



## NETHERLANDS

### To apply for a European order for payment procedure in the Netherlands

#### ❖ 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.*





The European Order for Payment Procedure (Implementation) Act [hereinafter referred to as the 'Implementation Act', Dutch title: Uitvoeringswet verordening Europese betalingsbevelprocedure] lays down detailed Dutch provisions regarding the European rules on a uniform procedure for obtaining an enforcement order for the collection of uncontested pecuniary claims in cross-border collection cases. The Implementation Act regulates two areas: those that the Regulation explicitly left to national law and those matters that were left unregulated.

#### **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.*

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### ❖ **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.

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 exhaustive 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 THE NETHERLANDS**

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

*Read the form in Dutch:*

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_form1\\_nl.jsp?countrySession=8&txtPageBack=epo\\_filling\\_nl\\_nl.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_nl.jsp?countrySession=8&txtPageBack=epo_filling_nl_nl.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.

In the Netherlands, in accordance with article 2 of the Implementing Law EBB, an application for a European Order for Payment as referred to in Article 7 of the Regulation is made to the court. If the amount as referred to in Article 7(2)(b) of the Regulation is not greater than the amount specified in Article 93(a) of the Code of Civil Procedure, or if it concerns a case as referred to in (c) of that Article, then the application is handled and decided upon by the sub-district court judge.





The application should be sent to the following address:

p/a Rechtbank 's-Gravenhage  
Sector civiel recht  
Algemene Zaken  
Postbus 20302  
2500 EH Den Haag

- **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”.

According to Dutch civil procedural law (Article 33 of the Code of Civil Procedure), the electronic submission of applications for a European Order for Payment is permitted, as long as this is provided for in the court's procedural rules. Currently none of the courts provides for this possibility. Only the following means of submission are possible : by post or by a submission lodged at the court.

The application for an EOP can be submitted to the court registry either by means of ordinary letter or direct handover. The Dutch court will only accept an application for an EOP once the court registry fee has been paid by the applicant. The amount of the court registry fee is determined in accordance with Section 11(1) of the Civil Cases (Fees) Act [Dutch title: Wet tarieven in burgerlijke zaken].

## 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\\_nl\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_nl_en.htm)

The forms are sent to the claimant by ordinary letter (see Section 3 of the Implementation Act) whether the applicant lives in the Netherlands or in another Member State.

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### 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 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.

If the defendant lives in the Netherlands, according to Article 12(5) of the (EC) Regulation, the court must serve the (not yet enforceable) EOP on the defendant or give notice thereof to the defendant. The Implementation Act gives the defendant two options for this purpose: registered letter with acknowledgement of receipt (the signature card) or bailiff's writ. In the case of the latter method, the court will need to engage the bailiff to serve the EOP on the defendant.

If the defendant lives in another Member State, service takes place in accordance with Section 277 of the Code of Civil Procedure, i.e. with due observance of the EC Service Regulation (1393/2007). The Implementation Act for the EC Service Regulation provides that the courts can transmit forms directly by registered letter in accordance with Article 14 of the Regulation or can serve them by transmitting them to a receiving agency in another Member State in accordance with Article 2 of Regulation 1393/2007.

Transmission by registered letter with acknowledgement of receipt does not entail extra costs. However, in each Member State, fixed fees apply for the provision of assistance by a bailiff or another authorized party. Service of the forms by a Dutch bailiff costs €65 (see Article 11 of the EC Service Regulation in conjunction with Section 6(1) of the Implementation Act for the EC Service Regulation).

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 the Netherlands, Section 281 of the Code of Civil Procedure provides that a statement of opposition shall be submitted to the court registry by physical handover at that location, transmission by letter (whether using a postbox or otherwise), delivery through the letterbox of the court registry, or transmission by fax.

According to Section 11(2) of the Implementation Act, the defendant is not obliged to pay a court registry fee if he submits a statement of opposition in accordance with Article 16 of the Regulation. However, according to Section 11(3) of the Implementation Act, this does not apply to continuing with the proceedings following the submission of a statement of opposition. This means that upon continuing the





proceedings before the civil law section, the defendant must pay a court registry fee if he appears by appointing an attorney.

#### **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.

The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings (Article 17(3) of the Regulation). Such notification is transmitted by ordinary letter (Section 3(2) of the Implementation Act).

The Regulation itself does not contain any rules on the way in which any transfer of EOP proceedings to ordinary civil proceedings in accordance with national law shall take place. Section 6 of the Implementation Act declares Section 69 of the Code of Civil Procedure applicable *mutatis mutandis* to the transfer to ordinary civil proceedings; in national law, the latter section functions as the transfer provision if the claimant starts proceedings using the wrong type of introductory procedural document. In this case, the court must decide whether the particular application for an EOP at issue is more in line with the Dutch summons procedure (*dagvaardingsprocedure*) or Dutch application procedure (*verzoekschriftprocedure*) since Dutch law does not have a procedure that is similar to the EOP procedure. As a rule, the court will decide that the summons procedure should be pursued.

Under the Dutch law of civil procedure, legal representation is mandatory in both the summons procedure and the application procedure, except in cases before the subdistrict court (i.e. claims of up to €25,000 and in the case of consumer purchases and consumer credit loans of up to €40,000 - see Section 93 of the Code of Civil Procedure). Since the EOP procedure is mostly used to collect small pecuniary claims, legal representation will not generally be required (see Sections 79(2) and 278(3) of the Code of Civil Procedure).

#### **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.

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According to Section 7 of the Implementation Act, in the case of a declaration of enforceability of an EOP in the Netherlands, the declaration of enforceability (standard form G) and the attached order for payment shall together constitute an enforcement order within the meaning of Section 430 of the Code of Civil Procedure.

According to section 3(1) of the Implementation Act, an enforceable EOP shall be transmitted to the claimant by ordinary letter.

## 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,

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 Dutch legislator has regulated review in Section 9 of the Implementation Act. According to Section 9(1) of the Implementation Act, an application for review of the EOP shall be submitted to the court that issued the EOP that has been declared enforceable. The application for review must, according to Article 20(1) of the Regulation, be submitted promptly. Article 9(2) provides more detail to flesh out this concept. In these cases, the Dutch legislator has adopted a period of four weeks, as it ties in with the promptness with which action can be taken in cross-border cases. Article 9(2) of the Implementation Act also provides that the period commences:

- in the cases referred to in Article 20(1)(a) of the Regulation, within four weeks after the defendant became aware of the enforceable order for payment;
- in the cases referred to in Article 20(1)(b) of the Regulation, within four weeks after the grounds referred to therein have ceased to apply;





- in the cases referred to in Article 20(2) of the Regulation, within four weeks after the defendant became aware of the grounds for review referred to therein.

If the requirements of Article 20(1) and (2) of the Regulation are satisfied and the court decides that the review is justified, the EOP shall be null and void. However, if the application for review is refused, the EOP shall remain in force.

## 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.*

Section 8(1) of the Implementation Act clarifies that, where an EOP originating from another Member State is declared enforceable in the Netherlands, the EOP – comprised of the original order for payment (in standard form E) and the declaration of enforceability (in standard form G) taken together – can be enforced in the same way as a bailiff's copy within the meaning of Section 430 of the Code of Civil Procedure. For the defendant's protection, the Dutch legislator has enacted a provision in Section 8(2) of the Implementation Act stipulating that Dutch is the only permissible language for the acceptance of an EOP issued in another Member State.

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## 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.

Section 10 of the Implementation Act declares Section 438 of the Code of Civil Procedure applicable to applications regarding the refusal, stay and limitation of the enforcement of an EOP. As a result, applications within the meaning of Sections 22 and 23 of the Regulation must be submitted to the preliminary relief court (in preliminary relief proceedings) in the form of a summons. This rule is similar to Section 11 of the Implementation Act for the EOP Regulation.

*January 2012*

