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Aspects of the implementation of the Regulation No. 1896/2006 “Creating a European Order for Payment Procedure”: decisionmaking, service, opposition to a European Order for Payment

TRAIN 2 EN4CE WORKSHOP

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A. Examination procedure of an application for a European order for payment: aspects of decision-making

The court that examines an application for an EOP:

- verifies whether the application falls within the scope of application of the Regulation No. 1896/2006, (Art. 2); whether it concerns a cross-border case (Art. 3), and pecuniary claims for a specific amount that have fallen due (Art. 4), whether it has jurisdiction (Art. 6), whether the application meets the formal requirements stipulated in Art. 7 and the claim appears to be founded.
- Does not make an evaluation of the evidence, or of the information provided by claimant in the application form.



A. Examination procedure of an application for a European order for payment: aspects of decision-making

- Depending on the result of the examination of the application for an EOP, the court can take a decision for the:
 1. modification of the application/partial acceptance of the claim
 2. rejection of the application
 3. acceptance of the application and issuance of the EOP



A. Examination procedure of an application for a European order for payment: aspects of decision-making

1. **Modification of the application/partial acceptance of the claim (Art. 10)**

- If during the examination of an application for an EOP only part of the claim meet the requirements, the court shall inform the claimant to that effect, using standard form C
- The claimant is invited to accept or refuse a proposal for a European order for payment for the amount specified by the court
- The Court sets a time limit for replying by returning standard form C
- The claimant is informed of the consequences of his decision



A. Examination procedure of an application for a European order for payment: aspects of decision-making

1. Modification of the application/partial acceptance of the claim (Art. 10)

- Consequences of claimant's (failure to) reply:
 - a. Issuance of the EOP when:
 - the claimant accepts the court's proposal, for the part of the claim accepted by the claimant
 - b. Rejection of the application for an EOP in its entirety in case of:
 - Failure to send the reply within the time limit set by the court;
 - Refusal of the court's proposal within the time limit set by the court.
- The consequences with respect to the remaining part of the initial claim are governed by national law.



A. Examination procedure of an application for a European order for payment: aspects of decision-making

2. Rejection of the application for an EOP (Art. 11)

Causes of rejection:

- The application does not fall within the scope of application of the Regulation No. 1896/2006, or
- The application does not concern a cross-border case, or
- The application does not concern pecuniary claims for a specific amount that have fallen due, or
- The court does not have jurisdiction, or
- The application does not meet the formal requests specified in Article 7, or
- the claim is clearly unfounded, or
- The application is not completed or rectified within the time limit set by the court, or
- The claimant fails to reply within the time limit set by the court concerning the court's proposal to amend the application.



A. Examination procedure of an application for a European order for payment: aspects of decision-making

2. Rejection of the application for an EOP (Art. 11)

The court has the right to assess on its own motion whether the interest rate on late payments set in the contract is an unfair term in accordance with the Directive 93/13 / EEC 'On unfair terms in consumer contracts' and consequently to reject the application for an EOP as clearly unfounded.

[Judgment of the Court (First Chamber) 14 June 2012 in the Case C-618/10 *Banco Español de Credit, SA v Joaquín Calderón Camino*]



A. Examination procedure of an application for a European order for payment: aspects of decision-making

2. Rejection of the application for an EOP (Art. 11)

- The claimant is informed of the grounds for the rejection by means of standard form D
- There is no right of appeal against the rejection of the application. This does not rule out, however, a possible review in accordance with national law.
- The rejection of the application does not prevent the claimant from pursuing the claim by means of a new application for an EOP or of any other procedure available under the law of a Member State.



A. Examination procedure of an application for a European order for payment: aspects of decision-making

- **3. Issue of an EOP (Art. 12)**
- If all the requirements are met, the court issues an EOP using standard form E
- Deadline: within 30 days of the lodging of the application, excluding the time taken by the claimant to complete, rectify or modify the application.
- Content -> The order must advise and inform the defendant that:
 - He has the option (i) to pay the amount indicated in the order to the claimant (ii) to 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 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
 - 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.



A. Examination procedure of an application for a European order for payment: aspects of decision-making

3. Issue of an EOP (Art. 12)

- The EOP shall be issued together with a copy of the application form
- 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.



B. Service of an EOP

Methods of service according to Regulation 1896/2006 (Art. 13-15)

1. **Service with proof of receipt by the defendant/representative** - are characterized by the complete certainty that the served document has reached its recipient:
 - a. **Personal service**- attested by:
 - i. an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;
 - ii. a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;
 - b. **Postal service**- attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;
 - c. **Electronic service** - e.g. fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.



B. Service of an EOP

Methods of service according to Regulation 1896/2006 (Art. 13-15)

2. Service without proof of receipt by the defendant/representative:

- Applicable only if the defendant's address is known with certainty;
 - National laws of some states provide for the service of acts to the prosecutor's office for citizens who have their habitual residence abroad (remise au parquet). This method is incompatible with the standards of the Regulation 1896/2006.
- characterized by a very high probability that the defendant has been served.



B. Service of an EOP

Methods of service according to Regulation 1896/2006 (Art. 13-15)

2. Service without proof of receipt by the defendant/representative:

- a. personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there, only if these persons accept the EOP, attested with an acknowledgement of receipt;
 - b. 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, only if these persons accept the EOP, attested with an acknowledgement of receipt;
 - c. deposit of the order in the defendant's mailbox;
 - d. 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
- In all these cases proof of service is attested by a document signed by the competent person who effected the service, indicating the method of service used, the date of service and where the order has been served on a person other than the defendant (a & b above), the name of that person and his relation to the defendant.



B. Service of an EOP

Methods of service according to Regulation 1896/2006 (Art. 13-15)

2. Service without proof of receipt by the defendant/representative:

- e. postal service without proof where the defendant has his address in the Member State of origin;
- f. electronic means attested by an automatic confirmation of delivery, **provided that** the defendant has expressly accepted this method of service in advance.



B. Service of an EOP

Methods of service according to Regulation 1896/2006 (Art. 13-15)

Article 27 of REGULATION 1896/2006 EOPP

“This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters.”

Regulation(EC) No. 1348/2000 is repealed by Regulation(KE) No. 1393/2007



B. Service of an EOP

- Where a European order for payment is served on the defendant without the application for the order, annexed to the order, being written in or accompanied by a translation into a language he is deemed to understand, as required by Article 8(1) of Regulation No 1393/2007, the defendant must be duly informed, by means of the standard form in Annex II to Regulation No 1393/2007, of his right to refuse to accept the document in question.
- If that formal requirement is omitted, the procedure must be regularised in accordance with the provisions of Regulation No 1393/2007, by communicating to the addressee the standard form in Annex II to that regulation.
- In that case, as a result of the procedural irregularity affecting the service of the European order for payment together with the application for the order, the order does not become enforceable and the period in which the defendant may lodge a statement of opposition cannot start to run, so that Article 20 of Regulation No 1896/2006 cannot apply.

[*Catlin Europe SE v OK Trans Prague spol. sro.* (Case C-21/17)]



B. Service of an EOP

- The above methods of service apply also to the representative of the defendant (Art. 15) both in cases of legal representation and in cases of voluntary representation. (Recital 22 of the Preamble of the EOPP Regulation)



C. Opposition to an EOP

- The defendant may submit his statement of opposition using the standard form F. However, the courts should take into account any other written form of opposition if it is expressed in a clear manner. (Recital 23 of the Preamble)
- Manners of submission of the statement of opposition:
 - 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.
- The statement of opposition should be signed by the defendant **or**, when applicable, by his representative. Where the statement of opposition is submitted in electronic form, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC, except when there is an alternative electronic communication system in the courts of the Member State of origin. Member States shall inform the Commission of such communication systems.
- The defendant does not need to specify the reasons in the statement of opposition.



C. Opposition to an EOP

- **Time limit for submission of a statement of opposition:**
 - Within 30 days of service of the order to the defendant
 - For the purposes of calculating time limits, Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits should apply.
 - The day of service is not included in the calculation of the time limit
 - If the time limit expires on Saturday, Sunday or on public holidays the time limit is extended to the next day of the week.
 - Only public holidays of the Member State in which the court issuing the EOP is situated shall be taken into account.
 - Closure of courts due to public holidays does not affect the running of time limits.



C. Opposition to an EOP

Effect of the lodging of a statement of opposition (Art. 17)

- Unless the claimant has explicitly requested that the proceedings be terminated, the proceedings shall continue in accordance with the rules of:
 - a. the European Small Claims Procedure laid down in Regulation (EC) No 861/2007, if applicable; or
 - b. any appropriate national civil procedure



C. Opposition to an EOP

- The proceedings shall be transferred to the appropriate national civil procedure, unless the claimant has explicitly requested that such transfer not be made, where:
 - the claimant has not indicated which of the procedures he requests to be applied to his claim in the proceedings that ensue in the event of a statement of opposition, or
 - the claimant has requested that the European Small Claims Procedure be applied to a claim that does not fall within the scope of that Regulation.
- Where the claimant has pursued his claim through the EOPP, nothing under national law shall prejudice his position in subsequent civil proceedings.
- The transfer to civil proceedings shall be governed by the law of the Member State of origin.
- The claimant shall be informed of whether the defendant has lodged a statement of opposition and of any transfer to civil proceedings.



C. Opposition to an EOP

Where a defendant does not contest the jurisdiction of the court of the Member State of origin in his statement of opposition to the European order for payment, that opposition cannot produce, in regard to that defendant, effects other than those that flow from Article 17(1) of Regulation No 1896/2006. Those effects consist in the termination of the European order for payment procedure and in leading – unless the claimant has explicitly requested that the proceedings be terminated in that event – to the automatic transfer of the case to ordinary civil proceedings.

Article 6 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, read in conjunction with Article 17 thereof, must be interpreted as meaning that a statement of opposition to a European order for payment that does not contain any challenge to the jurisdiction of the court of the Member State of origin cannot be regarded as constituting the entering of an appearance within the meaning of Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the fact that the defendant has, in the statement of opposition lodged, put forward arguments relating to the substance of the case is irrelevant in that regard.



C. Opposition of an EOP

Effect of the lodging of a statement of opposition (Art. 18)

- The court of origin shall without delay declare the EOP enforceable using standard form G, if within the time limit of 30 days of service of the order on the defendant, taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged.
- The court shall send the EOP to the defendant.



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