

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

creating a European order for payment procedure

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION AND BACKGROUND

1.1. Introduction

With the entry into force of the Treaty of Amsterdam the European Union has set itself the objective of progressively establishing an area of freedom, security and justice, amongst others by adopting measures in the field of judicial cooperation in civil matters. Pursuant to Article 65 (c) of the Treaty establishing the European Community such measures shall include the elimination of obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

The Vienna Action Plan of the Council and the Commission, adopted by the Council in 1998[1], called for the identification of the rules on civil procedure which are urgent to approximate for the purpose of facilitating access to justice for the citizens of Europe and for the examination of the elaboration of additional measures to improve compatibility of civil procedure.

In the conclusions of the European Council in Tampere 1999[2] the Council and the Commission were called upon to prepare new legislation on those elements of civil procedure which are instrumental to smooth judicial cooperation and to enhanced access to law. Orders for money payment were specifically included in a list of issues that warrant such legislative initiatives.

The joint programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, adopted by the Council on 30 November 2000[3], singled out the abolition of *exequatur* for uncontested claims as one of the Community's priorities. The programme, clearly focused on facilitating the recognition and enforcement of judgments, also makes reference to the approximation of procedural law as an accompanying measure that may, in some areas, be a precondition for the desired progress in attempting to gradually dispense with any *exequatur* procedure. It is against that background that the document underscores that in some areas, particularly with regard to the recovery of uncontested claims, abolition of *exequatur* might take the form of establishing a true European enforcement order, obtained following a specific, uniform or harmonised procedure laid down within the Community[4]. It has to be emphasised, however, that the abolition of *exequatur* and the harmonisation of procedural law, although joined together in the above-mentioned passage of the programme, are two distinct issues. The former presupposes the delivery of a decision and concerns the access to enforcement in another Member State whereas the latter relates to the access to justice in order to obtain a decision regardless of whether it has to be enforced abroad. These matters are separate in

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1 OJ C 19, 23.1.1999, p.1, point 41 (d).

2 Presidency conclusions, point 38.

3 OJ C 12, 15.1.2001, p. 1.

4 Section II A 2 b of the programme. Although no mention of an order for payment procedure (nor any other specific procedure) is made in this section the later reference to the proposal for a European enforcement order for uncontested claims at the first stage of the implementation in section III A proves that harmonisation along these lines has been envisaged particularly for the recovery of uncontested claims.

nature and can be addressed independently and on their own merits as evidenced by the Tampere conclusions that deal with both issues without forging a link between them.

The Commission has decided to pursue both objectives – the mutual recognition of decisions on uncontested claims on the one hand and the creation of a specific procedure for the attainment of decisions on uncontested claims on the other – in two different legislative instruments. This two-tiered strategy does not entail the risk of an overlap or of contradictions between both projects since they are clearly demarcated by their strict limitation to the stages before (creation of an order for payment procedure) and after (recognition and enforcement) the delivery of the enforceable decision, respectively. Quite on the contrary, this approach offers a number of significant advantages over a legislative initiative combining both aspects. For example, it allows a broader scope of application for the abolition of exequatur, extending it to all judgments handed down in the verifiable absence of any dispute over the nature and extent of a debt and not only to decisions delivered in one specific procedure.

In April 2002, the Commission presented a proposal for a Council Regulation creating a European Enforcement Order for uncontested claims[5] which provides for the elimination of intermediate measures for all enforceable titles on uncontested claims conditional upon the compliance with a number of minimum procedural standards regarding the service of documents. The present proposal represents the second leg of the strategy outlined above.

1.2. The Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation

The adoption of this proposal was preceded by a wide-ranging consultation of both Member States and all interested parties of civil society. The Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation presented by the Commission on 20 December 2002[6] gave an overview of the currently existing models of order for payment procedures under the legislation of the Member States. Based on a comparative study of how Member States deal with the relevant procedural issues it formulated a multitude of questions concerning the desirable scope and features of a European instrument. The most fundamental issues raised in the Green Paper can be summarised as follows:

– Should a European instrument on an order for payment procedure be applicable to cross-border cases only or to purely internal litigation as well?

– What types of claims should the European order for payment be available for? Should the scope of application be restricted to pecuniary demands and, if so, should any further sub-categories of pecuniary claims be excluded?

– Is there a need for specific rules on international jurisdiction or even on the attribution of jurisdiction within the Member States?

– Should the European order for payment procedure require the presentation of documentary evidence to support the claim at issue and involve a summary examination of the merits of that claim by the court or should a simple description of the claim and the lack of objections be sufficient for the delivery of an enforceable decision?

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5 COM (2002) 159 final, OJ C 203 E, 27.8.2002, p.86.

6 COM (2002) 746 final.

– Should the defendant have the opportunity to contest the claim and bring about a transfer to ordinary proceedings once or twice?

The Commission received roughly 60 replies from Member States and other interested parties representing the interests of businesses, consumers and legal professions. These reactions to the Green Paper that were further debated in a public hearing organised by the Commission on 26 June 2003 revealed that the creation of a European order for payment procedure is almost unanimously considered a step ahead in the creation of an area of freedom, security and justice.

The European Parliament, in its resolution on the Green Paper[7], warmly welcomed the Commission's initiative. It recalled the political objective, stipulated by the Tampere European Council, to lay down common European rules for the rapid and efficient recovery of uncontested debts and underscored the immense significance of this project for all economic operators having an interest in the proper functioning of the internal market. The Parliament's opinion coincides, to a considerable extent, with the characteristics of this proposal, for example concerning the choice of a Regulation as the appropriate instrument and the fact that the European order for payment procedure should represent an alternative to the procedures existing under the national law of the Member States.

The European Economic and Social Committee, in its opinion on the Green Paper[8], emphatically welcomed the Commission's initiative to launch a consultation on this issue. It considered the introduction of a rapid, efficient and fair order for payment procedure a key component of the fundamental right of access to justice and encouraged and urged the Commission to submit a legislative proposal for the establishment of a standard European procedure.

References to the reactions on the detailed questions in the Green Paper and the way in which these have been taken into account in the preparation of this proposal will be made in the following parts of this explanatory memorandum, most notably in the comments on the specific Articles.

2. OBJECTIVES AND SCOPE

2.1. Overall objective

2.1.1. The significance of an efficient mechanism for the recovery of uncontested claims

It is an established fact of life that the main purpose of a substantial percentage of court proceedings in the Member States is not to obtain an authoritative impartial decision on contentious questions of fact or law. Rather, it is increasingly not the exception but the rule that in the verifiable absence of any dispute the creditor has to turn to the judiciary to attain an enforceable title allowing him to collect a claim by means of forced execution that the debtor is simply unwilling or unable to honour. In 2000 the Commission launched a study on specific procedures on small claims in the Member States. The questionnaire distributed to the Member States in that context also contained some questions on uncontested claims. The answers of the Member States reveal that where comprehensive statistical data is available the

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7 Not yet published.

8 CESE 742/2003, adopted on 18 June 2003.

percentage of uncontested claims ranges between around 50 % and more than 80 % out of all cases dealt with by ordinary lower civil courts[9].

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[10]. 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 and produces the relief of the judiciary that is indispensable for the prevention of considerable backlogs. Thus, given the sheer number of non-contentious cases referred to above, the existence of a procedural legislation that ensures their efficient adjudication is a determining factor for the performance of a judicial system as a whole.

2.1.2. Definition of an order for payment procedure

All the Member States try to tackle the issue of mass recovery of uncontested claims through their courts from their national perspectives within the framework of their procedural systems and traditions. Not surprisingly, the solutions that have been devised differ widely, both in their technical nature and in their rate of success. In some Member States, judgments by default, special summary proceedings within the structure of ordinary civil procedure or even provisional measures that are quasi-definitive as in practice main proceedings hardly ever ensue are the principal procedural instruments to cope with uncontested claims.

In most Member States, however, a specific payment order procedure has proven to be a particularly valuable tool to ensure the rapid and cost-effective collection of claims that are not the subject of a legal controversy. As of today, eleven Member States (Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Portugal, Spain, Sweden) have such a procedure as an integral part of their civil procedural legislation, the French *injonction de payer* and the German *Mahnverfahren* being the most famous examples. In fact, recent years have seen the introduction of payment orders in two Member States (Spain, Portugal) that had

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9 Evelyne Serverin (Directeur de recherche au CNRS IDHE-ENS CACHAN), *Des Procedures de traitement judiciares des demandes de faible importance ou non contestées dans les droits des Etats-Membres de l'Union Européenne,* Cachan 2001, p. 30

10 Based on the results of a study conducted at the Commission's request in 1994 ('European Late Payment Survey' – Intrum Justitia), the Commission estimated the proportion of intentional payment delays throughout the European Union at 35 % in its Communication to the Council and the European Parliament 'Towards greater efficiency in obtaining and enforcing judgments in the European Union', OJ C 33, 31.1.1998, p. 3, para. 38.

not offered an enforceable title of that nature to their creditors before. This development testifies to the growing appreciation of this type of procedure throughout the European Union.

The payment order procedures available in the Member States vary considerably with regard to such crucial aspects as the scope of application, the attribution of competence to issue an order or the formal and substantive requirements for obtaining a favourable decision. In spite of these discrepancies between the existing models of legislation, all of them share the following distinctive features that can serve as elements of a definition of a payment order procedure.

Upon application by the claimant, the court or other competent authority takes a decision on the claim at issue *ex parte*, i.e. without any prior possibility for the defendant to participate. This decision is served on the defendant with an instruction to abide by the order or to contest the claim within a certain time limit. If the defendant fails to act either way, the payment order acquires enforceability. Only if he lodges a statement of opposition the case is transferred to ordinary proceedings. Hence, as opposed to normal procedural rules the burden to initiate adversarial proceedings rests with the addressee of the payment order. This shift of responsibility, referred to in French as '*inversion du contentieux*', combined with the protection of the rights of the defence as embodied in the opportunity to prevent an enforceable title from coming into being constitutes the core characteristic of the payment order procedure.

2.2. Scope

2.2.1. The need for action at Community level

It appears to be rather self-evident that the duration and cost of ordinary civil proceedings that are inappropriate for claims where no legal dispute exists tend to grow even more disproportionate in cases with cross-border implications. The lack of knowledge of the legal systems of other Member States and the consequential need to consult a lawyer, the time-consuming service of court documents on parties in a Member State other than the one where the proceedings take place and the expenses related to translation are only the most conspicuous factors that complicate the lives of creditors of cross-border claims. These problems are inherent in every cross-border litigation irrespective of the contested or uncontested nature of a claim. Nevertheless, the contrast between a rapid recovery procedure available for purely internal lawsuits and the delays and expenses that ensue where parties are domiciled in different Member States reaches an intolerable extent if the justification of the claim at stake is not even challenged by the defendant. This situation privileges bad debtors in cross-border relations and may provide a disincentive for economic operators to extend their activities beyond their Member State of origin, thus limiting commercial transactions between Member States. Even the availability of an effective national procedure for the recovery of uncontested debts in every Member State - a far cry from the current situation as even in those Member States that know an order for payment procedure it is often either inadmissible or impracticable where the defendant is domiciled abroad - would not necessarily be a decisive improvement since the profound differences between such procedures and the lack of familiarity with them present significant obstacles to the settlement of cross-border cases in themselves. A uniform European order for payment will go a long way towards providing easier access to efficient justice.

2.2.2. The scope of the proposal

For the reasons set out above the need for a uniform European procedure for the recovery of uncontested claims is most conspicuous with regard to cross-border litigation. The Commission would, however, consider it not only inappropriate but counterproductive to constrain the scope of application of this procedure to cross-border cases only.

Article 65 of the Treaty establishing the European Community attributes legislative powers to the Community with regard to judicial cooperation in civil matters having cross-border implications in so far as necessary for the proper functioning of the internal market. Whilst the existence of cross-border implications is a prerequisite for Community competence, this does not mean that the rules that can be adopted pursuant to this basis could only apply to cross-border *litigation*, i.e. to cases of a concrete cross-border nature. That would be an overly narrow interpretation of that provision not necessitated by its wording. The conscious use of the more open terminology of matters with cross-border implications in the specific context of Article 65 allows some flexibility to adopt legislation that governs more than cross-border litigation particularly where a common tool embracing both cross-border and domestic cases plays an instrumental role for the working of the internal market. The latter requirement is fulfilled in the light of the fundamental economic significance of an efficient procedure for the recovery of undisputed debts and the repercussions of the vast differences between national systems for the internal market as further elaborated above (*2.1.1*) and in this section. Under these circumstances, the legislation envisaged is sufficiently characterised by a cross-border element, and Article 65 permits such legislation not confined to cross-border lawsuits *in concreto* but also open for use in purely internal situations; in this context, it should also be taken into account that the instrument will apply on an optional basis. The optional nature of the European order for payment procedure and its implications for Member States are set out in more detail below (*2.2.3*).

Besides, the distinction between "cross-border" and "internal" scenarios is much more difficult than it might appear to be at first sight and would inevitably contain an element of arbitrariness. For example, if two persons both domiciled in France had a car accident in Germany and litigate over damages before a French court, is this a purely internal situation because both parties and the court are situated in the same Member State or does it transcend the domestic sphere because of the link to another Member State whose courts would have had jurisdiction to hear the case if the claimant had preferred to bring action there? Opting for the first alternative would amount to predicating the cross-border nature of a case on the subjective choice of the claimant; depending on his decision on which courts to turn to, one and the same situation would have to be considered as either having an international dimension or as being purely internal in spite of the existence of aspects linking it with two Member States. Conceivably, every case that possesses connecting factors to more than one Member State should be regarded as having cross-border implications. But first of all, it would unavoidably be an intricate exercise to define what constitutes a sufficient connecting factor. Should the applicability of the substantive law of a Member State other than the forum State be sufficient to establish such a link? Moreover, a European order for payment with its explicit objective to speed up and simplify the recovery of uncontested claims does not appear to be the most suitable procedure for the scrutiny of such complex matters as incidental questions relating to the admissibility of an application.

These ambiguities, taken together with the potential for every judgment to take on a cross-border nature if it needs to be enforced in another Member State, call into question the merits of the distinction between "internal" and "cross-border" matters.

Furthermore, in the specific context of a procedure for the recovery of uncontested claims a limitation to cross-border situations would produce undesirable political and economic results. Firstly, the access of economic operators to mechanisms of substantially differing performance levels entails a distortion of competition in the internal market regardless of whether actors are domiciled in different Member States or in the same Member State. Two companies competing in one Member State only one of which is domiciled in that same Member State are not on an equal footing if only the one domiciled abroad can make use of an efficient European order for payment procedure. Similarly, an enterprise with the majority of clients abroad might enjoy a significant advantage, due to the availability of such a procedure, over a competitor domiciled in the same Member State which does most of its business domestically. Besides, especially for those Member States that currently do not provide a very efficient tool for the collection of undisputed debts it will be politically difficult to explain both to creditors and debtors why they have access or are subject to a more efficient mechanism in a cross-border situation than domestically. The vast majority of the comments on the Green Paper submitted by economic operators or organisations representing them as well as the opinion of the European Economic and Social Committee confirm the demand for a European order for payment procedure that is universally applicable without a differentiation between internal and cross-border cases.

2.2.3. Subsidiarity and proportionality

It goes without saying that the very objective of this proposal, the creation of a uniform European procedure for the swift attainment of an enforceable decision on a claim whose justification is not challenged, cannot be sufficiently accomplished by the Member States themselves as they cannot guarantee the equivalence of rules applicable throughout the Community. The objective can therefore be only achieved at Community level.

The present proposal is fully consistent with the principle of proportionality in that it is strictly limited to what is necessary in order to reach this objective. In that context, it is particularly essential to underscore the effects of the combination of the legal instrument chosen (Regulation) with the optional nature of the European order for payment procedure in relation to comparable mechanisms under the national procedural law of the Member States. Whilst ensuring the uniformity and direct applicability of the procedure, the Regulation proposed here would only oblige Member States to make the European recovery mechanism available as an additional tool. It would force them neither to abandon their pre-existing legislation on orders for payment or any other procedure for the collection of undisputed debts nor to modify such legislation to bring it into line with Community law. Hence, this proposal for a Regulation which leaves untouched the Member States' right to continue the application of their domestic rules alongside the European order for payment encroaches much less on their procedural systems than a Directive that would require an adaptation of national legislation to the standards set in that instrument. This legislative technique, in fact, assures a minimum level in the efficiency of the recovery of uncontested claims but it permits Member States that have developed an even better-functioning domestic system to retain it. Ultimately, it will be left to the creditors to judge which procedure they consider as being either superior in performance or more convenient in terms of accessibility, the latter criterion being particularly relevant for those operating in several Member States and being spared the need to make themselves familiar with the procedural law of every one of them by the availability of a uniform European order for payment. Finally, it should be borne in mind that an order for payment procedure is, by definition, particularly suitable to respect the principles of subsidiarity and proportionality as this type of procedure is not inextricably interrelated with the other rules governing civil procedure but rather a chapter apart. It is only the end of the payment order procedure caused by the defendant's opposition that triggers the transfer to

ordinary civil proceedings. Hence, the introduction of a European order for payment does not entail the need for further approximation of national procedural legislation and thus keeps interference with domestic law to an absolute minimum.

3. COMMENTS ON THE SPECIFIC ARTICLES

Article 1 –Scope

The general scope of application, limited to civil and commercial matters, as set out in paragraph 1 coincides with that of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Paragraph 2 excludes certain types of civil and commercial claims from the scope. Rights in property arising out of matrimonial and similar (e.g. registered partnership) relationships were excluded as very often in these family law cases courts are obliged to examine the facts of their own motion and thus cannot content themselves with the lack of the defendant's objections to the claimant's allegations. As in Regulation No 44/2001, matters relating to insolvency and social security do not fall within the scope of application. Apart from those items the Commission has not identified reasons for the elimination of other claims from the scope of application. The mere jurisdiction of specialised courts or tribunals (e.g. labour tribunals for claims arising out of employment) instead of ordinary civil courts does not constitute a persuasive ground for not admitting an order for payment procedure. Any other limitation of the applicability of the procedure related to the nature or the legal basis of the claim does not appear to be warranted by compelling reasons; on the contrary, any such constraint would inevitably bring about complex problems of the demarcation of eligible and inadmissible demands. Finally, in accordance with the vast majority of comments on the Green Paper this proposal does not introduce a ceiling as to the amount that can be claimed in the order for payment procedure since the contested or uncontested nature of a claim does not appear to be related to the value of the claim in question in any way that would necessitate the restriction of the accessibility of the procedure to the recovery of amounts below a certain limit. If, as alleged by some, the likelihood of contentious proceedings increased with the rising value of the demand this would not justify a ceiling amount as it is left to the creditor's judgement whether he assesses the probability of the absence of opposition as sufficiently high to make it worthwhile to use the order for payment procedure; if that is not the case he will directly initiate ordinary proceedings.

The discrepancy between the list of exclusions from the scope of application of this proposal and the parallel provision of Regulation No 44/2001 is explained by the fact that they are governing different matters that call for a substantially different approach and a different perspective. This draft instrument is focused on the procedural rules and requirements for the attainment of an enforceable decision and addresses none of the questions dealt with in Regulation No 44/2001. It is not concerned with the international jurisdiction for the order for payment procedure as Regulation No 44/2001 strikes such a fair balance between the interests of plaintiffs and defendants that no justification could be identified to departing from those rules and setting up a special regime of jurisdiction for the European order for payment. Questions of recognition and enforcement in a Member State other than that whose courts delivered the order for payment are exclusively left to Regulation No 44/2001 and, as from its entry into force, to the future Regulation creating a European Enforcement Order for uncontested claims. Therefore, it is self-evident that the considerations underlying the

removal of some types of claims or procedures some of which cannot even conceivably encompass money debts from the scope of application of Regulation No 44/2001 are irrelevant or even nonsensical in the context of this proposal.

Article 2 – European order for payment procedure

Paragraph 1 confines the applicability of the European order for payment procedure to the recovery of liquidated and payable pecuniary claims. It is thus not available for money claims that cannot be specified in terms of a concrete amount (as in the case of immaterial damages, for example) and for demands that concern obligations to act or to refrain from a certain action such as the delivery or restitution of property or eviction. Theoretically, the principle underlying the identification of uncontested claims could be extended to other types of claims than those implying the payment of money and indeed the systems of some Member States cover certain non-pecuniary demands. Nevertheless, it is common grounds and confirmed by the feedback to the Green Paper that those other claims which would make up a minuscule percentage of the cases dealt with in this procedure at any rate are much less amenable to a standardised handling. Just to give one example, the mere formulation of the demand in such a way as to fulfil the requirements for the precision of an enforceable title will often present an insurmountable obstacle at least for legal laymen and would entail the rejection of a significant share of applications just for that reason or create a disproportionate amount of work for the courts.

Paragraph 2 specifies the optional nature of the European order for payment procedure. It is fully at the creditor's discretion if he prefers to pursue a claim that falls within the scope of this proposal by applying for a European order for payment or by making use of a summary or ordinary procedure available under the law of the forum Member State.

Article 3 – Application for a European order for payment

This provision lists the elements that the application for a European order for payment must contain relating to the identification of parties to the proceedings and to the description of the claim and its justification. Most of the items indicated in the Article are self-explanatory.

It needs to be underscored that this proposal refrains from making the presentation of documentary evidence a prerequisite for the granting of a European order for payment. In the light of the analysis of the replies to the Green Paper on this crucial distinction between the two existing models of order for payment procedures (referred to as the "evidence" and the "no evidence" schools in the Green Paper) the Commission came to the conclusion that such a requirement would imply a substantial risk to the uniform application of the Regulation as to what types of documents are considered satisfactory proof of the claim. Moreover and more importantly, it has to be taken into consideration that the sole purpose of the written evidence accompanying the application consists in serving as the basis of the summary examination of the merits of the claim that is prescribed under the law of the Member States that follow the "evidence" model. This proposal does not foresee a systematic and comprehensive or summary examination of the justification of the demand.

Rather, the Commission has attempted to identify a solution that combines the advantages of a "no evidence" order for payment as concerns the simplicity and efficiency of the procedure with an adequate protection of the defendant's rights. One element of the latter objective is the requirement for the applicant, pursuant to paragraph 2 (e), not to actually present but to

describe some evidence he could rely on in ordinary proceedings if the claim were contested. This prerequisite, which enables the applicant to refer to all admissible means of proof instead of just documents but does not oblige him to supply an exhaustive list of evidence, primarily constitutes a formal condition for the granting of the European order for payment that is easy to check.

The claimant has to provide the court with a description of the cause of action in accordance with paragraph 2 (d). This statement can and should be brief and concise, yet it must explain the legal relationship between the parties, the justification of the concrete claim and its amount and the link between the claim and the evidence offered.

Paragraph 3 permits, as an alternative to a hand-written signature, an electronic signature if, in accordance with Article 2 (2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, it is uniquely linked to the signatory and is capable of identifying him, if it is created using means that the signatory can maintain under his sole control and if it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable. This provision, reproduced in other parts of the proposal, reflects the general intention to permit the use of automatic data processing and electronic communication in the procedure under the condition of the adequate protection of the parties' rights.

Article 4 – Requirements for the delivery of a European order for payment

This Article is intended to comprise, in its paragraph 1, a complete and exhaustive list of the requirements for the issuance of a European order for payment whose fulfilment the court has to examine when seised of an application. The scrutiny has to cover but cannot go beyond

– The scope of application of the procedure as defined in Articles 1 and 2; and

– The formal requirements for the application as set out in Article 3.

Apart from these issues that have to be examined *ex officio* it is the defendant's responsibility to judge, based on the information provided in the application that allows him to clearly identify the claim made against him and to consider its merits, if he wants to contest it or to acquiesce in it. In the latter case, there is no further valid reason to deny the claimant a favourable decision.

Paragraph 2 affords the court a certain flexibility, without implying any obligation, to refer the application back to the claimant to allow him to remedy shortcomings of his request where he has not complied with all the formal requirements set out in Article 3 and the mistake appears to be easily rectifiable, e.g. where he has simply not filled in a mandatory field of the application form. It is by no means the intention of this provision to hamper the rapid and efficient administration of the procedure. At any rate, in the event of a rejection the claimant retains the right to pursue the claim in ordinary proceedings in accordance with Article 5.

Article 5 – Rejection of the application

It is the principal purpose of paragraph 1 to clarify, in the interest of maintaining the simplicity and uniformity of the procedure and in order to avoid the potential split-up of the procedure into two separate components, that as far as the compliance with the requirements

of Article 4 is concerned the court can only either grant the order for payment in full or refuse it altogether. Thus, where the application only partly meets these conditions it has to be rejected as a whole. To avoid such a rejection where it does not appear to be appropriate the court can make use of the option offered by Article 4 (2).

In line with the comments on the Green Paper and the existing national order for payment procedures, paragraph 3 spells out that the rejection of an application does not acquire the effect of *res iudicata*. This procedure only represents an optional tool for the creditor who presumes that the claim at issue will remain uncontested. If that presumption turns out to be wrong and the defendant objects the transfer to contentious proceedings is automatic. It must, however, also be possible to further pursue a claim in an ordinary civil procedure if the application is dismissed under paragraph 1 for reasons that are generally not at all linked to the justification of the claim but to formal or procedural circumstances such as the scope of application of this procedure. It is the logical corollary of this opportunity to continue the pursuit of the claim that there is no need for the availability of an appeal against the rejection of an application that would render the procedure unnecessarily cumbersome.

Article 6 – European payment notification

This proposal represents a "two-step" order for payment procedure in that the document issued by the court in the event of a favourable decision on the application is not yet the order for payment itself whose enforceability is only conditional upon the expiry of the time limit for lodging a statement of defence but a payment notification that informs the defendant about the claim as well as about his procedural rights and obligations including the prospective delivery of an enforceable order for payment should he fail to contest. It has to be borne in mind, however, that in the Member States that apply a "one-step" model a second involvement of the court is generally inevitable to verify that no objection was made to the claim and to append an enforcement clause (*formule exécutoire*). Where, as in this proposal, the second step does not imply any examination of the claim but the order for payment is issued automatically if no statement of defence was lodged the differences in terms of the efficiency of the procedure are marginal at the most. The main advantage resides in the existence of a separate decision that is subject to an appeal which is ordinarily not available in Member States that have opted for a "one-step" procedure but is considered necessary by the Commission in the context of a European order for payment as further explained in the comments on Article 11.

The European payment notification is, in its content, identical with the application form but supplemented by the information on the significance of this document as prescribed in paragraphs 3 and 4 in a prominent place and in terms that are easily comprehensible for recipients not familiar with legal matters. The necessary practical arrangements should be made to automatically copy the information contained in the application to the payment notification and eventually to the order for payment. The additional information for the defendant should be an integral part of the notification itself and not just attached to it in order to avoid the occurrence of any potential mistake that could give rise to procedural difficulties.

The proposal does not contain any specific rules on the service of the payment notification on the defendant which is thus governed by national law and, where applicable, by Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters. Paragraph 2 sets out the condition, however, that those methods of service which do not provide proof of receipt by

the debtor personally are not admissible for the purposes of this proposal if the debtor's address is not known.

The period of three weeks for contesting the claim takes account of what is considered necessary to determine if one wants to defend the case under the law of the Member States. Given the simplicity of lodging a statement of defence pursuant to Article 7, this span of time should be sufficient in cross-border as well as in purely internal situations.

Paragraph 5 is intended to ensure that no creditor is deterred from making use of the order for payment procedure, although principally deemed appropriate, by the concern that the claim gets barred by the statute of limitations if he does not interrupt the running of time by bringing ordinary civil action. It confers on the payment notification the status of a writ of summons in ordinary civil proceedings in that particular respect.

Article 7 – Statement of defence

In accordance with the philosophy of the European order for payment procedure that is focused on the identification of undisputed claims and the delivery of enforceable decisions on them whilst refraining from an examination of the justification of the claim, this Article keeps the requirements for an admissible statement of defence to the indispensable minimum. The defendant only has to unequivocally communicate to the court within the time limit and in the written or under certain conditions in the electronic form, in whatever terms, that he wants to object to the claim in full or in part. No further explanation needs to be given; the presentation of the factual and legal arguments as well as of evidence can be left to the ensuing ordinary proceedings. The defendant may use the standard response form supplied to him together with the payment notification but is not obliged to do so.

Article 8 – Effects of a statement of defence

This provision sets out that an admissible statement of defence automatically brings the order of payment procedure to and end and entails the transfer of the matter to ordinary civil proceedings without any specific request to that end being necessary. It is based on the assumption that, as a rule, creditors who apply for an order for payment choose the procedure because they expect the claim to remain uncontested but are willing to continue to pursue the claim in ordinary proceedings if necessary. Paragraph 1 does foresee, however, the possibility for the claimant to indicate in the application that he wants litigation to be discontinued if the defendant enters a statement of defence. Such a request could be made whenever from the applicant's perspective the value of the claim in question is too low to justify the effort and the costs of contentious ordinary proceedings.

Paragraph 2 is intended to clarify that the technicalities of how exactly the transfer to ordinary proceedings is effected are governed by the law of the forum Member State.

Article 9 – European order for payment

If the defendant has admitted the claim or failed to contest it in full or in part by the expiration of the time limit the order for payment is delivered by the court of its own motion, i.e. without the need for a separate request by the claimant.

This provision is parallel in structure to Article 6 dealing with the payment notification as far as the rules on service and information of the defendant, albeit this time with regard to a statement of opposition instead of a statement of defence, are concerned.

Article 10 – Enforceability of the European order for payment

This Article stipulates that the European order for payment, once delivered, is enforceable without the provision of a security in spite of the remaining opportunity for the defendant to lodge a statement of opposition and possibly have it set aside. The fact that the defendant has chosen not to protest against the demand in full knowledge of the consequences of such conduct provides sufficient reason for the *prima facie* assessment that the claim is and will remain uncontested and thus for unrestricted enforceability.

Paragraph 2 reflects that this proposal intends neither to interfere with the enforcement legislation of the Member States nor to introduce a separate fully developed set of rules specifically for the order for payment procedure. The details of the formal prerequisites for enforceability as well as of the conditions for a stay or limitation of enforcement are left to national law. This includes, for example, the impact of the lodging of a statement of opposition on enforceability.

Article 11 – Opposition to the European order for payment

The requirements for lodging a statement of opposition to the order for payment coincide with those for a statement of defence. Therefore, reference can be made to the comments on Article 7.

The Commission is convinced that in the specific context of this proposal the defendant has to be given a second opportunity to contest the claim and bring about the transfer to ordinary proceedings even though in spite of having been instructed on his rights and obligations by the court in the payment notification he failed to declare his intention to defend the case. An irreversible final decision would appear to represent an overly harsh sanction, especially in comparison with judgments by default that are handed down in a similar situation, i.e. after the defendant has been summoned to a hearing and informed about the consequence of not appearing in court to defend the case and that are generally still subject to appeal or another legal remedy. This reasoning is further reinforced by the fact that, as opposed to the systems of most Member States that know a "one-step" order for payment procedure and do not admit a further appeal the European order for payment does not presuppose any general summary examination of the well-founded nature of the claim. This simplification of the procedure in the interest of its efficiency and thus of the claimant warrants a counterbalance in the form of the right to bring a remedy.

Paragraph 4 contains an additional safeguard for the defendant that the Commission considers vital in the light of the absence of any specific rules on the service of documents in this proposal. In the negotiations of the Regulation creating a European Enforcement Order for uncontested claims it was deemed indispensable to provide the defendant with an opportunity to challenge a judgment irrespective of the general time limits for an appeal where

– a method of service without proof of receipt by him personally was used and the document in question did not reach him in such a way as to enable him to arrange for his defence; or

– he was prevented from defending the case by reason of force majeure or due to extraordinary circumstances.

The pertaining rule of the above-mentioned Regulation has been transferred and adapted to the context of this proposal.

Article 12 – Effects of the lodging of a statement of opposition

As far as the transfer to ordinary proceedings is concerned this Article reproduces the provisions on the effects of the statement of defence in Article 8. It does not have an impact on the transfer to ordinary proceedings if the defendant chooses to contest the claim sooner or later in the course of the procedure. The difference in status between the payment notification and the order for payment consists in the enforceability of the latter document. The questions of enforceability are governed by Article 10.

Paragraph 3 clarifies that a statement of defence that reaches the court belatedly after it has already delivered the order for payment but before the expiration of the time limit for entering a statement of opposition is to be treated as a statement of opposition since it clearly reveals the intention to defend the case.

Article 13 – Legal representation

In the light of the objective of this proposal to provide creditors with a simple and cost-effective mechanism for the recovery of uncontested claims it would be a contradiction in terms to make the use of this procedure conditional upon the representation by a lawyer. Firstly, the requirements for applying for an order for payment and, even more so, for contesting the claim are sufficiently straightforward not to necessitate the expertise of a legal professional. Secondly, legal representation will inevitably drive up the costs of the procedure. Whilst seeking professional legal counsel remains, of course, possible for those who deem it useful it should not be turned into an obligation. As stated in paragraph 2 for the purpose of clarification this provision only covers the order for payment procedure itself but not the ordinary civil procedure that ensues if a statement of defence or opposition is lodged.

Article 14 – Costs

Creditors could be dissuaded from using this procedure if, in the case of the defendant's opposition, they had to face the risk of court fees higher than those arising when immediately opting for ordinary civil proceedings. By the same token, it would not seem to be justified to impose higher court fees on the defendant for the sole reason that the plaintiff chose to try, albeit without success, to obtain a decision through a simplified procedure first.

This Article establishes the principle of the neutrality of a preceding order for payment procedure in terms of the total amount of court fees for ordinary civil proceedings but leaves it to the Member States how compliance with this principle is to be ensured. One imaginable solution could be the absorption of the fees for the order for payment procedure, if any, by those for the ensuing ordinary procedure.

Article 15 – Relationship with national procedural law

In several Articles of this proposal reference is made to national law for specific aspects of the procedure. In order to avoid any potential misunderstanding this provision clearly sets out that all procedural issues that are not dealt with in the proposal and where the applicability of national law is not explicitly stipulated either are governed by the domestic law of the Member State in which the order for payment proceedings take place.

Article 16 – Information on the courts that have jurisdiction

This provision aims at facilitating the access to information on the courts to which citizens have to address an application for a European order for payment. Member States should indicate in their communication to the Commission which categories of courts have jurisdiction for this procedure, e.g. the lower or higher first instance courts in those Member States where such a distinction exists. In some Member States it might be necessary to list more than one category of courts, amongst others if specialised tribunals are in charge of certain claims (e.g. labour tribunals for claims arising out of employment contracts). This would also be an opportunity to indicate if the general rules on territorial jurisdiction apply to this procedure (without having to explain these rules in detail) or if a special rule has been stipulated such as the exclusive jurisdiction of the court for the defendant's domicile or the centralisation of jurisdiction in one court or a limited number of courts.

The Commission will make this information available in the most appropriate form including its publication on the internet, possibly in the framework of the ongoing project of the creation of a European Judicial Atlas in civil matters, a database intended to provide user-friendly access in all official languages of the European Union.

Articles 17 and 18 – Implementing rules and committee

Article 18 refers to the Advisory Committee provided for by Regulation No 44/2001 that will assist the Commission in the implementation as necessary under Article 17, namely the updating of the standard forms in the Annexes or the making of technical amendments thereto. The Committee will be convened only if and when the need for such amendments arises.

2004/0055 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

creating a European order for payment procedure

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 61 (c) thereof,

Having regard to the proposal from the Commission[11],

Having regard to the opinion of the European Economic and Social Committee[12],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[13],

Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, among others, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) The European Council meeting in Tampere on 15 and 16 October 1999 invited the Council and the Commission to prepare new legislation on issues that are instrumental to smooth judicial cooperation and to enhanced access to law and specifically made reference, in that context, to orders for money payment.

(3) On 30 November 2000, the Council adopted a joint programme of the Commission and the Council of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters[14]. The programme envisages the possibility of a specific, uniform or harmonised procedure to obtain a judicial decision laid down within the Community in specific areas including the one of uncontested claims.

(4) The Commission adopted a Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation on 20 December 2002. The Green Paper launched a consultation on the possible objectives and features of a uniform or harmonised European procedure for the recovery of uncontested claims.

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11 OJ C , , p. .
12 OJ C , , p. .
13 OJ C , , p. .
14 OJ C 12, 15.1.2001, p. 1.

(5) The swift and efficient recovery of outstanding debts over which no legal controversy exists is of paramount importance for the economic operators in the European Union as late payments constitute a major reason for insolvency threatening the survival of businesses, particularly small and medium-sized ones, and result in numerous job losses.

(6) Whilst all Member States try to tackle the issue of mass recovery of uncontested claims, the majority of them by devising a simplified order for payment procedure, both the content of national legislation and the performance of the domestic procedures vary substantially. Furthermore, the currently existing procedures are frequently either inadmissible or impracticable in cross-border situations.

(7) The resulting impediments to access to efficient justice, particularly in cross-border cases, and the distortion of competition within the internal market due to the disequilibrium with regard to the functioning of the procedural means afforded to creditors in different Member States entail the need for Community legislation which guarantees a level playing field for creditors and debtors throughout the European Union.

(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.

(9) The European order for payment should be available for all civil pecuniary claims, contractual and non-contractual, with the exception of rights in property arising out of a matrimonial or similar relationship where even in default of objections courts often cannot rely on the claimant's allegations but have to examine the facts of their own motion. The procedure should not be restricted to claims below a certain ceiling amount. It should not apply, however, to claims that have not yet fallen due at the time of the application and in particular to future periodic payments.

(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.

(11) In the application for a European order for payment, the claimant should be obliged to provide information that is sufficient to clearly identify the demand and its justification to put the defendant in the position of making a well-informed choice of opposing the claim or leaving it uncontested. In that context, it should be mandatory for the claimant to cite some evidence he could rely on to prove the correctness of his allegations without having to actually submit documentary evidence to the court.

(12) The court should deliver a European payment notification after an examination of compliance with the formal requirements set out in this Regulation. It should refrain from an assessment of the merits of the claim at stake.

(13) The European payment notification should apprise the defendant of his options to either pay his outstanding debt to the claimant or submit a statement of defence if he wants to contest the claim within a time limit of three weeks. In addition to the full information on the claim as supplied by the claimant the defendant should be advised

of the legal significance of the notification and in particular of the consequences of leaving the claim uncontested.

(14) A statement of defence filed within the time limit should terminate the European order for payment procedure and should lead to an automatic transfer of the case to ordinary civil proceedings unless the claimant has explicitly requested to discontinue the proceedings in that event.

(15) The European order for payment to be issued in the absence of a statement of defence should be immediately enforceable against the defendant. It should be subject to opposition which should entail essentially the same consequences as a statement of defence. In default of the lodging of a statement of opposition the order for payment should have the same status as a final judgment handed down in ordinary civil proceedings.

(16) This Regulation does not affect the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[15] or of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[16].

(17) Since the objectives of this Regulation, namely to establish a uniform rapid and efficient mechanism for the recovery of uncontested money claims throughout the European Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the impact of the Regulation, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the EC Treaty. In accordance with the principle of proportionality as set out in that same Article, this Regulation does not go beyond what is necessary in order to achieve those objectives; in particular, it restricts the interference with national procedural law to a minimum as it does not supplant domestic simplified procedures but adds an additional option.

(18) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law. Specifically, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

(19) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[17].

(20) The United Kingdom and Ireland, in accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, are not participating in the adoption of this Regulation and are therefore not bound by it nor subject to its application.]/[The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on

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15 OJ L 12, 16.1.2001, p. 1.
16 OJ L 160, 30.6.2000, p. 37.
17 OJ L 184, 17.7.1999, p. 23.

European Union and the Treaty establishing the European Community, have given notice of their wish to take part in the adoption and application of this Regulation.]

(21) Denmark, in accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, is not participating in the adoption of this Regulation, and is therefore not bound by it nor subject to its application.

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

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.

2. The European order for payment procedure shall not be applicable to :

   (a) rights in property arising out of a matrimonial or similar relationship;

   (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

   (c) social security.

3. For the purposes of this Regulation, the expression 'court' shall include the 'Swedish enforcement service' (*kronofogdemyndighet*).

4. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark. *[United Kingdom, Ireland]*

Article 2

European order for payment procedure

1. The European order for payment procedure is hereby established for the collection of uncontested pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

2. Nothing shall prevent a creditor from pursuing a claim within the meaning of paragraph 1 making use of another procedure available under the law of a Member State, be it an ordinary or a summary procedure.

Article 3

Application for a European order for payment

1. An application for a European order for payment shall be made using the standard form in Annex 1.

2. The application shall state:

   (a) the names and addresses of the parties and the court to which the application is made,

   (b) the amount of the claim;

   (c) if interest on the claim is demanded, the interest rate and the time period that interest is demanded for unless a statutory interest is added to the principal without demand under the law of the Member State to whose courts the application is made;

   (d) the cause of action, including a brief description of the circumstances invoked as the basis of the claim and, where applicable, of the demanded interest;

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

3. The application shall be signed by the claimant or his representative manually or in the form of an advanced electronic signature within the meaning of Article 2 (2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

Article 4

Requirements for the delivery of a European order for payment

1. The court seised of an application shall examine if the requirements as set out in Articles 1, 2 and 3 are met.

2. Where the court considers a rejection of the application due to a failure to fulfil the requirements of Article 3 it may give the claimant the opportunity to complete or rectify the application.

Article 5

Rejection of the application

1. The court shall reject the application in whole if the requirements laid down in Article 4 are not fulfilled for the claim at issue or parts thereof.

2. No appeal shall lie against the rejection of an application for a European order for payment.

3. The rejection shall not prevent the claimant from initiating ordinary court proceedings with regard to the same claim.

Article 6

European payment notification

1. If the requirements laid down in Article 4 are fulfilled the court shall issue a European payment notification using the standard form in Annex 2.

2. The European payment notification shall be served on the defendant. A method of service without proof of receipt by the defendant personally is not admissible if the defendant's address is not known with certainty.

3. In the notification the defendant shall be advised of his options to

   (a) pay the claimed amount including the claimed interest and the claimed costs to the claimant and submit a statement informing about the payment; or

   (b) submit a statement of defence to the claim or parts thereof

   which has to reach the court within three weeks starting from the date of service of the European payment notification on him in accordance with the law of the Member State in which service is effected.

4. In the notification the defendant shall be informed that

   (a) the court has not examined the justification of the claim before issuing the notification

   (b) the court will deliver an enforceable decision unless it has received a statement of defence or a statement informing the court about the payment of the claim from the defendant within the time limit specified in paragraph 3.

5. For the purpose of the interruption of the statute of limitations, the European payment notification shall be considered equivalent to a writ of summons in ordinary civil proceedings.

Article 7

Statement of defence

1. The defendant may submit a statement of defence either by making use of the standard response form attached to Annex 2 which shall be supplied to him together with the notification or otherwise.

2. The defendant shall clearly indicate in the statement if he contests the claim at issue in whole or in part. He does not have to specify the reasons for contesting the claim.

3. The statement of defence shall be signed by the defendant or his representative manually or in the form of an advanced electronic signature within the meaning of Article 2 (2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

Article 8

Effects of a statement of defence

1. If a statement of defence is lodged within the time limit laid down in Article 6 (3) the proceedings shall continue in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested, in the application, to terminate the proceedings in that event.

2. The transfer to ordinary proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State in which the European payment notification was issued.

Article 9

European order for payment

1. In the absence of a statement of defence or a statement informing about the payment lodged within the time limit laid down in Article 6 (3) the court shall deliver a European order for payment of its own motion using the standard form in Annex 3.

2. The European order for payment shall be served on the defendant. A method of service without proof of receipt by the defendant personally is not admissible if the defendant's address is not known with certainty.

3. In the European order for payment the defendant shall be informed that he can lodge a statement of opposition to the European order for payment which has to reach the court that has issued the order within three weeks starting from the date of service of the European order for payment on him in accordance with the law of the Member State in which service is effected.

Article 10

Enforceability of the European order for payment

1. The European order for payment shall be enforceable without the condition of the provision of a security.

2. Without prejudice to paragraph 1, the conditions of enforceability and its stay or limitation, in particular in the event of a statement of opposition pursuant to Article 11, shall be governed by the law of the Member State in which the order was issued.

Article 11

Opposition to the European order for payment

1. The defendant may lodge a statement of opposition to the European order for payment by making use of the standard form attached to Annex 3 which shall be supplied to him together with the European order for payment or otherwise.

2. The defendant shall clearly indicate in the statement of opposition if he contests the claim at issue in whole or in part and, in the latter case, which parts of the claim he objects to. He does not have to specify the reasons for contesting the claim.

3. The statement of opposition shall be signed by the defendant or his representative manually or in the form of an advanced electronic signature within the meaning of Article 2 (2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures.

4. After expiry of the time limit specified in Article 9 (3) the debtor is entitled, under the conditions established by the law of the Member State in which the order for payment has been issued and communicated to the Commission pursuant to Article – (19 A) of Regulation ----/--/EC of the European Parliament and of the Council of ---- --- creating a European Enforcement Order for uncontested claims, to apply for a review of the order for payment where

a) (i) the order for payment was served by a method without proof of receipt by him personally; and

(ii) service was not effected in sufficient time or in such a way as to enable him to arrange for his defence without any fault on his part,

or

b) the debtor 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.

Article 12

Effects of the lodging of a statement of opposition

1. If a statement of opposition is entered within the time limit laid down in Article 9 (3) the proceedings shall continue in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested, in the application, to terminate the proceedings in that event.

2. The transfer to ordinary proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State in which the European order for payment was issued.

3. A statement of defence lodged after the expiry of the time limit laid down in Article 6 (3) but within the time limit specified in Article 9 (3) shall produce the same effects as entering a statement of opposition.

Article 13

Legal representation

1. Representation by a lawyer or another legal professional shall not be mandatory

   (a) for the claimant in respect of the application for a European order for payment

   (b) for the defendant in respect of the statement of defence or of the statement of opposition to a European order for payment.

2. The requirement of legal representation in the ordinary civil proceedings following a statement of defence or a statement of opposition to a European order for payment shall be governed by the law of the Member State in which the proceedings take place.

Article 14

Costs

The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of defence or a statement of opposition to a European order for payment shall not exceed the costs of ordinary civil proceedings without a preceding European order for payment procedure.

Article 15

Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by the law of the Member State in which the European order for payment proceedings take place.

Article 16

Information on the courts that have jurisdiction

1. By 1 July 2005 each Member State shall communicate to the Commission which courts have jurisdiction to issue a European order for payment. Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall publish and update, when necessary, the information provided by the Member States in accordance with paragraph 1.

Article 17

Implementing rules

The standard forms set out in the Annexes shall be updated or amended in accordance with the advisory procedure referred to in Article 18.

Article 18

Committee

1. The Commission shall be assisted by the Committee provided for by Article 75 of Council Regulation (EC) No 44/2001.

2. Where reference is made to this Article, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 19

Entry into force

This Regulation shall enter into force on 1 January 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States in accordance with the Treaty establishing the European Community.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*