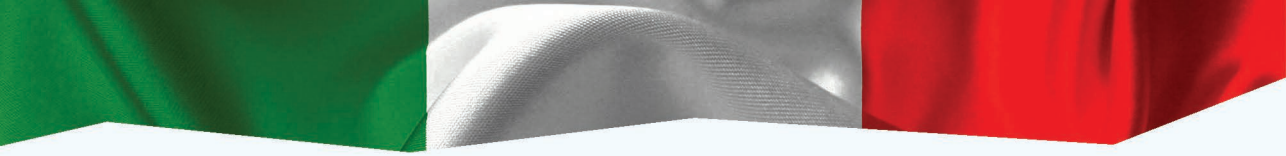

CROSS BORDER ENFORCEMENT OF MONETARY CLAIMS - INTERPLAY OF BRUSSELS I A REGULATION AND NATIONAL RULES

NATIONAL REPORT: ITALY

Author
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University of Maribor Press

Faculty of Law

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Cross border Enforcement of Monetary Claims - Interplay of Brussels I A Regulation and National Rules

National report: Italy

ANDREA GIUSSANI

Abstract The "National Report: Italy" systematically and comprehensively addresses the main features of the enforcement of monetary claims in the German legal system, focusing in particular on the analysis of legal remedies in the enforcement procedure. Said issues are approached from both national and cross-border perspectives. The issues discussed are profoundlytopical in light of the recent coming into effect of the Brussels IA Regulation (Recast) and its more or less successful implementation in the national systems of the Member States, which has raised a number of issues. The report critically reflects some of the controversial solutions covered by the Recast Regulation regarding the effectiveness and appropriateness of the Regulation's application in the legal system in question and related problems. It also deals with national specificities in the enforcement procedure, which still constitute an obstacle to cross-border procedures. The report was created as part of a study conducted under the auspices of the EU project BIARE ("Remedies on the Enforcement of Foreign Judgments according to Brussels I Recast") under the coordination of the Faculty of Law University of Maribor.

Keywords: • Brussels IA Regulation • cross-border enforcement procedure • enforcement of monetary receivables • legal remedies • Italy •

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1 MAIN FEATURES OF THE NATIONAL ENFORCEMENT PROCEDURES FOR RECOVERY OF MONETARY CLAIMS (GENERAL OVERVIEW)

1.1 LEGAL SOURCES REGULATING ENFORCEMENT

The highest source of law with respect to enforcement in civil and commercial litigation in Italy is Art. 24 of the Constitution, granting effectiveness to judicial protection of rights.

The most relevant statutory law provisions are Book III of the Code of Civil Procedure (Artt. 474-632), and the 2nd Chapter of Title IV of Book VI of the Civil Code (Artt. 2910-2933). Many other rules of the Code of civil Procedure, however, do frequently apply (such as, e.g., rules on venue for enforcement proceedings in Artt. 26 ff., and rules on enforceability of appealed judgments in Artt. 282 f.). Several special provisions help public entities both as creditors (e.g., Art. 52, § 1, of Presidential decree no. 602 of 29 September 1973, exempting from judicial approval of sale of assets) and as debtors (e.g., Art. 42, § 7 *novies* of law no. 207 of 30 December 2008, excluding seizure of public entities' credits against tax collection agents).

Special provisions may also apply to various situations (e.g., Art. 137 of the Code of Industrial Property provides special rules for seizure, attachment, and sale of patents).

With respect to transnational enforcement, nationality and domicile of creditor and debtor are in principle irrelevant, insofar as an asset located in Italy may be seized, and provided that no sovereign immunity applies. Recent amendment of Art. 26 *bis* of the Code of Civil Procedure (introduced by law no. 162 of 10 November 2014), may imply, according to some scholars, that garnishment is available only if the debtor is domiciled in Italy ([1]), but no case law followed this path so far (the Court of Cassation, however, has not yet settled the issue).

Enforcement of foreign judgments, court settlements, and authentic instruments, whenever neither Union law nor special international convention applies, is governed by Artt. 64 ff. of law no. 218 of 31 May 1995.

1.2 RECENT REFORMS AND ONGOING REFORM IN PROGRESS

In recent years Italian government gave high priority to improvement of effectiveness of enforcement procedures, enacting several reforms: the latest are law no. 132 of 6 August 2015, confirming law decree no. 83 of 27 June 2015, and now law decree no. 59 of 3 May 2016, confirmed by law no. 119 of 30 June 2016.

1.3 UNDERLYING DOGMATIC FRAMEWORK

Some of the traditional general principles of enforcement proceedings still apply, while other ones have lost most of their cogency.

It is still true that self-enforcement is allowed only in strictly exceptional cases, and that enforcement proceedings are governed by courts and not by administrative agencies (albeit public entities may be partly dispensed by court control in the

[1] See, e.g., E. D'Alessandro, "L'espropriazione presso terzi", in *Processo civile efficiente e riduzione arretrato. Commento al d.l. n. 132/2014, convertito in l. n. 162/2014*, ed. F.P. Luiso (Torino: Giappichelli, 2014), 58; A. Tedoldi, "Le novità in materia di esecuzione forzata nel d.l. 132/2014 … in attesa della prossima puntata …", in *Corriere giuridico* (2014): 390; M. Bove "La nuova disciplina in materia di espropriazione del credito", in *Le nuove leggi civili commentate* (2015): 4.

enforcement of their credits, pursuant to special provisions ([2])). It is also still true that the debtor cannot plead that the credit does not exist within the enforcement proceeding: to that end, the debtor must file an action on the merits.

It is also still true that the creditor may file several enforcement proceedings at the same time against the same debtor until the credit is fully satisfied: it is up to debtor to plead that seizures are excessive or abusive ([3]). It is also still true that in principle only specific assets may be seized and sold: seizure and sale of all the debtor's assets is available, however, if the debtor is an insolvent entrepreneur.

A main development concerned the traditional principle "*nemo precise ad factum cogi potest*": according to this principle, injunctions were enforceable only if no personal specific performance by the debtor was required. After introduction of Art. 614 *bis* of the Code of Civil Procedure by law no. 69 of 18 June 2009 this is no longer true: in principle, a debtor violating an injunction requiring personal specific performance incurs in monetary sanctions, proportionate to the depth and length of the violation, to be paid to the creditor.

Amendment of Art. 614 *bis* by law no. 132 of 6 August 2015 expanded its scope, allowing sanctions for violation of injunctions regardless of the kind of performance required. However, Art. 614 *bis* still does not apply to labor disputes.

Another traditional principle was that every creditor of the same debtor had a full right to participate in the proceedings and to the distribution of the revenues of the sale of assets on an equal footing (*par condicio creditorum*), unless a special protection of the credit applies (such as a mortgage, or a legal preference in the distribution of the revenues, e.g. for wages). After law no. 80 of 14 May 2005, however, this participation is allowed only to enforce credits assisted by a special protection with respect to the seized asset (such as a mortgage, or an attachment), or autonomously enforceable (however, all credits still concur in insolvency proceedings).

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[2] See, e.g., Art. 72 *bis* of legislative decree no. 602 of 29 September 1973, governing attachment of credits for the enforcement of tax credits.

[3] E.g., the debtor may plead abuse if the creditor splits the sum due between different enforcement proceedings: several enforcements at the same time are allowed only if the whole sum due is asked in each one of them; otherwise there is an abusive splitting of the cause of action (see the judgment of the Italian Court of Cassation no. 8576 of 9 April 2013.

The same reform, however, also expanded (through amendment of Art. 474 of the Code of Civil Procedure) the scope of autonomously enforceable credits: not only those affirmed by a judgment or a notary act, or by a bank check or a promissory note, but also money credits affirmed in private documents whenever a public officer certified the authenticity of their signatures.

1.4 DIFFERENT TYPES OF ENFORCEMENT PROCEDURES

A main subdivision may be traced between direct and indirect enforcement, the latter consisting in sanctions for noncompliance to injunctive remedies: sanctions, in fact, do not actually satisfy the credit, but force the debtor to comply spontaneously. Note, however, that no special proceeding is contemplated to determine the amount due for noncompliance: the injunctive order must set the sum due for any violation, and the creditor may file an enforcement proceeding for the total as an autonomously enforceable money credit (being up the debtor to plead that there was no violation, or that the total is wrong).

Another subdivision is traced by the Code of Civil Procedure between generic and specific enforcement, the former consisting in enforcement of money credits through seizure and sale, or assignment, of debtor's specific assets (Artt. 483-604 of the Code). Amongst generic enforcement proceedings, the Code of Civil Procedure also distinguishes depending on the kind of asset involved: different rules apply to seizure and sale of immovable and movable assets (respectively Artt. 555-598 and 413-542 of the Code), and special provisions regulate garnishments (Artt. 543-554 of the Code). Amongst specific enforcement proceedings, different rules apply respectively to delivery of movable assets or release of immovable ones (Artt. 605-611 of the Code) and to other instances of specific performance (Artt. 612-614 of the Code).

A speedier procedure, allowing less time for participation of other creditors in the distribution, applies to seizure and sale of movable assets when the value of the seized goods is no more than 20.000,00 euros (pursuant to Art. 525 of the Code).

Enforcement of the State's tax credits is governed by so many special rules that it may also qualify as a different procedure.

1.5 DECENTRALIZED SYSTEM

In every Italian Tribunal there is an enforcement division competent to govern enforcement proceedings concerning assets located in the territory of the court. Hence the Italian system qualifies as decentralized one from the territorial point of view.
Obviously, this does not help the creditor, especially with respect to garnishments: for this reason law no. 162 of 10 November 2014 provided that the competent court in these cases should locate in the debtor's domicile, instead of the debtor's debtor's one, derogating to the general rule referred to the location of the asset involved; in fact, the new rule allows the creditor to garnish several debtor's credits in the same enforcement proceeding, even if the debtor's debtors are located far away.

This solution, however, relies on dematerialization of money credits: whenever movable or immovable assets are involved, location of the asset is still dispositive.
The Court of Appeal of the place where enforcement would take place has jurisdiction to grant *exequatur* to foreign titles whenever the State of origin is not a Member of the EU.

1.6 AUTHORITIES/BODIES AND AGENTS

The Tribunal's enforcement division is the court of enforcement proceedings: the number of judges assigned to the division depends on the court's workload. The judge, however, is entrusted mainly with supervision of the proceedings and resolution of satellite disputes: several tasks (such as the research of movable property available for seizure) are performed by lower officers of the court (*ufficiali giudiziari*), and other ones (such as the sales of assets) may be delegated to notaries, lawyers, or accountants.

1.7 ROLE OF PARTIES

Enforcement proceedings do not start *ex officio*: the creditor has the burden of promoting the proceeding and choosing both the proper court, the proper means of enforcement, and the goods to be seized for sale or assignment. Moreover, the proceeding must also be fueled by the acting creditor, or by the intervening ones, through motions for the sale or assignment of seized goods, for the distribution of the revenues of the sale, etc.

Enforcement proceedings may also be withdrawn or discontinued: withdrawal terminates the proceeding when it comes from the acting creditor, and all the intervening ones assisted by an enforceable title, before the sale, while after the sale agreement of all the intervening creditors, even if not assisted by an enforceable title, is necessary, pursuant to Art. 629 of the Code of Civil Procedure; discontinuance, pursuant to art. 630 of the Code, applies mainly whenever said creditors do not timely set in motion the proceeding anew after termination of a stay ([4]).

The agreement of all the intervening creditors may dispose of the distribution of the revenues of the sale of the seized assets (pursuant to Art. 541 and Art. 598 of the Code). Moreover, not only any creditor may withdraw at any time, but also the debtor may waive any motion to object to the proceeding (albeit many nullities may be raised by the court even *sua sponte*).

1.8 MEANS OF ENFORCEMENT

Enforcement through seizure of assets, sale thereof, and distribution of revenues among the creditors (the first one and the intervening ones) is the general and residual means of enforcement: in fact, whenever a debtor does not comply to an injunctive remedy, and does not even pay the consequent sanctions, the creditor can only revert to generic enforcement of that money credit.

Seizure of movable property is performed by an officer of the court through its material apprehension, while seizure of immovable property is performed through inscription in public registries, and garnishments through legal notice to the debtor and the debtor's debtor. Recent legislation allows the officer and the creditor to access public databases for the research of property to seize.

Performance of such seizure is named *pignoramento*, and is the starting step of the enforcement proceeding.

[4] Special rules apply in more limited situations: e.g., Art. 608-*bis* of the Code provides for discontinuance of enforcement for release of immovable assets when notice of withdrawal is served to the debtor, because art. 629 and 630 could not apply to such proceedings.

In all these cases, pursuant to Art. 492 of the Code of Civil Procedure, there must be a legal proof (that is, a documentary certification by a competent public officer) that the debtor received a written prohibition (*ingiunzione*) to dispose of the asset in prejudice of the creditor (seized assets may still be validly transferred, but remain nonetheless subject to judicial sale), alongside various warnings concerning the subsequent procedural steps. Italian courts adopt a very strictly formalistic approach to this issue: whenever any part of the magic spell is missing, the enforcement procedure is incurably null and void ([5]), because the *ingiunzione* is necessary to identify the goods to be sold or assigned (therefore, it may be dispensed with when the goods are already subject to pawn or mortgage in the interest of the acting creditor, pursuant to Art. 502 of the Code).

In procedures for specific enforcement of obligations to release immovable assets the public officer must previously notify to the debtor a warning grossly corresponding to the *ingiunzione*, and only after ten days may enter the premise, pursuant to art. 608 of the code. Release of immovable located in cities is also governed by several special rules pursuant to law no. 392 of 27 July 1978, law no. 431 of 9 December 1998, and subsequent amendments thereof.

Moreover, direct enforcement of specific performance (other than delivery of movable assets or release of immovable ones) requires the creditor to file a motion for a summary proceeding in the enforcement division of the Tribunal, aimed at determining how the credit may be satisfied regardless of the lack of active cooperation by the debtor.

In the long run, hence, indirect enforcement through Art. 614 *bis* of the Code will probably often take the place of direct specific enforcement (unless the debtor appears devoid of any prospect of future earnings).

1.9 UNDERLYING PRINCIPLES

From the point of view of international jurisdiction the standard idea is that location of the goods to be seized, or of the performance to comply, is dispositive. As seen above, with respect to garnishments recent introduction of Art. 26-*bis* of the Code

[5] See, e.g., the judgment of the Italian Court of Cassation no. 2473 of 30 January 2009, and its order no. 8408 of 12 April 2011.

needs some time to be interpreted by the Court of Cassation, to determine if the rule envisaged by past case law still applies: a remote precedent stated that jurisdiction might be affirmed whenever the credit to be seized and assigned arose or should have been paid in Italy ([6]).

With respect to sanctions for noncompliance to injunctive orders, it is important to stress that not enforcement jurisdiction, but jurisdiction on the merits applies: every party subject to an injunctive order is also subject to sanctions for its violation.

Hence, territorial sovereignty often plays a role with respect to sanctions merely as a consequence of its role with respect to the territorial effects of the injunction: when an intellectual property right is protected only in Italy, no sanctions for its infringement outside Italy may apply, simply because no injunction may forbid it; by contrast, an Italian court may set sanctions for infringement outside Italy of a supranational intellectual property right, if there is international jurisdiction on the merits of the case (e.g. because the defendant is resident in Italy).

However, sovereign immunity of foreign States may apply directly to enforcement jurisdiction, forbidding seizure and sale of specific assets.

An Italian court might also set sanctions for violation in Italy of a foreign injunction: in this case enforcement jurisdiction applies. Enforcement of credits for violation of an injunction, however, when sanctions were set in a different EU Member State, requires final determination of their amount in the Member State of origin pursuant to Art. 55 of EU Reg. n. 1215/2012.

With respect to general principles is it fair to say that:

a principle of efficiency may be affirmed as a general interpretative criteria in procedural law, to be applied whenever the court holds a discretionary power ([7]);

[6] See the judgment of the Italian Court of Cassation no. 5827 of 5 November 1981.
[7] On the topic the main reference is the thorough analysis of case law developed in L.P. Comoglio (1980): *Il principio di economia processuale* (Padova: Cedam).

a principle of *favor debitoris* has no such status, albeit several rules may be seen as an implementation of it ([8]);

as already mentioned above, a priority rule was utterly rejected by the traditional system, in favor of the opposite principle of *par condicio creditorum*, but recent legislation choose a softer path;

a hearing with the participation of the debtor is due to provide for the sale of assets, for the assignment of credits, and for the direct enforcement of specific performance other than delivery of movable assets or release of immovable ones (as seen above); it is also dispensed with altogether in some special enforcement procedures (such as enforcement of State's tax credits mentioned above);

hearing in enforcement proceedings are not public, albeit *de facto* nobody is actually forbidden to enter the courtroom and see what happens; however, if an action on the merits on the legality of the proceeding is filed, a public hearing may be granted; moreover, lists of the pending proceedings are available to the general public at the portal of the Ministry of Justice.

1.10 PERMITTING ENFORCEMENT

Exequatur is needed in Italy to promote enforcement proceedings based on arbitral awards or foreign (non-EU) titles.

Moreover, a judicial order is required to permit enforcement of some special summary anticipatory orders (namely, the anticipatory order to release an immovable asset pursuant to Art. 663 of the Code, and the *decreto ingiuntivo* pursuant to Art. 647 and Art. 654 of the Code). Such orders must not be confused with the certificate of enforceability issued not by a judge, but by the records office of the court, that will be dealt with later.

[8] An explicit rejection of the principle appears in the accompanying report of the Ministry of Justice to the Italian Civil Code in force, enacted in 1942 (*Relazione alla Maestà del Re Imperatore*, esp. § 555).

1.11 SUBJECT-MATTER JURISDICTION

Only Tribunals have subject-matter jurisdiction for enforcement proceedings in Italy.

1.12 TERRITORIAL JURISDICTION

Every Tribunal has territorial jurisdiction for enforcement proceedings concerning assets located in its territory, or performances to comply therein. As already mentioned above, the special rule governing location for garnishments tries to help the creditor to cumulate several ones in a single proceeding.

1.13 CONDITIONAL CREDITS

Art. 474 of the Code clearly forbids enforcement of conditional credits. However, they may be protected through conservative (but not anticipatory) provisional measures (hence, an asset of the debtor may be seized, but not sold), and in special cases a creditor may also obtain a judicial enforceable title, provided that enforcement takes place only after condition is met (e.g., for the release of an immovable asset, pursuant to Art. 657 of the Code).

1.14 LEGAL SUCCESSION

Pursuant to Art. 477 of the Code, an enforcement title is effective also against the heirs of the debtor, 10 days after they have been served with it (within a year from the death the title may be served collectively to them in the last domicile of the deceased). In case of dissolution of a legal entity, a title may be directly enforceable against its former shareholders.

Some case law allows also enforcement against a successor by way of contract ([9]). Obviously, a creditor need not any new title whenever the succession occurred during the litigation (since in this case the judgment is fully effective against the successor pursuant to Art. 111 of the Code), and whenever it occurs during the

[9] See, e.g., the judgment of the Italian Court of Cassation no. 3643 of 14 February 2013.

enforcement proceeding (that is after the seizure: in fact, seizures protect the creditor from the effects of any subsequent succession in the ownership of the seized asset). Succession on the side of the creditor, by contrast, never requires a new enforcement title, pursuant to Art. 475 of the Code.

1.15 ENFORCEMENT TITLES

An enforcement title allows a credit to be autonomously enforceable: as already seen above, bank checks, promissory notes, and also private documents, insofar as a public officer certified the authenticity of their signatures, may be enforcement titles, alongside judgments; an enumeration of enforcement titles may be found in Art. 474 of the Code (accompanied, however, by a general reference to any other case provided by the law). Moreover, judicial titles may comprise not only judgments on the merits following a full-fledged trial, but also many anticipatory orders following a summary fact-finding (provided that the law expressly gives them this effect: the most important one in the practice is the *decreto ingiuntivo*, that is an *ex parte* order granted, e.g., when there is documentary evidence of the credit, regulated by Artt. 633 ff. of the Code of Civil Procedure), as well as court settlements. Note, however, that provisional measures, albeit included in the definition of "judgment" by Art. 2 of EU Regulation 1215/2012, are not proper enforcement titles according to Italian procedural law: their enforcement, hence, is subject to special rules (pursuant to Art. 669 *duodecies* of the Code of Civil Procedure).

It is worth noting that only judicial titles allow direct enforcement of specific performance obligations other than delivery of movable assets or release of immovable ones.

In the perspective of transnational litigation, however, the most important topic is the status of foreign enforcement titles. Judgments, court settlements, and authentic instruments within the meaning of Art. 2 of EU Regulation no. 1215/2015, are enforcement titles as such, provided they are certified, according to the provisions of the same, by the competent authority of the court of the Member State of origin, and the same holds for *ex parte* orders to pay uncontested credits pursuant to EU Regulation no. 805/2004, or small claims judgments pursuant to EU Regulation no. 861/2007 (moreover, orders of payments in cross-border litigation pursuant to EU Regulation no. 1896/2006 are also enforcement titles, and do not even require certification, being sufficient that in a general way they satisfy the conditions

necessary to establish their authenticity). As already mentioned, judgments and authentic instruments coming from other States, by contrast, as well as arbitral awards, are still subject to *exequatur* procedures.

1.16 CERTIFICATION OF ENFORCEABILITY

A certificate of enforceability (*formula esecutiva*), issued by the records office of the court at the request of the creditor (or, as already seen, by the creditor's successor), is needed to any judicial enforcement title, pursuant to Art. 475 of the Code. According to the same rule, a similar certificate applies to enforcement titles received by a notary or a similarly competent public officer (to be issued by the same notary of public officer).

A motion against unjustified refusal to issue the certificate by the records office may be filed to the chief justice of the court. Otherwise, an action on the merits aimed at declaring enforceability of the title is available to the creditor.

By contrast, no such certificate is required for private enforceable titles, such as bank checks or promissory notes, nor for enforceable titles issued by the public administration (mainly orders to pay taxes, or sanctions for infringement of administrative law provisions), nor for implementation of provisional measures.

Obviously, enforcement titles issued in a different EU Member State require the certificate issued by the court of origin, pursuant to Art. 42 and Art. 53 of EU Regulation 1215/2012, at the request of any interested party (see also above with respect to *ex parte* orders to pay uncontested credits pursuant to EU Regulation no. 805/2004, small claims judgments pursuant to EU Regulation no. 861/2007, and orders of payments in cross-border litigation pursuant to EU Regulation no. 1896/2006).

1.17 SERVICE

Pursuant to Art. 479 of the Code of Civil Procedure, a creditor must previously notify to the debtor the enforcement title, together with a warning (*precetto*) that judicial enforcement will take place if the obligation is not complied within ten days: only if the debtor does not pay within this deadline the *ingiunzione* may be notified

(and the *pignoramento* performed). However, the enforcement division of the Tribunal may discretionally accord immediate enforcement pursuant to Art. 482 of the Code, upon an *ex parte* motion from the creditor.

Obviously, third parties whose rights are affected by the enforcement proceeding must also be served: e.g., the third debtor in garnishments (pursuant to Art. 543 of the Code), or the co-owner of the seized asset (pursuant to Art. 599 of the Code), or the owner of an asset subject to a mortgage to secure the enforced credit (pursuant to Art. 603 of the Code).

Moreover, any other creditor protected by a security resulting from a public record (such as a mortgage) over the seized asset (pursuant to Art. 498 of the Code), as well as any other creditor that implemented a provisional attachment (*sequestro*) over it (pursuant to Art. 158 of the implementation rules of the Code), must be served with a warning before the sale of said asset (in order to protect the other creditor's right to participate in the proceeding, according to the actual scope of the principle of *par condicio creditorum* already seen above).

All these notifications are generally not extremely cumbersome when the addressee is a legal person, because in that case normally certified e-mail is available. This aspect, in fact, allows the creditor's lawyer to provide directly the service, unless participation of the *ufficiale giudiziario* is necessary (that is essentially whenever an *ingiunzione* must be notified, because that magic spell must be performed by the officer: e.g. for service of garnishment or seizure of immovable property): the lawyer may satisfy the legal requirements for service through a sworn statement of having sent a certified e-mail to the addressee containing the document (together with a sworn statement that the electronic version of the document sent corresponds to the original one, if the original one was not formed by the lawyer; otherwise, it must also be signed with the lawyer's certified digital signature; obviously, the records office of the court must also be provided with all the electronic files generated in the process of service).

Natural persons, by contrast, may be quite difficult to serve in actual practice: relevant rules are very complex and case law is huge (just to give an idea, the Court of Cassation provided on the topic no less than 1000 judgments only in 2015). Hence, a full exposition cannot be given here: only the very general principles will be treated.

Insofar as a natural person does not hold a certified e-mail (as is generally the case), there are two main alternatives for the notifying party: service by certified mail (that can also be processed directly by the creditor's lawyer, within the limits seen above), and service through a *ufficiale giudiziario*. If the address is impossible to find with reasonable effort, however, only service through the *ufficiale giudiziario* may help.

In fact, when the addressee is difficult to find, the law allows several forms of fictitious service by the officer: e.g., posting in a notice board of the offices of the city's mayor, or delivery to the local district attorney, pursuant to art. 143 of the Code of Civil Procedure. However, the legal requirements for such kind of service entail findings over peculiar features of the case (concerning the respective burdens of the parties to find and to be found, especially with respect to the amount of effort reasonably required to the notifying party for the identification of the address of the other one) that are often questionable and foster massive satellite litigation ([10]).

It is worth noting that the notifying party already meets the deadline for service with the delivery of the document to the officer: the subsequent delivery to the addressee by the officer is only the starting moment for the deadlines running against the latter ([11]). This, however, applies only if service is successful: otherwise, in order to prevent preclusion a notifying party needs to prove that the addressee is liable for the failure (e.g., because the addressee choose a specific domicile for service, but afterwards moved from there without informing the other party), and that a new service at the right address was performed immediately after knowing that the first one failed ([12]).

Service abroad is governed, depending from the country involved, within the EU by EU Regulation 1393/2007 (and, within their respective scope, by EU Regulations 805/2004, 1896/2006, and 861/2007), otherwise by the Hague Convention of 15 November 1965, or by other bilateral international conventions, and, when neither

[10] Recent case law, however, allows the notifying party to cure defects of the service process without prejudice in a very wide range of cases (see the judgments of the Italian Court of Cassation in plenary session no. 14916 and no. 14917 of 20 July 2016).
[11] The relevance of the delivery to the officer was firstly introduced by judgment no. 69 of 3 March 1994 of the Italian Constitutional Court, followed by several other similar ones applying the principle in various contexts; on its applicability to deadlines running against the notifying party only see, e.g., the judgment no. 23675 of 6 November 2014 of the Italian Court of Cassation in plenary session.
[12] According to recent case law, the new deadline should last the half of the original one (see the judgment of the Italian Court of Cassation no. 14594 of 15 July 2016.

of the above applies, by national rules concerning service via diplomatic agents (esp. Art. 37 and 77 of legislative decree no. 71 of 3 February 2011). When service is due outside the EU, no convention applies, and the foreign State resists service by consular agents, Art. 142 of the Code allows service via certified mail (accompanied by delivery to the district attorney, who is in charge of transmitting the document to the addressee via the Ministry of Foreign Affairs), and if no address can be identified with reasonable effort a fictitious service is available pursuant to Art. 143 of the Code.

1.18 DIVISION BETWEEN ENFORCEMENT AND PROTECTIVE MEASURES

As seen above, enforcement of provisional measures is so much *sui generis* that it does not even qualify as enforcement *stricto sensu*: rather than an enforcement (*esecuzione*), it is an implementation (*attuazione*). Art. 669 *duodecies* of the Code, in fact, provides that no preliminary warning (*precetto*) is required (neither is necessary any certificate of enforceability), and distinguishes between three categories of cases: attachments (*sequestri*, i.e. seizures granted without a proper enforcement title), money orders, and other remedies.

Implementation of attachments aimed at protecting effectiveness of general enforcement is performed like an ordinary seizure: the sale, or the assignment of credit, is set only after the formation of a proper enforcement title. Attachments concerning evidence, or movable or immovable property to deliver or release, are implemented like corresponding specific performance proceedings, but a guardian chosen by the court is entrusted with their custody.

Provisional measures ordering to pay money are implemented like enforcement titles: the creditor must seize assets, ask a hearing from the competent enforcement division to set their sale, and share the revenues thereof with concurring creditors.

Other provisional remedies, by contrast, are implemented under the supervision of the same judge that issued them, and not of the enforcement division of the court. Decisions concerning satellite litigation over implementation of these remedies may be appealed to a panel, always of the same division (and not of the enforcement division), without the participation of the judge that issued the remedy.

Obviously, this does not apply to provisional measures coming from a different EU Member State: these decisions are treated like proper judgments whenever they were previously notified to the debtor (insofar as the court that issued them also had jurisdiction on the merits of the claim, pursuant to the new provisions of Art. 2 of EU Regulation no. 1215/2015).

Moreover, since sanctions provided by Art. 614 *bis* of the Code may also apply to violation of interim injunctions, in the actual practice direct general enforcement of the corresponding money debt will probably take the place of their "*attuazione*" by the judge that issued the remedy.

1.18.1 Types of provisional measures

An enumeration of the several provisional measures available in Italy would go far beyond the scope of this contribution: in fact, they may count by the hundreds. A good classification, however, may distinguish, albeit with some overlapping, between: attachment (*sequestro*) of assets, preservation of evidence, and anticipation of the final remedy.

A first overlapping depends from attachments being also used for preservation of evidence, and in some instances being even anticipations of the final remedy (notably the remedy of specific performance to deliver or release the seized asset; in some special cases attachments are not even provisional remedies, notably the attachment of counterfeited goods until the expiry of a violated intellectual property right, pursuant to Art. 124, § 5, of legislative decree no. 30 of 10 February 2006). With respect to enforcement of money credits, however, the main function of attachments is anticipating the effects of the *pignoramento* (i.e. of the seizure performed with a proper enforcement title).

While preservation of written evidence can also be pursued through attachments, when a right to discovery thereof is disputed, oral evidence is preserved through a transcript of the deposition to be used in a subsequent trial.

Anticipation of the final remedy should be always possible, according to case law coming from the Italian Constitutional Court ([13]), but according to case law from the Court of Cassation some special effects of some judgments necessarily require *res judicata* (e.g., divorce). In these cases a provisional remedy may grant only the secondary effects of the judgment on the merits (e.g., permission to live separately, custody of children, etc.). Moreover, when a secondary effect finds its consideration in the main one, anticipation is denied altogether (e.g., when specific performance to sign a sale contract takes effect only with *res iudicata*, so that only after *res iudicata* delivery is due, payment of the price also is due only after) ([14]).

1.18.2 Requirements for provisional measures

Every provisional measure is available insofar as there is a *prima facie* showing that the plaintiff would win on the merits (*fumus boni iuris*), and that waiting for the conclusion of the action on the merits could prejudice the same (*periculum in mora*). These two requirements, however, interact reciprocally in a general way: *ceteris paribus*, a stronger showing of *fumus* allows to obtain the remedy with a lesser degree of *periculum*, and vice versa.

The specific requirement to obtain a *sequestro* anticipating the effects of a *pignoramento*, from the point of view of *periculum*, is that there is a concrete risk of non-payment. The specific requirement for preservation of evidence is the risk that it may not be concretely available at trial (apart from expert witness: in fact, after introduction of Art. 696-*bis* of the Code by law no. 80 of 14 May 2005, no *periculum* is required, being sufficient that it may help to settle the dispute; this, however, implies that the remedy is not really a provisional one).

With respect to anticipation of the final remedy, the main practical problem with the general rule is that an especially cumbersome showing of *periculum* is required: the risk that during ordinary proceeding the plaintiff would suffer an irreversible prejudice. This general rule, provided by Art. 700 of the Code, applies whenever no special provision allows for a lesser degree of *periculum* (e.g., a lesser degree applies

[13] A seminal leading case on this perspective is the judgment of the Italian Constitutional Court no. 190 of 28 June 1985 (but see also, e.g., its judgment no. 25 of 3 Februrary 1992).
[14] See, e.g., the judgment of the Italian Court of Cassation no. 4059 of 22 Februrary 2010.

to anticipate protection against dispossession, pursuant to Art. 1168 of the Italian Civil Code).

Hence, in a general way final remedies consisting in an order to pay money credits cannot be anticipated with a provisional remedy: the creditor may rather use available summary or fast-track proceedings (such as the *decreto ingiuntivo* mentioned above); in fact, since pursuant to Art. 2740 of the Italian Civil Code a debtor's liability extends to future assets, a money credit seems unsusceptible of irreversible prejudice. However, some money credits may be protected by a provisional remedy pursuant to Art. 700 of the Code, insofar as a late payment would prejudice a different protected right (namely, alimony payments, since they are necessary to survival; employees' wages are also seen like a form of alimony).

Anticipation of a declaratory judgment is also problematic, from the point of view of standing: a declaratory judgment protects the plaintiff insofar as *res iudicata* precludes further dispute, but a provisional remedy may never be *res iudicata*: hence, there seems to be no sufficient interest in the remedy. Nevertheless, the law expressly provides for declaratory provisional remedy, comprising even the negative declaration (that is, declaration that another person's alleged right does not exist: e.g., art. 120, § 6-*bis*, of the Italian Code of Industrial Property).

In the case law such remedies are granted quite rarely, in extreme cases: e.g., a provisional remedy declaring non-counterfeiting of a patent may be granted when the involved product is ready to enter the market, but not yet actually sold (in fact, if the product is not ready there is no sufficient interest, while if it is already sold the plaintiff assumed the risk of being sued for counterfeiting).

1.19 COMMENTS AND CRITICAL APPROACH

For several decades of the past century scholars advocated reforms of enforcement proceedings to foster effectiveness of judicial protection of rights, especially with respect to specific performance, but also with respect to generic enforcement, lamenting an excess of procedural guarantees for the debtor and for the creditors

without enforcement titles ([15]). These ideas were supported by prolonged dissatisfying experiences with the traditional rules and principles.

In the current century the government took the charge perhaps even too much seriously, providing not only for the reforms advocated by procedural law scholars, but also for the introduction of online enforcement proceedings, and for further reductions of the enforcement courts' workload (allowing satellite litigation to be very often decided with interim orders). Hence, an evaluation of the actual effectiveness of enforcement proceedings in Italy is now impossible, because practice on the applicable rules is mostly missing.

Many scholars are now asking the legislator to stay this apparently endless stream of reforms, and allow courts and lawyers to learn to cope with the new system emerging thereof ([16]).

[15] Compare, e.g., the essays collected in *L'effettività della tutela del creditore nell'espropriazione forzata*, ed. Associazione italiana fra gli studiosi del processo civile (Milano: Giuffrè, 1992), *La legge di riforma del codice di procedura civile e la tutela del credito*, ed. Centro nazionale di prevenzione e difesa sociale (Milano: Giuffrè, 1993), *Tecniche di attuazione dei provvedimenti del giudice*, ed. Associazione italiana fra gli studiosi del processo civile (Milano: Giuffrè, 2001), *Le espropriazioni individuali e concorsuali. Incertezze e prospettive*, ed. Associazione italiana fra gli studiosi del processo civile (Milano: Giuffrè, 2005).

[16] See esp. "Il documento dell'Associazione italiana fra gli studiosi del processo civile sul disegno di legge delega per la riforma del c.p.c.", in *Rivista trimestrale di diritto e procedura civile* (2015): 743.

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2 NATIONAL PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS

2.1 SYSTEM OF RECOGNITION AND ENFORCEMENT OF FOREIGN NON-EU JUDGMENTS

Contrôle limité: grounds for refusal of recognition are listed in Artt. 64 ff. of law no. 218 of 30 May 1995.

2.2 CONCEPT OF RECOGNITION AND ENFORCEMENT

Recognition of a foreign judgment in Italy means that its declaratory (and, if any, constitutive) effects apply in the Italian legal system. No *exequatur* is required to that end by the general rules: just like with EU judgments, the burden to file a complaint in court lies upon the party opposing recognition (similarly, when the foreign judgment's effects are relevant for pending litigation, it is up to the party resisting them to plead denial of recognition: in this case effects of the court's finding on recognition are limited to the proceeding where the issue arose, pursuant to Art. 67, § 3, of law no. 218 of 31 May 1995).

The main differences between recognition of EU judgments and the general rules are the following: non-EU judgments are recognized only after *res iudicata* in the State of origin (that is, when no ordinary appeal is allowed any more there); grounds for

denial of recognition are wider (e.g.: lack of international jurisdiction of the court of origin according to Italian principles on the topic; *lis pendens* in Italy).

Enforcement of a foreign judgment, by contrast, means using it as an enforceable title: as mentioned above, *exequatur* is still necessary to that end.

Recognition has obviously no constitutive effects as such (since no *exequatur* is required), and always implies extension, and not assimilation, of the effects of the foreign judgment: hence, the foreign judgments do not have in Italy wider preclusive effects than in the Member State of origin.

No "cumulation theory" (*Kumulationstheorie*) applies. Hence, the foreign judgment may have wider effects than a corresponding Italian one.

2.3 TYPE OF PROCEDURES

The "*procedura di delibazione*" was abolished by law no. 218 of 30 May 1995 (albeit it still applies, due to special agreements with the Vatican State, for recognition of judgments of its ecclesiastical courts, notably in matters of marriage ([17])). Hence, the party opposing recognition may plead grounds for its refusal, while the other party needs a court order only to use the foreign judgment as an enforcement title, but has anyway standing to ask a mere declaration that there is no ground for refusal of recognition, whenever it is contested or not spontaneously complied with, pursuant to Art. 67, § 1, of law no. 218 of 30 May 1995.

There is no acceptable way whatsoever to qualify *exequatur* proceedings as "non-contentious", whatever this might mean ([18]). Art. 30, § 1, legislative decree no. 150 of 1 September of 2011, in fact, only provides for a mandatory speedy track (and before that reform ordinary rules for full proceedings on the merits applied), and the rule contemplating decisions with effects limited to the case implies *a contrario* that ordinarily the decision may have *res iudicata* effects in order to put an end to the

[17] See, e.g., the judgment of the Italian Court of Cassation no.8764 of 30 May 2003.
[18] A vast debate on this topic arose in Italy at the end of the last century: see esp. the essays collected in *I procedimenti in camera di consiglio e la tutela dei diritti*, ed. Associazione italiana fra gli studiosi del processo civile (Milano: Giuffrè, 1991).

conflict between the parties (hence, the decision can be appealed to the Court of Cassation).

When the issue of recognition is decided pursuant to Art. 67, § 3, of law no. 218 of 30 May 1995, that is with effects limited to the same proceeding, the procedure is governed by the rules provided for the main subject matter of the litigation.

2.4 JURISDICTION

In *exequatur* proceedings there is no ground to plead lack of international jurisdiction: hence, there is no need to show that enforcement could actually take place in Italy. *A fortiori*, whenever a court has jurisdiction on a case it also has jurisdiction to decide an issue of recognition with effects limited to it, pursuant to Art. 67, § 3, of law no. 218 of 30 May 1995.

Court of Appeals have subject matter jurisdiction, pursuant to Art. 30, § 2, of legislative decree no. 150 of 1 September 2011, for *exequatur* proceedings and actions to declare recognition as a main subject matter. Territorial jurisdiction, pursuant to the same rule, depends on the place where the creditor would enforce the judgment: for money credits, this means wherever debtor's assets may be seized (when enforcement is not going to take place in an identified location, ordinary rules apply: hence, if the defendant has no residence nor domicile in Italy, the plaintiff's residence can determine the venue, pursuant to Art. 18 of the Code of Civil Procedure).

2.5 TYPES OF DECISIONS

As already seen above, there can be: a) a decision allowing enforcement; b) a decision denying enforcement; c) a decision affirming recognition; d) a decision denying recognition.

The first one may be granted only in the special proceeding pursuant to Art. 67, § 1, of law no. 218 of 30 May 1995. The second one may be granted in the same kind of proceeding, or in a proceeding on the merits against attempted enforcement.

Decisions on recognition may be asked through the said special proceeding as the main subject matter of the litigation (as it were, *principaliter*), but may also be granted in ordinary proceedings with effects limited to its influence in a different case (as it were, *incidenter*).

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3 RECOGNITION AND ENFORCEMENT IN REGULATION 1215/2012

3.1 CERTIFICATION OR DECLARATION OF ENFORCEABILITY IN MEMBER STATES OF ORIGIN (ART. 53. B IA)

3.1.1 Requirements

Introduction of the certification system by Regulation 44/2001 helped to simplify and streamline recognition and enforcement. Its modifications by Regulation 1215/2012 coherently reflects the new rules concerning cross-border enforcement of provisional measures. No significant problem with certifications emerged thus far in Italian case law, probably because Italian civil procedure is already familiar with certifications of enforceability of judicial titles.

3.1.2 Remedies

Just like the certificate of enforceability already provided by national rules, in Italy a certificate pursuant to Regulation 1215/2012 is issued by the records office of the court, according to Art. 153 of the implementation rules of the Italian Code of Civil Procedure: it is not a judicial decision.

Unjustified denials to release the certificate may be complained of with a motion to the chief justice of the court, and, if this is unsuccessful, with an action on the merits. Unjustified releases of the certificate by the records office may be complained of by the debtor whenever enforcement is actually attempted (service of the enforcement title with an illegally released certificate suffices to give the debtor a concrete interest in the suit).

If the title is enforceable, but the certificate is void, a timely debtor's compliant may force the creditor to start the enforcement proceeding anew (at least in extreme cases: e.g. when fundamental data are missing; however, if it was only released before enforceability, but the title became enforceable in the meantime, the violation becomes irrelevant ([19])). However, if the title is not enforceable, the nullity of the certificate becomes irrelevant for the debtor (the officer is sanctioned separately), because the certificate cannot be binding for any court (since it is not a decision): the debtor needs only to plead unenforceability.

It is worth noting that a wrong declaration, in the certificate, that a provisional remedy was issued by a court having also jurisdiction on the merits (according to point 4.6.2.2.1 of Annex I to Regulation 1215/2012) does not bind the court of the Member State addressed, notwithstanding the limits to the relevance of the issues of jurisdiction as grounds to refuse recognition pursuant to Art. 45 of the same Regulation: in fact, in such a case there would not be a refusal to recognize a decision, but rather a declaration that the title is not even a decision, pursuant to Art. 2 of the same Regulation.

3.1.3 Repeal and service of the certificate

Since the certificate is not a decision, but only a help to streamline recognition and enforcement, there seems to be no compulsory need to provide for its repeal in Regulation 1215/2012, forcing every Member State to follow the Italian solution seen above, even when it is illegally issued. In fact, there is no reason to preclude a debtor from pleading the violation directly in the Member State addressed, whenever the creditor attempts to use the judgment.

[19] See, e.g., the judgment of the Italian Court of Cassation no. 586 of 22 January 1999.

Art. 43 of EU Regulation 1212/2012 clarifies that previous service of the decision in (*rectius*, according to the rules of: see also above) the Member State of origin is not a prerequisite to enforcement (apart from *ex parte* decisions, pursuant to Art. 42, § 2, of the same). Hence, it is impossible to imagine why a defective service of a "judgment" in (*rectius*, according to the rules of) the Member State of origin should justify a repeal (or "withdrawal") of the certificate. The debtor may obviously plead, directly in the Member State addressed, defective service in (*rectius*, according to the rules of) the Member State of origin of an *ex parte* decision, in order to preclude creditor's attempt to use it (since, as already mentioned, the certification is not a decision).

Defective service of the judgment in (*rectius*, according to the rules of), the Member State addressed, by contrast, is obviously relevant for enforcement in that State, but it is impossible to imagine how or even why such violation could influence the validity of the certificate issued in the Member State of origin.

3.1.4 Rectification and withdrawal of certificate

Procedures to repeal or update certificates like those provided by Art. 6 and 10 of EU Regulation 805/2004, albeit not indispensable, may give a further help to streamline recognition and enforcement. Hence, their introduction in EU Regulation 1215/2012, albeit not strictly necessary, would be worth of full consideration, provided that the certificate has anyway no binding effect whatsoever for the court of the Member State addressed (otherwise, it should be issued by a judge, and not by the records office, and the procedure, instead of being simplified, would be more complex).

There seems to be no reason to deny the records offices the ability to fulfill such tasks.

3.1.5 Effects of certificate

As already mentioned, the certificate is not a decision and is not binding for any court.

3.1.6 Challenges

As already mentioned, in Italy unjustified refusal to issue the certificate may be complained of with a motion to the chief justice of the court, and any violation may be complained of in court.

3.1.7 Number of copies

In Italy, Art. 476, § 1, of the Code forbids release of more than one copy of the certificate of enforceability without a good reason. However, unjustified release of more than one copy leads to sanctions for the record office, but is irrelevant for the parties. Unjustified denials to release more than one copy may be complained of with a motion to the chief justice of the court and, if the motion is unsuccessful, with an action on the merits.

3.1.8 Legal nature

Certificates pursuant to Regulation 1215/2012 have the same legal nature of certificates pursuant to Art. 475 of the Italian Code of Civil Procedure.

3.1.9 Subsequent events

Repeal of certificate is not provided for by Regulation 1215/2012, or by national rules: if the title is not enforceable any more due to subsequent events, the debtor may plead them, if necessary, with an action on the merits. Repeal of certificate pursuant to Art. 10 of EU Regulation 805/2004 would stop its enforcement in the Member State addressed, but it would obviously be up to the debtor to plead such event there.

3.1.10 Service according to the rules of the Member State of origin

There seems to be no reason at all to serve a certificate of enforceability to the debtor in (*rectius*, according to the rules of) the Member State of origin, unless enforcement is attempted there (since, as already mentioned, the certificate has no binding effects).

3.1.11 Service according to the rules of the Member State addressed

Service for the purposes of Art. 43 of EU Regulation 1215/2012 is due pursuant to the general rules already summed up above. It is worth noting that service may be performed in the Member State addressed or in the Member State of origin or even in another State, depending from where the addressee is located: the relevant point is that the rules of the Member State addressed would apply.

3.1.12 Enforcement by surprise

As already mentioned above, implementation of provisional remedies does not require a previous warning of the debtor, and provisional measures may be given *ex parte*, pursuant to Art. 669-*sexies* of the Code, whenever informing the defendant may prejudice implementation: hence, in Italy a creditor may implement an attachment of a debtor's asset by surprise.

Art. 43, § 3, of EU Regulation 1215/2012 clarifies that the wording of Art. 43, § 1, of the same is no obstacle to such ambush (nor it is an obstacle the need of a previous service of the certificate, or of the decision to enforce, in – *rectius*, according to the rules of – the Member State of origin, since, as already seen above, no such service is due).

3.1.13 Amount of interests

EU Regulation 805/2004 provides for a simpler certificate, with respect to the calculation of interests, than EU Regulation 1215/2012, since no mention of the relevant statute is required, while an indication of the precise rate to be applied is necessary. Hence, the idea of modifying accordingly Regulation 1215 deserves full consideration, in order to ease recognition and enforcement.

3.1.14 Party succession

In Italy, successors of the creditor can obtain a certificate with no need to obtain a new title, pursuant to Art. 475, § 2, of the Code (compare above on the general issue of succession).

3.2 RECOGNITION AND ENFORCEMENT IN MEMBER STATE OF ENFORCEMENT

3.2.1 Concept

The concept of recognition pursuant to EU Regulation 1215/2012 in Italy does not differ from the concept of recognition of foreign non-EU Judgment (see above on the topic).

3.2.2 Scope

Just like with non-EU foreign judgments, recognition of EU judgments is not constitutive, implies extension and not assimilation of the effects, and no *Kumulationstheorie* applies (compare above).

3.2.3 Overlap between attachment and seizure

As already mentioned, implementation of an attachment of an asset is performed in Italy just like its seizure, but without the necessity of a previous warning: hence an attachment may anticipate the effects of a seizure. However, the attached asset is frozen, but cannot be sold or assigned as such: for its sale or assignment is necessary that the creditor holds an enforceable title; when the enforceable title is issued, the creditor must timely serve it to the debtor and file it within the enforcement court, in order to obtain a transformation (*conversione*) of the attachment in a seizure, pursuant to Art. 686 of the Code (in case of late filing the attachment loses every effect).

Hence, albeit there is some overlapping between attachments and seizures, in Italy the former cannot qualify at all as a "first enforcement measure" needing a previous service in (*rectius*, according to the rules of) the Member State addressed of the certificate of enforceability pursuant to Art. 43 of Regulation 1215/2012. It is also worth noting that in Italy the certificate of enforceability issued in the Member State of origin, pursuant to EU Regulation 1215/2012, is not an equivalent of the declaration of enforceability pursuant to Art. 38 of Regulation 44/2001, since the latter was a court decision, while the former is a certificate of the records office.

If a national case law would really qualify implementation of a provisional attachment as a "first enforcement measure" needing a previous service of the certificate of enforceability, a ruling from the European Court of Justice asking for a uniform interpretation would be seriously justified, because the principle of uniformity of effects of a judgment within the European space would be severely undermined, and Art. 40 of EU Regulation 1215/2012 utterly violated.

3.2.4 Possible amendment of Art. 43 BI A with respect to service of certificate

As already mentioned, service for the purposes of Art. 43 of EU Regulation 1215/2012 must follow the rules of the Member State addressed: hence, convenience of performing it in the Member State of origin, rather than in the Member State addressed depends, in Italy, from the concrete circumstances of the case (but as a rule of thumb service in Italy, if possible, seems preferable; for other Member States it would also very probably be the same in most cases).

Allowing service of the certificate according to the rules of the Member State of origin, through amendment of said Art. 43, might help the creditor in its fulfillment, but might also delay the proceeding in the Member State addressed: in fact, since the rules of a Member State addressed allow also service in the Member State of origin pursuant to EU Regulation 1393/2007, an equivalent of the certificate pursuant to Annex I of the same would be required. Hence, such an amendment does not seem a top priority.

3.2.5 Challenges

In Italy ordinary courts have jurisdiction over challenges pursuant to Art. 47 of EU Regulation 1215/2012. Notwithstanding the provision of Art. 48 of the same, no mandatory fast track is provided ([20]).

[20] Some argued, however, that the fast track provided by Art. 30 of legislative decree no. 150 of 1 September 2011 for the *exequatur* of non-EU judgments should be available: see, e.g., C. Consolo, "Il nuovo rito sommario (a cognizione piena) per il giudizio di accertamento dell'efficacia delle sentenze straniere in Italia dopo il d.lgs. n. 150/2011", in *Rivista di diritto internazionale privato e processuale* (2012): 523.

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4 REMEDIES

4.1 GENERAL OBSERVATIONS

It is important to state at the outset that for the purposes of this section of the report, the concept of remedy includes: *a*) challenges against national judicial decisions; *b*) challenges to recognition and enforcement of foreign decisions; *c*) challenges to enforcement proceedings.

The distinction between ordinary and extraordinary remedies concerns, in Italy, only a part of the first kind of challenges: namely, challenges to judicial decisions that can give *res iudicata* effects. In fact, according to the traditional view, every challenge against such decisions whose grounds may be detected from its reading must be filed within a deadline running from its issue, and qualifies therefore as an ordinary remedy precluding formation of *res iudicata*, while challenges whose grounds can be detected only elsewhere (such as fraud) must be filed within a deadline running from their discovery, and qualify therefore as extraordinary remedies, not precluding formation of *res iudicata*.

However, this systematic analysis was undermined by law no. 353 of 26 November 1990, introducing Art. 391-*bis* of the Code to provide that a very rare ordinary

remedy, that became available against the judgments of the Court of Cassation after a judgment of the Constitutional Court ([21]), does not preclude *res iudicata*.

4.2 REMEDIES IN ENFORCEMENT PROCEDURE

Challenges to enforcement proceedings, for the purposes of this section, comprise complaints introducing a proceeding on the merits interfering with the enforcement proceeding.

4.2.1 Description of available remedies

In Italian law, challenges to enforcement proceedings are divided in three groups: *a*) complaints alleging that the creditor has no right to proceed with the enforcement, pursuant to Art. 615 of the Code; *b*) complaints alleging that the enforcement proceeding should develop in a different way, pursuant to Art. 617 of the Code; *c*) complaints by a third party holding a right on the seized asset prevailing over the seizure, pursuant to Art. 619 of the Code.

4.2.2 Procedural rules

Complaints concerning the right to proceed must be filed in the court in charge of the proceeding after seizure (or the corresponding step in specific enforcement proceedings). However, such complaints may also be filed before seizure, because service of the *precetto* suffices to grant the debtor standing to challenge the attempted enforcement, but in this case the court in charge of the enforcement proceeding has not yet been determined: hence, Artt. 27 and 480 of the Code provide that the challenge must be filed in the Court of the place where the *precetto* was served, unless the creditor choose in the same *precetto* a domicile in the city of a different Court in whose territory enforcement may be performed (in this latter case the challenge must be filed in that Court, but the burden of proof that enforcement may take place in that territory lies on the creditor); besides, the competent Court in these cases is not necessarily a Tribunal, since ordinary rules on subject-matter jurisdiction apply (hence, it may be a Justice of the Peace if the value of the credit is less than 5.000 euros).

[21] No. 17 of 30 January 1986.

The same holds for complaints alleging that the enforcement proceeding should develop in a different way, but in this case only a Tribunal has subject-matter jurisdiction, even when the complaint is filed before the attachment. Complaints by third parties necessarily go to the court in charge of the proceeding because they can be filed only after the beginning of enforcement.

Stay of the enforcement proceeding is usually asked within every kind of such challenges: hence Art. 624 of the Code provides for these motions a mandatory fast-track for a provisional order by a single judge, subject to further challenge (*reclamo*) to a panel of three within the same Court (without the participation of the first one), and in any case (that is, regardless of the outcome) setting a deadline for a motion for an ordinary proceeding on the same claim; if the deadline is missed, the case is discontinued, while otherwise a full judgment amenable to *res iudicata* effects, and subject to appeal, is issued (appeal to the Court of Appeal is granted, after law no. 69 of 18 June 2009, for complaints alleging that the creditor has no right to proceed, an for complaints by third parties pursuant to Art. 619 of the Code, with the judgment of the Court of Appeal subject to further third instance appeal to the Court of Cassation; otherwise only appeal directly to the Court of Cassation is granted).

Joinder in all these challenge proceedings of the debtor, the creditor, and, according to some case law, the intervening creditors ([22]), is necessary.

4.2.3 Challenges within the enforcement proceeding

Many grounds for a challenge may be found directly by the enforcement judge, if they appear on the record of the case, or if the debtor highlights them, and justify, even *ex officio*, a declaration of discontinuance of the proceeding. The creditor may challenge this declaration pursuant to Art. 617 of the Code (alleging that proceeding should develop in a different way, meaning that there should not be discontinuance).

Obviously if the enforcement judge overlooks, or ignores, or deny, the ground for challenge, or if it is not possible to see it from the record, it is up to the debtor (or to the other interested party) to timely and fairly file the complaint.

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[22] See, e.g., the judgment of the Italian Court of Cassation no. 7264 of 1 June 2000; joinder of the garnished party, by contrast, is required only in exceptional circumstances, see, e.g., the judgment of the Italian Court of Cassation no. 24637 of 19 November 2014.

4.3 OPPOSITION IN ENFORCEMENT

For the purposes of this section, in order to ensure coherence in the queries, the following applies: "opposition in enforcement" refers to challenges to enforcement of judicial decisions alleging that the creditor has no right to proceed, pursuant to Art. 615 of the Code; "opposition against an enforcement decision" also refers to such "opposition in enforcement" (and not to actual oppositions against an enforcement decision, that would be oppositions against decisions of the enforcement court, that is challenges pursuant to Art. 617 of the Code); "grounds for enforcement" are not the credits in need of enforcement, but rather the grounds of the "opposition in enforcement" that are dealt with here.

4.3.1 Oppositions based on new facts or procedural violations

Relevant facts occurred after formation of the title are in a general way plainly grounds for an "opposition in enforcement", pursuant to Art. 615 of the Code.

Complaints concerning the way enforcement is performed are rather, as seen before, grounds for an "opposition against a decision of the enforcement court" pursuant to Art. 617 of the Code, albeit there may be some overlapping: in fact, sometimes it may be also possible to plead, pursuant to Art. 615 of the Code, that creditor has no right to proceed in the way adopted in the concrete proceeding, albeit there is a right to proceed in a different way (e.g., when the creditor tries enforcement of specific performance with a non-judicial title, or attachment of non-attachable assets).

This overlapping may be troubling in the practice because deadlines for the two kinds of challenges differ, and different kinds of appeals are granted against the judgment (as already seen above): satellite litigation on the point often arises.

When special rules allowing enforcement without a court hearing apply, both kinds of challenges are anyway available to the debtor.

4.3.2 Grounds for opposition

No "opposition in enforcement" may be allowed by way of a mere "notice pleading": plaintiff must state cause of action. However, burdens of specificity obviously fit the "reactive" nature of the opposition, since the remedy aims substantially at a negative declaration (a declaration of non-existence of the right to proceed): hence, a defendant's specific denial of facts giving rise to the right whose enforcement is sought, or allegation of other facts precluding enforcement, is necessary only inasmuch the right was identified by the creditor, and such identification may often need description of facts giving rise to it.

The most important general principle governing the issue is that, pursuant to Art. 161 of the Code, when the judicial title is a decision that can give *res iudicata* effects, no ground that can support an appeal against that decision may support an "opposition in enforcement": no redundancy of remedies is allowed. Obviously, grounds precluded by *res iudicata* itself are *a fortiori* inadmissible.

It is worth noting that according to the most recent Italian case law, a burden to firstly challenge the judgment used as enforceable title may lie also upon the third party claiming a right on the seized asset prevailing over the seizure: in fact, grounds to challenge the judicial decision with a third party opposition must be pleaded there (and stay of enforcement can be granted on such grounds only by that court), while they cannot support directly a challenge to the enforcement proceeding by the same third party in the enforcement court (and that court cannot grant a stay upon such grounds), even if the complaining party never participated in the proceeding leading to the formation of the enforceable title; an enforcement court would directly hear an opposition by a third party only if it is based on different grounds ([23]).

4.3.3 Source of grounds for opposition

Grounds for "opposition in enforcement" are described by the general clause of Art. 615 of the Code already seen above.

[23] See the judgment of the Court of Cassation no. 1238 of 23 January 2015.

4.4 REMEDIES CONCERNING RECOGNITION AND ENFORCEMENT OF NON-EU JUDGMENTS

Since enforcement of foreign non-EU judgments requires an *exequatur*, description of challenges to recognition and enforcement in Italy may comprise only challenges to recognition. Grounds to challenge recognition, however, obviously support as well a denial of the *exequatur*. After *exequatur*, an "opposition in enforcement", filed within the enforcement proceeding promoted using the foreign judgment as a title, cannot be supported by any ground that could have been pleaded there, according to the principle embodied in Art. 161 of the Code already seen above.

4.4.1 Features of remedies

As already seen above, effects of foreign non-EU judgments as such may be freely contested in and out of court: the other party has the burden to file an action pursuant to Art. 67 of law no. 218 of 31 May 1995 to prevent that. Hence, standing for a challenge in court of recognition may be difficult to prove: evidence that apparent effects of the judgment are prejudicial for the plaintiff would be required ([24]).

4.4.2 Grounds

Grounds for denial of recognition and enforcement of foreign non-EU judgments are the following, pursuant to Art. 64 of law no. 218 of 31 May 1995: *a*) violation by the court of origin of Italian principles on international jurisdiction; *b*) lack of service to the defendant of the complaint of the case decided according to the rules of the court of origin, or violation of essential rights of the defense; *c*) violation of the rules of the court of origin in establishing default of a party that did not actively participated in the proceeding; *d*) lack of *res iudicata* effects in the State of origin; *e*) conflict with an Italian judgment with *res iudicata* effects; *f*) *lis pendens* in Italy before the start of the foreign proceeding; *g*) conflict with public order.

[24] See, e.g., the judgment of the Court of Appeal of Venezia of 11 June 1997, in *Giurisprudenza italiana* (1998): 1158.

4.4.3 Differences with recognition and enforcement of EU decisions

The main differences are the following: *a*) non-EU foreign judgments are recognized only after *res iudicata*, but in order to preclude their recognition is not even necessary a conflict with an Italian judgment, because a previous *lis pendens* in Italy suffices; *b*) any violation of Italian principles on international jurisdiction precludes recognition; *c*) violations of public order preclude recognition even if they are not manifest.

Other differences are of limited relevance: in fact, violation of essential rights of the defense would also determine a manifest conflict with public order, precluding also recognition of EU decisions, and conflict with a recognized judgment from a different State would also generally preclude recognition of non-EU judgments, because public order would be violated, according to some doctrinal analysis ([25]).

4.5 REMEDIES CONCERNING RECOGNITION AND ENFORCEMENT OF EU DECISIONS

It is important to state at the outset that an analysis of remedies concerning enforcement of EU decisions pursuant to Regulation 1215/2012 requires to consider the overlapping between challenges to recognition and enforcement of the decision, and challenges to enforcement proceedings based on it.

4.5.1 Remedies in the Member State of origin

Art. 51 of Regulation 1215/2012 expressly provides for a discretionary stay of enforcement when the decision is challenged with an ordinary remedy in the Member State of origin. Besides, pursuant to Art. 38, proceedings on the merits influenced by an EU decision may also be stayed whenever such decision is challenged in the Member State of origin, even if an extraordinary remedy is sough (as well as when a proceeding for a refusal or recognition or enforcement is pending in the Member State addressed).

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[25] For this interpretation, largely influenced by German doctrine, see, e.g., E. D'Alessandro (2007): *Il riconoscimento delle sentenze straniere* (Torino: Giappichelli), esp. 308 ff.; however, it may be argued that if the preclusive effects of the first judgment could be pleaded in the second proceeding, recognition should not be denied to the latter, according to the general principles governing such contrasts in Italian case law (see., e.g., the judgment of the Italian Court of Cassation no. 2082 of 26 February 1998).

Obviously, if the decision is annulled or repealed in the Member State of origin, its recognition and its enforceability in the Member State addressed also elapse as well at the same time, and any interested party may allege such event whenever it is necessary. If enforceability of the decision is stayed in the Member State of origin, enforcement in the Member State addressed is also subject to mandatory stay, at the request of the debtor, pursuant to Art. 44 of Regulation 1215/2012.

4.5.2 Procedural aspects of proceedings pursuant to Art. 47 of Regulation 1215/2012

Italy chose to give subject-matter jurisdiction for complaints pursuant to Art. 47 of Regulation 1215/2012 to ordinary Tribunals, without enacting any special provision for a speedy track.
This option aims at allowing overlapping challenges to enforcement of the decision and challenges to enforcement proceedings: the debtor may plead together, in the same proceeding, both that there are grounds to refuse enforcement pursuant to Art. 45 of Regulation 1215/2012, and that the creditor has no right to proceed with the enforcement pursuant to Art. 615 of the Code (provided, pursuant to Art. 41 of Regulation 1215/2012, that grounds to challenge enforcement pursuant to national law do not conflict with said Art. 45).

Hence, rules already dealt with above concerning territorial jurisdiction for challenges to enforcement proceedings apply.

Territorial jurisdiction of Art. 47 courts for declarations of recognition, pursuant to art. 36 of Regulation 1215/2012, by contrast, is governed by the general rules, since no enforcement proceeding is involved.

4.5.3 Documents pursuant to Art. 47, § 3, of Regulation 1215/2012

No special rule has been enacted in Italy concerning documents pursuant to Art. 47, § 3, of Regulation 1215/2012: a wise plaintiff would try to file in court at the outset of the proceeding a copy and a translation of the decision in order to prevent delay.

4.5.4 Service and representation

Service in proceedings pursuant to Art. 47 of Regulation 1215/2012 is governed by the rules of the Member State addressed as already seen above. Italian procedural rules require the party to have a representative located in Italy, pursuant to Art. 82 of the Code of Civil Procedure, as a prerequisite to active participation in such proceedings, irrespective of nationality or domicile.

4.5.5 Challenges to recognition

Besides challenges to enforcement pursuant to Art. 47 of Regulation 1215/2012, challenges to recognition are allowed both *principaliter* and *incidenter*, pursuant to Art. 36 of the same. When the challenge is the main claim of the action, rules provided by said Art. 47 apply, while when the challenge is filed to prevent the decision from influencing the disposition of a different claim, the procedural rules provided for the disposition of such claim prevail.

4.5.6 Appeal to the Court of Cassation

As a general rule, in Italy third instance appeal (*rectius*, appeal to the Court of Cassation, that is not necessarily a "third" instance: in fact, whenever a Court of Appeal has subject-matter jurisdiction, e.g. for exequatur of non-EU foreign judgments, the decision is subject to appeal at the Court of Cassation, but such appeal is not a "second" appeal, nor a "third" instance, but rather the "only one" appeal available, and a "second" instance, but nevertheless the same rules provided for "third instance"/"second appeal" apply) cannot find support in a request to re-examine the evidence (unless it concerns procedural events). However, an indirect check on the fact-finding is anyway allowed if the supporting opinion of the judgment is challenged.

Recent reforms are aimed at reducing supervision by the Court of Cassation of the supporting opinion of the appealed judgment, but do not eliminate it ([26]). Hence the conclusion that no check of the fact-finding at all is allowed in the Italian Court of

[26] The latest one was amendment of Art. 360 of the Code of Civil Procedure by law no. 134 of 7 August 2012: on its impact see, e.g., the essays collected in *La Cassazione civile*, eds. M. Acierno, P. Curzio, A. Giusti (Bari: Cacucci, 2015), esp. 31

Cassation is grossly exaggerated, and quite misleading in the practice of law: in fact, a wise lawyer would never miss the opportunity to challenge the appealed decision's fact-finding whenever it is clearly erroneous (futile, by contrast, is such a challenge when the fact-finding may be erroneous, but is not clearly so). The only limitation to fact-finding in the Court of Cassation that really nobody can overcome is that no oral evidence is allowed in the proceeding.

4.5.7 Standing for refusal of recognition and enforcement

Standing for refusal of enforcement pursuant to Art. 47 of Regulation 1215/2012 is granted only to the party against whom enforcement is attempted. However, standing for refusal of recognition (that implies unenforceability) is granted by Artt. 36 and 45 of the same to any interested party.

4.5.8 Provisional measures pursuant to Art. 44, § 1, of Regulation 1215/2012

Orders pursuant to Art. 44, § 1, of Regulation 1215/2012 are obviously provisional measures subject to the rules provided, as already seen above, by Art. 624 of the Code. Hence they are issued (or denied) by a single judge, whose ruling is subject to challenge to be decided by a panel of three of the same court (without the participation of the first judge).

4.5.9 Stay of enforcement pursuant to Art. 44, § 2, of Regulation 1215/2012

As already seen above, if enforceability of the decision is stayed in the Member State of origin, enforcement in the Member State addresses is also subject to mandatory stay, at the request of the debtor, pursuant to Art. 44, § 2, of Regulation 1215/2012.

4.6 PROTECTIVE MEASURES

For the purposes of this section, the expression "protective measures" includes every provisional remedy.

4.6.1 Available measures

There is no reason to deny availability, pursuant to Art. 40 of Regulation 1215/2012, to any kind of provisional measure provided by Italian law.

4.6.2 Prerequisites

Since the EU decision is a sufficient ground to satisfy the requirement of *fumus boni iuris*, only requirements of *periculum in mora* provided for the various provisional remedies should be shown by the party seeking them in Italy pursuant to Art. 40 of Regulation 1215/2012.

4.6.3 Duration

In Italy as a general rule provisional measures that anticipate the effects of a judgment last until they are revoked explicitly or implicitly (that is when a judgment declaring that the protected right does not exist is issued), pursuant to Art. 669-*octies* and 669-*novies* of the Code. An attachment (*sequestro*), by contrast, automatically elapses not only if the proceeding on the merits is not timely filed, or is discontinued, or if its transformation (*conversione*) in seizure (*pignoramento*), pursuant to Art. 686 of the Code, does not meet the deadline set by Art. 156 of the implementation rules of the Code of Civil Procedure, by but also if the creditor does not proceed to enforce a foreign decision on the merits of the claim within 60 days from the moment of its enforceability, pursuant to Art. 156-*bis* of the implementation rules of the Code of Civil Procedure.

No case law has emerged as yet on applicability of said Art. 156-*bis* to attachments asked pursuant to Art. 40 of Regulation 1215/2012: hence a wise lawyer would consider the worst interpretative scenario, and ask an attachment immediately after the foreign decision in need of enforcement is issued, in order to exploit the surprise having also sufficient time to provide the subsequent service needed for enforcement. However, if a dispute should ever arise on the point, case law might hold that said Art. 156-*bis* does not apply at all to enforcement of EU decisions, since no *exequatur* is required: hence an attachment should just last until its transformation (*conversione*) in seizure pursuant to Art. 686 of the Code, as soon as the creditor files the decision served (together with its certificate) to the debtor at

the records office of the enforcement court (within the deadline set by Art. 156 of the implementation rules of the Code).

4.6.4 Effects

As already seen above, provisional measures can in a general way anticipate any effect of a final judgment.

Attachments aimed at protecting effectiveness of generic enforcement, however, anticipate most, albeit not all, of the protective effects of seizures: the debtor is dispossessed of the asset, and no disposition of it, nor any payment of the credit provisionally garnished, may prejudice the creditor's interests in the future sale or assignment, pursuant to Art. 2906 of the Italian Civil Code; however, protection against other forms of resolution of the provisionally garnished credit, pursuant to Art. 2917 of the Civil Code, and extension of such protections to creditors intervening in the enforcement proceedings, pursuant to Artt. 2913 ff. of the same, require a full seizure and a full garnishment.

Shortly, alienation of an attached asset is valid between the parties, but has no effect against the creditor.

4.6.5 Scope of measures pursuant to Art. 44, § 1, of Regulation 1215/2012

The most extreme protective measure provided to the debtor by Art. 44, § 1, of Regulation 1215/2012 is the stay of enforcement: this would anticipate only the protective effects of a final judgment denying enforceability of the EU decision, because the seized asset may not be sold or assigned, but the protective effects of the seizure for the creditors still apply.

At least in theory, Italian constitutional law should grant also, as a general rule, full provisional anticipation of any final remedy, whenever an irreversible prejudice is at stake, and a sufficient *fumus boni iuris* is shown, but, as already seen above, these requirements may be quite difficult to satisfy in practice, especially for a party in need to show that a judicial decision should not be enforced: hence, no case law clarified this point as yet.

4.7 GROUNDS FOR REFUSAL

4.7.1 Past rules and new problems

Grounds for refusal of non-EU judgments pursuant to law no. 218 of 30 May 1995, as already seen above, do not differ significantly from grounds for refusal pursuant to Art. 45 of Regulation 1215/2012. Grounds for refusal of recognition pursuant to Art. 797 of the Code of Civil Procedure, governing as general rules before law no. 218, and still applicable, as seen above, to recognition of ecclesiastical judgments, substantially correspond, with very little differences, to grounds enumerated by Art. 64 of said law (e.g., pursuant to Art. 797 of the Code, recognition is precluded by *lis pendens* in Italy even if Italian litigation begun after the foreign one, inasmuch as it begun before the foreign judgment became *res iudicata* in the State of origin).
Since also grounds in Regulation 1215/2012 differ only in marginal aspects from grounds in Regulation 44/2001 (relevance of third State judgments and issues of lack of jurisdiction), the impact of the former does not seem to generate new problems of special practical significance in Italy with respect to such aspects of the recognition of enforcement of foreign decisions: new Art. 2, governing enforceability abroad of provisional measures, is far more relevant in this field for both practice and theory.

4.7.2 Survival of ground for refusal in Regulation 1215/2012

It confirms the idea that contemplating such kind of grounds for refusal of recognition and enforcement is a fair compromise between competing needs of uniformity and autonomy in the EU.

4.7.3 Italian experience with grounds for refusal

Systematic cooperation between Italian courts and the European Court of Justice allows the latter to issue case law inspiring also interpretation of national rules governing recognition and enforcement of non-EU judgments.

With respect to EU judgments Italian case law specifically offers several instances of challenges to recognition, on grounds of violation of public order in the development of the proceeding abroad, rejected by the Court of Cassation ([27]).

With respect to non-EU judgments, Italian case law meets some criticism within scholarly analysis in its refusal to recognize, on public order grounds, punitive damages awards ([28]).

4.7.4 Grounds concerning conflicts of decisions

Conflict of judgments as a ground for refusal of recognition of non-EU judgments, pursuant to Art. 64 of law no. 218 of 30 May 1995, is a topic of high interest for scholars, due to its subtle nuances and the depth of the comparative law analysis it allows, but of very limited relevance in actual practice (in fact, it is more frequently alleged to challenge recognition of ecclesiastical judgments pursuant to Art. 797 of the Code). By contrast, rules governing conflict of EU decisions are also extremely important for the practice in transnational litigation.

Criteria to identify conflicts developed by the European Court of Justice as euro-autonomous interpretations may sometimes seem to lack coherence with the idea that a judgment should have a uniform effect in the EU territory, since different Member States have different rules on the scope of the judgment's effects. However, imposing the Member States uniform rules on effects of judgments does not seem possible in the near future.

With respect to conflicts involving provisional measures, the most persuading analysis suggests the following: when the decision to be recognized is not yet *res iudicata* in the Member State of origin, any internal conflicting decision, even if it is only a provisional measure, is preclusive; when the EU decision is *res iudicata* in the Member State of origin, only an internal conflicting *res iudicata* in the Member State

[27] See, e.g., the judgments of the Italian Court of Cassation no. 4392 of 24 February 2014, no. 1719 of 3 March 1999, no. 5451 of 18 May 1995.

[28] See, e.g., the judgments of the Italian Court of Cassation no. 1183 of 19 January 2007, and no. 1781 of 8 February 2012; however, this reading met so much criticism that recently judgment no. 9978 of 16 May 2016 referred the issue to the plenary composition of the Court for reconsideration; compare, on this issue, e.g. A. Giussani (2008): "Resistenze al riconoscimento delle condanne al pagamento di *punitive damages*: antichi dogmi e nuove realtà", in *Giurisprudenza italiana* (2008): 396

addressed is directly preclusive, while if the decision in the Member State addressed may still be appealed the party seeking recognition has the burden to challenge it alleging violation of foreign *res iudicata* (since that allegation should be allowed despite the internal decision), and proceedings aimed at declaring or refusing recognition and enforcement *principaliter* should be stayed until the conflicting decision in the Member State addressed is also *res iudicata* ([29]).

However, the possibility to deny recognition because of a conflict with an internal decision implies that, whenever the rules governing *lis pendens* in different Member States fail in preventing parallel litigation, the purpose of granting a decision uniform effects in all the EU territory may be frustrated, even if the above interpretation is adopted, since different Member States adopt different rules concerning limits to allegations of violations of *res iudicata*: some of them allow it also against *res iudicata* itself, while some others do not. Moreover, full effectiveness of the principle of uniformity of effects of a decision within the EU territory would require creation of a supranational judicial system with jurisdiction on the merits: a path followed, e.g., with the institution of the European Patent Court ([30]).

[29] See esp. E. Merlin (2004): *Il conflitto internazionale di giudicati. Profili sistematici* (Milano: Giuffré).
[30] Compare the analysis developed in A. Giussani, "Ground for Refusal of Recognition of Foreign Judgment: Developments and Perspectives in EU Member States on Public Order and Conflicting Decisions", report for the international conference on "New Developments in Judicial Cooperation in Civil and Commercial Matters" held in Portorož, Slovenia, on 19 May 2017.

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5 FINAL CRITICAL EVALUATION

5.1 IMPACT OF REGULATION 1215/2012 FOR CROSS-BORDER ENFORCEMENT

Regulation 1215/2012 actually simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning monetary claims, and eases cross-border enforcement of judgments.

5.2 MOST CONVENIENT ALTERNATIVE FOR CROSS-COLLECTION OF DEBTS

In Italy garnishment is surely the most effective choice, having notoriously by far the highest success rate.

5.3 TRANSLATION IN THE DEBTOR'S LANGUAGE

Art. 57 of EU Regulation 1215/2012 requires translations in the language of the court of the Member State addressed: translation in the different language spoken by the debtor is not required, not could validly replace the required one. However, if added to the required one, it might help to obtain cooperation from the debtor in locating assets available for seizure and sale.

5.4 RESPECT FOR NATIONAL AUTONOMY

National procedural autonomy does not seem adversely affected in a significant way by the provisions of Regulation 1215/2012 governing recognition and enforcement of EU decisions. In fact, even Art. 54 of said Regulation, establishing that Member States shall grant effectiveness to measures unknown in the Member State addressed, only provides to do it "to the extent possible".

5.5 COSTS OF ENFORCING JUDGMENTS

Cost-effectiveness for the creditor of Regulation 1212/2012, compared to Regulation 44/2001, cannot be seriously denied, since a procedural step is not due any more, regardless of its actual costs (that were not very high, since only an *ex parte* proceeding was strictly necessary).

Main costs to assess for the procedure include court costs and lawyer's fees: enforcement of the credit includes them as well, but they must be paid in advance by the interested party. Moreover, the debtor is liable only for ordinary lawyer's fees, but a high quality lawyer, able to cope with transnational litigation, would generally ask the client a higher pay.

Court cost are determined according to law decree no. 115 of 30 May 2002, implemented by various decrees of the Ministry of Justice adjourned on a regular basis. Lawyers' ordinary fees are determined, pursuant to law no. 247 of 31 December 2012, according to decrees of the Ministry of Justice, also adjourned on a regular basis (the latest one was enacted on 10 March 2014), while fees exceeding the ordinary amount must be negotiated in advance.

Depending from the sum involved, the amount of money the creditor would need to advance, for a standard legal representation, including court fees, would range now, to cover the costs of the Italian steps needed to enforce an EU decision, from less than 500 euros to more than 10.000, but obviously debtor's challenges might increase them significantly.

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