<EntPE>EUROPEAN PARLIAMENT</EntPE>

2004 *2009*

<Commission>{JURI}*Committee on Legal Affairs*</Commission>

<REFSTATUS>PROVISIONAL</REFSTATUS>
<RefProc>2004/0055</RefProc><RefTypeProc>(COD)</RefTypeProc>

<Date>{03/05/2005}3.5.2005</Date>

<RefProcLect>* I</RefProcLect>**

ABBOZZ TA' RAPPORT

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

<Commission>{JURI}Committee on Legal Affairs</Commission>

Rapporteur: <Depute>Arlene McCarthy</Depute>

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0173)[1],

– having regard to Article 251(2) and Article 61(c) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0006/2004),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2005),

1. Approves the Commission proposal as amended;

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission	Amendments by Parliament
	<Amend>Amendment <NumAm>1</NumAm> <Article>Article -1 (new)</Article>
	Article -1
	1. The purpose of this Regulation is to create, in respect of cross-border cases, a European order for payment procedure to permit the free circulation throughout the Member States of an order issued in accordance with this Regulation, without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement.
	2. The European order for payment procedure shall be without prejudice to

[1] Not yet published in OJ.

	national procedures.
	3. Notwithstanding paragraphs 2 and 3, Member States without corresponding national procedures may adopt the European order for payment for use in pure national as well as cross-border cases.
	4. Notwithstanding paragraphs 1 and 2, five years after the entry into force of this Regulation, the Commission shall present a proposal to the European Parliament and the Council for a measure facilitating the use of the European order for payment procedure in all Member States also for internal cases and proposing such amendments to this Regulation as are necessary to that end having regard in particular to the experience gained in using the procedure for cross-border cases.

Justification

This amendment sets out a possible compromise as a means of getting round the present impasse in the Council.
</Amend>

<Amend>Amendment <NumAm>2</NumAm>
<Article>Article 3, paragraph 2, point (a)</Article>

(a) the names and addresses of the parties and the court to which the application is made,	(a) the names and addresses of the parties***, and where applicable, of their representatives*** and ***of*** the court to which the application is made,

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>3</NumAm>
<Article>Article 3, paragraph 2, point (d)</Article>

(d) the cause of action, including a brief	(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;	description of the ***arguments forming*** the basis of the claim and, where applicable, of the demanded interest;

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>4</NumAm>
<Article>Article 3, paragraph 2, point (e)</Article>

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

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>5</NumAm>
<Article>Article 3, paragraph 2, point (e a) (new)</Article>

	(ea) a brief description of the reasons for the court's international jurisdiction if the defendant is not domiciled in the Member State of the court to which the application is made, and

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>6</NumAm>
<Article>Article 3, paragraph 2, point (e b) (new)</Article>

	(eb) a brief description of the cross-border

nature of the case, where applicable.

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>7</NumAm>
<Article>Article 3, paragraph 2 a (new)</Article>

2a. If the national law of the Member State of origin so requires, the applicant must attach relevant supporting documents or copies thereof to the application for a European order for payment.

The documents shall be translated if the court so requires. The translation shall be certified by a person qualified to do so in one of the Member States.

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>8</NumAm>
<Article>Article 3, paragraph 3</Article>

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.	3. The application ***must*** be signed by the claimant or his representative ***and submitted using any technical means accepted by the law of the Member State or origin and available to the court of origin. Where the application is submitted in electronic form, it shall be signed 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. ***The signature shall be recognised in the Member State of origin and may not be made subject to additional***

requirements.

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Justification

<OptDelPrev>*Seeks to take account of concerns raised by several Member States.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>9</NumAm>
<Article>Article 4, paragraph 1</Article>

1. The court seised of an application shall examine ***if*** the requirements as set out in Articles 1, 2 and 3 are met.	1. The court seised of an application shall examine: ***(a) whether it has jurisdiction;*** ***(b) whether*** the requirements as set out in Articles 1, 2 and 3 are met, ***and*** ***(c) where the national law of the Member State of origin so requires, whether, prima facie, the documentary evidence produced by the claimant, together with the application, supports the claim in accordance with Article 3(2a).***

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Justification

<OptDelPrev>*This amendment is designed to deal with several Member States' concerns.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>10</NumAm>
<Article>Article 4, paragraph 2</Article>

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.	2. ***The*** court may give the claimant the opportunity to complete or rectify the application ***in respect of the information listed in Article 3 using the standard form contained in the Annex.***

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Justification

<OptDelPrev>*This amendment is designed to deal with several Member States'*

concerns.</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>11</NumAm>
<Article>Article 5, paragraph 1</Article>

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.	1. The court shall reject the application in whole ***or in part*** if the requirements laid down in Article 4**(1)** are not fulfilled for the claim at issue or parts thereof. ***The court shall notify the claimant of the rejection.***

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Justification

<OptDelPrev>*This amendment is designed to deal with several Member States' concerns and introduce more clarity.*</OptDelPrev>
</Amend>

<Amend>Amendment <NumAm>12</NumAm>
<Article>Article 5, paragraph 3</Article>

3. ***The*** rejection shall not prevent the claimant from initiating ordinary court proceedings ***with regard to the same claim***.	3. ***In the event of*** rejection ***the claimant may not submit a new application for a European order for payment with regard to the same claim. However, this*** shall not prevent the claimant from initiating ordinary court proceedings.

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Justification

<OptDelPrev>*This amendment is designed to deal with several Member States' concerns and introduce more clarity.*</OptDelPrev>
</Amend>

EXPLANATORY STATEMENT

Judicial cooperation in civil matters is essential to the Treaty objective of establishing an area of freedom, security and justice. Legislative instruments have been brought forward with a view to approximating substantive and procedural law and facilitating access to justice and to speed up cross-border litigation. The European Enforcement Order (EEO) for uncontested claims will be transferred into national law by the end of 2005, abolishing the principle of exequator and enabling a judicial authority in one Member State to enforce an order from another Member State without a formal review. While the EEO creates an EU-level instrument enforcing a judgment handed down according to national procedural law, the EPO procedure introduces an EU level instrument in order to obtain an enforceable decision.

The high and expanding volume of trade within the EU and increased movements of people, raise the likelihood that citizens or businesses might become involved in cross-border litigation. There is a risk that citizens may not be inclined to assert their rights because of the obstacles they could encounter in dealing with the legal systems in another Member State, in particular due to unfamiliar procedures and unknown costs. This is considered an obstacle to the proper functioning of the internal market and a potential disincentive to the development of cross-border business and trade. It is essential that the EU provides for a judicial area where private individuals and businesses can have access to justice and redress the case of an uncontested claim for a payment order.

The Commission View

The European Commission argues that the procedure for the EPO should apply to both cross-border and national cases, and that Article 65 which refers to civil matters having "cross-border implications" should be interpreted in a flexible manner. The Commission argues that:

- The distinction between "cross-border" and "internal" scenarios is more difficult that it appears and could lead to arbitrary and discriminatory conclusions depending on the state of residence of the claimant.
- The potential for every national judgment to take on a cross-border nature if it needed to be enforced in another Member State calls into question the merits of a distinction between internal and cross-border cases.
- A limitation to cross-border cases would distort competition in the internal market.
- Creditors or debtors may have access to or be subject to a more efficient mechanism in a cross-border situation than in their own domestic system. This would be inconsistent with the principle of ensuring a fair regime across the EU.

Conclusion

Given the difficulties experienced in Council owing to the reluctance of many Member States to accept the use of the European order for payment in cases which are not cross-border in nature, your rapporteur has sought to reach a compromise which allows those States' concerns to be taken into account without ruling out a different solution in the future when experience will have been gained with the new European instrument.