



*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
dokuments»*

Training course „European order for payment, European small
claims procedure and European enforcement order”
May,27-28,2013

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

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Regulation (EC) No. 1896/2006 of the European Parliament and the Council of 12 December 2006 creating a European Order for Payment Procedure.

Applied from 12 December 2008 in all EU Member States with the exception of Denmark.

Areas regulated by the EU CP

International jurisdiction:

- Civil and commercial matters (Brussels I, (EC) No 44/2001)
- Family matters (Brussels IIbis, Regulation (EC) No 2201/2001)
- Maintenance (Brussels III, Regulation (EC) No 4/2009)

Judicial co-operation:

- Service of documents (Regulation (EC) No 1393/2007)
- Taking of evidences (Regulation (EC) No 1206/2001)

Law applicable to:

- Contractual obligations (Rome I, Regulation (EC) No 593/2008)
- Non-contractual obligations (Rome II, Regulation (EC) No 864/2007)
- Maintenance obligations (Brussels III + 2007 Hague Protocol)
- Divorce and legal separation (Regulation (EC) No 1259/2010). In Lithuania since 11/21/2012.

Enforcement of judgments:

- Recognition and enforcement (Brussels I, Brussels IIbis, Brussels III)
- Without *exequatur* (European Enforcement Order, Brussels IIbis, Brussels III)

Simplified and accelerated procedures:

- European order for payment (Regulation (EC) No 1896/2006)
- European small claims procedure (Regulation (EC) No 861/2007)

IMPLEMENTATION IN LITHUANIA

Law of 13 November 2008 on Implementation of European Union and International Legal Acts Regulating Civil Procedure of the Republic of Lithuania No. X-1809 (Official Gazette, 2008, No 137-5366). *Came into force on 29/11/2008.*
Actual version since 30/06/2012.

Section 8. Implementation of Regulation (EC) No 1896/2006 of the European Parliament and the Council Creating a European Order for Payment Procedure, Art. 19 - 23:

- peculiarities of the procedure
- jurisdiction over matters
- stamp duty
- review of the European order for payment
- enforcement of the European order for payment

PAR. 3 – 4, ART. 1 OF THE CODE OF CIVIL PROCEDURE OF THE REPUBLIC OF LITHUANIA:

3. If international treaties of the Republic of Lithuania provide provisions different than those set out in this Code and other laws of the Republic of Lithuania, provisions of the international treaties of the Republic of Lithuania shall apply.
4. In implementing European Union legal acts other laws may provide rules for the examination of cases, giving and enforcement of judgments that are different from those provided for by this Code.

SCOPE, Art. 2 of Regulation (EC) No 1896/2006

- ✖ Civil matter - principle of autonomous interpretation.

ECJ judgment of 28 April 2009 in case

No C-420/07 (concerning Brussels I Regulation).

ECJ judgment of 18 April 2006 in case

No C-343/04 (concerning 1968 Brussels Convention).

European Union and international legal acts regulating civil procedure shall only apply in civil matters that have a cross-border element, i.e. in ***cross-border cases***.

Cross-border case

- When at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized.

Art. 3 Regulation (EC) No. 1896/2006

+ Art. 59-60 Brussels I (place of residence)

European order for payment procedure may be applied when a claim is:

- **pecuniary**
- **clear**
- **uncontested by the defendant**

International jurisdiction

Art. 6 Regulation (EC) No 1896/2006



Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

National jurisdiction – district courts.

Art. 20 Law No. X-1809 + Art. 431(6) CCP RL

General principles

- May only be used when the claimant and the defendant are resident or the court is located in different EU MS, i.e. only in *cross-border* cases.
- All document forms are standard.
- Does not prevent from using national procedures or the European small claims procedure later.
- Procedural rules are to be determined by each State individually.
- Representation by an advocate is not mandatory (Art. 24 of the Regulation).
- **European order for payment shall be enforceable in all EU Member States (except Denmark) without *exequatur* procedure.**

ENFORCEMENT OF JUDGMENTS:

- ✖ ***Exequatur*** – recognition of a foreign judgment and giving it legal effect within the territory of the country, as well as authorizing its enforcement.
- ✖ **Without *exequatur* procedure** – enforcement of a foreign judgment without having to recognize it and declare it enforceable under the same conditions as national judgments
 - ❑ **Theory of equivalence.**
 - ❑ **Theory of extended effects.**

European order for payment procedure

- ✓ When lodging an application, evidence only needs to be indicated and not necessary to provide.
- ✓ A copy and a translation of the Application shall be served to the defendant.
- ✓ The claimant may indicate at once or later that he will not litigate under ordinary proceedings in case the defendant opposes the issue of the EOP.
- ✓ Stamp duty – $\frac{1}{4}$ (Art. 21 of the Law of 11/13/2008 + Art. 434(1) of CCP RL).
- ✓ The EOP shall be issued together with the Application for a EOP (except Appendixes 1 and 2).
- ✓ The defendant can simply declare his opposition to the issuance of the EOP – he is not required to support

APPLICATION FOR AN EOP

An Application for a EOP shall be lodged by filling in the standard form A and stating:

- ✓ the parties,
- ✓ the amount of the claim,
- ✓ the cause of the action,
- ✓ **a description of evidence** supporting the claim.

The claim form shall be filled out in one of the languages accepted by the court seized.

Article 113(3) of CCP RL:

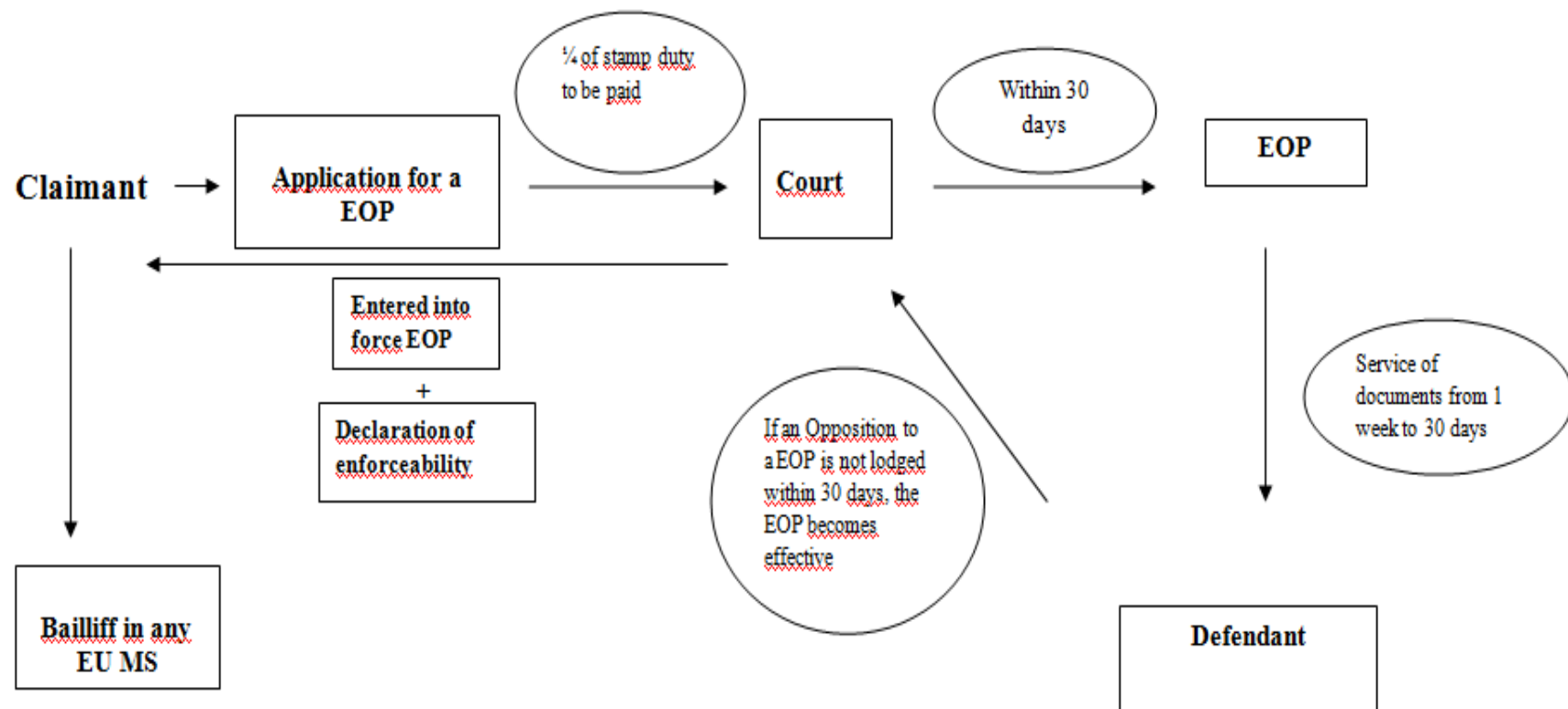
a translation of all documents submitted to the court (in this case – an Application for a EOP) **into a relevant foreign language** shall be included (Art. 8 of Regulation (EC) No. 1393/2007 on the service of documents).

Time limits for issuing a European order for payment

The court shall **within 30 days** of the lodging of the application, examine if all formal requirements have been met and issue an EOP (Par. 1 Art. 12).

The EOP together with the Application (except Appendixes 1 and 2, i.e. bank details and the opposition of the claimant to the transfer to ordinary proceedings) shall be served to the defendant + the form for the Opposition to a EOP (Part. 1 Art. 16 of the Regulation).

Within 30 days of the service of the EOP the defendant may lodge a Opposition to a EOP using the standardized form.

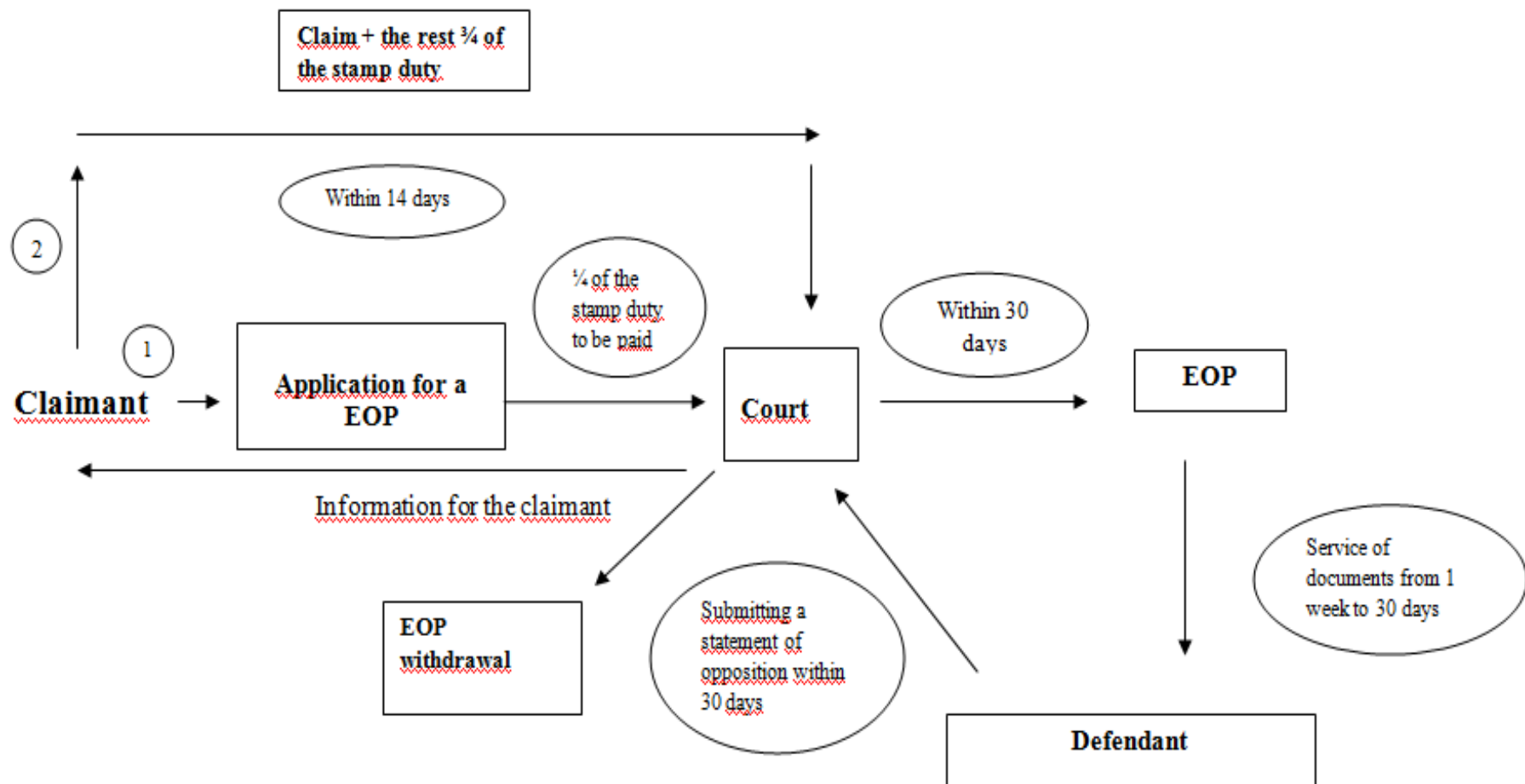


Defendant's opposition to a EOP

If the Opposition to a EOP is submitted within the 30 days time limit, the proceedings can continue in accordance with the rules of ordinary civil proceedings (Part. 2 Art. 16 of the Regulation).

The court shall within 3 working days inform the claimant that he has the right to no later than 14 days of the serving of the court notification submit the claim and pay the missing amount of stamp duty (Part. 3 Art. 439 of CCP RL).

If within the time limit set the defendant does not lodge a Opposition to a EOP, the court shall immediately declare the EOP enforceable by using the standard form (Art. 18 of the Regulation).



Enforceability of a European order for payment

- If the defendant does not submit a Opposition to a EOP, the court shall immediat declare the EOP enforceable and issue the standard form G.
- The European order for payment and the Declaration of enforceability shall be dispatched to the claimant **without a separate application.**

Art. 18 of Regulation (EC) No. 1896/2009

1) An EOP served by one of the methods set out in Art. 14 of the Regulation (i.e. without proof of receipt),

and

the document was not served in sufficient time to enable the defendant

to arrange for his defense, without any fault on his part

or

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,*

provided in either case that he acts promptly.

+ if the EOP was clearly issued without complying to the requirements of the Regulation.

Art. 18 of Regulation (EC) No. 1896/2009

✓ 14 days for claimant's response + 14 days.

EOP review procedure

An EOP shall be reviewed by the court of origin

Par. 1, Art. 23 of Law No. X-1809

The court may:

- Review the application and either refuse the EOP or maintain it.
- Withdraw the EOP.

Par. 3, Art. 20 of the Regulation

Upon receiving an application for the review of an EOP:

- ✓ The claimant shall be given 14 days to submit a response
- ✓ A decision shall be made within 14 days of the expiry of the time limit for submitting a response.

Par. 2-3, Art. 23 of Law No. X-1809

Refusal of enforcement of a European order for payment

Lithuanian Court of Appeal shall refuse to enforce a European order for payment if:

- the earlier decision or order involved was given in the same case, **and**
 - the earlier decision or order fulfills the conditions necessary for its recognition , **and**
 - the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.
- + if the defendant has paid the amount indicated in the EOP.

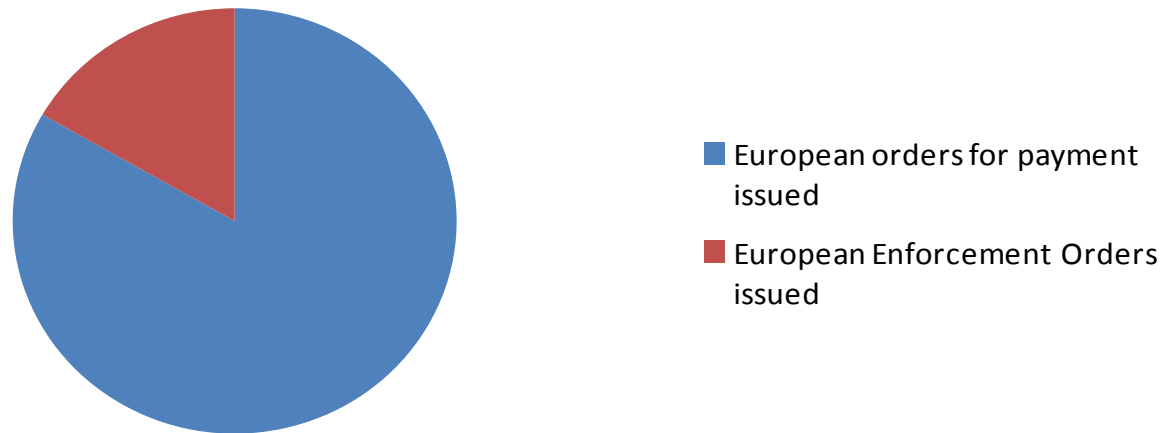
Art. 22 of the Regulation

+ Par. 2 Art. 24 of Law No. X-1809

Weaknesses of the procedure

- ✓ The form does not make it possible to apply provisional protective measures.
- ✓ Does not encourage the parties to conclude a settlement.
- ✓ Only issued in the language of the Member State of origin.

Proportion between the numbers of issued European orders for payment and European Enforcement Order certificates in the EU during 2009



Interesting facts. The European order for payment procedure that came into force on 12 December 2008 (hereinafter also referred to as **EOP**) already during its first years became more popular than the European Enforcement Order procedure laid down in Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims. During 2009 EU Member State courts issued 4-5 times more European orders for payment than European Enforcement Order certificates. According to unofficial estimates, there were 20 European orders for payment issued in Lithuania during 2009.

European Judicial Network in Civil and Commercial Matters

*Established on 28 May 2001 by the Commission's decision establishing
European Judicial Network in Civil and Commercial Matters*

<http://ec.europa.eu/civiljustice/>

European Judicial Atlas in Civil Matters

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

European E-Justice portal

<https://e-justice.europa.eu/home.do>



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Thank you for your attention!

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