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Theoretical aspects of the European Order for Payment Procedure

The European Order for Payment Procedure

- Main source of law at European level:
Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.
- Art 26 EOPP:
All procedural issues not specifically dealt with in this Regulation shall be governed by **national law**.

Aims

- Simplify and speed up litigation
- Reduce costs
- Free circulation of European orders for payment
- Simplify recognition and enforcement
- Introduce an efficient and uniform instrument
- Facilitate access to justice
- Relief of the justice
- Unify proceedings

Aims

Art 1 EOPP: Subject matter

The purpose of this Regulation is:

- to **simplify, speed up** and **reduce the costs** of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure; and
- to **permit the free circulation** of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

Characteristics

- The European Order for Payment Procedure is an additional, optional instrument.
- European order for payment should be recognised and enforced in another Member State
 - No declaration of enforceability
 - No possibility of opposing its recognition
- Simple way of initiating proceedings: standardized forms
- No requirement to be represented by a lawyer

Scope of application

Art 2 (1) EOPP:

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

Scope of application

Civil and commercial matters:

- Autonomous interpretation:
 - ECJ C-29/76, *LTU/Euro Control*
 - ECJ C-172/91, *Sonntag/Waidmann*
 - ECJ C-551/15, *Pula Parking*

Two relevant elements:

- Subject matter & nature of relationship

→ Sum of all private law disputes.

→ In principle no public law matters.

Scope of application

Specified exclusions:

- Art 2 (2) EOPP: This Regulation shall not apply to:
 - **rights in property** arising out of a **matrimonial relationship, wills and succession;**
 - **bankruptcy**, proceedings relating to the winding-up of insolvent companies or other legal persons, **judicial arrangements**, compositions and analogous proceedings;
 - **social security;**

Scope of application

Specified exclusions:

- Art 1 (2) Brussels-Ia-Regulation: This Regulation shall not apply to
 - a. the status or legal capacity of natural persons, **rights in property arising out of a matrimonial relationship** or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
 - b. **bankruptcy**, proceedings relating to the winding-up of insolvent companies or other legal persons, **judicial arrangements**, compositions and analogous proceedings;
 - c. **social security**;
 - d. arbitration;
 - e. maintenance obligations arising from a family relationship, parentage, marriage or affinity;
 - f. wills and succession, including maintenance obligations arising by reason of death.

Scope of application

Specified exclusions:

- Art 2 (2) EOPP: This Regulation shall not apply to matters concerning
 - **claims arising from non-contractual obligations, unless:**
 - they have been the subject of an agreement between the parties or there has been an admission of debt, or
 - they relate to liquidated debts arising from joint ownership of property.

Scope of application

Admissible types of claims

Art 4 EOPP:

The European order for payment procedure shall be established for the collection of **pecuniary claims** for a **specific amount that have fallen due** at the time when the application for a European order for payment is submitted.

Scope of application

Admissible types of claims

- Only pecuniary claims
- Art 10 (1), (2) EOPP: Order for payment only for the part of the claim which fulfills requirements
- No value limit
- Specific numerical amount, which must be precisely determinable
- Claims that have fallen due



Scope of application

Currency: form A

| | | | | | | | | | |
|-----|---------------|-----|---------------|-----|--------------|-----|----------------|-----|------------------|
| EUR | Euro | BGN | Bulgarian lev | CZK | Czech Koruna | GBP | Pound Sterling | HUF | Hungarian forint |
| HRK | Croatian kuna | PLN | Polish zloty | RON | Romanian Leu | SEK | Swedish krona | | |

| | | | | | |
|---|--|---|---|------------------|--|
| <p>6. Principal</p> <p>The claim relates to (Code 1)</p> <table border="0"> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> 01 Sales contract 02 Rental agreement - movable property 03 Rental agreement - immovable property 04 Rental agreement - commercial lease 05 Contract of service - electricity, gas, water, phone 06 Contract of service - medical services 07 Contract of service - transport 08 Contract of service - legal, tax, technical advice 09 Contract of service - hotel, restaurant </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> 10 Contract of service - repair 11 Contract of service - brokerage 12 Contract of service - other (please specify) 13 Building contract 14 Insurance contract 15 Loan 16 Guarantee or other collateral(s) 17 Claims arising from non-contractual obligations if they are subject to an agreement between the parties or an admission of debt (e.g. damages, unjust enrichment) </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> 18 Claims arising from joint ownership of property 19 Damages - contract 20 Subscription agreement (newspaper, magazine) 21 Membership fee 22 Employment agreement 23 Out-of-court settlement 24 Maintenance agreement 25 Other (please specify) </td> </tr> </table> | <ul style="list-style-type: none"> 01 Sales contract 02 Rental agreement - movable property 03 Rental agreement - immovable property 04 Rental agreement - commercial lease 05 Contract of service - electricity, gas, water, phone 06 Contract of service - medical services 07 Contract of service - transport 08 Contract of service - legal, tax, technical advice 09 Contract of service - hotel, restaurant | <ul style="list-style-type: none"> 10 Contract of service - repair 11 Contract of service - brokerage 12 Contract of service - other (please specify) 13 Building contract 14 Insurance contract 15 Loan 16 Guarantee or other collateral(s) 17 Claims arising from non-contractual obligations if they are subject to an agreement between the parties or an admission of debt (e.g. damages, unjust enrichment) | <ul style="list-style-type: none"> 18 Claims arising from joint ownership of property 19 Damages - contract 20 Subscription agreement (newspaper, magazine) 21 Membership fee 22 Employment agreement 23 Out-of-court settlement 24 Maintenance agreement 25 Other (please specify) | <p>Currency:</p> | <p>Other (according to international banking code)</p> |
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| | | | | | |
| | | | | | |

Scope of application

Cross-border cases

Art 3 (1) EOPP:

For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.

Scope of application

Cross-border cases

- Domicile:
 - Art 62 Brussels-Ia-Regulation (natural persons):
 - court shall apply its internal law
 - Art 63 Brussels-Ia-Regulation (legal persons):
 - statutory seat; or
 - central administration; or
 - principal place of business.
- Habitual residence:
 - Where the center of his or her existence has been for at least 6 months (Hague Maintenance Convention)

Scope of application

Geographic scope of application

Art 2 (3) EOPP: In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

Temporal scope of application

Art 33 EOPP: This Regulation shall apply from **12 December 2008**, with the exception of Articles 28, 29, 30 and 31 which shall apply from 12 June 2008.

Jurisdiction

Art 6 (1) EOPP:

For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.

→ Brussels-Ia-Regulation

Jurisdiction

Jurisdiction system Brussels-Ia-Regulation

1. General jurisdiction: Art 4 Brussels-Ia

- Domicile of the defendant
- Nationality is irrelevant
- International jurisdiction

2. Special jurisdiction: Art 7-9 Brussels-Ia

- Art 7 (1): place of performance
- Art 7 (2): the place where the harmful event occurred or may occur.
- International and territorial jurisdiction (exception Art 7 [6] Brussels-Ia)
- Claimant can choose between general and special jurisdiction.

Jurisdiction

Jurisdiction system Brussels-Ia-Regulation

3. Jurisdiction

- **in matters relating to insurance:** Art 10-16 Brussels-Ia
- **over consumer contracts:** Art 17-19 Brussels-Ia
- **over individual contracts of employment:** Art 20-23 Brussels-Ia

4. Prorogation of jurisdiction: Art 25-26 Brussels-Ia

5. Exclusive Jurisdiction: Art 24 Brussels-Ia

- Can not be overridden by a prorogation of jurisdiction
- Applies regardless of the domicile and nationality of the parties
- International jurisdiction

Jurisdiction

Art 6 (2) EOPP:

However, 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 shall have jurisdiction.**

“Domicile”: Art 62 Brussels-Ia-Regulation

Jurisdiction

Jurisdiction over consumer contracts: Art 17-19 Brussels-Ia

- Private-end-consumer
- Consumer case according to Art 17:
 - Contract for the **sale of goods on instalment credit terms**; or
 - Contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods ("**third-party financed purchase**"); or
 - Contract has been concluded with a person who **pursues** commercial or professional activities in the Member State of the consumer's domicile or
 - Contract has been concluded with a person who **directs** such activities to that Member State or to several States including that Member State and the contract falls within the scope of such activities.

→ **EOPP**: Term "consumer contract" is to be interpreted more extensively.

Jurisdiction

Jurisdiction over consumer contracts: Art 18 Brussels-Ia

Claim of the consumer against the contracting party: Art 18 (1) Brussels-Ia

- Courts of the Member State in which the contracting party is domiciled
- Courts for the place where the consumer is domiciled or
- Courts of the Member State in which the contracting party has an establishment

Claim of the contracting party against the consumer: Art 18 (2) Brussels-Ia

- Courts of the Member State in which the consumer is domiciled.

Jurisdiction

Jurisdiction over consumer contracts: EOPP

Claim of the contracting party against the consumer

- Art 6 (2) EOPP:
 - Courts of the Member State in which the consumer is domiciled.
- No possibility of agreements on jurisdiction
(in contrast to Art 19 Brussels-Ia)

Jurisdiction

Territorial and substantial jurisdiction

- National law
 - Austria: § 252 (2) ZPO
 - Exclusive jurisdiction: District Court for Commercial Matters in Vienna

Functional jurisdiction

- National law
 - Austria: Judge
 - Recital 16: The examination of the application does not have to be carried out by a judge

Commencement of the procedure

Application for a European order for payment

Art 7 EOPP: The application for a European order for payment is made by

- using standard form A
 - obligatory
 - available in all official languages of the European Union: https://e-justice.europa.eu/156/EN/european_payment_order_forms
- lodging it with the court with jurisdiction
 - in paper form
 - by any other means of communication accepted by the Member State of origin

Application for a European order for payment

Form A

Article 7 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure



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Form A

Please ensure that you read the guidelines on the last page – they will help you to understand this form!

Please note in particular that this form must be completed in the language or one of the languages accepted by the court to be seized. The form is available in all official languages of the European Union; this may help you fill in the form in the required language.

| | | | | |
|--------------|------|---------|---|--|
| Court | | | Case number (to be completed by the court) | |
| Court | | | Received by the court (day/month/year) | |
| Address | | | Signature and/or stamp | |
| Postal code | City | Country | | |

| 2. Parties and their representatives | | | | |
|--------------------------------------|---|-------------------|-------------------------------------|---|
| Codes: | | 01 Claimant | 03 Claimant's representative * | 05 Claimant's legally authorised representative ** |
| | | 02 Defendant | 04 Defendant's representative * | 06 Defendant's legally authorised representative ** |
| Code | Corporate name of company or organisation | | Identification code (if applicable) | |
| | | | | |
| | Surname | | First name | |
| | | | | |
| | Address | Postal code | City | Country |
| | | | | |
| | Phone *** | Fax *** | e-Mail *** | |
| | | | | |
| | Occupation *** | Other details *** | | |
| | | | | |
| Code | Corporate name of company or organisation | | Identification code (if applicable) | |
| | | | | |
| | Surname | | First name | |
| | | | | |
| | Address | Postal code | City | Country |
| | | | | |
| | Phone *** | Fax *** | e-Mail *** | |
| | | | | |
| | Occupation *** | Other details *** | | |
| | | | | |
| Code | Corporate name of company or organisation | | Identification code (if applicable) | |
| | | | | |
| | Surname | | First name | |
| | | | | |
| | Address | Postal code | City | Country |
| | | | | |
| | Phone *** | Fax *** | e-Mail *** | |
| | | | | |
| | Occupation *** | Other details *** | | |
| | | | | |

Commencement of the procedure

Obligatory content of the application: Art 7 (2) EOPP

- **Names and addresses** of the parties, and, where applicable, their representatives, and of the court to which the application is made;
- **Amount of the claim**, including the principal and, where applicable, interest, contractual penalties and costs;
- 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;

Commencement of the procedure

Obligatory content of the application: Art 7 (2) EOPP

- **Cause of the action**, including a description of the **circumstances invoked** as the basis of the claim and, where applicable, of the interest demanded;
- a **description of evidence** supporting the claim;
- the grounds for **jurisdiction**; and
- the **cross-border nature** of the case within the meaning of Article 3.

Definitive list (ECJ 13.12.2012, C-215/11, *Iwona Szyrocka/SiGer Technologie GmbH*)

6. Principal

Currency:

Other (according to international banking code)

Total value of principal, excluding interest and costs:

The claim relates to (Code 1)

- | | | |
|---|--|--|
| 01 Sales contract | 10 Contract of service - repair | 18 Claims arising from joint ownership of property |
| 02 Rental agreement - movable property | 11 Contract of service - brokerage | 19 Damages - contract |
| 03 Rental agreement - immovable property | 12 Contract of service - other (please specify) | 20 Subscription agreement (newspaper, magazine) |
| 04 Rental agreement - commercial lease | 13 Building contract | 21 Membership fee |
| 05 Contract of service - electricity, gas, water, phone | 14 Insurance contract | 22 Employment agreement |
| 06 Contract of service - medical services | 15 Loan | 23 Out-of-court settlement |
| 07 Contract of service - transport | 16 Guarantee or other collateral(s) | 24 Maintenance agreement |
| 08 Contract of service - legal, tax, technical advice | 17 Claims arising from non-contractual obligations if they are subject to an agreement between the parties or an admission of debt (e.g. damages, unjust enrichment) | 25 Other (please specify) |
| 09 Contract of service - hotel, restaurant | | |

Circumstances invoked (Code 2)

- | | | |
|-------------------------|---|---|
| 30 Non-payment | 33 Non-delivery of goods or services | 35 Goods or services not in conformity with the order |
| 31 Insufficient payment | 34 Delivery of defective goods or poor services | 36 Other (please specify) |
| 32 Late payment | | |

Other details (Code 3)

- | | | |
|----------------------|--|--|
| 40 Place of purchase | 43 Date of delivery | 46 In case of loan, purpose: Consumer credit |
| 41 Place of delivery | 44 Type of goods or services concerned | 47 In case of loan, purpose: Mortgage credit |
| 42 Date of purchase | 45 Address of immovable property | 48 Other detail (please specify) |

| ID | Code 1 | Code 2 | Code 3 | Explanatory statement | Date* (or period) | Amount |
|------|--------|--------|--------|-----------------------|-------------------|--------|
| ID 1 | | | | | | |
| ID 2 | | | | | | |
| ID 3 | | | | | | |
| ID 4 | | | | | | |

* Date format: day/month/year



10. Evidence available in support of the claim

Codes: 01 Written evidence 02 Oral evidence 03 Expert evidence 04 Inspection of an object or site 05 Other (please specify)

| ID * | Code | Description of evidence | Date (day/month/year) |
|----------------------|----------------------|-------------------------|-----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |

* Fill in corresponding claim ID

Confirmation of the correctness of the information

- Art 7 (3) EOPP: Claimant shall declare
 - information provided is **true to the best of his knowledge and belief**
 - acknowledge that any deliberate false statement could lead to appropriate **penalties**

Requests of the claimant

- Art 7 (4) EOPP: If defendant lodges a statement of opposition → claimant may request:
 - that the proceedings **discontinue**.
 - that the proceedings **continue in accordance with the rules of the European Small Claims Procedure**, if applicable.
 - that the proceedings **continue in accordance with any appropriate national civil procedure**.



Form A

Appendix 2 to the application for a European order for payment

Further procedure in a case of lodging of a statement of opposition

Codes

01 If the defendant lodges a statement of opposition, I request that the proceedings **discontinue**.

02 If the defendant lodges a statement of opposition, I request that the proceedings **continue in accordance with the rules of the European Small Claims Procedure, if applicable**.

03 If the defendant lodges a statement of opposition, I request that the proceedings **continue in accordance with any appropriate national civil procedure**.

Case number (to be completed if this Appendix is sent to the court separately from the application form):

| | | |
|---|--|------------------------|
| Corporate name of company or organisation | Surname | First name |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Code | <p>If despite of my choice above, my claim does not fall in the scope of the European small claims Procedure (Code 02), I request that the proceedings</p> <p>discontinue <input type="checkbox"/> continue in accordance with any appropriate national civil procedure <input type="checkbox"/></p> | |
| Done at | Date (day/month/year) | Signature and/or stamp |
| <input type="text"/> | <input type="text"/> | <input type="text"/> |

Legal representation

Art 24 EOPP: 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;
- for the **defendant** in respect of the **statement of opposition** to a European order for payment.

Languages

- Application:
 - Language or one of the languages of the court
- No explicit rule in EOPP

Examination of the application

Art 8 EOPP:

The court seised of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the **requirements set out in Articles 2, 3, 4, 6 and 7 are met** and whether the **claim appears to be founded**. This examination may take the form of an automated procedure.

Examination of the application

Examination of jurisdiction

- Ex officio *in limine litis*
- Consequences if the court is not competent?
 - No jurisdiction → application must generally be rejected.
 - Jurisdiction is determined by Art 6 EOPP and by the Brussels-Ia-Regulation → no possibility to transfer the case to another court.
 - Jurisdiction is determined by national law → consequences of an absence of jurisdiction are also governed by national law.

Examination of the application

Examination whether the claim appears to be founded

- Content and scope of this examination: controversial debates
- Prevailing opinion: plausibility check
 - General examination, reduced to minimum
 - On the basis of the application form

Completion and rectification of the application

Art 9 (1) EOPP:

If the **requirements set out in Article 7 are not met** and unless the claim is not clearly unfounded or the application is inadmissible, the court shall give the claimant the opportunity to **complete or rectify the application**.

The court shall use **standard form B**.

- Time limit: shorter than 30 days
- In principle before issuing the European order for payment
- If claimant does not improve application: rejection

Form B

Request to the claimant to complete and/or rectify an application for a European order for payment

Form B

Article 9 (1) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure



| | | | | | |
|-----------------|------|---------|------------------------|--|-----------------------|
| 1. Court | | | Case number | | |
| Court | | | Done at | | Date (day/month/year) |
| | | | | | |
| Address | | | | | |
| | | | Signature and/or stamp | | |
| | | | | | |
| Postal code | City | Country | | | |
| | | | | | |

| | | | | | |
|---|---|--------------|---------------------------------|---|---------|
| 2. Parties and their representatives | | | | | |
| Codes: | | 01 Claimant | 03 Claimant's representative * | 05 Claimant's legally authorised representative ** | |
| | | 02 Defendant | 04 Defendant's representative * | 06 Defendant's legally authorised representative ** | |
| Code | Corporate name of company or organisation | | | Identification code (if applicable) | |
| | | | | | |
| | Surname | | | First name | |
| | | | | | |
| | Address | | Postal code | City | Country |
| | | | | | |
| | Phone *** | Fax *** | | e-Mail *** | |
| | | | | | |
| Occupation *** | | | Other details *** | | |
| | | | | | |
| Code | Corporate name of company or organisation | | | Identification code (if applicable) | |
| | | | | | |
| | Surname | | | First name | |
| | | | | | |
| | Address | | Postal code | City | Country |
| | | | | | |
| | Phone *** | Fax *** | | e-Mail *** | |
| | | | | | |
| Occupation *** | | | Other details *** | | |
| | | | | | |
| Code | Corporate name of company or organisation | | | Identification code (if applicable) | |
| | | | | | |

Following the examination of your application for a European order for payment, please complete and/or rectify the attached application as indicated below as soon as possible and in any event by



Your initial application should be completed and/or rectified in the language or in one of the languages accepted by the court seised. The court will reject the application, under the conditions provided for in the Regulation, if you fail to complete and/or rectify the application within the time limit set out above.

Your application has not been filled in in the correct language. Please fill it in in one of the following languages:

| | | | | |
|--------------|-------------|---------------|---------------|---------------------------|
| 01 Bulgarian | 06 Greek | 11 Lithuanian | 16 Portuguese | 21 Swedish |
| 02 Czech | 07 French | 12 Hungarian | 17 Romanian | 22 English |
| 03 German | 08 Croatian | 13 Maltese | 18 Slovak | 23 other (please specify) |
| 04 Estonian | 09 Italian | 14 Dutch | 19 Slovene | |
| 05 Spanish | 10 Latvian | 15 Polish | 20 Finnish | |

| Language code | Language specification (only for code 23) |
|----------------------|---|
| <input type="text"/> | <input type="text"/> |

The following items must be completed and/or rectified:

Codes:

| | | | |
|--------------------------------------|-----------------|--------------------------|--------------------------|
| 01 Parties and their representatives | 04 Bank details | 07 Contractual penalties | 10 Additional statements |
| 02 Grounds of jurisdiction | 05 Principal | 08 Costs | 11 Signature |
| 03 Cross-border nature of the case | 06 Interest | 09 Evidence | |

| Code | Please specify |
|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> |
| Code | Please specify |
| <input type="text"/> | <input type="text"/> |

Modification of the application

Art 10 (1) EOPP:

If the requirements referred to in Article 8 are met for only **part of the claim**, the court shall **inform** the claimant to that effect, using **standard form C**.

- Invitation to **accept or refuse a proposal** for a European order for payment for the amount specified by the court.
- Claimant: **returning** standard form C
 - Time limit: 30 days

Form C

After examination of your application for a European order for payment, the court considers that the necessary requirements are met for only a part of the claim. Therefore, the court proposes the following modification to the application:

Please send your reply to the court as soon as possible and in any event by

If you fail to send your reply to the court within the time limit set out above or refuse this proposal, the court will reject your application for a European order for payment, under the conditions provided for in the Regulation, in its entirety.
If you accept this proposal, the court will issue a European order for payment for that part of the claim. It depends on the national law of the Member State where the court is seised whether you will be able, in further proceedings, to recover the remaining part of your initial claim not covered by the European order for payment.

| | | |
|---|---|------------|
| <input type="checkbox"/> I accept the above proposal by the court | <input type="checkbox"/> I refuse the above proposal by the court | |
| Corporate name of company or organisation | Surname | First name |
| | | |

Modification of the application

Consequences of acceptance

- Court shall **issue a European order for payment**, for that part of the claim accepted by the claimant.
- Remaining part of the initial claim: national law

Consequences of refusal

- Court shall **reject the application** for a European order for payment in its entirety.
- No right of appeal against the rejection

Rejection of the application

Art 11 (1) EOPP: The court shall reject the application if

- the requirements set out in **Articles 2, 3, 4, 6 and 7** are not met; or
- the claim is **clearly unfounded**; or
- the claimant fails to send his reply within the time limit specified by the court under Art 9 (2) EOPP
(= **completion and rectification of application**); or
- the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Art 10
(= **modification of application**).

Art 11 (2) EOPP: no right of appeal against rejection.

Art 11 (3) EOPP: new application for a EOP or other national procedure possible

Form D

The court has examined your application for a European order for payment, in accordance with Article 8 of Regulation (EC) No 1896/2006 and rejects it on the following ground(s):

- 01 The application does not fall within the scope of Article 2 of the Regulation (Article 11(1)(a)).
- 02 The application does not concern a cross-border case within the meaning of Article 3 of the Regulation (Article 11(1)(a)).
- 03 The application does not concern a pecuniary claim for a specific amount that has fallen due as referred to in Article 4 of the Regulation (Article 11(1)(a)).
- 04 The court does not have jurisdiction in accordance with Article 6 of the Regulation (Article 11(1)(a)).
- 05 The application does not fulfil the requirements set out in Article 7 of the Regulation (Article 11(1)(a)).
- 06 The claim is clearly unfounded (Article 11(1)(b)).
- 07 The application was not completed or rectified within the time limit specified by the court (Article 9(2) and Article 11(1)(c)).
- 08 The application was not modified within the time limit specified by the court (Article 10 and Article 11(1)(d)).

Ground(s) for rejection (please use code)

| Code | Further information, where necessary |
|----------------------|--------------------------------------|
| <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> |
| <input type="text"/> | <input type="text"/> |

There is no right of appeal against this rejection. However, this does not preclude a new application for a European order for payment or any other procedure available under the law of a Member State.

Issue of a European order for payment

Art 12 (1) EOPP: If the requirements referred to in Article 8 are met, the court shall **issue**, as soon as possible and normally within 30 days of the lodging of the application, a **European order for payment** using **standard form E**.

Options of the defendant

- **pay the amount** indicated in the order to the claimant; or
- oppose the order by lodging with the court of origin a **statement of opposition** (within 30 days of service).

Issue of a European order for payment

Defendant shall be informed that:

- Order was not **verified by the court**
- Order will become **enforceable** unless a statement of opposition has been lodged
- Where statement of opposition is lodged → **proceedings shall continue before competent courts of the Member State of origin.**

Service: national law (minimum standards in Art 13, 14 and 15)

Service

Art 13 EOPP: Service with proof of receipt by the defendant

The European order for payment may be served on the defendant by one of the following methods:

- **personal service** attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;
- **personal service** attested by 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;
- **postal service** attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant;
- **service by electronic means** such as fax or e-mail, attested by an acknowledgement of receipt, including the date of receipt, which is signed and returned by the defendant.

Service

Art 14 (1) EOPP: Service without proof of receipt by the defendant

The European order for payment may also be served on the defendant by one of the following methods:

- **personal service** at the defendant's personal address on **persons who are living in the same household** as the defendant or are employed there;
- 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**;
- **deposit** of the order in the defendant's **mailbox**;
- **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;
- **postal service** without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin;
- **electronic means** attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.

Service

Art 15 EOPP: Service on a representative

Service according to Articles 13 or 14 may also be effected on a defendant's representative.

Service

Language:

- no explicit rule in the EOPP
- protection is provided by Art 8 of the Regulation (EC) No 1393/2007
(Regulation on the service of documents)

Art 8 (1): Refusal to accept a document

The receiving agency shall inform the addressee, using the standard form set out in Annex II, that he may **refuse to accept the document** to be served at the time of service or by returning the document to the receiving agency **within one week** if it is not written in, or accompanied by a translation into, either of the following languages:

- a language which the **addressee understands**; or
- the **official language** of the **Member State addressed** or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

Art 8 (2):

Where the receiving agency is informed that the addressee refuses to accept the document in accordance with paragraph 1, it shall immediately **inform** the transmitting agency by means of the certificate provided for in Article 10 and return the request and the documents of which a translation is requested.

Service

Language:

Art 8 (3):

If the addressee has refused to accept the document pursuant to paragraph 1, the **service of the document** can be remedied through the service on the addressee in accordance with the provisions of this Regulation of the document accompanied by a **translation** into a language provided for in paragraph 1. In that case, the date of service of the document shall be the date on which the document accompanied by the translation is served in accordance with the law of the Member State addressed. However, where according to the law of a Member State, a document has to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document determined pursuant to Article 9(2).

Opposition to the European order for payment

Art 16 EOPP: The defendant may lodge a **statement of opposition** to the European order for payment with the court of origin using **standard form F**, which shall be supplied to him together with the European order for payment.

- Within **30 days** of service of the order
- Defendant shall indicate that he **contests the claim** (no special reasons required)
- In **paper form** or by any **other means of communication**
- Signed by defendant or representative

Effect of the lodging of a statement of opposition

Art 17 EOPP:

If a statement of opposition is lodged within the time limit laid down in Article 16 (2), the proceedings shall **continue before the competent courts of the Member State of origin** unless the claimant has explicitly requested that the proceedings be terminated in that event.

The proceedings shall continue in accordance with the rules of:

- European Small Claims Procedure, if applicable; or
- any appropriate national civil procedure.

Form A

Appendix 2 to the application for a European order for payment

Further procedure in a case of lodging of a statement of opposition

Codes

01 If the defendant lodges a statement of opposition, I request that the proceedings **discontinue**.

02 If the defendant lodges a statement of opposition, I request that the proceedings **continue in accordance with the rules of the European Small Claims Procedure, if applicable**.

03 If the defendant lodges a statement of opposition, I request that the proceedings **continue in accordance with any appropriate national civil procedure**.

Case number (to be completed if this Appendix is sent to the court separately from the application form):

Corporate name of company or organisation

Surname

First name

Code

If despite of my choice above, my claim does not fall in the scope of the European small claims Procedure (Code 02), I request that the proceedings

discontinue

continue in accordance with any appropriate national civil procedure

Done at

Date (day/month/year)

Signature and/or stamp

Enforceability

Art 18 EOPP:

If within the time limit laid down in Article 16 (2), taking into account an appropriate period of time to allow a statement to arrive, **no statement of opposition** has been lodged with the court of origin, the court of origin shall without delay **declare the European order for payment enforceable** using **standard form G**. The court shall verify the date of service.

- **Formal requirements:** law of the Member State of origin
- Court shall send the enforceable European order for payment to the claimant.

Abolition of exequatur

Art 19 EOPP:

A European order for payment which has become enforceable in the Member State of origin shall be **recognised and enforced** in the other Member States **without the need for a declaration of enforceability** and without any possibility of opposing its recognition.

Review in exceptional cases

Art 20 (1) EOPP:

After the expiry of the time limit 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.

- **Incorrect service:**
 - order for payment was **served** by one of the methods provided for in Article 14 and
 - service was **not** effected in **sufficient time** to enable the defendant to arrange for his defence, **without any fault on his part.**
 - **Force majeure or extraordinary circumstances:**
 - without any fault on the defendant's part.
- defendant must act promptly (= within a time limit of 14 days).

Review in exceptional cases

Art 20 (2) EOPP:

After expiry of the time limit 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**.

- Only obvious substantial defects
- Additional legal remedy
- No time limit

Review in exceptional cases

Proceedings

- **Competent court:** The court responsible for conducting the order for payment is also responsible for the review under Art 20 EOPP.
- Explicit application for a review
- Obligation to be **represented by a lawyer** depends on **national law**
- If review is not justified → rejection of application; EOP remains in force
- If review is justified → European order for payment shall be **null and void**.
 - **Art 20 (1) EOPP:** transfer to the ordinary procedure shall be initiated.
 - **Art 20 (2) EOPP:** application shall be rejected immediately. No transfer to the ordinary procedure is possible.
However, the claimant may assert his claim again pursuant to Art 11 (3) EOPP.

Enforcement

Art 21 EOPP: Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the **law of the Member State of enforcement.**

→ **equality with domestic titles**

Required documents:

- **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
- where necessary, a **translation** of the European order for payment into the official language or one of the official languages of the Member State of enforcement.

Prohibition of discrimination:

No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

Refusal of enforcement

Art 22 (1) EOPP: 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** and was 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.

Art 22 (2) EOPP: Enforcement shall, upon application, also be refused if and to the extent that the **defendant has paid the claimant the amount awarded** in the European order for payment.

Art 22 (3) EOPP: Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.

Stay or limitation of enforcement

Art 23 EOPP:

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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Thank you for your attention!