



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a Regulation of the European Parliament and of the Council creating a European order for payment procedure

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2004)173 final – 2004/0055 (COD):	19.03.2004.
Date of the opinion of the European Economic and Social Committee:	09.02.2005.
Date of the opinion of the European Parliament, first reading:	13.12.2005.
Date of transmission of the amended proposal:	08.02.2006.
Date of adoption of the common position:	30.06.2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The swift recovery of outstanding debts whose justification is not called into question is of paramount importance for economic operators in the European Union and for the proper functioning of the internal market. A legal framework that does not guarantee a creditor access to the rapid settlement of uncontested claims may afford bad debtors a certain degree of impunity and thus provide an incentive to withhold payments intentionally to their own advantage. Late payments are a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized ones, and resulting in numerous job losses.

The need to engage in lengthy, cumbersome and costly court proceedings even for the collection of uncontested debts inevitably exacerbates those detrimental economic effects. This situation implies a multi-faceted challenge for the Member States' judicial systems. It has become essential to distinguish the truly contentious cases at the earliest possible stage of the proceedings from those where no real legal dispute exists. Such a differentiation is a necessary, albeit not sufficient condition to make efficient use of the limited resources allocated to the courts. It enables them to concentrate on the controversial litigation and to adjudicate it within a reasonable period of time. This desired result can be achieved, however, only if a speedy and efficient procedure for uncontested claims is available.

The objective of the proposal is to establish a uniform rapid and efficient mechanism for the recovery of uncontested money claims throughout the European Union.

3. COMMENTS ON THE COMMON POSITION

3.1. General comment

The Council's common position was adopted by unanimity. It preserves the essentials of the Commission's initial proposal as modified by the amended proposal.

The main changes made in the common position concern the following issues:

- the common position limits the scope of application to cross-border cases; a cross-border case is defined as a case in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the seized court;
- several changes have been made to the text to enable electronic and automated processing of the application (see Articles 7(5), 7(6), 8, 16(4) and 16(5));
- the initial two-step order for payment procedure has been replaced by a single phase procedure. However, additional procedural guarantees have been inserted in the text to protect the rights of the parties to the proceedings (see in particular Articles 8, 10, 11 and 12). Thus, the court upon receiving an application will examine on the basis of the application form whether the admissibility criteria are met and whether the claim appears to be founded. Based on that examination, the court could either reject the application or deliver a European order for payment.
- differently from the original proposal, the Regulation now foresees a possibility for issuing a European order for payment for a part of the claim in case the claimant agrees.
- the Regulation has clarified the deadlines for different procedural phases. In order to assure consistency, the Regulation makes use of a uniform 30-day deadline for the delivery of the European order for payment and for sending the statement of opposition.
- differently from the original proposal, the Regulation now includes provisions on enforcement (see Articles 21, 22 and 23). The abolition of exequatur has been included in the text of the Regulation itself, accompanied by the minimum standards already foreseen in Regulation 805/2004 creating a European enforcement order for uncontested claims;
- the common position includes a detailed review clause.

Other amendments are of a more formal nature and have been made to render the text easier to read.

The Commission can accept the common position which, although modifying some specific features of the Commission's original proposal as amended following Parliament's opinion, remains faithful to the objective of simplifying, speeding up and reducing the costs of litigation concerning uncontested pecuniary claims.

3.2. Outcome of Parliament's amendments

All amendments of Parliament were included in the amended proposal of the Commission and also in the common position. In some cases, however, the discussions in the Council and the revision of the text by Legal/Linguistic Experts showed the need for certain technical

clarifications. In order to correspond to the text of the Regulation, the recitals and the standard forms have been adapted and updated.

There is one case of divergence between the amended proposal and the common position in Article 3(1):

- Article 3(1) of the amended proposal: "For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a State other than the Member State of the court seized."

- Article 3(1) of the common position: "For the purposes of this Regulation, 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 seized."

The Commission continues to regret the limitation to cases where both parties are domiciled in a Member State and has made a declaration accordingly.

The common position of the Council has been negotiated together with the European Parliament in view of reaching a first-reading agreement. Therefore the European Parliament should not request any amendments of the common position.

4. CONCLUSION

The Commission accepts the common position in the light of the fact that it includes the key elements included in its initial proposal and Parliament's amendments as incorporated into its amended proposal.

5. STATEMENT BY THE COMMISSION

At the occasion of the adoption of the common position, the Commission made the following declaration:

DECLARATION OF THE COMMISSION

The Commission declares that the definition of the term "cross-border case" in the context of this Regulation is not an interpretation of the obligation foreseen in Article 65 of the Treaty to limit the action of the Community to matters having cross-border implications, but only one among other possibilities to limit the scope of application of this Regulation in the context of Article 65.

It is not necessary to limit the scope of application by reference to a general definition of "cross-border" in the instruments relating to private international law.

The necessity or interest to resort to a general definition of "cross-border" in other instruments which are not linked to private international law such as the proposed directive on mediation the character of which is different from this Regulation should be analysed carefully case by case, taking into account the objectives of each instrument.