

**Regulation (EC) No [1896/2006](#) of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.**

The Regulation, which will apply from 2008, establishes a European procedure for orders for payment. The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims. The Regulation permits 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.

**Application of the procedure in civil and commercial matters**

The European order for payment procedure applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. 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 hearing the action. The Regulation applies to all Member States except Denmark, in conformity with the Protocol on the position of Denmark annexed to the Treaty on the European Union and the Treaty establishing the European Community.

The procedure does not extend 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").

The following are also excluded:

- matrimonial property regimes;
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- social security;
- 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.

**Applying for an European order for payment**

Written by Avv. Carlo Rossi  
Monday, 09 November 2009 16:43

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The Regulation includes a form, standard form A set out in Annex I, to be used to apply for a European order for payment, which must include the following details:

- the names and addresses of the parties and their representatives;
- the name and address of the court to which the application is made;
- the amount of the claim, including the principal and, where applicable, interest, contractual penalties and other costs;
- the cause of the action, including a description of the circumstances invoked as the basis of the claim and of the interest demanded;
- the cross-border nature of the case.

The signed application may be submitted in paper form or by any other means of communication (including electronic ones) accepted by the Member State in which the European order for payment is issued ("the Member State of origin") and available to the court issuing the European order for payment ("the court of origin").

A pecuniary claim must be for a specific amount that has fallen due at the time when the application for a European order for payment is submitted.

The jurisdiction of courts is decided using the appropriate Community legislation, especially [Regulation \(EC\) No 44/2001](#)

. If a claim relates to a contract concluded by a 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 have jurisdiction (Article 59 of Regulation (EC) No [44/2001](#) ).

### **Accepting or rejecting an application for a European order for payment**

The court to which an application for a European order for payment has been made considers whether the applicability conditions have been met (the cross-border nature of the case in civil and commercial matters, the jurisdiction of the court in question, etc.) as soon as possible, and examines the well-foundedness of the claim.

If the application form is not complete, the court gives the claimant an opportunity to complete or rectify the application by a certain date, unless the claim is clearly unfounded or the application inadmissible. Annex II of the Regulation contains a form for this purpose (form B).

If the requirements are met for only part of the claim, the court may propose that application be amended. Annex III of the Regulation contains a form for this purpose (form C). The claimant is asked to accept or refuse the proposed European order for payment for the amount specified by the court within a certain timescale. Claimants must be informed of the consequences of their decision. They are to reply by returning the standard form.

If the claimant accepts the court's proposal, the court issues a European order for payment for the part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim are governed by national law. If the claimant fails to reply within the time limit specified by the court or refuses the court's proposal, the court rejects the application for a European order for payment in its entirety.

The court rejects applications if:

- they fail to meet the necessary conditions;
- they are not founded;
- applicants fail to return a completed or modified application in time;
- applicants fail to reply within the time limit, or refuse the court's proposed amendment.

The court informs the applicant of the reasons for which the claim has been rejected using form D (Annex IV). There is no right of appeal if an application is rejected. The rejection of an application does not, however, prevent a claimant from pursuing a claim by means of a new application for a European order for payment or using any other procedure available under the law of a Member State.

### **Issuing a European order for payment within 30 days**

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If the conditions for applying for a European order for payment are met, the court issues the order as soon as possible and normally within 30 days of the lodging of the application. The 30-day period does not include the time taken by the claimant to complete, rectify or amend his or her application. Applications are made using the form in Annex V (form E).

A European order for payment informs a defendant that he or she may either pay the claimant the amount of the claim, or contest it. If the claim is to be contested, the defendant must lodge a statement of opposition with the court that issued the European order for payment (the "court of origin"). The statement of opposition must be sent within 30 days of the service of the order on the defendant.

A European order for payment is issued solely on the basis of the information provided by the claimant, and is not verified by the court. The order becomes enforceable unless the defendant lodges a statement of opposition with the court of origin.

The Regulation abolishes the exequatur, i.e. a European order for payment is recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. Enforcement procedures are governed by the national law of the Member State in which the enforcement of the European order for payment is requested (the "Member State of enforcement").

### **Serving a European order for payment on a defendant**

A European order for payment is served on a defendant in accordance with the national law of the State in which service is to be effected. The Regulation sets out minimum procedural standards regarding service either with proof of receipt by the defendant (Article 13) or without (Article 14).

A European order for payment may be served on a defendant using one of the following methods:

Service with proof of receipt:

- personal service: the defendant signs an acknowledgement of receipt, including the date of receipt;
- **personal service:** the competent person who effected the service signs a duly dated document stating that the defendant has received the document or refused to receive it without any legal justification;
- the defendant signs and returns a duly dated acknowledgement of receipt when the European order for payment is received, by post or by electronic means such as fax or e-mail;

Service without proof of receipt:

- **personal service:** at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;
- **personal service:** at the defendant's business premises on persons who are employed by the defendant, in the case of a self-employed defendant or a legal person;
  
- **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 stating the legal character of the document;
- by electronic means attested by an automatic confirmation of delivery, provided that the defendant has accepted this method of service in advance.

A defendant's address must be known with certainty for a European order for payment to be served. Service may also be effected on a defendant's representative.

### **Protecting a defendant's rights: opposing a European order for payment**

The person who receives a European order for payment, i.e. the defendant, may lodge a statement of opposition with the court that issued the order for payment (the "court of origin"). The statement of opposition must be sent within 30 days of the order being served on the defendant. Statements of opposition are lodged using the form in Annex VI (form F), which defendants receive with the European order for payment. Defendants indicate in their statement of opposition that the claim is contested, without having to specify their reasons.

When a defendant lodges a statement of opposition, the proceedings continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure, unless the claimant has requested that the proceedings be terminated in that event.

The Regulation authorises the defendant to apply for a review of the European order for payment before the competent court after the expiry of the 30-day time limit for lodging a statement of opposition, provided that:

- the order for payment was served without acknowledgement of receipt by the defendant (Article 14), and service was not effected in time to enable him or her to prepare a defence;
- the defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances;
- the order for payment was wrongly issued.

If the court rejects the defendant's application, the European order for payment remains in force. If, on the other hand, the court decides that there is a case for a review, the European order for payment becomes null and void.

Enforcement is also refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or an order previously given in any Member State or in a third country, upon application from the defendant. The decision must involve the same cause of action between the same parties, and must have been recognised in the Member State of enforcement.

### **Informing the public about practical arrangements**

By 12 June 2008, Member States must communicate to the Commission information about which courts have jurisdiction to issue a European order for payment, review procedures, the means of communication, and languages accepted. The Commission will make the information publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

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By 12 December 2013 at the latest, the Commission will present a detailed report reviewing the operation of the European order for payment procedure.