>	In Latvia the claimant may submit the statement of claim directly to the competent court or send it by mail.
13	<b>Lithuania</b>	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	<b>Luxembourg</b>	For Luxembourg acceptable mean of communication is sending by mail.
15	<b>Hungary</b>	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	<b>Malta</b>	The acceptable means of communication are registered mail and fax.
17	<b>The Netherlands</b>	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	<b>Austria</b>	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: <a href="http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv">http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv</a> . Documents may not be submitted via fax or e-mail.
19	<b>Poland</b>	Written. <i>(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).</i>
20	<b>Portugal</b>	The acceptable means of communication are: registered mail, fax, or electronic mail.
21	<b>Romania</b>	Pursuant to Article 4 (1) of the Regulation, the acceptable and available means of communication for courts within the European Small Claims Procedure are <b>mail and fax</b> .
22	<b>Slovakia</b>	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). <i>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.</i>
23	<b>Slovenia</b>	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	<b>Finland</b>	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	<b>Sweden</b>	Application for initiation of the European Small Claims Procedure shall be submitted to the competent court either directly, or by mail.
26	<b>United Kingdom</b>	<p><b>1 England and Wales</b> 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.</p> <p><b>2 Scotland</b> 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.</p> <p><b>3 Northern Ireland</b> 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.</p> <p><b>4 Gibraltar</b> 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).</p>

### 3.7.3. *Supplementing and Rectifying the Claim*

**545.** 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.*



**546.** Where the claim (Form A), in the court's opinion, contains one of such **drawbacks**:

- 546.1. Information provided by the claimant is inadequate;
- 546.2. Information is insufficiently clear;
- 546.3. Form is not filled in properly;
- 546.4. The claim is clearly unfounded;
- 546.5. Application is inadmissible; **then,**

**547. The court shall give the claimant opportunity:**

- 547.1. To supplement claim application form; or
- 547.2. To rectify claim application form; or
- 547.3. To provide supplementary information; or
- 547.4. To provide supplementary documentation; or
- 547.5. To withdraw the claim within the period specified by the court.

**548.** 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.<sup>382</sup> 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).<sup>383</sup>

**549.** 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 (619. § 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).

**550.** 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).

**551.** The concept of "**the claim is clearly unfounded**" shall be referred to those claims, where it is obvious that they cannot be satisfied. Example:

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*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.*

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<sup>382</sup> Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 121.

<sup>383</sup> See European Judicial Network: [http://ec.europa.eu/civiljustice/case\\_to\\_court/case\\_to\\_court\\_lat\\_lv.htm](http://ec.europa.eu/civiljustice/case_to_court/case_to_court_lat_lv.htm)

552. Example:

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*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).<sup>384</sup>*

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553. 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.

#### 3.7.4. *Dismissal of the claim*

554. 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.*

555. The abovementioned legal norm includes several **grounds for dismissal of the application**, namely:

555.1. The claim is clearly unfounded;

555.2. The application is inadmissible; or

555.3. The claimant fails to complete or rectify the claim form within the time specified by the court.

556. 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.

557. 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**

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<sup>384</sup> See also: Mayer/Lindemann/Haibach. Small Claims Verordnung. München: C.H.Beck, 2009, S. 126.

**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).

### **3.8. Conduct of the procedure**

#### **3.8.1. Written and oral process**

**558.** Regulation was intended as a specifically simplified procedure comparing to the legal procedure of the claim.<sup>385</sup> 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.

**559.** 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.<sup>386</sup> 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. ECT has specified that an oral process shall not be considered an absolute right,<sup>387</sup> it must be maintained in an emergency case when reviewing of specific legal and technical issues shall be required.<sup>388</sup> Consequently, majority of processes, when applying the Regulation, shall be conducted in writing, however, the Latvian jurisprudence shows the contrary.

**560.** 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 —

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<sup>385</sup> 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.

<sup>386</sup> 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/>.

<sup>387</sup> Judgement of ECT, dated by 12 November 2002, in the case: *Döry v. Sweden* No. 28394/95, ECHR – 2002- V, para 37.

<sup>388</sup> Judgement of ECT, dated by 10 November 2005, in the case *Schelling v. Austria* No. 55193/00 ECHR- 2005- IX, para 30.

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.<sup>389</sup>

**561. 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<sup>25</sup>. 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)).

**562. 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 raise the cost of the process, for example, summoning of one party for oral court hearing may raise additional costs.

**563.** 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.<sup>390</sup>

**564. 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.

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<sup>389</sup> 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.

<sup>390</sup> ECHR case *Airey v. Ireland* App No 6289/73 (9 October 1979), para 24.

**565.** 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.

**566.** 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.<sup>391</sup> 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 reduce the claimant's costs.

**567.** However, if due to complicity 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", 608. § 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,<sup>392</sup> 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,

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<sup>391</sup> Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

<sup>392</sup> 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.

Skype).<sup>393</sup> 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.<sup>394</sup>

**568.** 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,<sup>395</sup> 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.

**569.** 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.<sup>396</sup> Furthermore, explanations or testimonies may be recorded by use of 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.

### **3.8.2. Representation**

**570.** 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.

**571.** 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

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<sup>393</sup> House of Lords. European Small Claims Procedure: Report with evidences [2006] 23 rd Report of Session 2005-06, para 126-127.

<sup>394</sup> 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>.

<sup>395</sup> See 2011.09.08 law "Amendments to the Civil Procedure Law" ("LV", 148 (4546), 2011.09.20), valid from 30.09.2011.

<sup>396</sup> See, for example, online mediation service: Risolvioline. RisolviOnline are Milano arbitrary 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, mediator and employees of the arbitrary court, assigned for this specific service. Available at: [http://risolvionline.com/?lng\\_id=37](http://risolvionline.com/?lng_id=37).

associations or consumer right protection organizations, however, as stated further, in Latvia, costs for such representation may not be recovered.

**572.** 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.

### **3.8.3. Authority of the court**

**573.** 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.

**574.** 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, Article 8 (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 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.<sup>397</sup>

**575.** 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.

**576.** 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.

**577.** 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

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<sup>397</sup> Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

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.

**578.** 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.

**579.** 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.<sup>398</sup> 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 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.

**580.** 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.

**581.** 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.<sup>399</sup> Though, similar to commercial disputes, it may be difficult to establish, since the Regulation states no request to submit any agreements,

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<sup>398</sup> ECC-Net European Small Claims Procedure Report, September 2012, available at: [http://ec.europa.eu/consumers/ecc/docs/small\\_claims\\_210992012\\_en.pdf](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.

<sup>399</sup> 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.



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.

**582.** Alternatively, the above-mentioned article recommends using ADR (*alternative dispute 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.

**583.** 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.<sup>400</sup> Since such process is voluntary, both parties shall agree on 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.

**584.** 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.

**585.** 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.

#### **3.8.4. *Applicable law***

**586.** 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

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<sup>400</sup> 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>.

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.

**587.** 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 624 § 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 697 § and following paragraphs of this Research).

**588.** 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.

**589.** 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.<sup>401</sup> However, the court shall assess, if the applicable law may be established according to Rome Regulation I<sup>402</sup> (or Rome Convention<sup>403</sup>) or to the Regulation on the law applicable to non-contractual obligations (hereinafter referred to as: *Rome II*),<sup>404</sup> however, this process may be extremely complicated, in particular, if the dispute refers to facts of the case.

**590.** 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, the European Union Member States are Member States to the ANO

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<sup>401</sup> Decision of the Jelgava Court, dated by 27 January 2012, in the case No. C15285811 [unpublished].

<sup>402</sup> 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

<sup>403</sup> 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.

<sup>404</sup> 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

Convention on contracts for the international sale of goods (CISG),<sup>405</sup> 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.<sup>406</sup>

**591. Example:**

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*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.<sup>407</sup> 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 – 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.*

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### **3.8.5. Issuance of documents**

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<sup>405</sup> United Nations Convention on Contracts for the International Sale of Goods. *A/CONF.97/18*, 1980. 2010.

<sup>406</sup> See Kačevska, I. Application of the Convention on Contracts for the International Sale of Goods. *Jurista Vārds* No. 51/52, 22 December 2009.

<sup>407</sup> INCOTERMS 2010®. ICC Services, 2010.

**592.** 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.,

- 592.1. personal service attested by acknowledgement of receipt;
- 592.2. 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;
- 592.3. 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;
- 592.4. orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing;
- 592.5. personal service at the debtor's personal address on persons who are living in the same household as the debtor or are employed there;
- 592.6. 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;
- 592.7. deposit of the document in the debtor's mailbox;
- 592.8. 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;
- 592.9. postal service without proof where the debtor has his address in the Member State of origin;
- 592.10. electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

**593.** Detailed description of use of these methods see in Sub-paragraph of Articles to be commented of Regulation 805/2004 (543 § and further).

### **3.8.6. *Language of the procedure***

**594.** EU invests efforts into elaboration of various automated translation tools and forming of interpreters' database,<sup>408</sup> 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

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<sup>p</sup> 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.

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.

**595.** 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.

**596.** 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:<sup>409</sup>

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
Italy	Italian
Cyprus	Greek and English
Latvia	Latvian
Lithuania	Lithuanian
Luxembourg	French and German
Hungary	Hungarian
Malta	Maltese and English
Netherlands	Netherlandic
Austria	German
Poland	Polish

<sup>409</sup> 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&](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm?countrySession=1&).

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	Finland, Sweden or English
Sweden	Swedish or English
United Kingdom (England and Wales, Scotland, Northern Ireland, Gibraltar)	English

**597.** 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.

**598.** 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.

**599.** 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:

599.1. If the document is not in the official language of the Member State addressed;<sup>410</sup>

599.2. If the document is not in the language which the addressee understands.

**600.** 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.

<sup>410</sup> 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.

**601.** 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.<sup>411</sup> 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.

**602.** 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.

**603.** 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.<sup>412</sup> 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.<sup>413</sup> 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 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.<sup>414</sup> 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

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<sup>411</sup> Judgement of ECT, 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.

<sup>412</sup> Judgement of ECT, 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.

<sup>413</sup> 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.

<sup>414</sup> Judgement of ECT, 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.

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.

**604.** 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.

**605.** 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.

**606.** 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.<sup>415</sup> 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 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.

**607.** 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

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<sup>415</sup> 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/>.



document, as well as, if documents shall be translated into the language, for which no translators are available.<sup>416</sup> Translation shall be executed in line with national procedural provisions by a person qualified to make translations in one of the Member States.<sup>417</sup>

### **3.8.7. Taking of evidence**

**608.** 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.

**609.** 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.*

**610.** **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 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.

**611.** 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<sup>418</sup> that for taking

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<sup>416</sup> Judgement of ECT, dated by 8 November 2005, in the case C-443/03 *Götz Leffler v. Berlin Chemie AG* ECR, 2005, p. I – 09611, para 64.

<sup>417</sup> See Regulation 861/2007, Article 21, Part 2, Paragraph (b), last sentence.

<sup>418</sup> 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.

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*).<sup>419</sup> 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.<sup>420</sup>

**612. 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.

**613.** 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.

**614.** 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 assets. In this case also shall be used the Taking of Evidence Regulation and practical manual on the use of video conferences.<sup>421</sup>

**615.** 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

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<sup>419</sup> 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

<sup>420</sup> Practical manual for application of the Taking of Evidence Regulation. Available at: [http://ec.europa.eu/civiljustice/publications/docs/guide\\_taking\\_evidence\\_lv.pdf](http://ec.europa.eu/civiljustice/publications/docs/guide_taking_evidence_lv.pdf).

<sup>421</sup> 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](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](https://e-justice.europa.eu/attachments/vc_booklet_lv.pdf) .

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 international 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.<sup>422</sup> It means that a judge must involve interpreters to ensure taking of evidence.

**616.** 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.<sup>423</sup> 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.

**617.** 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).

**618.** 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.

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<sup>422</sup> 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/te_otherinfo_lv.htm).

<sup>423</sup> See: Information about equipment in Member States, available at: [https://e-justice.europa.eu/content\\_information\\_on\\_national\\_facilities-151-EU-lv.do](https://e-justice.europa.eu/content_information_on_national_facilities-151-EU-lv.do).

### 3.8.8. Time limit

**619.** 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.*

**620.** Regulation 861/2007 autonomously establishes procedural time limits in the following cases specified in the Regulation:

620.1. **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).

620.2. **Time limits established for the court and parties by Regulation 861/2007:**

620.2.1. **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).

620.2.2. **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).

620.2.3. **30 day term** — **the claimant** shall have 30 days from service to respond to any counterclaim (Article 5 (6) second sentence of the Regulation).

620.2.4. **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).

620.3. **The abovementioned time limits may be extended** (Article 14 (2) of the Regulation).

620.3.1. **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).

620.3.2. **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).

620.3.3. **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).

620.3.4. **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).

### *3.8.8.1. Calculation and extension of procedural terms*

**621.** 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**<sup>424</sup> (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).

**622.** 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 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

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<sup>424</sup> 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

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).

**623.** Example:

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*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.*

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**624.** 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 nor 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).

3.8.8.2. Consequences from non-observance of procedural term

**625. 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.

**626.** 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.

**627.** 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).

**628.** 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".

**629. 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).

**630. 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.

**631.** The Jelgava City Court in their decision dated by 6 July 2011<sup>425</sup> 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

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<sup>425</sup> Decision of the Jelgava City Court dated by 6 July 2011 in the civil matter [no No.] [unpublished].

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).

**632.** 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.<sup>426</sup> 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.

**633.** 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).

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<sup>426</sup> See Decision of the Jūrmala City Court dated by 4 August 2011 in the civil matter No. 3-11/0087/01 [unpublished].



**634.** In two cases, the Latvian claimants had taken national small claim proceedings (according to Chapter 30<sup>3</sup> 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<sup>427</sup> and Liepāja City Court<sup>428</sup> 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.

### **3.8.9. Completing and issuance of the answer Form C**

**635.** 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.*

**636.** 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:

Name of defendant:

<sup>427</sup> Decision of the Daugavpils City Court dated by 18 May 2012 in the civil matter No. 590/2012 [unpublished].

<sup>428</sup> Decision of the Liepāja City Court dated by 1 February 2012 in the civil matter No. 3-11/0052/11 [unpublished].

Court:

Claim:

Case number:

**637.** Attaching claim application forms, if any — other documents, the court shall dispatch Form C to the defendant.

**638.** **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.

**639.** **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.

**640.** 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.

**641.** Thus, when receiving and accepting Form C, the defendant, first, shall fill in part II. The defendant's 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

**642.** 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:

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*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.*

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**643.** 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.

**644.** 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

**645.** 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 (\*)

**646.** 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:

**647.** 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

**648.** 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

**649.** This form is relatively easy to complete in Atlas e-environment<sup>429</sup> 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.

**650.** 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.

**651.** If the defendant fails to submit the answer form within the established time limit, the court shall pass the judgement.

### ***3.8.10. Submission of counterclaim***

**652.** 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.

**653.** **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.<sup>430</sup> **Other** situation occurs when the defendant submits a counterclaim in relation to the same process.<sup>431</sup> 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.

**654.** 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

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<sup>429</sup> See [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_information\\_lv.htm?countrySession=2&](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm?countrySession=2&).

<sup>430</sup> Conclusions of ECT Lawyer General Leger, dated by 17 May 1995, in the case C-341/93 *Danvaern Production v. Schuhfabriken Otterbeck* ECR, 1995, p. I-02053, para. 33.

<sup>431</sup> Judgement of ECT, 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.

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.

**655.** 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.<sup>432</sup> As mentioned, a simple claim of the defendant against the claimant shall not be considered a counterclaim.<sup>433</sup>

**656.** Since a counterclaim shall be arising from the same contract or facts, it may be considered that such formulation is more limiting rather than "closely related" principle provided for in some national laws.<sup>434</sup>

**657.** For example, Section 136, Paragraph three provides that

*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.*

**658.** 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.

**659.** 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.<sup>435</sup> 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.

**660.** Furthermore, the counterclaim must be submitted in the case involving the same parties, and it may not concern proceedings involving any third parties.

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<sup>432</sup> 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."

<sup>433</sup> Judgement of ECT, 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.

<sup>434</sup> Furthermore, it will have more limiting scope rather than that provided for in Article 6 (1) of Brussels I Regulation.

<sup>435</sup> Magnus, U., Mankowski, P. (ed). *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 325.

**661.** 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<sup>436</sup> or not to accept counterclaim, if it is seemingly unjustified and exaggerated.<sup>437</sup> 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.<sup>438</sup>

**662.** 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 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.<sup>7</sup> or 644.<sup>17</sup> 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.*

**663.** 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

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<sup>436</sup> 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>.

<sup>437</sup> House of Lords. European Small Claims Procedure: Report with evidences [2006] 23rd Report of Session 2005-06, para 114.

<sup>438</sup> 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/>.

considered correct, since it allows the parties to decide if they wish to continue proceedings according to the standard procedure.

### **3.9. End of the procedure**

**664.** 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.<sup>439</sup>

**665.** 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 application form.<sup>440</sup> 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.<sup>441</sup> 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.

**666.** 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.

**667.** 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

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<sup>439</sup> 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.

<sup>440</sup> Supplementary decision of the Jelgava City Court dated by 27 January 2012 in the case No. C15285811 [unpublished].

<sup>441</sup> 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/>.



concerned shall act operatively that is not always possible, in particular, if evidence with translations thereof shall be requested from abroad.

**668.** 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.

**669.** 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 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.

### ***3.9.1. Judgement***

**670.** 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.

**671.** Although, during discussion of the Regulation, facilitation of decision forms and content of the European Small Claim Procedure was proposed,<sup>442</sup> 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

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<sup>442</sup> 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.

CPL). The judgment shall not be too long, since the procedure itself is comparatively simple.

**672.** 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.

**673.** 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:

- 673.1. personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the addressee;
- 673.2. 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;
- 673.3. postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the addressee;
- 673.4. 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;
- 673.5. personal service at the addressee's personal address on persons who are living in the same household as the addressee or are employed there;
- 673.6. 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;
- 673.7. deposit of the document in the addressee's mailbox;
- 673.8. 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;
- 673.9. 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;
- 673.10. by electronic means attested by an automatic confirmation of delivery, provided that the addressee has expressly accepted this method of service in advance.

### 3.9.2. Costs

**674.** 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.

**675.** 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.

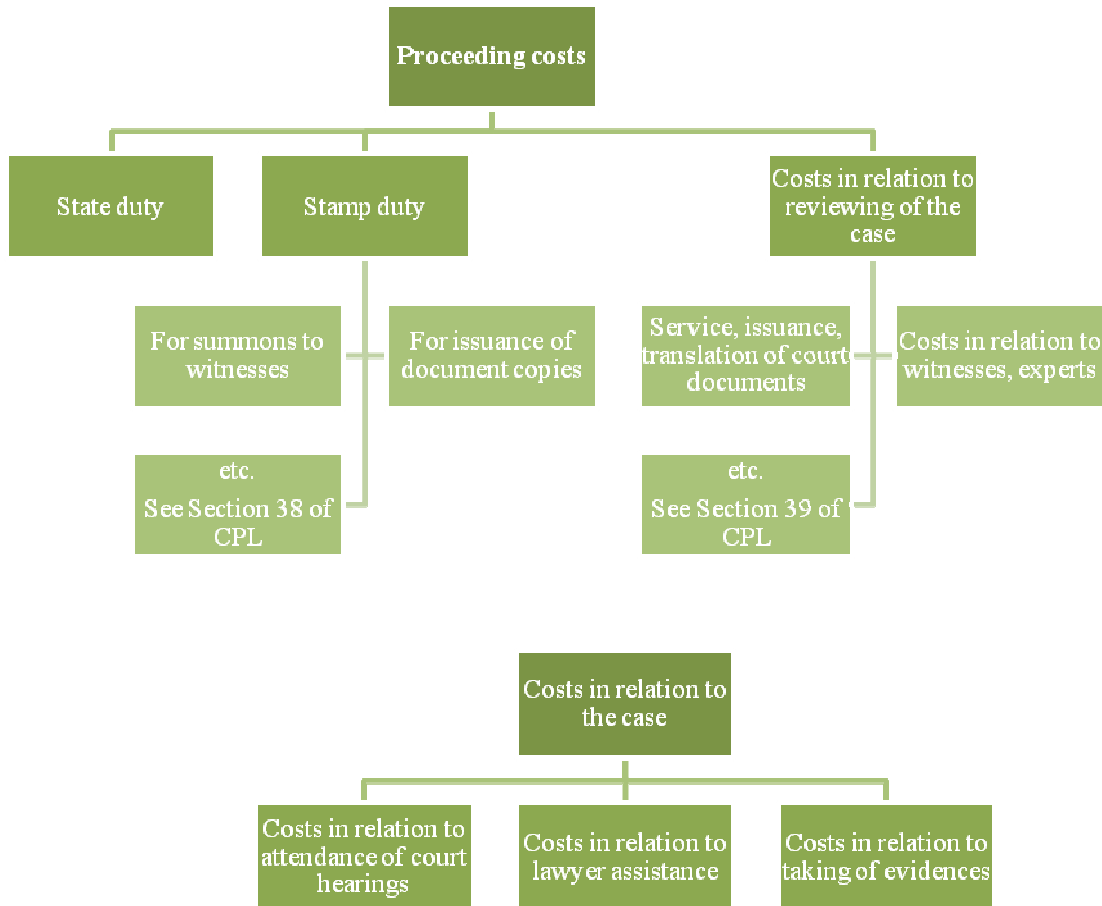
**676.** Regulation shows indirectly that parties should themselves monitor litigation expenses, in particular, those referring to costs for provision of legal assistance. If those are excessive, the court shall be entitled to refuse reimbursement thereof. However, the court also shall choose less costly 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).

**677.** 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,<sup>443</sup> however, this information is not always correct.

**678.** 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.

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<sup>443</sup> See proceeding costs [https://e-justice.europa.eu/content\\_costs\\_of\\_proceedings-37-eu-lv.do](https://e-justice.europa.eu/content_costs_of_proceedings-37-eu-lv.do).



**679.** 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 513-517 § of this Research).

**680.** 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.<sup>444</sup> 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.

**681.** 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

<sup>444</sup> 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>.

in France, maximum fee for the claim amounting to EUR 2500 shall be EUR 1000.<sup>445</sup> 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.<sup>446</sup>

**682.** 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<sup>447</sup> such representation costs will not be reimbursed.

**683.** 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.

**684.** 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.

**685.** 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.

**686.** 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.<sup>448</sup> However, currently, the court on their own discretion shall assess proportion of this specific sum.

**687.** 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).

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<sup>445</sup> 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](https://e-justice.europa.eu/attachments/cost_study_report_en.pdf).

<sup>446</sup> 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/>.

<sup>447</sup> 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/departments/2011/skc-377-2011.doc>.

<sup>448</sup> 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.

**688.** 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).

**689.** 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.

**690.** 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.

**691.** 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.<sup>449</sup> 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).

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<sup>449</sup> Supplementary decision of the Jelgava City Court dated by 27 January 2012 in the case No. C15285811 [unpublished].

**692.** 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.

### **3.10. Appeal and review of judgement**

#### **3.10.1. Appeal**

**693.** 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.*

**694.** 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*<sup>450</sup>; French — *voie de recours*; German — *Rechtsmittel*). Thus, the Latvian text version forms wrong view that such judgments shall be appealed according to the appeal (and not any other) procedure.<sup>451</sup> 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.

**695.** 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.

**696.** **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

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<sup>450</sup> 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.

<sup>451</sup> 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. Rīga: LU Akadēmiskais apgāds, 2012, p. 55-58.

(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).<sup>452</sup> 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.<sup>27</sup> of CPL).

**697.** 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 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).

**698.** 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.<sup>1</sup>, Paragraph 4<sup>1</sup> 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

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<sup>452</sup> Information available in the Judicial Atlas:  
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsappeal\\_lv.jsp?countrySession=19&#statePage0](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&#statePage0).



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.**

**699.** 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).

**700.** 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](http://www.tiesas.lv).

**701.** Other Member States have made the following announcements. **Announcements of the Member States in relation to appeal procedures**<sup>453</sup>

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 <b>Court of First Instance, the Commercial Court</b> or the <b>Court of Appeal</b> 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 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: <ul style="list-style-type: none"> <li>1. was addressed in conflict with the case law of the Supreme Court of Cassation;</li> <li>2. was addressed by the courts in a conflicting manner;</li> <li>3. is of relevance for the proper implementation of</li> </ul>

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See [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsappeal\\_lv.jsp?countrySession=19&statePage0](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&statePage0).

		<p>legislation and the evolution of the law.</p> <p>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).</p>
3.	Czech Republic	<p>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.</p> <p>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.</p> <p>No appeal is permitted against a decision ordering the payment of sums not exceeding CZK 2 000.</p>
4.	Germany	<p>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 appended to this letter.</p>
5.	Estonia	<p>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.</p> <p>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.</p> <p>Appeals are to be lodged with the district court in whose jurisdiction the county court ruling on the European Small Claims Procedure is located.</p> <p>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</p>

		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
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 ( <i>tribunale</i> ), 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

		<p>Article 7(2) of the Small Claims Tribunal Act (Ch 380)(*);</p> <p>- 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.</p> <p>A right of appeal shall also lie in all cases where the amount in dispute, exceeds €1164.69 (with the fees and expenses excluded).</p> <p>The Court of Appeal may, if it deems an appeal frivolous or vexatious, 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.</p>
17.	Netherlands	<p><u>Article 2(2) and (3) of the Implementing Law for European Small Claims Procedures:</u></p> <p>2. Under the European small claims procedure no higher appeal can be made against the decision of the sub-district court judge.</p> <p>3. Article 80 of the Judicial Service Act shall apply mutatis mutandis.</p> <p><u>Article 80 of the Justice Service Act:</u></p> <p>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:</p> <p>a. the grounds on which the judgment or decision was made have not been provided;</p> <p>b. the judgment or, as far as legally required, the decision, is not made public;</p> <p>c. there is a lack of competence; or</p> <p>d. legal competence has been exceeded.</p>
18.	Austria	<p>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.</p> <p>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.</p>
19.	Poland	<p><input type="checkbox"/> 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</p>

		<p>the court which handed down the contested judgment (district court).  <i>(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.)</i></p> <p><input type="checkbox"/> 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.  <i>(Articles 339 § 1, 342 and 344 § 1 of the Code of Civil Procedure.)</i></p>
20.	Portugal	<p>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.</p> <p>The courts with jurisdiction to decide on an appeal are the Appeal courts (<i>Tribunais da Relação</i>). An appeal is lodged by submitting a request to the court which gave the decision being appealed against.</p> <p>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."</p> <p>Article 771 of the Code of Civil Procedure: "A decision that has become final may be subject to review only where</p> <ol style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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;</li> <li>d) a confession, withdrawal or agreement on which the decision was based is invalid or may be declared invalid;</li> <li>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</li> </ol>

		<p>issued or that the summons issued is null and void;</p> <p>f) it is incompatible with the final decision of an international appeal body which is binding on the Portuguese State;</p> <p>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."</p>
21.	Romania	In accordance with Article 17 of the Regulation, an appeal may be lodged with the court only on expiry of <b>a term of 15 days from notification of the decision</b> (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 ( <i>krajský súd</i> ).
23.	Slovenia	<p>Slovenian civil procedural law provides for the possibility of appeal against judgments given in first instance.</p> <p>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).</p> <p>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).</p> <p>Decisions on these appeals are taken by the higher courts (i.e. <i>višje sodišče</i>) (Articles 35 and 333 of the Civil Procedure Act).</p>
24.	Finland	<p>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).</p> <p>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.</p> <p>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 appended 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</p>



		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	<p>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 (<i>hovsrätt</i>). 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.</p> <p>A court of appeal judgment given in the European Small Claims Procedure may be appealed against in the Supreme Court (<i>Högsta domstolen</i>). Appeals must reach the court of appeal within four weeks from the date on which the judgment is passed.</p>
26.	United Kingdom	<p><b>1. England and Wales</b></p> <p>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.</p> <p>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.</p> <p><b>2. Scotland</b></p> <p>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.</p> <p><b>3. Northern Ireland</b></p> <p>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.</p> <p><b>4. Gibraltar</b></p> <p>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</p>

		<p>Additional Judge or the Chief Justice of the Supreme Court.</p> <p>The provisions contained in <u>Part 52 of the Civil Procedure Rules</u> 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.</p>
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**702.** 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.

**703.** 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.

**704.** 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 supplementary decision dated by 27 January 2012<sup>454</sup> recovered from the defendant all proceeding costs paid by the claimant (total amount: LVL 106.89), from which LVL 46.72 for shoe expertise; LVL 35 for translation of documents; LVL 25.17 fuel costs in relation to submission of the claim and submission and receipt of other documents. The amount of claim in this case was LVL 62.99, but the state duty – LVL 50. Supplementary court decision fails to demonstrate whether the court has assessed

<sup>454</sup> 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].

necessity and proportionality of the abovementioned proceeding costs (LVL 106.89) with the claim. 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.**

**705.** 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 from the website of the network at: [http://ec.europa.eu/civiljustice/case\\_to\\_court/case\\_to\\_court\\_lat\\_lv.htm](http://ec.europa.eu/civiljustice/case_to_court/case_to_court_lat_lv.htm)

### ***3.10.2. Mandatory standards for reviewing of the judgment***

**706.** 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 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.*

**707.** 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).<sup>455</sup>

**708. 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.<sup>1</sup>, 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.<sup>456</sup>

**709.** 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.

**710.** 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.<sup>1</sup>, 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.

**711.** 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.<sup>1</sup>, Paragraph two of CPL). However, those cases where enforcement period, namely, 10 years, has lapsed (See Section 485.<sup>1</sup>, Paragraph three and Section 546, Paragraph one of CPL).

**712.** 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.<sup>457</sup>

**713.** 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.<sup>2</sup> of CPL).

**714. 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

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<sup>455</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 18 EG-BagatellVO (Varga I.), S. 487.

<sup>456</sup> *Ibid.*, S. 490.

<sup>457</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 18 EG-BagatellVO (Varga I.), S. 487.

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".

**715. 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.

**716.** 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.

**717.** General clause "without any fault on the defendant's part" the court should assess on a case-by-case basis. Article 18 (1) (a) of Regulation provides for that the defendant shall act immediately, to initiate the procedure of reviewing the judgment.

**718. 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 be interpreted autonomously rather than applying any of purposes or concepts specified in the national law.

**719.** 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.*"

**720. 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:

720.1. **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

720.2. **To satisfy the application for review** (Article 18 (3) second sentence) and the judgment shall become invalid.

721. According to **CPL, Section 485<sup>3</sup>** the Latvian court hearing applications for review shall have the following options:

722. If the court establishes circumstances of judgment review, it **cancel**s 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.<sup>3</sup>, Paragraphs two and four of CPL).

723. 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.<sup>458</sup> 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.**

724. 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).

725. 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* 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).

726. 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.<sup>3</sup>, 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.

727. From Article 18 (2) of Regulation 861/2007 and Section 485.<sup>3</sup>, Paragraphs two, three and four of CPL **it is not clear:**

727.1. *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

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<sup>458</sup> 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).

Section 442, Paragraph 1.<sup>1</sup> 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.<sup>3</sup>, 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.<sup>3</sup>, 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.

727.2. *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.

727.3. *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.

### 3.11. Enforcement procedure

**728. 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.*

**729.** 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:

729.1. What documents must be submitted to competent forced enforcement authorities of the Member State of enforcement (Article 21 (2));

729.2. 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

729.3. Basis and types of stay or limitation of enforcement (Article 23).

**730. 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:

730.1. A copy of the judgment that conforms to requirements by which authenticity may be established (Article 20 (1) (a)); and

730.2. 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.

**731.** Submission of a copy of the judgment is not permissible — it must be a true copy of the judgment<sup>459</sup> or the original. It should be understandable from the submitted documents whether they are authentic to avoid cases when one and the same certificate against a debtor is enforced several times.<sup>460</sup>

**732.** 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.<sup>461</sup> 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.

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<sup>459</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

<sup>460</sup> Rauscher, T. *Der Europäische Vollstreckungstitel für unbestrittene Forderungen*. München : Sellier, 2004, S. 67, 68.

<sup>461</sup> *Ibid.*, S. 68.



**733.** 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.<sup>462</sup>

**734.** 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.<sup>463</sup> 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.<sup>464</sup>

**735.** 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:

[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)

**736.** Member States of Regulation 861/2007 have specified the following acceptable languages:

**Table of the specified languages:**

No.	EU Member State	Specified languages
1.	<b>Belgium</b>	Flemish, French
2.	<b>Bulgaria</b>	Bulgarian
3.	<b>Czech Republic</b>	Czech, English, Slovak
4.	<b>Germany</b>	German; areas resided by Sorbians — also Sorbian
5.	<b>Estonia</b>	Estonian or English
6.	<b>Greece</b>	Greek

<sup>462</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-BagatellVO (Varga I.), S. 495.

<sup>463</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 21 EG-BagatellVO (Varga I.), S. 496.

<sup>464</sup> 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).

7.	<b>Spain</b>	Spanish
8.	<b>France</b>	French, English, German, Italian or Spanish
9.	<b>Ireland</b>	Irish or English
10.	<b>Italy</b>	Italian
11.	<b>Cyprus</b>	Greek, English
12.	<b>Latvia</b>	Latvian
13.	<b>Lithuania</b>	Lithuanian
14.	<b>Luxembourg</b>	German, French
15.	<b>Hungary</b>	Hungarian
16.	<b>Malta</b>	Maltese, English
17.	<b>Netherlands</b>	Dutch
18.	<b>Austria</b>	German; languages ethnic groups
19.	<b>Poland</b>	Polish
20.	<b>Portugal</b>	Portuguese
21.	<b>Rumania</b>	Romanian
22.	<b>Slovakia</b>	Slovak
23.	<b>Slovenia</b>	Slovenian; minority regions — Italian, Hungarian
24.	<b>Finland</b>	Finnish, Swedish or English
25.	<b>Sweden</b>	Swedish and English
26.	<b>United Kingdom</b>	English

**737.** 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.<sup>465</sup>

**738.** 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 enforcement, appointment of a representative and/or postal address in the Member State of enforcement.

### 3.12. Refusal of enforcement

**739.** 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:*

<sup>465</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

*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.*

**740. 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.<sup>3</sup>, Paragraph three of CPL. The debtor's application shall be executed according to Section 644.<sup>4</sup> of CPL.

**741.** 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 enforcement 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.

**742.** The debtor shall submit the application to the competent court of Latvia, which according to Section 644.<sup>3</sup>, 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.

**743.** 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.<sup>3</sup>, 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.

**744. 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<sup>466</sup> and it aims, **first**, to safeguard interconnection of court judgments and, **second**, to protect legal procedure of enforcement, 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

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<sup>466</sup> Kropholler, J. Internationales Privatrecht. 5.Aufl. Tübingen: Mohr Siebeck Verlag, 2004, S. 651.

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.<sup>467</sup>

**745.** Section 22 (1) of Regulation applies **first judgement principle**, according to which the judgment shall be recognized and/or enforced, which was given first.<sup>468</sup> Regulation 861/2007 establish no provision that the first judgment must have entered into force. Date of acceptance thereof shall matter.

**746.** 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".

**747.** 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.

**748.** Irreconcilable judgments **form the geographical aspect** may be accepted:

748.1. **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 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.

748.2. **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.

748.3. **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

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<sup>467</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, Vol. 8, No. 6 (82), p.165.

<sup>468</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637.panta izpratnē (I). *Likums un Tiesības*. 2006, Vol. 8, No. 6 (82), p. 164.

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.

**749.** 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 of 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.<sup>469</sup>

**750.** 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 appended not only with certificate specified in Article 20 (2) of Regulation, but also with the judgment of the foreign court (See Section 644.<sup>4</sup>, 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.

**751.** 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*<sup>470</sup> restriction).

### 3.13. Stay or limitation of enforcement

**752.** 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;*

<sup>469</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-BagatellVO (Varga I.), S. 497.

<sup>470</sup> Latin – reviewing in its merits.

*make enforcement conditional on the provision of such security as it shall determine; or*

*under exceptional circumstances, stay the enforcement proceedings.*

**753.** Section 644.<sup>2</sup>, 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:

753.1. replace the execution of the adjudication with the measures for ensuring the execution of such adjudication provided for in Section 138 of this Law;

753.2. amend the way or procedures for the execution of the adjudication;

753.3. suspend the execution of the adjudication.

**754.** When submitting application provided for in Section 644<sup>2</sup> of CPL, the debtor is not required to pay state duty.

**755.** 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.<sup>2</sup>, Paragraph three of CPL). An ancillary complaint may be submitted in respect of a decision by the court (Section 644.<sup>2</sup>, Paragraph four of CPL).

**756.** Provisions of Article 23 of Regulation 861/2007 in general comply with the objective stated in Recital 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.

**757.** 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).

**758. 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:

758.1. Where a party has challenged a judgment given in the European Small Claims Procedure, or

758.2. where such a challenge is still possible, or

758.3. where a party has made an application for review within the meaning of Article 18.

**759.** 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.<sup>471</sup>

**760.** 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".

**761.** 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 (706 § and further).

**762.** 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:

762.1. Application of a participant of the case (Article 23 of Regulation 861/2007 and Section 644.<sup>2</sup> of CPL; content of the application and documents to be appended thereto are established by Section 644.<sup>4</sup> of CPL);

762.2. 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.<sup>4</sup>, 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 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**

762.3. 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.<sup>1</sup> of the Latvian CPL).

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<sup>471</sup> 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, n° 3 (juillet-août-septembre), p. 673.

**763. 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.<sup>2</sup>, Paragraph one of the Latvian CPL):

- 763.1. replacement of the enforcement of a judgment with measures provided for in Section 138 of CPL to secure the enforcement of the respective judgment;
- 763.2. alteration of the type or procedure of the enforcement of a judgment;
- 763.3. suspension of the enforcement of a judgment.

**764.** 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.<sup>472</sup> At the same time forced enforcement in the Member State of enforcement continues.

**765.** 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).

**766.** 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<sup>473</sup>, Section 644.<sup>2</sup> 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.<sup>2</sup> of CPL. Therefore Article 23 of the Regulation should be applicable (see also Section 5, Paragraph three of CPL).

**767.** Contrary to Section 206 of CPL, in the case of the application of Section 644.<sup>2</sup>, 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

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<sup>472</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-BagatellVO (Varga I.), S. 500.

<sup>473</sup> 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**.



of a judgment, if no stay or limitation measures of enforcement would not be performed in the Member State of enforcement.

**768.** Contrary to Section 206 of CPL, in the case of the application of Section 644.<sup>2</sup>, 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."<sup>474</sup>

**769.** In Section 644.<sup>2</sup>, 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.<sup>2</sup>, Paragraph one of CPL should read approximately as follows:

No.	Current version of the first sentence of Section 644. <sup>2</sup> , Paragraph one	Amendments offered for the first sentence of Section 644. <sup>2</sup> , 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 of which the relevant adjudication of the foreign court is to be executed on the basis of an application of the debtor ( <b>in the case of Regulation 861/2007 — any of the parties</b> ), on the basis of [...] European Parliament and Council Regulation No 861/2007, Article 23 [...] is entitled to: [.,].  <b>(1<sup>1</sup>) 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."</b>

**770.** Contrary to Section 206 of CPL, in the case of the application of Section 644.<sup>2</sup>, 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)

<sup>474</sup> See [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsauthorit\\_lv\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_lv_lv.htm).

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).

**771. Stay of the enforcement of a judgment.** Section 644.<sup>2</sup>, 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).

**772.** The notion "extraordinary circumstances" means situations in which the enforcement of a judgment would violate *ordre public* of the Member State of enforcement.<sup>475</sup> 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 CPHRFF. 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.

**773.** 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.

**774.** 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).

**775. *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.

**776.** Section 644.<sup>2</sup> 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 the only option is to apply Section 644.<sup>1</sup> 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.<sup>2</sup>, Paragraph one of

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<sup>475</sup> 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.

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.<sup>2</sup> of CPL in the respective matter should be improved.

**777.** 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.<sup>2</sup>, Paragraph one, Clause 2 of CPL. This occurs due to the reason that in the application of Section 644.<sup>2</sup>, 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.

**778.** In Section 644.<sup>2</sup>, 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.<sup>2</sup>, Paragraph one of CPL should be amended according to the aforementioned example.

**779. Competent courts (authorities) of the Member States according to Section 23<sup>476</sup> of Regulation 861/2007**

No.	Member State	Competent court / authority
1.	<b>Belgium</b>	The <b>court bailiffs</b> 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 <i>first and foremost</i> the attachment <b>judge ("juge des saisies (exécution)" and "beslagrechter (tenhuitvoerlegging))" of the place where the attachment is carried out.</b> 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 <b>Court of First Instance</b> , 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.	<b>Bulgaria</b>	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 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).

<sup>476</sup> 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsauthorit_lv_lv.htm).

3.	<b>Czech Republic</b>	<p>1. The competent authorities for enforcement in the Czech Republic are the district courts and court executors. The entitled party may:</p> <p>(a) lodge a petition for judicial enforcement of a decision with the court which has territorial jurisdiction;</p> <p>(b) lodge a petition for an order of distraint with the court which has territorial jurisdiction, or</p> <p>(c) lodge a petition for an order of distraint with any court executor.</p> <p>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.</p> <p>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.</p> <p><i>More detailed information on enforcement in the Czech Republic has been published on the <a href="#">website of the European Judicial Network</a>.</i></p> <p>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).</p>
4.	<b>Germany</b>	The enforcing court is also the court with competence for the main proceedings.
5.	<b>Estonia</b>	<p>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 <a href="http://www.just.ee/4263">http://www.just.ee/4263</a>.</p> <p>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.</p> <p>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.</p> <p>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.</p>
6.	<b>Greece</b>	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.	<b>Spain</b>	The courts of first instance have competence for enforcement and for the application of Article 23.
8.	<b>France</b>	<p>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.</p> <p>For the purposes of the application of Article 23,</p> <ul style="list-style-type: none"> <li>• 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</li> </ul>

		<p>the effect of staying enforcement;</p> <ul style="list-style-type: none"> <li>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).</li> </ul>
9.	<b>Ireland</b>	<p>An application for enforcement should be made to the relevant County Registrar/Sheriff through the associated Circuit Court.</p> <p>The relevant District Court is competent to deal with applications for refusal, stay or limitation of enforcement.</p>
10.	<b>Italy</b>	<p>Ordinary civil courts have jurisdiction for enforcement. Ordinary civil courts have jurisdiction for the stay or limitation of enforcement under Article 23.</p>
11.	<b>Cyprus</b>	<p>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.</p>
12.	<b>Latvia</b>	<p>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.</p>
13.	<b>Lithuania</b>	<p>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.</p> <p>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.</p> <p>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.</p>
14.	<b>Luxembourg</b>	<p>The justice of the peace has competence with respect to enforcement and the application of Article 23.</p>
15.	<b>Hungary</b>	<p>In Hungary, for enforcement matters under the Regulation :</p> <p><i>- The following authorities have competence with respect to enforcement :</i></p> <p>the local court operating at the seat of the county court competent according to</p> <ul style="list-style-type: none"> <li>the debtor's domicile or seat in Hungary; or, failing this,</li> <li>the location of the debtor's assets that are subject to enforcement,</li> <li>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 <i>Budai Központi Kerületi Bíróság</i> [Buda Central District Court].</li> </ul> <p><i>- The authority with competence as regards the measures under Article 23 :</i></p> <p>In Hungary the enforcement court is competent to implement the measures provided for under Article 23. Under Hungarian law the enforcement court is</p> <ul style="list-style-type: none"> <li>the court to which the competent independent bailiff was appointed, or</li> <li>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 <i>Pesti Központi Kerületi Bíróság</i> [Pest Central District Court].</li> </ul>

16.	<b>Malta</b>	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.	<b>Netherlands</b>	<p>The authorities responsible for the enforcement of a decision in a European small claims case are the Dutch bailiffs.</p> <p>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.</p> <p><u>Article 8 of the Implementing Law for European Small Claims Procedures:</u></p> <p>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.</p> <p><u>Article 438 of the Code for Civil Procedure:</u></p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> <li>5. An appeal against enforcement by a third party can be lodged by the claimant and the respondent.</li> </ol>
18.	<b>Austria</b>	The district courts ( <i>Bezirksgerichte</i> ) have competence both for enforcement and for the application of Article 23. Territorial jurisdiction is determined by the Austrian Enforcement of Judgments Act.
19.	<b>Poland</b>	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 ( <i>Article 734 of the Code of Civil</i>

		<p><i>Procedure</i>)</p> <p>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).</p> <p><i>(Articles 739 742, and 755 § 1(3) of the Code of Civil Procedure).</i></p>
20.	<b>Portugal</b>	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.	<b>Romania</b>	The authority competent to enforce the decision is the <b>judicial enforcement officer</b> ( <i>executorul judecătoresc</i> ) 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 <b>enforcement authority</b> ( <i>instanța de executare</i> ) or the court in whose jurisdiction enforcement is to be effected.
22.	<b>Slovakia</b>	The competent authorities for enforcement will be the court executors ( <i>súdni exekútori</i> ). The competent authorities for the implementation of Article 23 of the Regulation will be the courts.
23.	<b>Slovenia</b>	Competent authorities with respect to enforcement and competent authorities for the purposes of the application of Article 23. Jurisdiction for enforcement lies with the <b>county court</b> (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). <b>County courts</b> are also competent for the purposes of Article 23.
24.	<b>Finland</b>	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.	<b>Sweden</b>	The Swedish Enforcement Administration ( <i>Kronofogdemyndigheten</i> ) has competence with respect to enforcement in Sweden and also takes decisions pursuant to Article 23.
26.	<b>United Kingdom</b>	<p><b>1. England and Wales</b></p> <p>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.</p> <p>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.</p> <p><b>2. Scotland</b></p> <p>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.</p> <p>The competent authority for the purposes of the application of Article 23 will be the sheriff court.</p> <p><b>3. Northern Ireland</b></p> <p>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</p>

		<p>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.  <b>4. Gibraltar</b>  The competent authority for the purposes of enforcement and for the purposes of Article 23 shall be the Supreme Court of Gibraltar.</p>
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### 3.14. Recognition and enforcement in another state

#### 3.14.1. Recognition and enforcement without the requirement to declare

**780.** 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.*

**781.** Judgment given in the European Small Claim Procedure differs from EEO by the fact that the first includes enforceability in the scope of EU<sup>477</sup> (except in Denmark).

**782.** 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).

**783.** 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

<sup>477</sup> Seidl, S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena : Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.



22 of Regulation). Judgment to be enforced shall have enforceability of the scope of EU rather than that of the issuing state (unlike EEO).

**784.** 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 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))".<sup>478</sup>*

**785.** 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.<sup>27</sup> 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.<sup>3</sup> of CPL shall not be applied also to judgments in the European Small Claim Procedures.**

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<sup>478</sup> For the statement of the Republic of Latvia see: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_courtsappeal\\_lv.jsp?countrySession=19&#statePage0](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsappeal_lv.jsp?countrySession=19&#statePage0).

**786.** 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.<sup>1</sup>, Paragraph 4.<sup>1</sup> 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.

## 4. Regulation 1896/2006

### 4.1. Introduction

**787.** 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,<sup>479</sup> 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.

**788.** 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.

**789.** 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.<sup>480</sup> 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.

**790.** Forms available in the Atlas here:

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_information\\_lv.htm?countrySession=2&](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_information_lv.htm?countrySession=2&).

### 4.2. Material scope

**791.** 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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<sup>479</sup> 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.

<sup>480</sup> OJ L 283, 16.10.2012, p. 1-23.

**792.** 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*).

**793.** 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:

- 793.1. Sales contract;
- 793.2. Rental agreement – movable property;
- 793.3. Rental agreement – immovable property;
- 793.4. Rental agreement – commercial lease;
- 793.5. Contract of service - electricity, gas, water, phone;
- 793.6. Contract of service – medical services;
- 793.7. Contract of service – transport;
- 793.8. Contract of service – legal, tax, technical advice;
- 793.9. Contract of service – hotel, restaurant;
- 793.10. Contract of service – repair;
- 793.11. Contract of service – brokerage;
- 793.12. Contract of service – other;
- 793.13. Building contract;
- 793.14. Insurance contract;
- 793.15. Loan;
- 793.16. Guarantee or other collateral(s);
- 793.17. 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<sup>481</sup>);
- 793.18. Claims arising from joint ownership of property;
- 793.19. Damages – contract;
- 793.20. Subscription agreement (newspapers, magazine);
- 793.21. Membership fee;
- 793.22. Employment agreement;
- 793.23. Out-of-court settlement;
- 793.24. Maintenance agreement.

### **4.3. Geographical scope**

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<sup>481</sup> Official translation into Latvian "*netaisnīga bagātības iegūšana*".

**794.** 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 Preamble). However, the United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland appended 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).

#### **4.4. Time scope**

**795.** 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".

**796.** Unlike Regulation 805/2004, EU legislator in this Regulation has stated no specific date, on which Regulation 1896/2006 shall enter into force.

##### **4.4.1. Date of entry into force**

**797.** Since Regulation 1896/2006 in the *Official Journal of the European Union* has been published on 30 December 2006<sup>482</sup>, it shall enter into force on the following day, i.e. **31 December 2006**.

##### **4.4.2. Beginning of application of Regulation**

**798.** 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:

798.1. 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.

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<sup>482</sup> See the date of publishing of the Latvian text version of Regulation: *Official Journal* L 399, 30.12.2006, p. 1-32

798.2. 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 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."

**799.** **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.<sup>483</sup>

#### **4.5. Cross-border cases**

**800.** The concept of "**cross-border**" cases is defined in Article 3 of Regulation.<sup>484</sup> 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.

**801.** 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

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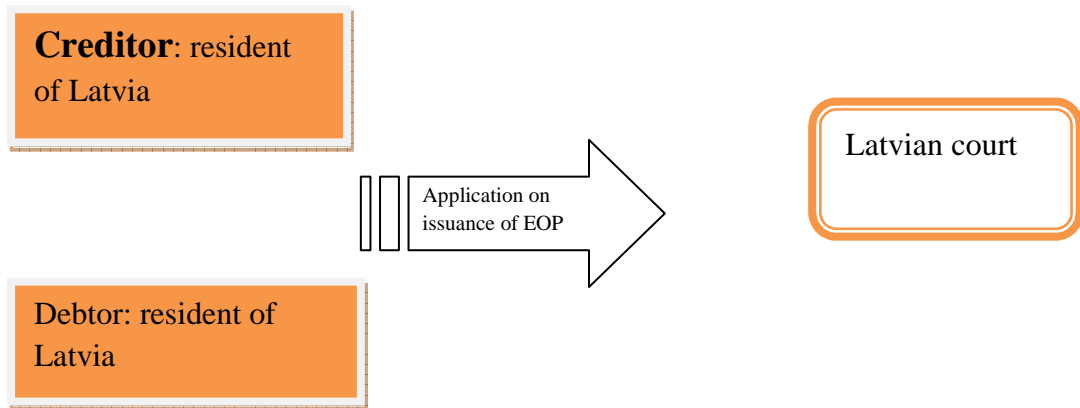
<sup>483</sup> [http://ec.europa.eu/justice\\_home/judicialatlascivil/](http://ec.europa.eu/justice_home/judicialatlascivil/).

<sup>484</sup> Translation of Article 3 part one of Regulation is incorrect, since instead 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 habitual residence"(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 seized" (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 problēmjaucājumi*. Jurista Vārds No. 24/25, 16.06.2009

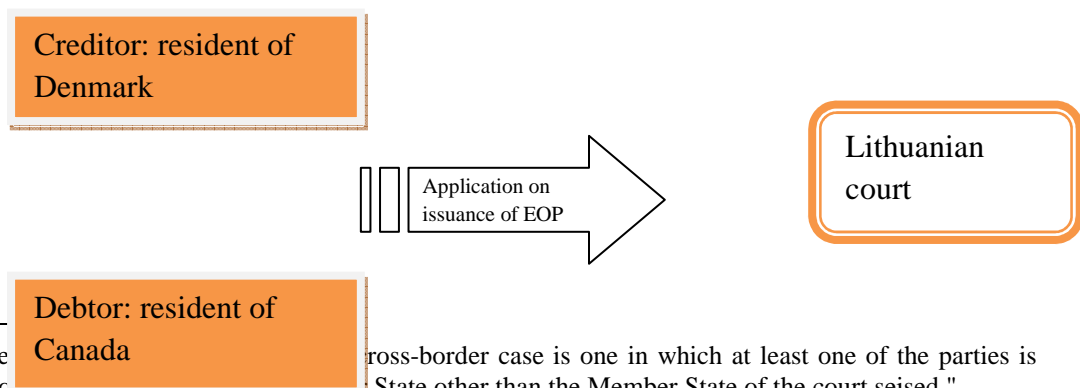
saņēmusī tiesa".<sup>485</sup> Considering that submission of the claim application and receipt of the claim application are different procedural phases, such difference in the translation shall be considered significant. It would be correct to translate this concept in both Regulations as "tiesa, kurā celta prasība", and court already known as competent to hear this claim.<sup>486</sup>

**802.** For further details and comments on the concept of "cross-border case" please see explanation of Regulation 861/2007 (463483. §), 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.<sup>487</sup> 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, 464 § of Research):

Example 1



Example 2



<sup>485</sup> "For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or has its habitual residence in a Member State other than the Member State of the court seised."

<sup>486</sup> 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)

<sup>487</sup> See Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucājumi*. Jurista Vārds No. 24/25, 16.06.2009

**803.** 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.

**804.** 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.

**805.** 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 471 § of the Research).

**806. 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 472§ 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.*

#### **4.6. Jurisdiction and establishment thereof**

**807. 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

**808.** As stated above, when reviewing Regulation 861/2007 (See 472§ 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.

**809.** 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<sup>488</sup>, 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.

**810. 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.<sup>489</sup> 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.<sup>490</sup>

**811. 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<sup>491</sup> and irrespective of the defendant's

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<sup>488</sup> Immigration Law: Law of the Republic of Latvia *Latvijas Vēstnesis* 20.11.2002, No. 169.

<sup>489</sup> See Decision of ECT 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.

<sup>490</sup> 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

<sup>491</sup> 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*

domicile. The special jurisdiction is based on the closest relation between the dispute and the court.<sup>492</sup> 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.

**812.** "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.<sup>493</sup> 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.

**813.** 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<sup>494</sup> – where services were provided or should have been provided (See Article 5(1)(b) of Brussels I Regulation).

**814.** 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. ECT 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.<sup>495</sup>

**815.** 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,<sup>496</sup> *inter alia*, considering Vienna Convention (1980) on Contracts for International Sale of Goods,<sup>497</sup> where Article 3 part one states that Contracts for the

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*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.*

<sup>492</sup> Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2nd edn, SELP 2012), p. 105.

<sup>493</sup> *Ibid.*, p. 121.

<sup>494</sup> 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.

<sup>495</sup> Decision of ECT dated by 25 February 2010 in the case: C – 381/08 *Car Trim GmbH v. KeySafety Systems Srl* ECR, 2010, p. I – 01255.

<sup>496</sup> *Ibid.*, para 34-38.

<sup>497</sup> The United Nations Convention On Contracts For The International Sale Of Goods: International Treaty. *Latvijas Vēstnesis*, 03.07.1997, No. 170.

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 materials, and it was not established in this case. Furthermore, special instructions by the seller shall not be considered materials.

**816.** 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 or where goods were physically transferred to the first carrier to further deliver to the buyer. Here, EST states that, first, contract provisions shall be assessed,<sup>498</sup> for example, whether parties have not agreed on Incoterms®<sup>499</sup> or whether it can be established by applying the applicable law chosen by the parties.<sup>500</sup> 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.<sup>501</sup> 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.

**817.** 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).

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<sup>498</sup> Decision of EST 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.

<sup>499</sup> INCOTERMS 2010®. ICC Services, 2010.

<sup>500</sup> For example, according to the Vienna Convention on International Contracts on Sale of Goods (1980), Section 31

<sup>501</sup> See the Vienna Convention on International Contracts on Sale of Goods (1980), Section 30

**818. 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,<sup>502</sup> as well as policyholder, insured or beneficiary (claimant) may sue the insurer in the Member State, where he is domiciled.<sup>503</sup> 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.

**819. 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 than 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.

**820.** According to Column 3 of Appendix I to Regulation 1896/2006, as a justification for 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.

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<sup>502</sup> 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 establishment, be deemed to be domiciled in that Member State. See Article 9 part two of Brussels I Regulation.

<sup>503</sup> See Article 9 part one of Brussels I Regulation.

**821.** Regulation 1896/2006 may be applied also when recovering non-fulfilled **maintenance obligations**, and jurisdiction will be determined according to the Council Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.<sup>504</sup>

**822.** 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.

**823.** 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.

**824.** 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.<sup>505</sup>

**825.** 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 58 § of the Research).

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<sup>504</sup> 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

<sup>505</sup> Rudevska, B. *Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaūtājumi*. Jurista Vārds No. 24/25, 16.06.2009

**826.** 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 property. Thus, we may say that this Regulation narrows the concept of "civil matters and commercial matters".

**827.** 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,<sup>506</sup> for instance, traffic accidents, treatment mistakes, unfair commercial operation, responsibility for goods and services, fraud, etc.<sup>507</sup> 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.

**828.** Unlike the two regulations described above, **arbitrary court** has not been excluded from the scope of Regulation. From analysis we may conclude that the exemption of arbitrary court was not included during elaboration of the Regulation, thus, there were no discussions on that afterwards.<sup>508</sup> In theory, if the court establishes that there is a valid arbitrary agreement concluded between parties, it must refuse to waive in favour of a good arbitrary jurisdiction,<sup>509</sup> however, practically, when applying Regulation 1896/2006, the court after receiving Form I cannot establish, whether an arbitrary 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

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<sup>506</sup> Decision of ECT 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.

<sup>507</sup> Magnus, U., Mankowski, P. (ed), *European Commentaries on Private International Law Brussels I. Regulation* (2<sup>nd</sup> edn, SELP 2012), p. 237-238.

<sup>508</sup> 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>.

<sup>509</sup> Majority of law systems recognize that a valid arbitrary agreement permits no state court jurisdiction. For instance, Article 8(1) of *UNCITRAL Model Law* states that "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.

(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 arbitrary courts.



#### 4.7. The concept of "European order for payment" (EPO)

**829.** 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.*

**830.** 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.<sup>510</sup> However, it cannot be unequivocally stated that EOP is an absolutely analogous to German or non-evidence model.

**831. 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).

**832. 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).

**833. 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.<sup>511</sup>

**834.** 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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<sup>510</sup> Ferrand, F. "Mahnverfahren" Allemande, Injonction de payer Française et projets Communautaires: Remarques Comparatives. 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.

<sup>511</sup> Rudevskā, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucājumi. *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.<sup>512</sup>

#### **4.8. European order for payment procedure**

**835.** It must be noted at the beginning that **the purpose of EPO procedure** is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims, and this procedure must be a 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).

**836.** 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<sup>513</sup> 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.

**837.** 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.

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<sup>512</sup> Rauscher, T. (Hrsg.). Europäische Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 4 EG-MahnVO (Gruber U.P.), S. 302.

<sup>513</sup> European Parliament and Council Directive 2000/35/EC on combating late payment in commercial transactions. OJ L 200, 08.08.2000, p. 35-38

#### **4.8.1. Filing an application: Standard Claim Form A**

**838.** 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.*

**839.** 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).

**840.** 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 Annexes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure*<sup>514</sup> new claim forms (only slightly different from the previous ones) have been introduced; the new forms are applicable as of 23 October 2012.

**841.** 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.<sup>515</sup>

**842.** 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](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.

**843.** 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).<sup>516</sup> 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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<sup>514</sup> 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.*

<sup>515</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

<sup>516</sup> See EU Judicial Network information on languages: [http://ec.europa.eu/civiljustice/case\\_to\\_court/case\\_to\\_court\\_lat\\_lv.htm#8](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.**

**844.** 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).

**845.** 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.<sup>517</sup> In Latvia submission of an EPO application in electronic form is not provided for.

**846.** 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.<sup>518</sup>

**847.** State Fee shall be transferred to:<sup>519</sup>

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<sup>517</sup> See European Judicial Atlas:

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_communicationshtml\\_lv\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_lv_lv.htm).

<sup>518</sup> **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.**

<sup>519</sup> See: <http://www.tiesas.lv/index.php?id=26> .

Beneficiary: Treasury  
Registration No. 90000050138  
Account No. LV55TREL1060190911200  
Beneficiary Bank: Treasury  
BIC: TRELLV22

Purpose of payment: case identification information shall be entered there.

**848.** EPO delivery costs (LVL 5.25) shall be transferred to.<sup>520</sup>

Beneficiary: Court Administration  
Account No. LV51TREL2190458019000  
Taxpayer No. 90001672316  
Beneficiary Bank: Treasury  
BIC: TRELLV22

**849.** 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).

**850.** Thus, the following documents shall be **enclosed with EPO applications** filed to Latvian courts:

850.1. a document certifying the payment of the State Fee in lats (LVL) (see Article 26 of Regulation 1896/2006 and Section 406.<sup>3</sup>, Paragraph three of CPL),  
**and**

850.2. a document certifying the payment of EPO issuance costs in lats (LVL) (see Article 26 of Regulation 1896/2006 and Section 406.<sup>3</sup>, Paragraph three of CPL).

**851.** 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).

**852. 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,

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<sup>520</sup> See: <http://www.tiesas.lv/index.php?id=26>.

Advocate General of ECJ, in the conclusions of 28 June 2012 in Case *Szyrocka*<sup>521</sup> has 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.<sup>522</sup>

**853.** 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.

**854.** 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).<sup>523</sup> 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).<sup>524</sup>

#### 4.8.1.1. *Content of Application*

**855.** 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*

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<sup>521</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

<sup>522</sup> *Ibid.*, para. 38.

<sup>523</sup> See decision of Jēkabpils District Court in Civil Case No. 3-10/0011 dated 30 May 2012 [not published].

<sup>524</sup> See Riga City Zemgale Suburb 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 Suburb Court decision in Civil Case No. 3-11-0278/5-2010 dated 1 March 2010 [not published].

*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.*

**856.** Article 7 (2) of Regulation 896/2006 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.<sup>525</sup>

**857. Article 7 (2) (b)** of Regulation 896/2006 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".<sup>526</sup> 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.

**858.** 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.<sup>527</sup>

**859. Article 7 (2) (c)** of Regulation 896/2006 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<sup>528</sup>); 5) other type of interest (see Form A, section 7).

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<sup>525</sup> 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.

<sup>526</sup> Seidl, S. Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz. Jena : JWV, 2010, S. 248.

<sup>527</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

<sup>528</sup> Torgāns, K. Saistību tiesības. I daļa. Rīga: Tiesu namu aģentūra, 2006, 146. lpp.

**860.** 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, 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.<sup>529</sup>

**861.** 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)).<sup>530</sup>

**862.** Article 3 (1) (d) of Directive 2000/35/EC (29 June 2000) on combating late payment in commercial transactions<sup>531</sup> 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."

**863.** *"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).

**864.** 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

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<sup>529</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

<sup>530</sup> Seidl S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena: JWV, 2010, S. 247; See also Section 1765 of the Civil Law of Latvia.

<sup>531</sup> 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.



the contract between the parties is governed by Latvian law. German law or UNIDROIT principles of international commercial contracts<sup>532</sup>, or even European Contract Law principles, which provide for observation of the European Central Bank (ECB) rate<sup>533</sup>, may be applicable to the contract (or interest calculation method).

**865.** 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<sup>534</sup>. "The relation between the principal obligation and interest obligation has the following structure:

865.1. 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);

865.2. with the lapse of time accessory amounts are included in the principal claim, thus becoming a certain element of the amount in question."<sup>535</sup>

**866. 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.

**867. 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; § 847 and further.

**868.** 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

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<sup>532</sup> UNIDROIT International Commercial Law principles, available at: [www.unidroit.org](http://www.unidroit.org)

<sup>533</sup> In Latvian see more: Torgāns, K. Saistību tiesības. I daļa. Rīga : Tiesu namu aģentūra, 2006, 149. lpp.

<sup>534</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

<sup>535</sup> Conclusions 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](http://www.europa.eu) (Case not considered at ECJ yet).

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.

**869.** 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.

**870.** 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.

**871.** 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.<sup>536</sup> 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.<sup>537</sup>

**872.** 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.

#### 4.8.1.2. *Claimant's Declaration*

**873.** 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.*

**874.** 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

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<sup>536</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 317.

<sup>537</sup> *Ibid.*, 316, 317.

providing false information. Liability shall be set according to the national law of the 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: \_\_\_\_\_

**875.** Such certification is necessary because:

875.1. 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);

875.2. 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).

**876.** It follows from the said text that liability occurs only for *knowingly* providing false information, not due to inadvertence, for example.

**877.** 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.<sup>538</sup> 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.

**878.** Besides, it is not known, whether criminal or civil liability is implied.<sup>539</sup> At present it may be either the one, or the other.

#### 4.8.1.3. *Application Form and the Signature therein*

**879.** 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*

<sup>538</sup> 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.

<sup>539</sup> Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 101.

*from informing the court thereof subsequently, but in any event before the order is issued.*

**880.** 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 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.<sup>540</sup>

**881.** 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.

**882.** 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).<sup>541</sup>

**883.** Pursuant to **Article 7 (6)** of the Regulation:

*5. 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.*

**884.** 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.

**885.** 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

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<sup>540</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 7 EG-MahnVO (Gruber U.P.), S. 318.

<sup>541</sup> *Ibid.*, S. 319.

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.<sup>4</sup> 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 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.

**886.** As already stated previously, filing of EPO application electronically is not provided for in Latvia.

### ***5.1.1. Hearing of Claim***

**887.** 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.*

**888.** 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:

888.1. whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met, **and**

888.2. whether the claim appears to be founded.

**889. Meeting the requirements set out in Articles 2, 3, 4, 6 and 7 of Regulation 1896/2006.** The court shall examine:

889.1. whether the scope of material application of Regulation 1896/2006 is met (Article 2 of the Regulation);

889.2. whether the case is a cross-border case (Article 3 of the Regulation);

889.3. 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);

889.4. 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;

889.5. whether all autonomous requirements regarding the form and content of application under Article 7 of the Regulation are met.

**890.** 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.

**891.** 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.

**892. 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.<sup>542</sup>

### ***5.1.2. Completion and Rectification of Application: Standard Form B***

**893.** 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.*

**894.** 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.**

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<sup>542</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 8 EG-MahnVO (Gruber U.P.), S. 321, 322.

**895.** 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 07); costs (code 08); evidence (code 09); additional findings (code 10); signature (code 11).

**896.** 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.<sup>543</sup>

**897.** 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", § 913 and further).

**898. 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).

**899.** *For example:*

899.1. Riga City Zemgale Suburb Court<sup>544</sup> 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.

899.2. Riga City Zemgale Suburb Court in two cases<sup>545</sup> 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.

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<sup>543</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 11 EG-MahnVO (Gruber U.P.), S. 331.

<sup>544</sup> Riga City Zemgale Suburb Court decision of 6 February 2012 . in Civil Case No. 3-11/0050/12 [not published].

<sup>545</sup> Riga City Zemgale Suburb Court decision of 29 November 2011 in Civil Case No. 3-11/0491/5-2011 [not published]; Riga City Zemgale Suburb Court decision of 2 August 2011 in Civil Case No. 3-11/0293-2011 [not published] and Riga City Zemgale Suburb Court decision of 31 October 2011 in Civil Case No. 3-11/0293-2011 on the extension of time limit [not published].

For the non-payment of State duty Article 26 of the Regulation shall be applied, respectively, the provisions of Latvian CPL.

899.3. 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.<sup>546</sup>

**900.** 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.**

### *5.1.3. Modification of Application: Standard Form C*

**901.** 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.*

**902.** 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

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<sup>546</sup> Riga City Vidzeme Suburb Court decision of 4 November 2010 in Civil Case No. 3-10/1040/13-2010 [not published]; Riga City Vidzeme Suburb Court decision of 15 March 2010 in Civil Case No. 3-10/0531/5-2010 [not published]; Riga City Zemgale Suburb Court decision of 12 August 2009 in Civil 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].



7 (2) (b) of the Regulation, and in the rest of the claim such amount seems clearly unfounded. Such situations may arise if:

902.1. EPO application comprises several concurrent pecuniary claims and part of such claims may seem clearly unfounded;

902.2. EPO applications contains one pecuniary claim, however, the amount thereof seems clearly unjustified.<sup>547</sup> For example, the principal amount (capital) is set to be LVL 1200, but the penalty makes LVL 340 000.

**903.** 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".

**904.** 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).

**905.** 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).

**906.** 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.<sup>548</sup> 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).

**907.** 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

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<sup>547</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 10 EG-MahnVO (Gruber U.P.), S. 325.

<sup>548</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 10 EG-MahnVO (Gruber U.P.), S. 326.

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 the court shall issue EPO (standard form E as set out in Appendix V to Regulation 1896/2006).

**908.** 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).

**909.** 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**.

**910.** The same occurs if the claimant fails to return his reply (makes no reply) within the time limit specified by the court.

**911.** 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; § 913 and further on.

**912.** 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
<b>Article 9</b>	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 <b>in its entirety</b> .	<b>Form B:</b> to be completed by the court (and sent to the claimant).	1. If the claimant within the time limit set by the court <b>has</b> completed and/or rectified EPO application, the court shall <b>issue EPO for the pecuniary claim in its entirety</b> (using form E). 2. If the claimant within the time limit set by the court <b>has not</b> completed and/or rectified EPO application, the court shall <b>reject EPO application in its entirety</b> (using form D).
<b>Article 10</b>	The <i>amount</i> 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 <b>part</b> of	<b>Form C:</b> - 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 <b>accepts</b> the proposal by the court, the court shall <b>issue EPO for the part</b> 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 <b>reject EPO application in its</b>

	the pecuniary claim.		<p><b>entirety (not only for the part thereof)</b> (using form D).</p> <p>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.</p>
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#### 5.1.4. Rejection of Application

**913.** 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.*

**914.** The court may reject EPO application in four cases only:

- 914.1. if the requirements set out in Articles 2, 3, 4, 6 and 7 of Regulation 1896/2006 are not met;
- 914.2. the claim is clearly unfounded or inadmissible;
- 914.3. the claimant fails to send his reply within the time limit specified by the court under Article 9 (2) of the Regulation;
- 914.4. 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.

**915.** 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.

915.1. *For example*, Riga City Vidzeme Suburb Court<sup>549</sup> 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.

915.2. In another case Riga City Zemgale Suburb Court<sup>550</sup> 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).

915.3. *For example*, Valmiera District Court<sup>551</sup> 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.

**916.** 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.**

**917.** 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.

917.1. *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

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<sup>549</sup> Riga City Vidzeme Suburb Court decision of 15 March 2010 in Civil Case No. 3-10/0531/5-2010 [not published].

<sup>550</sup> Riga City Zemgale Suburb Court decision of 12 August 2009 in Civil Case No. 3-10/0555-2009 [not published].

<sup>551</sup> 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).

**918.** 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).

918.1. *For example*, Riga City Vidzeme Suburb Court<sup>552</sup> 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).

**919. Article 11 (1) (c) and (d) of Regulation 1896/2006 shall only be applicable if:**

919.1. the court has previously charged the claimant with the task to complete or rectify EPO application within a specified time limit (Article 9 of the Regulation) and the claimant within that time limit has not sent his reply to the court; or

919.2. 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.

**920. 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.<sup>4</sup> 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.<sup>4</sup> of CPL) are identical.

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<sup>552</sup> Riga City Vidzeme Suburb Court decision of 4 November 2010 in Civil Case No. 3-10/1040/13-2010 [not published].

**921.** 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.<sup>1</sup> 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).

**922.** 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.

**923.** 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<sup>553</sup> as from the day of issue of attested copy of the decision.

### ***5.1.5. Legal Representation***

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<sup>553</sup> 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).

**924.** 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 has some sections where representatives may be specified (Item 2), thus the party may apply the right to a lawyer.

**925.** 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.

#### ***5.1.6. Court Fees***

**926.** 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.

**927.** 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.

**928.** 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.

**929.** 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.<sup>1</sup> of CPL shall be applied with regard to court fees; Section 36.<sup>1</sup> 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.

## 5.2. Issue of EPO

**930.** 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.*

### 5.2.1. Issue of EPO: standard form E

**931.** 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<sup>554</sup>), 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).

**932.** 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.<sup>555</sup> If the defendant lives in Latvia, no problem will arise. If the defendant lives, for example, in

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<sup>554</sup> 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.

<sup>555</sup> 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.



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).

**933.** 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<sup>556</sup>).

**934.** 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,<sup>557</sup> 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.

**935.** 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.

**936.** 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<sup>558</sup> was received,

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<sup>556</sup> 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.

<sup>557</sup> 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.

<sup>558</sup> 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.

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 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.

**937.** 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.

**938.** So, the court shall serve on the defendant:

**Form E + form A (except Appendices 1 and 2) + blank form F.**

### *5.2.2. Notification of defendant*

**939.** Pursuant to **Article 12 (3)** of Regulation 1896/2006, the defendant shall be advised of his option to:

939.1. pay the claimant the amount indicated in the order; **or**

939.2. 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.

**940.** 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).<sup>559</sup>

**941.** 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).

**942.** 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.

**943.** 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

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<sup>559</sup> Rudevskā, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaucājumi. *Jurista Vārds*, Nr. 24/25, 2009. gada 16. jūnijs, 34. lpp.

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 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."**

**944.** Pursuant to **Article 12 (4)** of Regulation 1896/2006, in the European order for payment the defendant shall be informed that:

- 944.1. the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court;
- 944.2. the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;
- 944.3. 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.

**945.** 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.

**946.** 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.

### ***5.2.3. EPO service on the defendant***

**947.** The notion of minimum procedural standards and the theoretical background thereof is provided together with the analysis of Regulation 805/2004 (§ 171 and further).

**948.** 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).

**949.** 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.

**950. Service with proof of receipt.** This type of service shall not be used if the defendant's address is not known:

**951. Personal service** (Article 13 (a), and (b)).<sup>560</sup> Personal service may be attested by:

951.1. an acknowledgement of receipt, including the date of receipt, which is signed by the defendant; or

951.2. 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.

**952.** 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<sup>561</sup>, 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.<sup>1</sup>, Paragraph one and two). It complies with the moment of service of cross-border document (Section 56.<sup>2</sup>, Paragraph two of CPL).

**953. Postal service** (Article 13 (c)).<sup>562</sup> 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.<sup>1</sup> of CPL, which prescribes the day of delivery of summons to be on the seventh day as from the day of sending (Section 56.<sup>1</sup>, Paragraph three of CPL). However, if an EPO from Latvia is to be sent to another Member State, the seven-day

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<sup>560</sup> See Article 13 (a) and (b) of Regulation 1896/2006.

<sup>561</sup> Law on Bailiffs: Law of the Republic of Latvia. *Latvijas Vēstnesis*, Nr. 165, 2002. gada 13. novembris.

<sup>562</sup> See Article 13(c) of Regulation 1896/2006.

period shall not be applicable. In such case the Latvian court shall be governed by Article 9 of the Regulation on the service of documents together with Section 56.<sup>2</sup>, Paragraph two of CPL. It shall be noted that in accordance with Section 56.<sup>2</sup>, 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."

**954.** *Service by electronic means* (Article 13 (d)).<sup>563</sup> 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 or by fax.<sup>564</sup>

**955.** **Service without proof of receipt.** This type of service shall only be used if the defendant's address is known for certain.<sup>565</sup>

**956.** *Personal service* (Article 14 (1) (a)-(c)).<sup>566</sup>

956.1. 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.

956.2. 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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<sup>563</sup> See Article 13(e) of Regulation 1896/2006.

<sup>564</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 13 EG-VollstrTitelVO (Pabst S.), S. 130.

<sup>565</sup> 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.

<sup>566</sup> 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.

956.3. 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.

**957.** *Service by mail* (Article 14 (1) (d) and (e)).<sup>567</sup>

957.1. 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.

957.2. 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).

**958.** *Service by electronic means* (Article 14 (1) (d)).<sup>568</sup> 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<sup>1</sup> however does not provide for automatic confirmation of delivery.

**959.** 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:

959.1. the method of service used;

959.2. the date of service, and

959.3. where the order has been served on a person other than the defendant, the name of that person and his relation to the defendant.<sup>569</sup>

**960.** *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.

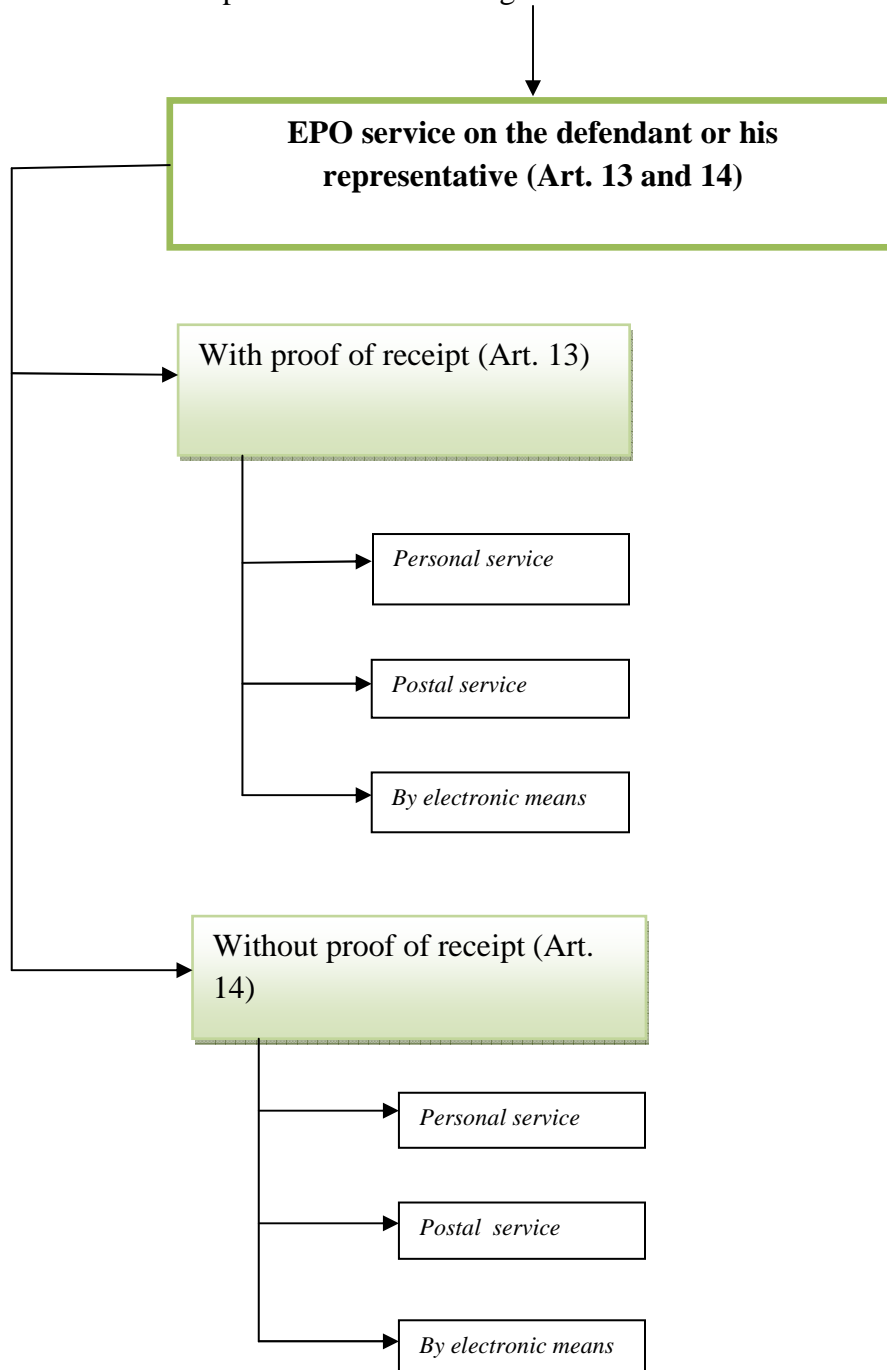
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<sup>567</sup> See Article 14, Paras. 1 d) and e) of Regulation 805/2004; Article 14, Paras. 1 d) and e) of Regulation 1896/2006 and Article 13, Para. 2 of Regulation 861/2007.

<sup>568</sup> 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.

<sup>569</sup> 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.

961. The summary of minimum procedural standards prescribed by Regulation 1896/2006 shall be depicted as the following chart:<sup>570</sup>



<sup>570</sup> Rudevska, B. Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

#### 5.2.4. Some common problem issues

**962.** 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.<sup>571</sup> The court shall only verify the EPO service date, not the compliance of service method to the minimum procedural standards.<sup>572</sup> 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.

**963.** 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.<sup>573</sup> Let us compare both Regulations and their legal rules with regard to the minimum procedural standards:

**964.** *Table*<sup>574</sup>

Regulation 805/2004	Regulation 1896/2006
<p><b>Article 13</b></p> <p>"The document instituting the proceedings or an equivalent document may have been served on the debtor <b>by one of the following methods:</b></p> <p>[<i>methods with proof</i>]"</p>	<p><b>Article 13</b></p> <p>"The European order for payment may be served on the defendant <b><u>in accordance with the national law of the State in which the service is to be effected, by one of the following methods:</u></b></p>

<sup>571</sup> 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 enforceable EPO when the bailiff begins the proceedings.

<sup>572</sup> See also: Gruber, U.P. *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. Rauscher, T. (Hrsg.). München : Sellier, 2010, S. 339 (Art. 12).

<sup>573</sup> 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.

<sup>574</sup> Rudevskā, 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).



	[methods with proof]".
<p><b>Article 14</b></p> <p>"Service of the document instituting the proceedings 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:</p> <p>[methods without proof]".</p>	<p><b>Article 14</b></p> <p>"The European order for payment may also be served on the defendant <b><u>in accordance with the national law of the State in which service is to be effected</u></b>, by one of the following methods:</p> <p>[methods without proof]".</p> <p>See also <b>Article 12 (5)</b>:</p> <p>"The court shall ensure that the order is served on the defendant <b><u>in accordance with national law by a method that shall meet the minimum standards</u></b> laid down in Articles 13, 14 and 15".</p>

**965.** 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:<sup>575</sup>

**966.** *Situation*

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*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?*

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**967.** 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

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<sup>575</sup> Ibid.

addressed or by a particular form requested by the transmitting agency,<sup>576</sup> 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 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.

### **5.3. Opposition to EPO: standard form F**

**968.** 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 in 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.

**969.** 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.

**970.** 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,

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<sup>576</sup> 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).

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 matter are submitted to the Latvian courts which have accepted such free forms of opposition to EPO in accordance with Regulation 1896/2006.<sup>577</sup>

**971.** 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 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.<sup>578</sup>

**972.** 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).

**973.** 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.<sup>579</sup>

**974.** 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.

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<sup>577</sup> Decision of Riga City Northern Suburb court of 8 June 2012 in the case No. 3-11/00147 [not published].

<sup>578</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar*. München : Sellier, 2010. Art. 16 EG-MahnVO (Gruber U.P.), S. 344.

<sup>579</sup> 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.

**975.** 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 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<sup>580</sup>; 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.

**976.** 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.<sup>581</sup> If the relevant section has been completed, the court shall terminate the proceedings pursuant to Article 17 (1) of the Regulation.

**977.** 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."

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<sup>580</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR/EuIPR Kommentar. München : Sellier, 2010. Art. 16 EG-MahnVO (Gruber U.P.), S. 344.

<sup>581</sup> 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.

**978.** 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.

**979.** 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):

979.1. on acceptance of the statement of claim and initiation of a matter;

979.2. on refusal to accept the statement of claim;

979.3. on leaving the statement of claim not proceeded with.

**980.** 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.<sup>1</sup> 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.<sup>4</sup>, Paragraph four of CPL shall be applied in the matter.

## **5.4. Enforceability**

### ***5.4.1. Enforceability in general***

**981. 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.*

**982.** 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:

982.1. the 30 day period of service as per Article 16 (2) of the Regulation has run out;

982.2. 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;

982.3. 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);

982.4. the court shall verify the date of service of EPO on the defendant (and the compliance of service to the minimum procedural standards).

**983.** 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.

**984.** **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<sup>582</sup> (see recital 28 in the preamble to Regulation 1896/2006).

**985.** 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).

**986.** 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.<sup>583</sup>

**987.** 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

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<sup>582</sup> 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.

<sup>583</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 28 EG-MahnVO (Gruber U.P.), S. 351.

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.<sup>584</sup> In Latvia it will be re-adjudication of a matter in connection with review of adjudication of EPO (see Section 485.<sup>1</sup> of CPL).

**988. 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.<sup>585</sup> (On the minimum procedural standards see the sub-chapter "EPO service" of this Study; § 947 and further on).

**989. 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*).<sup>586</sup> 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.<sup>587</sup> 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.

**990.** 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.<sup>1</sup>, Paragraph 4.<sup>2</sup> 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).

**991. 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."

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<sup>584</sup> *Ibid.*, S. 351, 352.

<sup>585</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 18 EG-MahnVO (Gruber U.P.), S. 351.

<sup>586</sup> 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.

<sup>587</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 18 EG-MahnVO (Gruber U.P.), S. 351.

**992. 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.<sup>588</sup> Enforceability is a characteristic feature of court adjudication, not the legal effects of an adjudication.<sup>589</sup> 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).<sup>590</sup>

**993.** 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.<sup>591</sup> 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.<sup>592</sup>

**994.** 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*,<sup>593</sup> *Apostolides*<sup>594</sup> and *Prism Investments BV*<sup>595</sup> 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.<sup>596</sup> 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).

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<sup>588</sup> Péroz, H. La réception des jugements étrangers dans l'ordre juridique français. Paris : L.G.D.J., 2005, p. 143.

<sup>589</sup> 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.

<sup>590</sup> Bureau, D., Muir Watt, H. Droit international privé. Tome I. Partie générale. Paris : PUF, 2007, p. 237.

<sup>591</sup> Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Autoru kolektīvs prof. K.Torgāna vispārīgā zinātniskā redakcijā. Rīga : Tiesu namu aģentūra, 2006, 305.-307. lpp.

<sup>592</sup> 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.

<sup>593</sup> European Court of Justice judgment of 29 April 1999 in the Case: C-267/97 *Coursier*, ECR [1999], p. I-2543, para. 29.

<sup>594</sup> European Court of Justice judgment of 28 April 2009 in the Case: C-420/07 *Apostolides*, ECR [2009], p. I-3571, paras. 66, 69.

<sup>595</sup> 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.

<sup>596</sup> See by analogy conclusions of J. Kokott, Advocate General of European Court of Justice, dated 18 December 2008 in the Case: C-420/07 *Apostolides*, ECR [2009], p. I-03571, paras. 97, 98.



**995. 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).

**996. 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).<sup>597</sup>

**997.** 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 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.

**998. 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.*

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<sup>597</sup> 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.

**999.** Law applicable to enforcement procedures. 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.

**1000.** 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:

- 1000.1. what documents the claimant shall provide to the competent authorities of the Member State of enforcement (Article 21 (2));
- 1000.2. prohibition of *cautio judicatum solvi* (Article 21 (3)); and
- 1000.3. the basis for stay or limitation of enforcement and the methods thereof (Article 23).

**1001.** 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:

- 1001.1. 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**
- 1001.2. 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.

**1002.** Submission of photocopies of the mentioned documents is inadmissible — they shall be attested copies of document<sup>598</sup> or the original documents. The submitted documents shall bear a testimony that they are authentic documents. This requirement

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<sup>598</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 163.

shall exclude a possibility that one and the same EPO towards the debtor be executed several times.<sup>599</sup>

**1003.** 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,<sup>600</sup> however it should be admitted that the bailiff only needs the EPO form.

**1004.** 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).<sup>601</sup> 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 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.**<sup>602</sup>

**1005.** 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.

**1006.** **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.<sup>603</sup>

**1007.** 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

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<sup>599</sup> Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 67, 68.

<sup>600</sup> Rudevska, B. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjuatājumi. Jurista Vārds, Nr. 24/25, 2009. gada 16. jūnijs, 45. lpp.

<sup>601</sup> Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 68.

<sup>602</sup> Rauscher, T. Der Europäische Vollstreckungstitel für unbestrittene Forderungen. München : Sellier, 2004, S. 68.

<sup>603</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

languages. Therefore, an EPO issued in Ireland in English shall be submitted for enforcement in Estonia without a translation.<sup>604</sup>

**1008.** 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](http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_lv.htm)

**1009.** The Member States to Regulation 1896/2006 have notified the following acceptable languages.

Table of Notified Languages.

No.	EU Member State	Notified languages
1.	<b>Belgium</b>	Flemish, French
2.	<b>Bulgaria</b>	Bulgarian
3.	<b>Czech Republic</b>	Czech, English, Slovak
4.	<b>Germany</b>	German
5.	<b>Estonia</b>	Estonian or English
6.	<b>Greece</b>	Greek
7.	<b>Spain</b>	Spanish
8.	<b>France</b>	French, English, German, Italian or Spanish
9.	<b>Ireland</b>	Irish or English
10.	<b>Italy</b>	Italian
11.	<b>Cyprus</b>	Greek, English
12.	<b>Latvia</b>	Latvian
13.	<b>Lithuania</b>	Lithuanian
14.	<b>Luxembourg</b>	German and French
15.	<b>Hungary</b>	Hungarian (Magyar)
16.	<b>Malta</b>	[not notified yet]
17.	<b>Netherlands</b>	Dutch
18.	<b>Austria</b>	German
19.	<b>Poland</b>	Polish
20.	<b>Portugal</b>	Portuguese
21.	<b>Romania</b>	Romanian
22.	<b>Slovakia</b>	Slovak
23.	<b>Slovenia</b>	Slovenian, Italian, Hungarian (Magyar)
24.	<b>Finland</b>	Finnish, Swedish or English
25.	<b>Sweden</b>	Swedish or English
26.	<b>United Kingdom</b>	English

**1010.** 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.<sup>605</sup>

<sup>604</sup> Notifications of Lithuania and Estonia are available here:

[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).

<sup>605</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-VollstrTitelVO (Pabst S.), S. 164.

#### 5.4.2. Abolition of exequatur

**1011.** 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.*

**1012.** The institution of European order for payment differs from the EEO notion — the first one includes EU scale activity and enforceability<sup>606</sup> (except Denmark).

**1013.** 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 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.<sup>607</sup>

**1014.** 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)."**

**1015.** 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

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<sup>606</sup> Seidl, S. *Ausländische Vollstreckungstitel und inländischer Bestimmtheitsgrundsatz*. Jena : Jenaer Wissenschaftliche Verlagsgesellschaft, 2010, S. 232.

<sup>607</sup> Rudevska, B. *Ārvalstu tiesu nolēmumu atzīšanas un izpildes attīstības tendences civillietās un komercietās 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>.

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).

**1016.** 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.).<sup>608</sup>

**1017.** 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.<sup>609</sup>

**1018.** The EU legislature in the Regulation should also specify the autonomous legal consequences or action of an enforceable European order for payment.

### 5.4.3. Review

**1019.** 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.*

**1020.** 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.

**1021.** This article of the Regulation has not been applied by the Latvian courts yet.

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<sup>608</sup> 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.

<sup>609</sup> 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.

**1022.** 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.<sup>1</sup>, Paragraph one of CPL).

**1023.** 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.<sup>610</sup>

**1024.** 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.<sup>1</sup>, 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.

**1025.** 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.<sup>1</sup>, 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.<sup>1</sup>, 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.

**1026. Competent courts of the Member states for the purposes of the application for review.**<sup>611</sup>

No.	EU Member State	Competent Courts
1.	<b>Belgium</b>	<i>Not notified yet.</i>
2.	<b>Bulgaria</b>	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.	<b>Czech Republic</b>	The review procedure lies within the jurisdiction of the court, which has issued the European order for payment.
4.	<b>Germany</b>	The competent court will be lower instance local court of Berlin-Wedding (Amtsgericht Wedding, 13343 Berlin).
5.	<b>Estonia</b>	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

<sup>610</sup> 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."

<sup>611</sup>

See.: [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_courtsreview\\_lv.jsp?countrySession=19&#statePage0](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsreview_lv.jsp?countrySession=19&#statePage0)

		<p>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.</p> <p>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.</p>
6.	<b>Greece</b>	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.	<b>Spain</b>	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 (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.	<b>France</b>	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.	<b>Ireland</b>	The High Court has the jurisdiction in the review procedure: High Court Central Office Administrative address: Four Courts, Inns Quay, Dublin 7 Ireland.
10.	<b>Italy</b>	<p>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.</p> <p>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.</p>
11.	<b>Cyprus</b>	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.	<b>Latvia</b>	Not notified yet.
13.	<b>Lithuania</b>	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 and 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.	<b>Luxembourg</b>	The following court instances have the jurisdiction over the statement of opposition and application for review: <ol style="list-style-type: none"> <li>1. District court if the chairperson of the district court or the acting judge have issued the European order for payment.</li> <li>2. Chief magistrate or the acting judge if the magistrate has issued the European order for payment.</li> <li>3. Labour court if the chairperson of the Labour court or the acting judge have issued the European order for payment.</li> </ol>
15.	<b>Hungary</b>	In Hungary the competent court shall be the court, which has issued the European order for payment.
16.	<b>Malta</b>	Not notified yet.
17.	<b>Netherlands</b>	<u>Article 9 of Law on the application of the procedure of European order for payment:</u> <ol style="list-style-type: none"> <li>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.</li> <li>2. The application shall be submitted: <ol style="list-style-type: none"> <li>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;</li> <li>b. in the event as per Article 20 (1) (b) of the Regulation – within four weeks after the reasons mentioned therein have extinguished;</li> <li>c. in the event as per Article 20 (2) of the</li> </ol> </li> </ol>

		<p>Regulation — within four weeks after the defendant has learned the reason for the review as indicated therein.</p> <p>3. Representation by a lawyer or another legal professional shall not be mandatory to submit an application for review.</p>
18.	<b>Austria</b>	<p>Applications for review, pursuant to Article 20 (1) and (2) of the Regulation, shall procedurally be considered as applications <i>restitutio in integrum</i>. However, a positive decision regarding the application, which is taken in accordance with Para. 2, may be appealed.</p> <p>Bezirksgericht für Handelssachen Wien Administrative address: Justizzentrum Wien Mitte Marxergasse 1a; A-1030 Wien.</p>
19.	<b>Poland</b>	<p>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.</p> <p>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.</p>
20.	<b>Portugal</b>	<p>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.</p> <p>Tribunal de Comarca (Secretaria-Geral de Serviço Externo do Porto) Administrative address: R. Gonçalo Cristóvão,</p>

		347- 3 <sup>o</sup> e 4 <sup>o</sup> ; P-4000-270 Porto.
21.	<b>Romania</b>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
22.	<b>Slovakia</b>	<p>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.</p>
23.	<b>Slovenia</b>	<p>Courts, which have jurisdiction in review procedures and application of Article 20 of Regulation 1896/2006, are district courts and regional courts.</p>
24.	<b>Finland</b>	<p>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.</p> <p>In addition to the provisions of Article 20 of the Regulation the provisions of Chapter 31 of the</p>

		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.	<b>Sweden</b>	An application for review is heard by the appellate court ( <i>hovrätt</i> ) (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.	<b>United Kingdom</b>	<p><b>1. England and Wales</b> 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.</p> <p><b>2. Northern Ireland</b> 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.</p> <p><b>3. Scotland</b> 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.</p> <p><b>4. Gibraltar</b> 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.</p>

**1027.** 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.<sup>2</sup> of CPL).

5.4.3.1. Grounds for review of a European order for payment — failure to inform the defendant

**1028.** 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.*

**1029.** 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.

**1030.** 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.*

**1031.** 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.<sup>612</sup> 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".<sup>613</sup>

**1032.** The idea of "conditions independent of the defendant (due to force majeure)" must be independently evaluating by the court in each individual situation.

**1033.** 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.

**1034.** Article 20 (1) (b) of Regulation 1896/2006 with respect to sub-paragraph (a), is considered the norm of general law.<sup>614</sup> The legal norm mentioned determines that a defendant can submit a review application even if the submission of objections has been

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<sup>612</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 359.

<sup>613</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 359.

<sup>614</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 358, 359.

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.

**1035.** 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.<sup>615</sup> As such, the **EU legislator should consider the opportunity to include clearly the principle of a comprehensible language in the minimal procedural standards.**

**1036.** 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.<sup>616</sup> 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?*

**1037.** Time will show what answer the ECJ will bring to these prejudicial questions.

#### 5.4.3.2. Obviously wrong issue of an EPO

**1038.** 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.

**1039.** 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.<sup>617</sup> If this

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<sup>615</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 361.

<sup>616</sup> 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](http://www.europa.eu).

<sup>617</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 363.

has not been noticed, then it can be corrected during the review process (following the defendant's application).

**1040.** The cases anticipated in Article 11 of Regulation 1896/2006 are the following:

1040.1. 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;

1040.2. the claim is clearly unfounded.

1040.3. also in the case where the EPO application form has not been fully completed.

**1041.** 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 from the defendant, to initiate the review 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.<sup>618</sup>

**1042.** 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.<sup>619</sup> Of course, this is only a theoretical opinion; court practice over time will show what content will fill the general phrase mentioned.

#### 5.4.3.3. Legal consequences of examining a review application

**1043.** In accordance with **Article 20 (3) of Regulation 1896/2006**, the court examining the review application (in Latvia — the regional court) has two options:

1043.1. **reject the application** (Sentence 1 of Article 20 (3) of the Regulation and as such the EPO remains enforceable, or

1043.2. **accept the application** (Sentence 2 of Article 20 (3) of the Regulation) and as such the EPO is no longer enforceable.

**1044.** In accordance with **Section 485.<sup>3</sup> of CPL**, a Latvian court examining a review application has these options.

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<sup>618</sup> *Ibid.*, S. 364, 365.

<sup>619</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 20 EG-MahnVO (Gruber U.P.), S. 366, 367.

**1045.** 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.<sup>3</sup>, 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 be 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.

**1046.** 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 justified only in the situations indicated in Article 20 (1) of the Regulation.<sup>620</sup> As such, it would be more correct to provide the CL with the option of satisfying the review application by revoking the EPO declared enforceable (not passing the case for new examination to a court of first instance).

**1047.** In cases where the EPO has already been settled in the territory of Latvia, Section 635, Paragraph five of the CPL anticipates a **reversal of execution**.<sup>621</sup> 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.**

**1048.** 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

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<sup>620</sup> 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.

<sup>621</sup> 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).



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?**

**1049.** 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.

**1050.** 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.<sup>3</sup>, Paragraphs three and four of CPL). As can be seen, this opportunity generally corresponds to the first sentence of Article 20 (3) of Regulation 1896/2006.

**1051.** From Article 20 (3) of Regulation 1896/2006 and Section 485.<sup>3</sup>, Paragraphs two, three and four the **following questions are unclear**.

1051.1. *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.<sup>1</sup> 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.

1051.2. *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).**

1051.3. *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.

1051.4. *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.*

#### **5.4.4. Refusal of enforcement**

**1052.** 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<sup>622</sup> 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.*

**1053.** In Latvian courts, this Article of the Regulation has not yet been applied.

**1054.** 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.

**1055. 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.<sup>3</sup>, Paragraph four of CPL. The defendant's (debtor's) application is to be completed in accordance with Section 644.<sup>4</sup>.

**1056.** 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

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<sup>622</sup> 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*).

enforced in Latvia (made earlier than the EPO), then the state fee of LVL 20 must be paid.

**1057.** The debtor must submit an application to the competent Latvian court, which, according to Section 644.<sup>3</sup>, Paragraph four of CPL, is district (city) court in the territory of which the EPO is enforceable.

**1058.** 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.<sup>3</sup>, 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.

**1059. 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.

**1060. Irreconcilability of decisions.** The irreconcilability of decisions is one of the classic barriers to having foreign court decisions recognized<sup>623</sup> 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.<sup>624</sup>

**1061.** 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.<sup>625</sup> 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.

**1062.** 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

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<sup>623</sup> Kropholler, J. Internationales Privatrecht. 5.Aufl. Tübingen : Mohr Siebeck Verlag, 2004, S. 651.

<sup>624</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637. panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), 165. lpp.

<sup>625</sup> Rudevska, B. Tiesu nolēmumu un tiesvedību nesavienojamība Civilprocesa likuma 637. panta izpratnē (I). *Likums un Tiesības*. 2006, 8.sēj., Nr. 6 (82), 164. lpp.

autonomous interpretation of these concepts is to be applied, provided by the ECJ in its former and current adjudication.

**1063.** Irreconcilable decisions **of to a geographic nature** can be accepted:

1063.1. **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.

1063.2. **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 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.

1063.3. **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.

**1064.** 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.<sup>626</sup>

**1065.** 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

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<sup>626</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 375.

period for objection submission provided in Article 16 (2) of the Regulation has already ended.<sup>627</sup>

**1066.** 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.<sup>628</sup>

**1067.** 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.<sup>4</sup>, Paragraph two, Clauses 1 and 2 of CPL) should be appended 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.

**1068.** 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.

**1069.** 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".<sup>629</sup> 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"

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<sup>627</sup> Rauscher, T. (Hrsg.). *Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar*. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 375.

<sup>628</sup> *Ibid.*, S. 377.

<sup>629</sup> 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."

(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.<sup>630</sup> **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 application or will not submit an EPO already in effect for enforcement.<sup>631</sup> 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.<sup>632</sup>

**1070.** 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.<sup>633</sup>

**1071.** When submitting the application mentioned in Section 644.<sup>3</sup>, 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.<sup>4</sup>, Paragraph two, Clause 3 of CPL).

**1072.** 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*<sup>634</sup>). It must assess only the fact of decision irreconcilability, or the fact of payment of the amount ordered in the EPO.

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<sup>630</sup> For comparison, see Section 406.<sup>7</sup>, 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."

<sup>631</sup> Kormann, J.M. Das neue Europäische Mahnverfahren im Vergleich zu den Mahnverfahren in Deutschland und Österreich. Jena : JWV, 2007, S. 169.

<sup>632</sup> 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.

<sup>633</sup> See also: Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 22 EG-MahnVO (Gruber U.P.), S. 381.

<sup>634</sup> French – review by substance.

#### 5.4.5. Stay or limitation of enforcement

**1073.** 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.*

**1074.** Within Section 644.<sup>2</sup>, Paragraph one of the Latvian CPL, the legislator has anticipated that the local (municipal) court, within whose territory the EPO is to be enforced, by application of the debtor<sup>635</sup> and based on Article 23 of Regulation 1896/2006, has a right to:

1074.1. Substitute EPO enforcement with activities anticipated in Section 138 of CPL to ensure the enforcement of this order;

1074.2. amend the form or process of EPO enforcement;

1074.3. stay EPO enforcement.

**1075.** When submitting the application provided in Section 644.<sup>2</sup> of CPL, the debtor does not pay the state fee.

**1076.** 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.<sup>2</sup>, Paragraph three of CPL). An ancillary claim regarding the court decision can be submitted Section 644.<sup>2</sup>, Paragraph four of CPL).

**1077.** 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."

**1078.** 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

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<sup>635</sup> Unlike Regulation 1896/2006, which uses the term "defendant", Section 644 of CPL uses the term "debtor".

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.

#### 5.4.5.1. Grounds for enforcement postponement or limitation

**1079.** 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.**

**1080.** 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 enforcement postponement or limitation occurs in the Member State of enforcement.<sup>636</sup> For more details about Article 20 of Regulation 1896/2006, see sub-chapter "Review" of the Research (§1019 and forward).

**1081.** 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:

1081.1. the debtor's application (Article 23 of Regulation 1896/2006 and Section 644.<sup>2</sup> of the Latvian CPL; application content and the documents to be appended are determined by Section 644.<sup>4</sup> of the Latvian CPL;

1081.2. the debtor must have already submitted an application for EPO review (Article 20 of the Regulation) in its Member State of origin. Section 644.<sup>4</sup>, 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.

#### 5.4.5.2. Forms of enforcement postponement or limitation

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<sup>636</sup> 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, 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.



**1082.** The forms of EPO enforcement postponement or limitation in Latvia, according to Article 23 of Regulation 1896/2006, are the following (Section 644.<sup>2</sup>, Paragraph one of the Latvian CPL):

1082.1. Replacing EPO enforcement with actions anticipated in Section 138 of CPL to ensure this order is enforced;

1082.2. amendments to the form or process of EPO enforcement;

1082.3. EPO enforcement suspension.

**1083.** 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 origin.<sup>637</sup> Simultaneously, forced enforcement in the Member State of enforcement continues.

**1084.** 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).

**1085.** 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,<sup>638</sup> Section 644.<sup>2</sup> allows the court to decide on this question only after the defendant's (but not the claimant's) request.

**1086.** Unlike Section 206 of CPL, in the case of the application of Section 644.<sup>2</sup>, 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.

**1087.** Unlike Section 206 of CPL, in the case of application of Section 644.<sup>2</sup>, 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.

**1088.** Unlike Section 206 of CPL, in case Section 644.<sup>2</sup> 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

<sup>637</sup> Rauscher, T. (Hrsg.). Europäisches Zivilprozess- und Kollisionsrecht EuZPR / EuIPR Kommentar. München : Sellier, 2010, Art. 23 EG-VollstrTitelVO (Pabst S.), S. 180.

<sup>638</sup> 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.

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.**

**1089. Suspending EPO enforcement.** Section 644.<sup>2</sup>, 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).

**1090.** The concept of "exceptional circumstances" should be understood in situations where EPO enforcement would transgress the public order of the Member State of enforcement (*ordre public*).<sup>639</sup> 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 CPHRFF, and which correspond to the situations listed in Article 20 of the Regulation.

**1091.** 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).

## **5.5. Interaction of Regulation 1896/2006 with other bills of standard legislation**

**1092. Brussels I Regulation (Regulation (EC) 44/2001)** will be applied in accordance with Article 6 (1) of Regulation 1896/2006, determining international jurisdiction (see §807 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).

**1093.** 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 §984 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

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<sup>639</sup> 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.

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.

**1094.** 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 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.

**1095.** 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 (§853 and forward), the issue of documents (§ 990 and forward) and the forced enforcement of the EPO (§ 999 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).

## **6. A general assessment of the use of the European Judicial Atlas in Civil Matters**

**1096.** 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](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](https://e-justice.europa.eu/content_european_judicial_atlas_in_civil_matters-88-lv.do).

**1097.** Performing an empirical study (see § 1130 and forward), the Researchers interrogated judges, law enforcement officers 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.

**1098. 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.

**1099. 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.

**1100.** 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.

**1101. 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.

## 7. Statistics of Regulation application

**1102.** Unfortunately, the viewable categories of cases in publicly available reviews of civil law statistics are not subdivided,<sup>640</sup> 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.

**1103.** 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.<sup>641</sup> **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 § 292 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.

**1104.** 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.

**1105.** 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.<sup>642</sup> 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

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<sup>640</sup> See Legal Information System statistics, available at:

[https://tis.ta.gov.lv/tisreal?Form=TIS\\_STAT\\_O&SessionId=DCF6E66C100419EF3CA38F20A8084970&roupid=tisstatcl&topmenuid=151](https://tis.ta.gov.lv/tisreal?Form=TIS_STAT_O&SessionId=DCF6E66C100419EF3CA38F20A8084970&roupid=tisstatcl&topmenuid=151).

<sup>641</sup> Decision of the Riga Municipal Vidzeme suburb court from February 5, 2010, in civil case No. C30385610 [unpublished]; Decision of the Riga Municipal Vidzeme suburb court from August 31, 2010 in civil case No. C30589310 [unpublished].

<sup>642</sup> 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].

about the initiated process. (see § 171 and forward). Unfortunately, the new procedure in effect from 1 January 2013, regarding the legal fiction of document issue<sup>643</sup> (if documents are mailed to the defendant's registered domicile in Latvia; see Section 56.<sup>1</sup>, 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).

**1106.** In a different case, the court ruled that the decision cannot be confirmed as a contested EPO demand.<sup>644</sup> 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 (§ 117 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.

**1107.** 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.<sup>645</sup> 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.<sup>646</sup>

**1108.** 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 Kuldīga court has reviewed such cases within one or only two days.

**1109.** The following Latvian courts have had cases where Regulation 805/2004 has been applied:

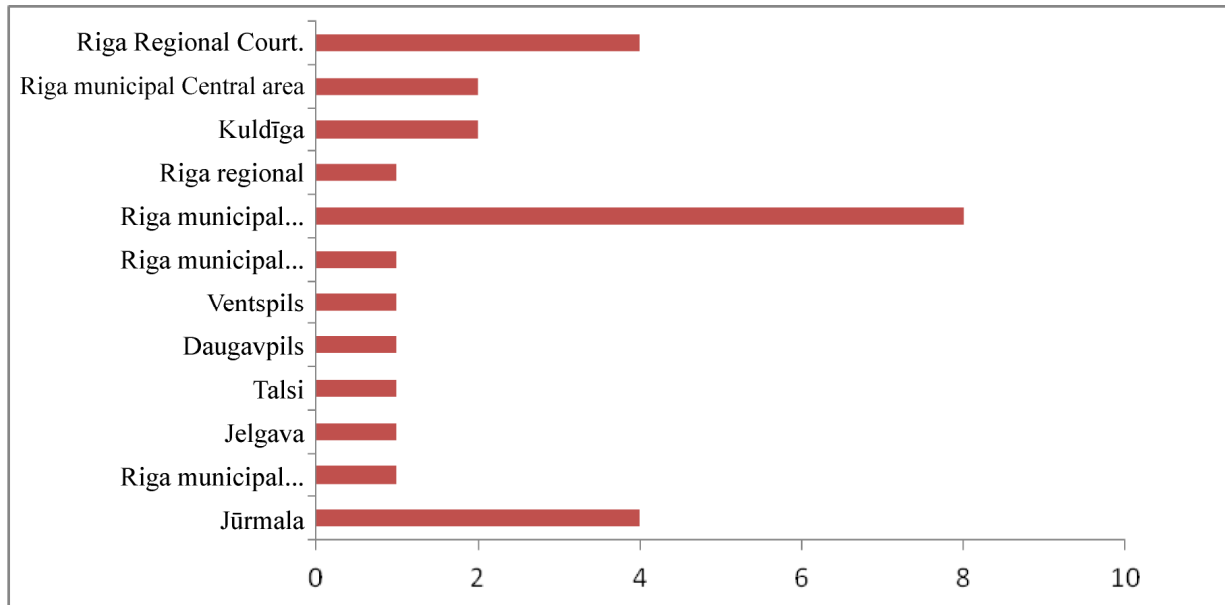
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<sup>643</sup> In the second part of the new Article 56<sup>1</sup> of the CL, it is referred to as the presumption of issue, although in reality it is legal fiction. For more details, see: Rudevska, B., Jonikāns, V. Deklarētās dzīvesvietas princips Civilprocesa likumā: vai tiešām risinājums. Jurista Vārds, Nr. 36, 2012. gada 4.,septembris, , 7., 8. un 11. lpp.

<sup>644</sup> Decision of the Jūrmala municipal court from December 9, 2010, in civil case No. C17132509 [unpublished].

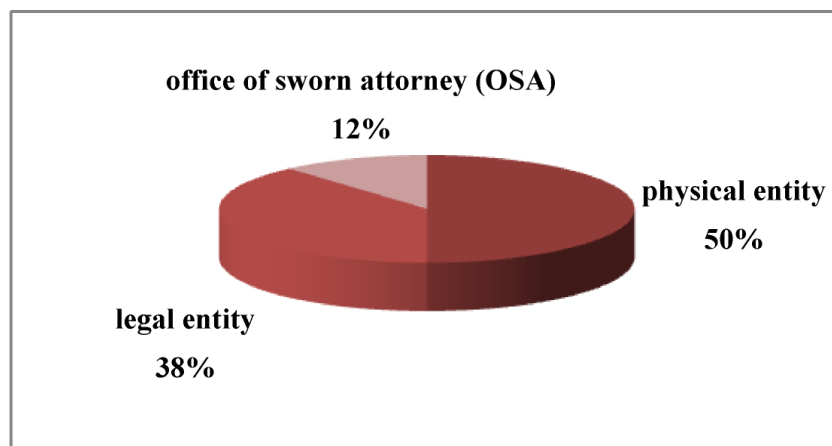
<sup>645</sup> Decision of the Riga District Court Collegium of Civil Matters from September 12, 2011, in civil case No. 3-12/3031 [unpublished], decision of a Jelgava court judge from November 28, 2011, in civil case No. 3-12/0735.

<sup>646</sup> The New York Arbitration Convention, on the Recognition on Enforcement of Foreign Arbitral Awards [1958] 330 UNTS 38.



**1110.** 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.

**1111.** The next graph shows the fractional division by defendant category.



**1112.** 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.

**1113.** 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.<sup>647</sup> Still, the suggestion of the

<sup>647</sup> 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.

**1114.** 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<sup>648</sup> or have not filled out application form A properly — for example, have incorrectly indicated the claim.<sup>649</sup> 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.

**1115.** 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.<sup>650</sup> 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.

**1116.** 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.<sup>651</sup> 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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<sup>648</sup> 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].

<sup>649</sup> Decision of the Jelgava court from 6 July 2011 in civil case [no case number indicated, not published].

<sup>650</sup> Decision of the Jekabpils regional court from 6 February 2012, in civil case No. 3-10/0004 [not published].

<sup>651</sup> 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:

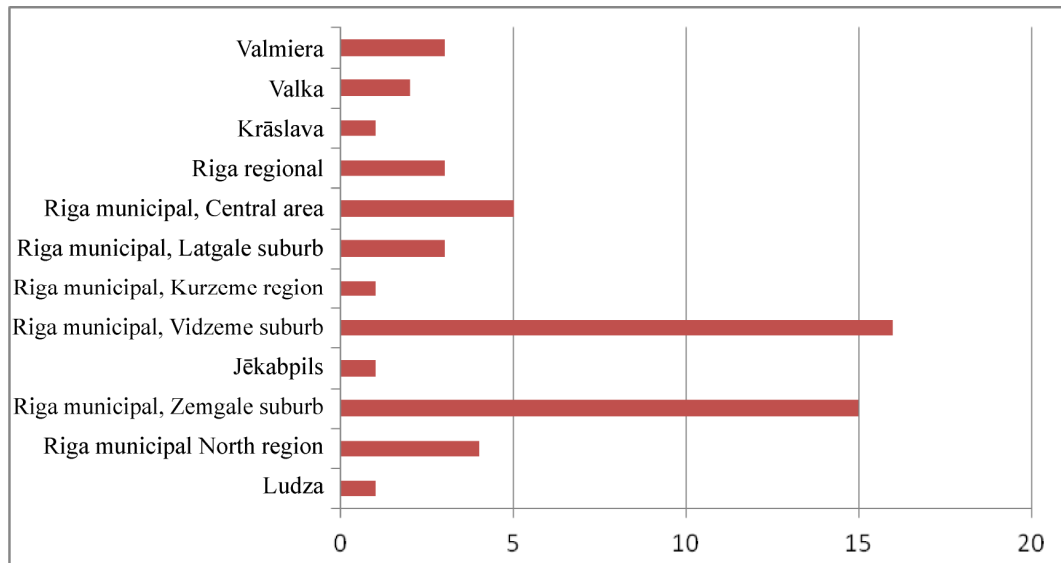
[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/sc\\_information\\_lv.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_lv.htm).



**1117.** 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.

**1118.** 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.

**1119.** This graphic reflect the courts which have applied **Regulation 1896/2006**:



**1120.** 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.

**1121.** 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.

**1122.** 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.<sup>1</sup>, Section 406.<sup>6</sup>, 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.<sup>652</sup>

**1123.** 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.

**1124.** 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.<sup>653</sup>

**1125.** 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.

**1126.** 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.

**1127.** 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).

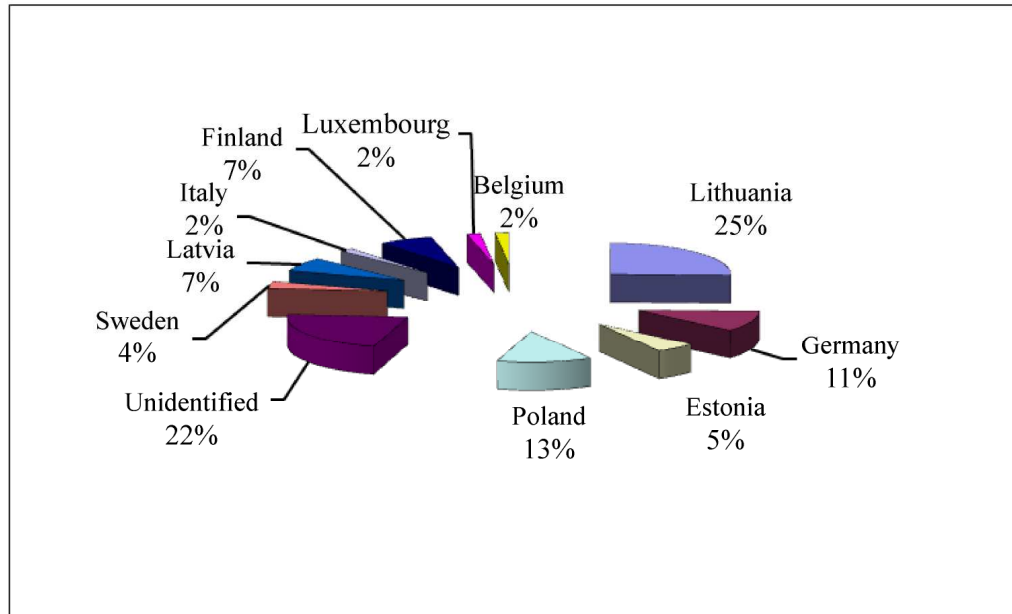
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<sup>652</sup> Decision of the Krāslava regional court judge from 13 September 2011, in the civil case No. 3-12/230 [not published], decision from the Riga municipal Latgale suburb court from 5 May 2011, in civil case No. 3-12/0762/11.

<sup>653</sup> See decision of the Riga municipal Zemgale suburb 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].

**1128.** 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.

**1129.** The Table indicates countries of origin of creditors, as fractions:



## **8. Results of a survey of representatives of legal professions about the application of regulations in practice: An empirical study**

**1130.** Researchers developed survey forms for judges, law enforcement officers 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, law enforcement officers and selectively chosen attorneys. The forms were distributed in the Latvian Judge Training Centre.

**1131.** 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.

### **8.1. The number of judges surveyed and an assessment of their responsiveness**

**1132.** 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.

**1133. 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).

**1134.** 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.

**1135. 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.<sup>1</sup> of the CPL. The majority have no opinion about this transition from one process to the other.

**1136.** 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.

**1137.** 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.

**1138.** 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.

**1139.** In the survey, mainly regional and municipal judges expressed their opinions, being the main applicers 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.

## **8.2. The number of practicing attorneys surveyed and an assessment of their responsiveness**

**1140.** 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.

**1141.** 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.

**1142.** 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.<sup>6</sup>, 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".

**1143.** 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.**

**1144.** 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.

**1145.** 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.

**1146.** 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.

### **8.3. The number of law enforcement officers surveyed and an assessment of their responsiveness**

**1147.** On 1 October 2012, with the mediation of the Latvian Sworn Law Enforcement Officer Council, invitations to all law enforcement officers 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 law enforcement officers to be more active in the future, so that these Studies can examine questions significant to them, too.

## 9. Implementation of Regulations in the Latvian legal system

### 9.1. Performed legislative measures

**1148.** The Regulations were incorporated into the CPL, as well as the Land Register Law and the Notariate Law.

**1149.** The incorporation of Regulations into the CPL occurred in three stages.

**1150.** Stage one: amendments to the CPL 07.09.2006. edit were made, coming into effect on 11.10.2006.<sup>654</sup> 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.<sup>2</sup>, Paragraph one, Clauses 1 to 3 of the Civil Procedure Law were compared to the enforcement actions anticipated and known within national legal standards.<sup>655</sup>

**1151.** Stage two: the 05.02.2009 amendment of the law was accepted, which took effect on 01.03.2009,<sup>656</sup> with which Regulation 1896/2006 was incorporated into CPL. For example, Section 541.<sup>1</sup> of CPL was supplemented with Paragraph 4.<sup>2</sup>, 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 delivery 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.

**1152.** State three: the 08.09.2011. amendment to the law was accepted, which came into effect on 30.09.2011<sup>657</sup>, and these amendments are some of the most expansive in relation to the regulations examined. A new chapter, 60.<sup>1</sup>, 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

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<sup>654</sup> 07.09.2006. law "Amendments to Civil Law", "LV", 154 (3522), 27.09.2006, available: <http://www.likumi.lv/doc.php?id=144415>.

<sup>655</sup> Annotations to the law "Amendments to Civil Law", project VSS-1382, TA-3126, available: [http://mk.gov.lv/doc/2005/TManot\\_301105.doc](http://mk.gov.lv/doc/2005/TManot_301105.doc), 3. lpp.

<sup>656</sup> 05.02.2009 law "Amendments to Civil Law", "LV", 31 (4017), 25.02.2009, available: <http://www.likumi.lv/doc.php?id=188235>.

<sup>657</sup> 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.<sup>3</sup> 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.<sup>1</sup> <sup>658</sup>

**1153.** 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,<sup>659</sup> 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.<sup>1</sup> — 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.

**1154.** Section 206<sup>1</sup> 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.

**1155.** Appendix 3 contains all direct references to the Regulations within the CPL.

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<sup>658</sup> 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](http://mk.gov.lv/doc/2005/TMAnot_120110_groz_CPL.3791.doc), p. 29.

<sup>659</sup> 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](http://mk.gov.lv/doc/2005/TMAnot_120110_groz_CPL.3791.doc), p. 34.

**1156.** The Regulations were implemented through changes in **other standard legal legislation**, too.

**1157.** 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).<sup>660</sup> 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.

**1158.** 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).<sup>661</sup>

**1159.** 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.

**1160.** In the Land Register Law<sup>662</sup>, together with 26 May 2011, law "Amendments to the Land Register Law"<sup>663</sup>, 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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<sup>660</sup> Draft law "Amendments to Notariate Law" VSS-453, TA-1414, reviewed at the Cabinet of Ministers on 31.07.2012, Section 107.<sup>1</sup> available at <http://mk.gov.lv/lv/mk/tap/?pid=40249389>.

<sup>661</sup> Ibid. Article 107.<sup>2</sup> *et seq.*

<sup>662</sup> 22 December 1937 Land Register Law: Law of the Republic of Latvia. Latvian Herald, No. 11, 08.04.1993.

<sup>663</sup> Amendments to the Land Register Law: Law of the Republic of Latvia. Latvian Herald, No. 93, 15.06.2011.

**1161.** 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."

## **9.2. Education and Training**

**1162.** Within this Research, it was also discovered what kind of training concerning the regulations examined is organized for judges, law enforcement officers, 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 Sworn Law Enforcement Officers, as well as the Ministry of Judicial Affairs of the Republic of Latvia.

**1163.** 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.

**1164.** 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.

**1165.** In accordance with the information provided by the **Latvian Council of Law Enforcement Officers** 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.

**1166.** 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.

**1167.** 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.

### **9.3. Publications**

**1168.** 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 861/2006 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. EEOopas procedūru piemērošanas jautājumi. *Jurista Vārds*, Nr. 9 (562), 03.03.2009.
- Rudevska, Baiba. Eiropas maksājuma rīkojuma procedūra: piemērošana un problēmjaudājumi. *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*. Rīga: 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. Rīga: University of Latvia Press, 2011. Available at: <https://luis.lanet.lv/pls/pub/luj.fprnt?l=1&fn=F-2050448075/LindaDamane2012.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 komercietās 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>.

**1169.** In Latvia, from the time period from 1 January 2004 until 10 December 2012, the following are the scientific seminars will be read concerning the regulations mentioned here:

- Rudevska, Baiba. Oral presentation: "Eiropas maksājuma rīkojuma procedūra: piemērošanas priekšnosacījumi un aktuālākie problēmjaudājumi" (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 70<sup>th</sup> 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 (Quality and its significance on legal notices in the modern courtroom)*".

## Abbreviations

<i>2007 Hague Protocol</i>	Hague Protocol of 23 November 2007 on legal enactments applicable to maintenance obligations
<i>Atlas</i>	European Judicial Atlas in Civil Matters
<i>Brussels I Regulation</i>	Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation)
<i>Brussels Convention</i>	Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters
<i>CL</i>	Civil Law
<i>CPL</i>	Civil Procedure Law
<i>d.</i>	Paragraph
<i>Service Regulation</i>	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
<i>ECHR</i>	European Court of Human Rights
<i>CPHRFF</i>	Convention for the Protection of Human Rights and Fundamental Freedoms
<i>CPHRFF</i>	4 November 1950. Convention for the Protection of Human Rights and Fundamental Freedoms
<i>EEO</i>	European Enforcement Order
<i>EC</i>	European Community
<i>ECJ</i>	European Court of Justice
<i>Electronic Signatures Directive</i>	Directive 1999/93/EC of the European Parliament and of the Council on a Community framework for electronic signatures
<i>EPO</i>	European Payment Order
<i>EU</i>	European Union
<i>CJEU</i>	Court of Justice of the European Union (formerly — the Court of Justice of the European Communities)
<i>Et seq.</i>	<i>Et sequens (Latin)</i> ... and further on.
<i>Joint Programme of Measures</i>	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

<i>The Hague Programme</i>	The Hague Programme: strengthening freedom, security and justice in the European Union
<i>Hague Protocol</i>	Hague Protocol of 23 November 2007 on legal enactments applicable to maintenance obligations
<i>Heidelberg Report</i>	Hess, B., Pfeiffer, T., Schlosser, P. Heidelberg Report on the Application of Brussels I Regulation in 25 Member States (Study JLS/C4/2005/03)
<i>TFEU</i>	Treaty on the Functioning of the European Union
<i>Agreement with Denmark</i>	Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
<i>New York Convention</i>	1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards
<i>Para or §</i>	Paragraph
<i>p.</i>	Article
<i>Research</i>	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)
<i>Researchers</i>	In Latvia — Doc. Dr.iur Inga Kačevska, Dr. iur cand. Baiba Rudevskā, in Lithuania — Prof. Dr. iur Vytautas Mizaras, Dr. iur Aurimas Brazdeikis and in Estonia — Dr. iur cand. Maarja Torga
<i>Taking of Evidence Regulation</i>	Council Regulation No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters
<i>Regulation 1346/2000</i>	Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings
<i>Regulation 1896/2006</i>	Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure
<i>Regulation 4/2009</i>	Council Regulation (EC) No 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations
<i>Regulation 805/2004</i>	Regulation (EC) No 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims
<i>Regulation 861/2007</i>	Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure
<i>Rome I Regulation</i>	Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations
<i>Rome II Regulation</i>	Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations

<i>Rome Convention</i>	Convention 80/934/ECC on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980
<i>See</i>	See
<i>Bulletin</i>	Supreme Council of the Republic of Latvia and Government Bulletin

## Appendixes

- 1. Study methodology**
- 2. Inquiry forms used in the study**
- 3. Results of judge inquiry forms**
- 4. Results of lawyer inquiry forms**
- 5. Inclusion of regulations within the Latvian CPL**