

## **QUESTIONNAIRE**

**Version 2016**

### **General guidelines**

This questionnaire addresses the practical application of B IA before the national courts of member states with an emphasis on the interplay of Regulation and national rules regarding the enforcement procedure as a whole and the remedies in particular.

Please refer for existing information relating to B IA in the EU, among others to:

- Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,<sup>1</sup>
- Green Paper on the Review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,<sup>2</sup>
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,<sup>3</sup>
- Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters,<sup>4</sup>
- Study on residual jurisdiction (Review of the Member States' Rules concerning the 'Residual Jurisdiction' of their courts in Civil and Commercial Matters pursuant to the Brussels I and II Regulations),<sup>5</sup>
- Data Collection and Impact Analysis – Certain Aspects of a Possible Revision of Council Regulation No. 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Brussels I');<sup>6</sup> with accompanying Appendix D<sup>7</sup> and Appendix E,<sup>8</sup>

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<sup>1</sup> OJ L 351/1, 20.12.2012. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R1215&from=EN>

<sup>2</sup> COM(2009) 175 final. Available at:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52009DC0175&from=EN>

<sup>3</sup> COM(2010) 748. Available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0748:FIN:EN:PDF>

<sup>4</sup> COM(2009) 174 final. Available at:

[http://ec.europa.eu/civiljustice/news/docs/report\\_judgements\\_en.pdf](http://ec.europa.eu/civiljustice/news/docs/report_judgements_en.pdf)

<sup>5</sup> [http://ec.europa.eu/civiljustice/news/docs/study\\_residual\\_jurisdiction\\_en.pdf](http://ec.europa.eu/civiljustice/news/docs/study_residual_jurisdiction_en.pdf)

<sup>6</sup> [http://ec.europa.eu/justice/civil/files/study\\_cses\\_brussels\\_i\\_final\\_17\\_12\\_10\\_en.pdf](http://ec.europa.eu/justice/civil/files/study_cses_brussels_i_final_17_12_10_en.pdf)

<sup>7</sup> [http://ec.europa.eu/justice/civil/files/brussels\\_i\\_appendix\\_d\\_17\\_12\\_10\\_en.pdf](http://ec.europa.eu/justice/civil/files/brussels_i_appendix_d_17_12_10_en.pdf)

<sup>8</sup> [http://ec.europa.eu/justice/civil/files/brussels\\_i\\_appendix\\_e\\_15\\_12\\_10\\_en.pdf](http://ec.europa.eu/justice/civil/files/brussels_i_appendix_e_15_12_10_en.pdf)

- Report on the Application of Regulation Brussels I in the Member States ('Heidelberg Report'),<sup>9</sup>
- Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) Note (Study by Ilaria Pretelli),<sup>10</sup>
- The Commission's Civil Justice Documents compilation,<sup>11</sup>
- European Judicial network in civil and commercial matters,<sup>12</sup> where other rudimentary information regarding national order for payment and small claims procedure for most Member States can also be found,<sup>13</sup>
- European e-Justice Portal,<sup>14</sup>
- European Judicial Network Documents, e.g. Citizens' guide to cross-border civil litigation in the European Union, Practice guide for the application of the Regulation on the European Enforcement Order, Judicial cooperation in civil matters in the European Union etc., which can be found at the web page of European Judicial Network,<sup>15</sup>
- Study on European Payment Order, Study on making more efficient the enforcement of judicial decisions within the European Union etc. All of them are available at the web page of European Judicial Network<sup>16</sup> etc.

The structure of each individual report does not necessarily have to follow the list of questions enumerated below. The questions raised should be dealt with within the reports, however the authors are free to decide where this will be suitable. Following the structure of the questionnaire will make it easier to make comparisons between the various jurisdictions.

The list of questions is not regarded to be a conclusive one. It may well be that we did not foresee certain issues that present important aspects in certain jurisdictions. Please include such issues where suitable. On the other hand, questions that are of no relevance for your legal system can be left aside.

Please give representative reference to court decisions and literature. Please try to illustrate important issues by providing examples from court practice. If possible, please include empirical and statistical data.

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<sup>9</sup> B. Hess, T. Pfeiffer, P. Schlosser, Study JLS/C4/2005/03, 2007. Available at:

[http://ec.europa.eu/civiljustice/news/docs/study\\_application\\_brussels\\_1\\_en.pdf](http://ec.europa.eu/civiljustice/news/docs/study_application_brussels_1_en.pdf)

<sup>10</sup> European Parliament Directorate-general for internal policies, I. Pretelli, 2011. Available at:

[http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI\\_NT\(2011\)453205](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_NT(2011)453205)

<sup>11</sup> [http://ec.europa.eu/justice/civil/document/index\\_en.htm](http://ec.europa.eu/justice/civil/document/index_en.htm)

<sup>12</sup> [http://ec.europa.eu/civiljustice/simplif\\_accelerat\\_procedures/simplif\\_accelerat\\_procedures\\_ec\\_en.htm](http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_ec_en.htm).

<sup>13</sup> For case of Slovenia see:

[http://ec.europa.eu/civiljustice/simplif\\_accelerat\\_procedures/simplif\\_accelerat\\_procedures\\_slv\\_en.htm](http://ec.europa.eu/civiljustice/simplif_accelerat_procedures/simplif_accelerat_procedures_slv_en.htm).

<sup>14</sup> For European Order for Payment procedure see:

[https://e-](https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=41&lang=en&vmac=r9Klvk5c5yBXTTpIFcE3eO1ILsS)

[justice.europa.eu/contentPresentation.do?idTaxonomy=41&lang=en&vmac=r9Klvk5c5yBXTTpIFcE3eO1ILsSHvqlyFn4mfXJsyLxOwleIXN-A4iEnlghxe4PUfmlXktLJDRjq1LeHcGY6HAAAazMAAAC\\_](https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=41&lang=en&vmac=r9Klvk5c5yBXTTpIFcE3eO1ILsSHvqlyFn4mfXJsyLxOwleIXN-A4iEnlghxe4PUfmlXktLJDRjq1LeHcGY6HAAAazMAAAC_).

For European Small Claims Procedure see:

[https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=42&lang=en&vmac=qu-](https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=42&lang=en&vmac=qu-zZrpu8lja62kGDeATAFhREcgMT4qv4YmtKfdXNfmehAJtx1tqZZSY2wLGuXL2B4q74ERMigBc7S447YG47)

[zZrpu8lja62kGDeATAFhREcgMT4qv4YmtKfdXNfmehAJtx1tqZZSY2wLGuXL2B4q74ERMigBc7S447YG47wAAHccAAALd](https://e-justice.europa.eu/contentPresentation.do?idTaxonomy=42&lang=en&vmac=qu-zZrpu8lja62kGDeATAFhREcgMT4qv4YmtKfdXNfmehAJtx1tqZZSY2wLGuXL2B4q74ERMigBc7S447YG47wAAHccAAALd).

<sup>15</sup> [http://ec.europa.eu/civiljustice/publications/publications\\_en.htm](http://ec.europa.eu/civiljustice/publications/publications_en.htm) .

<sup>16</sup> [http://ec.europa.eu/civiljustice/publications/publications\\_en.htm](http://ec.europa.eu/civiljustice/publications/publications_en.htm) .

Please do not repeat the full questions in your text. There is no limitation as to the length of the reports.

**Languages of national reports:** English.

**Deadline:** 1 November 2016.

In case of any questions, remarks or suggestions please contact project coordinator, prof. dr. Vesna Rijavec: vesna.rijavec@um.si; or Katja Drnovšek: katja.drnovsek@um.si

## Terminology used in the questions

The use of a unified terminology can certainly ease the comparison between national reports. For the purposes of this questionnaire, the following definitions shall apply:

**Action:** Used in the sense of lawsuit, e.g. 'bringing an action' (starting a lawsuit, filing a suit).

**Application:** Request addressed to the court. Note: the term 'motion' is in B IA exclusively used for acts issued by the court.

**Astreinte:** Monetary penalties used as a means of enforcing judgments in certain civil law jurisdictions. A proper English term to describe '*astreinte*' does not exist.

**Authentic instrument:** A document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:

- (i) relates to the signature and the content of the instrument; and
- (ii) has been established by a public authority or other authority empowered for that purpose

**Cassation Complaint:** Second appeal in the Romanic family of civil procedure (in the Germanic family one uses 'Revision' instead).

**Civil Imprisonment:** Imprisonment of a judgment debtor in order to force him to satisfy the judgment.

**Claim / Defence on the Merits:** Claim or defence which concerns the specific case at hand and not preliminary (procedural) issues. Opposite of preliminary defences.

**Claimant:** Before the Woolf Reforms designated as 'Plaintiff'. In your contributions, please only use 'claimant' (the term which is also used in B IA).

**Counsel:** Generic term for the lawyer assisting a party. We would advise to use this terminology instead of 'advocate', 'procurator', etc.

**Court of origin:** The court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

**Court settlement:** A settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings.

**Default:** Omitting the execution of the required procedural act (e.g. where the summoned defendant does not appear).

**Defaulter:** Party in a civil action who does not execute the procedural act which should have been executed by him.

**Enforcement:** Use the term enforcement instead of execution.

**Enforcement officer:** Official involved in enforcing court rulings. Enforcement is part of the tasks of a '*huissier de justice*' in France and other jurisdictions belonging to the Romanic family of civil procedure.

**Ex officio / Sua Sponte:** Both ‘*ex officio*’ and ‘*sua sponte*’ are used to indicate that the judge may act spontaneously without being asked to do so by the parties. In other words, we are dealing with powers of the judge which he may exercise at his own motion.

**Final judgment:** Judgement, which is binding to parties and against which generally, no ordinary legal remedy is permitted.

**Hearing:** Session before the court, held for the purpose of deciding issues of fact or of law. For civil law jurisdictions, we would suggest to avoid using the terminology ‘trial’ (which in English civil procedure refers to a specific stage in litigation).

**Interlocutory Judgment:** All judgments which do not decide the merits of the case.

**Interlocutory Proceedings:** Proceedings which are not aimed at acquiring a final judgment on the merits in the case but aim at an intermediate, non-final decision in a pending lawsuit.

**Judgment:** 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 a decision on the determination of costs or expenses by an officer of the court.

For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;

**Judicial Case Management:** An approach to litigation in which the judge or the court is given powers to influence the progress of litigation, usually in order to increase efficiency and reduce costs.

**Main Hearing:** In German: *Haupttermin*.

**Means of recourse against judgments:** General terminology to indicate all possible means to attack judgments, e.g. ordinary appeal, opposition, cassation, revision etc.

**Member State of origin (MSO):** The Member State in which in which the judgment has been given, the court settlement has been approved or concluded or the authentic instrument has been drawn up or registered.

**Member State addressed (MSA):** The Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought.

**Opposition:** Act of disputing a procedural act or result, e.g. a default judgment.

**Preclusion:** The fact that a party is barred (precluded) from taking specific steps in the procedure since the period for taking these steps has expired (*‘Reihenfolgeprinzip’*).

**Preliminary defences:** ‘Exceptions’; (usually) procedural defences. Opposite of defences on the merits.

**Process server:** Official serving the summons on the opponent party. This is part of the tasks of a '*huissier de justice*' in France and other jurisdictions belonging to the Romanic family of civil procedure.

**Second instance appeal:** First appeal, not to be confused with a Cassation Complaint or Revision (i.e. second appeal or third instance appeal).

**Statement of Case:** General terminology for the documents containing the claim, defence, reply, rejoinder etc. Before the Woolf reforms these documents were indicated as 'pleadings'. In French: 'conclusions'.

**Statement of Claim:** Document containing the claim.

**Statement of Defence:** Document containing the defence.

## **Questionnaire for national reports**

### **Part 1: Main features of the national enforcement procedures for recovery of monetary claims (general overview)**

#### **1. Main Features of Estonian Enforcement Procedure**

##### **1.1. Domestic Legal Sources**

Enforcement in Estonia is primarily carried out by bailiffs, who are sole proprietors acting on behalf of the state in enforcement matters. Courts and judges have a supervisory role to ensure that enforcement procedure is carried out according to the applicable rules and regulations.

Estonian domestic rules of (civil) enforcement are primarily included in the Code of Enforcement Procedure (CEP) that has been in force since 1 January 2006<sup>17</sup>. The CEP consists of 8 sections and it includes separate rules regarding enforcement of monetary and non-monetary claims as well as rules regarding service of documents including declarations of intent, which is also performed by the bailiffs. The CEP does not regulate civil enforcement only, but also provides rules for enforcement of enforceable titles given in administrative, misdemeanour and criminal matters. While the CEP includes the legal norms that make up the basis for actions against enforcement and complaints concerning the actions of a bailiff, the court procedure of handling an action or complaint is regulated by the Code of Civil Procedure that came into force on 1 January 2006<sup>18</sup>.

Rules specifically concerning operation of the bailiffs as well as their rights and obligations are provided in the Bailiffs Act<sup>19</sup> and Bailiffs Regulations<sup>20</sup> (both in force since 1 January 2010). Bailiffs Act regulates who and under which requirements may serve as a bailiff, what are the requirements for running a bailiff's office, what rights and obligations a bailiff has, what are the services provided by the bailiff and under which conditions. Bailiffs Act also provides the fees that can be charged by a bailiff for its services. Bailiffs Regulations (which is not a law) includes more specific (and technical) regulations concerning how many bailiffs are assigned to a particular region, what are the territorial boundaries for operation of bailiffs in each region, how a bailiff must conduct its everyday operations (including what formal requirements must be met), how bailiffs are selected (including the system of examination for bailiffs), etc. Also specific conditions for provisions of certain services are provided in the Bailiffs Regulations.

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<sup>17</sup> Code of Enforcement Procedure (RT I 2005, 27, 198 ... RT I, 23.03.2017, 1). English translation of the current text available at: <https://www.riigiteataja.ee/en/eli/527032017002/consolide>.

<sup>18</sup> Code of Civil Procedure (RT I 2005, 26, 197 ... RT I, 28.12.2016, 14). English translation of the current text available at: <https://www.riigiteataja.ee/en/eli/510012017004/consolide>.

<sup>19</sup> Bailiffs Act (RT I 2009, 68, 463 ... RT I, 08.07.2016, 1). English translation of the current text available at: <https://www.riigiteataja.ee/en/eli/515122016004/consolide>

<sup>20</sup> Bailiffs Regulations (RTL 2009, 98, 1456 ... RT I, 26.02.2016, 19). The current text in Estonian is available at: <https://www.riigiteataja.ee/akt/126022016020>. No translation is available.

Estonia has only one system of enforcement that has to ensure the enforcement of enforceable titles arising from civil, administrative, misdemeanour and criminal proceedings as well as certain enforceable titles created either by agreement or by other means. This system is primarily regulated by one common set of rules included in the above-mentioned legal acts. However certain additional requirements regarding enforcement may derive from time to time from legal acts that regulate the specific legal relationships regarding which the enforceable titles have been issued.

## 1.2. Recent reforms

There have not been any significant reforms in Estonia in the field of enforcement procedure since the adoption of the new CEP and Code of Civil Procedure (both in force since 1 January 2006). However several adjustments to the rules have been made, some of which have been connected with the adoption of EU legislation and some with the aim to enhance, simplify and speed up enforcement procedure by using more ICT tools. For example Estonia has implemented a fully electronic enforcement information system where information is gathered about all enforcement proceedings against a person (including any electronic documents related to the enforcement). The system also acts as a platform for exchange of information and for gathering statistic data on enforcement matters.<sup>21</sup> Estonia has also implemented an electronic seizure system the aim of which is to serve as a channel between the enforcement proceeding register, register of taxable persons and credit institutions with the objective to ensure electronic submission of applications concerning seizure of debtors' accounts and activities related to administration of seizures to credit institutions and, enable inquiries about information in the possession of credit institutions and to ensure immediate and safe forwarding of parties' expressions of will.<sup>22</sup>

With the passing of the new Bailiffs Act that came into force on 1 January 2010 several changes were made to the rules regulating the bailiff's profession. A new organisation (The Estonian Chamber of Bailiffs and Trustees in Bankruptcy) was founded to gather all bailiffs and trustees in bankruptcy. This organisation is responsible for supervision and further training of bailiffs and trustees in bankruptcy as well as for the development of ICT tools to enhance enforcement procedures.<sup>23</sup> However these changes do not significantly influence the enforcement procedure itself.

A perhaps more notable amendment to the CEP adopted with the Bailiffs Act was the amendment of Section 78 of CEP whereby it was made compulsory to sell debtor's assets on an electronic auction (except if electronic sale is not possible for some reason). The purpose of this was to make the enforcement proceedings more efficient.<sup>24</sup>

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<sup>21</sup> A more detailed overview of information gathered in the register as well as the purposes of the register can be found in Section 63 of CEP. English translation available at: <https://www.riigiteataja.ee/en/eli/527032017002/consolide#para63>.

<sup>22</sup> A more detailed overview of the seizure system can be found in Section 63<sup>1</sup> of CEP. English translation available at: <https://www.riigiteataja.ee/en/eli/527032017002/consolide#para63b1>.

<sup>23</sup> Kohtutäituri seaduse eelnõu seletuskiri. Available at: <https://www.riigikogu.ee/download/2a42fa24-b7ec-c087-1101-85bab4a52989>.

<sup>24</sup> Kohtutäituri seaduse eelnõu seletuskiri. Available at: <https://www.riigikogu.ee/download/2a42fa24-b7ec-c087-1101-85bab4a52989>.



### **1.3. Underlying framework of the System of Enforcement**

In Estonia no specific philosophical or dogmatic framework has been mentioned as the basis for the enforcement system. The explanatory memorandum to the CEP only mentions the need to ensure that the regulation of the enforcement procedure would meet the standards required in a state based on the rule of law – on the one hand it has to protect the debtor, but on the other hand it has to provide creditors with an efficient system of enforcement. This is said to have been the guiding principle in the drafting of the CEP.<sup>25</sup>

### **1.4. Availability of Different Enforcement Procedures**

As has been mentioned before, Estonia has only one system of enforcement to enforce all possible enforceable titles regardless of whether they arise from civil, administrative, misdemeanour or criminal proceedings or from an agreement between the parties or from other circumstances.

Estonian CEP does not really provide for different procedures for the enforcement of different types of claims, although CEP includes separate provisions for the enforcement of monetary and non-monetary claims (see Part 2 and Part 3 of CEP). The general rules of enforcement procedure apply regardless of whether the claim to be enforced is monetary or non-monetary. The special rules simply deal with specific questions that may arise in the enforcement of different claims.

The CEP includes separate regulations based on whether the property against which enforcement is sought is movable or immovable (see Chapters 6 and 7 of CEP respectively). However the regulation concerning enforcement against immovable property refers back to the regulation regarding movable property<sup>26</sup> and thus the latter is applied also with regard to immovable property, although with some modifications.

### **1.5. Centralisation of the Enforcement System**

Estonian enforcement system can be considered to be centralized since there is just one system and one set of rules applying to all enforcement matters. Although each bailiff in Estonia operates in a certain territory only<sup>27</sup> (the territories correspond to the areas of jurisdiction of courts, see below) it does not mean that the bailiff could not take enforcement measures on other territories. The territorial division of bailiffs only determines which bailiffs are entitled to start enforcement proceedings against a certain debtor – each bailiff is allowed to start enforcement proceedings only against debtors with habitual residence or property within the bailiff's territory of operation.<sup>28</sup> However if it later appears that the debtor does not have property in the territory where his/her habitual residence is situated, the same bailiff is allowed to continue the commended enforcement proceedings in another territory.<sup>29</sup> In practice creditors

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<sup>25</sup> Explanatory Memorandum of the Code of Enforcement Procedure. Available at: <https://www.riigikogu.ee/download/1cf65f8d-80ee-3eff-a29d-faffdfdda30f>.

<sup>26</sup> See Section 137 of CEP. English translation available at: <https://www.riigiteataja.ee/en/eli/527032017002/consolide#para63b1>.

<sup>27</sup> See Section 4 of CEP. English translation available at: <https://www.riigiteataja.ee/en/eli/527032017002/consolide#para63b1>.

<sup>28</sup> See Section 4 (1) of CEP.

<sup>29</sup> See Section 4 (2) of CEP.

usually submit an application for enforcement to the bailiff operating in the territory where the debtor has his/her habitual residence and the same bailiff will automatically take enforcement measures against any property that the debtor has, regardless of where it is situated.

As was mentioned above, the courts have certain powers of supervision over bailiffs operating in its territory of jurisdiction. However these powers are limited to the court review of complaints (against the bailiff's acts) or actions arising from enforcement proceedings.<sup>30</sup>

## 1.6. Authorities involved in enforcement proceedings

In Estonia carrying out the enforcement of enforceable titles is the task of bailiffs. However courts are involved in enforcement proceedings in some specific situations<sup>31</sup> and courts also have the task to hear cases based on a complaint about bailiff's actions during the enforcement proceedings or based on actions arising out of enforcement proceedings. The courts have the right to suspend enforcement proceedings during the time when the particular case is adjudicated before the court. According to Section 11 of CEP a county court has the following competences in enforcement proceedings:

- imposition of fines;
- making of rulings on the imposition of compelled attendance, detention and arrest regarding persons;
- grant of search permits;
- review of complaints filed against decisions of bailiffs;
- adjudication of actions related to enforcement proceedings;
- appointment and release of compulsory administrators;
- making other decisions in the cases prescribed in CEP.

All bailiffs are assigned to a particular territory and they only have the power to operate within the territory, i.e. they may not institute enforcement proceedings against debtors who do not have habitual residence or property within the territory. Bailiffs are allowed to seize property that is situated outside their territory of operation, provided that the habitual residence of the debtor is within their territory of operation.

Bailiffs may be assigned to one of the 4 operating territories: (i) Harju operating territory (including Harju County), (ii) Viru operating territory (including Lääne-Viru and Ida-Viru Counties), (iii) Tartu operating territory (including Tartu, Viljandi, Jõgeva, Põlva, Valga and Võru Counties) and (iv) Pärnu operating territory (including Pärnu, Saare, Hiiu, Lääne, Järva and Rapla Counties).<sup>32</sup> The operating territories of bailiffs are the same as the operating territories of county courts<sup>33</sup> - the above mentioned territories are served respectively by Harju County Court, Viru County Court, Tartu County Court and Pärnu County Court. The purpose of this is that all

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<sup>30</sup> See Sections 217 – 223 of CEP.

<sup>31</sup> Courts are involved e.g. when the bailiff wishes to limit certain rights of a maintenance debtor (CEP allows the court to suspend the person's hunting rights; right to drive power-driven vehicles; weapons permits and acquisition permits for weapons; right to drive recreational craft and personal water craft and fishing rights).

<sup>32</sup> See Section 1 of Bailiffs Regulations.

<sup>33</sup> See Minister of Justice Regulation No 46 of 27 October 2005 "Maa- ja halduskohtute kohtumajade täpsed asukohad ja teeninduspiirkonnad ning ringkonnakohtute asukohad".

complaints and actions related to a particular enforcement proceedings will go the county court on whose territory the bailiff is operating.<sup>34</sup>

Bailiffs are private individuals, who have been empowered by the state to carry out enforcement proceedings and perform certain other tasks assigned to them by virtue of different laws. Bailiffs are required to operate in his/her own name and at his/her own liability.<sup>35</sup> This is why bailiffs carry out their tasks as sole proprietors and are not allowed to operate through a company.

Every bailiff is required to have an office situated within the operating territory of the bailiff and the office must be open to public during opening hours published on the website on Ministry of Justice and the website of the Chamber of Bailiffs and Trustees in Bankruptcy.<sup>36</sup>

Although the law requires bailiffs to operate in their own name, it is allowed<sup>37</sup> and not at all uncommon for several bailiffs to share an office space as well as office staff. However even if the bailiffs share an office, each of them must still carry out enforcement procedures personally, although they may share accounting and other such technical services.

While enforcement proceedings are the most important task of bailiffs, it is not their only task. For example under Estonian domestic Law of Succession Act bailiffs carry out inventory of estate if requested by one of the successors before the estate is transferred to the successors (the primary reason why inventory is requested is that an inventory limits the liability of the successors for liabilities of the estate). Also in cases and pursuant to the procedure prescribed in the law a bailiff is required to conduct an auction at the request of court or administrative body outside enforcement proceedings. On the basis of the State Family Benefits Act upon the bailiff has an obligation to mediate maintenance support collected from a foreign state.<sup>38</sup>

Disciplinary supervision of bailiffs is the task of Ministry of Justice and the court of honour of the Chamber of Bailiffs and Trustees in Bankruptcy. However the decision to remove the bailiff from office or deprive the bailiff of the right to act as a bailiff may only be taken by the Ministry of Justice.

As mentioned above, courts have jurisdiction to hear cases based either on a complaint against a bailiff's action<sup>39</sup> or based on an action related to the enforcement.<sup>40</sup> Each court has jurisdiction to hear cases based on enforcement proceedings conducted by bailiffs within the court's territorial jurisdiction.

Cases based on a complaint are adjudicated in county court as cases based on an application.<sup>41</sup> This means that in such cases the court is free to gather any evidence and the court is not bound by any submissions made by the parties involved. These

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<sup>34</sup> See Sections 217 – 223 of CEP.

<sup>35</sup> See Section 2 (1) of Bailiffs Act.

<sup>36</sup> See Section 4 of Bailiffs Act.

<sup>37</sup> See Provision 4 (3) of Bailiffs Act.

<sup>38</sup> See Section 6 of Bailiffs Act.

<sup>39</sup> See Sections 217 – 219 of CEP.

<sup>40</sup> See Sections 220 – 223 of CEP.

<sup>41</sup> See Section 475 (1) p 15 of the Code of Civil Procedure

types of cases are concerned with particular procedural decisions or actions that bailiffs have to take during the enforcement proceedings<sup>42</sup> – these proceedings are not intended for challenging the enforcement title or anything arising from it.

In case where the debtor or a third person has objections against the enforcement procedure as a whole either because the proceedings are not based on an enforceable title or the debtor in the proceedings is not mentioned in the enforceable title or the enforceable title should not be enforced or the person holds a right regarding seized property, the person must file an action against the creditor to the court in whose jurisdictional territory the bailiff is operating. Upon application from the debtor the court may suspend the enforcement proceedings until a final judgment becomes into force in the case. The effect of a judgment in such cases is to either disallow the enforcement proceedings (if the basis for the action is that proceedings have been instituted without an enforceable title or instituted against a person not mentioned in the title) or remove the enforceability of the enforcement title altogether.

### **1.7. The Position of Parties Involved in the Enforcement**

The enforcement proceedings are mainly under the control of the creditor. According to Section 23 (1) of CEP a bailiff conducts enforcement proceedings on the basis of an application of a claimant and an enforcement title. Section 44 (1) of CEP provides that the bailiff shall be under obligation to suspend or postpone any enforcement action upon an application of the creditor. The creditor is also entitled according to Section and 48 (1) p 1 of CEP to terminate the enforcement proceedings at any time.

There is however one exception provided in Section 23 (1) of CEP. A bailiff has the right to conduct enforcement proceedings regardless of the application of the creditor if a decision on payment of the bailiffs' fee or on ordering payment of the enforcement costs constitutes the enforcement instrument. The bailiff may also have such a right in other cases provided by law.

Section 45 of CEP allows a court upon an application of a debtor to suspend enforcement proceedings or extend or defer enforcement if continuation of the proceedings is unfair in respect of the debtor. In such case, the interests of the creditor and other circumstances must be taken into account by the court (including the family and economic situation of the debtor). The bailiff will suspend extend or defer enforcement once a court ruling to that effect is received by the bailiff (Section 46 (1) p 2 of CEP).

A court may also suspend enforcement proceedings as a protective measure if a complaint against an action of the bailiff or an action against the enforceability of the enforcement title is lodged.

### **1.8. Means of Enforcement**

The enforcements methods used by the bailiff depend on the type of property seized by the bailiff.

In case of movable property, in order to seize things in the possession of a debtor, a bailiff records the things and restrains disposition thereof. If the movable things are

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<sup>42</sup> See Section 217 (1) of CEP.

recorded in a register, the things will be considered seized once a notation of seizure has been entered in the register.<sup>43</sup> Section 65 of CEP further provides that the right of security on seized things arises for the creditor as of the time of seizure. Thus the debtor will be unable to sell the things after seizure free from third party rights. However not all things can be seized. Section 66 of CEP provides a list of things that cannot be seized. These are primarily personal items and things that a person needs in order to continue their everyday life.

A bailiff may also seize all kinds of rights that a creditor has, including securities, claims against third person, bank accounts, etc. Also income of the creditor may be seized provided that the creditor is left with at least the minimum wage (in 2017 it is EUR 470 per month) or in case of enforcement to recover maintenance for a child at least half of the minimum wage is left for the debtor.<sup>44</sup>

In case of immovable property, a notation is entered into the land register concerning seizure. The notation prohibits any entries to be made in the land register. In case any entries are made after the notation, the entry will be null and void. This ensures that the debtor does not transfer the ownership of the immovable property.<sup>45</sup>

All property seized is sold at a public auction by the bailiff.

## 1.9. Underlying Principles of Enforcement

The underlying principles of Estonian enforcement procedure can be said to be the following:

Principle of efficiency – it has been said that the enforcement system must ensure a swift and efficient system for creditors to collect their claims against debtors.<sup>46</sup>

Protection of the rights of the debtor – it has been said that the debtor's interests and rights should be adequately taken into account in the enforcement proceedings.<sup>47</sup>

Principle of formality – it has been confirmed in court practice that a principle of formality is applicable in enforcement proceedings, meaning that the bailiff is not allowed to evaluate the legality of the enforcement title. If the title is enforceable and all other requirements for enforcement are met, then the bailiff has an obligation to enforce it, even if the enforceable title contains mistakes.<sup>48</sup>

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<sup>43</sup> See Section 64 of CEP.

<sup>44</sup> See Sections 110 – 136 of CEP.

<sup>45</sup> See Sections 137 – 149<sup>1</sup> of CEP.

<sup>46</sup> Täitemenetluse seadustiku eelnõu seletuskiri, available at: <https://www.riigikogu.ee/download/1cf65f8d-80ee-3eff-a29d-faffdfdda30f>.

<sup>47</sup> Täitemenetluse seadustiku eelnõu seletuskiri, available at: <https://www.riigikogu.ee/download/1cf65f8d-80ee-3eff-a29d-faffdfdda30f>.

<sup>48</sup> See for example judgement of the Supreme Court of 12 March 2014 in case No 3-2-1-1-14, p 17. Available at: <http://www.riigikohus.ee/?id=11&indeks=0,2,9614,9628&tekst=RK/3-2-1-1-14> or judgement of the Supreme Court of 26 May 2014 in case No 3-2-1-44-14, p 10. Available at: <http://www.riigikohus.ee/?id=11&indeks=0,2,9614,9628&tekst=RK/3-2-1-44-14>.

## **1.10. Requirements of Enforcement**

Estonian Code of Enforcement Procedure does not require any certification of any enforcement title to start enforcement proceedings. Thus no involvement of the court is necessary to institute enforcement proceedings. It is enough that the creditor holds an enforceable title and other supporting documents as may be required by CEP.

In case of judgements and other similar enforcement titles the requirement pursuant to Section 12 of CEP is that the judgement or a decision of a labour dispute committee or a lease committee has entered into force and the judgement or decision must bear a notation on entry into force.

According to Section 458 (1) of Code of Civil Procedure a notation certifying the entry into force of a judgment is issued, based on the application of a participant in the proceeding and the court file, by the court office of the county court which adjudicated the matter. The notation is entered on a transcript or printout of the court judgment. The notation is signed and certified by the seal of the court. Section 458 (2) of Code of Civil Procedure allows the notation to be given electronically, in which case the electronic notation on entry into force is not certified by the seal of the court.

In practice notations of entry into force are usually given electronically by the office of the county court, unless a paper version is specifically requested by the applicant (e.g. if enforcement abroad is anticipated). The notation can be obtained by sending an e-mail including a request to receive the notation to the court's official e-mail address.

In case of foreign judgements originating from other EU Member States, the requirements for enforcement derive directly from EU law. With regard to judgements from other states, a declaration of enforceability provided by Estonian court is required.

## **1.11. Overview of Estonian Court System**

According to Section 148 (1) of the Constitution of the Republic of Estonia, Estonian court system is a three level system. The first instance courts are county and administrative courts; second instance are circuit courts and the third instance is the Supreme Court. While the Constitution does allow courts to be created for special subject matter, the reality is that no such courts have been established in Estonia.

At this moment Estonia has 4 county courts: Harju County Court, Tartu County Court, Viru County Court and Pärnu County Court. Each county court have several courthouses situated in various locations.

The territorial jurisdiction of the county courts is as follows:

- Harju County Court – Harju County;
- Viru County Court – Lääne-Viru and Ida-Viru Counties;
- Tartu County Court – Tartu, Viljandi, Jõgeva, Põlva, Valga and Võru Counties;
- Pärnu County Court – Pärnu, Saare, Hiiu, Lääne, Järva and Rapla Counties.

Estonia has two administrative courts: Tallinn and Tartu Administrative Court. Tallinn Administrative Court serves the following counties: Harju, Hiiu, Järva, Lääne, Rapla,

Pärnu and Saare County. Tartu Administrative Court serves Jõgeva, Põlva, Tartu, Valga, Viljandi, Võru, Ida-Viru and Lääne-Viru Counties.

Estonia has only two circuit Courts: Tallinn Circuit Court and Tartu Circuit Court. Harju County Court, Pärnu County Court and Tallinn Administrative Court are in the jurisdiction of Tallinn Circuit Court. Tartu County Court, Viru County Court and Tartu Administrative Court are in the jurisdiction of Tartu Circuit Court.

The Supreme Court (Riigikohus) accepts cassation appeals against judgements of any of the circuit courts (in some misdemeanour cases also from county courts).

### **1.12. Territorial Jurisdiction of Enforcement Proceedings**

All bailiffs are assigned to a particular territory and they only have the power to operate within the territory, i.e. they may not institute enforcement proceedings against debtors who do not have habitual residence or property within the territory. Bailiffs are allowed to seize property that is situated outside their territory of operation, provided that the habitual residence of the debtor is within their territory of operation.

Bailiffs may be assigned to one of the 4 operating territories: (i) Harju operating territory (including Harju County), (ii) Viru operating territory (including Lääne-Viru and Ida-Viru Counties), (iii) Tartu operating territory (including Tartu, Viljandi, Jõgeva, Põlva, Valga and Võru Counties) and (iv) Pärnu operating territory (including Pärnu, Saare, Hiiu, Lääne, Järva and Rapla Counties).<sup>49</sup> The operating territories of bailiffs are the same as the operating territories of county courts<sup>50</sup> - the above mentioned territories are served respectively by Harju County Court, Viru County Court, Tartu County Court and Pärnu County Court. The purpose of this is that all complaints and actions related to a particular enforcement proceedings will go the county court on whose territory the bailiff is operating.<sup>51</sup>

### **1.13. Enforcement of Conditional Claims**

Enforcement of conditional claims or claims that become due in the future is possible in Estonia. Enforcement of such claims is regulated in Sections 19 – 21 of CEP.

Section 19 of CEP provides that if the falling due of a claim contained in an enforcement instrument depends on the expiry of a term or fulfilment of a condition or due date, the enforcement acts may be commenced after the expiry of the term or fulfilment of the condition or due date. If the claim depends on a condition, then the fulfilment of the condition must be proved to a bailiff by written documents.

Section 20 of CEP concerns enforcement proceedings that depend on security of the creditor. It provides that if enforcement proceedings depend on the security of a creditor, enforcement proceedings may be commenced only if grant of security is certified by a written document and the copy of the document has been delivered to a debtor or is delivered to the debtor together with the enforcement notice.

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<sup>49</sup> See Section 1 of Bailiffs Regulations.

<sup>50</sup> See Minister of Justice Regulation No 46 of 27 October 2005 "Maa- ja halduskohtute kohtumajade täpsed asukohad ja teeninduspiirkonnad ning ringkonnakohtute asukohad".

<sup>51</sup> See Sections 217 – 223 of CEP.

A separate provision is included in CEP regarding obligations that must be performed simultaneously. Section 21 of CEP provides that if the execution of an enforcement instrument depends on the concurrent performance of the obligation of the creditor to the debtor, the bailiff shall not commence enforcement proceedings before the obligation of the creditor has been performed or if the creditor or bailiff has offered to the debtor performance of the obligation of the creditor and the debtor has unjustifiably refused to accept the performance or has delayed acceptance of the performance for other reasons. Such offer need not be made if the creditor submits a written document certifying that the obligation of the creditor has been performed or that the debtor delays acceptance of the performance and a copy of the document has been communicated to the debtor or is communicated to the debtor together with the enforcement notice.

#### **1.14. Legal Succession in Enforcement Proceedings**

Legal succession in enforcement proceedings is regulated in Section 18 of CEP. It provides that if an enforcement instrument also applies to the legal successor of a creditor or debtor indicated therein, a bailiff shall accept the enforcement instrument for enforcement if the legal succession has been proven to the bailiff by a judgement, an extract from the public register or a notarized document. The same applies to the enforcement of a judgement in respect of the possessor of the disputed thing if the possessor has changed after the judgement is made. Section 18 (1<sup>2</sup>) of CEP further provides that a legal successor of the creditor may join any initiated enforcement procedure.

#### **1.15. Enforcement Titles**

Estonia uses an exhaustive list of enforceable titles – i.e. if a title is not mentioned in this list, it is not directly enforceable. A list of all the enforceable titles based on which enforcement proceedings may be initiated is provided in Section 2 (1) of CEP. As the enforcement proceedings are based on the principle of formality, the bailiffs do not have discretion to interpret documents submitted to it or to decide whether it should be directly enforceable.

Enforceable titles according to Section 2 (1) of CEP are:

- court judgments and rulings which have entered into force or are subject to immediate enforcement in civil matters;
- judgments and rulings of administrative courts which have entered into force or are subject to immediate enforcement and concern the costs of proceedings and other public law claims for payment, and which concern the ordering of payment of compensation for damage caused in public law relationships and ensuring the fulfilment of financial claims;
- court judgments and rulings which have entered into force in criminal matters concerning criminal punishments consisting of claims for payment, procedure expenses and other claims for payment in criminal procedure;
- court judgments and rulings which have entered into force in misdemeanour matters concerning fines imposed as punishment for misdemeanours, the costs of misdemeanour proceedings and other public law claims for payment;
- decisions by courts of foreign states declared enforceable in Estonia or subject to enforcement without recognition;



- official documents of foreign states declared enforceable in Estonia or subject to enforcement without recognition;
- decisions of arbitral tribunals permanently operating in Estonia and decisions of another arbitral tribunals, which are declared to be subject to enforcement;
- decisions of labour dispute committees and lease committees which have entered into force;
- decisions of the public procurement appeals committee concerning claims for payment which have entered into force;
- decisions of the court of honour of the Bar Association entered into force;
- agreements entered into in the proceedings conducted by out-of-court dispute settlement bodies provided by law, including agreements approved by the Legal Chancellor in conciliation proceedings;
- decisions and rulings of extra-judicial bodies concerning fines imposed as punishment for misdemeanours, claims for payment of cautionary fines imposed in written caution proceedings, costs of misdemeanour proceedings and other public law claims for payment;
- orders of investigative bodies or a Prosecutor's Office for collection of information needed to impose fines to the extent of assets or for deciding confiscation of property which was obtained by a criminal offence, and for reimbursement of the expenses relating to criminal proceedings in pre-trial proceedings, and orders of a Prosecutor's Office for recovery of compensation for damage caused in offence proceedings;
- administrative acts on the basis of which penalty payments and costs of substitutive enforcement are collected;
- administrative acts issued by tax authorities concerning compulsory enforcement of tax liabilities and other financial obligations;
- precepts for the collection of state fees issued by the administrative agency which performed an act subject to a state fee;
- decisions of county governors in expropriation proceedings regarding immovables;
- decisions of the Minister responsible for the area in expropriation proceedings regarding immovables;
- decisions of rural municipality governments or city governments in expropriation proceedings regarding immovables;
- statements of compulsory auctions on the basis of which a person who purchases an immovable is entered in the land register as the owner of the immovable, upon reclamation of possession of the immovable;
- bailiffs' decisions on bailiff's fee and enforcement costs and imposition of penalty payments;
- invoices for notary fees for notarial acts and expenses relating thereto;
- notarized agreements concerning financial claims according to which a debtor has consented to be subject to immediate compulsory enforcement after the claim falls due;
- notarized agreements concerning claims for support according to which a debtor has consented to be subject to immediate compulsory enforcement;
- notarized agreements which prescribe the obligation of the owner of an immovable or a ship entered in the register of ships or an object encumbered with a registered security over movables to be subject to immediate compulsory

- enforcement for the satisfaction of a claim secured by the mortgage, maritime mortgage or registered security over movables;
- notarized agreements which prescribe the obligation of the owner of a structure as a movable or a part thereof to be subject to immediate compulsory enforcement for the satisfaction of a claim secured by a pledge contract of a structure or a part thereof;
  - notarized agreements which prescribe the obligation of the owner of an immovable to be subject to immediate compulsory enforcement for the satisfaction of a financial claim secured by a real encumbrance;
  - agreements specified in subsection 351 (9) of the Land Reform Act and entered into in writing which prescribe the obligation of the owner of an immovable to be subject to immediate compulsory enforcement for the satisfaction of a financial claim secured by a real encumbrance;
  - decisions on the imposition of a fine for delay made upon monitoring of parking;
  - in the cases provided by law, administrative acts for the performance financial obligations in public law.
  - decisions of the Council or of the Commission issued on the basis of Article 256 of the Treaty establishing the European Community which impose a pecuniary obligation on persons other than States;
  - decisions of the Office for Harmonisation in the Internal Market specified in Article 82 of Council Regulation (EC) No 40/94 on the Community trade mark (OJ L 011, 14.01.1994, pp. 1–36) and Article 71 of Council Regulation (EC) No 6/2002 on Community designs (OJ L 003, 05.01.2002, pp. 1–24);
  - agreements entered into in the course of conciliation proceedings and approved and declared to be subject to execution pursuant to the procedure provided for in Chapter 62<sup>1</sup> of the Code of Civil Procedure;
  - agreements approved by a conciliation body pursuant to the procedure provided for in Section 26 of the Conciliation Act;
  - notarised agreements specified in subsection 14 (3) or (4) of the Conciliation Act.

### **1.16. Requirements for Enforceability of a Judgement**

Estonian Code of Enforcement Procedure does not require any special certification of judgements to start enforcement proceedings. The requirement pursuant to Section 12 of CEP is that the judgement or a decision of a labour dispute committee or a lease committee has entered into force and the judgement or decision must bear a notation on entry into force.

According to Section 458 (1) of Code of Civil Procedure a notation certifying the entry into force of a judgment is issued, based on the application of a participant in the proceeding and the court file, by the court office of the county court which adjudicated the matter. The notation is entered on a transcript or printout of the court judgment. The notation is signed and certified by the seal of the court. Section 458 (2) of Code of Civil Procedure allows the notation to be given electronically, in which case the electronic notation on entry into force is not certified by the seal of the court.

In practice notations of entry into force are usually given electronically by the office of the county court, unless a paper version is specifically requested by the applicant (e.g. if enforcement abroad is anticipated). The notation can be obtained by sending an e-mail including a request to receive the notation to the court's official e-mail address.

In case of foreign judgements originating from other EU Member States, the requirements for enforcement derive directly from EU law. With regard to judgements from other states, a declaration of enforceability provided by Estonian court is required.

### **1.17. Service of Documents and Decisions in Enforcement Proceedings**

In the enforcement proceedings the bailiff first serves personally on the debtor a notice of enforcement proceedings (Section 24 of CEP). Subsequently all the other documents of enforcement that regard the rights and obligations of the debtor will also be served on the debtor.

### **1.18. Division between enforcement and protective measures**

The Code of Enforcement Procedure does not provide for special provisional measures. Once there is an enforceable title, the bailiff will proceed with enforcement procedures, seizing the property of the debtor. If the party does not have an enforceable title, he/she must obtain a ruling from the court ordering provisional measures. This ruling will then be enforced basically in the same way as any other enforceable title.

### **1.19. Criticism Concerning Current Enforcement Proceedings**

One of the biggest problems of enforcement proceedings in Estonia is (and has been for some time) the requirement of Section 24 (1) of CEP that before starting enforcement proceedings, a notice of enforcement has to be personally served on the debtor. Bailiffs have pointed out that in many cases it is very difficult to find a debtor and serve him/her the notice<sup>52</sup>, which then delays the commencement of enforcement and does not allow bailiffs to take appropriate measures to ensure that enforcement is possible. Section 64 (2) of CEP does allow a bailiff to seize property before serving an enforcement notice to the debtor, but only if it can be demonstrated that significant damage to enforcement could arise from a delay in serving the enforcement notice on the debtor. The latter may be difficult to prove. Unfortunately no solution has been found for the problem.

Another tendency according to the author's practical experience is that an increasing amount of debtors tend to submit an action to the court asking the court to partially or totally remove the enforceability of enforcement titles. This happens not only in cases where the enforcement title derives from parties' agreement (e.g. enforcement titles mentioned in Section 2 (1) pp 18 – 19<sup>3</sup> of CEP) but also in cases where the basis of the enforcement is a domestic judgement. The practice has been encouraged by some judgements of the Supreme Court<sup>53</sup> where the Supreme Court found that in some cases it could be possible to reduce the payable penalty interest at the enforcement stage, although the penalty interest has been awarded by an enforceable judgement. These kinds of actions significantly delay enforcement proceedings and prejudice the right of the creditors to a quick and swift enforcement.

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<sup>52</sup> See for example the statements made by the Chairman of Chamber of Bailiffs and Trustees in Bankruptcy, available at: <http://rup.ee/uudised/oigus/eesti-pankrooti-ja-taitemenetlused-on-liiga-aeglased>.

<sup>53</sup> Judgement of the Supreme Court of 17 June 2009 in case No 3-2-1-64-09, p 9. Available at: <http://www.riigikohus.ee/?id=11&indeks=0,2,10246,10320,10329&tekst=RK/3-2-1-64-09>.



## **Part 2: National procedure for recognition and enforcement of foreign judgements**

### **2. National procedure for recognition and enforcement of foreign judgements**

The recognition of foreign judgement and the declaration of foreign judgements enforceable is regulated on Estonia by the Code of Civil Procedure (CCP).

Estonian domestic system of recognition and enforcement of foreign judgements is very similar to the system that was in operation under the previous version of Brussels I Regulation (i.e. Regulation 44/2001). Thus the Estonian system of recognition and enforcement of foreign judgements corresponds mostly to the system of *contrôle limité*.

The notions of recognition and enforcement of a judgement are interpreted in Estonian domestic law in the same way as in Brussels I Regulation. That is recognition is the ability to rely on the judgement and on what has been established by the judgement. Recognition also means that the parties cannot re-litigate the action in Estonian court and that the judgement can be relied on in subsequent proceedings before an Estonian court (if necessary). Enforceability is understood as the possibility to enforce the judgement in enforcement proceedings.

Recognition of a foreign judgement in Estonia is regulated by Section 620 of CCP. According to this provision a judgement in a civil matter made by the court of a foreign state is recognised in Estonia without a need to conduct separate court proceedings provided that it is enforceable in the state where the judgement was given. However a foreign judgement is not recognised if:

- recognition of the judgement would be clearly contrary to the essential principles of Estonian law (public order) and, above all, the fundamental rights and freedoms of persons;
- the defendant or other debtor was unable to reasonably defend the rights thereof and, above all, if the summons or other document initiating the proceeding was not served on time and in the requisite manner, unless such person had a reasonable opportunity to contest the judgement and the person failed to do so within the prescribed term;
- the judgement is in conflict with an earlier judgement made in Estonia in the same matter between the same parties or if an action between the same parties has been filed with an Estonian court;
- the judgement is in conflict with a judgement of a foreign court in the same matter between the same parties which has been earlier recognised or enforced in Estonia;
- the judgement is in conflict with a judgement made in a foreign state in the same matter between the same parties which has not been recognised in Estonia, provided that the earlier judgement of the foreign state is subject to recognition or enforcement in Estonia;
- the court which made the judgement could not make the judgement in compliance with the provisions of Estonian law regulating international jurisdiction.

Section 620 (3) and (4) of CCP allow an interested party to request adjudication of its recognition pursuant to the procedure prescribed in CCP for declaring a judgement

enforceable if there is a dispute on recognition or if it is necessary for a person due to another reason for the purpose of exercising his or her rights. If adjudication of another court matter depends on the recognition of a judgement of a foreign state, the recognition may be decided by the court adjudicating such court matter.

In order to enforce a foreign judgement, the Estonian domestic system requires a foreign judgement to be declared enforceable (see Section 2 (1) p 5 of CEP). In order to declare a foreign judgement enforceable, an application must be submitted to court asking the court to declare the judgement enforceable. The following documents must be attached to the application (Section 622 of CCP):

A petition for declaring a court decision of a foreign state enforceable is submitted in writing, and the following is annexed thereto:

- a transcript of the judgement authenticated pursuant to the requirements of the law of the state of the location of the court which made the judgement;
- a document which confirms that an action, summons or other document initiating the proceeding has been served in time on at least one occasion pursuant to the law of such state on the defendant or based on the judgement, on another debtor who did not participate in the proceeding;
- a document which certifies that the judgement has entered into force pursuant to the law of the state where the judgement was made and has been communicated to the defendant or based on the judgement, another debtor;
- documents concerning the enforcement of the judgement if enforcement has already been attempted;
- documents concerning the enforcement of the judgement if the judgement has already been enforced;
- translations into Estonian of the above mentioned documents made by a sworn translator or certified by a notary.

According to Section 623 of CCP the court upon adjudication of the application for declaring a judgement of a foreign state enforceable, examines the prerequisites for recognition of the judgement only. The correctness of the judgement regarding the merits of the matter is not assessed. Prior to declaring the foreign judgement enforceable (or recognise it) the court may hear the debtor as well as the creditor.

Section 623 (4) of CCP further provides that if enforcement of the judgment depends on the provision of a security by the person who, based on the judgement, is the claimant, or on other circumstances, or if declaration of enforceability of the judgement is requested by a person other than the person specified in the judgement as the claimant, or if enforcement of the judgement is requested in respect of a person other than the person specified in the judgement as the debtor, the court evaluates the existence of the prerequisites for enforcement of the judgement based on the law of the state of the location of the court which made the judgement and based on the evidence provided by the participants in the proceeding.

The jurisdiction of courts in the process of recognising or declaring a foreign judgment enforceable is dependent on where the debtor has his habitual residence or where enforcement proceedings will be instituted. The matter is settled in Section 122 of CCP which provides that an application for recognition and declaration of enforceability of a judgement of a court or arbitral tribunal of a foreign country, an

application for refusal to recognise or enforce or for suspension of enforcement or another application in enforcement proceedings shall be filed according to the residence or seat of the debtor, or with the court within whose territorial jurisdiction the conduct of enforcement proceedings is sought, unless otherwise provided by law or an international agreement.

**Part 3: Recognition and Enforcement in B IA**

**3. Recognition and Enforcement in B IA**

**3.1. Certification or declaration of enforceability in Member States of origin (Art. 53. B IA).**

**3.1.1. Critical Assessment Regarding Certification**

Estonia has not adopted many specific rules in order to apply the Brussels I A Regulation (1215/2012).<sup>54</sup> One of the few references made to Regulation 1215/2012 is found in Section 619 (1) p 1 of CCP. It provides that rules provided in CCP shall be applied to the recognition and enforcement of judgements from other Member States of the EU as far as Regulation 1215/2012 does not regulate the matter differently.

Article 53 of Regulation 1215/2012 on the other hand leaves the question of the procedure of issuing the certificate open and it seems that it assumes that this would be a matter of domestic procedural rules. As Estonia does not have specific rules regarding the issuing of the certificate, one must apply the general rules in Estonian CCP, which were not designed for issuing of such a certificate.

Thus there are a lot of open questions on Estonian domestic level. It is unclear for example whether the issuing of a certificate should be considered to be the issuing of a court ruling within the meaning of the CCP? What are the possibilities to challenge the certificate if the court mistakenly issues the certificate? Can the court correct mistakes made in the certificate? Can only obvious mistakes (e.g. typing mistakes) be corrected or is it also possible to correct substantial mistakes? Unfortunately at this point there is no guidance how to answer these questions.

The everyday practice in Estonian courts is that certificates are issued upon a simple request and no written ruling or anything similar is issued by the court. In case the court has not issued a certificate, the court has sometimes written a letter explaining why the certificate could not be issued. However there is no legal grounds to challenge these explanations in case the applicant does not agree with them. In Estonian CCP court rulings can only be challenged, if this right specifically arises from the provisions of the CCP.<sup>55</sup> As the issuing of the certificate is not regulated, there is also not provision that would allow the challenging of the ruling deciding not to issue the certificate.

**3.1.2. Challenging the Certificate of Enforceability**

As mentioned above, Estonian law does not provide any specific provisions regarding the certification of a judgement under Brussels I A Regulation. Thus Estonian law and more specifically the CCP does not explicitly provide for a procedure to challenge the certificate of enforceability. Taking into account the general principle arising from Section 660 (1) of Estonian CCP that a court ruling may only be challenged in circuit court if that right is specifically provided for in the CCP, one should come to the

<sup>54</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

<sup>55</sup> See Section 660 (1) of CCP.



conclusion that no procedure for challenging the certificate would be available under CCP.

The enforcement of the judgement of another Member State of the EU relies on Section 2 (1) p 5 of the CEP, which provides that a foreign judgment that is enforceable in Estonia without the need to be recognised constitutes an enforceable title. The fact that judgements of other Member States are directly enforceable in Estonia derives directly from Article 39 of Regulation 1215/2012. Thus if the judgment of a court of another Member State is regarded as directly enforceable in Estonia under Regulation 1215/2012, it would be enforceable by virtue of Section 2 (1) p 5 of the CEP.

### 3.1.3. The Effects of a Judgement that is not Enforceable in the Member State of Origin

If an Estonian court would certify an Estonian judgement under Article 53 of Regulation 1215/2012 before the judgement would be enforceable in Estonia, it is not clear whether the certificate could be corrected by the court. If the certificate includes obvious mistakes, then probably they could be corrected under Section 447 (2) of the CCP, which allows the court to correct any obvious typing or calculation mistakes. However this provision does not allow the correction of mistakes that influence the content of the decision taken by the court. Thus it is doubtful whether such a mistake could be corrected under Section 447 (2) of the CCP.

Unfortunately it is not clear what type of a procedure is the issuing of the certificate – one could assume that it is proceedings on petition, although it is not specifically mentioned in Section 475 (1) of the CCP, which lists all the proceedings on petition. However if this assumption is true, one could wonder whether a substantial amendment to the certificate could be made under Section 480 (1) of the CCP. But this is not clear since Section 480 (1) of the CCP only allows the court to change or repeal a ruling if the ruling has lasting effects and the circumstances underlying it or the legal situation has changed considerably. It is a bit doubtful whether correction of a substantial mistake would fall under this provision.

On the other hand, if enforcement proceedings would be instituted in Estonia based on such a faulty certificate, one could argue based on Article 39 of Regulation 1215/2012 and Section 2 (1) p 5 of the CEP that the judgement of another Member State is not an enforceable title in Estonia as it is not directly enforceable because it does not meet the requirements of direct enforceability (it is not enforceable in Member State of origin as required by Article 39 of Regulation 1215/2012). That could give grounds for the debtor to file a complaint against the actions of the bailiff under Section 217 (1) of CEP as the bailiff has instituted enforcement proceedings without a valid enforcement title. It is of course not clear whether such complaint would be successful.

### 3.1.4. Withdrawal of Certificate of Enforcement

Estonian domestic law does not provide for any regulation on the withdrawal of the certificate. It is also doubtful whether such withdrawal would be possible. As to the possibilities to correct the certificate, please see above in section 3.1.3.

### 3.1.5. Effects of Certificate in Estonia

Estonian domestic law does not attach any specific meaning to the certificate issued under Regulation 1215/2012. As was explained above, enforcement of the judgement of another Member State of the EU relies on Section 2 (1) p 5 of the CEP, which provides that a foreign judgment that is enforceable in Estonia without the need to be recognised constitutes an enforceable title. The fact that judgements of other Member States are directly enforceable in Estonia derives directly from Article 39 of Regulation 1215/2012. Since Regulation 1215/2012 also provides what documents would have to be produced in the Member State of enforcement, the certificate would have the meaning that is attached to it by Regulation 1215/2012.

### 3.1.6. Control and Correction

Please see above in section 3.1.3.

### 3.1.7. Plurality of Certificated Documents

The author of this report does not see any specific problems deriving from a plurality of certificate unless the certificates would include different information.

### 3.1.8. Legal Nature of the Certificate of Enforcement

Please see the comments above in section 3.1.7. As was mentioned above, domestically it is not clear whether the act of an Estonian court issuing a certificate is a court ruling or not.

### 3.1.9. *Post festum* cancelation or withdrawal of certificate of enforceability in Member State of origin.

The situation would probably be the same as described above in section 3.1.3. If the judgement would no longer enforceable in the Member State of Origin, one could argue based on Article 39 of Regulation 1215/2012 and Section 2 (1) p 5 of the CEP that it is no longer an enforceable title in Estonia and thus no enforcement proceedings would be allowed.

### 3.1.10. Service of Certificate or Declaration of Enforceability on the Defendant

Estonian domestic rules do not regulate the question of whether the certificate of enforcement should be served on the defendant. In the absence of a clear rule, the practice in Estonia seems to be that it is not always served on the defendant. However even if there was a requirement of service, it would not be clear what would be the consequences if this requirement was not met, as there seems to be no challenge available against the issuing of the certificate.

### 3.1.11. Protective Measures Prior to First Enforcement Measure

As was mentioned above, Estonian enforcement procedure namely Section 64 (2) of CEP allows a bailiff to seize property before serving an enforcement notice to the debtor, but only if it can be demonstrated that significant damage to enforcement could arise from a delay in serving the enforcement notice on the debtor. Of course in the light of Article 43 (1) of Regulation 1215/2012 no such measures could be taken.

This is a problem in the opinion of the author as it does take away the surprise effect, however in Estonian context it is not common in practice for bailiffs to apply protective measures based on Section 64 (2) of CEP. Thus this might not affect Estonian enforcement procedure that much.

### 3.1.12. Certifying the Amount of Interests

A problem has been raised whether Annex I of Regulation 1215/2012 allows the certifying court to adequately provide the basis for interest calculation in case of statutory interest so that the enforcement officer of another Member State would understand it.

The author of this report agrees with the above. Since in Estonia the statutory interest rate is provided in law as the sum of ECB basic interest rate before the 1 January or 1 July and 8% per year, it would make sense to allow this information to be included in the certificate. It is probably quite difficult in Estonian case for an enforcement officer of another Member State to determine the statutory interest rate, as Section 113 of Law of Obligations act that provides the interest rate, refers back to Section 94 of Law of Obligations Act. Thus a more simple calculation base could be useful.

### 3.1.13. Effects of Succession on Certificate

In case of succession regarding a certificate based on which enforcement is sought in Estonia, the principles of how succession affect enforcement is provided in Sections 16 – 18 of CEP. According to these provisions if succession is successfully demonstrated to the bailiff, the new creditor or debtor will become part of the proceedings.

On the other hand the question of what happens if the debtor is succeeded by a successor after the judgement comes into effect and before a certificate is issued under Article 53 of Regulation 1215/2012 is a rather difficult one. Estonian domestic law provides no answer to the question. It also seems that Regulation 1215/2012 provides no answer.

## **3.2. Recognition and Enforcement in Member State of enforcement.**

### 3.2.1. The concept of 'recognition' (Art. 36/1).

In the author's understanding, recognition is the ability to rely on the judgement and on what has been established by the judgement. Recognition also means that the parties cannot re-litigate the action in a court of any Member State of the EU and that the judgement can be relied on in subsequent proceedings before a court within the EU.

### 3.2.2. The scope of a judgement's authority and effectiveness

From the Estonian perspective the author does not see any problems to spread the effects of a judgment from the Member State of origin to the Member State of enforcement.

### 3.2.3. Article 43 of Regulation 1215/2012 and Protective Measures

As was mentioned above, Estonian domestic law does not provide the obligation to serve the certificate of enforcement of the debtor. Thus it is possible that the debtor may receive a certificate issued in Estonia with the notification of the enforcement.

Regarding the question of whether protective measures could be taken in Estonia before the certificate was delivered, the author maintains the view already taken in section 3.1.11 that it would not be possible in the light of Article 43 of Regulation 1215/2012. The author agrees that perhaps CJEU could clarify this issue and possibly an amendment of Regulation 1215/2012 would be needed.

### 3.2.4. The Residual Challenge Stage in Estonia

As has been mentioned before, Estonia has not provided for almost any substantial regulations for the implementation of Regulation 1215/2012. Thus there is no specific procedure available in Estonian domestic law for challenging the recognition of the judgement of another Member State.

However as the question of recognition is a question regarding the admissibility of the enforcement title, the challenging of the judgement would probably be available based on Section 221 (1) of CEP that allows the debtor to file an action against the creditor for declaration of compulsory enforcement of the judgement to be inadmissible. In these proceedings the debtor could rely on the grounds of non-recognition provided in Article 45 of Regulation 1215/2012.

## **Part 4: Remedies**

### **4. Remedies**

#### **4.1. System of Remedies in Enforcement Procedure in Estonia**

As has been mentioned above, two types of remedies are available in Estonian enforcement proceedings: a complaint against a bailiff's action<sup>56</sup> and an action related to the enforcement.<sup>57</sup>

Cases based on a complaint are adjudicated in county court as cases based on an application.<sup>58</sup> This means that in such cases the court is free to gather any evidence and the court is not bound by any submissions made by the parties involved. These types of cases are concerned with particular procedural decisions or actions that bailiffs have to take during the enforcement proceedings<sup>59</sup> – these proceedings are not intended for challenging the enforcement title or anything arising from it.

In case where the debtor or a third person has objections against the enforcement procedure as a whole either because the proceedings are not based on an enforceable title or the debtor in the proceedings is not mentioned in the enforceable title or the enforceable title should not be enforced or the person holds a right regarding seized property, the person must file an action against the creditor to the court in whose jurisdictional territory the bailiff is operating. Upon application from the debtor the court may suspend the enforcement proceedings until a final judgment becomes into force in the case. The effect of a judgment in such cases is to either disallow the enforcement proceedings (if the basis for the action is that proceedings have been instituted without an enforceable title or instituted against a person not mentioned in the title) or remove the enforceability of the enforcement title altogether.

Estonian law provides no specific remedies concerning enforcement proceedings based on foreign judgments. Thus the remedies described above must be adjusted to meet the need of enforcement proceedings based on a foreign judgment (including a judgment of another Member State).

In case the enforcement is challenged by the debtor, the court has the option under procedural rules to take preliminary protective measures. However an interested party should apply for such measures from the court. There are no specific protective measures available in enforcement proceedings. But if enforcement is challenged after seizure of assets has been done, then all the measures (notations in registers, seizure of assets) will stay in place during the court proceedings unless the court specifically orders the measures to be lifted. This should ensure the protection of the interest of the creditor.

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<sup>56</sup> See Sections 217 – 219 of CEP.

<sup>57</sup> See Sections 220 – 223 of CEP.

<sup>58</sup> See Section 475 (1) p 15 of the Code of Civil Procedure

<sup>59</sup> See Section 217 (1) of CEP.

**Part 5: Final critical evaluation of B IA – what necessary adaptations to national legislations need to be done?**

**5. Final critical evaluation of B IA**

It is the author's opinion that the amendment of Brussels I Regulation and the new Regulation 1215/2012 despite some of its shortfalls has simplified the enforcement of a judgement of one Member State in another Member State.

In Estonian context Regulation 1215/2012 has produced a situation where a foreign person who speaks English could probably institute enforcement proceedings in Estonia based on a judgement from another Member State without hiring a lawyer in Estonia. This is in the author's opinion a good achievement and certainly will make cross-border litigation easier.

The author does not see any additional costs for the debtor arising from Regulation 1215/2012 that would not have existed before. The author would rather think that the overall costs would be significantly lower. The author is also not concerned about the procedural autonomy of Member States and maintains the view that perhaps the procedure of enforcement of judgements under Regulation 1215/2012 could be further harmonised.

As to the standardised forms, the author is of the opinion that using a form in the debtor's language does not give much practical advantage if the court will not be able to fill the form out completely in that language. Since the form in Annex I of Regulation 1215/2012 requires an overview of the judgement and several other free text to be added, it is not probable that a court would fill that part out in a foreign language. If the latter is the case, it will also not make much practical sense to choose the form in the debtor's language as the certificate would need to be translated anyway.

In Estonian context it is not easy to say at this point what would be the best regime for collecting claims in cross-border cases. The author is of the opinion that the current Brussels I A regime and the European Enforcement Order (Regulation 805/2004) regime are not so different anymore. However because European Enforcement Order seems to be a bit better thought through, it seems that perhaps in case on an uncontested claim it would be better to proceed under Regulation 805/2004.