

# Enforcement of Foreign Judgments

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Fundamental Principles [Italy]

2020



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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)**

**A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes.

**B. Applicable Law: General Rules**

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** The procedure is set out in the Articles 64 and ff. of the Italian Law no. 218/1995:

[https://www.gazzettaufficiale.it/atto/serie\\_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1995-06-03&atto.codiceRedazionale=095G0256&elenco30giorni=false](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1995-06-03&atto.codiceRedazionale=095G0256&elenco30giorni=false)

**C. Special Rules: European Union**

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** Multilateral arrangements including the Recast Brussels Regulation (EU) no. 1215/2012 concerning jurisdiction, recognition and enforcement of decisions in civil and commercial matters (so-called Bruxelles I bis); the 2001 Brussels Regulation (EC) no. 44/2001 (so-called Bruxelles I); the Regulation (EC) no. 805/2004 which sets up the European Enforcement Order for uncontested credits; the Regulation (EU) no. 861/2007 which sets up an European proceeding for the litigations having a small value; the Regulation (EC) no. 1896/2006 which sets up an European proceeding for the injunction of a payment and the Regulation (EC) no. 936/2012 which modifies the attachments of the last mentioned regulation; the Brussels Convention of 27 September 1968 concerning jurisdiction, recognition and enforcement of decisions in civil and commercial matters; the Lugano Convention of 30 October 2007 (which replaced the 1988 Lugano Convention and applies to judgments from Iceland, Norway and Switzerland); the Hague Convention of 30 June 2005 on Choice of Court Agreements (which applies in international cases to exclusive choice of court agreements concluded in civil or commercial cases).

## 2. Does the European Union have a special procedure to enforce court judgments coming its member states?

**Answer:** Yes. The principle is that a claimant who has obtained a judgment from one of the member states can enforce in the other member states without having to begin separate proceedings.

For judgments on civil and commercial matters in court proceedings commenced on or after 10 January 2015, the procedure is governed by the Recast Brussels Regulation no. 1215/2012 (Bruxelles I bis) which has direct effect in all EU member states and has also been implemented in Denmark (Arrangement dated 21.3.2013, n. L-79, 4). The Recast Brussels Regulation states that a judgment given in a member state shall be recognised in other member states without any special procedure being required.

Unlike the previous 2001 Brussels Regulation (Bruxelles I), the Recast Brussels Regulation provides that a judgment given in a member state which is enforceable in that member state shall be enforceable in other states without a declaration of enforceability (*exequatur*) being necessary.

The general principle is that the procedure for the enforcement of judgments given in another member state is governed by the law of the member state in which enforcement is sought (Article 41).

The 2001 Brussels Regulation (Bruxelles I) continues to apply to civil and commercial matters where court proceedings were commenced prior to 10 January 2015. The courts of the enforcing member state must first declare the judgment to be enforceable and so an application must be made locally (in Italy is competent the Court of Appeal on the basis of the domicile of the debtor or the place of the execution).

The Brussels Convention (1968) continues to apply to territories of the member states which are included within its territorial limits and which are excluded from the application of the regulation pursuant to article 335 TFUE.

Other simplified and expedited procedures can be applied in specific circumstances:

- For judgments concerning uncontested credits can be followed the European Enforcement Order procedure, which is ruled in the EEO Regulation no. 805/2004/EC. Following this procedure, a judgment concerning uncontested credits issued by a member state (except for Denmark) is automatically enforceable in another member state. An application for an EEO certificate must be made. This option is quicker and simpler than the above the mentioned regimes.
- The European Small Claims Procedure (Regulation (EC) no. 861/2007) sets out a simplified procedure for civil or commercial

cross-border claims with a value of up to € 5,000 (previously € 2,000). The judgments issued in accordance with these procedures are recognized and executed in another member state without a declaration of enforceability and without being possible to oppose their recognition.

- The European Order for Payment Procedure (Regulations (EC) no. 1896/2006 and 936/2012) can be used for cross-border uncontested money claims. The injunction in accordance with this procedure is immediately enforceable in the member states (except for Denmark).

#### **D. Average Duration of Enforcement Procedure**

##### **1. What is the average length of time for this kind of procedure?**

**Answer:** Usually around 4 to 10 months, depending on whether it is challenged.

## **II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS**

### **A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes.

Where the **Recast Brussels Regulation** (so-called Bruxelles I bis) applies, reasons to refuse recognition and enforcement of a judgment are as set out at Articles 45 and 46:

#### Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:

(a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;

(b) where the judgment 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;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between

the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed;

or (e) if the judgment conflicts with:

(i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or

(ii) Section 6 of Chapter II.

2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.

3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.

4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

#### Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Where the **2001 Brussels Regulation** (so-called Bruxelles I) applies, reasons to deny enforcement include:

- failure to comply with the formalities as set out in Articles 53-54 -55 of the 2001 Brussels Regulation;
- one of the grounds set out in Articles 34 and 35 of the 2001 Brussels Regulation (which largely correlate with Article 45 of the Recast Brussels Regulation).

Where the **Regulation (EC) no. 805/2004** which sets up the European Enforcement Order for uncontested credits applies, reasons to deny enforcement include failure to comply with the procedural requirements as set out in Articles from 12 to 19 of the Regulation (EC) no. 805/2004.

Besides Article 21 of the Regulation (EC) no. 805/2004, about the refusal of enforcement, provides:

1. Enforcement shall, upon application by the debtor, be refused by the competent court in the Member State of enforcement if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:



(a) the earlier judgment involved the same cause of action and was between the same parties; and

(b) 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

(c) 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 judgment or its certification as a European Enforcement Order be reviewed as to their substance in the Member State of enforcement.

Where the **Regulation (EC) no. 861/2007** (which sets up an European proceeding for the litigations having a small value) applies, reasons to deny enforcement include:

- the hypotheses in which it is possible to request the review of the judgment as set out in Articles from 18 of the Regulation (EC) no. 861/2007;
- one of the grounds set out in Article 22 of the Regulation (EC) no. 861/2007, about the refusal of enforcement (which are substantially the same provided in the Article 21 of the Regulation (EC) no. 805/2004 above mentioned).

Where the **Regulation (EC) no. 1896/2006** (which set up an European proceeding for the injunction of payment) and the Regulation (EC) no. 936/2012 (which modifies the attachments of the last mentioned regulation) apply, reasons to deny enforcement include:

- the hypotheses in which it is possible to request the review of the judgment as set out in Articles 20 and ff. of the Regulation (EC) no. 1896/2006;
- one of the grounds set out in Article 22 of the Regulation (EC) no. 1896/2006, about the refusal of enforcement (which are substantially the same provided in the Article 21 of the Regulation (EC) no. 805/2004 above mentioned, save the following rule provided in addition in Article 22 of the Regulation (EC) no. 1896/2006: "*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*").

Where the **Brussels Convention of 27 September 1968** (concerning jurisdiction, recognition and enforcement of decisions in civil and commercial matters) applies, reasons to refuse recognition and enforcement of a judgment are as set out at Articles 27 and 28:

Article 27

*A judgment shall not be recognized:*

- 1. if such recognition is contrary to public policy in the State in which recognition is sought;*
- 2. where it was given in default of appearance, if the defendant was not duly served with the document which instituted the proceedings in sufficient time to enable him to arrange for his defence;*
- 3. if the judgment is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;*
- 4. if the court of the State in which the judgment was given, in order to arrive at its judgment, has decided a preliminary question concerning the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills or succession in a way that conflicts with a rule of the private international law of the State in which the recognition is sought, unless the same result would have been reached by the application of the rules of private international law of that State.*

#### Article 28

*Moreover, a judgment shall not be recognized if it conflicts with the provisions of Section 3, 4 or 5 of Title II, or in a case provided for in Article 59.*

*In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State in which the judgment was given based its jurisdiction.*

*Subject to the provisions of the first paragraph, the jurisdiction of the court of the State in which the judgment was given may not be reviewed; the test of public policy referred to in Article 27 (1) may not be applied to the rules relating to jurisdiction.*

Where the **Lugano Convention of 30 October 2007** (which replaced the 1988 Lugano Convention) applies, reasons to refuse recognition and enforcement of a judgment are as set out at Articles 34 and 35:

#### Article 34

*A judgment shall not be recognised:*

- 1. if such recognition is manifestly contrary to public policy in the State in which recognition is sought;*
- 2. 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;*

*3. if it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;*

*4. if it is irreconcilable with an earlier judgment given in another State bound by this Convention or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State addressed.*

#### Article 35

*1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Title II, or in a case provided for in Article 68. A judgment may furthermore be refused recognition in any case provided for in Article 64(3) or 67(4).*

*2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.*

*3. Subject to the provisions of paragraph 1, the jurisdiction of the court of the State of origin may not be reviewed. The test of public policy referred to in Article 34(1) may not be applied to the rules relating to jurisdiction.*

Where the **Hague Convention** of 30 June 2005 applies:

- the enforcing court must be satisfied that the original court was designated in an exclusive choice of court agreement;
- the foreign judgment must be enforceable in its state of origin;
- however, the enforcing court cannot review the merits of the judgment.

Besides Article 9 of the Hague Convention of 30 June 2005 provides that recognition or enforcement may be refused if:

a) the agreement was null and void under the law of the State of the chosen court, unless the chosen court has determined that the agreement is valid;

b) a party lacked the capacity to conclude the agreement under the law of the requested State;

c) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim:

- i) was not notified to the defendant in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant entered an appearance and presented his case without contesting notification in the court of origin, provided that the law of the State of origin permitted notification to be contested; or

- ii) was notified to the defendant in the requested State in a manner that is incompatible with fundamental principles of the requested State concerning service of documents;
- d) the judgment was obtained by fraud in connection with a matter of procedure;
- e) recognition or enforcement would be manifestly incompatible with the public policy of the requested State, including situations where the specific proceedings leading to the judgment were incompatible with fundamental principles of procedural fairness of that State;
- f) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or
- g) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

Where **Italian law no. 218/1995** applies for the enforcement of a foreign court judgment in Italy (i.e. where the enforcing state is not subject to specific multilateral or bilateral arrangements), reasons to deny recognition and enforcement can include:

- lack of jurisdiction of the foreign Court;
- the summon of the judgment was not brought to knowledge of the defendant in accordance with the provisions of the law of the place where the trial took place and were violated essential rights of defense;
- the parties have not appeared before the Court according to the law of the place where the trial took place and the contumacy was not declared in accordance with that law;
- the judgment has not become final according to the law of the place in which it was pronounced;
- the judgment was in conflict with a prior Italian judgment which has become final;
- it is pending a trial before an Italian judge for the same object and between the same parties, which began before the foreign trial;
- the provisions of the judgment would be contrary to public order.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:**

- Court fees

- Translation fees
- Lawyers' fees, which will vary depending on the complexity of the matter and whether the procedure is challenged by the other party
- Process server's fees
- Costs of enforcement, which will depend on the method of enforcement used.

### III. FORMAL REQUIREMENTS

#### A. Time limit

1. **Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** There are no limitation periods under the Recast Brussels Regulation, the 2001 Brussels Regulation, the Brussels Convention or the 2007 Lugano Convention.

Under the common law there is no specific provision on the limitation periods within which foreign judgments must be enforced.

#### B. Final and Definitive Court Judgment: Provisional Enforcement

1. **Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** Yes. To be enforceable in Italy a judgment must be final and definitive according to the law of the State of issued. In particular, it is necessary that the court judgment cannot be appealed under the foreign legal system.

#### C. Necessary Requirements

1. **What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?**

**Answer:**

- EU Regime – when the judgment has been certified /declared enforceable in another member state.
- Any requirements set out in multilateral or bilateral treaties / statutes.

• Common law (Law no. 218/1995):

a) the court that issued the decision was competent to rule on the matter pursuant to general principles on jurisdiction in Italy; b) the defendant was properly served with the writ summons pursuant to the law of the place where the proceeding were held and there was no breach of fundamental defence rights; c) the parties appeared in the proceeding pursuant to the law of the place where the proceeding were held or the Court declared the default of appearance in accordance with that law; d) the decision is final and binding under the law of the state of origin; e) the judgment do not conflict with another final and binding judgment issued by an Italian Court; f) no proceeding on the same dispute and between the same parties are pending before an Italian Court, which were initiated before the foreign proceedings; g) the provisions of the judgement are not compatible with public policy in Italy.

**D. Other Formal Requirements: Court Fees**

**1. Is it mandatory to pay Court Fees for this kind of application?**

**Answer:** Yes. There will be court fees payable for the application.

It is mandatory to pay:

- fees for serving the judgment on the other party;
- fees for translation of the judgment and of the certificate issued pursuant to article 53 of the Regulation (EU) no. 1215/2012, if the Judge requests it;
- court fees due for the possible proceeding of recognition and enforcement and for possible appeal;
- tax for registration of the judgment, whether the procedure is challenged by the other party and whether it is due in relation of the type of the judgment to be executed.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** No.

## IV. PROCEDURE

### A. Competent court

#### 1. Which Court or courts are competent to decide an enforcement application?

**Answer:** The competent Court may vary according to the origins of the judgment.

(i) For judgments given in a non-EU country:

The competent Court is the Court of Appeal of the place of enforcement (Article 67 of Law no. 218/1995 and Article 30 of Legislative Decree no. 150/2011).

(ii) For judgments given in an EU country:

For proceedings which fall within the scope of Regulation (EU) no.1215/2012 ("**Recast Brussels Regulation**"), the competent Court is the Court of *first instance* having territorial jurisdiction under art. 26 of the Italian Court of Civil Procedure ("CPC").

For proceedings which fall within the scope of Council Regulation (EC) no. 44/2001 ("**2001 Brussels Regulation**") – *i.e.* proceedings commenced prior to January 10, 2015 – the application for the recognition shall be submitted to the Court of Appeal (Article 39) identified according to Article 26 CPC.

Please note that if the judgment is issued by a non-EU country with which Italy has an international Treaty, the rules on recognition and enforcement are given by the Treaty (Article 2 of Law no. 218/1995).

### B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

#### 1. What information must be contained in the enforcement application of a foreign court judgment?

**Answer:** The information required may vary according to the origins of the judgment.

(i) For judgments given in a non-EU country:

The enforcement application of a foreign Court decision must contain all the information related to the requirements requested by the Article 64 of Law no. 218/1995.

(ii) For judgments given in an EU country:

Under Article 42 of Recast Brussels Regulation, there is no need for an application for enforcement as judgments given in a Member State are directly enforceable.

For proceedings which fall within the scope of 2001 Brussels Regulation the applicant must:

- give an address for service of process within the area of jurisdiction of the court applied to; or
- appoint a representative ad litem.

Please note that under Article 38.1 of 2001 Brussels Regulation, a judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there.

No specific information is required under Regulation (EC) no. 805/2004.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** The documents requested may vary according to the origins of the judgment.

(i) For judgment given in a non-EU country,

Applicant must file the judgment translated and legalized by the competent authorities (usually Italian Consulate) all the documentation showing the requirements of Article 64 of Law no. 218/1995, e.g. that the first deed of the procedure was correctly served on debtor.

Prior to starting the execution procedure, the creditor shall serve on the debtor the recognized judgment and the writ of enforcement (ITA: *atto di precetto*). Proof of service shall be filed with the court for the enforcement.

(ii) For judgments given in an EU country:

Under Article 42 of Recast Brussels Regulation, there is no need to register a foreign judgment. For a judgment to be enforced the creditor need only produce, before the court of the State in which enforcement is sought:

- a. a copy of the judgment which satisfies the condition necessary to establish its authenticity;



- b. the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest; and
- c. in some cases, a translation or transliteration may be necessary.

Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.

These documents, together with the writ of enforcement ("*atto di precetto*"), allow the enforcement to begin.

Under Article 53 and 54 of 2001 Brussels Regulation, for the recognition it is requested:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
- the certificate using the standard form in Annex V of the 2001 Brussels Regulation.

Please note that if the Annex V certificate is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has enough information before it, dispense with its production. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the Member States.

Also in this case, to initiate the enforcement procedure it is necessary to file to Court the recognized judgment and the "*atto di precetto*", both previously served on the debtor.

Under Regulation (EC) no. 805/2004, to start the enforcement procedure the creditor shall be required to provide the competent enforcement authorities of the Member State of enforcement with:

- a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and

- where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language of the Member State of enforcement. The translation shall be certified by a person qualified to do so in one of the Member States.

#### **D. Phases of the Procedure**

##### **1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** The enforcement procedure includes the following phases:

1. Recognition of the foreign Judgment;
2. Apposition of the execution order formula;
3. Serving on the debtor the title enforceable (i.e. the judgment with the execution order formula) and the “*atto di precetto*”;
4. Enforcement (seizure of assets, goods, credits, and so on);
5. Selling of the distrained goods and awarding of the sums (or awarding of the sums distrained to third creditor of the debtor, e.g. Banks or employers).

Phases 1 and 2 are not necessary under Recast Brussels Regulation for judgments of an EU country

Likewise, the first two phases are not necessary for the decision referred to the European order for uncontested claims, in accordance with Council and Parliament Regulation no. 805/2004.

#### **E. Opposition of the Defendant**

##### **1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes

##### **2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** Yes. Under Italian law the defendant can challenge:

- a) the right to proceed with enforcement or the existence of the creditor's right to proceed with enforcement by appeal against

enforcement (ITA: *opposizione all'esecuzione*) (Articles 615 and 616 CPC); or

b) procedural errors (i.e. the legality of the documents involved in the enforcement procedure) by appeal against enforceable acts (ITA: *opposizione agli atti esecutivi*) (Articles 617 and 618 CPC).

## **F. Appeal and its Consequences in this Procedure**

### **1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?**

**Answer:** Yes.

#### **(i) For judgment given in a non-EU country:**

The decision by which the Court of Appeal recognizes a foreign judgment under Article 67 and ff. of Law no. 218/1995 can be appealed, in the lack of specific regulation, before the Supreme Court in accordance with the ordinary principles of the CPC (Article 360 and ff. CPC).

#### **(ii) For judgment given in an EU country:**

Under the Recast Brussels Regulation, no declaration of enforceability is required so there's no decision of a court to appeal.

Under Article 49 of Recast Brussels Regulation, the decision on the application for refusal of enforcement may be appealed against by either party. The decision can be further appeal under Article 50. Further, under Article 51, the court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

Similarly, under Article 43 of the 2001 Brussels Regulation, the decision on the application for a declaration of enforceability may be appealed against by either party. Under Article 46.1, the court with which an appeal is lodged under Articles 43 or 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired; in

the latter case, the court may specify the time within which such an appeal is to be lodged.

Under Regulation (CE) no. 805/2004, the European Enforcement Order certificate cannot be appealed. However, the defendant may request the competent court to refuse enforcement in compliance with the conditions laid down in Article 21 of the Regulation.

## **2. Can this appeal suspend the enforcement?**

**Answer:** Generally speaking, the appeal does not suspend the enforceability of the decision. Nevertheless, the defendant can file a relevant application for requesting the suspension.

In case of appeal before the Supreme Court, the court who gave the appealed decision may, on relevant application of the debtor, suspend the enforceability of the decision when laden and irreparable damages can follow from the execution. This decision cannot be appealed (Article 373 CPC).

## **G. Recovery of judicial costs and expenses**

### **1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Under Italian law creditors are entitled to recover not only the due amount but also interests, legal and procedural expenses as stated by the "*atto di precetto*".

The legal and procedural expenses referred to the enforcement proceedings are decided by the Court at the end of the proceedings.

Because of this, usually the attachment of the goods is made with the target to recover (if possible) an amount higher than the one due.

## V. RECOVERY OF THE DEBT

### A. Means of Enforcement

#### 1. What types of assets are subject to enforcement of the court's judgment?

**Answer:** All movable and immovable assets as well as credits may be subjected to enforcement by the court.

However, certain assets may not be subject to enforcement since they are functional to the exercise of certain debtor's rights recognized as fundamental.

For instance, cannot be subject to enforcement under any circumstances (art. 514 CPC):

- Goods declared non-distrainable by special laws;
- Sacred goods or the one necessary to play worship activity;
- Weeding ring, clothes, beds, tables and chairs used for having meals; wardrobes; chest of drawers and so on;
- Books, tools and goods that are essential for the job, the business, arts and crafts of the debtor;
- Arms and stuff that debtor hold for fulfilling a public service;
- Merit decorations, letters, registers and family's writings; manuscript, except if they are part of a collection.

Please note that other assets may not be subject to enforcement in specific circumstances: (see Articles 515 and 516 CPC).

## VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

### A. Any other issues of interest in your jurisdiction

**Answer:** Every judicial proceeding (e.g. for recognition and then to start the enforcement) must be enrolled in the special register of the Court. Because of this the plaintiff must file with the Court a specific form, wherein he has to indicate all the information about the case (e.g. name of parties, their lawyers, subject of the request etc.) together with the proof of the payment of the 'contribution' for the trial and a 'tax stamp'.

*Italy*

*Parts I-II-III submitted by*

*Prof. Avv. Alessio Di Amato*

*Avv. Samantha Caminiti*

*Astolfo Di Amato & Associati Avvocati*

[alessiodiamato@diamato.eu](mailto:alessiodiamato@diamato.eu)

[samanthacaminiti@diamato.eu](mailto:samanthacaminiti@diamato.eu)

*Tel: +39 06 855 0010*

[www.diamato.eu](http://www.diamato.eu)

*Parts IV-V-VI submitted by*

*Tommaso Foco*

*Martina Lucenti*

*PORTOLANO CAVALLO*

[tfoco@portolano.it](mailto:tfoco@portolano.it)

[mlucenti@portolano.it](mailto:mlucenti@portolano.it)

*T +39 02722341*

[www.portolano.it](http://www.portolano.it)