

European Order for Payment Procedure and European Small Claims Procedure

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CURRENT EU JUSTICE PROJECTS RUN BY FACULTY OF LAW MARIBOR:

**Research projects: Diversity of Enforcement Titles in cross-border
Debt Collection in EU - EU-En4s
Digiguard NEW**

Train to Enforce - Train 2 EN4CE

European Investigation Order – legal analysis and practical dilemmas of international cooperation - EIO-LAPD

WOODIE - Whistleblowing Open Data Impact. An Implementation and Impact Assessment (concluded in 2021)

LAWtrain: An Innovative and Interactive Cross-border Training for Lawyers (concluded in 2021)

EU Civil Procedure – some general observations

- The enforcement of cross border rights is complicated by the huge differences in civil procedure as well as legal and practical obstacles.
- The harmonisation of civil procedure within the EU was by now gradual but reached certain solid level to facilitate the access to civil justice with the unified regime on jurisdiction and on recognition and enforcement of foreign judgements,
- On the other hand 'judicial cooperation in civil matters' is often ad hoc and lacks more determined willingness to act of the MS.
- In practice as well there are many hidden reservations in implementing EU Acts of Civil Procedure
- Some authors warn from 'deconstructivism' in European civil procedure, which is a potential source of injustice and may endanger rather than improve access to justice. In Slovenia there is a saying everybody draws to his own side .

Regulations of 2nd generation

- **Harmonisation** requires that a majority of Member States agree on a certain level of harmonisation ('minimum' or 'maximum') which can be politically difficult, for example if conflicting interests of various groups (e.g. consumers and businesses) are at stake. **Unification** requires Member States to give up their existing legal rules and apply a uniform EU regulation instead, which can also be difficult to accept, not only because a common set of rules must be reached, but also because of concerns to preserve national legal culture.
- Therefore optional instruments- are an attractive alternative. Within the law of civil procedure, there are currently **four optional instruments**. Three of them create self-contained optional forms of civil procedure (the European Small Claims Procedure (ESCP) the European Order for Payment Procedure and the European Account Preservation Order.
- Similar to these is the Online Dispute Resolution (ODR) Regulation, which regulates online ADR proceedings for consumer-trader disputes. These four procedures are complemented with optional EU 'titles', i.e., formal documents recognised across the EU.

Twin regulations

1. European order for payment procedure Reg.-1896/06
2. Small Claims procedure Reg.-861/07

Objectives:

- Unified procedures, for civil and commercial matters in crossborder cases
- Direct access to enforcement in all member states
- Not a substitute to a national summary payment order or small claims procedures but offers the supplementary choice to creditor
- judgment in small claims procedure is immediately enforceable before res iudicata, no special certificate of enforceability is provided

Despite being a potentially useful tool for creditors, according to available statistical data, in practice the ESCP is not frequently used. Statistics Slovenia 2009-2012

Slovenia Eu Payment order	12	35	1	5			
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Slovenia Small claims	4	1	2	2			37 652
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The Distinction between Unified and National Payment Order Procedure in SLO – Matter of Creditor's Choice

- Only in crossborder cases;
- ZPP payment order even without the expressly required by claimant in a lawsuit when the prerequisites enables the issue of payment order
- EU payment order only if expressly required

The distinction between unified and national procedure is that the national procedure requires the authentic document, the unified procedure does not

Statement under oath that the allegations in the application are correct under the penal responsibility

Electronical manipulation in domestic procedure for enforcement on the ground of an authentic document

The court refuses the proposal in case of prima facie obvious irrelevance same: the notification that the payment order has been issued only upon claimants/creditors allegations

Bare opposition without alleging any reason

30 days 8 days

The claimant can require that the closing of the procedure in case the defendant files an opposition.

Multiple choice in international disputes under 2000€

1. National payment order + certification as EU payment order
2. EU payment order procedure – transnational procedure
3. Small claims national procedure + BI A R facilitated way to invoke grounds against the foreign judgment
4. EU small claims procedure – transnational procedure

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application of Regulation (EC) 1896/2006

Aleš Galič effective payment orders or effective consumer protection

Report: „The European order for payment procedure – being a written procedure without examination of evidence or hearings - **seems particularly suited for full electronic processing.**“

How does this go together with the requirement of the CJEU that courts must ex officio verify the fairness of general coagaintterms in consumer contracts (e.g. Banco Espanol)

Report: „Since a **statement of objections can be easily lodged** againts the payment order issued in an automated procedure and the procedure ensures effective service of documents, **the defendant’s rights are duly safeguarded.**“

How does this go together with the CJEU's request for ex officio control in favor of the consumer, which must also be carried out in favor of a completely passive consumer who has not lodged an objection or response to an action (e.g. Finnanmadrid).

As well a problem of language remains

EU Small claims disputes

- Regulation 861/2007 - Obvious failure in practice
- New attempt: Amendment by Regulation 2015/2421
- Measures to increase popularization: (1) raising the threshold value of the disputed object; (2) more awareness, education, promotion, e-links as the European instrument suppose to suffer as not well known and not enough in the minds of users

CONCLUSIONS

- EU regulatory activities offer full range from coordinating national procedures to enacting self-standing procedures.
- We can agree with Prof. Burkhard HESS that the European instruments' practical impact is still unsatisfactory. In this respect, the European lawmaker should focus on rules, minimum standards, and self-standing procedures and **regard the judicial systems of the EU member states**. Implementing legislation of Member States is an essential tool to improve the practical impact of the EU instruments. **Duplicative sets of procedural rules** place a heavy burden on the judges and all lawyers who have to work with them.
- In addition, legislative approaches should be based on a clear concept and aim to pursue clear objectives.