



PRACTICE GUIDE FOR THE APPLICATION OF THE REGULATION ON THE EUROPEAN ORDER FOR PAYMENT



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in civil and commercial matters



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I. Introduction: The European Civil Procedure



Regulation 1896/2006 created the first genuine European civil procedure – the European Order for Payment procedure (EOP). It was preceded by the Regulation on a European Enforcement Order (EEO), the major achievement of which was to abolish *exequatur* for the enforcement of judgments issued in another Member State of the European Union in certain categories of civil cases, subject to observance of certain procedural guarantees, which has to be confirmed by an appropriate authority in a prescribed certificate. However, the EEO is a certificate which relates to a judgment (or authentic act or court settlement) issued in a national procedure, while the EOP can be issued only in a single procedure common to 26 Member States. National law is applicable, on a subsidiary basis, to questions which are not regulated in the EOP Regulation. Shortly after the EOP Regulation, another Regulation creating a European civil procedure was adopted, namely the Regulation establishing a European Small Claims procedure. These three Regulations put into practice the principle of mutual recognition of judgments in civil matters. Their main aim is to simplify and speed up the cross-border recognition and enforcement of creditors' rights in the European Union. In this respect they contribute both to building a genuine area of justice in the European Union, and to implementing the Single Market.

Each of the procedures has a different scope — not all of them can be used in each cross-border civil case.



Practice guide

for the application of the Regulation on the European Order for Payment

If the case has already been decided by a competent court, or the claim stems from an authentic act or court settlement, and it needs to be enforced abroad, a request for a European Enforcement Order can be submitted to the competent authorities in the Member State of origin of the judgment, authentic act or court settlement, if it concerns an uncontested claim¹. This is the only European procedure (of the three mentioned) designed for enforcing an existing judgment or court settlement. It is possible for a claimant to use an authentic instrument as a basis for the evidence to be provided for an EOP or ESCP claim.

A cross-border claim has to be submitted to a court that is competent on the basis of European and/or national law². Such a claim could be pursued according to the national procedure applicable under the jurisdiction of the court, or according to one of the European procedures, if the relevant conditions are met.

If the claim (without costs or interest) does not exceed 2000 €, both the EOP and the ESCP could be considered. However, if it is likely that the defendant will contest the claim, it is advisable to

use the ESCP, since the EOP could be turned down through simple opposition of the defendant. The EOP Regulation does not, however, prevent the claimant choosing the EOP procedure in this situation.

If the claim (without costs or interest) exceeds 2000 € only the EOP Regulation can be used if the conditions for its application are fulfilled.

The EOP can be used only for pecuniary claims for specific amounts that have fallen due when the application is submitted. The ESCP also covers other types of claim.

The EOP does not provide for a court hearing — the procedure is purely written, except if the EOP is contested or opposed; in this case there may be a court hearing in accordance with the national procedures. The ESCP, which is normally a written procedure, does nevertheless allow a hearing to be held if necessary.

The EOP procedure is optional, to the extent that it is up to the claimant to choose to use it rather than any of the other available ways in which the same claim could be made. The decision to reject an application does not prevent the claimant from pursuing the claim again in any appropriate proceedings, including the EOP and also before the same court that rejected the application.

1 See Practice Guide for the application of the Regulation on the European Enforcement Order: http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_en.pdf.

2 See Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I'), OJ L 12, 16.1.2001, p. 1.





II. Scope of Application of the New Procedure



1. Territorial scope of application

The EOP Regulation applies in all Member States except for Denmark. This means that no one can apply to a Danish Court for an EOP, and that an EOP will not be enforced in Denmark.

2. Material scope of application

The EOP procedure applies to civil and commercial matters in cross-border cases, irrespective of the nature of the court or tribunal. Cases which meet the requirements of the Regulation may be considered by the courts designated as competent in the relevant Member State.

The Regulation itself does not define the nature of a civil and/or commercial matter. However, it expressly excludes from its scope of application the following categories of cases: revenue, customs and administrative matters as well as the liability of the State for acts and omissions in the exercising of State authority. Thus, in such cases the court is not obliged to consider whether the case has a civil or a commercial character.



2.1. Civil and commercial matters

The European Court of Justice has consistently held that the term “civil and commercial matters” must be given an autonomous meaning derived from the objectives and scheme of the Community legislation concerned and the general principles underlying the national legal systems as a whole (C-29/76 LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol, ECR 1976, 1541). The Court held that two elements are relevant for deciding whether or not a dispute is of a civil and commercial nature:

- the subject matter of the dispute; and
- the nature of the relationship between the parties involved.

In particular with respect to actions involving a public authority, the Court specified that a matter is not “civil or commercial” when it concerns a dispute between a public authority and a private person when the first acted in the exercise of public power. The Court, therefore, distinguishes between *acta iure imperii*, which are excluded from the notion of “civil or commercial matters”, and *acta iure gestionis*, which are, a contrario, included in such notion. The distinction between *acta iure imperii* and *acta iure gestionis* is not always easy to make in practice. The following guidelines have been given through the Court’s case law.

In *Eurocontrol*, the Court held that a claim by a public authority created by an international treaty to recover from private party charges for the use of its equipment and services where such use was obligatory and the charges were fixed unilaterally is not a civil or commercial matter.

In *Rüffer* (C-814/79 Netherlands v Rüffer, ECR 1980, 3807), the Court held that a claim by a public authority suing a ship-owner for the recovery of costs incurred during the removal of a collision wreck also does not qualify as a civil or commercial matter.

In *Sonntag* (Case C-172/91, ECR 1993, I-1963), on the contrary, the Court held that a civil action for compensation for injury to an individual resulting from a criminal offence is civil in nature. However, such an action falls outside the scope of the term “civil or commercial matters” where the author of the damage must be regarded as a public authority which acted in the exercise of public powers (in that case a teacher supervising pupils was not considered to fall within the definition of “acting in the exercise of public power”).

In *Gemeente Steenberghe* (Case C-271/00, ECR 2002, I-10489), the Court held that the concept of “civil matters” encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by

way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in “civil matters”.

In *Préservatrice foncière* (Case C-266/01, ECR 2003, I-4867), the Court held that the notion “civil or commercial matters” covers a claim by which a State seeks to enforce against a person governed by private law a private-law guarantee contract which was concluded in order to enable a third person to supply a guarantee required and defined by that State, in so far as the legal relationship between the creditor and the guarantor, under the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals.

In *Frahuil/Assitalia*, (Case C-265/02, ECR 2004, I-1543), it was held that an action brought by way of legal subrogation against an importer who owed customs duties by the guarantor who paid those duties to the customs authorities in performance of a contract of guarantee under which it had undertaken to the customs authorities to guarantee payment of the duties in question by the forwarding agent, which had originally been instructed by the principal debtor

to pay the debt, must be regarded as coming within the concept of “civil and commercial matters”.

Finally, in *Lechouritou*, (Case C-292/05, ECR 2007, I-1519), the Court confirmed that redress for loss or damage caused in wartime by government troops is not encompassed by “civil matters”.

2.2. Cross-border case

The EOP Regulation applies only in cross-border cases. Article 3 of the EOP Regulation defines such a case as one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. In certain situations, this provision gives access to the European Order for Payment procedure to non-EU applicants (i.e. who are not domiciled or habitually resident in a Member State) too: if the debtor is domiciled or habitually resident in a Member State other than that of the competent court, also a non-EU applicant can lodge an application for an EOP, since the conditions of Article 3 related to the parties are met. Also the creditor domiciled or habitually resident in a Member State other than that of the competent court may apply for European Order for Payment against a defendant domiciled or habitually resident outside the European Union.





Domicile should be determined pursuant to the notion of domicile as it is determined by the Regulation on jurisdiction, the recognition and enforcement of judgments in civil and commercial matters ("Brussels I Regulation"). In practice, the domicile or habitual residence of the parties is determined on the basis of the information provided by the claimant in form A. Given that an initial examination of an application may be made by an automated procedure it is sufficient to verify that the indicated address of one of the parties is in a different Member State from that of the court before which the matter has been brought. However, if the court has doubts regarding the accuracy of the information provided, it may choose to ask the claimant to rectify or complete the application.

The domicile or habitual residence of the parties is evaluated when an application for an EOP is submitted. In accordance with Article 3(3) the appropriate moment for determining whether a case is to be considered as cross-border has to be when the application is made and not when the events upon which the claim is founded took place.

3. Application in time

The Regulation creating the EOP has applied in all Member States bound by it since 12 December 2008. While the procedure itself has only been available from that date, it is possible to use an EOP in all

relevant disputes even in cases where the issues which led to the dispute occurred before 12 December 2008, provided the period of limitation applicable to the claim in question has not expired, according to the law of the requested court.

4. Jurisdiction

The jurisdiction for claims made under the EOP procedure is to be established in accordance with the Brussels I Regulation, with one exception. When the case concerns a consumer contract and the consumer is the defendant, the jurisdiction has to be that of the Member State where the defendant is domiciled within the meaning of Article 59 of the Brussels I Regulation.





III. The European Order for Payment Procedure



1. Application for a European Order for Payment

1.1. Amount claimed & interest

In accordance with Article 7(2)(b) an application should include the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs. The amount of the principal claim and any contractual penalties should be as fallen due at the time when the application is submitted and specified in Form A under sections 6 and 8.

Details of the interest rate and the period of time for which interest is demanded should be provided in section 7 of Form A. There is no requirement to provide an amount of interest. The guidelines for the completion of Form A state that if interest is demanded up to the date of the decision of the court the last date box should be left blank.

In Form E the court must state the total amount due from the defendant or defendants as at the date of the order. The Regulation is silent about whether interest can be claimed after that date.

The same considerations apply where statutory interest is automatically added to the principal under the law of the Member State of origin. In such a case, in accordance with Article 7(2)(c),

the claimant does not need to state the interest rate and the dates between which the interest runs.

The details of any costs due are included in section 9 of Form A. While the main costs envisaged here are court fees, the guidelines for the completion of Form A state that other costs could include the fees of a claimant's representative or pre-litigation costs. In accordance with Article 25 court fees can include fees and charges paid to the court, the amount of which is fixed in accordance with national law. The guidelines also clarify that if the court fees are not known by the claimant the amount box can be left blank to be completed by the court.

1.2. Cause of action and description of evidence

Under Article 7 an application for an EOP must include the cause of the action, including a description of the circumstances invoked as a basis of the claim and, where applicable, of the interest demanded. A description of the evidence supporting the claim must also be included.

The Regulation does not specify the level of detail that an applicant should provide, nor does it prescribe the way that a court should carry out the examination of a claim. It does, however, make clear that the examination of an application for an EOP need not be

carried out by a judge and, under Article 8, may take the form of an automated procedure. Courts must examine the application on the basis of the information provided in the application form.

When completing an application the applicant needs to provide enough information to enable the defendant to be in a position to make a well informed choice either to oppose the claim or leave it uncontested. There should also be enough information to allow the court to examine *prima facie* the merits of the claim and *inter alia* to exclude clearly unfounded claims or inadmissible applications. For that reason, standard form A as set out in Annex I is designed to include as exhaustive a list as possible of the types of evidence that are usually produced in support of pecuniary claims.

It follows, therefore, that it should be possible for applicants to submit an application by simply completing the relevant fields of the appropriate sections (mainly 6 to 10) of the standard form. There is no requirement to attach supporting documentation but applicants are free to do so if they wish. Section 11 allows the applicants to provide additional statements and further information, if necessary. Again they are not compelled to do so.

In as much as the court can only consider an application on the basis of the application form there is nothing in the Regulation that allows it to request supporting documentation. However, balanced

against that, the applicant must ensure that the application provides enough information to ensure that the requirements of the Regulation are met and to ensure the claim appears to be founded.

1.3. Competent courts

The competent courts for the EOP are those that have been designated by the Member States and officially notified to the Commission. As Member States can modify these notifications at any time, it is important when applying for an EOP to check the current notifications. All notifications are published in the European Judicial Atlas in civil and commercial matters. However, as in most cases these notifications are of a very general nature and refer to general provisions of the procedural law in question further research will sometimes be necessary before the correct court can be found. If the competence of the court is of a territorial nature and depends on the address of the defendant, a specific court can be found by making use of the 'Competent courts' tool of the Atlas. In a few cases the Member States have designated specific courts for EOP cases. Should the application be sent to a court that is not competent, it is a matter for national law what action that court should take.

1.4. How to submit an application

Each Member State must agree to allow EOP applications to be submitted by paper. There are no additional requirements. However, on the basis of the notifications of the Member States available through the European Judicial Atlas, some Member States accept paper applications only if they are submitted by post or by registered post. Member States may also accept other methods for the submission of applications, including electronic. These include fax and e-mail communications. Where the application is submitted in electronic form it must be signed in accordance with Article 2(2) of Directive 1999/93/EC in a form recognised in the Member State of origin. Such electronic signature is not required where alternative secure electronic communication systems exist in the Member State of origin which are available to authorised users and where such systems have been notified to the Commission.

Before submitting an application it is advisable to check in the European Judicial Atlas which method is accepted by a particular Member State. The application can be submitted either by the claimant or by the claimant's legal representative. It should be noted that fees will often have to be paid to the relevant court along with the application (<https://e-justice.europa.eu>).



2. Conduct of the Procedure before the court

The court will examine the application but there will be no evaluation of evidence. It will ensure that everything that is stated in Article 7 (Chapter III p.1) is fulfilled. As long as the claim is clearly not unfounded or the application inadmissible, the court shall give the claimant the opportunity to complete or rectify the application, if necessary using form B.

2.1. Modification or rectification

Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may, at its discretion, extend that time limit.

First of all the court will request the claimant to complete the application (modification).

If the requirements, after modification, are met for only part of the claim, the court shall inform the claimant to that effect. The claimant shall be invited to accept or refuse a proposal for an EOP for the amount specified by the court and shall be informed of the consequences of his decision, by using form C.

If the claimant accepts the court's proposal, the court shall issue an EOP for that part of the claim accepted by the claimant (rectification). The consequences with respect to the remaining part of the initial claim shall be governed by national law.

If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for an EOP in its entirety.

2.2. Rejection of the application

The court shall reject the application, using form D, if:

- the requirements set out in Articles 2, 3, 4, 6 and 7 are not met;
or
- the claim is clearly unfounded;
or
- the claimant fails to send his reply (in response to the court's proposal to modify the application) within the time limit specified by the court;
or
- the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Article 10.

The claimant shall be informed of the grounds for the rejection.

It is not possible to appeal against the rejection of the application. The rejection of the application shall not prevent the claimant from pursuing the claim by means of a new application for an EOP or of any other procedure available under the law of a Member State.

3. Issuing & serving the European Order for Payment

3.1. Completion of Form E

Once the application (Form A) has been lodged and, if necessary, duly modified or rectified at the court's request, the court issues the EOP using form E as set out in Annex V when, if applicable, the relevant court fees have been paid. Under Article 12 of the Regulation, Form E includes the names, addresses and other details of the parties and their representatives, as well as the order to the defendant (or defendants as joint liability is allowed) to pay the amount claimed by the claimant as described in Form A, a copy of which is attached thereto. This order sets out the principal sum claimed and any interest and time period for which it is granted (e.g. up to the date of payment), as well as any contractual penalties and costs as described in Article 25 (see also Recital 26) in the currency as stated. Form E reminds the defendant of his rights and options (see 'important information for the defendant'), i.e. either to pay

the claimant the amount indicated in the order or to oppose the order by lodging with the court of origin a statement of opposition. The defendant is also informed: that the order was issued solely on the basis of the information provided by the claimant and has not been verified by the court; that the order will become enforceable, unless a statement of opposition as described above is lodged with the court (see Article 16); and that, should a statement of opposition be lodged, the proceedings will continue before the competent courts of the Member State of origin ('automatic transfer of the case', see Recital 24) in accordance with the rules of ordinary civil procedure, unless the claimant has explicitly requested that the proceedings be terminated in that event. If the claimant has requested that the proceedings be terminated, this information will not be sent to the defendant.

3.2. Issue of a European Order for Payment – time limits

3.2.1. When does the court issue a European Order for Payment?

In accordance with Article 12(1), if the requirements for applying for an EOP are met (see Article 8), the court issues the order as soon as possible, normally within 30 days of the lodging of the application. The 30-day period does not include the time taken by the claimant to complete, rectify or amend his or her application. The abovementioned time limit should be calculated in accordance



with the provisions of Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (O.J. L 124 08.6.1971, p. 1.).

3.2.2. When does a European Order for Payment become enforceable?

An EOP does not become final as soon as it has been issued. In an EOP, the defendant will be advised that he or she may either pay the claimant the amount of the claim or contest it by lodging a statement of opposition with the court of origin. The statement of opposition should be sent within 30 days of service of the order on the defendant(s) (see Article 12 (3)). Under Article 12 (4)(b) the order becomes enforceable unless the defendant lodges a statement of opposition with the court of origin. The defendant is obliged to do so within 30 days of service of the order on him/her (see section 4.2.).

3.3. Service on the defendant (Commission)

The EOP has to be served on the defendant in accordance with the national law of the Member State of origin. However, such a method has to meet the requirements set as minimum procedural standards in the Regulation (Articles 13 to 15). In general, two types of service are possible: either service with proof of receipt by the debtor (Article 13) or service without proof of receipt by the debtor

(Article 14); each of them can be used in relation to the defendant's representative.

3.3.1. Service with proof of receipt by the defendant or the defendant's representative

The methods of service with proof of receipt are specified in Article 13. An exhaustive list can be found in that article.

In summary, these methods allow:

- personal service with acknowledgement of receipt signed by the defendant³;
- declaration by the competent person who effected the service that the defendant received the document or refused to receive it without any legal justification⁴;
- service by post attested by an acknowledgment of receipt signed by the defendant;

3 If the service needs to take place in another Member State, the documents must be transmitted to that other Member State in accordance with Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 324, 10.12.2007, p. 79).

4 See in particular the right to refuse service under Article 8 of Council Regulation 1393/2007.

- electronic service with an acknowledgment of receipt signed by the defendant.

3.3.2. Service without proof of receipt by the debtor or the debtor's representative

The service on the debtor may be effected also by one of the methods without proof of receipt specified in Article 14. These methods may only be used if the address of the defendant is known with certainty. They rule out any form of fictitious service (e.g. 'remise au parquet').

In summary, these methods allow:

- service at the defendant's address on persons who are living in the same household as the defendant or are employed there. In the case of a self-employed or a legal person, the service may also be effected at the defendant's business premises on persons who are employed by the defendant.

In these cases, the service must be attested:

- either by an acknowledgement of receipt signed by the person who received the service; or

- by a document signed by the person who effected the service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the defendant;
- deposit of the document in the defendant's mailbox or at a post office or with competent public authorities.

In cases mentioned in the last bullet point, a written notification of the deposit must have been placed in the defendant's mailbox, clearly stating the nature of the document as a court document or the legal effect of the notification as effecting service and causing time limits to start to run. Service must be attested by a document signed by the person who effected the service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the defendant;

- postal service without proof of receipt where the defendant has his address in the Member State seized of the substance of the case;
- electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.



4. Opposition defendants' rights/options

4.1. Opposition to the European Order for Payment

A defendant can lodge a statement of opposition to the EOP by making use of Form F in accordance with Article 16. It is not necessary for the defendant to give reasons for his/her opposition. The statement of opposition should be sent within 30 days of service of the order on the defendant. The period is calculated in accordance with Council Regulation (EC) No 1182/71 determining the rules applicable to periods, dates and time limits (OJ. EC 1971 L 124/1). The date of service is not counted when calculating the period. If the end of the period is on a public holiday, a Saturday or a Sunday, the period ends with the expiry of the last hour of the following weekday. Under Article 2(1) of Council Regulation (EC) No 1182/71, only public holidays in the Member State of the court issuing the EOP are taken into account.

The statement of opposition should be submitted in either paper form or by any other means of communication, including electronic, accepted in the Member State of origin and available to the court of origin. The statement of opposition can also be made by a representative of the defendant.

In accordance with Article 17(1) if a defendant submits an admissible statement of opposition the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Under Article 7(4) the claimant can make such a request at any time until the EOP is issued. In accordance with Article 17(2) the transfer to ordinary civil proceedings is governed by the law of the Member State of origin. Nothing under national law shall prejudice the claimant's position in any subsequent ordinary civil proceedings.

4.2. Enforceability

If no statement of opposition is lodged within the 30-day period the EOP is declared enforceable, subject to the court allowing sufficient time for the statement of opposition to arrive.

The court will use Form G to declare that the EOP is enforceable and will send this to the claimant.

In accordance with Article 18(2), the formal requirements for enforceability are governed by the law of the Member State of origin. An EOP that has been declared enforceable in the Member State of origin must, under Article 19, be recognised and enforced in other Member States without the need for a declaration of

enforceability in the other Member State and without any possibility of opposing its recognition. Enforcement can only be rejected under the provisions of Article 22.

5. Possible remedies/defences for the parties

5.1. What can the claimant do if the application for a European Order for Payment is incomplete, contains an error, requires modification or is rejected?

5.1.1. What can a claimant do if an application for a European Order for Payment is incomplete or contains an error (Article 9)

If the application for an EOP does not meet the requirements of Article 7, i.e., is incomplete or contains an error, the court which has jurisdiction shall give the claimant the opportunity to complete or rectify the application (see Article 9 (1)) using the standard form B as set out in Annex II. The court shall request the applicant to complete or rectify the application within a time limit which is appropriate to the circumstances (see Article 9(2)). This provision does not apply in the case of claims which are clearly unfounded or are inadmissible.

5.1.2. What can the claimant do if only part of the claim meets the requirements for a European Order for Payment (Article 10)

If the requirements for an EOP are met (see Article 7) for only part of the claim, the court shall so inform the claimant, using standard form C as set out in Annex III, and invite the claimant to accept or refuse a proposal for an EOP for the amount specified by the court. The claimant shall reply within the time specified by the court (see Article 9(2)) using standard form C. If a claimant accepts the court's proposal, the court shall issue an EOP (see Article 12) for that part of the claim accepted by the claimant.

The consequences for the remaining part of the claim shall be governed by national law (see Article 10(2)). If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application in its entirety.

If the claimant does not accept the court's proposal, he/she may decide to withdraw his/her application and proceed with the case under ordinary civil proceedings.



5.1.3. What can the claimant do if an application for a European Order for Payment is rejected? (Article 11)

There is no right of appeal against a refusal to issue an EOP. Rejection of a claim shall not prevent the claimant from pursuing the claim by means of a new application for an EOP or by any other procedure available under the law of a Member State (see Article 11).

5.2. What can the debtor do in the Member State of origin when a European Order for Payment is issued?

5.2.1. Lodge a statement of opposition in the Member State of origin (Article 16)

Within 30 days of service of the order the defendant can lodge a statement of opposition to the EOP with the court of origin, using standard form F as set out in Annex VI. If a statement of opposition is entered within the 30-day time limit (See Article 16(2)), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated.

5.2.2. Review in exceptional cases in the Member State of origin (Article 20.1)

Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin where:

1. (a) the order was served by one of the methods provided for in Article 14, i.e. without proof of receipt by the defendant, and (b) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his or her part;⁵

or

2. the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part,

provided in either case that he acts promptly.

⁵ For example if the defendant was in hospital, on holiday, away on business, etc.

5.2.3. Review in the Member State of origin where the European Order for Payment was wrongly issued (Article 20.2)

Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin where the order was clearly wrongly issued, having regard to the requirements laid down in the Regulation, or due to other exceptional circumstances.

NOTE: If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 5.2.2 and 5.2.3 apply, the EOP shall remain in force. If the court decides that the review is justified for one of the reasons laid down in those paragraphs, the EOP shall be null and void.





IV. Recognition and Enforcement of European Orders for Payment in other Member States



1. General principles

An EOP which becomes enforceable in the Member State of origin – i.e. in a Member State where it was issued, is equally enforceable in any other Member State. There is no need to obtain a declaration of enforceability (exequatur) in the Member State of enforcement. The authorities in the Member State of enforcement cannot review the circumstances or procedures that led to the issuing of the order except in the situations provided for by Articles 22 and 23. No review as to the substance is allowed in the Member State of enforcement.

The procedure for enforcement is governed by the law of the Member State of enforcement, without prejudice to the provisions of the Regulation.

2. Submission of an application for enforcement

The claimant must apply for enforcement to the court or authority competent for enforcement in the Member State where enforcement is required. These authorities vary from one Member State to another. Details of the competent courts and authorities can be found on the pages of the European Judicial Network in civil and commercial matters on the European e-justice portal.



The claimant should provide the competent court or authority with a copy of the order, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity, and a declaration of enforceability (form G).

3. Translation

The claimant may be required to provide a copy of the EOP in a different language from that used by the court of origin. As a general rule the EOP should be provided in the official language, or one of the official languages, of the Member State of enforcement unless that Member State has indicated that it will accept orders in another official language or languages of the European Union. Details of which languages are accepted by each Member State are available on the European Judicial Atlas. When checking the details a claimant should also bear in mind that in Member States where there is more than one official language it may be necessary to provide a translation into the language specified for a particular part or region of that Member State. Any translation shall be certified by a person qualified to do so in one of the Member States.

4. Refusal of enforcement in exceptional circumstances

The defendant can undertake the following actions in the Member State of enforcement, although these possibilities can never lead to a review in the Member State of enforcement of the substance of the EOP:

4.1. Refusal of enforcement (Article 22)

The defendant has the possibility to apply for a refusal of enforcement (see Article 22) if the order is irreconcilable with an earlier decision or order given in any Member State or in a third country, provided that:

- the earlier decision or order involved the same cause of action and was between the same parties; and
- the earlier decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the EOP.

4.2. Stay or limitation of enforcement (Article 23)

The defendant may apply for a stay or limitation of enforcement of the EOP (see Article 23) where the defendant has applied for a review within the meaning of Article 20. In such cases, the competent court in the Member State of enforcement may:

- limit the enforcement proceedings to protective measures;
or
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings.



Practice Guide for the application of the Regulation on the European Order for Payment

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