Mutual Trust and Free Circulation of Judgments

CONTENTS

A. LEGAL ANALYSIS OF THE NATIONAL LEGAL SYSTEM

1. IMPLEMENTING LEGISLATION[1]

EU legislation	Implementing national legislation (quotation, link and English translation)
Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)	Pursuant to Article 3 of the European Union Act (Chapter 460 of the Laws of Malta) as from the 1st May 2004 all existing and future acts adopted by the European Union (which includes regulations) shall be binding on Malta and shall be part of Maltese domestic law. This applies to all the Regulations listed below. Article 3 provides as follows: *"3. (1) From the First day of May 2004, the Treaty and existing and future acts adopted by the European Union shall be binding on Malta and shall be part of the domestic law thereof under the conditions laid down in the Treaty.* *(2) Any provision of any law which from the said date is incompatible with Malta's obligations under the Treaty or which derogates from any right given to any person by or under the Treaty shall to the extent that such law is incompatible with such obligations or to the extent that it derogates from such rights be without effect and unenforceable."* Link to English translation of the abovementioned Act - http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8926&l=1
Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility	Please refer to the above reply.
Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters	Please refer to the above reply.

[1] Please consult first the European Judicial Atlas and verify whether the information provided there is accurate

Regulation 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters	Please refer to the above reply.
Regulation 805/2004 creating a European Enforcement Order for uncontested claims	Please refer to the above reply.
Regulation 1896/2006 creating a European order for payment procedure	Please refer to the above reply.
Regulation 861/2007 establishing a European Small Claims Procedure	Please refer to the above reply.
Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.	Please refer to the above reply. Additionally, pursuant to article 2 of the International Maintenance Obligations Order (Subsidiary Legislation 460.25), certain provisions of the Regulation are also implemented. Article 2 provides as follows: *"This Order implements the relevant provisions of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations."* Link to English translation of the abovementioned Order: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11809&l=1

2. A CLASSIC CROSS-BORDER CASE, FROM THE POINT OF VIEW OF THE ISSUING STATE

2.1. THE USUAL SITUATION

2.1.1 In this section, please describe chronologically each step of a classic cross-border procedure initiated by a national claimant against a defendant domiciled in another Member State within the scope of Brussels I (or Ibis) regulation. For the purpose of this assessment we assume that the claim is for the payment of 20.000 €, a court in your own Member State has jurisdiction over the case and that every step goes according to plan between loyal parties. We also assume that the

defendant does not speak the language of your Member State and thus translations are necessary. In that given situation, please describe the following steps with a special attention for time-limits and the consequences of their expiry:

The Maltese plaintiff must initiate the claim by filing a sworn application before the First Hall of the Civil Court of Malta (the Court of Magistrates would have jurisdiction to hear and determine claims of an amount which does not exceed €15,000).

- The cross-border service of document
  The document must be served pursuant to Regulation 1393/2007. For this purpose, an application must be filed to the court (hearing the original claim) requesting authorisation for the defendant to be notified pursuant to Regulation 1393/2007. If authorisation is forthcoming, the documents to be served on the defendant are transmitted to the Attorney General's office which is in charge of transferring all such documentation to the receiving agency appointed in the particular Member State where the documents must be served in accordance with the aforementioned regulation. Maltese law does not stipulate a time limit within which the sworn application must be served on the defendant. The defendant must file the sworn reply within twenty days from the date of service of the sworn application.

- Legal aid[2] and advancement of fees/cost[3]
  Legal Aid:
  The procedure for legal aid available is provided for in Title X of the Code of Organisation and Civil Procedure (Cap 12 of the Laws of Malta) ("**COCP**").

  The demand for admission to sue or defend with the benefit of legal aid is made by application to the Civil Court, First Hall or else orally to the Advocate for Legal Aid in terms of Article 911 of the COCP.

  An "Advocate for Legal Aid" is defined in our law as including any other lawyer, officer or public officer designated by the Minister responsible for justice to perform, under the guidance of the Advocate for Legal Aid, any function pertaining to the Advocate of Legal Aid or to the administration of the benefit of legal aid.

  Certain conditions must be satisfied in order for the applicant to be granted the benefit of legal aid. For instance the applicant must confirm on oath that he believes that he has reasonable grounds to be a party to the proceedings and that excluding the subject-matter of the proceedings, he does not possess

[2] Please assume that the plaintiff cannot afford the litigation. Would it be different in the case of the defendant?
[3] Please calculate costs (if necessary) according to a value of amount of 20.000 € (plus legal interests)

property the net value of which amounts to €6,988.12 and that his yearly income is not more than the national minimum wage established by law (Article 912).

A demand for legal aid is examined by the Advocate for Legal Aid who shall draw up a report. If such report is favourable, the applicant is granted legal aid and if it is unfavourable, the applicant is given the chance to make submissions before the Civil Court, First Hall.

A person admitted to proceed with the benefit of legal aid is exempt from the payment of all fees and from giving security for costs in terms of Article 920. Moreover if the action succeeds, such person shall, out of the amount obtained, pay the relative registry and advocate, saving his right of reimbursement against the opposite party.

Legal aid in cross-border disputes is then provided for in Title XA of the COCP. A cross-border dispute is defined (in article 928A of COCP) as *"...a dispute where the party applying for legal aid in the context of the Directive is domiciled or is habitually resident, as determined by Article 59 of Council Regulation (EC) No. 44 of 2001, in a Member State other than Malta or where the decision is to be enforced"*. In the aforementioned definition, "the Directive" means the provisions of Council Directive 2002/ 8/EC of the 27th January, 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes.

Legal aid in cross-border disputes is granted to applicants involved in such disputes who are, partially or totally, unable to meet the costs of the proceedings as a result of their economic situation. The benefit of legal aid includes: costs relating to pre-litigation advice with the aim of reaching a settlement, legal assistance and representation in court, the costs of the opposing party if the recipient loses the cases and the enforcement of authentic instruments in other Member States. Moreover the said benefit covers also costs for the assistance of a local lawyer until the application for legal aid has been received in the Member State where the court is sitting as well as costs for translation of the application when it is submitted before the Member State where the court is sitting (Articles 928D and 928F).

Advancement of fees:
The costs for filing a sworn application for the amount of €20,000 are as follows:

Court Registry Fees-	€740
Cost for each notification-	€7.20
Legal Procurator Fees-	€465
18%VAT on LP Fees-	€83.70

- The translation of judicial documents
  This is required pursuant to article 5 of Regulation 1393/2007.

- The national rules on competence in cross-border cases (e.g. is there a specialized judge, in cross-border situations?)
  There is no specialised court or judge which is assigned to deal with cross-border cases. The matter will be dealt with by the court before which it arises.

  Where the Brussels I (bis) regulation does not apply, article 742 of the COCP provides that the civil courts of Malta shall have jurisdiction to try and determine all actions, without any distinction or privilege, concerning the persons hereinafter mentioned:
  (a) citizens of Malta, provided they have not fixed their domicile elsewhere;
  (b) any person as long as he is either domiciled or resident or present in Malta;
  (c) any person, in matters relating to property situate or existing in Malta;
  (d) any person who has contracted any obligation in Malta, but only in regard to actions touching such obligation and provided such person is present in Malta;
  (e) any person who, having contracted an obligation in some other country, has nevertheless agreed to carry out such obligation in Malta, or who has contracted any obligation which must necessarily be carried into effect in Malta, provided in either case such person is present in Malta;
  (f) any person, in regard to any obligation contracted in favour of a citizen or resident of Malta or of a body having a distinct legal personality or association of persons incorporated or operating in Malta, if the judgment can be enforced in Malta;
  (g) any person who expressly or tacitly, voluntarily submits or has agreed to submit to the jurisdiction of the court.

  Furthermore, in accordance with article 549 of the Commercial Code (Cap 13 of the Laws of Malta), the Civil Court, First Hall, shall also take cognizance - (a) of actions against agents or other persons commissioned by merchants, or their subordinates in regard only to transactions carried out in the ordinary course of the business of their principal; and of actions by the former against the principal; (b) of all matters relating to bankruptcy in accordance with the provisions contained in the Commercial Code.

- The rules on representation before the court, scheduling and time limits.
  Representation before the Court:
  In Malta parties may plead personally or through their advocates in the superior courts or else personally, through their advocates or their legal procurators before the inferior courts in terms of Article 204 of the COCP.

Pursuant to article 205 of the COCP, when a party is assisted by an advocate, he can only make submissions to the court through his advocate unless otherwise allowed by the court. The court may order the party who is not assisted by an advocate to engage one if, in the opinion of the court, such party is unable adequately to plead his case. If the party fails to engage an advocate, the court must appoint one of the official curators to be selected according to the turn on the rota. If the party refuses to give the necessary information to the advocate so appointed, the court may dispose of the case after hearing the evidence that the court considers necessary.

Scheduling:
Part II of Subsidiary Legislation 12.09 of the Laws of Malta (Court Practice and Procedure and Good Order Rules) provides that the court may opt not to appoint for hearing, between the 16th of July and the 15th of September of each year, proceedings which, in the opinion of the court, need not be dealt with in any particular haste and none of the parties will suffer any prejudice if the hearing takes place after the 15th of September.

Time Limits:
A defendant must file his sworn reply within twenty days from the date of service of the sworn application in terms of Article 158 of the COCP.

When written pleadings of a cause are concluded, the court will proceed either with a pre-trial hearing or with a trial hearing, both of which must be concluded as expeditiously as possible. In terms of the COCP, the date and time of the hearing must be determined at least two months before the date fixed for hearing, unless the court decides otherwise including due to the urgency of the cause.

Our law provides for a mechanism enabling any party to a case to personally present an application to the Chief Justice requesting for the presiding member of the court be changed and the case assigned to another member of the judiciary (Article 195(5). However this mechanism may only be availed of where a cause has been pending before a particular court for three or more years or where a cause has been pending for judgment before a particular court for eighteen months or more.

Following the conclusion of written pleadings of an appeal, the Court of Appeal may dismiss the appeal in open court at the first hearing if it considers such appeal to be frivolous and vexatious.

In terms of time limits of court proceedings, our law provides for a mechanism enabling any party to a case to personally present an application to the Chief Justice requesting for the presiding member of the court be changed and the

case assigned to another member of the judiciary (Article 195(5). However this mechanism may only be availed of where a cause has been pending before a particular court for three or more years or where a cause has been pending for judgment before a particular court for eighteen months or more.

- The cross-border taking of evidence (including problems related to the translation of documents or interpretation during court hearings)

  Pursuant to the COCP, if the superior courts are satisfied that the evidence of a person absent from Malta is indispensable for the case at hand, the courts may order the examination of such witness and stay the proceedings until such evidence is obtained. A party wishing to demand such examination must produce the interrogatories in writing and state the name and address of the person whom he wishes to represent him during the examination.

  The courts will not receive any interrogatories if they are not accompanied by a translation in the language of the place where the witness is to be examined, unless it is made to appear to the satisfaction of the court that it is impracticable to prepare such translation. Translations shall be signed and their correctness must be verified on oath by the translator.

  If a party's demand to proceed with the examination is allowed by the court, the opposite party must be served with a copy of the interrogatories and will have the right to appoint someone to represent him during the examination. The opposite party also has the right to cross-examine the witness.

  The court registrar in Malta must draw up a letter of request addressed to a judge in the place of examination, asking such judge to examine on oath the witness. The examination shall be reduced to writing by the witness and signed by the examiner.

  Maltese law also provides for another procedure by which the evidence of a witness residing abroad can be obtained. Such witness may make an affidavit about facts within his knowledge before the competent authorities in his country of evidence and such affidavit shall be accepted as evidence by Maltese courts so long as it is sworn and authenticated. A copy of the affidavit shall be served on the opposite party who shall have the right to cross-examine the witness through letters of request.

  Evidence from a witness residing abroad can also be audio-recorded or video-recorded if the Maltese courts so allow.

  The courts shall order the trial to resume once the evidence is obtained.

- The confidentiality requirements in court proceedings

Under our law causes must be tried in public although the courts may order that the cause be heard with closed doors, should decency or good morals so require (Article 22 of the COCP). Article 23 of the COCP further provides that judgements must in all cases be delivered in public. The court delivering the judgment must read out the operative part which is to be included in the concluding part of the judgment. Moreover, immediately upon delivery the judge or magistrate must deposit a signed transcript of the judgment in the records of the case.

- The motivation/reasoning of the judgment;
  In accordance with article 218 of the COCP, a judgement must provide the reasons on which the decision of the court is based, and it must also include a reference to the proceedings, the claims of the plaintiff and the pleas of defendant (Article 218 COCP).

- The decision on (refundable) costs
  Every definitive judgment must award costs against the party cast. The courts may order that the costs shall not be taxed as between party and party, when either party has been cast in some of the points at issue, or when the matter at issue involves difficult points of law. In the case of any frivolous or vexatious appeal or re-trial, the Court of Appeal or the Constitutional Court may award double costs against the appellant in favour of the respondent (Article 223 COCP).

  In cases where two or more persons are condemned to pay costs, each person shall be deemed to be condemned *in solidum* or in proportion to his interest in the cause according to the decision on the merits.

  The party in whose favour costs are awarded may then proceed to recover such costs. The costs which can be recovered are the costs which are taxed in accordance with the Tariffs set out in the COCP. These may not necessarily be equivalent to the fees charged by the lawyer, which may be higher.

- Conditions for enforceability of a judgment (security, time limits, prescription)
  A judgment must constitute an executive title in order to be capable of enforcement. A judgment becomes an executive title if no appeal is entered within 20 days from the date of the judgment, then the judgment delivered by the first court will become *res judicata.* Judgments delivered by the Court of Appeal cannot be appealed from and are capable of enforcement.

  There are certain judgements which may be enforced after the lapse of twenty four hours (such as judgments ordering the supply of maintenance; or any judgment on any collateral issue or any interlocutory decree, provided the time for enforcement is not stated in the judgment or decree itself). Other definitive

judgments which do not contain any suspensive condition, and which condemn a debtor to pay a liquidated sum, or to deliver up or surrender a specific thing, or to perform or fulfil any specific act or obligation whatsoever, may be enforced after two days from the day of delivery of the judgment. Additionally, the enforcement of any other executive title may only take place after the lapse of at least two days from the service of an intimation for payment made by means of a judicial act.

If 15 years expire form the say on which a judgment of the Superior Court could have been enforced; or 10 years expire form the day on which a judgment of the Inferior Courts or the Small Claims Tribunal could have been enforced, then enforcement can only be proceeded with upon an application being filed. The applicant must also confirm on oath the nature of the debt or claim sought to be enforced, and that the debt or part thereof is still due.

A party may also seek the provisional enforcement of a judgment pursuant to article 266 of the COCP. A judgment which does not constitute a *res judicata* is not enforceable unless, on the demand of the interested party, the judgment has been declared by the court to be provisionally enforceable. The court must declare the judgment to be provisionally enforceable if it is satisfied that delay in the execution of the judgment is likely to cause greater prejudice to the party demanding the provisional enforcement than such execution would cause to the opposite party

2.2. APPEAL AND THIRD INSTANCE

2.2.1. In this section please briefly describe your national appeal procedure,

- its conditions (admissibility)

  An appeal must be initiated by filing an application requesting that the judgment appealed from or a part of it be reversed or varied. Where an appeal is not entered from the whole judgment, the appeal application must state the heads of the judgment against which the appeal is entered. An application for the reversal of a judgement must contain a reference to the claim and to the judgment appealed from together with detailed reasons on which the appeal is entered and a request that the claim be allowed or dismissed. An application for the variation of a judgement must, in addition to the aforementioned, distinctly state the heads of the judgment complained of and specifically state the manner in which it is desired that the judgment be varied under each head.

  An appeal may be entered by any party against all the other parties or against any one of them. The appellant must indicate the parties against

who the appeal is directed. An appeal may be entered not only by the contending parties but also by any person interested.

Different rules apply with respect to appeals from court decrees.

- especially time-limits (length, interruption/tolling, and starting point),

  An appeal application must be filed within twenty days from the date of the judgment in terms of Article 226 of the COCP. The person on whom the application is served must file a reply within twenty days from date of service of the appeal application and state the reasons why the appeal should be dismissed. In urgent cases, any of the parties may request the court of first instance, immediately after the delivery of the judgment, to abridge the time for the filing of the appeal.

  If a party wishes to appeal from a judgement, he must provide security for costs which must be deposited in court within twelve months from the date of the notification of the amount to be deposited (the amount to be paid shall be determined by the registrar of courts). However the afore-mentioned security shall not be required in certain specific cases such as appeals before the inferior courts (Articles 249 and 250 of the COCP).

- the scope of review/re-litigation

  All judgments of the Civil Court, First Hall, are subject to appeal to the Court of Appeal in terms of Article 34 unless provided otherwise in the COCP itself.

  However no party may appeal from a judgment given upon an admission of the claim, or accepted by the renunciation of the right of appeal or by acquiescence in the findings of the judgment (Article 228 of the COCP). It is also not possible to appeal any judgment of the Court of Magistrates (Malta), or of the Court of Magistrates (Gozo) in its inferior jurisdiction as a court of first instance, where the amount of the claim does not exceed €465.8), and the matter at issue does not involve a point of law determined in the judgment or the determination of a claim for the eviction of any person from immovable property.

  Another specific scenario where no right of appeal is permitted is where a court of first instance omits to determine any of the claims brought forward. In such cases, no appeal shall lie *ab omissa decisione* in terms of Article 235 of the COCP provided that any party may request the competent court to determine such claim within 15 days from the date of the judgment.

- its consequences on (provisional) enforcement.

  Please also refer to section 2.1.1 above.

  Where the court of first instance has declared a judgment to be provisionally enforceable, the appellate court may, at any time before

delivering judgment, on the application of the interested party, confirm, vary or revoke the decision.

Moreover the party against whom execution of a judgment declared provisionally enforceable is sued out, must, in case of reversal or variation of such judgment, be entitled to damages and interest.

To this end, the court may order the party entitled to the execution of such judgment to give to the opposite party sufficient security for the payment of the damages in case of a potential reversal of the judgement on appeal.

2.2.2. In the cross-border context: What documents are provided to a defendant domiciled abroad who lost his first instance case in view of introducing an appeal or another specific recourse?
Notably, how is the defendant made aware of the judgment?
Who is responsible for its translation if necessary?
Is the defendant informed of the competent court to file his recourse and of the delay to do it? (do any of these points depend on whether the defendant participated in the proceedings or not?)

In order to appeal, the defendant would need to be in possession of the judgement given at first instance and all the documents which form part of the records of the proceedings. Maltese law does not require judgments to be notified to the parties to the suit. The defendant must take appropriate measures to inform him/herself before which competent court to file his recourse. Typically, defendant's counsel would advise.

2.2.3. In this section, please describe your third instance procedure (second appeal, cassation), its conditions, time-limits, consequences on enforcement and whether it can review facts or only legal assessments. Again, please start from the assumption that the foreign party is bringing the second appeal
Third instance procedure is not available in Malta – judgments delivered by the Court of Appeal are not appealable. Although not identical, the institute of retrial is available pursuant to Maltese law. Any party concerned may, in any of the cases listed in article 811 of the COCP, demand a new trial of a cause decided by a judgment given in second instance or by the Civil Court, First Hall, in its Constitutional Jurisdiction. The list in the aforementioned article 811 follows:
(a) where the judgment was obtained by fraud on the part of any of the parties to the prejudice of the other party;
(b) where the sworn application was not served on the party cast, provided that, notwithstanding such omission, such party shall not have entered an appearance at the trial;
(c) where any of the parties to the suit was under legal disability to sue or be sued, provided no plea thereanent had been raised and determined;

(d) where the judgment was delivered by a court having no jurisdiction in terms of article 741(a), provided no plea thereanent had been raised and determined;
(e) where the judgment contains a wrong application of the law - there shall be deemed to be a wrong application of the law only where the decision, assuming the fact to be as established in the judgment which it is sought to set aside, is not in accordance with the law, provided the issue was not in reference to an interpretation of the law expressly dealt with in the judgment;
(f) where judgment was given on any matter not included in the demand;
(g) where judgment was given in excess of the demand;
(h) where the judgment is conflicting with a previous judgment given in a suit on the same subject-matter and between the same parties, and constituting a res judicata, provided no plea of res judicata had been raised and determined;
(i) where the judgment contains contradictory dispositions;
(j) where the judgment was based on evidence which, in a subsequent judgment, was declared to be false or which was so declared in a previous judgment but the party cast was not aware of such fact;
(k) where, after the judgment, some conclusive document was obtained, of which the party producing it had no knowledge, or which, with the means provided by law, he could not have produced, before the judgment;
(l) where the judgment was the effect of an error resulting from the proceedings or documents of the cause - there shall be deemed to be such error only where the decision is based on the supposition of some fact the truth whereof is incontestably excluded, or on the supposition of the non-existence of some fact the truth whereof is positively established, provided that, in either case, the fact was not a disputed issue determined by the judgment.

2.3. DEFAULT JUDGMENTS

2.3.1. In this section, please describe the proceedings in a way similar to question 2.1.1[4] in case the foreign defendant does not enter into an appearance.

Pursuant to article 158 of the COCP, if the defendant makes default in filing the sworn reply, the court must give judgment as if the defendant failed to appear to the summons, unless he shows to the satisfaction of the court a reasonable excuse for his default in filing the sworn reply within the prescribed time. The court must, however, before giving judgement allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself against the claims of the plaintiff. Such submissions must be served on the plaintiff who shall be given a short time within which to reply.

In addition, please answer the following questions on defaulting defendants:

[4] You can refer to the description above and highlight the differences.

2.3.2. According to your national law, is there a particular declaration by the judge acknowledging the default of the defendant? If yes, what are its conditions and consequences?

There is no specific declaration the judge is required to make however the judge will note the fact that the defendant has defaulted in the records of the case and also in the judgment. The consequences of the default are outlined in the reply to section 2.3.1 above.

2.3.3. According to your national law, what assessment shall judges do in case the defendant does not enter into an appearance? (on jurisdiction and on the merits)

Assessment of Jurisdiction:
In the absence of any plea to the jurisdiction, the court must of its own motion, declare that it has no jurisdiction: where the action is not one within the jurisdiction of the courts of civil jurisdiction of Malta and the defendant has either made default in filing the statement of defence or is an absent defendant represented in the proceedings by curators appointed in terms of article 929; or where by reason of the subject matter of the claim or of the value of the thing in issue, the action is not within the jurisdiction of the court; or where in actions touching the recovery of deposits, the monies or other things are deposited under the authority of another court.

Assessment on the merits:
If the defendant makes default in filing a sworn reply, the court must give judgment as if the defendant failed to appear to the summons. The court must, however, before giving judgement allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself against the claims of the plaintiff. Such submissions must be served on the plaintiff who shall be given a short time within which to reply.

If the defendant or his advocate (or the defendant or his advocate or legal Procurator before the inferior courts) fails to appear, the cause may be determined according to law on the acts available after hearing such evidence as the court may consider necessary, notwithstanding his default of appearance (Article 201 of the COCP).

2.3.4. Are there court appointed representatives in your Member States for civil or commercial claims? if yes, under which condition will a court appoint one instead of a defendant (incl. a foreign defendant),
Pursuant to article 929 of the COCP, the court will appoint curators to appear in and defend proceedings in any of the superior courts inter alia when a person is absent. Article 187(6) COCP also provides for the appointment of a curator if the persons entrusted with the judicial representation of a legal entity are absent from Malta.
to what extend can he represents the defendant in *absentia* (is the procedure still considered as a procedure *in absentia*?;

Usually curators are appointed to represent defendants who are absent. However this situation must be distinguished from a situation where the defendant is contumacious.

The procedure cannot be said be in absentia since there would be a curator appearing before the court.

can he submit to the jurisdiction of the court ;

In the absence of any plea to the jurisdiction, the court must, of its own motion, declare that it has no jurisdiction where the action is not one within the jurisdiction of the courts of civil jurisdiction of Malta and the defendant has either made default in filing the statement of defence or is an absent defendant represented in the proceedings by curators appointed in terms of article 929[5].

can he represent the defendant for the service of documents;

When the court appoints a curator, it will also order for the sworn application to be served upon him/her.

what are the limits of his power?

Curators have several duties in terms of Article 936 of the COCP, including the duty to fully inquire as to the rights of the persons represented, identify such rights and take all necessary measures to safeguard such rights as well as to obtain all necessary information to defend the interests of the persons represented.

2.3.5. According to your national law, are there situations where a defendant will not be permitted to defend himself although he is present / aware of the case (contempt of court or debarment from defending)?

If the defendant makes default in filing a sworn reply, the court shall give judgment as if the defendant failed to appear to the summons - before giving judgement the court must allow the defendant a short time which may not be extended within which to make submissions in writing to defend himself against the claims of the plaintiff (see the reply to section 2.3.1 above).

In the context of an appeal, the default of the filing of any written pleading shall not debar the party, who was entitled to file such written pleading, from appearing at the hearing of the cause and producing his evidence, provided he shows to the satisfaction of the court a good reason for such default. Therefore as long as the defendant proves a good reason for failing to submit written pleadings, he will not be barred from defending himself.

2.3.6. In case of a judgment *in absentia*, is there a specific procedure to oppose the judgment besides the appeal? If yes please describe this procedure, its scope, its time-limits (length and starting point) and its coordination with the appeal procedure (mutually exclusive or not).

- Articles 811 *et seq* of the COCP regulate the institute of re-trial which allows any party concerned to demand a new trial of a cause decided by a judgment given in second instance or by the Civil Court, First Hall, in its Constitutional Jurisdiction. A new trial may be requested if the aggrieved

[5] Article 929 of the COCP lists the instances where the court deems it necessary to appoint curators.

party's claim falls within the scenarios envisaged in Article 811 (please refer to the reply to section 2.2.3 above). Article 811(e) allows a party to seek re-trial if *"the sworn application was not served on the party cast, provided that, notwithstanding such omission, such party shall not have entered an appearance at the trial".*

- The time limit for demanding a new trial is three months. This time limit commences to run from the days stipulated in the COCP (which vary in accordance with the basis for the re-trial). In no case may a re-trial be demanded after the lapse of five years from when the first judgement was given.
- Re-trial and appeal are not mutually exclusive. A new trial in respect of a judgment given upon a new trial cannot be granted.

Does this procedure provide for a full review of facts and law or is it limited to certain number of objections?

A new trial shall not be granted except in regard to such heads of the judgment complained of in respect of which any of such grounds exists and in regard to such other heads as are dependent thereon (article 813 of the COCP).

2.3.7. In case the defendant is unable to introduce his recourse within the time-limit, what circumstances allow him to introduce his recourse outside of this time-limit? Only force majeure or more (EU ask for force majeure and exceptional circumstances without any fault from the debtor). Is there restriction to this right (e.g. maximum time limit starting from a defined point)? Does the extended time limit start from the moment the defendant is aware of the content of the judgment or can it start from a point earlier in time?

The defendant must file an application for appeal within twenty days from the date of delivery of the judgement. In addition, the defendant must produce all documents in support of his demand together with the appeal application.

If the defendant fails to do lodge the appeal within the stated time limit, there are limited grounds on which he can ask for a new trial of the case if he proves that he was not aware of the judgement in terms of Article 811(b) of the COCP.

The time for demanding a new trial is three months and such time shall commence to run from the day on which the plaintiff became aware of the judgment.

2.4. PROVISIONAL MEASURES

2.4.1. In this section, please briefly describe what types of provisional relief are available to the claimant in the course of the proceedings (please describe for each type the conditions, the procedure for obtaining the measure, the decision of the court, possible remedies). Please focus in particular on:

- Arrest/provisional attachment
- Provisional payment
- Preservation of evidence
- Other

A person may secure his rights by one or more of the precautionary acts. A previous judgment is not necessary in order for a precautionary act/warrant to be issued. A precautionary act is issued and carried into effect on the responsibility of the person suing out the act. The applicant must then bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant, otherwise the effects of the warrant will cease. The precautionary acts available to a claimant are the following:

- Warrant of description – this may be issued in order to secure a right over movable things, for the exercise of which the applicant may have an interest that such movable things remain in their actual place or condition.

- Warrant of seizure of movable property – this warrant allows for the seizure from the debtor of the articles indicated by the creditor. A consignee must be appointed for the articles seized.

- Warrant of seizure of a commercial going concern –this warrant may solely be issued to secure a debt or claims which could be frustrated by the sale in part or in whole of the going concern and, for this purpose, no other warrant may be issued against the going concern, unless it is this warrant of seizure. The effect of a precautionary warrant of seizure of a commercial going concern is to preserve the totality of the assets of the going concern, including licences and good-will, to order that
the same is not sold in part or in whole and are to be concurrently kept in business. The court must not issue any such warrant unless it is satisfied that such warrant is necessary in order to protect the rights belonging to applicant who, prima facie, appears to have such rights.

- Garnishee order – this is used by a creditor in order to safeguard the payment of a debt owing to him by attaching in the hands of a third party moneys or movable property due or belonging to his debtor.

- Warrant of arrest of sea vessels – a precautionary warrant of arrest of any sea-going vessel exceeding 10 metres in length may solely be issued to secure a debt or claims which could be frustrated by the departure of the said ship, and no other warrant may be issued against a sea-going vessel unless it is a warrant of arrest, and whether such vessel is at sea or at some other place. The effect of the warrant is that the sea vessel is seized from the debtor attached in the hands of the relevant authority which must not release such sea vessel or allow the debtor to divest himself from the same. Under pain of nullity, the application for the issue of the warrant must clearly state the particulars which may enable the identification of the ship, the name of the authority in whose hands the arrested ship may be, as well as the place where the ship is to be found.

- Warrant of arrest of aircraft – a precautionary warrant of arrest of any aircraft may solely be issued to secure a debt or claims which could be frustrated by the departure of the aircraft, and no other warrant may be issued against an aircraft unless it is a warrant of arrest. The warrant of arrest has the effect to seize the aircraft from the debtor and to attach the same in the hands of the relevant authority which must not release the aircraft or allow the debtor to divest himself from the same.

- Warrant of prohibitory injunction - the object of a warrant of prohibitory injunction is to restrain a person from doing anything whatsoever which might be prejudicial to the person suing out the warrant. The court must not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve any right of the person suing out the warrant and that *prima facie* such person appears to possess such right.
  A warrant of prohibitory injunction may also be demanded by a creditor to secure a debt or any other claim amounting to not less than €11,647. The object of such a warrant is to restrain the debtor from selling, alienating, transferring or disposing *inter vivos* such property as may be indicated in the application. Such warrant can also be used in cases of personal separation or divorce or to restrain a person from taking a minor outside Malta.

For all precautionary warrants, the demand for the issue of a precautionary act must be made by sworn application. The application must include: the origin and nature of the debt or claim sought to be secured; and when the right sought to be secured by the act is a debt or a demand which may be satisfied by the payment of a sum of money, the amount of such demand.

A person against whom a precautionary act has been issued may request the court issuing such act for a revocation of the act if:
(a) that the precautionary act ceased to be in force (that is, the claim on the merits has not been filed within the 20 days allowed by law);
(b) any one of the conditions requested by law for the issue of the precautionary act does not in fact subsist;
(c) other adequate security is available to satisfy the claim; or
(d) it is shown that the amount claimed is not prima facie justified or is excessive; or
(e) the security provided is deemed by the court to be sufficient; or
(f) it is shown that it would be unreasonable to maintain in force the precautionary act or that the precautionary act is no longer necessary or justifiable.

The court may condemn the applicant at whose request a precautionary act was issued to pay a penalty
(a) if the applicant, without any valid reason, does not bring the action in respect of the claim, within the time established by law;
(b) if, on demand of the defendant for the rescission of the precautionary act, the plaintiff fails to show that the precautionary act had to be issued

(c) if the circumstances of the debtor were such as not to give rise to any reasonable doubt as to his solvency and as to his financial ability to meet the claims of the applicant, and such state of the debtor were notorious;
(d) if applicant's claim is malicious, frivolous or vexatious.

2.5. CERTIFICATION OF A DECISION

2.5.1. Brussels I and Brussels II bis require that the competent court in the MS of origin deliver a certificate for the purpose of enforcing the judgment cross-border. Is there any problem with this procedure of formal certification? Notably has any certification ever been refused and if yes on what ground?)

We are not aware of any problems encountered in relation to the certification procedure. We are also not aware of any instances where a certification has been refused.

3. A CLASSIC CROSS-BORDER CASE, FROM THE POINT OF VIEW OF THE REQUESTED STATE

3.1. ENFORCING A FOREIGN JUDGMENT ACCORDING TO THE BRUSSELS I BIS REGULATION

3.1.1. Please describe a typical procedure in your Member State to enforce a decision according to the Brussels I bis regulation.

The judgement must be served on the defendant prior to the first enforcement measure. The competent authority must be provided with the documents referred to in article 42 of the Regulation. The judgement can then be enforced in accordance with national procedures therefore through the issue of executive warrants as set out in section 3.3.2 below.

3.1.2. Please specify which court, in your national system, is competent to hear applications for a decision that there are no grounds for refusal of recognition under Article 36(2) and applications for refusal of recognition under article 45) of the Brussels I bis Regulation.

The First Hall of the Civil Court.[6]

[6] As per information found on the E-Justice website which can be accessed at https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-mt-en.do?member=1

3.2. GROUNDS OF NON-RECOGNITION:[7]

3.2.1. Public policy: Please provide a summary of cases where the public policy exception was raised successfully and explain which foreign rules were deemed in contradiction with the public policy of your Member State. (Please try to quantify reoccurring problems if any).

There have been cases where the public policy exception was raised; however we are not aware of any cases where the exception was raised successfully.

3.2.2. Default judgment: Please provide a summary of cases where the absence of proper notification of the claim in case of a defendant not entering into an appearance was raised

Cartiera Lucchese Spa v. Cimaco Group Limited[8] - There was an attempt by the office of the Attorney General to notify the appellant in terms of Regulation 1393/2007, however the Attorney General's office (being the responsible agency in Malta pursuant to Regulation 1393/2007) held that nobody answered the door. The appellant then received a copy of the judgement which was sent to it by the foreign tribunal which handed down the same judgement. The appellant raised the defence of lack of proper service in terms of Article 34(2) of Brussels I on the bases that the service of the judgement was not carried out in accordance with Regulation 1393/2007. The Maltese court acknowledged the fact that service of documents was not effected pursuant to Regulation 1393/2007, however it held that this default on the part of the foreign tribunal was not so serious as to impede the appellant from making an appearance. The court therefore refused the defence based on Art 34(2) of Brussels I and declared the judgement enforceable in Malta.

McDermott v. Ferro[9] and *De Marco noe v. Randazzo et*[10] - in both these cases, the party against whom recognition and enforcement of the judgement was sought, raised the defence in terms of Art 34(2) of Brussels I which was however refused by the Maltese Court, which held that no defence whatsoever is granted to defendants at the level of a court of first instance because such court is only authorised to determine whether the basic requisites for recognition and enforcement in terms of BR1 have been duly satisfied. An appeal has been filed against the decision in *De Marco noe v. Randazzo et.*

[7] Please provide case-law related to articles 34 and 35 of the Regulation 44/2001 (Brussels I).
[8] Court of Appeal, 12/02/2016, Application no. 999/12SM.
[9] First Hall Civil Court, 15/04/2014, App. No. 1085/2013. This case is currently pending appeal.
[10] First Hall Civil Court, 26/04/2016, App. No. 77/2016SM. Judgement confirmed by the Court of Appeal on 28/04/2017

Zammit noe. V. De Valier Co Limited[11] - the appellant in this case successfully raised the plea of lack of proper service. The court held that there was no evidence that the appellant was successfully notified with the documents. The court accepted this argument and refused the respondent's request to have the foreign judgement recognised and enforced.

Dr. Peralta noe. v. ZET Limited[12] - at first instance the court accepted the defendant's plea of lack of proper service and declared that the judgement could not be recognised and enforced in Malta. The party seeking to enforce the judgement appealed from the decision of the first court. The Court of Appeal held that although the defendant was not notified at its registered office, it does not render the notification null as long as the documents were served on a relative of one of the directors and thus said documents eventually reached the director. The Court of Appeal therefore refused the defendant's plea of lack of proper service and accepted the appellant's appeal thus recognising the foreign judgement in Malta.

Dr. Sultana noe v. Maray & Grant Limited et[13] - the defendant appealed from a judgement of the court of first instance declaring a foreign judgement enforceable in Malta on the basis of lack of proper service. The appellants held that they were not notified in accordance with Regulation 1393/2007. The Maltese courts held that the appellant had not attempted to enter an appeal before the foreign court even after it was notified with the judgement. The court therefore refused the appellant's plea and declared the foreign judgement enforceable in Malta.

3.2.3. Irreconcilability of decisions: Please provide a summary of cases where the Irreconcilability of decision was considered and their outcomes.

Opatecka v. Ciantar[14] - the defendant appealed from a judgement of the First Hall, Civil Court enforcing a foreign judgement which ordered him to pay maintenance to his ex-wife. The appeal was based on the grounds that the appellant and his ex-wife had already signed a personal separation contract for the settlement of all claims therefore there was a conflict between the two judgements: the separation agreement (which the appellant submitted amounted to a judgement) and the judgement of the foreign court. The appellant claimed that although the definition of "judgement" in Article 32 of Brussels I does not include a public contract, it however includes a decree or order given by a Member State court. It therefore follows that since under Maltese law a separation contract can only be published

[11] Court of Magistrates Gozo (Superior Jurisdiction), 30/07/2010, App. No. 48/2010. No appeal has been lodged.
[12] Court of Appeal, 31/01/2011, App. No. 676/2007/1.
[13] Court of Appeal, 15/12/2015, App. No. 886/12SM.
[14] Court of Appeal, 27/01/2006, App. No. 303/2005/1.

following authorisation through a decree by the Maltese courts, such contract thus falls within the definition of a judgement. The Court of Appeal rejected this argument and upheld the decision of the First Hall, Civil Court.

3.2.4. Lack of jurisdiction: Please provide a summary of cases where a conflict with Sections 3, 4 or 6 of Chapter II of the Brussels I Regulation was considered and their outcomes

We are not aware of any cases where Sections 3, 4 or 6 of Chapter II of the Brussels I were considered.

3.2.5. Apart from the grounds of non-recognition prescribed by the regulation, is there other national grounds used to refuse recognition of a foreign judgment?

The COCP does not provide for grounds on the basis of which recognition of a foreign judgment can be refused, however it does provide for grounds on which enforcement of a foreign judgment may be refused. In cases where the Regulation does not apply, the enforcement of a judgment would not be ordered: if such judgement can be challenged on the grounds of retrial[15], in the case of a judgement by default if the parties were not contumacious according to foreign law and if the judgement contains a disposition which is contrary to Maltese public policy.

3.2.6. Please explain how the grounds of non-recognition are assessed (ex officio?)

As explained above, our national law does not make reference to any grounds of non-recognition. However Article 827 refers to grounds for non-enforcement.

3.3. REFUSAL OF ENFORCEMENT

3.3.1. What authority is responsible for enforcement of judicial decisions?

The First Hall, Civil Court and the Court of Magistrates.

3.3.2. Please describe the procedure to be followed in your Member State to have a judicial decision enforced.

A judicial decision which is enforceable in Malta can be enforced by any of the following executive acts:
(a) warrant of seizure of movable property;
(b) warrant of seizure of immovable property;
(c) warrant of seizure of a commercial going concern;

[15] The grounds for retrial are listed in Article 811 COCP as already explained in the answer to 2.3.6

(d) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;
(e) executive garnishee order;
(f) warrant of ejection or eviction from immovable property;
(g) warrant in factum;
(h) warrant of arrest of sea vessels;
(i) warrant of arrest of aircraft;
(j) warrant in procinctu.

Any of the abovementioned warrants may be issued following a demand to be made by application. The application must indicate the sum due in virtue of the executive title and the remedies demanded, if any.

3.3.3. In front of which authority(ies) recourse against enforcement procedure have to be filed?

The court issuing the executive act.

3.3.4. Please describe the procedure to be followed in case of recourse against enforcement, specifying the applicable time-limits.

The person against whom an executive act has been issued may make an application to the court issuing the executive act requesting for the executive act to be revoked, totally or partially, for any reason valid at law. The application must be served on the party issuing out the warrant who must reply within ten days.

The court must decide and deliver its decree on the application after hearing the parties and receiving such evidence as it may deem fit. The court must decide within a period not later than one month from the filing of the application. An appeal may then be entered by an application to the Court of Appeal within six days from the date on which the decree is read out in open court. The Court of Appeal must appoint the appeal for hearing within one month from the date that the decree is read out in open court. The appeal must be decided within three months from the date when it has been appointed for hearing.

3.3.5. What objections can be raised against the enforcement of a decision?

As stated in section 3.3.4, the person against whom an executive act has been issued may make an application to the court issuing the executive act requesting for the executive act to be revoked, totally or partially, for any reason valid at law. A “reason valid at law” has been defined as a defect in form, an instance where the executive act would have been issued by the wrong court or any other serious

defect in breach of Article 274 of the COCP (which deals with the preparation and issue of executive warrants). This reasoning was confirmed in later judgements.[16]

3.3.6. Are there special objections available against enforcement of foreign decisions, based on national law?

Please refer to section 3.2.5 and 3.2.6 above.

3.3.7. What are the usual costs for enforcing a judgment of 20.000 €?

As explained in 3.3.2 above, a party wishing to enforce a judgement may avail himself of various executive acts. The executive act which the creditor opts for will depend on the assets held by the debtor. Typically, the main executive acts are the garnishee order, the warrant of prohibitory injunction and the warrant of seizure of immovable property. The costs vary from one executive act to another:

Garnishee Order:
Court Registry Fees- €50
Cost per notification- €7.20
Legal Procurator fees- €25
18% VAT on LP fees- €4.5

Warrant of Prohibitory Injunction:
Court Registry Fees- €150
Cost per notification- €15.40
Legal Procurator fees- €50
18% VAT on LP fees- €9

Warrant of seizure of immovable property:
Court Registry Fees- €200
Cost per notification- €7.20
Legal Procurator fees- €60
18% VAT on LP fees- €10.8

3.3.8. Are there special objections available against enforcement of some EU instruments (EEO, EOP, ESC, B1 bis...)?

No.

[16] *Degiorgio vs Sare'* (First Hall Civil Court, 27/01/2016, App. No. 932/2015), no appeal lodged; *HSBC v. Cremona* (Court of Magistrates (Malta), 27/04/2016, App. No.54/2016), no appeal lodged

4. SPECIFIC INSTRUMENTS

4.1. CROSS-BORDER SERVICE

4.1.1. What are the main practical problems in your Member State regarding the application of the service regulation?

The following are the main problems:

- The receiving agencies do not always adhere to the one month time limit;
- Agencies sometimes sent documents and feedback only in their language; and sometimes the forms prescribed by the regulation are not utilised, making it more difficult to follow and understand.

4.1.2. What means of service are accepted by your Member State for the notification of the documents instituting the proceedings? Please provide for an estimation of their respective costs (if any).

Article 187 of the COCP requires service to be effected by the delivery of a copy of the pleading to the person on whom the pleading is to be served, wherever such person may be found. Service may also be effected by leaving a copy at the place of residence or business or place of work or postal address of such person with a member of his family or household or with a person in his service or with his attorney or person authorized to receive his mail. If service is not effected on a first attempt, the officer charged with the service must make two other attempts to serve the copy of the pleading without further authorisations by the court and such attempts shall be made at different times of the day with the last attempt at service to be made after judicial hours. Each attempt of service is to be made after the payment of the appropriate fee due to the registry. The officer charged with the service shall file a separate certificate of service for each attempt made in the acts of the proceedings.

If service is not successful, a request can be made for service to take place *inter alia* through publication in the Government gazette and daily newspapers.

Service of judicial acts (except the act indicated below) must, unless otherwise ordered by a court, be effected by registered post – however, the registrar on a request by the party filing the judicial act may, upon reasonable cause being shown, direct that service be effected by the executive officers of the courts. The judicial acts which may not be served by post are the following: (a) applications of appeal; (b) applications made under the provisions of the Constitution of Malta and the European Convention Act; (c) sworn applications; and (d) applications before the court of voluntary jurisdiction.[17]

Estimation of Costs:

[17] Subsidiary Legislation 12.12 of the Laws of Malta (Service of Judicial Acts by Post Rules)

The costs for the notification of the documents instituting the proceedings would amount to approximately €7 (seven Euro) for each notification.

4.1.3. *Substituted service*: According to your national law, who can be served instead of the defendant and under which conditions? (employer, co-worker, family, neighbour…)

There are various scenarios in which someone else can be served instead of the defendant.

For instance, when the defendant's legal procurator or his ascendant, descendant, brother or sister, uncle or aunt, nephew or niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, husband or wife has filed the written pleading, they are bound to accept service of any other written pleading on behalf of the defendant in terms of Article 182.

A different situation of substituted service may arise where two or more parties are pleading together in which case one of them shall be served on behalf of all parties pleading in terms of Article 186.

Substituted service is also provided for in Article 187 (quoted in 4.1.2 above) which states that a court office may also effect service by leaving a copy of the judicial document with a relative of the defendant, with a person in his service, with his attorney or with a person authorized to receive his mail.

In the case of bodies having a distinct legal personality, service on such body shall be effected by leaving a copy of the pleading with an employee of such body, the company secretary or the person having legal and judicial representation of the body.

4.1.4. Regarding *fictitious service*, are there situations in your national law in which the defendant (domiciled in another MS or not) is not factually served according to national law? (*e.g. situations such as reported in CJUE, Alder v. Orłowski, C-325/11 or because the defendant domiciled abroad is a citizen of the Member State of the tribunal seised or because the notification is made by public notice etc.*.).

If it appears from the certificate of the officer charged with the service of a written pleading or any judicial act that, although it does not result that the person upon whom such a pleading or act is to be served, is abroad, access to his place of residence cannot be obtained, or his place of residence in not known, the court may direct service to be effected by the posting of a copy of the written pleading or act at the place, in the town or district in which official acts are usually posted up, and by publishing a summary of such written pleading or act in the Gazette and in one or more daily newspapers as the court may direct and, where possible, when the residence is known, by posting up a copy of the pleading on the door leading to such residence. The court may also adopt such other measures as it may

deem fit to bring the pleading or act to the notice of the person upon whom the same is to be served. In such cases, service shall be deemed to have been made on the third working day after the date of last publication or after the date of such posting, whichever is the later. In cases where service has been ordered with urgency, service shall be deemed to have been made at such time, after posting or publication as the court may determine, which time is to be stated in the publication or posting (Article 187(3)).

A similar procedure applies for companies (Article 187(5)).

4.1.5. To what extend does your national law authorise *electronic service* of claims or of judicial decisions?

Maltese law does not provide for service of claims electronically. Furthermore, there is no requirement for judicial decisions to be served/notified on the parties. The court delivering the judgment is required to read out the operative part – judgments are, with few exceptions, delivered in public (article 23 COCP).

4.1.6. To what extend does your national obliges business, lawyer or other profession to have a certified email address that can be used for judicial proceedings?

There is no such obligation. However, some lawyers do provide their email address on judicial documents in order to facilitate communication.

4.1.7. Can the persons/authorities in charge of service in your Member State refuse to serve a document, if they do not understand its contents (e.g. if it is drafted in a language they do not understand)?

The problem would not arise since the court registry would not accept a document which is not prepared in Maltese (being the official language of the courts, subject to the provisions of the Judicial Proceedings (Use of English Language) Act (Cap 189 of the Laws of Malta)). If the document is not accepted, it will not subsequently be served.

4.2. TAKING OF EVIDENCE IN CROSS-BORDER SETTINGS

4.2.1. What are the main practical problems in your Member State regarding the application of the evidence regulation?

None that we are aware of.

4.2.2. What are the main benefits regarding the use of the Regulation

It can be an efficient method of obtaining evidence.

4.2.3. Does the fact that evidence has been obtained at the State of origin via new technologies create any problem at the stage of recognition in your Member State?

The fact that evidence has been obtained via new technologies is not a ground on the basis of which the recognition of a judgment can be refused pursuant to the Brussels Regulation.

4.2.4. Are you aware of any problems caused by protection of confidentiality

Witness statements/evidence form part of the records of the case. All documents forming part of the records of the case are publicly available, unless the judge has ordered otherwise.

4.3. THE EUROPEAN ENFORCEMENT ORDER

4.3.1. What are the main practical problems in your Member State regarding the application of the European enforcement order regulation?

None that we are aware of.

4.3.2. What kinds of assessment do competent authorities when certifying judicial and extra judicial decisions as EEO?

In our experience, the EEO Regulation is not utilised often. The assessment would be based on article 6 of the EEO Regulation.

4.3.3. Please describe how the right to apply for a review under Article 19 of the EEO Regulation is implemented in your system

This right is exercisable by application to the First Hall, Civil Court. To our knowledge, the right granted by article 19 of the EEO Regulation has never been utilised.

4.3.4. Please provide for a summary of cases where the certification of a decision as an EEO was refused.

We are not aware of any cases where certification of a decision as an EEO was refused.

4.3.5. Please provide for a summary of cases where the enforcement of an EEO decision was refused

We are not aware of any cases where the enforcement of an EEO decision was refused.

4.4. THE EUROPEAN ORDER FOR PAYMENT

4.4.1. What are the main practical problems in your Member State regarding the application of the European payment order regulation?

None that we are aware of.

4.4.2. Are specific courts/judicial authorities competent for issuing the payment order?

Pursuant to the communication by Malta to the Commission in terms to article 29 of the EPO Regulation, the national courts having jurisdiction to issue a European order for payment are the following:

- Civil Court First Hall – from €15,000 upwards
- Court of Magistrates (Malta) – from €5,000 to €15,000
- The Small Claims Tribunal – up to €5,000
- Court of Magistrates (Gozo) sitting both in its superior (€15,000 upwards) and inferior jurisdiction (from €5,000 to €15,000) – are competent to take cognizance of all claims against persons residing or having their ordinary abode in the Island of Gozo or Comino

All correspondence is to be addressed to:
The Registrar,
(Name of the competent court)
Courts of Justice
Republic Street
Valletta VLT 2000
MALTA

Correspondence regarding the Gozo Courts should be addressed to:
The Registrar
(Name of the competent court)
Courts of Justice
Cathedral Square
Victoria, Gozo

The information provided by Malta pursuant to article 29 of the EPO Regulation has been recently updated to reflect amendments in Maltese law to the jurisdiction *rationae valoris* of the courts. The amendments came into force on the 15th February 2016 and provide as follows:

- Court of Magistrates (Malta) – all claims not exceeding €15,000;

- The Small Claims Tribunal – all claims of an amount not exceeding €5,000.
- The Court of Magistrates (Gozo) has the same jurisdiction *rationae valoris* as the Court of Magistrates (Malta).

4.4.3. What does the authority control before issuing European orders for payment? (Control of its jurisdiction, control of the type of claim...)

The court would ensure that all requirements in articles 2-4 and 6-7 of the Regulation are met.

4.4.4. Please describe how the right to apply for a review under Article 20 of the EOP Regulation is implemented in your system

We are not aware of any instance where the review procedure established in terms of article 20 of the EOP Regulation has been used before the Maltese courts.

4.4.5. Please provide for a summary of cases where the enforcement of an EOP decision was refused.

We are not aware of any cases where the enforcement of an EPO decision was refused on the basis of the EPO Regulation.
In the case of *Dr Mark Refalo as mandatory of the absent from Malta Remo Montone v. European Insurance Group Limited*,[18] an executive garnishee warrant was issued by the creditor against the debtor pursuant to having obtained an EPO which had not been opposed. The debtor filed an application for the revocation of the warrant on the basis of article 222 of the Companies Act which provides that any warrants against a company in liquidation shall be void. The warrant was revoked on this basis.

4.5. THE EUROPEAN SMALL CLAIM PROCEDURE

4.5.1. What are the main practical problems in your Member State regarding the application of the European payment order regulation

None that we are aware of.

4.5.2. Who is competent to adjudicate on European Small claim procedure?

[18] First Hall, Civil Court, 16/03/2012, Application no. 163/2012MCH. Judgement was confirmed by the Court of Appeal on 9/11/2012

The tribunal having jurisdiction in terms of Article 25(1)(a) of Regulation 861/2007 is the Small Claims Tribunal established pursuant to Chapter 380 of the Laws of Malta (Small Claims Tribunal Act).

4.5.3. Please describe how the right to apply for a review under Article 18 of the ESCP Regulation is implemented in your system

We are not aware of any instance where the review procedure established in terms of article 18 of the ESCP Regulation has been used before the Maltese courts.

4.5.4. Please provide for a summary of cases where the enforcement of an incoming ESC decision was refused.

We are not aware of any cases where the enforcement of an incoming ESC decisions was refused.

4.6. THE EUROPEAN MAINTENANCE PROCEDURE

4.6.1. Which courts/judicial authorities are competent to decide maintenance disputes?

The Civil Court (Family Section).

4.6.2. Please describe in a few sentences the procedure pursuant to which maintenance disputes are adjudicated in your Member State. Is it a judicial or an administrative procedure? Specify whether there are different procedures depending on the type of maintenance claim (e.g. child support/spousal support) and highlight the main distinctive features of the procedure (e.g. on fees, representation, oral/written form; mandatory intervention of the public prosecutor etc.).

The claim for maintenance and frequency of payment must be made to the Civil Court (Family Section). A mediator will be appointed in order to encourage the parties to reach an amicable settlement.

4.6.3. Please describe how the right to apply for a review under Article 19 of the Maintenance Regulation is implemented in your system.

The review procedure for the purposes of Article 19 of the Maintenance Regulation is provided for in Article 6 of the International Maintenance Obligation Order (Legal Notice 452/11 of the Laws of Malta).

Article 6 provides that "*(1) A defendant who fulfils the criteria laid down by Article 19.1 of the EC Regulation*[19] *may apply by means of an application to the Civil Court (Family Section) for a review within the time limit set out by Article 19.2 of the EC Regulation. The Civil Court (Family Section) shall dispose of an application for a review in accordance with Article 19 of the EC Regulation. (2) The Civil Court (Family Section) shall dispose of an application for a review in accordance with Article 19 of the EC Regulation.*"

4.6.4. Please describe what types of provisional measures are available to parties in divorce/separation proceedings and in maintenance proceedings.

All of the precautionary warrants referred to in section 2.4.1 above. In particular, where a spouse has brought or intends to bring an action for personal separation, such spouse may request the issue of a precautionary warrant pursuant to article 876 of the COCP. The spouse may request the court to issue a warrant of prohibitory injunction:

(a) against the other spouse restraining the other spouse from selling, alienating, transferring or disposing *inter vivos* whether by onerous or gratuitous title any shareholding in any commercial partnership if the shareholding is comprised in the community of acquests; or
(b) against any commercial partnership in which the other spouse has a majority shareholding which pertains to the community of acquests from selling, alienating, transferring or otherwise disposing by onerous or gratuitous title, any immovable property or rights annexed thereto owned by that commercial partnership; or
(c) against the other spouse from contracting any debt or suretyship which is a charge on the community of acquests.

The spouse against whom the warrant is issued and any partnership referred to in the warrant and any person showing an interest may, at any time, request the court to revoke or vary the warrant.

4.6.5. How can a party retrieve information relevant to maintenance claims in your Member State? For example, how can a party retrieve information concerning the income of the debtor and the location of his/her assets?

There is no specific procedure provided to locate assets. Information relating to the income of the debtor will not be publicly available. Garnishee warrants cannot be issued upon any salary, or wages (including bonus, allowances, overtime and other emoluments) (article 381(1)(a) of the COCP). It is possible to

[19] Defined in the International Maintenance Obligation Order as follows: *Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations*

ascertain whether the debtor owns immovable property (registered in the debtor's name) in Malta by ordering searches from the Public Registry. Furthermore, it is possible to ascertain whether any shares are owned personally by the debtor in a company registered in Malta by running a search on the online database of the Registry of Companies.

Furthermore, where the proceeding before the Civil Court (Family Section) are public, the record of the proceedings before the court (typically kept in a physical file) will be available for public viewing at the court registry.

4.6.6. Please describe what types of measures are available to parties in maintenance proceedings at the enforcement stage. Describe, in particular, how the collection of maintenance debts is performed.

The Central Authority will make use of all remedies available according to Maltese law. The Central Authority will send a letter stating that court proceedings will be instituted against such person who fails to pay maintenance. Upon failing to adhere to such letter the Central Authority will ask the creditor to make an affidavit and the matter will be referred to the Maltese police so that they proceed against the debtor in accordance with the provisions of the Criminal Code. Where necessary the Central Authority will assist the applicant so that lawyers, either from legal aid unit or from the Central Authority, will initiate civil proceedings against the debtor so that arrears are paid. In such case if the debtor has an income a request can be made to the Court so that part of the income is seized and transferred directly to the creditor. If the debtor has valuable assets yet has no income, the Court may liquidate the assets and direct the money to the Central Authority which in turn will send it to the creditor.

The Central Authority in Malta will assist:
a. Creditors living out of Malta, when they need to sue a debtor in Malta, namely by searching for the debtor and facilitate proceedings against the debtor;
b. Creditors living in Malta, when they need to sue a debtor who is living outside of Malta by sending an application to another Central Authority so they search and sue the debtor.

4.6.7. What role do central authorities play in practice in maintenance claims?

The central authority in Malta is the Director of Welfare Standards within the Ministry for the Family.

4.6.8. Please provide for a summary of cases where the application for a maintenance decision was refused.

We are not aware of any cases where the application for a maintenance decision was refused.

4.6.9 Please provide for a summary of cases where the enforcement of a maintenance decision was refused

We are not aware of any cases where the enforcement of a maintenance decision was refused.