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REPORT

on the application of the European Order for Payment Procedure
(2016/2011(INI))

Committee on Legal Affairs

Rapporteur: Kostas Chrysogonos

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the application of the European Order for Payment Procedure (2016/2011(INI))

The European Parliament,

- having regard to the Commission's Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation (COM(2002)0746),
 - having regard to Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure¹,
 - having regard to Commission Regulation (EU) No 936/2012 of 4 October 2012 on amending the Annexes to Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure²,
 - having regard to the Commission report on the application of Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European Order for Payment Procedure (COM(2015)0495),
 - having regard to the European Implementation Assessment on the European Order for Payment Procedure carried out by the European Parliamentary Research Service,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs (A8-0299/2016),
- A. whereas the Commission has submitted its report reviewing the operation of the European Order for Payment Procedure in accordance with Article 32 of Regulation (EC) No 1896/2006;
- B. whereas the report is almost two years late and does not include an extended and up-to-date impact assessment for each Member State as required, considering the different legal provisions in all Member States and their interoperability, but only an incomplete statistical table with information dating predominantly from 2012; whereas the European Order for Payment is an optional procedure that can be used in cross-border cases as an alternative to domestic payment orders;
- C. whereas this procedure was created to enable the rapid, facilitated and inexpensive recovery of sums arising from debts that are certain, of a fixed amount and due, and uncontested by the defendant; and whereas the operation of this procedure seems largely satisfactory according to statistics, but the procedure is working greatly below its full potential, as it is mainly used in Member States whose legislation includes a similar national procedure;
- D. whereas the European Order for Payment Procedure falls into the category of measures

¹ OJ L 399, 30.12.2006, p. 1.

² OJ L 283, 16.10.2012, p. 1.

in the field of judicial cooperation in civil matters having cross-border implications and needed for the functioning of the internal market;

- E. whereas late payments are a key cause of insolvency, which threatens the survival of businesses – and in particular of small and medium-sized enterprises – and results in numerous job losses;
- F. whereas concrete measures, including targeted awareness campaigns, should be taken to inform citizens, businesses, legal professionals and other relevant parties of the availability, functioning, application and advantages of the procedure;
- G. whereas, in certain Member States in which the European Order for Payment Procedure is not applied in conformity with the current regulation, orders should be issued more quickly, and in any case the 30-day deadline set by the regulation should be respected, bearing in mind that orders can only be enforced where claims are uncontested;
- H. whereas the development of the e-Codex system to allow the online submission of applications is to be encouraged, through further measures targeting the more efficient use of the procedure;
- I. whereas more Member States should follow the example of France, the Czech Republic, Estonia, Cyprus and Sweden and allow claimants to submit their applications in additional languages and in general to take support measures in order to minimise error-margins resulting from the use of a foreign language;
- J. whereas the streamlined nature of the procedure does not mean that it can be misused to enforce unfair contractual terms, since Article 8 of Regulation (EC) No 1896/2006 calls on the court to examine whether the claim is founded on the basis of the information available to it, thus ensuring compatibility with the relevant case law of the Court of Justice on this subject; whereas, moreover, all relevant parties should be informed about rights and procedures;
- K. whereas the standard forms need revising and future periodic review in order to update the list of Member States and currencies, and to make better provisions for the payment of interest on claims, including an appropriate description of the interest to be recovered;
- L. whereas the Commission should consider proposing the revision of the provisions on the scope of the procedure and on the exceptional review of orders;
 - 1. Welcomes the successful operation in all the Member States of the European Order for Payment Procedure, a procedure applicable in civil and commercial matters relating to uncontested claims whose main objective is to simplify and speed up the procedure for the cross-border recognition and enforcement of creditors' rights in the EU;
 - 2. Deplores the significant delay of almost two years in the submission of the Commission's report reviewing the implementation of Regulation (EC) No 1896/2006;
 - 3. Regrets the lack of an extended impact assessment for each Member State in the Commission's report, as required by Article 32 of Regulation (EC) No 1896/2006;

deplores the lack of up-to-date data in this report on the situation in the Member States with regard to the functioning and implementation of the European Order for Payment Procedure; calls on the Commission therefore to produce an extended, updated and detailed impact assessment;

4. Regrets, likewise, that use of the European Order for Payment Procedure varies significantly between Member States; stresses in this connection that, despite the simplified modern procedure offered by EU legislation, the differences in implementation in the Member States and the desirability of choosing national legislation rather than the European Order for Payment Procedure are failing to maximise the results of the implementation of Regulation (EC) No 1896/2006, and European citizens are consequently unable to exercise their rights at cross-border level, posing a risk of a decline in confidence in EU legislation;
5. Points out that members of the public use the procedure most often, and are best informed about it, in Member States with similar instruments at national level;
6. Considers that practical steps need to be taken to further inform citizens, businesses, legal professionals and all other relevant parties of the availability, functioning, application and advantages of the European Order for Payment Procedure in cross-border cases; stresses, further, that assistance is needed for members of the public and in particular for small and medium-sized enterprises to improve their use, understanding and knowledge of existing legal instruments with a view to the enforcement of claims at cross-border level under the relevant EU legislation;
7. Stresses the need for Member States to provide the Commission with accurate, comprehensive and up-to-date data for effective monitoring and evaluation purposes;
8. Encourages the Member States to strive to issue orders within 30 days, and to accept applications in foreign languages where possible, taking into consideration that translation requirements have a negative impact on costs and processing times in respect of the procedure;
9. Fully supports the work being done to allow, in the future, the electronic submission of applications for a European Order for Payment; calls therefore on the Commission, in this connection, to encourage use of the e-CODEX pilot project and to extend it to all Member States, following a Commission study that was conducted regarding the feasibility of electronic applications for European Orders for Payment;
10. Calls on the Commission to adopt updated standard forms as required, in order to make better provision, inter alia, for an appropriate description of the interest to be paid on claims;
11. Considers that a future review of the regulation should look at removing certain exceptions to the scope of the procedure and at revising the provisions on the review of European Orders for Payment;
12. Instructs its President to forward this resolution to the Council and the Commission, and to the parliaments and governments of the Member States.

EXPLANATORY STATEMENT

Purpose of the procedure

The purpose of the European Order for Payment Procedure is to allow for the easier recovery of sums in cross-border proceedings. The procedure is optional, meaning that it is available in cross-border cases as an alternative to the various equivalent national procedures. Put simply, the procedure allows creditors to easily obtain an order to recover uncontested civil and commercial claims. It can be applied for by correspondence or, often, electronically, does not require the assistance of a lawyer, and is enforceable in other Member States without any need for additional formalities.

The European Order for Payment is issued automatically, on the sole basis of the application, but the debtor can make a statement of opposition within 30 days. In the case of such an opposition, the order is terminated, and adversarial court proceedings can commence.

Use of the procedure

The Commission states that some 12 000 applications for European Orders for Payment are made each year. Use of the procedure seems to be most common in countries which have a similar national procedure in place, meaning that the target audience will be more familiar with the concept. Some Member States have an extremely low usage rate, suggesting that more could be done to inform businesses and legal professionals of the existence and advantages of the procedure.

Practical implementation

Several elements are essential for the use of the European Order for Payment procedure to be effective. Firstly, the order must be granted quickly, as no detailed examination of the claim should take place. The regulation provides that orders should be issued within 30 days. It appears, however, that whilst some Member States grant orders within that timeframe, others take considerably longer, and in certain cases more than half a year. This is not acceptable.

Secondly, it should be possible to submit the relevant forms online. It is currently possible to fill in the forms online, which already reduces the number of errors and omissions on forms. This should also contribute to bringing down the number of requests for correction or rectification of applications. More could be done in this area, in particular via the e-Codex system, so that the forms can be actually submitted online.

Thirdly, as this is a cross-border procedure, Member States should accept applications in languages other than their own where possible. France serves as the example in this respect, as applications are accepted in five languages. In most other Member States, however, applications in foreign languages are not accepted.

Legal issues

A number of legal issues have arisen in the course of the application of the European Order for Payment Procedure. Firstly, insufficient explicit provision was made in the original regulation for the interest payable on the main claim. The situation has been clarified by case

law: it is possible to use the European Order for Payment Procedure to claim interest due in the future, up to the date of actual payment¹. However, the forms could make such a claim easier by clarifying the relevant sections.

Secondly, it has become apparent that the full automaticity of the European Order for Payment Procedure, just as that of comparable national procedures, is not always compatible in practice with consumer protection. The Court of Justice has ruled that, even if the court should not normally consider the legal situation underlying the payment order, the effectiveness of consumer protection law requires the court to at least consider whether the contractual clause under which a business is claiming payment is fair to the consumer². If it is unfair, the payment order should not be issued. This is compatible with the regulation, as it does state that the court should assess whether a claim appears to be founded.

Opposition and review

Where the defendant opposes the application, the procedure cannot continue. Depending on the indications of the applicant, the case may either be dropped, continue in ordinary court proceedings or, following the 2015 revision, continue under the European Small Claims Procedure. The rate of opposition varies wildly from Member State to Member State, apparently depending on whether similar proceedings are known in national law. In countries where such a national procedure exists, the rate of opposition is quite low, whereas in some others, the rate of opposition exceeds 50%.

In view of the nature of the European Order for Payment Procedure, a review is only possible in exceptional cases, for example where the right of defence was not respected. It was considered in 2015 whether to amend the provisions on exceptional review, but the text remains unchanged for the time being. Clarification might, however, have been desirable.

Possible changes to the procedure

Your rapporteur considers that the Commission should adopt new versions of certain of the standard forms in order to take into account various changes that have occurred over the years, as well as to improve the clarity of the sections on payment of interest. As concerns the regulation itself, your rapporteur sees no immediate need for changes, but considers whether some of the restrictions to the scope of the procedure might be lifted in view of the progress made by EU family law. More work also needs to be done on applications for review of European Orders for Payment.

¹ Judgment of the Court (First Chamber) of 13 December 2012 in Case C-215/11, *Iwona Szyrocka v SiGer Technologie GmbH*, ECLI:EU:C:2012:794, point 53.

² Judgment of the Court (First Chamber) of 14 June 2012 in Case C-618/10, *Banco Español de Crédito SA v Joaquín Calderón Camino*, ECLI:EU:C:2012:349, point 57.

RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

Date adopted	13.10.2016
Result of final vote	+ : 19 - : 2 0 : 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Enrico Gasbarra, Gilles Lebreton, António Marinho e Pinto, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Tadeusz Zwiefka
Substitutes present for the final vote	Daniel Buda, Sergio Gaetano Cofferati, Pascal Durand, Evelyne Gebhardt, Constance Le Grip, Virginie Rozière