



COMMISSION OF THE EUROPEAN COMMUNITIES

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COM(2006) 57 final

2004/0055 (COD)

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**creating a European order for payment procedure**

(presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND

On 19 March 2004 the Commission adopted a proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure<sup>1</sup>. The proposal was transmitted to Parliament and the Council on 19 March 2004. On 9 February 2005, the European Economic and Social Committee issued its Opinion on the proposal<sup>2</sup>. The European Parliament referred the proposal to its Legal Affairs Committee (responsible for the report) and its Committee on Public Liberties and Citizens' Rights (for opinion). The Committee on Public Liberties and Citizens' Rights adopted its opinion on 13 June 2005. The Legal Affairs Committee approved its report on 14 July 2005. Council reached a general agreement on the text of the articles of the Regulation at its meeting on 2 December 2005. At the plenary session on 13 December 2005, the European Parliament adopted its opinion approving the Commission proposal subject to a number of amendments. The amendments adopted by the European Parliament correspond to the text agreed by the Council on 2 December 2005. They basically replace the articles of the original Commission proposal.

### 2. OBJECTIVE OF THE AMENDED PROPOSAL

This amended proposal adapts the original proposal for a Regulation creating a European order for payment procedure in response to amendments voted by the European Parliament.

### 3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY PARLIAMENT

#### 3.1 *Amendments accepted in their entirety by the Commission*

Amendments 26, 27, 28, 32, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, and 73 can be accepted as presented by Parliament since they simplify the proposed procedure, add an additional dimension relating to the free circulation of European orders for payment, or they make improvements relating either to the clarity of the instrument or to questions of detail, and add material that will be potentially useful in implementing the proposed Regulation.

The inclusion of the abolition of *exequatur* in the Regulation requires the inclusion of additional recitals which are derived, to a large extent, from Regulation No (EC) 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European enforcement order for uncontested claims.

#### 3.2 *Amendments accepted by the Commission as to substance, subject to reformulation*

Amendments 30, 31, 33, 47, 51, 52, 53, 68, 69, 70, 72, 74, and 75 can be accepted in principle, subject to redrafting:

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<sup>1</sup> COM (2004) 173 final, 19.03.2004 and COM(2004)173 final/3 of 25.05.2004.

<sup>2</sup> CESE/2005/133, OJ C 221, 8.9.2005, p. 77.

**Amendment 30** aims at clarifying that Regulation No (EEC/Euratom) 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits applies for purposes of computing time limits. It is appropriate to slightly revise the language used in the recital in order not to prejudice an interpretation by the European Court of Justice with respect to the applicability of Regulation 1182/71 to existing instruments in the area of civil justice.

**Amendment 31** proposes to inform the defendant in the relevant standard form about the computation of time limits in accordance with Regulation No (EEC/Euratom) 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits. While this is acceptable in substance, there is no need to include a recital for that purpose; this modification must be realised directly in the relevant standard form.

**Amendment 33** obliges the courts to take into account any form of opposition by the defendant if it is expressed in a clear manner. In the light of the protection of the rights of the defense, it is important to stress the importance of this obligation. The language of the recital should therefore be stronger.

In **Amendment 47** the reference should be to Article 4b instead of Article 4b(3) of the text of the Parliament.

In **Amendment 51** the word “sent” is missing after “court of origin” in paragraph 2(b).

**Amendments 52** and **53** are necessary in the light of the inclusion of the abolition of *exequatur* for European orders for payment. They are an exact copy of the corresponding minimum standards on service in Regulation No (EC) 805/2004 of the European Parliament and of Council of 21 April 2004 creating a European enforcement order for uncontested claims. However, one technical modification is needed, resulting from the definition of “cross-border cases” proposed in Amendment 39 (Article 1a, paragraph 1 of the text of the Parliament). Under this definition, it is possible that the defendant is domiciled or habitually resident in a State other than a Member State of the European Union. In that case, the rules on service of that State will apply when serving a European order for payment upon the defendant. Amendments 52 and 53 need to reflect this possibility and should therefore refer to the rules of service of the “State” rather than “Member State”.

In **Amendment 68** the reference in paragraph b should be to Articles 12(d) through 12(f) of the text of the Parliament.

In **Amendment 69** the reference in paragraph 1(b) must be to Article 12c of the text of the Parliament.

**Amendment 70** should refer to the annexes (in plural) because the Regulation will contain several annexes.

**Amendment 72** provides for a detailed review clause concerning the operation of the Regulation in the light of national order for payment procedures. Such a review shall take place five years after the date of entry into force of the Regulation. In the light of the proposed distinction, in Amendment 73, between the date of entry into force and the date of entry into application of the Regulation, it is more appropriate to refer, in Amendment 72, to the date of entry into application rather than the date of the entry into force. This is also in line with discussions in Council.

**Amendment 74** must be substantially verified from a technical point of view and must be re-drafted on the basis of the software needed to ensure an electronic processing of the European order for payment.

**Amendment 75** proposes an annex to the application form. This annex is technically part of the application form itself and must therefore be included in Amendment 74.

### *3.3 Amendments accepted by the Commission in part*

Amendments 29, 39, and 76 can be accepted partially:

**Amendment 29** aims at clarifying the objective pursued by the special review offered to defendants after the expiry of the time limit for opposition to the European order for payment. Because this review is important in the light of the protection of the rights of the defense of the defendant, it should be more specific and clarify that the term “other exceptional circumstances” could include the situation where a European order for payment was based on false information provided by the claimant in the application form. This is also in line with discussions in Council.

**Amendment 39** aims at defining the concept of “cross-border case” for purposes of this Regulation. While the Commission can accept the restriction of the Regulation to cross-border cases and agrees to a large extent with the proposed definition, it cannot accept the reference to “Member State” with respect to the domicile or habitual residence of the parties. The reference to “Member State” with respect to the parties has significant legal and political consequences. This reference means that the European order for payment procedure cannot be used by non-EU domiciled claimants or against non-EU domiciled defendants, in certain cases where European Union courts have jurisdiction, in particular under Council Regulation No (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Prohibiting the use of the procedure by non-EU domiciled claimants is highly doubtful in the light of existing international obligations of the European Union, in particular obligations arising under GATT 1994, the GATS and the TRIPS Agreement. Also, the combined application of the future instrument with the 1988 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters creates highly undesirable situations with respect to claimants domiciled or habitually resident in a non-EU State party to that Convention. Finally, the definition raises questions under the Agreement on the European Economic Area.

**Amendment 76** proposes to delete annexes 2 and 3 of the original Commission proposal. While Annex 2 may be deleted, this is not the case of Annex 3. Annex 3, as well as the other annexes constituting the standard forms, must be re-drafted in order to bring them in line with the amended proposal, on the basis of the software needed to ensure an electronic processing of the European order for payment

### 3.4 *Amendments rejected*

Amendment 71 cannot be accepted because the proposed modification is technically not correct. The reference made in this paragraph must be to the entire article concerned, not only to the paragraph containing the reference.

## 4. **CONCLUSION**

Having regard to Article 250 paragraph 2 of the EC Treaty, the Commission modifies its proposal as follows.

Amended proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
creating a European order for payment procedure**

**(Text with EEA relevance)**

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 and Article 67(5), second indent,

Having regard to the proposal from the Commission<sup>3</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty;

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 having cross-border implications 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<sup>5</sup>. 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. This was taken forward by the Hague Programme, adopted by the European Council on 5 November 2004, which calls on work to be pursued actively on the European order for payment procedure.
- (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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<sup>3</sup> COM (2004) 173 final, 19.03.2004 and COM(2004)173 final/3 of 25.05.2004.

<sup>4</sup> CESE/2005/133, OJ C 221, 8.9.2005, p. 77

<sup>5</sup> 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 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 purpose of this Regulation 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 all Member States by laying down minimum standards whose observance renders unnecessary any intermediate proceedings to be brought in the Member State of enforcement prior to recognition and enforcement.
- (9) The procedure established by this Regulation serves as an additional and optional means for the claimant, who remains free to resort to a procedure provided for by domestic law. Accordingly, this Regulation neither replaces nor harmonises the existing mechanisms for the recovery of uncontested claims under national law.
- (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) Member States when deciding which courts are to have jurisdiction to issue a European order for payment, shall give due account to the need to ensure access to justice.
- (12) 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.
- (13) In that context, it should be mandatory for the claimant to describe some evidence he could rely on to prove the correctness of his allegations without having to actually submit documentary evidence to the court.
- (14) Lodging of an application for a European order for payment implies the payment of any applicable court fees.
- (15) The court shall examine the claim, including the issue of jurisdiction and the description of evidence, on the basis of the information provided in the form. This

would allow the court to examine *prima facie* the merits of the claim and *inter alia* to exclude clearly unfounded or inadmissible claims. The examination does not necessarily need to be carried out by a judge.

- (16) The European order for payment should apprise the defendant of his options to either pay his outstanding debt to the claimant or to submit a statement of opposition if he wants to contest the claim within a time limit of 30 days. In addition to the full information on the claim as supplied by the claimant, the defendant should be advised about the legal significance of the European order for payment and in particular of the consequences of leaving the claim uncontested.
- (17) Whereas no review will lie against a rejection of an application for a European order for payment this does not preclude the possibility of a review of the decision at the same level of jurisdiction.
- (18) Due to differences in domestic law as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of those minimum standards. In particular, any method based on legal fiction as regards the fulfilment of those standards cannot be considered sufficient for the service of a European order for payment.
- (19) All the methods of service listed in Articles 13 and 14 are characterised by either full certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee.
- (20) Personal service on certain persons other than the defendant himself pursuant to Article 14(1)(a) and (b) should be understood to meet the requirements of those provisions only if those persons actually accepted/received the European order for payment.
- (21) Article 15 should apply to situations where the defendant cannot represent himself in court, as in the case of a legal person, and where a person to represent him is determined by law as well as situations where the defendant has authorised another person, in particular a lawyer, to represent him in the specific court proceedings at issue.
- (22) The court should ensure full compliance with the minimum procedural standards and issue a standardised European order for payment.
- (23) The defendant may submit a statement of opposition using the standard form set out in the annex. However, the courts shall take into account any other written form of opposition if it is expressed in a clear manner.
- (24) A statement of opposition 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. The concept of ordinary civil proceedings in this Regulation should not necessarily be interpreted within the meaning of national law.
- (25) In exceptional cases the defendant should be entitled to apply for a review of the European order for payment despite the expiry of the time-limit for submitting a statement of opposition. Such a review in exceptional cases does not mean that the



defendant is given a second chance to object to the claim. During the review procedure the merits of the claim should not be evaluated beyond the grounds resulting from the exceptional circumstances invoked by the defendant. The other exceptional circumstances referred to in Article 20(2) could include the situation where the European order for payment was based on false information provided in the application form.

- (26) Whereas the combined court fees of a European order for payment and of the ordinary civil proceedings in the event of a statement of opposition should not exceed the court fees of ordinary civil proceedings without a preceding European order for payment, those costs do not include, for example, lawyers' fees or costs of service of documents by an entity other than a court.
- (27) A European order for payment issued in one Member State which has become enforceable should be regarded for the purposes of enforcement as if it had been issued in the Member State in which enforcement is sought. Mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for delivering a European order for payment are fulfilled and that the order is to be enforced in all other Member States without judicial control of the proper application of minimum procedural standards in the Member State where the order is to be enforced. Without prejudice to the provisions of this Regulation, in particular Articles 22 (1) and (2) and 23, the rules for the enforcement of a European order for payment will continue to be governed by national law.
- (28) It is recalled that the computation of periods and time limits is to be governed by Council Regulation No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits.<sup>6</sup>
- (29) Since the objectives of this Regulation 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 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.
- (30) 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.
- (31) 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<sup>7</sup>.
- (32) 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 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.

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<sup>6</sup> OJ L 124, 8.6.1971, p. 1.

<sup>7</sup> OJ L 184, 17.7.1999, p. 23.

- (33) 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*  
*Subject matter*

1. The purpose of this Regulation 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 all Member States by laying down minimum standards whose observance renders unnecessary any intermediate proceedings to be brought in the Member State of enforcement prior to recognition and enforcement.
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.

*Article 2*  
*Scope*

1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“*acta iure imperii*”).
2. This Regulation shall not apply to:
  - (a) rights in property arising out of a matrimonial relationship, wills and succession;
  - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (c) social security;
  - (d) claims arising from non-contractual obligations, unless
    - (i) they have been the subject of an agreement between the parties or there has been an admission of debt; or
    - (ii) they relate to liquidated debts arising from joint ownership of property.

3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

*Article 3*  
*Cross-border cases*

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a State other than the Member State of the court seized.
2. Domicile shall be determined in accordance with Articles 59 and 60 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.<sup>8</sup>
3. The relevant moment for determining whether there is a cross-border case is the time when the application for a European order for payment is submitted in accordance with this Regulation.

*Article 4*  
*European order for payment procedure*

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

*Article 5*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

1. "Member State of origin": the Member State in which a European order for payment is issued;
2. "Member State of enforcement": the Member State in which enforcement of the European order for payment is sought;
3. "court": any authority in the Member States with competence regarding the European order for payment or any other related matters;
4. "court of origin": the court which issues the European order for payment.

*Article 6*  
*Jurisdiction*

1. For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Council

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<sup>8</sup> OJ L 12, 16.1.2001, p. 1.

Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

2. However, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled within the meaning of Art. 59 of Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters shall have jurisdiction.

#### *Article 7*

#### *Application for a European order for payment*

1. An application for a European order for payment shall be made using the standard form in the Annex.
2. The application shall state:
  - (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;
  - (b) the amount of the claim, including the principal and, where applicable, interest and contractual penalties;
  - (c) if interest on the claim is demanded, the interest rate and the time period for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;
  - (d) the cause of action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;
  - (e) a description of evidence supporting the claim;
  - (f) the grounds for jurisdiction; and
  - (g) the cross-border nature of the case in accordance with Article 3.
3. In the application, the claimant shall state that the information provided is true to the best of the claimant's knowledge and belief and that he acknowledges that any deliberate false statement could lead to appropriate sanctions under the law of the Member State of origin.
4. In an annex to the application, the claimant may indicate to the court that he opposes a transfer to ordinary proceedings within the meaning of Article 17 in case of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.
5. 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.

6. The application must be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5 above, 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.<sup>9</sup> The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and that permits the identification of those users in a secure manner. Member States shall inform the Commission of such communication systems.

#### *Article 8* *Examination of the application*

The court seized of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded and admissible. This examination can be by means of an automated procedure.

#### *Article 9* *Completion and rectification*

1. If the requirements set out in Article 7 are not met and unless the application is clearly unfounded or inadmissible, the court shall give the claimant the opportunity to complete or rectify the application. The court shall use the standard form in the Annex.
2. Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may at its discretion extend the time limit.

#### *Article 10* *Modification of the application*

1. If the requirements set out in Article 8 are met for only a part of the application, the court shall inform the claimant thereof, using the standard form in the Annex. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning the standard form sent by the court within a time limit specified by the court in accordance with Article 9(2).

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<sup>9</sup> OJ L 13, 19.1.2000, p. 12.

2. If the claimant accepts the court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the application accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law.
3. If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for a European order for payment in its entirety, in accordance with Article 11.

*Article 11*  
*Rejection of the application*

1. The court shall reject the application if
  - (a) the claimant fails to send his response within the time limit set by the court under Article 9(2); or
  - (b) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Article 10; or
  - (c) the requirements set out in Articles 2, 3, 4, 6 and 7 are not met; or
  - (d) the claim is clearly unfounded or inadmissible.

The claimant shall be informed of the grounds for the rejection by means of the standard form in the Annex.

2. No appeal shall lie against the rejection of the application.
3. The rejection of the application shall not prevent the claimant from pursuing the claim by means of a new application for a European order for payment or of any other procedure available under the law of a Member State.

*Article 12*  
*Issue of a European order for payment*

1. If the conditions set out in Article 8 are met, the court shall issue, as soon as possible and normally within 30 days as of the lodging of the application, a European order for payment, using the standard form in the Annex.

The 30 days period shall not include the time taken by the claimant to complete, rectify or modify the application.

2. The European order for payment shall be issued together with a copy of the application form. It shall not comprise the information provided by the claimant pursuant to Article 7(4).
3. In the European order for payment, the defendant shall be advised of his options to
  - (a) pay the amount indicated in the order to the claimant; or

- (b) oppose the order by lodging a statement of opposition with the court of origin, sent within the time limit laid down in Article 16(2).
4. In the European order for payment, the defendant shall be informed that
- (a) the order was issued on the sole basis of the information which was provided by the claimant and was not verified by the court;
  - (b) the order will become enforceable unless a statement of opposition has been lodged with the court in accordance with Article 16;
  - (c) where a statement of opposition is lodged, the proceedings shall 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 to terminate the proceedings in that event.
5. The court shall ensure that the order is served on the defendant in accordance with national law by a method that shall meet the minimum standards laid down in Articles 13 to 15 below.

*Article 13*  
*Service with proof of receipt by the defendant*

The European order for payment may be served on the defendant in accordance with the national law of the State addressed, by one of the following methods:

- (a) personal service attested by an acknowledgement of receipt, including the date of receipt, which is signed by the defendant;
- (b) personal service attested by a document signed by the competent person who effected the service stating that the defendant has received the document or refused to receive it without any legal justification, and the date of service;
- (c) postal service attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the defendant;
- (d) service by electronic means such as fax or e-mail, attested by an acknowledgement of receipt including the date of receipt, which is signed and returned by the defendant.

*Article 14*  
*Service without proof of receipt by the defendant*

1. The European order for payment may also be served on the defendant in accordance with the national law of the State addressed, by one of the following methods:
- (a) personal service at the defendant's personal address on persons who are living in the same household as the defendant or are employed there;

- (b) in the case of a self-employed defendant or a legal person, personal service at the defendant's business premises on persons who are employed by the defendant;
  - (c) deposit of the order in the defendant's mailbox;
  - (d) deposit of the order at a post office or with competent public authorities and the placing in the defendant's mailbox of written notification of that deposit, provided that the written notification clearly states the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for purposes of time limits;
  - (e) postal service without proof pursuant to paragraph 3 where the defendant has his address in the Member State of origin;
  - (f) electronic means attested by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service in advance.
2. For the purposes of this Regulation, service under paragraph 1 is not admissible if the defendant's address is not known with certainty.
3. Service pursuant to paragraph 1 (a) to (d) shall be attested by:
- (a) a document signed by the competent person who effected the service, indicating:
    - (i) the method of service used;
    - (ii) the date of service;
    - (iii) where the order has been served on a person other than the defendant, the name of that person and his relation to the defendant;
  - or
  - (b) an acknowledgement of receipt by the person served, for purposes of paragraphs (1)(a) and (b).

*Article 15*  
*Service on a representative*

Service pursuant to Articles 13 and 14 may also be effected on a defendant's representative.

*Article 16*  
*Opposition to the European order for payment*

1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin using the standard form in the Annex which shall be supplied to him together with the European order for payment.



2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.
3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.
4. The statement of opposition 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.
5. The statement of opposition must be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form in accordance with paragraph 4 above, 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.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and that permits the identification of those users in a secure manner. Member States shall inform the Commission of such communication systems.

#### *Article 17*

##### *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 16(2), the proceedings shall 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 to terminate the proceedings in that event in accordance with Article 7(4).

Where the claimant pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary proceedings.

2. The transfer to ordinary proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin.
3. The claimant shall be informed of whether the defendant has lodged a statement of opposition and of any transfer to ordinary proceedings.

*Article 18*  
*Enforceability*

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, the court of origin shall without delay declare the European order for payment enforceable, using the standard form in the Annex. The court of origin shall verify the date of service.
2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.
3. The court shall send the enforceable European order for payment to the claimant.

*Article 19*  
*Abolition of exequatur*

A European order for payment which has become enforceable in the Member State of origin shall be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition.

*Article 20*  
*Review in exceptional cases*

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

3. If the court rejects the 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.

#### *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 produce to the competent enforcement authorities of that Member State:

- (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 Community 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.

#### *Article 22* *Refusal of enforcement*

1. Enforcement shall, upon application by the defendant, be refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that:

- (a) the earlier decision involved the same cause of action and was between the same parties; and

- (b) the earlier decision fulfils the conditions necessary for its recognition in the Member State of enforcement; and
  - (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.
2. Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.
  3. Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.

*Article 23*  
*Stay or limitation of enforcement*

Where the defendant has applied for a review in accordance with Article 20, the competent court in the Member State of enforcement may, upon application by the defendant:

- (a) limit the enforcement proceedings to protective measures; or
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

*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.

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

This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 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*

The 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 the application of Articles 21 to 23,

notably via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC of 28 May 2001.

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

1. By \_\_ \_\_\_\_\_, 200\_, the 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 purposes of the European order for payment procedure and available to the courts; and
- (d) the 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.

*Article 30*  
*Amendments to the annexes*

The standard forms set out in the Annexes shall be updated or technically adjusted, ensuring full conformity with the provisions of this Regulation, in accordance with the procedure referred to in Article 31.

*Article 31*  
*Committee*

1. The Commission shall be assisted by the committee provided for by Article 75 of 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 32*  
*Review*

By \_\_ \_\_\_\_\_ 200\_<sup>10</sup>, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a detailed report reviewing the operation of the European order for payment procedure. That report shall contain an assessment of the procedure as it has operated and an extended impact assessment for each Member State.

To this end and in order to ensure that best practice in the European Union is duly taken into account and reflects the principles of better legislation, Member States shall provide the Commission with information relating to the cross-border operation of the European order for payment. This information should cover court fees, speed of the procedure, efficiency, ease of use and the internal payment order procedures of the Member States.

The Commission's report shall be accompanied, if appropriate, by proposals for adaptation.

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<sup>10</sup> Five years after the date of entry into application of the Regulation.

*Article 33*  
*Entry into force*

This Regulation shall enter into force on \_\_\_\_\_ 200\_.

It shall apply from \_\_\_\_\_ 200\_, with the exception of Articles 29, 30 and 31 which shall apply from \_\_\_\_\_ 200\_.

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

Done at Brussels,

*For the European Parliament,*  
*The President*

*For the Council*  
*The President*