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Language Issues in European Order for Payment and European Small Claim Procedures

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Language Issues?

- EU: 24 official languages
- Low average of multilingual citizens
- European civil procedures → exchange of documents written in different languages
- High costs of translation
- Difficulties in translation

- *EOP and ESCP → attempts to reduce language issues: standardized forms available in all languages on e-Justice portal; minimized need for translation of forms; providing information on means of communication and language*



EOP Regulation

- **Art 21(2)(b)**

For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:

(b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.

- **Art 29(1)(d)**

By 12 June 2008, Member States shall communicate to the Commission:

(d) languages accepted pursuant to Article 21(2)(b).

Member States shall apprise the Commission of any subsequent changes to this information.



Language Provisions in the Service of Documents Regulation

- REGULATION (EC) No 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
- Recast → REGULATION (EU) No 2020/1784 of 25 November 2020 (applies from 1 July 2022)



ESCP Regulation

- **Art 6**

1. The claim form (..) shall be submitted in the language or one of the languages of the court or tribunal.
2. If any other document (..) is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.
3. Where a party has refused to accept a document because it is not in either of the following languages: (a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or (b) a language which the addressee understands, the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

- **Art 20(2)**

At the request of one of the parties, the court or tribunal shall issue a certificate (...). Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. Nothing in this Regulation shall oblige the court or tribunal to provide a translation and/or transliteration of the text entered in the free-text fields of that certificate.

- **Art 21(2)(b)**

The party seeking enforcement shall produce: (b) the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept

- **Art 21a**

1. Each Member State may indicate the official language or languages of the institutions of the Union, other than its own, which it can accept for the certificate referred to in Article 20(2).
2. Any translation of the information on the substance of a judgment provided in a certificate as referred to in Article 20(2) shall be done by a person qualified to carry out translations in one of the Member States.

- **Art 25(1)(i)** – information by the Member States on the accepted languages



Croatian vs. Austrian Perspective (e-Justice information)

	EOP		ESCP	
	CROATIA	AUSTRIA	CROATIA	AUSTRIA
Accepted languages	„European payment orders must be accompanied by a translation into Croatian, certified by a person authorised to do so.”	<p>„German is the accepted language in accordance with Article 21(2)(b).</p> <p>In addition to the official language (German), Austrian nationals and nationals of countries that are party to the Agreement on the European Economic Area may use Hungarian before the district courts of Oberpullendorf and Oberwart, Slovenian before the district courts of Ferlach, Eisenkappel and Bleiburg, and Croatian before the district courts of Eisenstadt, Güssing, Mattersburg, Neusiedl am See, Oberpullendorf and Oberwart.”</p>	„A translation into Croatian, certified by a qualified person in one of the Member States, must be submitted.”	<p>„The language accepted pursuant to Article 21a(1) is German.</p> <p>In addition to the official language (German), Austrian nationals and nationals of countries that are party to the Agreement on the European Economic Area may use Hungarian before the district courts of Oberpullendorf and Oberwart, Slovenian before the district courts of Ferlach, Eisenkappel and Bleiburg, and Croatian before the district courts of Eisenstadt, Güssing, Mattersburg, Neusiedl am See, Oberpullendorf and Oberwart.”</p>



CJEU Case Law

- **Catlin Europe SE v O.K. Trans Praha spol. s r.o. (C-21/17)**
- Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin (C-14/07)
- Alpha Bank Cyprus Ltd v Dau Si Senh et al. (C-519/13)
- Andrew Marcus Henderson v Novo Banco SA (C-354/15)
- Götz Leffler v Berlin Chemie AG (C-443/03)
- Alta Realitat S.L. v Erlock Film ApS and Ulrich Thomsen (C-384/14)



Case Study 1 (EOP)

- Ms. Anić works and lives with her family in Eisenkappel, Austria. She is originally from Croatia, but she permanently moved to Austria in 2018. In 2021, Ms. Anić ordered a coffee machine from a Slovenian company, Coffetado. The coffee machine costs 500EUR. However, when the machine came, Ms. Anić refused to pay for it as it didn't meet her expectations. Coffetado therefore decides to apply for an European order for payment and seizes the court in Eisenkappel, Austria. An EOP is served directly to Ms. Anić.
- As Ms. Anić works in an international firm where she mainly uses English, and her family and friends speak fluent Croatian, she does not understand German language. However, the EOP is served in German language only. Is this the ground for refusal of accepting the service of documents?
- How does one determine whether Ms. Anić actually understand the language?
- Let's suppose Ms. Anić rightly refused the service of suggested document. Does that make the procedure invalid?
- In which language must the application for the EOP by Coffetado be?



Case Study 2 (ESCP)

- Mr. Henderson, an Austrian national, lives in Graz, Austria. He owns a small company which sells records. His customers are primarily from Austria, Germany, Slovenia and Croatia. When Mr. Klarić, a Croatian national, ordered a record from Mr. Henderson's website, and subsequently haven't paid for it after receiving it, Mr. Henderson's company decided to start an European small claims procedure. The Croatian court is seized, and an Mr. Henderson applies using a standard form A in English language.
- How will the seized court proceed?
- Let's suppose Mr. Henderson was successful with his application and wants to proceed to enforcement. He requests a certificate of the judgment in ESCP from the Croatian court. What is the court obliged to do?
- What does Mr. Henderson need to produce to the enforcement authorities in order to start the enforcement procedure? In which languages?
- Let's suppose Mr. Henderson wants to enforce a judgment from different Member State in Croatia. As he knows some Croatian, he translated the foreign certificate and information in the certificate himself. Is such translation adequate?

Thank You for Your Attention!



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