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## MODULE IV

### SUBJECT 11

***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***

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## 1.- INTRODUCTION

The legal basis for this Regulation, as in all civil matters of judicial cooperation (within the framework of the first stage of European Union measures following the reforms of the Treaty of Amsterdam), is found in Articles 61 (c) and 65 of the Treaty establishing the European Economic Community, which states that “measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 (majority regime) and in so far as necessary of the proper functioning of the internal market shall include: a) Improving and simplifying ... – the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases...”.

It is within this framework (and within the limits mentioned), that Regulation 805/2004 has been issued as one of the standards aimed at applying the principle of mutual recognition of judicial decisions in civil and commercial matters, with a view to facilitating recognition and enforcement of the decisions issued in another Member State.

Its main tenets are:

- 1.-) It aims to remove intermediate measures.
- 2.-) It provides greater flexibility to the procedure aiming at the implementation of a European Enforcement Order.
- 3.-) It is independent from the legislation on the European Payment Order.
- 4.-) It is directly linked to Regulation 44/2001 (Brussels I).
- 5.-) It is markedly voluntary.

- 1.-) It aims to remove intermediate measures.

Intermediate measures traditionally comprised exequatur procedures which involved previous internal validation prior to determining whether or not a foreign judgment could be subject to enforcement in a state different to that in which it was issued. These steps involved the requisite processing of a procedure prior to the enforcement. Only in the event of a positive decision thereon was it possible to initiate enforcement proceedings of the judgment issued in another State.

This system is in force generally, although at the European Union level there is a trend towards its abolition both due to the delay it entails (it is an additional procedure) and to the lack of trust on the workability of intermediate measures which are essentially based on the verification of the required procedural guarantees of the action in another state; there must also be no impact on public policy.

Due to the fact that the European Union aims to fully develop an area of freedom, security and justice in which free circulation of judgments is ensured as the clearest exponent of mutual trust, which needs to go hand in hand with the creation of a European judicial culture, a statutory process is taking place in which these intermediate measures are being abolished gradually.

A clear example of this is Regulation 805/2004, which removes such intermediate measures in pecuniary claims for a specific amount, when the debtor has remained in a situation of voluntary default and service has been made in the terms established therein.

This represents a significant change from Regulation 44/2001 (Brussels I), under which it is possible (as Art. 45 states) to invoke the grounds of opposition to enforcement set out in Arts. 34 and 35 by way of an appeal - which would be heard in Spain by the Provincial High Court, but not upon enforcement of the decision, which should be immediate according to Art. 41. The first ground is that the decision is irreconcilable with an earlier judgment between the same parties in the enforcing Member State (or in any other State in which the decision fulfils the conditions necessary for its recognition). This ground for opposition is also present in the European Enforcement Order under the provisions of Art. 21 of the Regulation -as will be seen below-. It is therefore possible to refer to the abolition of these intermediate measures as an objective, since such measures still exist, albeit in a limited way. However, in addition to the above, the Brussels I Regulation contemplates a further ground for opposition, i.e. that the judgment which the creditor is seeking to enforce, delivered by a court in another Member State, is contrary to public policy, or that service on the defendant was deficient. The latter does not arise with the European Enforcement Order in the country of enforcement, as service must meet certain specific requirements (set out in the Regulation and discussed below), which are to be supervised by the body issuing the European Enforcement Order certificate in the originating Member State. The existence of this joint regulation and the confidence that the certifying body (which issues the decision or is integrated in the relevant framework) will fully comply with the Regulation has resulted in the fact that grounds for opposition to a deficient service are not invocable, which presupposes the disappearance of one of the main elements considered in the intermediate measures typical of the exequatur procedures.

2.- ) It provides greater flexibility to the procedure aiming at the implementation of a European Enforcement Order..

The Regulation does not provide a closed catalogue of decisions or orders which would be certifiable as a European Enforcement Order, but rather permits certification in respect of all kinds of enforcement orders meeting the minimum requirements established in the Regulation, which will be detailed below. Thus, in the case of Spanish procedural law it is possible to mention, among others, a

judgment issued in the so-called 'verbal hearing proceedings', ordinary proceedings, a judicial settlement or even certain extrajudicial enforcement orders.

3.-) It is independent from the legislation on the European Payment Order.

Regulation 1896/2006 of the European Parliament and the Council of 12 December 2006 (OJEU L 399 of 30.12.2006) provided for a European payment order procedure. In uncontested proceedings, through form G –annexed to the Regulation-, the European payment order is enforceable and subject to recognition in another Member State of the European Union, the only requisite formality being the submittal of a copy of the request declared enforceable and its translation. There are only two grounds for opposition: incompatibility with an enforceable decision in the other state and payment by the respondent.

The European enforcement order is similar to that of the enforceable European order for payment in that it removes intermediate measures for enforcement in another state although, unlike the European payment procedure, the Regulation on the European Enforcement Order does not contain any uniform or harmonised provision for any procedure but rather a set of minimum standards which enable any national judgment fulfilling these, irrespective of the nature of the national action where it was issued, to become a European Enforcement Order. In theory this would include a European payment order, although in practice the same effects are obtained with a simple declaration of enforceability using Form G in Regulation 1896/2006, thus hoping that Regulation 805/2004 is not resorted to in such cases,.

A similar situation has arisen with Regulation 861/2007 of the European Parliament and the Council of 11 July 2007, which establishes a European Small Claims Procedure, since it sets down practically the same judgment enforcement system as the one established by the European Enforcement Order Regulation, the object of our study. The main difference, however, is that both Regulation 861/2007 and 1896/2006 establish common procedural rules that include enforcement provisions for certain cross-border disputes, while the European Enforcement Order Regulation allows certain decisions (those that meet the Regulation's requirements) issued in a State under its internal procedural rules to access swift conducts of judgment enforcement in a different State.

4<sup>o</sup>.-) It is directly linked to 44/2001 (Brussels I).

It operates within the scope of similar material application, although for certain specific orders it entails further progress, since it facilitates the enforcement.

5.-) It is markedly voluntary.

This means that the procedure therein is an additional option to the already existing ones (i.e. Regulation 44/2001 -Brussels I-, Regulation 1896/2006 or Conventions in force and compatible with it).

As a result, even if the creditor has obtained a judgment for which he could secure certification as a European Enforcement Order, he may nevertheless turn to the mechanism in Brussels I for enforcement of the judgment in another Member State, as stated in Art. 27 of Regulation 805/2004.

## **2. OBJECTIVES, TYPES AND SCOPE.**

### *2.1 Objectives.*

The Regulation attempts to abolish all controls on judicial decisions issued in a Member State as a prior requisite for their enforcement in another Member State (removal of the exequatur) in respect of those cases where creditors have obtained an enforcement order on a pecuniary claim uncontested by the debtor. In this respect Art. 5 of the Regulation states: "A judgment 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".

Since the control imposed by the exequatur effectively disappears (it focuses on the normalization of the summons), the Regulation provides for the minimum standards for service of documents in uncontested claims. These minimum standards include admissible methods of service, a qualifying period for preparation of the defence and the information to be submitted to the debtor. Only the fulfilment of these minimum standards justifies the removal of the control of defence rights by the enforcing Member State, control which is then transferred to the State in which the decision was issued.

The Regulation is an important step forward in the simplification of the enforcement of foreign judgments, since it facilitates the process. This simplifying process began with the Convention, the Brussels I Regulation, and also this new Regulation. This process might eventually go as far as permitting the adoption of enforcing measures by the courts of one state in another Member State (such as seizure of assets located in another country). This is not currently possible, as there is always a requirement that the courts of the Member State in which the judgment is to be enforced take part in the procedure.

### *2.2.- Types of European Enforcement Order*

The Regulation has several variants; although it refers to "a single European Enforcement Order" having equal effects, there are

several ways for it to be issued, depending on the specific document on which it is based (to such an extent that there are different certificate forms in the annexes), namely -

- European Enforcement Order Certificate Judgment (Annex I)

- Partial European Enforcement Order Certificate (there is no specific form; the general form is used because it is only applicable when part of a judgment meets the requirements for certification).

- European Enforcement Order Certificate Court Settlement (Annex II)

- European Enforcement Order Certificate for Public Instrument with executive force. (Annex III)

## *2.3 Scope of Application*

### 2.3.1.- Material

The material scope of Regulation 805/2004 is similar to that under Regulation 44/2001 (Brussels I). Thus it covers (Article 2) civil and commercial matters whatever the nature of the court or tribunal.

This similarity makes it possible to apply case law -created in judgments on the Brussels I Convention and the Brussels I Regulation- to the new Regulation in those cases where issues on the scope of the Regulation arise.

The following matters are expressly outside the scope of the Regulation -

- Revenue matters
- Customs matters
- Administrative matters
- The liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii').
- The status or legal capacity of natural persons.
- Rights in property arising out of a matrimonial relationship.
- Wills.
- Succession.
- Bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings.
- Social security.
- Arbitration.

### 2.3.2.- Territorial

The scope of territorial application -as with existing instruments in matters of civil judicial cooperation- includes all the

Member States (including those incorporated in 2007) of the European Union, with the exception of Denmark.

The entry of ten new States into the European Union on 1 May 2004 led to the first amendment of Regulation 805/2004, since the forms annexed thereto were replaced (in order for it to adapt itself to the new reality of the union) by other annexes which appear in Regulation (EC) 1869/2005 of the Commission of 16 November 2005, which replaces the annexes in Regulation 805/2004 of the European Parliament and the Council of 21 April 2004 establishing a European enforcement order for uncontested claims (OJEU L300 of 17.11.2005).

As a result, the forms to be used are those which appear in the most recent Regulation.

Due to the fact that Bulgaria and Romania joined the Union on 1 January 2007, these Annexes will need to be replaced in order to include the two currencies of these States (lei and leva) although the content and the operation of Regulation 805/2004 remains the same.

It is important, however, to mention that Regulation 44/2001 (Brussels I) will be applicable to Denmark as of 1 July 2007 by virtue of a specific Agreement with this country. This Agreement has been ratified by Denmark and has been the object of certain decisions of the Union: decision of 20 September 2005 on the signing of the convention and decision of 27 April 2006 ratifying it. Nevertheless, the provisions thereof are restricted to those of the Brussels I Regulation and do not apply to 805/2004; therefore it may be concluded that the European Enforcement Order does not extend to Denmark.

#### 2.3.1.- Temporal

Finally, although Art. 33 provides for the Regulation to enter into force on 21 January 2005, this is solely for the purposes of the submittal of the information by the Member States for the Regulation to be applicable.

Therefore the date for the Regulation to become fully operational is 21 October 2005, as Article 33 states. As of this date it will be possible to issue European Enforcement Order certificates even if they refer to previous judgments, provided that they comply with the requirements of the Regulation.

Thus, as regards Romania and Bulgaria (which joined the European Union on 1 January 2007), their authorities may, from the aforementioned date, issue certifications for European Enforcement Orders even if these refer back to previous orders or judgments,, provided that they comply with the requirements of the Regulation, in particular in respect of European Enforcement Orders for judgments

and those referring to the service of the procedure on the person against whom they are issued.

### **3. EUROPEAN ENFORCEMENT ORDER JUDGMENT**

#### *3.1. Judgment on an uncontested claim*

Art. 5 of the Regulation states that the underlying principle is the free movement of judgments and the abolition of exequatur. Thus, a judgment on an uncontested claim which has been certified as a European Enforcement Order will automatically be recognised and enforced in all the other Member States, thereby enabling the creditor to secure enforcement of the judgment in the other Member States without any need for an exequatur.

This system is innovative and it means that it is not the courts or tribunals of the enforcing Member State that determine whether or not the requirements for enforcement of a judgment are met in the exequatur procedure. It is rather the courts of the originating Member State that must decide whether a judgment meets the requirements for certification as a European Enforcement Order. If a certificate is approved, it will be issued without any supervision by the enforcing Member State on the basis of the principle of mutual trust between the EU Member States' respective judicial systems. This reflects the principle of mutual trust in that a decision issued in due process of law by the courts of another Member State is adopted.

The **judgments** which may be certified as European Enforcement Orders are wide-ranging (depending on the procedural law of each individual Member State) although the judgment must be delivered by a court in respect of an uncontested claim concerning matters within the scope of the Regulation -as referred to above-.

The Regulation does not specifically state what kind of judgments qualify, nor does it require that the Member States specify the judgments considered amenable to certification as European Enforcement Orders. Instead, it sets out certain requirements to be met by judgments eligible for certification as European Enforcement Orders, although it is the court seised of the claim that must decide which of the types of judgments under its national law may be certified as European Enforcement Orders.

The courts eligible to certify are not detailed in the Regulation; besides, Member States are not required to list such courts. The only requirement is that they are in fact 'courts' (regardless of their actual name): provided the subject matter falls within the scope of the Regulation, all courts being an integral part of the judicial system of each Member State may issue certificates, whether they be sole-judge courts or courts sitting in bench, since the term 'court' is used to refer to a body exercising jurisdiction.



Courts of the Member States must have regard to the meaning of the term 'judgment' in the Regulation when determining whether their decisions are eligible for certification. The definition given in Art. 4 of the Regulation is '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'.

It may therefore be assumed that not only a judgment delivered at the end of proceedings, but also a small claims order, an order for costs, for payment of interest or an order for damages may be certified as a European Enforcement Order if the requirements are met.

Nevertheless, the judgment must concern an uncontested claim. Article 4 defines the term **claim**: actions for which the issue of certification of a European Enforcement Order is sought must meet the following requirements:

a) They refer to the payment of a specific sum of money.

The sum must be a specific amount, which implies a liquidated debt.

b) The debt must have fallen due or the due date must be indicated in the judgment.

'Receivability' corresponds to what in Spanish law qualifies as a due receivable debt. The debt may have matured already or this may occur in the future, provided that this fact is indicated in the judgment to be certified as a European Enforcement Order.

Finally, Article 3 sets out the conditions under which a claim is deemed to be '**uncontested**', namely -

\* the debtor has expressly agreed to it within the context of judicial proceedings by admission, which implies an express statement of a willingness to admit the claim;

\* the debtor has not objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin in the course of the court proceedings. In this case the debtor assumes a passive role in the proceedings;

\* the debtor has not appeared and has not been represented in a court hearing 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.

### *3.2. Requirements for Certification of Judgments as European Enforcement Orders (Art. 6).*

Art. 6 lays down the following requirements -

a) The judgment must be enforceable in the Member State of origin.

b) The judgment must not conflict with the rules on jurisdiction as laid down in Sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001.

c) If the debtors are consumers, they must be domiciled in the Member State in which the court delivered the judgment.

d) Where a claim is considered to be uncontested due to the debtor's failure to challenge the claim or to appear at the hearing after initially challenging the claim, the court proceedings in the Member State of origin must meet the requirements set out in Chapter III of the Regulation.

These requirements are examined separately in the following section.

#### 3.2.1.) The judgment must be enforceable in the Member State of origin.

Given that there is no requirement that the judgment must be final and binding, the judgments amenable to certification as European Enforcement Orders will include all judgments in uncontested claims proceedings, whether for final or provisional enforcement, given that the fundamental requirement is that they should be enforceable.

#### 3.2.2) The judgment must 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 rules in question govern jurisdiction in respect of insurance matters and exclusive jurisdiction. Breach of these rules constitutes a ground for refusal to enforce the relevant judgment under the provisions of Arts. 35 and 45 of Regulation 44/2001 (Brussels I). As a result, the rules on international jurisdiction must be adhered to if the subject matter of the judgment to be certified includes the above-mentioned matters, as the court must otherwise refuse certification of the judgment as a European Enforcement Order.

#### 3.2.3) If the debtors are consumers, they must be domiciled in the Member State in which the court delivered the judgment.

This concerns uncontested claims where the debtor has never opposed the claim and the contracts were made for a purpose outside the debtor's trade or profession. The debtor must be domiciled in the Member State of origin in which the judgment certified as a European Enforcement Order was given. The purpose of the rule, as cited in the Statement of the Council's Reasons in Joint Position 19/2004, is to strengthen the protection given to consumers.

#### 3.2.4 ) Where a claim is considered to be uncontested due to the debtor's failure to challenge the claim or to appear at the hearing after initially challenging the claim, the court proceedings in the Member State of origin must meet the requirements set out in Chapter III of the Regulation.

Compliance with these procedural requirements is a prerequisite for establishing that the claim is indeed 'uncontested' by a debtor who is aware of a claim against him and intentionally decides to take a passive approach. In practice, this has given rise to the need for certain minimum European standards, although these are rather basic due to the diverse range of procedural systems within the EU and also due to the fact that the European Enforcement Order system places all supervision in the hands of the courts of the Member State of origin.

The procedural guarantees have two aspects:

- 1/ Service methods (Arts. 13 to 15):
- 2/ Information provided to the debtor upon notification (Arts. 16 and 17)

#### 3.2.4.1/Service methods (Arts. 13 to 15):

The rules on service govern the manner in which the document instituting the proceedings, or an equivalent document, must be served on the debtor.

The Regulation provides that service may be effected with or without acknowledgement of receipt by the debtor, on the basis that the lack of proof of receipt does not imply that there is no record of notification (which is essential), but rather determines the specific cases in which notice can be served on a person other than the debtor.

- Personal service with acknowledgment of receipt by the debtor (Art. 13), which includes: personal acknowledgement of receipt or certification by the competent person who effected the service; postal service attested by an acknowledgement of receipt signed and returned by the debtor, and service by reliable electronic means (fax, e-mail) with acknowledgement of receipt, attested by an acknowledgement of receipt signed and returned by the debtor .

- Personal service without proof of receipt by the debtor (Art. 14). These cases do not mean absence of evidence of delivery, rather that it is not the debtor who is served, but other persons related to him, and these include: persons living in the same household as the debtor;; persons employed by the debtor if s/he is a legal entity or is self-employed (service to employers or at the business premises is not admissible). Art. 14 also includes: deposit of the document in the debtor's mail-box provided that this system of service is recognised as valid in the country of service; deposit at the Post Office or public authority with notification of the deposit in the debtor's mail box advising the recipient both of the legal nature of the document and of its purpose and effects; postal service without proof of receipt, although in all cases it is necessary to provide evidence of service and electronic means attested by confirmation of delivery. Finally, service on the debtor's representatives is admissible (Art 15); in this case the person occupying the position of debtor for the purposes of application of the provisions of Arts. 13 and 14 is the debtor's representative.

Nevertheless, and with respect to service to be made in another Member State, notifications and service of documents should be made through one of the channels of Regulation 1348/2000 relating to the notification and service in Member States of judicial and extrajudicial documents on civil or commercial matters. (it must be pointed out that from 13 November 2007, this Regulation was replaced by Regulation (EC) no. 1393/2007 of the European Parliament and 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”), repealing Regulation (EC) no 1348/2000 of the Council).

If the service has been verified through one of the aforementioned means, the judgment may be certified as a European Enforcement Order. At times this may conflict with national methods, which may incorporate other means not provided for in the Regulation (such as the Spanish public notice summons), or the Regulation may have established forms of service which are unacceptable under national legislation (as is the case of Spain with deposit in mailboxes). The Regulation does not permit service methods in different Member States which are not authorised by national legislation (in the case of Spain, service cannot be made to a mail box). However, it does establish that if such means have been used in another Member State in which they are permissible, a judgment delivered in a procedure which has been certified as a European Enforcement Order and in which it has been used, should be enforced in another Member State even when the method of service is not admissible, as the Regulation validates it, and the issue of the certification of the European Enforcement Order cannot be subject to any revision by the state of enforcement. Conversely, although it does not prevent the judgment from being issued and being enforceable in the State which has issued it, the use of a form of service valid for national legislation (such as the public notice summons) but which is not recognised by the Regulation, , cannot however, be admissible for a judgment to be certified as a European Enforcement Order and it will be necessary to make use of other mechanisms such as the Brussels I Regulation. Nevertheless, if there is a challenge on the grounds of the irregularity of the service, it may be accepted, although this will depend on the domestic law of the state of enforcement and the admissibility which that national law might accord to a public notice summons.

3.2.4.2/ Information provided to the debtor upon notification (Arts 16 and 17).

This is also an essential element of the Regulation, since in uncontested claims it is as important to have evidence of the debtor's receipt of the claim as it is to inform that person sufficiently of the courses of action available in response to the claim. Only then will it be possible to consider that a passive attitude by the debtor constitutes “acceptance” of the claim.

The information to be provided must refer both to the claim and to the procedural requirements for contesting it (in writing or on the day of the hearing)

The debtor should be informed of the following:

- names and addresses of the parties;
- amount of the claim;
- interest claimed (rate and term unless it is a legal interest);
- brief statement of the reason for the claim;
- period for contesting the claim and address to which it should be sent, in addition to the formalities required (the need for a legal professionals such as a lawyer).
- If the notification is for a summons to a hearing, service should have been effected in sufficient time to enable the debtor to arrange for his defence. The meaning of "sufficient" is not specified, although it may be assumed that the various terms provided in Spanish legal proceedings are adequate for this purpose.
- Favourable effects for the creditor, which may involve the absence of opposition. With respect to the nature of these favourable effects they are said to be those of issue and enforcement of a judgment against the debtor, as well as payment of the procedural costs.

### *3.3.-Cure of non-compliance with minimum standards.*

If the proceedings in the Member State of origin did not meet the procedural requirements, such non-compliance may be cured (Art 18). However, in order for this to be possible (which will determine whether or not the decision may be certified as a European Enforcement Order), it is always a requirement that the decision giving rise to the European enforcement order be served on the debtor in the manner mentioned above, and in that notification the debtor must have been advised of the methods to challenge the decision; besides, the debtor must have failed to challenge the judgment.. In such cases, the period of challenge must have expired, in such a way that only final decisions may be certified (an exception to the general rule which does not contemplate this requirement).

Even if the notification formalities in Articles 13 and 14 of the Regulation have not been fulfilled, there is deemed to be a cure if it is demonstrated that the debtor has personally received the document with sufficient time to prepare his defence (which is perfectly compatible with the jurisprudence of the Spanish Constitutional Court on the cure of faulty services).

Nevertheless, the possibility of a review (Art. 19) should be left open in the event of cases of force majeure or extraordinary circumstances which prevented the debtor from objecting to the claim.

### *3.4.- Issue of the European Enforcement Order Certificate. Challenges*

Art. 9 of the Regulation deals with the contents of the Certificate of the European Enforcement Order. The relevant form is contained in Annex 1, (the same as in Regulation 1869/2005 until Romania and Bulgaria are included), which should be issued in principle by the same court issuing the judgment on which the order is based, and it should be in the official language of the place of the judgment.

This system represents a considerable advantage with respect to the exequatur procedure in Brussels I, since the conversion to a European Enforcement Order of a specific decision is made by the originating court, which has heard the case in question and applied the relevant procedures.

Appeals against this judgment (issued after verifying the fulfilment of the requirements) cannot be lodged, pursuant to Art. 10. This is due to the fact that in this phase of the procedure the court only ascertains whether the formal requirements for the issue of the certificate have been met. Should the merits or formalities of the case be contested, allegations would have to be made during the qualifying period for reply. However, despite the foregoing, the rectification of material errors is admissible, as is the withdrawal should the certificate have been wrongly granted (Art 10.1). In this case there is a certificate form in Annex VI (once the rectification has been verified). This rectification/withdrawal procedure is subject to the domestic rules of law.

These rules in the case of Spain are detailed in the Final Fourth Provision of Act 19/2006 of 5 June extending the means for protection of intellectual and industrial property rights and establishing procedural standards for facilitating the application of various Community Regulations (BOE 6 June 2006), which introduces into the Law on Civil Procedure a Twenty First Final Provision termed "Measures for facilitating the application in Spain of European Parliament and Council Regulation of 21 April 2004 establishing a European Enforcement Order for uncontested claims".

This legal reform deals with the procedure to be followed by the court delivering the judgment (which, irrespective of its type, has jurisdiction to issue the European Enforcement Order arising from a judgment) for certification, rectification, revocation and refusal of issue.

#### **A) Certification**

Certification is issued by means of an order which differs from the general appeal system in that, contrary to orders issued by courts and tribunals, it is not subject to any appeal, as expressly stated in Art. 10.4 of the Regulation, which prevails over Spanish domestic legislation.

Given the voluntary nature of the European Enforcement Order, it requires application by an interested party. Only after this application has been made and it has been verified that the formal requirements are met will the order be issued (not subject to appeal) and will the court duly issue the certificate in Annex I.

#### B) Rectification

Rectification of errors in a European Enforcement Order is carried out in application of the provisions of Art 267 of the Organic Law of the Judiciary which regulates the system for clarification of obscure concepts and material errors in judgments in general

#### C) Revocation

In order to revoke a certification of an European Enforcement Order, an application is required, and in the case of issue of an incorrect European Enforcement Order (Art. 10.1b), an application for rectification should be filed, which must be dealt with and resolved upon pursuant to the provisions for appeal. Despite the fact that the procedure is the same as that in a review appeal, a revocation application cannot be construed as an appeal, as this would contravene Article 10.4 of the Regulation, which states that no appeal shall lie against the issuing of a European Enforcement Order. Thus, if a European Enforcement Order has been wrongly granted, an appeal cannot be lodged against the order for its issue. However, it will be possible to submit a revocation application (which, as indicated, will be dealt with as a review appeal). There is no qualifying period for this revocation application since the review appeal procedure operates once the revocation application has been submitted. Despite this, it would be advisable to submit the revocation application within five days, which is the period established for a review appeal under the law of civil procedure. The decision issued in respect of whether or not the European Enforcement Order will be revoked would need to propose whether or not it is subject to an appeal (as the previous application was not a review appeal but rather an application for revocation). This is the appeal which is deemed operative, since it is the one provided for refusal of issue of a European Enforcement Order, which in practice is equivalent to a refusal.

#### D) Refusal of issue of a European Enforcement Order

Finally, with respect to the refusal of a European Enforcement Order (that is, the courts deems that it does not fulfil the requirements and issues a negative order) it is subject to reversal and there is no possibility of appeal against the decision on the reversal, as the order resolving a reversal cannot be appealed later (except in a complaint) pursuant to Art. 454 of the Law of Civil Procedure.

### 4:- OTHER EUROPEAN ENFORCEMENT ORDERS

#### *4.1.- PARTIAL EUROPEAN ENFORCEMENT ORDER*

According to Art. 8, partial orders may be issued in cases where only specific parts of the judgment fulfil the requirements of the Regulation

Typical cases which may be included are those for which decisions have been issued such as:

- a) cases dealing with various matters, not all of which relate to pecuniary claims for a specific sum which has expired;
- b) pecuniary claims for a specific sum which has expired and that are not fully uncontested or do not fulfil the requirements for certification as a European Enforcement Order.

In these cases it would be necessary to directly approach the court and request the issuing of a partial certification of an European Enforcement Order, or to make an application for the issue of a full European Enforcement Order, with the result that this is only partially granted in the order. In the latter case, since the part denied implies refusal, the order could be subject to a review appeal, which is the one contemplated by law-giving authorities in cases of refusal of issue of a European Enforcement Order. This refusal may cover either the full application or part of it (a partial order is issued when a full order had been requested). This appeal in any case shall not be admissible if the part of the order challenged is the part issuing the European Enforcement Order because, as mentioned above, no appeal can be lodged against an order for issue.

#### *4.2.- EUROPEAN ENFORCEMENT ORDER IN COURT SETTLEMENTS (ART 24).*

Even though the system is similar to that for the certification of European Enforcement Order for other decisions, the certification form is different (Annex II) although in this case, given the settlement of the action brought before the Court, all the problems with procedural requirements (Chapter III of the Regulation) are not applicable, nor is there any possibility of review by the State of enforcement should there be any incompatibility with another decision issued on the case. This shall be dealt with later as a ground for refusal of enforcement with the enforcement standards.

#### *4.3.- EUROPEAN ENFORCEMENT ORDER, ENFORCEABLE AUTHENTIC INSTRUMENT (ART 25).*

The Regulation does not limit certification exclusively to decisions or orders of legal authorities, but it also incorporates as possibly certifiable as European Enforcement Orders specific extrajudicial authentic instruments. In these cases the authority which authenticated the document shall issue the European Enforcement



Order certificate by completing the standard form in Annex III in application, by analogy, of the provisions for judicial decisions in respect of issue.

Nevertheless, the greater or lesser extent of this possibility of certification will depend on the decision by the Spanish government on the bodies that may issue these European Enforcement Orders as enforceable authentic instruments.

The Member States have already stated the authorities responsible for this issue (Spain has done so via the aforementioned Act 19/2006). These bodies present three possibilities:

- a) there are no instruments conforming to national legislation and therefore it is a null figure, which means that in those Member States instruments of this type are not certified. This does not prevent certifications issued in other Member States from being enforced in those states, pursuant to Art. 25;
- b) notaries certify directly, or in some cases other bodies do, as long as they are recognised by national legislation);
- c) the Courts of Justice certify even when in cases of non-judicial documents. In this case, courts should oversee the requirements stipulated in the Regulation; only when these are met should the certification be issued. This presupposes that the issuer of the instrument and the issuer of the certification of the European Enforcement Order are different.

Spain has opted for a system where certification is directly carried out by notaries . This system contemplates the issue and rectification or refusal to issue, with appeal to the General Office of Registries and Notaries and with final appeal before the Court of First Instance. As a result, no other authority (except for the obvious exception of courts for European Enforcement Orders) is entitled to issue certification.

Nevertheless, and irrespective of the decisions by each State on the bodies responsible for certification, it should be emphasized that certifications of European Enforcement Orders issued pursuant to the terms of Art. 25 of the Regulation shall always be enforceable in other Member States even when the authority or body certifying in the issuing state would not be entitled to do so in the enforcing state.

The current systems are:

Belgium: Notaries
Czech Republic: District Court
Bulgaria: Information to be forwarded
Germany: Notaries and civil servants with responsibility for children (Welfare Offices); the latter for the undertakings with which they are concerned.
Estonia: Harju District Court
Greece: Notaries

Spain Notaries
France: President of the Chamber of Notaries
Ireland: These instruments do not exist
Italy: Courts
Cyprus: No statement has been made to the Commission
Latvia: Statement has been made but only to indicate that as yet no decision has been taken
Lithuania: Notaries
Luxembourg: Notaries
Hungary: Courts
Malta: No statement has been made to the Commission
Netherlands: Courts
Austria: Notaries and Administrative Authority (in the case of maintenance)
Poland: District Court
Portugal: Notaries
Slovenia: Notaries
Slovakia: Regional Courts
Finland: Municipal Social Boards (maintenance)
Romania: Courts of the district in which the instrument was adopted
Sweden: No statement has been made to the Commission
United Kingdom: <ul style="list-style-type: none"><li>▪ England and Wales: These instruments do not exist</li><li>▪ Scotland: Keeper of the Registers (documents recorded for maintenance and enforcement in the Books of Council and Session</li><li>▪ Northern Ireland: These documents do not exist</li><li>▪ Gibraltar: These documents do not exist</li></ul>

## 5.- ENFORCEMENT OF EUROPEAN ENFORCEMENT ORDERS

### 5.1.- *Applicable procedure.*

The Regulation does not establish the manner to proceed when enforcing any of the certifications of European Enforcement Order above, since it merely states that enforcement is governed by the laws of the enforcing authorities of the Member State of enforcement (Art 20). This means that the procedure will be commenced in the manner established by the legislation of the State in question, attaching to the claim the documents stipulated in Art 20:

a) a copy of the judgment giving rise to the certification of European Enforcement Order and which satisfies the conditions necessary to establish its authenticity (in the case of Spain, an attested copy, order, or any other decision which has served as the basis for certification);

b) a copy of the European Enforcement Order Certificate which satisfies the conditions necessary to establish its authenticity.

Thus, the document submitted need not necessarily be the certificate itself, an attested copy is sufficient;

c) where necessary, (it is not obligatory) a transcription of the certificate of the European Enforcement Order 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, the 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.

Most Member States have stated the languages in which it is necessary to submit the certification of the European Enforcement Order.

This means that in order to be enforced, an enforcement application should be made to the competent Court (in the case of Spain, through the statement in Act 19/2006: the Court of First Instance of the domicile of the respondent or the place of enforcement) in the manner stipulated by the procedural law of the state of enforcement. This should be accompanied by the judgment or document to be enforced (in the original language), the certification of the European Enforcement Order Certificate (in the original language which is that of the instrument or proceedings in which the judgment was issued) and a translation of the European Enforcement Order Certificate in the event that this has not been issued in a language accepted by the State of enforcement. In principle, a translation of the judgment or document which has served as a basis for the European Enforcement Order is not required, as the certification contains sufficient data to identify the essential elements needed to deal with the enforcement.

The previous declaration requires that, although the enforcement application should in principle be formulated in the official language of the State of enforcement (or a language accepted) the European Enforcement Order Certificate and the judgment/instrument need not necessarily be translated. The judgment/instrument on which the enforcement is based does not require translation in any case, and the certification will only need to be translated in the event that it has not been written in one of the languages specified by the State of enforcement. In this case the application should be accompanied by a translation into one of these languages.

The statements submitted are:

Belgium; Dutch, French or German (according to area)
Bulgaria: Information to be forwarded
Czech Republic: Czech, English or German
Germany: German
Estonia: Estonian or English
Spain: Spanish
Greece: Greek or English
France: French, English, German, Italian or Spanish

Ireland: Irish or English
Italy: Italian
Cyprus: No statement has been made to the Commission
Latvia: Latvian
Lithuania: Lithuanian
Luxembourg: French and German
Hungary: Hungarian or English
Malta: No statement has been made to the Commission
Netherlands: Dutch or any language understood by the debtor
Austria: German
Poland: Polish
Portugal: Portuguese
Slovenia: Slovenian
Slovakia: Slovakian
Finland: Finnish, Swedish or English
Romania: Romanian
Sweden: No statement has been made to the Commission
United Kingdom: <ul style="list-style-type: none"> <li>▪ England and Wales: English</li> <li>▪ Scotland: English</li> <li>▪ Northern Ireland: English</li> <li>▪ Gibraltar: English</li> </ul>

*5.2.- Refusal of enforcement: review possibilities by the court of the state of enforcement (Art 21).*

Notwithstanding the operational capacity of the grounds for opposition stipulated in internal legislation, given that enforcement is governed by internal law (provided that it does not entail assessment with respect to the substance or basis) and with respect to European Enforcement Order Certificates, Art. 21 of the Regulation specifies the grounds for refusal of enforcement based on operation of the system as established under the Regulation, which add to those under the national regulations. In order to appeal and resolve on these, the national law of procedure is applied in such a way that the grounds for opposition are included in the most satisfactory manner (generally principles referring to an opposition to the enforcement due to procedural defects).

The Regulation specifically states as grounds (upon application by the debtor) the fact that the judgment certified as a European Enforcement Order (this does not include Enforcement Orders deriving from court settlements or those based on public instruments) is irreconcilable with an earlier judgment given in any Member State or in a third country (a review as to the substance of the judgment is unacceptable) provided that they fulfil the following three requirements:

a) the earlier judgment involved the same course of action and was between the same parties (identities of the thing judged);

b) the judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement;

c) the irreconcilability was not raised as an objection in the court proceedings in the Member State of origin.

### *5.3.- Stay or limitation of enforcement (Art 23).*

This is applicable in cases where the European Enforcement Order is not final in cases where the debtor in the original State has either challenged the judgment certified as a European Enforcement Order (provisional enforcement, which includes cancellation of final judgments) or has applied for the rectification or withdrawal of the order as established in Art. 10 discussed above.

In such cases the debtor may apply to the court (on the basis of grounds referring to certification of European Enforcement Order as a result of court judgments), to either stay the enforcement proceedings, to limit the enforcement procedure to protective measures, or to make enforcement conditional on the provision of such security as the competent enforcement authority shall determine. The stay of enforcement is the most exceptional option and therefore it is only resorted to under exceptional circumstances. As to the procedural incorporation of this possibility, the most appropriate national regulations should be applied.