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Scope of application, jurisdiction and formal application requirements in European Order for Payment Procedure

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1. Regulation 1986/2006, is not the only cross-border act for collections of obligations in the EU
2. Purpose and scope of application of the Regulation 1986/2006
3. Determination of the court jurisdiction
4. The form and the procedure of application for getting an EOP



Regulation 1986/2006, as not the only cross-border act for collections of monetary obligations

- **Regulation on a European Enforcement Order (EEO) No. 805/2004** [*If the case has already decided by a competent court, or the claim stems from an authentic act or court statement, and it needs to be enforceable abroad, a request for EEO can be submitted to the competent authorities in the MS of origin of the judgment, authentic act or court settlement if it concerns an uncontested claim*].
- **Regulation on a European Order for Payment Procedure (EOPP) No. 1896/2006** [*If the claim without costs or interest exceed 5000EUR only the EOPP can be used if the condition for its application are fulfilled*]
- **Regulation on European Small Claims Procedure (ESCP) Nr. 861/2007** [*If the claim (without costs or interest does not exceed 5000EUR, both the EOP and the ESCP could be considered. However, if it likely that the defendant will contest the claim, it is advisable to use the ESCP instead of EOP*]



- **National procedure**
- The EOPP should serve as an additional and optional means for the Claimant, who remains free to resort to a procedure provided for by national law.
- The EOPP Regulation neither replaces nor harmonizes the existing mechanisms for the recovery of uncontested claims under national law. [Recital 10]



Purpose and scope of application of the Regulation 1986/2006

- a. simplify, speed up and reduce the costs of litigation (1) in cross-border cases (2) concerning uncontested pecuniary claim [by establishing a EOPP]
- b. to establish a uniform rapid and efficient mechanism for the recovery of uncontested pecuniary claims throughout the European Union' (Recital 29)
- c. permit the free circulation of EOP throughout the Member States by laying down minimum standards, complying with which renders unnecessary any intermediate proceedings in the MS of enforcement prior to recognition and enforcement. [EXECUTION OF THE ORDER]



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- Article 3 – cross-borders cases

“For the purpose of this Regulation, 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 in accordance with Articles 59 and 60 of the Brussels Regulation Nr. 44/2001. (Recast: 62&63)
- Art. 62: “In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law. 2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.
- Article 63 1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat;
 - (b) central administration; or
 - (c) principal place of business.



Theoretically:

1. Claimant / Respondent – both MS
2. Claimant [non- MS (ex Albania)] / Respondent [MS]
3. Claimant [MS]/ Respondent [non-MS (ex. Albania)]



Territorial scope: Regulation is applicable in the

- a. All MS, except Denmark;
- b. Art. 355 of TFEU;
- c. *Apostolides case C-420/07* – the northern part of Cyprus excluded



- Art. 3 para. 3 (*time*): “The relevant moment to determine whether there is a cross – border case shall be the time when the application for an EOP is submitted in accordance with this Regulation.”
- Regulation is applicable from 12 December 2008 (with some exceptions), also for the cases before this date, with condition that of not been prescribed.
- EOPE shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for EOP is submitted. (Art. 4)



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Subject matter scope of application

Art. 2

- Regulation applies to the civil and commercial in cross-border matters cases, whatever nature of the court or the 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'*).



- The regulation shall not apply to:
 - a. Rights in property arising out of matrimonial relationship, wills and succession;
 - b. Bankruptcy, proceedings relating to the winding-up of insolvency companies or other legal persons, judicial arrangements, compositions and analogues proceedings;
 - c. Social security;
 - d. Claims arising from non-contractual obligations, unless:
 - i. they have been the subject of an agreement between the parties or there has been an admission of debt. Or
 - ii. They relate to liquidate debts arising from joint ownership of property



- **Regulation does not provide the definition of “the civil and commercial matters”**
- “In the interpretation of the concept “civil and commercial matters” for the purpose of the application of the Convention..... the reference must be made not to the law of one of the states concerned but, *first* to the objectives and scheme of the Convention and, *secondly*, to the general principles which stem from the corpus of the national legal systems.” (C-29/76 *LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol*, ECR 1976, 1541).



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- 2 elements are of significant about of determination whether a dispute it is or it is not of civil and commercial matters:
 1. the subject-matter of the dispute and
 2. the nature of the relationship between the parties involved



- *Although certain judgments given in action between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers. Such is the case in a dispute which concerns the recovery of charges payable by a person governed by private law to a national or international body governed by public law for the use of equipment and services provided by such body, in particular where such use is obligatory and exclusive. This applies in particular where the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users.*



- In relation to the claim that include a public authority, ECJ stipulates that: “A case is not "civil or commercial" when it has to deal on a dispute between a public authority and a private person when the first acts in the exercise of public power.”
- ECJ makes difference between *acta iure empire*, of what they are of excluded from notion of "issue CIVIL or commercial", AND *acta iure gestionis*, of WHAT included IN A notion of such.
- The difference between *acta iure empire* AND *acta iure gestionis* it is no not i easily in practice.



- ECJ in relation to the difference between *acta iure empire* AND *acta iure gestionis*:
- In *Preservatrice fonciere* (C-266/01), ECJ 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 *Eurocontrol*, ECJ 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.
- (*Practice guide for the application of the Regulation on the EOP*)



Jurisdiction

- **Recital (12):** "When deciding which courts should have jurisdiction to issue a EOP, Member States should consider the need to ensure access to justice."
- For the purpose of applying this Regulation, jurisdiction shall be determined similarly in accordance with the relevant rules of Community law, in particular Regulation (EC) No. 44/2001, with an exception:
- if the claim 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 if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, withing the meaning of Article 59 of Regulation (EC) no. 44/2001, will have jurisdiction.



- The court should examine the application, including of jurisdiction and the description of evidence, **on the basis of information provided in the application form.** (recital 16)
- The court seised of an application for a EOP shall examine, as soon as possible and **on the basis of the application form,** whether the requirements set out in [Articles 6 and 7] are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.’ (Art. 8)



- What's happened if the applicant gives wrong information?
- After the expiry of the time-limit for submitting the statement of opposition, in certain exceptional cases the defendant should be entitled to apply for a review of the EOP. Review in exceptional cases should not mean that the defendant is given a second opportunity to oppose the claim. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances could include a situation where the EOP was based on false information provided in the application form. (Recital 25)



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- *Thomas Cook Belgium vs Thurner Hotel GmbH*, C-245/14, EU: C: 2015: 715, para. 37.
- Definitions (Art. 5)



Application for a EOP

1. An application for a EOP shall be made using standard form A, as set out in Annex I.
2. The application shall state:
 - a. **the names and addresses of the parties** and, where applicable, their representatives, and of the court to which the application is made;
 - b. **the amount of the claim**, including the principal and, where applicable, interest, contractual penalties and costs;
 - c. 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; (no INTERESTS of upcoming)
 - d. **The cause of the action**, including a description of the circumstances invoked as the basis of the claim and, interest demanded;
 - e. a description of **EVIDENCE** supporting the claim;
 - f. the grounds for **jurisdiction**; and
 - g. The cross-boarder nature of the case within the meaning of Article 3.



- In that context, it should be compulsory for the claimant to include a description of evidence supporting the claim. For that purpose the application form should include as exhaustive a list as possible of types of evidence that are usually produced in support of pecuniary claims. [Recital 14]
- Application must be completed in the language of a country where it is the court seized.



- 3. In 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 MS of origin.
- 4. In an Appendix to the application the Claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings within the meaning of **Article 17** in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.
- 5. The application shall be submitted in paper form or by any other means of communication, including electronic accepted by the MS of origin and available to the court of origin.



- 6. The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with para. 5, it shall be signed in accordance with Article 2(2) of the Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. The signature shall be recognized in the Member State of origin and may not be made subject to additional requirements.



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