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Practical cases on European order for payment procedure

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The German Office Furniture

- Mr. Grönlund, a Swedish national, domiciled in the picturesque Medieval town of Sigtuna (in the vicinity of Stockholm) is a legal consultant with his own firm (Grönlund Juridik AB, hereinafter Grönlund). Usually Mr. Grönlund works in his office in the city centre of Sigtuna. Socially distancing himself during the Corona pandemic he works from his summer-home in the archipelago of Stockholm since March 2020. Shortly before relocating he orders some exclusive office furniture for his firm from the German manufacturer Schmittl Büromöbel Produktions- und Vertriebs GmbH in Düsseldorf (hereinafter the German company).



- The grand total is € 24 000 to be payed after delivery. The furniture is duly delivered. However, Mr. Grönlund forgets all about the German invoice. After two months, the German company submits an application for a European order for payment with a court in Düsseldorf. The court issues a European order for payment.
- **Question 1:** Can the European order for payment be enforced in Sweden against Grönlund Juridik AB (Grönlund)? If so, how? If not, why?



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- **Article 2** – Civil and commercial matters case
- **Article 3** – Cross border case
- **Article 4** – Pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted
- **Article 33(2)** – Temporal issue



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- *The perspective of the German court of origin.*
- *The perspective of the enforcing Member State(s).*
- *The perspective of the German applicant.*
- *The perspective of the competent enforcement authority.*



1. The perspective of the German court of origin

- **Before declaring the European order for payment enforceable, should the German court of origin do something?**
- Unless Grönlund lodges a statement of opposition pursuant to Art. 16(1) (using standard form F as set out in Annex VI to the Regulation) within 30 days of service of the order on the defendant, taking into account an appropriate period of time to allow a statement to arrive and after the verification of the date of service, the German court of origin shall, without delay, declare the European order for payment enforceable according to Art. 18(1) of the EOP Regulation.



- **Article 18 - Enforceability**

- 1. 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 as set out in Annex VII. The court shall verify the date of service.
- 2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.
- 3. The court shall send the enforceable European order for payment to the claimant.



- **Does German company have to apply for a declaration of enforceability?**
- **To whom should the court send the enforceable European order for payment?**
- Under Art. 18(3) of the EOP Regulation, the court shall send the enforceable European order for payment to the claimant, the German company. The Regulation does not contain any provisions that the enforceable European order for payment is also sent to the defendant Grönlund. This may, however, occur under national law, i.e. under the law of the Member State of origin = German law.
- **Can a decision to declare European order for payment enforceable be appealed or re-opened?**



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- **Article 19 - Abolition of exequatur**
- 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.



2. The perspective of the enforcing Member State(s).

- **What about the perspective of the enforcing Member State(s) regarding the said article or important information?**
- After the German court has declared the European order for payment enforceable it shall be recognised and enforced in Sweden, or in any other Member State for that matter, without a need for a declaration of enforceability and without any possibility of opposing its recognition according to Art. 19 of the EOP Regulation. Hence, the Regulation abolishes exequatur for European payment orders declared enforceable in the Member State of origin under Art. 18 of the EOP Regulation. The simplified way of enforcement is a token of European mutual trust.



3. The perspective of the German applicant.

- **How should German applicant proceed in order to enforce the European order for payment in Sweden?**
- In order to enforce the European order for payment in Sweden, the German company must apply to Swedish enforcement authorities, cf. Art. 21(1). (In Sweden, there is only one enforcement authority, Kronofogdemyndigheten.) Art. 21(2) of the EOP Regulation specifies that the applicant must produce a copy of the European order for payment, declared enforceable by the German court of origin, which satisfies the conditions necessary to establish its authenticity.



- **Language of European order for payment procedure?**
- Where necessary, the European order for payment shall be translated into a language/s accepted in Sweden.
- **Can security, bond or deposit can be required from German applicant?**
- No security, bond or deposit can be required in Sweden of the German claimant just because it is foreign, see Art. 21(3). At this point, the EU principle of non-discrimination is perceptible.



4. The perspective of the competent enforcement authority.

- **Which national law is applicable?**
- **Is European order for payment equivalent to decision issued in the Member State of enforcement?**
- Art. 21(1) second paragraph of the EOP Regulation underlines the fact that 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, i.e. the European order for payment shall be enforced in the same way as a domestic Swedish decision. This signifies the principle of equivalence: the same remedies and procedural rules should be available to claims based on EU law as are extended to analogous claims of a purely domestic nature.



- **Article 21 - Enforcement**

- 1. Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement. 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.
- 2. For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:
 - (a) 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
 - (b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.
- 3. 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.



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- The answer to, and the point of departure in, the first question is thus that the European order for payment can be enforced in Sweden.
- **Scenario I:**
- Grönlund also has assets in Denmark.
- **Question 2:** Can the European order for payment be enforced in Denmark against Grönlund under the EOP Regulation?



- **Answer:** The Regulation applies to all Member States of the European Union, save Denmark. According to Art. 2(3) of the EOP Regulation, the term “Member State” shall mean Member States with the exception of Denmark. The reason is explained in recital 32 to the Preamble of the EOP Regulation.
- **Recital 32 to the Preamble:** In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Regulation, and is not bound by it or subject to its application.



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- **Can a German company obtain Grönlund's property in Denmark? If so, how? If not, why not?**
- This Regulation is an alternative to procedures provided by national law or procedures provided by the Regulation (EU) No 1215/2012. Therefore, when it comes to enforcement of judgments in Denmark, other ways must be employed, either by using Danish national law or most notably by using the Brussels I Regulation (albeit under public international law, and not union law).



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- **Scenario II:**
- At the time when the European order for payment is served on Grönlund the invoice is already paid.
- **Question 3:** Shall the European order for payment still be enforced in Sweden against Grönlund?



- **Answer:** A European order for payment which has been declared enforceable can be refused enforcement in the Member State of enforcement under limited circumstances. The grounds for refusal are laid down in Art. 22 of the EOP Regulation.
- According to Art. 22(2) of the EOP Regulation enforcement shall, upon application by the defendant, be refused by the competent court in the Member State of enforcement if and to the extent the defendant has paid the claimant the amount awarded in the European order for payment. As the invoice is paid, the European order for payment shall be refused enforcement in Sweden under Art. 22(2).



- **Scenario III:**
- Grönlund has instituted proceedings against the German company in Denmark to safeguard the assets located there. A Danish court has delivered a declaratory judgment before the German company submits the application for a European order for payment. According to the Danish judgment, Grönlund is not liable to pay the invoice to the German company.
- **Question 4:** In this situation, can the European order for payment still be enforced in Sweden?



- **Article 22 - Refusal of enforcement**

- 1. 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:
 - (a) the earlier decision or order involved the same cause of action between the same parties; and
 - (b) the earlier decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement; and
 - (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.



- ***The same cause of action between the same parties***
- The concepts “the same cause of action” and “the same parties” are relevant also in the Brussels I Regulation. In summary, the following has been established under the Brussels I Regulation. The same cause of action refers to the same object (fr. même objet), the same factual circumstances and rules pleaded.
- In the current situation, the European order for payment and the Danish judgment includes the same cause of action and it involves the same parties. The fact that Grönlund is the defendant in one case, and the claimant in the other case is not decisive.



- ***The earlier judgment fulfils the necessary requirements for recognition in Sweden***
- The second condition that needs to be established in this case is whether the earlier Danish judgment can be recognized in Sweden. Grönlund can oppose enforcement of the European order for payment only if there is another earlier judgment concerning the same cause and the same parties, which is enforceable in Sweden. In this case, the Danish judgment is most likely to be recognized in Sweden under the 2005 Danish agreement and the Brussels regime.



- ***The irreconcilability could not have been raised in the German court proceedings***
- The final condition that needs to be met is that the irreconcilability could not have been raised during the latter German proceedings. In order to fulfil this condition, the defendant Grönlund must have been prevented to plead the existence of the earlier Danish judgment during the latter German proceedings. This is an objective assessment, and could be argued to be the case as the Danish judgment was delivered prior in time to the submission of the application for a European order for payment with the German court.
- If all the conditions in Art. 22(1) of the EOP Regulation are fulfilled, Grönlund can object successfully to the enforcement of the European order for payment in Sweden.



The Closed Gates of the Garden of Edén

- Mrs. Edén, a Swedish national, is the proprietress of an outstanding garden in the east of Skåne, the southernmost province of Sweden. People are coming from far and near to visit The Garden of Edén. For a long time, the Horticultural Society of Northern Poland (hereinafter HSNP) has planned a tour to Skåne, including a full day in the famous garden. However, when they arrive on April 12, 2020, the gates are closed. In spite of paying € 11 500 in advance for entrance fees, three different guided tours, lunches, floral masterclass workshops, and nice dinners, no one has told them the garden has closed due to the Corona pandemic. This message is only brought to them by a small notice card by the gates.



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- Mrs. Edén doesn't answer phone calls or e-mails from HSNP. Four weeks after returning to Poland, HSNP applies to a court in Gdańsk for a European order for payment to retrieve the fees. The court issues a European order for payment against Mrs. Edén. She doesn't make any objections to it. After two months, the Polish court declares the European order for payment enforceable.



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- **Scenario I:**
- When the European order for payment is served on Mrs. Edén, she claims that she was prevented from objecting to the claim due to the Corona situation.
- **Question 1:** What can Mrs. Edén do?



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- **Answer:** The decision by the court in Gdańsk, Poland, to declare the European order for payment enforceable cannot be appealed or reopened. However, a right of review is provided for in Art. 20 of the EOP Regulation in exceptional cases.



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- According to this Article, Mrs. Edén as the defendant has the right to apply for a review in the Polish court of origin, even after the time limit in Art. 16(2) of the EOP Regulation has expired. However, already the heading of the article indicates that this possibility is only available under exceptional circumstances. The intention of the provision is not to provide the defendant with a “second chance” to contest the claim, see recital (25) to the Preamble of the EOP Regulation.



- **Recital 25 to the Preamble**

- After the expiry of the time limit for submitting the statement of opposition, in certain exceptional cases the defendant should be entitled to apply for a review of the European order for payment. Review in exceptional cases should not mean that the **defendant is given a second opportunity to oppose the claim**. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances could include a situation where the European order for payment was based on false information provided in the application form.



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- Judgment of the European Court of Justice, **Case C-245/14**, Thomas Cook Belgium, p. 31:
- Since the EU legislature intended to limit the review procedure to exceptional circumstances, the provision must necessarily be interpreted strictly (see, by analogy, judgment in Commission v Council, C 111/10, EU:C:2013:785, paragraph 39 and the case-law cited)



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- The restrictive application of Art. 20 of the EOP Regulation is due to the fact that it is a derogation from the principles of mutual recognition of judgments and the free circulation of judgments in the European Union. Hence, case law of the European Court of Justice confirms that Art. 20 of the EOP Regulation is to be applied restrictively.



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- **Is Corona pandemic force majeure or extraordinary circumstances?**
- Mrs. Edén could invoke Art. 20(1)(b) of the EOP Regulation, and plead that she was prevented from objecting to the claim by reason of the Corona pandemic, and argue that it constitutes force majeure or extraordinary circumstances without any fault on her part.



- According to the Practice Guide of the Commission p. 24, examples of such circumstances are “if the defendant was in hospital, on holiday, away on business, etc.” Depending on the specific impact, the Corona pandemic and State measures in response could qualify as an extraordinary circumstance. At least Mrs. Edén can try to put forward such an argument.
- A further condition for the application of Art. 20(1)(b) of the EOP Regulation is that Mrs. Edén acts promptly, i.e. that she applies for a review of the EOP before the competent court in Poland (the Member State of origin) as soon as possible.



- For comparison, European Court of Justice's case **C-324/12**, Novontech-Zala
- The Court of Justice ruled that a failure to observe the time limit for lodging a statement of opposition to a European order for payment, by reason of the negligence of the defendant's representative, does not justify a review of that order for payment pursuant to Art. 20 of the EOP Regulation, since such a failure to observe the time limit does not constitute extraordinary or exceptional circumstances within the meaning of that article.



- **Question 2:** What are the legal consequences for Mrs. Edén if the Polish court decides that a review is justified, alternatively if the Polish court rejects the application for a review?
- **Answer:** If the Polish court decides that the review is justified for one of the reasons laid down Art. 20(1) or Art. 20(2), the European order for payment shall be null and void pursuant to Art. 20(3) second paragraph of the EOP Regulation. The result is that the European order for payment cannot be enforced against Mrs. Edén in Sweden.



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- If, on the other hand, the Polish court rejects Mrs. Edén's application on the basis that none of the grounds for review referred to in Art. 20(1) or Art. 20(2) of the EOP Regulation apply, the European order for payment shall remain in force. The result is that the European order for payment can be enforced against Mrs. Edén in Sweden.



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Thank you for your attention!