



LUXEMBOURG

To apply for a European order for payment procedure in Luxembourg

❖ Summary of the objectives and principles of the European order for payment procedure:

In order to ensure swift and efficient recovery of outstanding debts, the European institutions adopted Regulation (EC) No 1896/2006 of 12 December 2006 creating a *European order for payment procedure*, which came into force on 12 December 2008.

This procedure is uniformly applicable in the different Member States. It is autonomous, optional and additional to the national procedures. This European procedure does not substitute itself for the existing national procedures and is optional in consideration of the other existing European mechanisms – Article 1 (2): “*This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law* ».

Recital 9 of Regulation 1896/2006 states that its purpose “is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement”.

The regulation in fact abolishes the *exequatur*: the order for payment is recognised and enforceable in all the Member States.

❖ Reminder of the general provisions of the Regulation:

Article 24 - Legal representation

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 opposition to a European order for payment.*

Article 25 - Court fees

1. 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 opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.

2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.

Article 26 - Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.





In France, was adopted the law dated Mars 13th 2009. This law added to the code of civil procedure a new Chapter III (Chapter III of the book I of the new code of civil procedure) relative to the European order for payment procedure. New articles 49, 49-1 to 49-5 deal with the European order for payment procedure.

Article 27 - Relationship with Regulation (EC) No 1348/2000

This Regulation shall not affect the application 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 and commercial matters .

Article 28 - Information relating to service costs and enforcement

Member States shall cooperate to provide the general public and professional circles with information on:

(a) costs of service of documents;

and

(b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23,

in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC.

Article 29 - Information relating to jurisdiction, review procedures, means of communication and languages

1. By 12 June 2008, Member States shall communicate to the Commission:

(a) which courts have jurisdiction to issue a European order for payment;

(b) the review procedure and the competent courts for the purposes of the application of Article 20;

(c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;

(d) languages accepted pursuant to Article 21(2)(b).

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

❖ Reminder of the scope of the Regulation:

The regulation applies to civil and commercial matters in accordance with Community law. It does not extend to revenue, customs or administrative matters and excludes matrimonial relationships, wills and successions, bankruptcy, judicial arrangements, compositions and analogous proceedings, as well as social security.

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The regulation applies to cross-border cases, namely cases in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized. The cross-border character is determined at the time of application for a European order for payment. The territorial jurisdiction of the court is determined in accordance with the rules of Community law on jurisdiction, in particular the Brussels I regulation. However, the regulation does make one exception to the Brussels I rules: a claim made against a consumer (a person who has concluded a contract “for a purpose which can be regarded as being outside his trade or profession”) may be brought only before the courts in the Member State in which the consumer is domiciled (which has sole jurisdiction).

The regulation applies only to a pecuniary claim for a specific amount that has fallen due at the time when the application for a European order for payment is submitted and arises from a contract. Accordingly, claims of a non-contractual origin are excluded unless they have been the subject of an agreement between the parties or there has been an admission of debt, or if they relate to liquidated debts arising from joint ownership of property. On the other hand, there is no limitation on the amount of the claim.

TO APPLY FOR A EUROPEAN ORDER FOR PAYMENT PROCEDURE IN LUXEMBOURG

I. The application for the order for payment

The application is made using standard form A.

Read the form in English:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_en.jsp?txtPageBack=epo_filling_fr_fr.htm&countrySession=2&

Read the form in French:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_fr.jsp?countrySession=2&txtPageBack=epo_filling_fr_fr.htm

• Competent jurisdiction

Member States were invited by the regulation to indicate to the European Commission their national jurisdictions which would be competent to issue an European order for payment procedure.

The government of Luxembourg has indicated to the European Commission that have jurisdiction to issue a European order for payment:

- the presiding judge of the district court or his replacement where the order exceeds €10 000;
- the justice of the peace where the order does not exceed €10 000;
- the presiding judge of the labour court or tribunal or his replacement irrespective of the amount of the order, in the case of disputes relating to:
 - o employment contracts, apprenticeship contracts and supplementary pension schemes between employers and their employees, including those applying after the obligation has ended;
 - o the insolvency insurance benefits provided for in Chapter V of the Supplementary Pensions Act of 8 June 1999 arising between the body referred to in Article 21 or a life





assurance company as referred to in Article 24(1) of the same Act and employees, former employees and persons holding entitlement.

- **Submission of the application**

The regulation states that “The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin”.

The application for a European order for payment may be submitted to the court by post or be handed over to the Clerk's Office of the jurisdiction.

II. Court examination of the application

Once the conditions prescribed for the issue of an order to pay are met, the Court must examine the application as soon as possible and must “normally” decide within a period of **30 days** from the lodging of the application.

The Court may:

- . Invite the claimant to complete his application within a given time limit (**form B**) or to accept the proposal of a partial order to pay (**form C**);
- . Reject the application: **form D for one of the reasons restrictively** listed by the regulation, and which must be notified to the claimant through a specific form. (There is no right of appeal against the rejection of the application.)
- . Issue a European order for payment using **form E**.

These forms are available on the European judicial atlas in civil matters Website:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_fr_en.htm

If the applicant lives in Luxembourg, the service of these forms is made by the jurisdiction: the jurisdiction send to the applicant a recorded letter with the advice of delivery slip sought. If the addressee is not found by the services of the Post office, the service must be made through a judicial officer.

If the applicant lives in another Member State, the service of these forms is made in accordance with Regulation (EC) no 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Clerk of the jurisdiction responsible for the service of documents are transmitting agencies in accordance with the (EC) regulation n°1393 / 2007 – So they transmit documents to be served to the receiving agency of the Member State of the applicant.

III. Service of the European order for payment

The order to pay must be served on the defendant in accordance with the national rules of law, by procedures complying with minimal standards (Articles 13 and 14 of the regulation – service or notice

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with proof of receipt by the defendant/service or notice without proof of receipt by the defendant). The claimant serves a certified copy of form A and form E on the defendant. The form for the opposition (form F) is attached to the notice of service.

In the event of a service of documents through a jurisdiction, the clerk sends a registered letter if the defendant lives in Luxembourg. If the defendant lives in another Member State, the clerk transmits the document to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.

In the event of a service of documents through a judicial officer, the applicant (and not the court) has to select and appoint a judicial officer for the purpose. Service by judicial officer is made in accordance with law of Luxembourg, if the defendant lives in Luxembourg. If the defendant lives in another Member State, the judicial officer, who is also a transmitting agency under Regulation (EC) no 1393/2007, transmits documents to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.

The choice between these two options is within the competence of the court. This choice will obviously have consequences regarding legal certainty: the service of the forms through a judicial officer guarantees that procedure complies with minimal standards required by the European regulation (articles 13, 14 and 15).

In the case of cross border service of documents, the addressee may refuse to accept the document to be served if it is not written in, or accompanied by a translation into, either a language which the addressee understands or the official language of the Member State addressed. So, documents must be translated if necessary. But only the entries made by the applicant in the Form A and by the judge in the Form E are to be translated because the forms are available in the different languages of the European Union on the website of the European Judicial Atlas. In accordance with the Regulation 1393/2007, it is not required that the translation must be certified by a person qualified to do so in one of the Member States. However, in practice, it is advisable to ask a person qualified to translate entries made in the forms.

IV. Opposition

The defendant must send the statement of opposition within 30 days of service of the application, using the form F transmitted to him at the same time as the European order for payment; this time limit may be extended as necessary to allow the statement to arrive.

In Luxembourg, the statement of the opposition is brought before :

- the district court, where the European payment order has been issued by the presiding judge of the district court or his replacement;
- the lead justice of the peace or his replacement, where the European payment order has been issued by a justice of the peace;
- the labour court, where the European payment order has been issued by the presiding judge of the labour court or his replacement.

The statement of opposition is presented to the clerk's office by a declaration upon receipt or sent by letter.

The statement of opposition is received without any costs.





The law offers no additional period to allow the statement to arrive.

V. Effects of the opposition:

Where a statement of opposition is lodged by the defendants, the proceedings continue *“before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event”*.

- If the claimant has explicitly stated, in the application form, that he opposes the transfer to ordinary civil proceedings: termination of the procedure
- In the absence of such a statement in the application form, the procedure continues as substantiated proceedings in accordance with the rules for national procedures.

Where a statement of opposition is lodged by the defendants and if the claimant has not explicitly stated, in the application form, that he opposes the transfer to ordinary civil proceedings, the court rules upon the action for recovery (of claims).

- The clerk of the court instructs the parties to get a lawyer within 15 days ;
- The clerk of the court summons the parties to a hearing, at least 8 days before the hearing. It contains the date of the hearing to which the parties are summoned and its place

VI. Effects of the absence of a statement of opposition within the time limit of 30 days and any additional period to allow a statement to arrive:

Article 18 (1) : If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

Article 18 (2) : Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

Article 13 (3) : The court shall send the enforceable European order for payment to the claimant.

In Luxembourg, the European order for payment enforceable is served on the claimant by the clerk's office.

VII. Review of the order to pay (article 20):

Article 20 - Review in exceptional cases

1. *After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:*

(a) (i) the order for payment was served by one of the methods provided for in Article 14,

and

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

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or

(b) the defendant 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.

2. After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.

3. If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

The rules governing the review procedure are the rule of civil procedure governing the proceedings which continue before the competent courts where a statement of opposition is lodged by the defendants and the claimant hadn't explicitly requested that the proceedings be terminated in that event".

The claim for the purposes of review is brought before :

- the district court, where the European payment order has been issued by the presiding judge of the district court or his replacement;
- the lead justice of the peace or his replacement, where the European payment order has been issued by a justice of the peace;
- the labour court, where the European payment order has been issued by the presiding judge of the labour court or his replacement.

VIII. Enforcement of the order for payment

Article 21 - Enforcement

1. Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.

A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.

2. For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:

(a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity;

and

(b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member





State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.

3. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

In Luxemburg, the order must have been served (through a judicial officer) on the party against which it has been made for it to be enforced. The judicial officer is competent to enforce the European payment order which is enforceable.

IX. Stay, limitation or refusal of enforcement

On certain conditions the defendant may obtain a stay, limitation or refusal of enforcement of the “European order for payment” by the “competent court in the Member State of enforcement” (*article 22(1)*).

- The limitation or stay can be obtained only if an application for review has been made to the original court. The competent court or authority in the Member State of enforcement may either limit the enforcement proceedings to protective measures, or make enforcement conditional on the provision of such security as it may determine or, under exceptional circumstances, stay the enforcement proceedings.
- The refusal may be obtained only if the European order for payment is irreconcilable with an earlier decision given between the same parties and involving the same cause of action, and if the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

The common judge is competent for ruling a stay, limitation or refusal of enforcement. An application must be submitted by the judicial officer.

March 2012

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