



Project No JUST/2010/JCIV/AG/0010-30-CE-042 1163/00-50 «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»

April, 29-30, 2013

**General insight and application
provisions for Regulation (EC) No
1896/2006 of the European
Parliament and of the Council of 12
December 2006 creating a European
order for payment procedure**

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

Content of lecture/seminar

1. General overview on the main principles of the European order for payment
2. Interaction of the Regulation with the Civil Procedure Law
 - ✓ amendments to the Civil Procedure Law in issues related to the application of the Regulation
 - ✓ interaction with other norms of the Civil Procedure Law
 - ✓ comparison with forced enforcement of obligations according to warning procedures

Before and STILL along the European order for payment procedure

German
court
judgment



Announcement of German
court judgment
enforcement at Latvian
courts (Brussels I Regulation
(44/2001))



Enforcement
of German
court
judgment in
Latvia

European order for payment procedure model

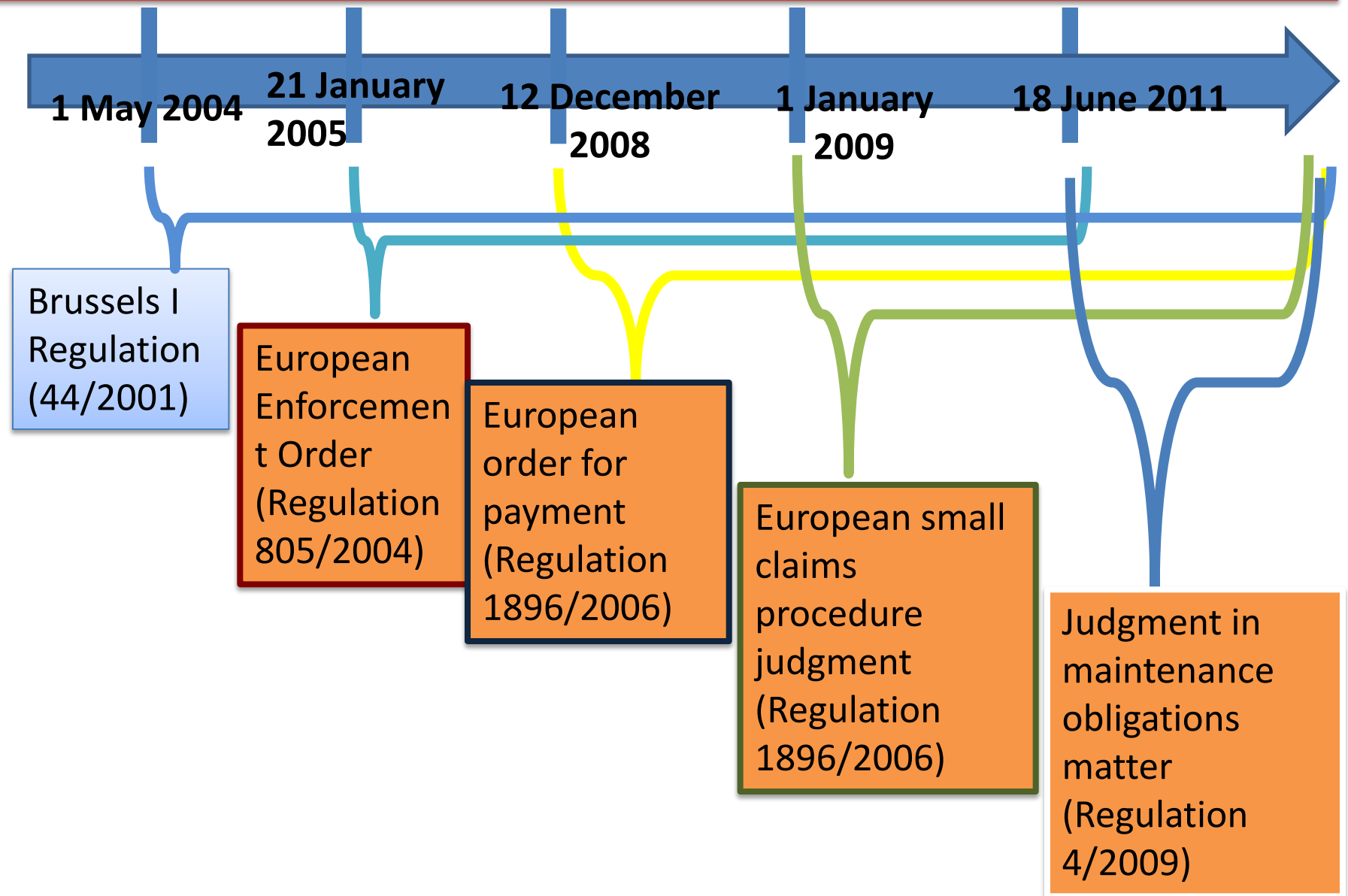
German courts **must observe definite procedures in the adoption of an order**, which excludes the necessity of non-recognition of a judgment application basis in the Member State of enforcement

~~sprieduma
izpildes
pasludināšana
(*exequatur*)
Latvijas tiesās~~



Enforcement
of an order
for payment
issued by
German
court in
Latvia

Recognition of a judgment on uncontested claims and enforcement in the European Union



European order for payment procedure (1896/2006) – general insight and application provisions

1. Goal is to provide a possibility how simply, reducing legal proceeding expenses, it is possible to reach the levy of uncontested debt in the EU.

2. In force from 31 December 2006 and it **is applied from 12 December 2008** (Article 33)

3. Not applied in Denmark

4.1. The Regulation is applied **only in cross-border matters**, thus, when at least one participant of the matter resides/is domiciled outside the Member State of legal proceedings (Article 3)

4.1. The warning procedures are not permissible if the (declared) place of residence or location of the debtor is outside the Republic of Latvia. (Section 406.¹, Paragraph two of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

4.2. Number of cross-border matters at Latvian courts

In 2011, Latvian courts have requested the issue of court documents in civil matters (summons to a court hearing, claim applications, judgments, and decisions) for persons in other Member States in **1064** cases.

4.3. Number of cross-border matters at the courts of other Member States with involvement of persons from Latvia

In 2011, the courts of other Member States have requested the issue of court documents for persons in Latvia in **431** cases.

!Data are only about those document issue requests that have been submitted through the mediation of the Ministry of Justice as the central institution!

European order for payment procedure (1896/2006) – general insight and application provisions

5. The claimant may choose whether to raise the claim in accordance with the procedures prescribed by the Regulation or to use alternative procedure, which is provided for in regulatory enactments of the respective state (Recital 10 to Preamble, Article 1)

5. CPL obligation forced enforcement warning procedure – there will not be an appropriate alternative in all cases

6. Deciding about which courts should be granted the jurisdiction to issue the European order for payment, Member States should duly take into account the necessity to ensure availability of court institutions. (Recital 12 to Preamble of the Regulation)

6. General jurisdiction courts are competent to issue the European orders for payment in Latvia.

European order for payment procedure (1896/2006) – general insight and application provisions

7. The Regulation is applied in civil and commercial matters.

The Regulation is not applied reviewing issues related to matrimonial property regimes, inheritance, insolvency and separate out-of-contract obligations. (Article 2)

European order for payment procedure – single order **for levy of monetary claims for a specific sum that must be paid** at the moment of the submission of the application (Article 4)

7. Compulsory execution of obligations in accordance with warning procedures is permitted in **payment obligations, which are justified by a document** and for which the term for execution is due, as well as payment obligations regarding the payment of such compensation, which is in the entered into contract regarding supply of goods, purchase of goods or provision of services if such obligations are justified by a document and for which **a time period for execution has not been specified**. (Section 406.¹, Paragraph one of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

8. Application forms practically for each stage of proceedings and procedural activity:

Form A – application for EPO;

Form B – request addressed to the claimant to correct or fill in the application for EPO;

Form C – proposal addressed to the claimant to amend application for EPO;

Form D – decision to decline the application for EPO;

Form E – EPO (sent to the defendant);

Form F – objection form of the defendant;

Form G – EPO enforcement certification form

8. Forms for warning procedures:

1) application on forced enforcement of the obligation according to warning procedure;

2) warning on forced enforcement of payment obligation;

3) response to warning on forced enforcement of the obligation according to warning procedure
(Cabinet Regulation No. 792 of 21.07.2009)

European order for payment procedure (1896/2006) – general insight and application provisions

9. Jurisdiction is determined in accordance with Brussels I Regulation (44/2001), but in the case of consumer contracts, if the defendant is a consumer, the procedure is available only if consumer's domicile Member State courts have the jurisdiction. (Article 6)

9. An application according to warning procedure shall be submitted to the land register division of the regional (city) court according to the (declared) place of residence or location (legal address) of the debtor. (Section 406.², Paragraph two of CPL)

10. Application is submitted in paper format or by using other means of communication, including electronic means, **which has been accepted by the Member State of origin and that are available to the court of origin.** (Article 7(5) of the Regulation)

10. In Latvia an application may be submitted in written form (in paper format) in person or through the mediation of an authorised person, or by sending via post.

10. The application shall be drawn up in conformity with the sample approved by the Cabinet of Ministers. (Section 406.³ of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

11. The court, which has received the application for the European order for payment [...], shall verify whether the requirements set forth in Sections 2; 3; 4; 6 and 7 have been complied with and **whether the claim seems substantiated and acceptable** (Article 8 of the Regulation).

[...] **unless the claim is clearly unsubstantiated and unacceptable**, the court gives the claimant a chance to **supplement or correct** the application (Article 9 of the Regulation).

The court **declines an application** if [it does not conform to the requirements of the Regulation]. **There is no right to submit an appeal** regarding declining of application (Article 11 of the Regulation)

11. The judge refuses to accept an application if it does not conform to the [...] requirements of the law.

A motivated decision is taken for [...] refusal. The decision together with the document on the payment of a state fee is **sent to the filer**.

The decision **cannot be repealed**.
(Section 406.⁴ of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

12. Joint court expenses in EPO procedure and simple civil procedure, started if a statement regarding an objection for the European order for payment in the Member State, **shall not exceed court expenses** of simple civil procedure **if there are no previous EPO** procedures in the respective Member State. (Article 25(1) of the Regulation)

12. The decision on termination of the court proceedings for compulsory execution of obligations in accordance with warning procedures in relation to the objections of the debtor, is not an impediment to bringing an action in accordance with the procedures for court proceedings by way of action. In such cases the paid **state fee shall be transferred or it is being included if the claim is raised according to the procedures for court proceedings by way of action.** (Section 406.⁸ of CPL)

A state fee in the following amount shall be paid for each claim application [..]:

7) for application [..] according to warning procedure, [...] *for application for European order for payment [..]* — 2 % of the sum of the debt, but not more than LVL 350. (Section 34, Paragraph one of CPL).

Fee paid application for European order for payment [..] **shall be included in state fee for claim** if the defendant has made an announcement about the objection [..] claim legal procedure is being continued. (Section 36.¹ of CPL).

European order for payment procedure (1896/2006) – general insight and application provisions

13. [...] [Court] invites the claimant to accept or decline the proposal for European order for payment for the sum specified by the court.
(Article 10 of the Regulation)

13. If **the debtor** recognises the application in any of its parts, the response of the debtor is notified to the filer and a term is set during which he shall announce to the court regarding the handing over of the obligation for forced enforcement in the recognised part. (Section 406.⁷ of CPL)

14. If the claimant accepts the proposal of the court, the court issues the European order for payment in relation to the part of the claim that has been accepted by the claimant. **Consequences in relatio to the remaining part if the initial claim is regulated by national regulatory enactments.** (Article 10 of the Regulation)

14. The court leaves the claim without review in the part about which it does not issue the European order for payment [...].
(Section 219, Paragraph two of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

15. The court ensures that the order is **delivered** to the defendant in accordance with the national regulatory enactments, **observing minimum standards** defined in Sections 13; 14 and 15. (Article 12(5) of the Regulation)

Delivery of documents [...] is not acceptable if **the address** of the defendant **is not known with certainty** (Article 14(2) of the Regulation)

15. A warning [...] **is issued to the debtor in exchange of a signature**. The document with a signature regarding the receipt thereof and a note of the date of issue of the warning shall be submitted to the court.

If the **issue** of a warning to the debtor **is not possible**, the judge adopts a decision regarding the leaving of the application without review.
(Section 406.⁶ of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

16. If the defendant submits the **objection** within the specified term, **legal procedure continues** at courts of Member State of origin in accordance with the provisions of **simple civil procedure**, unless the claimant has requested **to terminate legal procedure** in such case. (Article 17(1) of the Regulation)

Transfer to simple civil procedure is regulated by regulatory enactments of the Member State of origin. (Article 17(2) of the Regulation)

16. Objections [...] of the debtor are basis for **termination of legal procedure** [...]. (Section 406.⁷, Paragraph one of CPL)

A decision regarding the termination of legal procedure [...] due to objections of the debtor does not serve as an obstacle for raising a claim according to the claim legal procedure order. (Section 406.⁸, Paragraph three of CPL)

16. If review of the matter **is not possible** in accordance with [...] Regulation 1896/2006 [...], a judge in the cases provided for in the referred to regulatory enactments regarding proceeding of the statement of claim shall take a decision regarding initiation of a matter, regarding refusal to accept an application or leaving the application without proceeding. (Section 131, Paragraph two of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

17. After [...] the term [for expression of objections] has ended, **the defendant** has the right to request the review of the **European order for payment in the competent court of the Member State of origin:**

- if the payment order has been issued in accordance with Article 14 and it was not issued on time or force majeure circumstances delayed the defendant to make objections;
- if the payment order has been issued falsely.

(Article 20 of the Regulation)

17. If a debtor is of the opinion that the claim of the applicant is, on the merits, unfounded he or she may, within three months from the date when the true copy of the decision is sent, bring an action against the creditor to dispute the claim. The action shall be brought in court in accordance with the procedures prescribed by this Law.

(Section 406.¹⁰, Paragraph one of CPL)

17. Review of the matter anew due to the review of judgment in cases provided for in the legal norms of the European Union (Chapter 60.¹ of CPL)

European order for payment procedure (1896/2006) – general insight and application provisions

18. An enforceable European order for payment shall be enforced under the same conditions as enforceable decisions issued by the Member State of enforcement.

For enforcement **in another Member State** the claimant shall submit the following for the competent enforcement institution of the respective Member State:

- a) a copy of the enforceable European order for payment, which corresponds to authenticity determination requirements,
 - b) in case of necessity, a translation of the European order for payment in the language of the Member State of enforcement.
- (Article 21 of the Regulation)

18. Execution documents may be submitted for compulsory execution within 10 years from the day when an adjudication by a court or a judge comes into effect, provided that other **limitation periods** are not provided for by law. (Section 546, Paragraph one of CPL)

A bailiff shall, pursuant to an **application** in writing by a judgment creditor [...] and on the basis of an execution document. (Section 549, Paragraph one of CPL)

Member State of origin

1. The court issues **enforceable** European order for payment (Article 18 of the Regulation)



Member State of enforcement

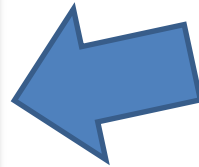
2. The creditor submits for enforcement the European order for payment (Article 21 of the Regulation)



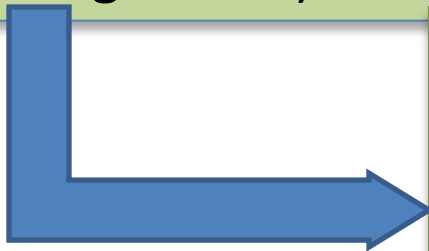
3. After the commencement of enforcement activities, the debtor finds out about the European order for payment, which has been issued against him or regarding the existence of the basis for an enforcement refusal



4. Upon the application of a debtor, it is possible to request an enforcement refusal (Article 22 of the Regulation) (Sections 644.³ and 563 of CPL)



4. The debtor requests the review of the European order for payment (Article 20 of the Regulation)



5. Upon the application of a debtor, limitation of enforcement or suspension thereof is possible (Article 23 of the Regulation) (Sections 644.²; 560 and 559 of CPL)

European order for payment procedure (1896/2006) - statements of Member States in issues related to the application of the Regulation

Member States notify the Commission:

- a)** which court has jurisdiction to issue the European order for payment;
- b)** review procedure and competent courts for the purpose of the application of Article 20;
- c)** regarding means of communication that have been approved for the purpose of the European order for payment and are available to courts;
- d)** languages approved according to Article 21(2)(b).

The notified **information is made publicly available by the Commission** by publishing it in the Official Journal of the European Union and **other appropriate means**.
(Article 29 of the Regulation)

- 1.** Courts of general jurisdiction have the jurisdiction to issue European orders for payment in Latvia.
- 2.** The review procedure in Latvia is determined by Chapter 60.¹ of the Civil Procedure Law.
- 3.** In Latvia an application may be submitted in written form (in paper format) in person or through the mediation of an authorised person, or by sending via post.
- 4.** In accordance with Article 21(2)(b), in Latvia the European order for payment is accepted only in Latvian.

European Judicial Atlas in Civil Matters

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_lv.htm

European e-Justice Portal

https://e-justice.europa.eu/content_dynamic_forms-155-lv.do

Thank you for your attention!