



European Order for Payment Procedure; R 1896/2006

Jose Antonio Morales Mateo
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General backgrounds

- Proper functioning of the internal market
- Endorsing mutual recognition and facilitating cooperation in cross-border cases
- Swift and efficient recovery of outstanding debts with no legal controversy
- *Shortcomings at national level*
- *“The purpose of this Regulation is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.”*

Scope of application

- Territorial application: except Denmark
- Material application
- Temporal application: came into force on 12 December 2008

Material application

- Civil and commercial cases in cross-border cases, whatever the court or tribunal
- The Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters (nor *acta iure imperii*).
- Shall not apply to:
 - (a) rights in property arising out of a matrimonial relationship,
 - (b) bankruptcy proceedings and analogous proceedings;
 - (c) social security;
 - (d) arbitration
 - (e) claims arising from non-contractual obligations.

Material application: cross-border cases

- A cross-border case is one in which at least one of the parties is domiciled or habitually resident in a MS other than the MS of the court seized
- Domicile shall be determined according to Brussels I
- The relevant moment for determining whether there is a cross-border case is the time when the application is submitted

Jurisdiction (art. 6)

- The claimant shall submit his claim before a competent court
- Jurisdiction shall be determined according to Brussels I
- But, if the subject matter is a contract concluded by a consumer, and he is the debtor, the competent court shall be the court of the MS in which the consumer is domiciled
- Concept of domicile: Brussels I

The claim

- Shall be made using the standard form (Annex I, standard form A)
- In paper or by any other means of communication, even electronically
- Content:
 - Names and addresses of the parties
 - Amount of the claim (principal, interest, costs)
 - Interest rate, period of time in which is demanded
 - The cause of action
 - Description of evidence
 - Grounds for jurisdiction
 - Cross-border nature of the case

The court acts

- - whether the formal requirements are met
- - whether the application appears to be founded (*prima facie*)
- - jurisdiction and cross-border nature
- - a possibility of rectification could be granted within a time limit (so as to complete or rectify).
Standard forms
- - partial admission of the claim, inviting to accept or refuse the court proposal of that
- No right to appeal the rejection of the application

Issuing the European order for payment

- Standard form (annex V, E)
- Within 30 days from the lodging date
- A copy of the application form is required
- Shall advise the debtor of his options:
 - Pay
 - Oppose by lodging a statement of opposition within 30 days of service of the order on him (no reasons are required)
 - Inform the debtor the order will become enforceable unless an opposition were lodged; in such a case, the proceedings shall continue before the competent court of the MS of origin (unless the claimant has explicitly requested that the proceedings be terminated in that event)

Minimum standards for the service

- It depends on:
 - The service is received by the defendant (art. 13)
 - The service is made without proof of receipt by the defendant (art. 14)
- The service may be effected on a defendant's representative

Enforceability

“European order for payment issued in one Member State which has become enforceable should be regarded for the purposes of enforcement as if it had been issued in the Member State in which enforcement is sought. Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for issuing a European order for payment are fulfilled to enable the order to be enforced in all other Member States without judicial review of the proper application of minimum procedural standards in the Member State where the order is to be enforced”, according Whereas 27. (without exequatur)

Formal requirements for enforceability shall be governed by national law. Refusal is possible if the order is irreconcilable with an earlier decision previously given in any MS or third State given concerning the same cause of action and between the same parties.

Enforcement procedure

- Governed by the law of the MS of enforcement
- Under the same conditions as a judgment handed down in the MS of enforcement
- The creditor shall provide:
 - Copy of the European order for payment
 - Translation into the official language of the MS of enforcement
 - No security bond or deposit

Review possibilities

- After the expiry of the time limit to oppose, the defendant may apply for a review under certain conditions:
 - The order was served by one of the methods provided in art. 14 (no personally)
 - And service was not effected in sufficient time to enable proper defence, without any fault on his side
 - Or the defendant could not object the claim by force majeure or extraordinary circumstances
 - In such cases, upon application by the defendant, the court may limit the enforcement to protective measures or ask for a security, or exceptionally stay the enforcement procedure