

EUROPEAN ORDER FOR PAYMENT PROCEDURE

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Abstract

The proper functioning of the EU internal market requires measures that eliminate the obstacles related to cross-border enforcement of decisions in civil and commercial matters. This is especially important when the decisions are product of litigation in cross-border cases concerning uncontested pecuniary claims. In these situations, the need for efficient and effective enforcement of creditors' claims is undeniable. For this reason, in order to accelerate the movement of European orders for payments within the EU territory, in 2006, the European Parliament and the European Council introduced the European order for payment procedure. This happened with the adoption of Regulation 1896/2006 as an instrument of secondary EU law which should help free circulation of European orders for payment and bypassing the exequatur procedure. The ambition of this procedure is to simplify, accelerate and reduce the costs of the national civil litigations in cross-border cases concerning uncontested pecuniary claims, hence the study of this procedure as an alternative procedure for national enforcement procedures is a real challenge.

Keywords: cross-border enforcement, uncontested, pecuniary, claims

1. Introduction

The European order for payment as the legal institute of civil procedural law of the European Union was created by the European Parliament and the European Council with the adoption of Regulation (EC) no. 1896/2006 (in the text below Regulation). The purpose of this institute is to eliminate the exequatur procedure as a cross-procedure between the cognitive procedure for the adjudication and the enforcement procedure.

The reason for the introduction of the European order for payment should be sought in the need to overcome the problems in the cross-border enforcement of decisions, as well as the necessity for the proper functioning of the single European market.

The ambition of the Regulation 1896/2006 is to establish a single, fast, inexpensive, economical communitarian procedure for all Member States of the European Union that creates the European order for payment. This procedure was initially created as an alternative procedure versus the national litigation procedures for issuing a payment order which, further due to its benefits, should harmonize national procedures for issuing a payment order at Community level. In this way, the principle of mutual trust in the judicial systems of the member states should be strengthened and the costs of the national litigation for issuing a payment will be reduced.

2. Scope of application of the Regulation 1896/2006

The Regulation 1896/2006 determines its validity *ratione materiae* (material scope of application) autonomously, and not according to the *lex nationalis*, depending on the subject matter of the dispute in *concreto* and the substance of the relationship between the parties.

The scope of application of this Regulation is almost identical to the scope of application of the other European procedures for the issuance of enforcement titles with the difference that here the claim tends towards a contractual nature. This regulation applies only to civil and commercial matters with cross-border implications. According to article 3 of the Regulation, 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. In doing so, the concept of civil and commercial matters is shaped through the practice of the European Court of Justice Sonntag (Case C-172/91, ECR 1993, I-1963), Gemeente Steenberg (Case C-271/00, ECR 2002, I-10489), *Préservatrice foncière* (Case C-266/01, ECR 2003, I-4867), that is, as an independent notion of the national law of the Member States of the European Union. By a way of negative enumeration of the private legal field of application, this Regulation excludes: 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.

The *ratione territoriae* the Regulation or territorial scope of application is that it applies in all Member States of the European Union with the exception of Denmark, and by Bregzit, with the exception of the United Kingdom.

The *ratione temporis* (application in time) of the Regulation has an *ex nunc* validity, ie applies from December 12, 2008.

The *ratione personae* of the Regulation 1896/2006 is that it applies irrespective of the nationality or residence of the parties that may be natural or legal persons.

The *ratione valoris* of the Regulation 1896/2006 is not limited.

3. European order for payment procedure

The procedure for issuing a European order for payment is devised as an alternative procedure for national litigation procedures for issuing a payment order. The main objective of this procedure is the faster 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. This procedure is much automated i.e. it is based on the use of standard forms, and in terms of initiation it is based exclusively on the dispositive principle. This means that this procedure always starts at the request i.e. application of the claimant who has an interest in obtaining a European order for payment and is never *ex officio* initiated by a court of any member state of the European Union.

3.1 Application for a European order for payment

The procedure for issuing a European order for payment is initiated by the claimant. The claimant fills an application for a European order for payment which submits it to the competent court. The application for European order for payment shall be submitted on a standard form and must necessarily include the following data: 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; if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin; the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded; a description of evidence supporting the claim; the grounds for jurisdiction; and the cross-border nature of the case within the meaning of Article 3 of the Regulation. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin. In an Appendix to the application, the claimant may indicate to the court which, if any, of the procedures (European Small Claims Procedure or any appropriate national civil procedure) he requests to be applied to his claim in the subsequent civil proceedings in the event that the defendant lodges a statement of opposition against the European order for payment. The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.

3.2 Rejection of the application, issue of a European order for payment and opposition to the European order for payment

Once the claimant submits the application for European order for payment, the court examines the application for the issuance of a European order for payment in a much automated procedure. The court shall reject the application if it finds that the requirements for issuance of a European order for payment are not met; the claim is clearly unfounded; or the claimant fails to send his reply 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. The claimant shall be informed of the grounds for the rejection by means of standard form. There shall be no right of 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 a European order for payment or of any other procedure available under the law of a Member State.

If the court finds that the requirements for issuance of a European order for payment are met, the court shall issue, as soon as possible and normally within 30 days of the lodging of the application, of European order for payment using standard form. In the European order for payment, the defendant shall be informed 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 with the court in; where a statement of opposition is lodged, 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 defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form which shall be supplied to him together with the European order for payment. The statement of opposition shall be sent within 30 days of service of the order on the defendant. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.

If the requirements for issuance of a European order for payment are met for only part of the claim, the court shall inform the claimant to that effect, using standard form. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form sent by the court within a time limit specified by the court. If the claimant accepts the court's proposal, the court shall issue a European order for payment, for that part of the claim accepted by the claimant. 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 a European order for payment in its entirety.

3.3 Serving the European Order for Payment

The European Order for Payment 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. In general, two types of service are possible: either service with proof of receipt by the debtor or service without proof of receipt by the debtor; each of them can be used in relation to the defendant's representative. The service with proof of receipt by the defendant or the defendant's representative methods allow: personal service with acknowledgement of receipt signed by the defendant; declaration by the competent person who effected the service that the defendant received the document or refused to receive it without any legal justification; service by post attested by an acknowledgment of receipt signed by the defendant; electronic service with an acknowledgment of receipt signed by the defendant. The service without proof of receipt by the defendant or the defendant's representative methods allow: personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there; in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant; 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, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits; postal service without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin; electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.

3.4 Review in exceptional cases

The Regulation leaves the defendant with the opportunity to ask for review of the European order for Payment before the competent court in the member state of the origin of the European order for Payment in a situations where: the order for payment was served by one of the methods of service without proof of receipt by the defendant and service was not effected in sufficient time to enable him to arrange for his defense, without any fault on his part, or 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. The defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances. The court will reject the defendant's application if none of the grounds for review are met and the European order for payment shall remain in force. If the court decides that the review is justified for one of the reasons, the European order for payment shall be null and void.

3.5 Enforceability and enforcement

If no statement of opposition is lodged within the 30-day period by the defendant the European Order for Payment is declared enforceable, by the court using standard form and it will send it to the claimant. The formal requirements for enforceability are governed by the law of the Member State of origin.

A European Order for Payment that has been declared enforceable in the Member State of origin must, be recognized 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. This means that this Regulation abolishes the exequatur and European order for payment is enforceable all over the European Union without any additional procedures.

A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement. As a general rule the for enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with: a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity and where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

3.6 Refusal of enforcement and stay or limitation of enforcement

Under the Regulation the defendant has the right to submit an application for refusal of enforcement of the European order for payment to the competent court in the Member State of enforcement and the court will refuse the enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that the earlier decision or order involved the same cause of action 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. The enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.

Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.

The defendant may apply for a stay or limitation of enforcement of the European order for payment 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.

4. Conclusions

The European order for payment procedure starts with the submission of application for a European order for payment by the claimant to the competent court if the case is cross-border and concerning uncontested pecuniary claims. The competent court can reject the application or issue the European order for payment. If it rejects the application the claimant has no right of appeal against the rejection of the application and if it issues the European order for payment the defendant has a right to lodge a statement of opposition to the European order for payment with the court. The main effect of the lodging of a statement of opposition is that if a statement of opposition is lodged within the time limit, the proceedings shall continue before the competent courts of the Member State of origin unless the claimant has explicitly requested that the proceedings be terminated in that event. If no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable and it will be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition which is the grandest acquisition of the Regulation because abolish the exequatur. The abolition of the exequatur permit the free circulation of European orders for payment throughout the Member States and allows citizens and businesses to enforce uncontested payments through a harmonized process applicable in the whole of Europe.

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