



Regulation (EC) 1896/2006 of 12 December 2006 creating the European order for payment procedure (EOP)

PERFORMANCE AND MAIN ISSUES

Scope

- ▶ To ensure swift and efficient recovery of outstanding debts,
- ▶ This procedure is uniformly applicable in the different Member States. It is autonomous, optional and
- ▶ additional to the national procedures.
- ▶ This European procedure does not substitute itself for the existing national procedures and is optional in consideration of the other existing European mechanisms –
- ▶ its purpose *“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”*.
- ▶ The regulation in fact abolishes the exequatur: the order for payment is recognised and enforceable in all Member States.

INTRODUCTION

Does mark the Regulation a major milestone in the European judicial cooperation?

It improves some previous regulations (i.e. Regulation (EC) No. 805/2004 establishing a European Enforcement Order for uncontested claims), without relevant methodologies nor major contributions,

Lacks some technical deficiencies:

- a) Contradictions
- b) Interpretative difficulties
- c) Exceptional appeals

Achievements

- ▶ Legislative form adopted to ensure full compliance with European procedural principles (Regulation)
- ▶ Follow-up of previous regulations to gain uniformity
- ▶ Abolition of *exequatur* and other intermediate procedures
- ▶ Automatic recognition of foreign decisions
- ▶ No ways to refuse enforcement (except n° 2 Regulation)
- ▶ Abolition of duality of systems provided by the art. 7, EC1348/2000 on formal notifications
- ▶ Use of forms
- ▶ Potestative use
- ▶ Same procedure throughout the European territory
- ▶ Equal protection of rights throughout the EU territory
- ▶ Provision about Court fees
- ▶ Procedure for remedy deficiencies
- ▶ Clear procedure to determine jurisdiction

Drawbacks and Difficulties

- ▶ Extent of the evaluation competences to examine the EOP
- ▶ Susceptibility of actions against rejection of an EOP
- ▶ Notification of the EOP
- ▶ Delimitation of subsequent ordinary civil procedure
- ▶ Appeal in exceptional cases
- ▶ Enforcement of EOP...

...Scarce use

- ▶ Despite being in force for 15 years, it appears to be not well known by professionals and citizens in general. As with other instruments of international legal cooperation, its use is scarce, and in most cases, due to ignorance. Some professionals are not familiar with the procedure, and is not “friendly” to them. However, the progress made by this procedure is huge, saving a lot of time and money for professionals, citizens and the Administration of Justice.

Extent of evaluation for the courts of the country of origin (I)

- ▶ (Art. 8):
 - ▶ Examine, as soon as possible, the petition
 - ▶ Verify if conditions laid down in #2, 3, 4, 6 and 7 are met
 - ▶ Verify if the application is well grounded
- ▶ Practical activities:
 - ▶ subsumption of the application within the scope of the Regulation, excluding matters specified in Article 2(2) of EC No 44/2001
 - ▶ whether it has jurisdiction, following EC No. 44/2001
 - ▶ if the debt claim meets the conditions on amount, expired date and enforceability
 - ▶ if the application fulfils the requirements of Article 7 regarding forms

Extent of evaluation for the courts of the country of origin (II)

- ▶ “if the application is well grounded”
- ▶ Indetermined concept
- ▶ Art. 12,4: “the defendant shall be informed in the EOP that the injunction was issued solely on the basis of the information provided by the applicant, without having been verified by the court”.
- ▶ #16 Preamble: “The court should examine the application, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the application form. This would allow the court to **examine prima facie** the merits of the claim and *inter alia* to **exclude clearly unfounded claims or inadmissible applications**. The examination should not need to be carried out by a judge”
- ▶ Art° 11:” The court shall reject the application if... **(b) the claim is clearly unfounded”**

Extent of evaluation for the courts of the country of origin (III)

- ▶ The CJEU interprets art. 38 of the Charter of Fundamental Rights of the EU, which provides that: "The policies of the Union will guarantee a high level of consumer protection", as to this consequence:
 - ▶ 1) the courts examining a petition of EOP can request the creditor additional information on the contractual clauses to control their eventual abusiveness, and
 - ▶ 2) should the conjunction of European precepts oppose a national rule, this last should prevail.
- ▶ The CJU assumes that, despite the initially pure or undocumented nature of the EOP, when used by professionals against consumers, the court should control the abusiveness of the contractual clauses that ground the claim; it is necessary then for the petitioner to present the contract, and for the judicial body to request this if it has not been made from the start. Otherwise, the abusive nature of the clauses could not be examined, which is considered harmful to Directive 93/13 (arts. 6.1 and 7.1) and the Charter of Fundamental Rights of the EU (art. 38). It is thus understood that these precepts are above the regulatory norms that design the EOP as a non-documentary process, preventing it from becoming a channel used by professional creditors to avoid the abusive control of the contracts they sign with consumers.

Actions against rejection of the application

Art. 11 . *“There shall be no right of appeal against the rejection of the application”*

#17 Preamble: “There is to be no right of appeal against the rejection of the application. This does not preclude, however, a possible review of the decision rejecting the application **at the same level of jurisdiction** in accordance with national law.”

Art.11,3. “The rejection of the application shall not prevent the claimant from pursuing the claim by means of a new application for a European order for payment or of **any other procedure available under the law of a Member State.**”

Appeals to a superior level Court or Tribunal

Countries with administrative organs to decide applications

AIM

- ▶ Set out in Article 1:
 - ❖ To simplify and speed up the debt-recovery of claims by the debtor in cross-border cases between EU countries.
 - ❖ To allow the recognition, free circulation and enforcement of European orders for payment in all EU countries.

Five Steps Procedure

- ▶ Step 1: application form
- ▶ Step 2: The court examines application
- ▶ Step 3: the judge issues a European Order for Payment within thirty days of the application.
- ▶ Step 4: the other party opposes the decision
- ▶ Step 5: the other party must proceed with payment

- ▶ Subject matter
- ▶ 1.
- ▶ The purpose of this Regulation is:
- ▶ (a)
- ▶ 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
- ▶ (b)
- ▶ 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.
- ▶ 2.
- ▶ This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law.



- ▶ Scope

- ▶ 1.

- ▶ 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').

Main issues of the EOP

- ▶ The main problem is that many European orders for payment remain paralyzed in their subsequent **enforcement**. Taking into account that the order for payment has to be enforced in the debtor's country. So unless there is voluntary payment, in the end the creditor the creditor will have to sue the debtor abroad.

Transnational element

- ▶ We have been finding how many companies that usually operate in Spain, that have a branch in Spanish territory (in most cases their activity is the sale of credits), but that have registered offices in other countries of the European Union. They even designate an attorney with address in Spain. Leaving aside the issue of filing a claim by attorney-in-fact, which deserves a more extensive comment, I understand that in these cases the transnational requirement, which is the foundation of the rule, is breached. Therefore, it is possible to reject such procedures because one of the parties is not domiciled in a Member State other than the one in which the claim is filed.

Decision of the Court of Justice of the European Union.

- ▶ The jurisprudence of this court is reiterated, which indicates that the courts must be able to control ex officio the possible abusive nature of the clauses of the contracts whose effectiveness is to be enforced and to which consumers have adhered, as a way of correcting the imbalance that these suffer with respect to the professionals who have predisposed such clauses (thus, for example, the SSTJUE of June 4, 2009, as. C-243/08, Pannon GSM, ap. 32, and of September 13, 2018, as. Profi Credit Polska, as. C-176/17, p. 42). There are also pronouncements of the CJEU that are contrary to the rules of domestic law in which the issuance of a request for payment in a national order for payment is allowed without the judge having been able to previously examine the possible abusiveness of the clauses of the contract that has motivated the claim (see especially the last sentence cited, section 71). And if this happens in the national payment documents, the same must apply to the European payment documents. In form A of the RPME, a section is provided for the creditor to indicate the means of proof available to him, including documentaries (field 10); In addition, there is another space to add additional information (field 11), where it is possible to reproduce the contractual clauses that are intended to be effective. By virtue of arts. 7.1 and 9.1 of the same Regulation, the judicial body must be able to ask the creditor for additional information on the clauses it invokes, such as the reproduction of the contract or a copy of it, in order to examine whether such clauses are abusive or not, in accordance with the arts. 6.1 and 7.1 of Directive 93/13; since a contrary interpretation of art. 7.2, d) and e) RPME "could allow creditors to evade the requirements derived from Directive 93/13 and from Article 38 of the Charter" (section 51 of the judgment we are commenting on). In addition, the CJEU has recently declared (in its judgment of November 7, 2019, as. C-419/18 and C-483/18, Profi Credit Polska, ap. 68), that "the fact that a national judge requires the plaintiff to provide the content of the document or documents on which his claim is based is simply a part of the evidentiary stage of the process, since this requirement has the sole purpose of determining whether the claim is well founded", which, in the opinion of this court does not violate the device principle, in its statement regarding the consistency of the sentence. And if the courts may require a copy of the contract or the reproduction of the clauses that apply, in accordance with European norms and jurisprudence, the national norms that discipline the application of the European order for payment procedure in a State cannot declare that documentation inadmissible when be provided as a complement to form A.

REVIEW OF AN ENFORCEABLE ORDER FOR PAYMENT IS NOT
ADMISSIBLE WHEN BASED ON GROUNDS THAT THE
DEFENDANT MIGHT HAVE TAKEN INTO ACCOUNT IN
ORDER TO LODGE A STATEMENT OF OPPOSITION

- ▶ ECJ Judgment of 22 October 2015 rules that, in the context of a European order for payment procedure, a defendant willing to contest jurisdiction on grounds of an agreement conferring jurisdiction to another Member State shall lodge a statement of opposition under article 16 of Regulation 1896/2006; and, if he or she fails to do so, once the European order for payment has become enforceable, no review of the order will be granted on the very same grounds under article 20.2 of Regulation 1896/2006. This interpretation may lead to the conclusion that failure to lodge a statement of opposition shall have devastating preclusive consequences for a defendant within a European order for payment procedure.