




Project No JUST/2010/JCIV/AG/0010-30-CE-0421163/00-50 «Enhancing quality of judicial cooperation in civil matters: the European Union civil proceedings and tools provided by regulations on taking evidence and service of documents»

Training course „Cross – border civil proceedings: European order for payment, European small claims procedure and European enforcement order”

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European Order for Payment Procedure Regulation and its application



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EOPP Regulation - chronology

- ▶ 2002 Green Paper
- ▶ 2004 Report of the European Parliament
- ▶ 2004 Proposal for a Regulation
- ▶ 2006 Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure. – OJ L 399, 30/12/2006, pp 1-32 ([EOPP Regulation](#))
- ▶ 2008 The substantive provisions of the EOPP Regulation became applicable



E-tools for the EOPP Regulation

- ▶ The **Judicial Atlas**

- ▶ administered by the European Commission

- ▶ The **European e-Justice Portal**

- ▶ administered by the European Judicial Network (EJN)
 - ▶ defined by the EJN as a 'future electronic one-stop-shop in the area of justice'
 - ▶ currently in 22 languages
 - ▶ will replace the Judicial Atlas in the future



European e-Justice Portal



bg	Европейски портал за електронно правосъдие
cs	Portál evropské e-Justice
da	Den eu Portál evropské e-Justice -portal
de	Europäisches Justizportal
et	Euroopa e-õiguskeskonna portaal
el	Διαδικτυακή πύλη της ευρωπαϊκής ηλεκτρονικής δικαιοσύνης
en	European e-Justice Portal
es	Portal Europeo de e-Justicia
fr	Portail e-Justice européen
it	Portale europeo della giustizia elettronica
lv	Eiropas e-tiesiskuma portāls
lt	Europos e. teisingumo portalas
hu	Európai igazságügyi portál
mt	Portal Ewropew Ġustizzja-e
nl	Europees e-justitieportaal
pl	Europejski portal e-sprawiedliwość
pt	Portal Europeu da Justiça
ro	Portalul european e-justiție
sk	Európsky portál elektronickej justície
sl	Evropski portal e-pravosodje
fi	Euroopan oikeusportali

European e-Justice Portal



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Rights of defendants in criminal proceedings

Tools for courts and practitioners

Registers

The European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice.

As a first step it strives to make your life easier by providing information on

European Payment Order
Information on the European Payment Order procedure

Videoconferencing

- General policy description
- Manual
- Information on national facilities

Cooperation in civil matters

- Taking of evidence
- Service of documents
- Interim and precautionary measures
- Enforcement of judgments
 - » Enforcing a judgment in the same Member State
 - » Enforcing a judgment in another Member State
 - » European Enforcement Order
- **European Payment Order**
- Small Claims
- Insolvency
- Jurisdiction
- European Judicial Atlas in civil matters

Cooperation in criminal matters

- European Arrest Warrant
- Request for judicial assistance

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European e-Justice Portal

The screenshot shows the European e-Justice Portal in a Windows Internet Explorer browser window. The address bar displays the URL: https://e-justice.europa.eu/content_european_payment_order-82-en.do. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The Favorites bar shows the current page. The page title is "European e-Justice Portal - European Payment Order".

The portal's header features the European Union flag and the "e-justice" logo. A search bar with the text "Search..." and "Advanced search" is located on the right. The breadcrumb navigation path is: Home > Tools for courts and practitioners > Cooperation in civil matters > European Payment Order. Links for "Recent updates" and "Login" are also present.

The left sidebar contains a list of navigation links: Law, Case law, Judicial systems, Legal professions and justice networks, Going to court, Legal aid, Mediation, Successions, Wills, Victims of crime, Rights of defendants in criminal proceedings, Tools for courts and practitioners (highlighted), Registers, and Find a....

The main content area is titled "European Payment Order". It contains the following text:

The [European Payment Order](#) is a simplified procedure for cross-border monetary claims which are uncontested by the defendant, based on standard **FORMS**

Standard forms have been drawn up for the European Payment Order and are available [here](#) in all languages. This link will also provide more information about which courts can issue a European Payment Order and where the application forms should be sent.

To start the procedure, Form A must be filled in, giving all the details of the parties and the nature and amount of the claim. The court will examine the application, and if the form is correctly filled in, the court should issue the European Payment Order within 30 days.

The European Payment Order must then be served on the defendant by the court. S/he can either pay the amount of the claim, or contest it. S/he has 30 days to lodge any statement of opposition to the European Payment Order. If this happens, the case must be transferred to the normal civil law courts to be dealt with under national law.

If there is no statement of opposition by the defendant, the European Payment Order will become automatically enforceable. A copy of the European Payment Order, and if necessary a translation, must be sent to the enforcement authorities of the Member State where it needs to be enforced. Enforcement takes place in accordance with the national rules and procedures of the Member State where the European Payment Order is being enforced. For details on the enforcement, please consult [the relevant section](#).

To obtain more detailed information please click [here](#) (you will be redirected to the **INFO ON ENFORCEMENT** Network in Civil and Commercial matters).

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The purpose of the EOPP Regulation

To remedy problems perceived in the cross-border debt collection by simplifying, speeding up and reducing the costs of cross-border litigation concerning uncontested pecuniary claims.

- This has been done by:
 - ❖ the abolition of exequatur
 - ❖ setting the deadlines for the courts (e.g. ‘as soon as possible’, ‘normally within 30 days’ etc, ‘within 30 days’ etc)
 - ❖ introduction of standard forms (these were updated in 2012 by the Regulation 936/2012!)



Standard forms (European e-Justice Portal)

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European Payment Order forms



🔗 [Council Regulation 1896/2006](#) of 12 December 2006 creating a European order for payment procedure allows creditors to recover their uncontested civil and commercial claims according to a uniform procedure that operates on the basis of standard forms.

The Regulation applies between all Member States of the European Union with the exception of Denmark.

European order for payment is issued by courts with the exception of Hungary, where order for payment procedure falls under the competence of notaries (civil law notaries).

The procedure does not require presence before the court. The claimant only has to submit his application, after which the procedure will lead its own life. It does not require any further formalities or intervention on the part of the claimant.

The Regulation provides for seven standard forms which were replaced by 🔗 [Commission Regulation \(EU\) No 936/2012](#) of 4 October 2012.

You can complete these forms online by clicking one of the links below. If you have already started a form and saved a draft, you can upload it using the "Load draft" button.

For additional information, please go to our page on the [European Payment Order](#).

Complete a form online	Download an empty form	Email a blank form
 Form A - Application for a European order for payment		
 Form B - Request to the claimant to complete and/or rectify an application for a European order for payment		
 Form C - Proposal to the claimant to modify an application for a European order for payment		
 Form D - Decision to reject the application for a European order for payment		
 Form E - European order for payment		
 Form F - Opposition to a European order for payment		

EOPP as an alternative procedure to...

- ▶ ordinary civil procedure under national law
 - ▶ payment order procedure as a simplified procedure
- ▶ national payment order procedure (In Estonia: '*maksekäsu kiirmenetlus*' in the Code of Civil Procedure)
- ▶ the European small-claims procedure (if claim under 2000 EUR)



Scope of the EOPP Regulation

▶ **Temporal scope**

- ▶ EOPP Regulation was adopted in 12 December 2006
- ▶ Procedure applicable as from 12 December 2008

▶ **Territorial scope**

- ▶ All the Member States except Denmark
- ▶ Romania and Bulgaria joined in 2007 (i.e. before the EOPP procedure had become applicable in the EU)

▶ **Substantive scope**

- ▶ In 'civil- and commercial matters' → (A)
- ▶ In 'cross-border cases' → (B)
- ▶ For the collection of 'uncontested pecuniary claims for a specific amount that have fallen due' → (C)



(A) The meaning of 'civil and commercial matters' (Art 2)

- ▶ **Autonomous term** used in various EU instruments, excludes:
 - ❖ Revenue
 - ❖ Customs
 - ❖ Administrative matters
 - ❖ *Acta iure imperii*

- ▶ Some 'civil and commercial' are excluded from the scope of the EOPP Regulation:
 - ❖ rights in property arising out of a matrimonial relationship, wills and succession;
 - ❖ 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.



(B) The meaning of a 'cross-border case'

- ▶ At least one of the parties has to be domiciled or habitually resident in a Member State other than the Member State of the court seized.
 - ❖ **Domicile** – Arts 59 and 60 of the Brussels I Regulation (Regulation No 44/2001)
 - ❖ **Habitual residence** – autonomous concept found in the various EU and the Hague instruments
 - ❖ The cross-border nature of a claim has to be determined at the time of the submission of the claim!



(C) The meaning of ‘uncontested pecuniary claims for a specific amount that have fallen due’

- ▶ ‘Uncontested’ claims
- ▶ ‘Pecuniary’ claims
- ▶ Claims for a ‘specific amount’
 - ❖ There is no limit from the EOPP Regulation
 - ❖ There should be no limit from national law!
 - ❖ compare: § 481(2)² of the Estonian Code of Civil Procedure, which sets a limit of 6400 EUR for the domestic ‘maksekäsukiirmenetlus’



Procedure I

- ▶ The claimant makes an application ([form A](#))
- ▶ The court examines, whether the requirements set out in Art-s 2, 3, 4, 6 and 7 are met + whether the claim appears to be founded
 - ▶ Art 2 – civil & commercial matter?
 - ▶ Art 3 – cross-border case?
 - ▶ Art 4 - collection of pecuniary claims for a specific amount that have fallen due?
 - ▶ Art 6 – jurisdiction?
 - ▶ Art 7 – formal requirements (is all the required information filled in the form A)?
 - ▶ court asks for the completion or rectification if not (form B)



Procedure II

- ▶ The court can then do either of the following:

(A) Reject the application (Art 11)

- no appeal
- but claimant can apply again

(B) Issue the EOP (Art 12) (Form E), where the defendant is advised to either:

- lodge a 'statement of opposition' (Form F)
 - result - proceedings continue in ordinary civil procedure unless claimant has opposed
- to pay
 - result - proceedings are stopped



Procedure III

- ▶ The court then serves the EOP on the defendant under its national law, but by complying with the Art 13, 14 and 15 minimum standards:
 - ❖ Art 13 – service with proof of receipt
 - ❖ Art 14 – service without proof of receipt (e.g. service attested by competent person)
 - ❖ Art 15 – service on a representative

- ▶ If the defendant does not answer/pay... →
- ▶ The court declares the EOP enforceable (form G) and sends it to the claimant



Procedure IV (enforcement)

- ▶ The claimant then applies in another Member State for the enforcement of the EOP
 - ❖ Abolition of *exequatur*
 - ❖ Enforcement under national law of the enforcing state (except if otherwise provided by the EOPP Regulation)
 - ❖ For example: Art 23 of the EOPP Regulation sets conditions for the stay or limitation of enforcement



Stay or limitation of enforcement (Art 23)

- ▶ If the defendant has applied for a review of the judgment in the Member State of origin, the court can either:

limit the enforcement proceedings to protective measures

make enforcement conditional on the provision of such security as it shall determine

under **exceptional circumstances**, stay the enforcement proceedings



Defendant's options to challenge the enforcement

- ▶ The defendant can either:

Apply (promptly) in the Member State of origin on limited grounds relating to the denial of justice (Art 20) + apply in the 2nd Member State for the limitation or stay of enforcement (Art 23)

Apply in the 2nd Member State for the refusal of enforcement (if irreconcilable previous decision OR has voluntarily paid) (Art 22)



Appeal in the MS of origin (Art 20)

- ▶ Defendant has to act 'promptly'
- ▶ Only possible if the EOP was served without the proof of receipt (Art 14) and either:
 - ▶ Service was not effected in sufficient time to enable him to arrange for his defence or
 - ▶ *Force majeure*/ extraordinary circumstances prevented him from answering to the claim



Thank you!

