



Orders for payment in the EU

National procedures and the European Order for Payment

SUMMARY Every year, 1 million small businesses in the EU face problems with collecting cross-border debts, and as much as €600 million in cross-border claims are never satisfied.

Domestic orders for payment are an effective tool for debt collection in the Member States. Although they exist in many Member States, they differ to a great extent, and are often not practical for cross-border use.

In order to supplement the existing national order for payment measures, the EU legislature created a European Order for Payment ('EOP') procedure. The procedure is available for cross-border claims for money, mainly those arising from a contract. It is based on standard forms and the claimant does not need to prove the case before an order is issued. Once an EOP is served upon the defendant, they may oppose it. This then makes the EOP unenforceable and the case is moved onto standard civil proceedings.

Although the EOP procedure is an autonomous civil procedure in EU law, several aspects are regulated by national law. These include the designation of the competent authority or court, permissible languages, court fees and detailed rules on service.

The Commission is due to report on the practical application of the EOP procedure in December 2013.

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Background

Collecting cross-border debts in the EU

The European Order for Payment ('EOP') procedure is part of a broader initiative by the Commission aimed at combating difficulties in cross-border debt collection, which include in particular the [European Enforcement Order Regulation](#), as well as the recently recast [Late Payments Directive](#).¹ According to the Commission, [1 million](#) EU small businesses have problems with collecting cross-border debts, and up to €600 million of cross-border debts are never recovered. This is partly because creditors do not see as worthwhile to pursue their claim in civil proceedings abroad.

At the same time, up to 80% of claims filed in courts of first instance in the EU Member States (MS) are never contested by defendants.² Many MS have introduced special accelerated and simplified procedures for the recovery of uncontested claims which allow for swift issue of an 'order for payment'.³ If the debtor does not oppose such an order, it becomes enforceable. In practice, only a minority of debtors do so (e.g. in France only 6-8% of orders of payment are opposed).⁴

EU competence to create a cross-border order for payment procedure is based on Article 67(4) TFEU, which gives the Union the power to facilitate access to justice, and Article 81 TFEU which allows the Union to



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develop judicial cooperation in civil matters with cross-border implications.

National orders for payment

Civil procedures in many MS (e.g. UK, France, Germany, Italy, Poland and Spain), have simplified order for payment proceedings for the recovery of uncontested claims. There are differences between national procedures, especially with regard to the extent of evidence the claimant must produce, and the exact consequences of the defendant's lack of reaction.

In **England and Wales** a [summary judgment](#) may be pronounced, without trial, if the court considers that either the claimant or defendant has no real prospect of making their case. They are available in all types of civil cases and are issued after the defendant has acknowledged service of the application or filed a defence. They are subject to appeal.

An English court may give a [default judgment](#), without trial, if the defendant has not acknowledged service of the application or has failed to file a defence within the deadline. They are allowed only for claims for money or for delivery of goods. They may not be appealed, but the defendant may ask the court to set them aside. The court will do so only if it considers that the defendant has a strong case or there are other compelling reasons. Default judgments are issued by two **specialised, on-line centres** – the [Claims Production Centre](#) ('CPC') which works for major claimants (e.g. banks, credit card companies, debt recovery firms) and the [Money Claim Online](#) service available to one-off claimants.

In **France** an order for payment is available for claims for money owed under a contract. The claimant must produce supporting evidence. A judge analyses the application and may issue an order of payment, which the defendant can then oppose within one month. Opposition automatically moves the case onto standard civil proceedings.

In **Germany** an order for payment can be sought for claims for money. Applications are processed in a part-automated procedure, overseen by court clerks. Evidence is not analysed. Parties must use standard forms (paper or electronic). The procedure has two stages: first the court issues a warning notice, and if the defendant does not react, a notice of enforcement. If the defendant still fails to react, the order becomes enforceable. If the defendant reacts in time, the court will consider setting the order for payment aside.

Orders for payment are available in **Italy** to creditors pursuing claims for money or for delivery of goods. The court decides on the basis of evidence provided by the claimant, without hearing the debtor. Once the order for payment is issued, the defendant may launch an opposition which automatically moves the case onto standard civil proceedings.

Creditors in **Poland** have three alternative tracks for obtaining an order for payment.⁵ In **injunction proceedings**, the claimant must prove the claim by producing documentary evidence (e.g. invoice, contract, bill of exchange, cheque). If the court is satisfied with the evidence, it issues an order for payment without a hearing. Thereupon, the defendant may raise defences which the court will analyse and either uphold the order, or (partly) annul it.

Another option available is **monition proceedings**, where the court issues an order of payment on the basis of information provided by the claimant, without the need to produce evidence. The defendant then has two weeks to oppose it which automatically sets aside the order for payment and the case is moved to standard civil proceedings. There are also **electronic monition proceedings**, available only for claims less than three years old, where electronic forms are used.

In **Spain** monition proceedings are available for claims for money up to €30 000, which

have fallen due and can be proven by documents (e.g. invoices), which must be attached to the claim. On the basis of the documents presented by the claimant, the court issues an order for payment, setting a deadline for the defendant to satisfy or oppose the claim. Opposition moves the case onto standard civil proceedings.

The EOP Regulation

In order to supplement existing national order for payment procedures, the EU adopted the European Order for Payment Procedure in [Regulation No 1896/2006](#) which has applied since December 2008 in all MS except Denmark. The main aim of the EOP procedure is to simplify, accelerate and reduce the costs of cross-border civil litigation concerning uncontested claims for money. For this reason, at all stages of the EOP procedure, claimants, defendants and courts are obliged to use [standard forms](#).

The EOP procedure **is available for cross-border claims for money**. At least one party (the claimant or the defendant) must be domiciled or [habitually resident](#) in an MS different from the one, where the claim is filed (even if both live in the same MS). There are no minimum or maximum thresholds as to the value of the claim, making it useful also for claims under business-to-business contracts.⁶ Claims for money arising from marriage or succession, as well as all public-law claims (revenue, taxes, administrative law, social security...) are excluded. Claims arising from non-contractual obligations are allowed only if the parties have agreed to their amount or if the debtor admitted the debt.

The EOP procedure is intended to be an **additional and optional** way of pursuing claims. Claimants may still use national procedures even in cross-border cases. Furthermore, the Regulation does not affect national order for payment procedures. With regard to certain aspects, such as the competent court, court fees or details of service (delivery) of documents, the

regulation **refers to national law**. Otherwise, however, it is a self-contained and autonomous EU civil procedure.⁷

Formal requirements

All the requirements for filing an EOP application are exhaustively set out in the Regulation, and no additional formalities may be imposed by national law ([Szyrocka case, 2012](#)). An application must identify the claimant and defendant, specify the amount of money sought, contain a description of the facts upon which the claim is based, a description of evidence (but not the evidence itself), and justification that the case is a cross-border one. National law may set penalties for deliberately providing false statements in the application. If the application does not conform to the requirements, the court may ask the claimant to correct it.

Jurisdiction of courts

An application for an EOP is filed in a court which is competent under the [Brussels I Regulation](#) (as from 2015 – under the [recast Brussels Ia Regulation](#)). However, consumers may be sued only in the MS where they are domiciled. Whenever [Brussels I](#) allows it, the EOP procedure may also be used by creditors situated outside the EU to sue a debtor in an MS, and by creditors from within the EU to sue debtors from outside the Union, if an MS court has jurisdiction.⁸

Examination of application

The court in which an EOP application has been launched examines it from the point of view of formal requirements. It also checks whether the claim appears to be founded, but does not analyse any evidence. The examination of an EOP application may even be automated.

Issue of an EOP

If all the formal requirements are met and the claim appears to be founded, the court issues an EOP. This should normally happen within 30 days of filing the application, but there is no concrete obligation on the court.⁹ An EOP informs the defendant that

they may either pay the debt or file a statement of opposition within 30 days of receiving it.

Service on the defendant

The EOP procedure is not adversarial and the defendant becomes aware of an EOP only when it is served on them.¹⁰ This makes the rules on service essential from the point of view of safeguarding defendants' interests. Service is governed by the law of the MS in which it is to take place. It may either be effected with proof of receipt, or – if the defendant's address is known – even without such proof.

Possibilities of challenging an EOP

Defendant's statement of opposition

The intent of the Regulation is to speed up cross-border civil proceedings, but only as long as the claim remains uncontested.¹¹ Hence, once a defendant files a statement of opposition, the EOP automatically loses its force and the case is transferred to standard civil proceedings. A statement of opposition does not need to contain any specific arguments.

The filing of an opposition does not have any impact upon jurisdiction of courts. A defendant who files an opposition containing arguments on the merits, may still question the jurisdiction of courts of an MS in the ordinary proceedings that follow ([Sperindeo](#) case, 2013).

Defendant's application for review

After the expiry of the time limit for launching a statement of opposition, the defendant may still apply for a review of the EOP before the court which issued it. However, this is allowed only in exceptional cases: if the order was not delivered to the defendant or the defendant was prevented from launching a statement of opposition because of extraordinary circumstances and not through their own fault. Upon review of the EOP, the competent court may either uphold or annul it.

Enforcement of the EOP

Declaration of enforceability

If the defendant does not file a statement of opposition within the prescribed deadline, the court which issued the EOP declares it to be enforceable and sends the EOP to the claimant. An EOP is automatically recognised and enforceable in all MS, without the need to seek any additional declaration of enforceability.

Formal requirements

Enforcement proceedings are outside the scope of the Regulation, and are governed by the law of the MS where enforcement is sought. However, some common rules apply.

Limited possibility of challenging enforcement

In strictly limited cases, the defendant may ask the competent court of the MS of enforcement not to enforce the EOP. This is possible if the same dispute has already been decided upon in an earlier judgment which is enforceable, and the defendant did not have the opportunity to raise this objection earlier or if the defendant had already paid the debt in the meantime.

Implementation and evaluation

Implementation in the MS

MS are free to indicate which courts or authorities will be responsible for processing EOP applications. Whilst some countries (e.g. Poland, England & Wales) have entrusted courts of ordinary jurisdiction with this task, others (e.g. Germany, Austria) have designated only one specialised court. Furthermore, in Sweden EOP applications are processed by a centralised administrative authority. In some MS (e.g. Austria) EOP applications are processed not by judges, but by court clerks.

As to penalties for making false statements in EOP applications, in England and Wales, such claimants may face proceedings for [contempt of court](#), and in France they may face up to five years in prison and €375 000 in penalties.¹²

Various approaches have been taken as regards the service of an EOP; in France it is possible only by an enforcement officer, in Poland it may be done by post. Some countries allow electronic communication, while others have excluded it.

EOP in court practice

General overview

In general, the number of EOP applications is much lower than for national orders for payment.¹³ The number of EOP applications is low both in proportion to all order for payment applications (0.2% in Sweden, 0.4% in Austria, 1% in Germany) as well as in absolute numbers (35 applications yearly in Sweden, 95 in the UK). In Austria there were a fairly high number of EOP applications filed (2 177) but this number is relatively low compared to the 507 000 applications for a national order for payment in that MS.

Focus on Poland

The Polish [Institute of Justice](#) has recently published a detailed empirical study on the topic, containing case-by-case analysis of court practice regarding the EOP.¹⁴ The study revealed that most EOP applications (87%) were filed in Polish courts by claimants domiciled in Poland against parties from another MS. This is possible, for instance, if the jurisdiction of Polish courts is foreseen in the contract.

In 64% of the cases the court issued an EOP directly following the application, whilst in 34% cases the claimant was asked to correct the application, e.g. by paying the appropriate amount in court fees. Where there was no need to correct the application, courts needed on average **33 days** to issue an EOP. Only in 7% of cases did defendants file a statement of opposition, meaning that **93% of EOPs remained uncontested**. However, only in 73% of cases did the courts declare an EOP enforceable on their own motion. In the remaining cases, they waited for a request from the claimant, a step not set out in the Regulation.

The analysis revealed that the rules of the Regulation are interpreted and applied in divergent ways, often contrary to the purposes of the Regulation. For instance, in several cases courts required the claimant to pay in advance for the costs of translation, without checking first whether it was really necessary. In some cases courts demanded that the claimant provide the documents supporting the claim, although the Regulation does not require this. Polish courts usually sent the EOP abroad by post, without checking if this method is acceptable in a specific MS.

Academic proposals

Soraya Amrani-Mekki¹⁵ (Paris) points out that the jurisdiction rule whereby the defendant may be sued only in the courts of their own MS extends only to consumers, meaning employees and insured persons may face an EOP procedure abroad. Furthermore, she proposes to strengthen the protective rule, to make it explicit that a court or authority must, before issuing an EOP, verify its competence.

Carla Crifò¹⁶ (Leicester) believes that too much has been left to national law, which can create the risk of divergent application of the Regulation across the EU. This could be remedied by frequent references to the CJEU, but in practice courts may be more eager to fill the gaps in the Regulation with national law. She has also made proposals for rules which could be added to the EOP, instead of leaving the matter to national law (e.g. rules on withdrawing an application, and on specification of the moment when proceedings are deemed to have started).

Elena Alina Ontanu and Ekaterina Pannebaker¹⁷ (Rotterdam) propose that the Regulation be supplemented by clear language rules, instead of leaving the matter to national law. As a hypothetical solution they consider using only English across the EU for commercial EOP proceedings. They also consider resorting to automated translation in order to cut down costs.

Xandra Kramer¹⁸ (Rotterdam) points out that important issues, especially the rules on service, have been left to national law, which can lead to a situation in which MS uphold their own inefficient rules. She also advocates the enactment of more detailed rules on the scope of 'review' of an EOP. Kramer proposes that ideally the EOP should be an entirely electronic procedure. She also suggests that explanatory guidelines for national courts should be published.

Review by the European Commission

By December 2013, the Commission should present a detailed report reviewing the operation of the EOP procedure. It will contain a detailed impact assessment for each MS.

Further reading

[Cross-border enforcement of debts in the European Union : default judgments, summary](#)

[judgments and orders for payment](#) / Carla Crifò, Alphen a/d Rijn: Kluwer Law International, 2009.

[Droit processuel civil de l'Union européenne](#) / ed. Loïc Cadet, Emmanuel Jeuland, Soraya Amrani-Mekki, LexisNexis, 2011.

[Implementation of optional instruments within European civil law](#) / Bénédicte Fauvarque-Cosson, Martine Behar-Touchais, EP Policy Department C study, 2012

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<http://www.library.ep.ec>

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Endnotes

- ¹ [Civil Procedure and EU Law: A Policy Area Uncovered](#) / Eva Storskubb, Oxford University Press, 2008, p. 203.
- ² Storskubb, op.cit., p. 204; [Europejski nakaz zapłaty w praktyce sądowej](#) [The European Order for Payment in Court Practice] / Piotr Rylski, in: *Prawo w Działaniu – Sprawy Cywilne*, 2012, vol. 12, pp. 145-190, p. 147.
- ³ [Cross-border enforcement of debts in the European Union: default judgments, summary judgments and orders for payment](#) / Carla Crifò, Kluwer Law International, 2009, p. 151-254.
- ⁴ Storskubb, op.cit., p. 204-205.
- ⁵ See Polish [Code of Civil Procedure](#), art. 484¹-497; art. 491¹-505; art. 505²⁸-505³⁸.
- ⁶ Commercial Litigating in the European Union: A Changing Landscape / Luc Demeyere, in: *International Business Law Journal*, 2008, vol. 4, pp. 481-508, p. 500.
- ⁷ Storskubb, op.cit., p. 143; [A major step in the harmonisation of procedural law in Europe: the European Small Claims Procedure: Accomplishments, new features and some fundamental questions of European harmonisation](#) / Xandra Kramer, in: *The XIIIth World Congress of Procedural Law. The Belgian and Dutch Reports*, 2008, p. 1; Rylski, op.cit., p. 145.
- ⁸ Règlement (CE) no. 1896/2006 du 12 décembre 2006 instituant une procédure européenne d'injonction de payer / Soraya Amrani-Mekki, in: [Droit processuel civil de l'Union européenne](#), LexisNexis 2011, pp. 249-275, p. 253.
- ⁹ Storskubb, op.cit., p. 214.
- ¹⁰ CJEU [Case C-144/12 Sperindeo](#), para. 29.
- ¹¹ CJEU [Case C-144/12 Sperindeo](#), para 42.
- ¹² Amrani-Mekki, op.cit., p. 258. See Art. [313-1](#) and [441-1](#) of the French Penal Code.
- ¹³ [Implementation of optional instruments within European civil law](#), EP Policy Department C study, 2012, p. 108-115.
- ¹⁴ Rylski, op.cit., *passim*.
- ¹⁵ Amrani-Mekki, op.cit., p. 257-258.
- ¹⁶ Crifò, op.cit., p. 103-147.
- ¹⁷ [Tackling language obstacles In cross-border litigation: The European Order for Payment and the European Small Claims Procedure approach](#) / Elena Alina Ontanu and Ekaterina Pannebakker, in: *Erasmus Law Review*, 2012, vol. 5, issue 3.
- ¹⁸ Kramer, op.cit.