



Regulation 805/2004 EU

Regulation 1896/2006 EU

Judge Darina Kostova
Burgas District Court, 18 June 2015



If you don't know where
you are going, any road
will get you there.

-Cheshire Cat (Alice in Wonderland)

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- › Purpose - the creation of the area of freedom, security and justice , increase the speed of the proceedings, lower the costs
- › Similarities - The jurisdiction of courts is decided using the appropriate EU legislation, especially Regulation (EC) No 44/2001
- › Differences



Regulation 805/2004

- › The Regulation creates a European enforcement order for claims which are uncontested by debtors
- › The certificate enables judgments, court settlements and authentic instruments on uncontested claims to be recognized and enforced automatically in another Member State, without any intermediate proceedings
- › A judgment on an uncontested claim is certified as a European enforcement order by the Member State who delivered the judgment (State of origin)
- › There is a mandatory standard form



- › Regulation 805/2004
- › Date of document: 21/04/2004, Date of effect: 21/01/2005, Date of end of validity: 31/12/9999
- › Scope
- › Applies 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 or the liability of the State for acts and omissions in the exercise of State authority ("acta iure imperii").
- › Does not apply to:
 - › the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - › bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - › social security; arbitration.
- › The term "Member State" means Member States with the exception of Denmark.



Regulation 805/2004

- › Applies to judgments, court settlements and authentic instruments on uncontested claims.
- › A claim shall be regarded as uncontested if:
 - › (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
 - › (b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
 - › (c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
 - › (d) the debtor has expressly agreed to it in an authentic instrument.

Requirements for certification as a European Enforcement Order

- › A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:
 - › (a) the judgment is enforceable in the Member State of origin; and
 - › (b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and
 - › (c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
 - › (d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where
 - › - a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
 - › - it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and
 - › - the debtor is the consumer.



Enforcement

- › Applicable law - that of the Member State where enforcement of the judgment is requested (Member State of enforcement).
- › The creditor must supply the authorities responsible for enforcement with:
 - › a copy of the judgment;
 - › a copy of the European enforcement order certificate;
 - › where necessary, a transcription of the European enforcement order certificate or a translation thereof into the official language of the Member State of enforcement or into another language accepted by the Member State of enforcement.
- › No security, bond or deposit can be required of creditors on the ground either that they are foreign nationals or are not domiciled or resident in the Member State of enforcement.
- › The competent court in the enforcing Member State may, subject to certain conditions, **refuse to enforce** a judgment if it is irreconcilable with an earlier judgment given in any Member State or in a third country. In certain cases, it can also stay or limit enforcement



Regulation 1896 / 2006 EU

- › Regulation No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creates a European order for payment procedure. It establishes a new procedure for orders for payment on an European level.
- › The procedure is simple, quick and less expensive .
- › The regulation permits the free circulation of European orders for payment throughout European Union countries by laying down minimum standards, compliance with which makes unnecessary any intermediate proceedings in the EU country of enforcement prior to recognition and enforcement.



Regulation 1896 / 2006 EU

- › Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii')
- › Regulation shall not apply for : rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings, social security, claims arising from non-contractual obligations, unless they have been the subject of an agreement between the parties or there has been an admission of debt, or they relate to liquidated debts arising from joint ownership of property



Regulation 1896 / 2006 EU

- › Cross-border cases
- › A cross-border case is 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 seised
- › Purpose
- › The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.



First impressions ???



Regulation 1896 / 2006 EU



You can always take
more than nothing.

-Mad Hatter (Alice in Wonderland)

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Regulation 1896 / 2006 EU

› The Application

- › standard form
- › the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made
- › the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs
- › a description of evidence supporting the claim
- › the grounds for jurisdiction
- › the cross-border nature of the case within the meaning of Article 3

Regulation 1896 / 2006 EU

- › Examination of the application
- › The court shall examine on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded
- › Completion and rectification
 - › If the requirements set out in Article 7 are not met and unless the claim is clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to complete or rectify the application - standard form B
- › Modification of the application
 - › If the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that effect, using standard form C



Regulation 1896 / 2006 EU

- › Rejection is due if any of the following occur
- › the requirements set out in Articles 2, 3, 4, 6 and 7 are not met
- › the claim is clearly unfounded
- › the claimant fails to send his reply within the time limit specified by the court under Article 9(2)
- › 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 by means of standard form D
- › There shall be no right of appeal against the rejection of the application



Regulation 1896 / 2006 EU

- › Issue of a European order for payment
- › Term – 30 days
- › Content – standard form E
- › The defendant shall be advised of his options to pay or oppose the order by lodging with the court of origin a statement of opposition within 30 days of service of the order on him
- › The defendant shall be advised that the order was issued solely on the basis of the information which was provided by the claimant and was not verified by the court; the order will become enforceable unless a statement of opposition has been lodged and if so 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
- › The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13, 14 and 15



Regulations 1896 / 2006 EU & 805/2004 EU

› **Minimum standards**

- › The document instituting proceedings must give details of: the claim (personal details of parties, amount of the claim, whether or not interest is incurred and for what period, etc.); the procedural arrangements required for contesting the claim (deadline for contesting the claim, consequences of failing to object, etc.).
- › Service with proof of receipt:
 - › personal service: the defendant signs an acknowledgement of receipt, including the date of receipt;
 - › personal service: the competent person who effected the service signs a duly dated document stating that the defendant has received the document or refused to receive it without any legal justification;
 - › the defendant signs and returns a duly dated acknowledgement of receipt when the European order for payment is received by post or by electronic means, such as fax or e-mail.
- › Service without proof of receipt:
 - › personal service: at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;
 - › personal service: at the defendant's business premises on persons who are employed by the defendant, in the case of a self-employed defendant or a legal person;
 - › deposit of the order in the defendant's mailbox;
 - › deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit stating the legal character of the document;
 - › by electronic means attested by an automatic confirmation of delivery, provided that the defendant has accepted this method of service in advance.



“ Now, here, you see,
it takes all the **running**
you can do, to keep
in the same place.
If you want to get
somewhere else,
you must **run** at
least twice as fast
as that!”

Through the Looking Glass, Lewis Carroll (Charles Lutwidge Dodgson)

Thank you for the attention