

# EUROPEAN PARLIAMENT

2004



2009

---

*Committee on Civil Liberties, Justice and Home Affairs*

**2004/0055(COD)**

16.6.2005

## **OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on the proposal for a European Parliament and Council regulation creating a  
European order for payment procedure  
(COM(2004)0173 – C6-0006/2004 – 2004/0055(COD))

Draftsman: Mihael Brejc

PA\_Leg

## **SHORT JUSTIFICATION**

The Committee on Civil Liberties, Justice and Home Affairs was asked for its opinion on the proposal for a Regulation creating a European order for payment procedure. At the European Council meeting in Tampere, the Council and the Commission were instructed to draw up measures to strengthen judicial cooperation between Member States, including in the area of payment of uncontested claims. In 2002 the Commission published a Green Paper on a European order for payment procedure, on the basis of which it was established that a uniform, accelerated and cost-effective mechanism for payment of uncontested claims would help not only to improve access to the courts but also to improve the functioning of the internal market because, in practice, enterprises, especially small and medium-sized enterprises, encounter numerous difficulties in recovering uncontested claims.

The Regulation lays down a simpler procedure for issuing payment orders, which will make it faster and easier for creditors to receive payment of pecuniary claims. The procedure will be based on the use of standard forms by courts and the parties involved, which will allow the administrative procedures and electronic data processing to be simplified.

### **Draftsman's opinion**

The draftsman supports the proposed Regulation but draws attention to the following points with regard to its content:

1. Consideration should be given to applying the procedure both in cross-border cases and national cases, with the possibility for Member States to limit application of the Regulation to cross-border cases only.
2. In the procedure for issuing a European order for payment the claimant should present a brief description of at least one piece of evidence and enclose copies of the relevant documents with the application.
3. The possibility of a single-stage procedure for issuing payment orders should be examined.
4. A European order for payment issued in one Member State should be enforceable in another Member State without the need for a decision declaring it enforceable in the other Member State.

## **AMENDMENTS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

## Amendment 1

## Recital 8

(8) The European order for payment procedure *should not replace or harmonise the existing mechanisms for the recovery of uncontested debts under national law but constitute an additional option for the creditor who remains free to resort to a procedure provided by domestic law.*

(8) The European order for payment procedure *will create for natural and legal persons throughout the EU a secure legal framework providing a simplified procedure in cross-border cases to assist cross-border business. In this way, the European order for payment procedure should also serve as a model for national legal systems, in particular where such efficient procedures do not yet exist.*

*Justification*

*This recital clarifies that the present draft regulation serves mainly two purposes. On the one hand, a reliable legal framework should be created for cross-border transactions. It can be assumed that even today citizens and small and medium-sized enterprises avoid such transactions because of ignorance of national legal systems and concerns over their ability to enforce their claims effectively in the event of problems occurring.*

*On the other hand the Regulation - outside its immediate scope of application - will serve also as a model for the Member States of the European Union, particularly those which do not have an order for payment system, to provide within their national legal system a procedure which will be of benefit to citizens and companies in providing a fast and efficient mechanism to enforce uncontested claims.*

## Amendment 2

## Recital 10

(10) The procedure should be based, to the largest extent possible, on the use of standard forms in the communication between the court and the parties in order to facilitate its administration and enable the use of automatic data processing.

(10) The procedure should be based, to the largest extent possible, on the use of standard forms in the communication between the court and the parties in order to facilitate its administration, **and the Member States should encourage** the use of automatic data processing.

---

<sup>1</sup> Not yet published in OJ.

### *Justification*

*In some Member States the procedure for issuing payment orders is already computerised, which makes it faster. Member States should encourage the use of automatic data processing, which will be of great help in making the procedure more efficient.*

### Amendment 3 Recital 10 a (new)

***(10a) The European order for payment should be issued at the earliest opportunity; the courts should aim at completing the whole procedure within three months.***

### *Justification*

*The main advantage of the European order for payment procedure is precisely that it should be more efficient and faster than an ordinary civil procedure. Whether it is a one-stage or two-stage procedure, Member States should endeavour to ensure that the payment order is issued in the shortest possible time, and the entire procedure should not take more than three months. The experience of Member States is that the procedure is normally concluded in two to three months.*

### Amendment 4 Article 1, paragraph 1

1. This Regulation shall apply in civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

1. This Regulation shall apply in ***cross-border cases*** to civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters.

### *Justification*

*The scope of the Regulation should be limited to cross-border disputes. In this way a noticeable added value is created for European citizens and small and medium-sized enterprises in Member States. An appropriate legal framework is created for their business activities in the European internal market when enforcing uncontested claims. At the same time, we avoid creating insecurity and uncertainty in national procedures by the creation of an additional parallel national system for purely internal disputes. Consequent inefficiencies and unnecessary costs are also avoided. Where there are no existing efficient national procedures, however, this Regulation can serve as a model for the adoption of national procedures. Thus the legal base of Article 61(c) in connection with Article 65 of EU-Treaty is used extensively and safeguarded.*

Amendment 5  
Article 3, paragraph 2, point (e)

***(e) the brief description of at least one means of evidence that could be adduced in ordinary civil proceedings to support the claim.*** ***deleted***

*Justification*

*For the sake of efficiency, the use of automatic data processing is required, which means that it would be sufficient, particularly in the case of non-contentious claims, for the creditor merely to state the type of evidence he has. The court would then examine the application and if it met all the requirements under the Regulation the court would not examine the evidence itself. The debtor would always be able to disagree with the procedure.*

Amendment 6  
Article 10, paragraph 2 a (new)

***2a. The European order for payment shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.***

*Justification*

*The proposed amendment provides that a European order for payment issued in one Member State should be enforceable in another Member State without the need for a decision declaring it enforceable in the other Member State.*

Amendment 7  
Article 18 a (new)

***Article 18a***

***Review***

***Five years after the entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council.***

### *Justification*

*After five years it will be clear from practical experience whether the Regulation should also apply to cases where the parties are domiciled in the same Member State. In that case the Commission should draw up an amendment to the effect that it would apply to national cases as well as cross-border cases.*

## PROCEDURE

<b>Title</b>	Proposal for a European Parliament and Council regulation creating a European order for payment procedure
<b>References</b>	COM(2004)0173 – C6-0006/2004 – 2004/0055/COD)
<b>Committee responsible</b>	<b>JURI</b>
<b>Committee asked for its opinion</b> Date announced in plenary	LIBE 16.9.2004
<b>Enhanced cooperation</b>	
<b>Draftsman</b> Date appointed	Mihael Brejc 21.2.2005
<b>Discussed in committee</b>	26.5.2005      13.6.2005
<b>Date amendments adopted</b>	13.6.2005
<b>Result of final vote</b>	for:                    27 against:              4 abstentions:         0
<b>Members present for the final vote</b>	Roberta Angelilli, Edit Bauer, Johannes Blokland, Mihael Brejc, Maria Carlshamre, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Charlotte Cederschiöld, Carlos Coelho, Kinga Gál, Elly de Groen-Kouwenhoven, Adeline Hazan, Ewa Klamt, Magda Kósáné Kovács, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Edith Mastenbroek, Inger Segelström, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka
<b>Substitutes present for the final vote</b>	Panayiotis Demetriou, Gérard Deprez, Jeanine Hennis-Plasschaert, Antonio Masip Hidalgo, Bill Newton Dunn, Siiri Oviir, Herbert Reul, Marie-Line Reynaud, Kyriacos Triantaphyllides
<b>Substitutes under Rule 178(2) present for the final vote</b>	