



*Project No JUST/2010/JCIV/AG/0010-30-CE-0421163/00-50 «Enhancing quality of judicial cooperation in civil matters: the European Union civil proceedings and tools provided by regulations on taking evidence and service of documents»*

Training course „ Cross – border civil proceedings: European order for payment, European small claims procedure and European enforcement order”

May,21-22,2013

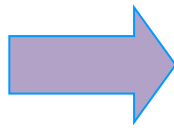
# European Enforcement Order for uncontested claims and its application

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International Family Law

*The training course is being implemented within the European Commission Specific Programme "Civil Justice" Project No JUST/2010/JCIV/AG/0010-30-CE-0421163/00-50 «Enhancing quality of judicial cooperation in civil matters: the European Union civil proceedings and tools provided by regulations on taking evidence and service of documents*

|                                                                                                                                                                                                                  | APPLICATION<br>AS OF: | TODAY IN<br>FORCE FOR:                 |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|----------------------------------------|
| <p>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<br/>(the „Brussels I Regulation“)</p>                 | 1 March 2002          | all EU Member States including Denmark |
| <p>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<br/>(the „European Enforcement Order Regulation“)</p> | 21 Oct. 2005          | all EU Member States except Denmark    |
| <p>Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure<br/>(the „European Payment Order Regulation“)</p>              | 12 Dec. 2008          | all EU Member States except Denmark    |
| <p>Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure<br/>(the „Small Claims Regulation“)</p>                              | 1 Jan. 2009           | all EU Member States except Denmark    |

## ENFORCEMENT ORDER REGULATION



### 1<sup>st</sup> step

- National decision, or
- court settlement, or
- authentic instrument

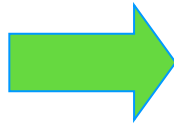
on uncontested pecuniary claim

### 2<sup>nd</sup> step

Enforcement title certified as European Enforcement Order (EEO)

**No exequatur needed** for enforcement in other Member State

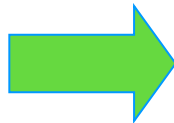
## EUROPEAN PAYMENT ORDER REGULATION



European procedure for uncontested pecuniary claims created in addition to relevant national procedures

Enforceability in other Member States  
**without exequatur**

## SMALL CLAIMS REGULATION



European small claims ( value  $\leq$  2000 EUR) procedure created in addition to relevant national procedures

Enforceability in other Member States  
**without exequatur**

# EUROPEAN JUDICIAL ATLAS

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|                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Member States' Courts                                                                                                                                                                                         |
| Legal Aid (Directive 2003/8/EC)                                                                                                                                                                               |
| Mediation (Directive 2008/52/EC)                                                                                                                                                                              |
| Serving Documents (Regulation 1393/2007)                                                                                                                                                                      |
| European Cross-border Procedures <ul style="list-style-type: none"><li>European Payment Order (Regulation 1896/2006)</li><li>Small Claims (Regulation 861/2007)</li></ul>                                     |
| Taking Evidence (Regulation 1206/2001)                                                                                                                                                                        |
| Recognising and Enforcing Judgements <ul style="list-style-type: none"><li>Judgements in civil and commercial matters (Regulation 44/2001)</li><li>European Enforcement Order (Regulation 805/2004)</li></ul> |
| Family law <ul style="list-style-type: none"><li>Matrimonial matters and matters of parental responsibility (Regulation 2201/2003)</li><li>Maintenance obligations (Regulation 4/2009)</li></ul>              |
| Compensation to Crime Victims (Directive 2004/80/EC)                                                                                                                                                          |

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# ENFORCEMENT ORDER REGULATION

## STRUCTURE

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PREAMBLE

CHAPTER I – Subject Matter, Scope and Definitions

Arts 1-4

CHAPTER II – European Enforcements Order

Arts 5-11

CHAPTER III – Minimum Standards for Uncontested Claims Procedures

Arts 12-19

CHAPTER IV – Enforcement

Arts 20-23

CHAPTER V – Court Settlements and Authentic Instruments

Arts 24-25

CHAPTER VI – Transitional Provision

Art. 26

CHAPTER VII – Relationship with other Community Instruments

Arts 27-28

CHAPTER VIII – General and Final Provisions

Arts 29-33

ANNEX - FORMS

**! Updated forms** following accession of new Member States on 1 May 2004;  
see **Commission Regulation (EC) No 1869/2005**

# ENFORCEMENT ORDER REGULATION

## CHAPTER I - SCOPE

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### Article 2

- The Regulations applies in civil and commercial matters, whatever the nature of the court or tribunal
- It shall NOT extend, in particular to: revenue, customs or administrative matters or State liability for acts and omissions in the exercise of State authority
- Not applicable to matters listed in Art. 2(2)

➤ Complies with scope Brussels I Regulation

**! European Maintenance Regulations, Art. 58(2):**

**“This Regulation shall replace, in matters relating to maintenance obligations, Regulation (EC) No 805/2004, except with regard to European Enforcement Orders on maintenance obligations issued in a Member State not bound by the 2007 Hague Protocol.”**

# ENFORCEMENT ORDER REGULATION

## CHAPTER I - APPLICABILITY

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### Article 3

#### Judgements, court settlements and authentic instruments on uncontested claim

- **Debtor expressly agreed** to claim by admission or by means of settlement approved by a court or concluded before a court in the course of proceedings; *or*
- **Debtor has never objected** to claim, in compliance with relevant procedural requirements under law of Member State of origin, in the course of the court proceedings; *or*
- **Debtor has not appeared or been represented** at 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 creditor under law of Member State of origin; *or*
- **Debtor has expressly agreed** to claim in an authentic instrument.

Regulation also applies to decisions delivered following challenges to judgements / court settlements / authentic instruments certified as EEO

# ENFORCEMENT ORDER REGULATION

## CHAPTER I - DEFINITIONS

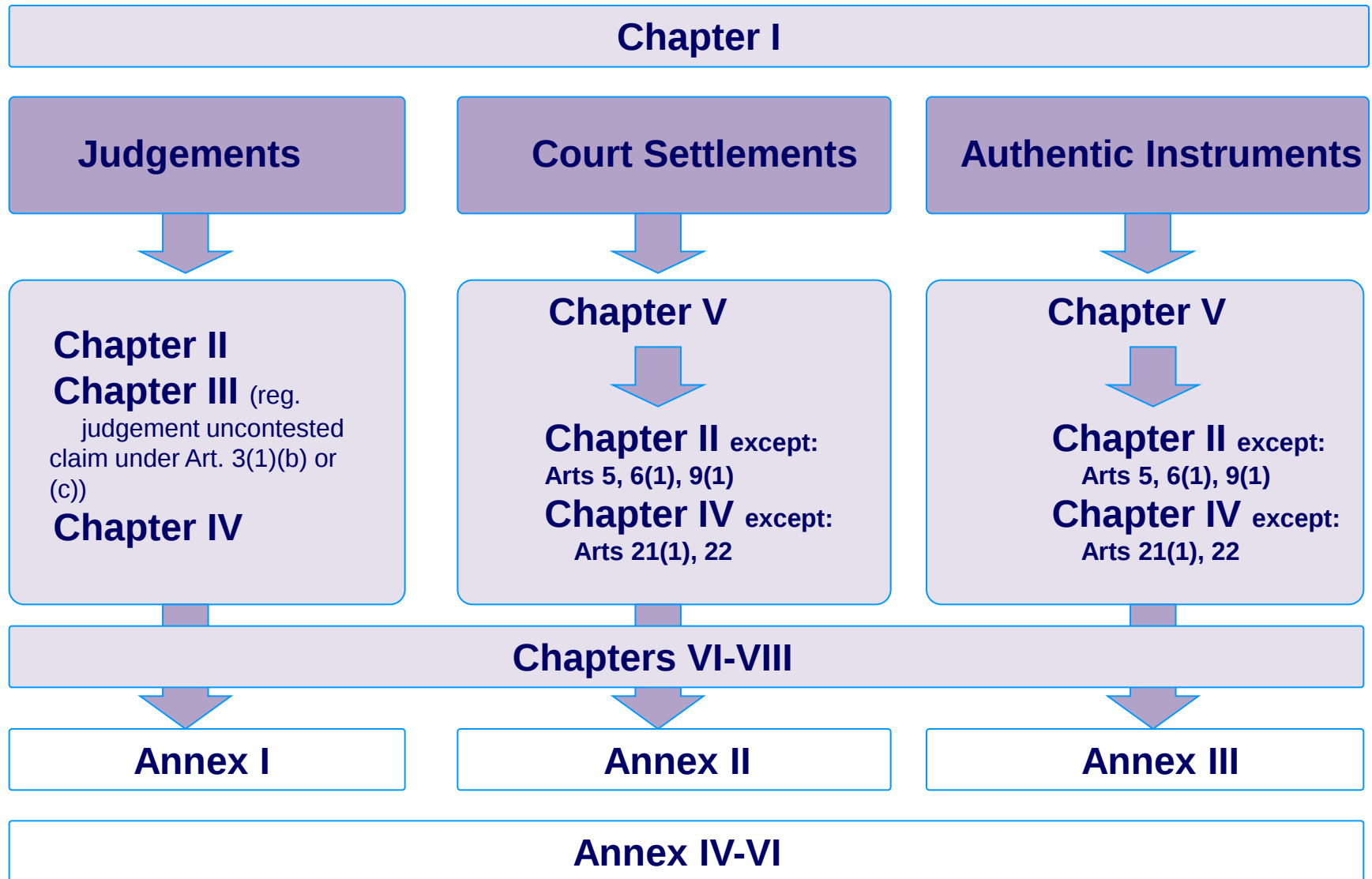
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### Article 4

- 'judgement'
- 'claim'
- 'authentic instrument'
- 'Member State of origin'
- 'Member State of enforcement'
- 'court of origin' (with special rule for Sweden)

} ! Art. 2 (2) – Member States all  
EU Members States except DK

# ENFORCEMENT ORDER REGULATION OVERVIEW



# ENFORCEMENT ORDER REGULATION

## CHAPTER II

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Certificate indicating lack or limitation of enforceability - [ANNEX IV](#)

- shall be issued, upon application at any time, where enforceability of judgement ceased to exist / has been suspended or limited (*Art. 6(2)*)

Replacement certificate – [ANNEX V](#)

- shall be issued, upon application at any time, where a decision has been delivered following a challenge to a judgment certified as a European Enforcement Order in accordance with Art. 6(1), if that decision on the challenge is enforceable in the Member State of origin (*Art. 6 (3)*)

Rectification or Withdrawal of EEO certificate – [ANNEX VI](#)

EEO certificate shall be

- rectified where, due to a material error, there is a discrepancy between the judgment and the certificate; (*Art 10(1)(a)*)
- withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in the Regulation. (*Art 10(1)(b)*)

! For court settlements and authentic instruments - the provisions of Chapter II, with the exception of Articles 5, 6(1) and 9(1), see Art. 24

# ENFORCEMENT ORDER REGULATION

## CHAPTER II

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### Article 8 – Partial European Enforcement Order certificate

- where only parts of the judgement met the Regulation's requirements

### Article 9 – Issuing of European Enforcement Order certificate

- using ANNEX I - for judgement on uncontested claim
- EEO certificate issued in language of the judgement

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| Compensation to Crime Victims (Directive 2004/80/EC)                                                                                                                                                          |

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Family law

Compensation to Crime Victims

European Enforcement Order >>> **Forms**

Information  
Information communicated by member states  
**Forms**  
Documents

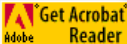
Selected Country: **Latvia**

CLICK ON THE MAP TO SELECT ANOTHER COUNTRY:



Forms

- [European enforcement order certificate - judgment](#)
- [European enforcement order certificate - court settlement](#)
- [European enforcement order certificate - authentic instrument](#)
- [Certificate of lack or limitation of enforceability \(article 6\(2\)\)](#)
- [European enforcement order replacement certificate following a challenge \(article 6\(3\)\)](#)
- [Application for rectification or withdrawal of the european enforcement order certificate \(article 10\(3\)\)](#)



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Family law

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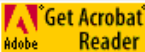
European Enforcement Order >>> **European enforcement order certificate - judgment**

Information

Information communicated by member states

Forms

Documents



**EUROPEAN ENFORCEMENT ORDER CERTIFICATE - JUDGMENT**

**1. Member State of origin:**

|            |                          |                |                          |          |                                     |                |                          |
|------------|--------------------------|----------------|--------------------------|----------|-------------------------------------|----------------|--------------------------|
| Belgium    | <input type="checkbox"/> | Czech Republic | <input type="checkbox"/> | Germany  | <input type="checkbox"/>            | Estonia        | <input type="checkbox"/> |
| Greece     | <input type="checkbox"/> | Spain          | <input type="checkbox"/> | France   | <input type="checkbox"/>            | Ireland        | <input type="checkbox"/> |
| Italy      | <input type="checkbox"/> | Cyprus         | <input type="checkbox"/> | Latvia   | <input checked="" type="checkbox"/> | Lithuania      | <input type="checkbox"/> |
| Luxembourg | <input type="checkbox"/> | Hungary        | <input type="checkbox"/> | Malta    | <input type="checkbox"/>            | Netherlands    | <input type="checkbox"/> |
| Austria    | <input type="checkbox"/> | Poland         | <input type="checkbox"/> | Portugal | <input type="checkbox"/>            | Slovakia       | <input type="checkbox"/> |
| Slovenia   | <input type="checkbox"/> | Finland        | <input type="checkbox"/> | Sweden   | <input type="checkbox"/>            | United Kingdom | <input type="checkbox"/> |

**2. Court/Tribunal issuing the certificate**

2.1. Name:

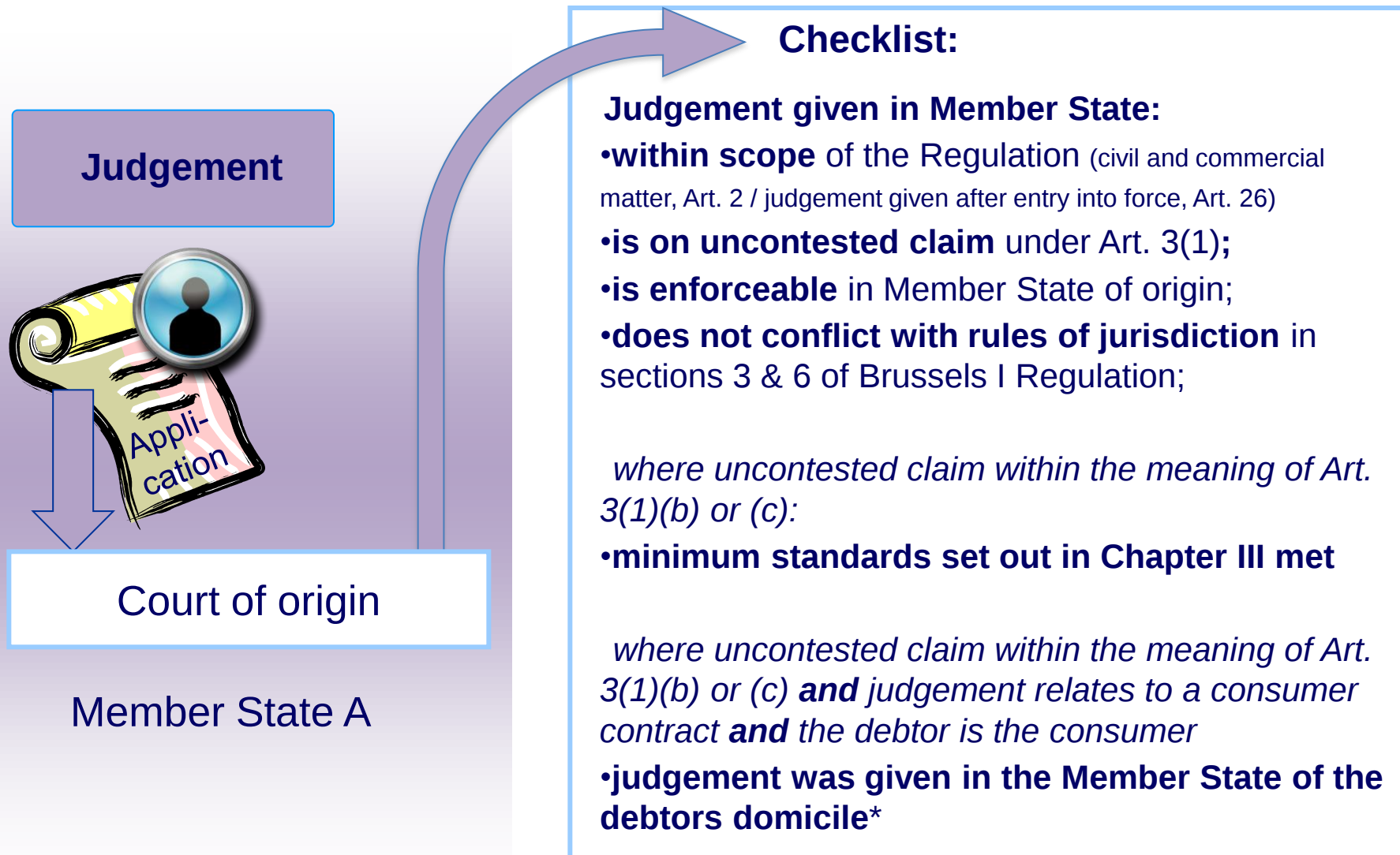
2.2. Address:

sdf

2.3. Tel./fax/e-mail:

# ENFORCEMENT ORDER REGULATION

## JUDGEMENTS – Requirements for Certification



\*domicile = within the meaning of Art. 59 of Brussels I Regulation

# ENFORCEMENT ORDER REGULATION

## **CHAPTER III – MINIMUM STANDARDS FOR UNCONTESTED CLAIMS PROCEDURES**

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### Article 12

- judgement on uncontested claim in the meaning of Art. 3(1)(b) or (c)
- decision following a challenge to a judgement where, at the time of that decision, the conditions of Art. 3(1)(b) or (c) are fulfilled

### Recitals 10 *et seq.*

- Sufficient guarantee of observance of the rights of defence;
- Respect for right to fair trial as recognised by Art. 47 of the Charter of Fundamental Rights of the European Union;
- Minimum standards to ensure that the debtor is informed about the court action / requirements of active participation / consequences of non-participation in sufficient time and in a way as to enable him to arrange for defence
- Due to difference between Member States' rules of civil procedure and especially those governing service a detailed definition of minimum standards is necessary

# ENFORCEMENT ORDER REGULATION

## CHAPTER III – MINIMUM STANDARDS

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### Article 13 – Service with proof of receipt by debtor

Document instituting proceedings or an equivalent document **served on debtor** by:

- **personal service attested by acknowledgement** of receipt, incl. date, **signed by debtor**;
- **personal service attested by a document signed by competent person who effected service** stating that debtor has received the document or refused to receive it without any legal justification, and the date of service;
- **postal service attested by acknowledgement** of receipt including date **signed and returned by debtor**;
- **service by electronic means** such as fax / e-mail, **attested by acknowledgement** of receipt including date **signed and returned by the debtor**

Any summons to a court hearing can be served on the debtor in compliance with paragraph 1 or orally in a previous court hearing on the same claim and stated in the minutes of that previous court hearing

# ENFORCEMENT ORDER REGULATION

## CHAPTER III – MINIMUM STANDARDS

### Article 14 – Service without proof of receipt by debtor

**Debtor's address must be known with certainty, Art. 14(2)**

**Service** of document instituting proceedings or equivalent document and any summons to a court hearing **effected by:**

- **personal service at debtor's personal address on persons living in same household / are employed there;**
  - **in the case of self-employed debtor or legal person, personal service at the debtor's business premises on persons employed by debtor;**
  - **deposit of the document in the debtor's mailbox;**
  - **deposit of the document at a post office or with competent public authorities and the placing in the debtor's mailbox of written notification of that deposit,** provided that the written notification clearly states the document's character as 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;
- | <b>Art. 14(3)</b>                                                                                                                                                                                                                                                                                                    | <b>or</b> | <b>Art. 14(3)</b>                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|-------------------------------------------------------------------------|
| Service attested by:<br>(a) document signed by competent person who effected service, indicating: <ul style="list-style-type: none"><li>- method of service,</li><li>- date of service,</li><li><b>and</b></li><li>- if document served on person other than debtor, name of person and relation to debtor</li></ul> |           | Service attested by:<br>(b) acknowledgement of receipt by person served |
- **postal service without proof pursuant to paragraph 3 where the debtor has his address in Member State of origin;**
  - **electronic means attested by automatic confirmation of delivery,** provided that debtor has expressly accepted this method of service in advance.

# ENFORCEMENT ORDER REGULATION

## CHAPTER III – MINIMUM STANDARDS

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### Article 15 – Service on debtor's representative

- **Service** pursuant to Arts. 13, 14 **may also have been effected on debtor's representative**

# ENFORCEMENT ORDER REGULATION

## CHAPTER III – MINIMUM STANDARDS

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Provisions to the debtor of due information about:

### **the claim**

#### **Article 16**

**document instituting proceedings  
or equivalent document must  
have contained:**

- the **parties' names and addresses**;
- the **amount of the claim**;
- if interest on the claim is sought, **the interest rate and period** unless statutory interest is automatically added to the principal under the law of the Member State of origin;
- a statement of the **reason for the claim**.

# ENFORCEMENT ORDER REGULATION

## CHAPTER III – MINIMUM STANDARDS

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Provisions to the debtor of due information about:

### **the procedural steps to contest the claim**

#### **Article 17**

**clearly stated** in or together with the document instituting the proceedings, the equivalent document or any summons to a court hearing **must have been:**

- **procedural requirements for contesting the claim, including time limit** for contesting in writing or time for the court hearing, as applicable, **name and address of the institution to which to respond or before which to appear**, as applicable, **and whether representation by lawyer is mandatory;**
- **consequences of an absence of objection or default of appearance**, in particular, where applicable, the possibility that judgment may be given or enforced against debtor and the liability for court proceedings related costs

# ENFORCEMENT ORDER REGULATION

## **CHAPTER III – MINIMUM STANDARDS**

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Article 18 – Cure of non-compliance with minimum standards

Article 19 – Minimum standards for review in exceptional cases

# ENFORCEMENT ORDER REGULATION

## **ABOLITION OF EXEQUATUR**

Member State A

**Judgement  
certified as  
European  
Enforcement  
Order**

RECOGNITION &  
ENFORCEMENT

Member State B

**ABOLITION OF  
EXEQUATUR  
*Article 5***

- judgement is recognised and enforced without the need for a declaration of enforceability and without any possibility of opposing its recognition

# ENFORCEMENT ORDER REGULATION

## CHAPTER IV - ENFORCEMENT

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### Article 20 – Enforcement Procedure

- **enforcement procedures governed by the law of the Member State of enforcement**
- **a judgment certified as a European Enforcement Order shall be enforced under the same conditions as a judgment of Member State of enforcement**
- **creditor needs to provide enforcement authorities with:**
  - **copy of the judgment** satisfying authenticity needs; **and**
  - **copy of the European Enforcement Order certificate** satisfying authenticity needs; **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 or indicated language (see Art. 20(2) c) for details)**

# ENFORCEMENT ORDER REGULATION

## **CHAPTER IV - ENFORCEMENT**

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Article 21 – Refusal of Enforcement

Article 23 – Stay or limitation of enforcement

## Training Course on Cross-Border Civil Proceedings

Thank you for your attention

Juliane Hirsch, LL.M.  
Independent Consultant  
on Private International Law and  
International Family Law