

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,
- ▶ 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 recognized and enforceable in all Member States.

Five Steps Procedure

1

Step 1:
application
form

2

Step 2: The
court
examines
application

3

Step 3: the judge
issues a European
Order for
Payment within
thirty days of the
application.

4

Step 4: the
other party
opposes the
decision

5

Step 5: the
other party
must proceed
with payment

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 way 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
- ▶ Proceedings to continue after opposition
- ▶ Review 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 (19/12/2019) 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.

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

- ▶ 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

Service of the EOP

- ▶ Preamble(19): *"Due to differences between Member States' rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of minimum standards that should apply in the context of the European order for payment procedure. In particular, as regards the fulfilment of those standards, any method based on legal fiction should not be considered sufficient for the service of the European order for payment"*
- ▶ Preamble (21): *"Personal service on certain persons other than the defendant himself pursuant to Article 14(1)(a) and (b) should be deemed to meet the requirements of those provisions only if those persons actually accepted/received the European order for payment."*
- ▶ Article 12(5) requires the court to ensure that the defendant is served in accordance with national law in a manner which meets the minimum requirements contained in Articles 13, 14 and 15
- ▶ ...but methods a) d),e) and f) (art. 14) hardly ensure that the EOP has come to the attention of the addressee.

Proceedings to continue after opposition

- ▶ Expected solution: follow the proceedings of the country of origin
- ▶ Preamble (24): *“For the purposes of this Regulation the concept of ordinary civil proceedings should not necessarily be interpreted within the meaning of national law.”*
- ▶ Is there an European meaning of “ordinary civil proceeding”?
- ▶ The right solution should be to follow the relevant proceedings in accordance with the member State of origin.
- ▶ Labour cases

Review in exceptional cases (I)

- ▶ Art 20 (1) 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 where:
 - ▶ (a)
 - ▶ (i) the order for payment was served by one of the methods provided for in Article 14, and
 - ▶ (ii) service was not effected in sufficient time to enable him to arrange for his defense, 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.

- ▶ TIME : Art. 20(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; **no time limit***
- ▶ SUBSTANTIATION: Art. 20(2)
 - ▶ *“...the order for payment was clearly wrongly issued”*
 - ▶ *...or due to other exceptional circumstances.”*
- ▶ REGARDING OPPOSITION
 - ▶ Compatibility?
- ▶ APPEAL of the decision on the review?


Review in
exceptional
cases (II)

Enforcement procedure (I)

- ▶ Governed by the law of the Member State of enforcement
- ▶ Shall be refused if the EOP is irreconcilable with an earlier decision or order previously given in any Member State or in a third country provided that:
 - ▶ a) the earlier decision or order involved the same cause of action between the same parties;
 - ▶ (b) the earlier decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement;
 - ▶ (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.
- ▶ Shall also be refused if the defendant has paid the claimant the amount awarded

Enforcement procedure (II)

- ▶ Provisions Art. 22,1: hardly to happen except in the event of duplication of orders.
- ▶ Cause of suspension more than refusal
- ▶ It is not explicitly set out who are the **competent enforcement authorities** in the information to be provided by the Member States pursuant to Article 29 of the Regulation to the Commission. Art 28 establishes Member States shall **cooperate** to provide the general public and professional circles that information.
- ▶ Stay or limitation of enforcement “under exceptional circumstances” (Art. 23, c)

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- ▶ 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, unless there is voluntary payment, in the end the creditor will have to sue the debtor abroad.

Enforcement procedure (III)

(2016/2011 (INI)) Report about the EOP by the European Parliament (I)

- ▶ 3. Regrets the lack of a comprehensive assessment of its impact in each Member State, in accordance with the provisions of Article 32 of Regulation (EC) No 1896/2006; deplores the lack of up-to-date data in this report on the situation in the Member States regarding the operation and application of the European order for payment procedure;
- ▶ 4. Regrets also that the use of the European order for payment procedure varies significantly from one Member State to another; stresses in this regard that, despite the simplified modern procedure offered by Union legislation, the differences in application in the Member States and the advisability of opting for national legislation rather than the European order for payment procedure prevent maximizing the results of the application of Regulation (EC) No 1896/2006, which means that European citizens cannot exercise their rights at cross-border level, which entails the danger of diminishing confidence in Union law;
- ▶ 5. Notes that individuals use the process more frequently and are better informed about it in Member States which have similar instruments at national level;

(2016/2011 (INI)) Report about the EOP by the European Parliament (II)

- ▶ 6. Considers that practical measures should be taken to continue informing Union citizens, businesses, legal professionals and other interested parties about the availability, operation, application and benefits of the European order for payment procedure in cross-border cases; stresses, furthermore, that it is necessary to assist citizens and in particular small and medium-sized enterprises to improve their use, understanding and knowledge of the existing legal instruments with a view to the cross-border enforcement of credit claims. compliance with relevant Union legislation;
- ▶ 7. Stresses the need for the Member States to provide the Commission with accurate, comprehensive and up-to-date information for effective monitoring and evaluation;
- ▶ 8. Encourages Member States to endeavor to formulate requirements within 30 days, accepting applications in foreign languages to the extent possible, as translation requirements have a negative impact on cost and the processing times of the procedure;

(2016/2011 (INI)) Report about the EOP by the European Parliament (III)

- ▶ 9. Fully supports the work undertaken to allow future electronic filing of applications for the application of the European order for payment procedure; therefore calls on the Commission, in this context, to promote the use of the e-Codex pilot project and to extend it to all Member States, following a study carried out by the Commission on the feasibility of electronic applications for European payment requirements;
- ▶ 10. Calls on the Commission to adopt updated standard forms, as requested, in order to better provide for an appropriate description of the interest to be paid on credits, inter alia;
- ▶ 11. Considers that a future revision of the Regulation should contemplate the elimination of certain exceptions to the scope of the process and the revision of the provisions on the revision of European payment orders;

Thank you very much