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Review and enforcement of an EOPP. Issues of legal representation and court fees

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I. Legal representation

- Is the legal representation mandatory for the claimant and the defendant in EOPP?



I. Legal representation (*Article 24*)

- Representation by a lawyer or another legal professional **shall not be mandatory for the claimant** in respect of the application for a European order for payment neither for **the defendant** in respect of the statement of opposition to a European order for payment.



I. Legal representation

- However, the parties have the right to appoint a lawyer or other legal professional, in this procedure for issuing the EOPP.

In such a case:

- The application for a **European order for payment** shall state the names and addresses of the parties, and, where applicable, **their representatives**. (Article 7 point 2a)
- The application shall be signed by the claimant or, where applicable, by his representative. (Article 7 point 6)
- **Service with proof of receipt by the defendant** (article 13) or **service without proof of receipt by the defendant** (article 14) may also be effected on a defendant's representative. (Article 15)
- The statement of opposition shall be signed by the defendant or, where applicable, by his **representative**. (Article 16 point 5)



II. What can request the defendant after 30 days from service (article 16.2) and submission of the EOP?

- **Review in exceptional cases of the EOP (Article 20)**
 - To limit the enforcement proceedings to protective measures;(Article 23)
 - To make enforcement conditional on the provision of such security as it shall determine; (Article 23)
 - To stay the enforcement proceedings. (Article 23)
- **Refusal of enforcement on EOP(Article 22)**



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Review in exceptional cases of the EOP (Article 20)

Review in exceptional cases of the EOPE is foreseen from article 20 of the Regulation.



II.I Which is the review procedure and the competent court in case of review in exceptional cases of the EOP?

Based on article 29 of the Regulation on EOPP, Member States shall communicate to the Commission: the review procedure and the competent courts for the purposes of the application of Article 20 (**Review in exceptional cases**).

This information is available on:

[European e-Justice Portal - European payment order \(europa.eu\)](http://europa.eu)



Examples on the competent courts for the review of EOP in some Member States

Ireland

A review jurisdiction lies with the **High Court**.

Croatia

The Commercial Court in Zagreb decides on applications for review of a European payment order. The court's decision cannot be appealed.

France

The rules governing the review procedure in the exceptional cases provided for in Article 20 of the Regulation are exactly the same as those applicable to the opposition procedure. Requests for review must be submitted to **the court which issued the European order for payment**.



Examples on the competent courts for the review of EOP in some Member States

Italy

- The court with jurisdiction for the review referred to in Article 20(1) of Regulation No 1896/2006/EC and the related proceedings, is the court which issued the order pursuant to Article 650 of the Italian Code of Civil Procedure.
- The court with jurisdiction for the review referred to in Article 20(2) of Regulation No 1896/2006/EC and the related proceedings, is the **ordinary court** responsible for the order, in accordance with the commonly applicable rules.



Examples on the competent courts for the review of EOP in some Member States

Bulgaria

- **Review procedure** is governed by Article 626a of the Code of Civil Procedure:
- Article 626a
- (1) The respondent may apply for a review of a European order for payment under the terms and procedure laid down in Article 20 of Regulation (EC) No 1896/2006 before the respective court of appeal.
- (2) The application for a review is submitted within 30 days from the day the respondent was effectively acquainted with the contents of the order or after the circumstances referred to in Article 20(1)(b) of the Regulation no longer pertain.
- (3) The court sends a copy of the application to the other party which may reply within one week from receipt thereof.
- (4) The application is examined in camera. If the court deems it appropriate, it may examine the application in an open session.
- (5) The court's decision cannot be appealed.



Causes for review of EOP

After the expiry of the time limit of 30 days from service of the order to the defendant(laid down in Article 16(2)) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:

- (a)(i) the order for payment was served by one of the methods provided for in Article 14 (**Service without proof of receipt by the defendant**), and
- (ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part, or
- (b) 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.

After expiry of the time limit of 30 days from service of the EOPP to the defendant, laid down in Article 16(2), 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**.



Recital 25 of the Regulation

- 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 European order for payment was based on false information provided in the application form.**



Case
Novontech-Zalakft. v
Logicdata Electronic & Software Entwicklungs GmbH

- **The failure to observe the time-limit for lodging a statement of opposition to a European order for payment, by reason of the negligence of the defendant's representative, does not justify a review of that order for payment, since such a failure to observe the time-limit does not constitute extraordinary circumstances within the meaning of Article 20(1)(b) or exceptional circumstances within the meaning of Article 20(2) 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.**



Consequences from the review of EOP

- **If the court rejects the defendant's application on the basis that none of the grounds for review do not apply, the European order for payment shall remain in force.**
- **If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2 of article 20, the European order for payment shall be null and void.**

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Stay or limitation of enforcement (article 23)

Where the defendant has applied for a review in accordance with Article 20, the competent court in the Member State of enforcement may, upon application by the defendant:

- 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.



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III. Enforcement (Article 21)

Which is the competent authority that is going to enforce the EOP, in the Member State of enforcement?

Which are the legal documents that the claimant shall provide to the competent enforcement authorities of the Member State?



Enforcement

For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:

(a) **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

(b) **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.



The language of the EOP for enforcement in some Member States

Franc

The languages accepted pursuant to Article 21(2)(b) are: **French, English, German, Italian and Spanish.**

Croatia

European payment orders must be accompanied by a translation into **Croatian**, certified by a person authorised to do so.

Ireland

Accepted languages of the EOP are **Irish and English.**



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Italy

The language accepted is **Italian**.

Luxembourg

Luxembourg accepts **French** and **German**.

Hungary

A translation into **Hungarian** must always be supplied with a European order for payment issued for enforcement.



Malta

- **Accepted languages are Maltese and English.**

Austria

German is the accepted language in accordance with Article 21(2)(b).

In addition to the official language (German), Austrian nationals and nationals of countries that are party to the Agreement on the European Economic Area may use:

- **Hungarian** before the district courts of Oberpullendorf and Oberwart,
- **Slovenian** before the district courts of Ferlach, Eisenkappel and Bleiburg, and
- **Croatian** before the district courts of Eisenstadt, Güssing, Mattersburg, Neusiedl am See, Oberpullendorf and Oberwart.



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Enforcement

- Without prejudice to the provisions of the Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.
- 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.



Enforcement

The Member State of enforcement of a European order for payment, issued in another Member State, shall not require to the claimant no security, bond or deposit, however described, on the ground:

- that he is a foreign national;

or

- that he is not domiciled or resident in the Member State of enforcement.



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IV. Refusal of enforcement (Article 22)

- Where could be refused the enforcement of the EOP?



The conditions for refusal of enforcement of EOP

Enforcement shall, upon **application by the defendant**, be refused by **the competent court in the Member State of 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.**



Another condition for refusal of enforcement of EOP

Enforcement shall, upon application, be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.

So the enforcement shall be refused:

- totally if the defendant has not paid the claimant the amount awarded in the European order for payment; or
- Partially if the defendant has paid the claimant a part of the amount awarded in the European order for payment



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



V. Court fees (Article 25)

- Where, in a Member State, the court fees for civil proceedings within the meaning of point (a) or point (b) of Article 17(1), if applicable; are equivalent to or higher than those of the European order any appropriate national civil procedure, as der for payment procedure, the total of the court fees for a European order for payment procedure and for the civil proceedings that ensue in the event of a statement of opposition in accordance with Article 17(1) shall not exceed the fees for those proceedings without a preceding European order for payment procedure in that Member State.
- No additional court fees may be charged in a Member State for the civil proceedings that ensue in the event of a statement of opposition in accordance with point (a) or point (b) of Article 17(1), for the European Small Claims Procedure laid down in Regulation (EC) No 861/2007, if applicable; or any appropriate national civil procedure, as applicable, if the court fees for such proceedings in that Member State are lower than those for the European order for payment procedure.

For the purposes of the Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.

Information of court fees is provided in: [European e-Justice Portal - Court fees concerning European Payment Order procedure \(europa.eu\)](#)



Relationship with national procedural law (Article 26)

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.

- The application for EOP 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. (article 7.2)
- 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. (article 7.3)
- The transfer to civil proceedings of Payment Order shall be governed by the law of the Member State of origin..(article 17.4)
- The formal requirements for enforceability shall be governed by the law of the Member State of origin.(article 18)
- Enforcement procedures shall be governed by the law of the Member State of enforcement.(article 21)
- Court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.(neni 25.2)



Relationship with Regulation (EC) No 1348/2000 (Article 27)

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.

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 foreseen on article 27, has been repealed and the reference to it shall be construed as a reference to Council Regulation (EC) No. 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the notification to the Member States of judicial and extrajudicial documents in civil and commercial matters repealing Council Regulation (EC) No. 1348/2000.

Issues not regulated by Regulation no. 1896/2006, in connection with the service of a European order for payment together with the enforcement of the order, should consequently be decided, if necessary, in accordance with Regulation no. 1393/2007.



Information relating to service costs and enforcement (Article 28)

Member States shall cooperate to provide the general public and professional circles with information on:

(a) costs of service of documents; and

(b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23, in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC (4).



Information relating to jurisdiction, review procedures, means of communication and languages(Article 29)

Member States shall communicate to the Commission **information relating:**

- which courts have jurisdiction to issue a European order for payment;
- the review procedure and the competent courts for the purposes of the application of Article 20;
- the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;
- languages accepted pursuant to Article 21(2)(b).

Member States shall apprise the Commission of any subsequent changes to this information.

The Commission shall make the information publicly available through publication in the Official Journal of the European Union and through any other appropriate means.



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