

The European order for payment procedure

Facilitating Cross-Border Debt Recovery in Europe

Trieste November 2021

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1. Introduction to the Regulation

Background

- R. 1896/2006 creating a European order for payment procedure is part of the procedural law of the European Union.
- The legislation ultimately aims at achieving the objective of “free movement of judgments” in civil and commercial matters. By strengthening creditors’ rights in the European Union, trade between the Member States will benefit.
- The aim is achieved either through simplified procedures for recognition and enforcement of judgements from other Member States, or by creating common EU civil procedures.
- Denmark. Brexit.

What is the European Payment Order?

- A simplified, swift and inexpensive procedure – common for the entire EU (except for Denmark) – for the recovery of uncontested money claims in cross-border cases.
- An alternative to procedures provided for by national law.
- Enforceable throughout the EU (except for Denmark).
- A written procedure where the claimant, the Court and the defendant communicate through standardised forms.

Why use the European Payment Order procedure?

- Accessible: Easier to understand than national procedures.
- Simplified standard forms.
- Swift: the Regulation provides for set time limits.
- Easier to get enforced than a national court order/judgement.

Interpretation of the Regulation

- The Regulation is to be interpreted autonomously, i.e. in the same way in all Member States.
- Case law on the Brussels I regulation can provide guidance as to the interpretation of international procedural law concepts.
- Article 26: All procedural issues not specifically dealt with in the regulation are governed by national law.
 - Swe: The Enforcement Code (1981:774)
 - Swe: The Act (1990:746) on Orders for Payment and Administrative Assistance

Material scope

- Article 4: The Regulation is applicable for the collection of pecuniary claims for specific amounts that have fallen due at the time when the application for a European order for payment is submitted.
- Article 2: The Regulation is only applicable to civil and commercial matters.
 - Mainly ordinary contract claims.
- Articles 2 and 3: The Regulation applies to so-called cross-border cases.

Territorial and temporal scope

- Applicable in all Member States, except Denmark.
- Does not apply in the UK since Brexit.
- Applicable since 12 December 2008.

2. Overview

Overview of the procedure

1. The claimant applies to the court which has jurisdiction (e.g. where the defendant is domiciled) using the standard form. (Article 7.)
2. The court examines the application, and if the form is filed correctly, the court should issue the European payment order within 30 days. (Articles 8, 12.)
3. The European payment order is then served on the defendant. (Articles 13-15.)
4. If the defendant does not oppose the claim within 30 days, the court shall without delay declare the European order for payment enforceable. (Article 18.)
5. The enforcement order is then enforceable in all Member States and the defendant may only hinder enforcement in exceptional cases. (Articles 21-23.)

1. Application: Competent Court

- Article 5: Any public authority with competence regarding European orders for payment is considered a court for the purposes of the regulation.
- Article 6: Jurisdiction is determined in accordance with the Brussels I regulation.
 - Main rule: Defendant's domicile (B-I art 4).
 - Agreement: Place of performance, (i) goods-place of delivery (ii) services-place of provision (B-I art 7).
 - (Torts: Where the harmful event occurred [B-I art 7].)
- Exception for consumers (only the consumer defendant's domicile).

1. Application: E-justice service



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Sweden	United Kingdom

1 Existence of an order for payment procedure

Yes, in Sweden you can apply for a payment order (*betalningsföreläggande*) to the Enforcement Authority (*Kronofogdemyndigheten*). You should send your application to

Kronofogdens inläsningscentral [Enforcement Authority Input Centre], Supro, Luleå, FE 7502, 105 81 Stockholm.

More information is available on the [Enforcement Authority website](#) in Swedish, English, Finnish, North Sami, Polish, Arabic and Farsi.

1.1 Scope of procedure

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

An application for a payment order must relate to an obligation on the defendant to pay a financial debt. The debt must be overdue and mediation must be permissible in the case.

1.1.2 Is there an upper limit regarding the value of the claim?

No, claims may be heard regardless of the amount involved.

1.1.3 Is the use of that procedure optional or obligatory?

It is not obligatory to apply for a payment order. A summons before the district court (*tingsrätt*) may be sought instead.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

The option of using the payment order procedure is based on the assumption that the defendant is resident in Sweden, but it is also possible to apply for a payment order against a defendant who is resident outside Sweden. A decision on an application for a payment order can be enforced in other EU Member States in accordance with the [Brussels I Regulation](#) (Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

1.2 Competent court

Applications must be submitted to the Enforcement Authority.

1. The application

- Article 7 stipulates which information the application shall contain, which is also specified in standard form A, inter alia:
 - a. The amount of the claim, including interest,
 - b. The cause of the action including a description of the circumstances invoked,
 - c. A description of evidence supporting the claim,
 - d. The grounds for jurisdiction.
- What languages are accepted is determined by national law.
- It is not mandatory to be represented by a lawyer.
- The application may always be submitted physically, but sometimes electronically.
- Court fees.

2. Examination of the application

- Article 8: The Court's examination of the application is limited to:
 1. Assessing whether it meets the formal requirements, and
 2. A summary examination of the grounds for the application.
- Article 9: Request to complete or rectify the application (standard form B, Annex II).
- Article 10: Proposal to modify the application where only part of the requirements set out in Article 8 are met (standard form C, Annex III).
- Article 11: Rejection of the application.
- Article 12: Issuance of a European order for payment and service on the defendant (standard form E, Annex V).

3. Service on the defendant

- Article 12.5: Served on the defendant in accordance with national law by a method that shall meet the minimum standards of the Regulation.
- Article 13: Service with proof of receipt by the defendant or the defendant's representative.
- Article 14: Service without proof of receipt by the defendant or the defendant's representative.
- The defendant may refuse to accept the payment order if it is not in a language which he understands or in an official language in the Member State where service is effected.

4. The defendants' options

- A defendant may choose to:
 1. Lodge a statement of opposition to the European order for payment within 30 days of service of the order on the defendant, or
 2. Not to oppose it (accept it or not respond at all).
- Article 17: The effect of opposition is that the proceedings shall continue before the court in 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.
- Article 18: The effect of non-opposition of the European order for payment is that the court declares the EOP enforceable.

5. Enforceability

- The European order for payment is enforceable in the Member State of origin.
- The order shall also be recognised and enforced in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

5. Review in exceptional cases

- Article 20: The defendant is entitled to apply for a review in the Member State of origin where:
 - a) Service was not effected in sufficient time to enable the defendant to arrange for his defence, without any fault on his part.
 - 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.
 - c) The order for payment was clearly wrongly issued or due to other exceptional circumstances.

5. Enforcement in other Member States

- Article 21: 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. The enforcement procedure is governed by the law of the Member State of enforcement.
- The following shall be provided to the competent enforcement authorities of the other Member State:
 1. A copy of the European order for payment , and
 2. Where necessary, a translation of the European order for payment into the official language of the Member State of enforcement, or another language that the Member State of enforcement accepts.

5. Refusal of enforcement

- Article 22: The defendant has the possibility to apply for refusal 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 third country (*res judicata*).
- Ordre public and/or incorrect service cannot be raised as grounds for refusal.
- The procedural law of the Member State at issue regulates how the defendant should go about making an application for refusal.

5. Enforcement: Stay or limitation of enforcement

- Article 23: The defendant may apply for a stay or limitation of enforcement of the European order for payment where the defendant has applied for a review in accordance with Article 20.
- In such cases, the competent court in the Member State of enforcement may:
 - 1) Limit the enforcement proceedings to protective measures; or
 - 2) Make enforcement conditional on the provision of such security as it shall determine; or
 - 3) Under exceptional circumstances, stay the enforcement proceedings.

Summary and concluding remarks

Further information

- The Commission's E-justice portal: <https://e-justice.europa.eu/home.do>
- The Commission's Practice Guide for the application of the Regulation on the European Order for Payment