

# TRAIL

Train in your language: multilingual transnational training in EU civil and commercial law

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## D4.1 – Dissemination material

### BOOKLET

on EU law standards



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## Executive summary

The EU-funded project titled Train in your language: multilingual transnational training in EU civil and commercial law – TRAIL trained 175 lawyers, notaries and bailiffs from Greece, Cyprus, Estonia, Latvia and Poland, as well as 16 trainers, on EU procedural civil and commercial law, through five multilingual, transnational training workshops, under the coordination of the Centre for European Constitutional Law – Themistocles and Dimitris Tsatsos Foundation (GR), in collaboration with Tallinn University (ET), the Laboratory of Law and Informatics of the National and Kapodistrian University of Athens (GR), the University of Cyprus (CY), the University of Silesia (PL), and Latvia University (LV). The project is supported by 16 professional associations in the participating countries.

The training seminars addressed five EU legal documents and tools, namely: Regulation 655/2014 on the European Account Preservation Order; the Business Registers Interconnection System (BRIS), originally established in Directive 2012/17/EU; Regulation 848/2015 on insolvency proceedings (recast); Regulation 2015/2421 amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure; and Regulation 2016/1191 on simplifying the requirements for presenting certain public documents in the European Union.

The present booklet summarises the main standards contained in the above-mentioned legal instruments, aiming to provide easy-to-use, condensed guidance to practitioners in their daily work. The instruments are dealt with in three broad thematic areas, as divided by the project's Scientific and Training Committees. These are: (1) European Procedures, encompassing Regulation (EC) No 861/2007, Regulation 655/2014, and Regulation (EC) No 1896/2006; (2) Insolvency, encompassing Regulation 848/2015; and (3) Circulation of documents, encompassing Regulation 2016/1191 and Regulation 2015/2421, on its elements relating to the service of documents.

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## European procedures

### Regulation (EC) No 861/2007 - European Small Claims Procedure

**Aim of the Regulation:** to create a simplified and fast-track written procedure for handling cases involving small cross border claims. This reduces costs and guarantees that judgments delivered in one EU country are automatically enforced in another.

The Procedure established in the regulation is available to litigants as an alternative to the procedures existing under the laws of the member states.

**Scope of application:** The regulation applies in cross-border cases of civil and commercial law, where the value of a claim does not exceed € 5. 000, excluding all interest, expenses and disbursements. It only applies to contentious proceedings.

- The regulation does not apply to:
  - (a) an individual's status or legal capacity;
  - (b) matrimonial or partnership property rights;
  - (c) family maintenance obligations;
  - (d) wills and succession;
  - (e) bankruptcy;
  - (f) social security;
  - (g) arbitration;
  - (h) employment law;
  - (i) property tenancies;
  - (j) violations of privacy or personality rights, including defamation.
- In the context of the Regulation, cross border cases are defined as disputes where at least one of the parties is domiciled or habitually resident in one member state and the competent court is established in another member state. Hence, a dispute where one of the parties resides in the same Member State of the court or tribunal seised, while the other party resides in a third country, does not come within the scope of that regulation.

### Procedure

**Complainants** begin the written procedure by sending a completed standard claim form A (Annex I), including any relevant documentation, to the court or tribunal which will handle the case. The application can be submitted by electronic means, if the competent court accepts them.

All official forms must be in a language used by the court and other documents may need to be translated

**Courts** may:

- (a) ask for additional information, clarifications or corrections to the original submission, using standard form B (Annex II);
- (b) dismiss applications which are inadmissible or where the applicant fails to provide the additional information within the specified deadline;

- (c) agree to hold an oral hearing if they consider it impossible to give a judgment on the written evidence alone.

Courts proceed with the case by sending the defendant the claim and a standard answer form C (Annex III) within 14 days from the receipt of the duly completed form.

**Defendants:**

- (a) have 30 days to reply to the court. Their response is sent to the claimant within 14 days;
- (b) may reply that the value of the non-monetary claim exceeds the €5,000 ceiling. The court decides whether that is true. If not, the case continues. If so, it is handed to the country's relevant legal system.

Representation by a lawyer is not mandatory. Parties are entitled to receive practical assistance in filling out the forms as well as general information on the scope of the ESCP and the competent courts. This information must be provided free of charge.

**Courts** give a judgment within 30 days of receiving the defendant's or claimant's reply, unless they:

- (a) demand further details from the parties concerned;
- (b) take evidence in the simplest and least burdensome way;
- (c) organise an oral hearing, using distance communication technology, such as video or teleconferences where possible, although individuals may request to be physically present.

Courts must seek to reach a settlement among the parties whenever appropriate.

The procedural law of the EU country in which the case is heard applies otherwise.

The court's judgment is enforceable notwithstanding any appeals potentially provided for in national law.

**Documents and judgments** are delivered by post or electronically, and their receipt acknowledged.

**Costs**

Court fees must:

- (a) not be disproportionate and no higher than those of national simplified court procedures;
- (b) allow parties, particularly those in another EU country, to use distant forms of payment, such as bank transfer, credit or debit card or direct from a bank account.

Costs are paid by the loser of the case and are not awarded to the winner if incurred unnecessarily or are disproportionate to the claim.

The provisions of the Regulation are without prejudice to national legislation under which, where a party succeeds only in part, the national court may order each of the parties to the proceedings to bear its own procedural costs or may apportion those costs between those parties.

**Review**

A review of the court's judgment is possible if the defendant:

- (a) did not receive the claim form or summons to an oral hearing in sufficient time to prepare their defence;

- (b) was prevented from contesting the claim due to force majeure (or extraordinary circumstances) through no fault of their own;
- (c) applies for a review within 30 days of the judgment.

Review is an autonomous European remedy which may be used in cases where national law does not provide for an appeal. If national law provides for such an appeal, and the defendant does not make use of this option, the review claim is inadmissible.

The competent court that issued the decision can accept or reject the review. In case of rejection the decision preserves its legal effects. If the court accepts the remedy the decision is annulled and its legal effects are retroactively rendered null and void.

### **Enforceability**

Judgments are enforceable in any EU country and must be delivered at no cost, accompanied by a certificate in standard form D (Annex IV) in the relevant EU language, if one of the parties so requests.

Judgements may be refused in the enforcing jurisdiction, after a request from the losing party, if they are incompatible with an earlier ruling in either an EU or non-EU country, provided this ruling:

- (a) involved the same action and parties;
- (b) was given in the enforcing EU country or legally recognised as such;
- (c) the incompatibility was not, and could not have been, raised as an objection in the other country's court proceedings.

After a challenge or review application before the issuing court, a court in the enforcing jurisdiction may also:

- (a) limit the enforcement proceedings to protective measures;
- (b) make enforcement conditional;
- (c) In exceptional circumstances, stay the proceedings altogether.

Enforcement of judgments is governed by the law of the enforcing country.

### **Regulation 1896/2006 – European order for payment**

**Aim of the Regulation:** to simplify, speed up and reduce the costs of litigation in cases involving more than one EU country by establishing a procedure for a European order for payment for claims not contested by the defendant, and by permitting the free circulation of European orders for payment which are recognised and enforced in all EU countries.

**Scope of application:** The European order for payment (EOP) procedure applies to all civil and commercial matters in cases where at least one of the parties lives in an EU country different from the one where the application for an order is made. A European order for payment is issued only when a claim is pecuniary, certain, of a fix amount and it is fallen due at the time when the application for a European order for payment is submitted.

The procedure does not apply to certain issues:

- (a) revenue, customs or administrative matters,
- (b) state liability for acts and omissions in the exercise of state authority,

- (c) matrimonial property regimes,
- (d) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, and judicial arrangements,
- (e) social security,
- (f) claims arising from non-contractual obligations, unless there was an agreement between the parties or an admission of debt; or they relate to liquidated debts arising from joint ownership of property.

## **Procedure**

### **Application process**

The regulation includes a standard form to apply to a court for an EOP.

- The claim must be for a specific amount which is due at the time the application is submitted.
- The jurisdiction of courts is determined by the rules set out in Regulation (EC) No 1215/2012 on the recognition and enforcement of court decisions in civil and commercial matters. The term “Court” is interpreted autonomously and can be any competent state authority
- The court to which an application has been made considers whether the various conditions have been met (the cross-border nature of the case in civil and commercial matters, the jurisdiction of the court, etc.) as soon as possible, as well as whether the claim appears to be well-founded. The Court must give the applicant the opportunity to complete or rectify their application, if it’s not manifestly unfounded or inadmissible.
- The court must inform the applicant of its reasons for rejecting a claim. In that case, there is no right of appeal, but the claimant may make a new application for an EOP or use another procedure available under the law of an EU country.

### **Issuing an EOP**

If the conditions are met, the court issues the EOP as soon as possible and normally within 30 days of the lodging of the application (excluding the time required for the completion or the rectification of the application). An EOP is issued solely on the basis of the information provided by the claimant if the claim appears to be well-founded. Unless the defendant lodges a statement of opposition with the court issuing it, it is automatically recognised and enforced in other EU countries without any further possibility of opposing its recognition (it constitutes precedent between the parties).

Enforcement procedures are governed by the national law of the EU country in which the enforcement of the EOP is requested. Enforcement may be refused by the competent court in the member state, upon the defendant’s request, of enforcement if the EOP is irreconcilable with an earlier decision or order previously given in any member state or in a third country, provided that the irreconcilability could not have been raised as an objection in the EOP proceedings.

### **Serving an EOP**

An EOP is served on a defendant in accordance with the national law of the country in which it is served. The possible methods of serving the EOP, either with or without proof of receipt by the defendant, are set out in the regulation and include service by a competent person, service by post or service by electronic means.

### **Opposing an EOP**

The defendant may lodge a statement of opposition with the court that issued the order for payment. This must be sent within 30 days of service of the EOP. When a defendant lodges a statement of opposition, ordinary civil proceedings continue before the competent courts of the EU country in which the EOP was issued, unless the claimant does not want to continue proceedings.

The defendant may apply for a review of the EOP before the competent court after the expiry of the 30-day time limit for lodging a statement of opposition, if:

- the order for payment was served without acknowledgement of receipt by the defendant and not in sufficient time to prepare a defence,
- the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances,
- the order for payment was clearly wrongly issued.

If the court rejects the defendant's application, the EOP remains in force. If, on the other hand, the court decides that the review is justified, the EOP becomes null and void and the dispute may then be resolved by the competent national courts.

### **Review by national courts**

The European order for payment can be reviewed by the competent national court which issued the EOP:

- (a) if the EOP has not been issued under the provisions of the regulation;
- (b) if the EOP has been declared enforceable although it was not legally serviced to the defendant according the procedural rules of the national law or the provisions of the regulation;
- (c) in exceptional circumstances, in cases of "force majeure".

### **Costs**

Court fees for the EOP procedure are determined by national courts, in accordance with the rules laid down by domestic law, provided that those rules are no less favourable than those governing similar domestic actions and do not make it in practice impossible or excessively difficult to exercise the rights conferred by European Union law.

## **Regulation 655/2014 – European Account Preservation Order**

**Aim of the regulation:** to facilitate debt recovery between EU countries in civil and commercial matters by establishing a new procedure allowing a court in one EU country to freeze funds in the bank account of a debtor in another EU country.

The regulation: a) offers a unified process for creditors to achieve the issuance of a bank account attachment; b) reduces the judicial costs and the delays related to the issuance of bank account attachments; c) facilitates enforcement proceedings in the European Union; d) facilitates debt recovery for businesses; and e) prevents debtors from concealing their assets before the creditor gains an enforceable order.

**Scope of application:** the EAPO applies to financial claims in civil and commercial matters, excluding the following:



- (a) revenue, customs or administrative matters and social security;
- (b) rights in property arising out of marriage or equivalent relationship, and wills and succession;
- (c) claims against a debtor who is the object of bankruptcy or insolvency proceedings, judicial arrangements, compositions or other similar proceedings.

Some categories of specially protected bank accounts are also excluded.

It is available to **citizens and businesses** in cases where the account, at the date of application of the EAPO, is held in an EU country other than the one where the creditor is domiciled or where the court seized is based

The EAPO is an alternative to national procedures, and does not replace them. It is not a means of enforcement but a protective measure.

The EAPO is not available for creditors or bank accounts based in Denmark.

### **Procedure**

The procedure is open before initiating proceedings on the substance of the matter against the debtor, during the proceedings or after obtaining a judgment, court settlement or authentic instrument requiring the debtor to pay. Representation by a legal counsel is not mandatory. The court competent to issue an EAPO is ordinarily the one competent to rule on the substance of the matter. Where the debtor is a consumer, the court competent to issue an EAPO to secure a claim relating to the consumer's contract is the court of the EU country where the debtor is domiciled.

In all cases, the creditor must provide evidence to convince the court that there is a real risk that justifies the need to freeze the debtor's account. If the creditor requests an EAPO before obtaining a judgment on the substance of the matter, sufficient evidence should also be given to the likelihood to successfully pursue the claim in terms of its substance.

- An EAPO is submitted using a standardised form, along with all supporting documents.
- A strict timeline is in place for the different procedural steps, depending also on whether the debtor has already obtained a judgement on the substance of the case.
- The creditor has the right to appeal against a refusal to issue an EAPO.
- In order to ensure the surprise effect and the usefulness of the EAPO, the debtor is not informed prior to its implementation.

The application must contain the identifying data of the applicant (name, date of birth, identification card number, the registry number for legal entities, etc.), the amount of the claim, the bank's details, but not necessarily the data of specific bank accounts (as, for example, the number of the bank account). The creditor who does not know the debtor's account information can, under certain conditions, request the court to obtain account information from designated authorities in the EU country of enforcement.

### **Recognition, enforceability and enforcement of the EAPO**

An EAPO issued in an EU country in accordance with the regulation should be recognised and enforceable in another EU country without any special procedure or declaration of enforceability. The order for the bank account attachment is notified to the competent authority of the state of enforcement. The authority of the state of enforcement notifies the order to the bank, which is obligated to preserve the relevant amounts in the debtor's bank accounts.

The bank is obligated to declare whether the EAPO has led to the preservation of any of the debtor's funds, using a standardised form. The creditor has a duty to request the release of any funds preserved that exceed the amount specified in the EAPO. Some amounts may be exempt from seizure under the law of the country of enforcement, i.e., amounts necessary to ensure the livelihood of the debtor and of their family.

### **Safeguards for the debtor**

In order to counterbalance the absence of a prior hearing, there are the following safeguards for the debtor against the abusive use of the EAPO:

- (a) **remedies** — including the right of appeal, the right to raise objections, and the right to ask for the revision of the EAPO — to be able to challenge the EAPO as soon as the debtor is informed of the blocking of their accounts;
- (b) rules on the **provision of a security** by the creditor — to ensure that the debtor can be compensated for any damage caused by the EAPO;
- (c) rules on the **creditor's liability** for any damage caused to the debtor by the EAPO due to an error on the creditor's behalf.

### **Forms**

To execute the above procedures, nine dedicated EAPO forms are developed, contained in Implementing Regulation (EU) 2016/1823.

### **Other provisions**

The regulation also addresses various related matters, including legal representation, court fees, costs supported by the banks, fees charged by authorities, data protection and language of documents.

The regulation is without prejudice to legal provisions related to similar matters, as regulated in other legal instruments, such as Regulation (EC) No 1393/2007 (on the service of documents) and Regulation (EC) No 1206/2001 (on the taking of evidence).

## **Insolvency**

### **Regulation (EU) 2015/848 – Insolvency Proceedings**

**Aim of the regulation:** to ensure the efficient administration of insolvency proceedings involving an individual or business active or with financial interests in an EU member state other than the one in which they are usually based.

**Scope of application:** the regulation applies to proceedings which include all or a significant number of a debtor's creditors, are based on insolvency laws and in which, for the purpose of rescue, adjustment of debt, reorganisation or liquidation:

- (a) a debtor has lost all or part of their assets and an insolvency specialist, such as a liquidator, has been appointed;
- (b) the assets and affairs of a debtor are under the control or supervision of a court; or
- (c) proceedings have been halted to allow for negotiations between the debtor and its creditors, provided that:
  - the negotiations take place in the context of proceedings which aim at protecting the creditors;

- they have failed, in which case one of the 2 other types of proceedings listed above would follow.

The regulation covers 'preventive' insolvency proceedings available under national law which may be launched at an early stage in order to improve the chances of rescuing the business. These proceedings are listed by member state in Annex A. It also covers a larger range of personal insolvency proceedings.

The Regulation does not apply to Denmark.

The regulation sets out EU-wide rules to establish:

- (a) which court has jurisdiction to open an insolvency case;
- (b) the applicable national law;
- (c) recognition of the court's decision when a company, a trader or an individual becomes insolvent.

### **Jurisdiction**

Proceedings take place in the courts of the EU country where the debtor's main interests are centred. This is presumed to mean:

- the location of the registered office, in the case of a company or legal person;
- the principal place of business, in the case of an individual running a business or professional activity;
- the place of their habitual residence, in the case of any other individual.

These presumptions do not apply if the above locations have changed within a certain period of time prior to the start of insolvency proceedings (3 months in the first two cases and 6 months in the third one).

If the debtor has a place of operation in an EU country other than the one where their main interests are centred, insolvency proceedings against them may also be initiated there. However, these would be 'secondary proceedings' and would be limited to the assets held in that country.

### **Applicable law**

In general, the applicable law is that of the country in which the proceedings take place. That law governs the conditions for opening and closing the proceedings and their conduct. This includes determining:

- (a) the debtors against whom a case can be brought;
- (b) the assets which form part of the insolvency estate;
- (c) the creditors' rights after the case is closed;
- (d) the person(s) responsible for bearing the costs and expenses of the proceedings.

### **Recognition and enforcement**

Once a judgment opening insolvency proceedings in one EU country becomes effective, it must be recognised in all other EU member states with the same effect.

### **Insolvency registers**

To better ensure creditors and courts receive relevant information and to prevent parallel proceedings being opened, EU countries are required to publish relevant information on cross-

border insolvency cases in a publicly accessible online register. These registers will be interconnected via the European e-Justice portal, in line with EU data protection rules.

### **Group insolvency proceedings**

The regulation creates a specific approach to deal with the insolvency of members of a group of companies. This includes:

- rules requiring the various insolvency practitioners and the courts involved to cooperate and communicate with each other;
- limited rights of standing for an insolvency practitioner in the proceedings concerning another member of the same group;
- a specific system for the coordination of proceedings concerning the same company group ('group coordination proceedings').

## **Circulation of documents**

**Aim of the regulation:** to reduce red tape and costs for citizens when they present to the authorities of one European Union country a public document issued by the authorities of another EU country. By accomplishing these goals, the regulation promotes the free movement of EU citizens and ensures the free circulation of public documents.

**Scope of application:** the regulation covers public documents including administrative documents, notarial acts, judgments and consular documents in certain areas. It abolishes the apostille requirement and simplifies formalities with regard to certified copies and translations.

The areas covered by the regulation are as follows:

- birth;
- death;
- name;
- marriage, including capacity to marry and marital status;
- divorce, legal separation or marriage annulment;
- registered partnership, including capacity to enter into a registered partnership and registered partnership status;
- dissolution of a registered partnership, legal separation or annulment of a registered partnership;
- parenthood, including adoption;
- domicile and/or residence;
- nationality;
- absence of a criminal record;
- the right to vote and stand as a candidate in municipal elections and elections to the European Parliament.

The regulation covers only the authenticity of the public document and not the recognition of its contents or effects. It does not impose upon Member States any obligation to recognize the legal

effect of the content of a public document but merely functions as sufficient proof of a set of circumstances, including the existence of a legal relationship, under the law of the issuing Member State.

### **Abolition of the apostille requirement**

In the areas covered by the regulation, when a citizen presents to the authorities of an EU country a public document issued by the authorities of another EU country, the receiving authorities cannot require that the document bear an apostille stamp (the apostille stamp is designed to prove the authenticity of a public document issued in a foreign country).

### **Certified copies**

EU countries can require the presentation of the original public document or of its certified copy, but not both at the same time. If an EU country accepts the presentation of a certified copy in place of the original document, it must accept a certified copy made in another EU country.

### **Translations**

The EU country where the public document is presented cannot require a translation if the public document is in one of the EU country's official languages or in a non-official language that the EU country can accept.

Furthermore, translation cannot be required where the public document is accompanied by a multilingual standard form. This is provided that the authority to which the public document is presented considers that the information included in the form is sufficient for processing the document.

### **Multilingual standard forms**

The regulation introduces optional multilingual standard forms in all EU languages. The forms can be presented by citizens in another EU country as translation aids attached to their public document to avoid translation requirements. If the public document presented is accompanied by a multilingual standard form, the receiving EU country can only require a translation of the document in exceptional circumstances. If such exceptional circumstances exist and the receiving EU country requires a certified translation, it must accept a certified translation done in another EU country.

Multilingual standard forms as translation aids of public documents are available for documents concerning:

- (a) birth;
- (b) a person being alive;
- (c) death;
- (d) marriage, including capacity to marry and marital status;
- (e) registered partnership, including capacity to enter into a registered partnership and registered partnership status;
- (f) domicile and/or residence;
- (g) absence of a criminal record.

### **Fraudulent documents**

The regulation establishes a mechanism of cooperation between the authorities of EU countries to fight against fraudulent public documents. The cooperation mechanism is based on an existing IT system (the Internal Market Information System). The cooperation mechanism allows the

authorities of the receiving EU country to talk to the authorities of the issuing EU country if they have a serious doubt about the authenticity of a public document presented by a citizen.

### **Administrative cooperation**

Regulation 2016/1191 establishes administrative cooperation facilitation verification of authenticity of documents. For the purposes of this Regulation, each Member State must designate at least one central authority to fulfil functions relating to the application of this Regulation. The Internal Market Information System (IMI) is made available to competent authorities in the Member States for the purposes of the Regulation 2016/1191, in order to facilitate communications with their counterparts in the EU (EEA).

### **Verifying the authenticity of a public document**

Where the authorities of a Member State in which a public document (or certified copy) is presented have a reasonable doubt as to the authenticity of that public document, they shall take the following steps:

- check the available models of documents in the repository of IMI,
- if a doubt remains, submit a request for information through IMI:
  - (a) to the authority that issued the public document or, where applicable, to the authority that made the certified copy, or to both; or
  - (b) to the relevant central authority.