



The European Small Claims Procedure & the European Order for Payment Procedure Seminar

Case Study Analysis on European Order for Payment

28 October 2021

Case Study 1

Mrs. Garriga, a Spanish national, domiciled in Madrid owns a coffee shop there. In April 2018, Mrs. Garriga ordered paintings for the coffee-shop from Italian painter, Mr. Pasquale, domiciled in Trieste. Mrs. Garriga pays the price, but the paintings never arrive. In May 2018, Mrs. Garriga decides to apply for European order for payment before the Spanish court.

Question 1: What should Mrs. Garriga do in order to obtain European order for payment?

Question 2: The Spanish court issues a European order for payment. While Mr. Pasquale was on vacation, the order was served to Mrs. Gatti, the assistant working in his gallery. Unfortunately, Mrs. Gatti forgot to give the order to Mr. Pasquale. Is the service of the European order for payment in accordance with the EOP Regulation?

Question 3: Suppose that Mr. Pasquale received the order and sent his opposition without specifying the reasons. Is this an effective opposition against the European order for payment?

Question 4: Suppose that Mr. Pasquale received the order and sent his opposition. However, he forgot to sign the form F. Is this a valid opposition against the European order for payment?

Question 5: Suppose that Mr. Pasquale sent the opposition in accordance with Art. 16 of the EOP Regulation? What are the effects of sending the opposition?

Question 6: Suppose that Mr. Pasquale received the European order for payment and did not oppose, the Spanish court declares the order enforceable using standard form G. What does Mrs. Garriga have to do in order to enforce the order in Italy?



Case Study 2

Mrs. Sturm, a German national, domiciled in Munich, decided to spend a week in Croatia in February 2019. During her stay, she arranged for an aesthetic procedure at a clinic Aphrodite owned by a company Aphrodite d.o.o. with its seat in Zagreb. She found out about the company through a paid advertisement in German language which appeared as a search result on aesthetic surgery clinics in her web browser. It led to a company website aphrodite-skin-beauty.de which used entirely German language. After the procedure of face-lifting, she developed a severe skin inflammation and irritation. After returning to Munich, she needed to undergo several procedures to remedy her skin condition. Since Ms. Sturm failed to pay the agreed price (2.000,00 EUR), the company Aphrodite d.o.o. sought legal advice on recovery of the amount due.

Question 1: Can the company Aphrodite use one of the following EU instruments to recover the amount owed by Mrs. Sturm: Regulation (EC) No 1896/2006 on European Order for Payment (EOP Regulation), Regulation (EC) No 861/2007 on European Small Claim Procedure (ESCP Regulation) or Regulation (EC) No 805/2004 on Uncontested Claims?

Question 2: If the Aphrodite d.o.o. decides to use the EOP Regulation for enforcing the claim, the court of which Member State will have jurisdiction?

Question 3: If the company Aphrodite decides to use the ESCP Regulation for enforcing the claim, the court of which Member State will have jurisdiction?

Question 4: Do the procedures in EOP Regulation and ESCP Regulation allow that Aphrodite d.o.o. and Mrs. Sturm agree on the jurisdiction of Croatian courts?

Question 5: Consider that the circumstances changed. Aphrodite d.o.o. does not have a website, and does not target German consumers. Mrs. Sturm found out about the clinic when she saw a billboard during her stay in Croatia. Does that affect the jurisdiction of the courts?

Question 6: If Aphrodite d.o.o. instituted the proceedings under EOP Regulation before the Croatian court, and Mrs. Sturm wants to object to the jurisdiction, how can she do so?

Question 7: Suppose that Mrs. Sturm wants to apply for a European order for payment against Mr. Horvat, a Croatian domiciled doctor who performed the procedure and recover the costs of procedures she needed to undergo to remedy her skin condition. Can EOP Regulation be used for recovering this claim?



Case Study 3

Mr. Kovač, a Slovenian national, domiciled in Maribor, accessed the website of the company Lucky Dice llc. offering online gambling services, seated in Malta, in October 2019. The company directs its activity to Slovenia, among some other Member States. Mr. Kovač opened a user account and played online poker. In January 2020, the company blocked user accounts of Mr. Kovač, since he opened two user accounts which is prohibited by the company's Terms and conditions to which Mr. Kovač agreed during registration. Lucky Dice llc. withheld the amount of 50.000,00 EUR which Mr. Kovač won and decided to institute the proceedings for the recovery of 20.000,00 EUR already paid to Mr. Kovač. On 11 March 2020, Lucky Dice llc. decided to apply for the European order for payment.

Question 1: Courts of which Member State have jurisdiction for issuing European order for payment?

Question 2: Suppose that Lucky Dice llc. applied for European order for payment before the court on Malta. The court on Malta issues a European order for payment on 8 April 2020. Does a statement of opposition to a European order for payment, in which the jurisdiction of the court on Malta is not contested, constitute the tacit prorogation of jurisdiction?

Question 3: Suppose that on 8 April 2020 the Slovenian court issued the European order for payment. How can Mr. Kovač defend himself?

Question 4: Suppose that Lucky Dice llc. submits the application for European order for payment on 11 March 2020 to the Slovenian court. The Slovenian court requests from Lucky Dice llc. to submit additional documentation relating to the contract, particularly its Terms and Conditions with the aim of exercising control over contractual terms in accordance with the provisions by which the Directive 93/13 on unfair terms in consumer contracts was transposed. How to solve the question of the supply of documents for the purpose of *ex officio* control of contractual terms?

Question 5: Suppose that Lucky Dice llc. submits the application for European order for payment on 11 March 2020 to the Slovenian court. The Slovenian court finds that the Lucky Dice llc. did not fill in part 7 of the Application form from Annex A correctly. Should the Slovenian court reject the application?

Question 6: Suppose that on 8 April 2020 the court issued the European order for payment. On 22 April, the European order for payment was served on Mr. Kovač by depositing it in mailbox of Mr. Kovač's apartment. Mr. Kovač was hospitalised due to contracting Covid-19 and was released from the hospital on 25 June. Can Mr. Kovač oppose the European order for payment?

Question 7: Suppose that on 8 April 2020 the court issued the European order for payment. On 22 April, the European order for payment was served on Mr. Kovač's representative. Mr. Kovač representative did not oppose to the European order for payment. On 15 June, Mr. Kovač found out about the European order for payment. Can Mr. Kovač oppose the European order for payment?





Question 8: Suppose that Lucky Dice llc. applied for European order for payment before the court on Malta. The court on Malta issued a European order for payment on 8 April 2020. The court on Malta declared the European order for payment enforceable. Lucky Dice llc. instituted the proceedings for enforcement in Slovenia. Can Mr. Kovač oppose the enforcement of the order before the Slovenian court due to lack of jurisdiction?

