

**Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council creating a European order for payment procedure**

(COM(2004) 173 final/3 — 2004/0055 COD)

(2005/C 221/16)

On 6 April 2004 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the abovementioned proposal.

The Committee Bureau instructed the Section for the Single Market, Production and Consumption to prepare the Committee's work on the subject.

Given the urgent nature of the work, the European Economic and Social Committee appointed Mr Pegado Liz as rapporteur-general at its 414<sup>th</sup> plenary session of 9 and 10 February 2005 (meeting of 9 February), and adopted the following opinion with 73 votes in favour and two abstentions.

### 1. Aim of the proposal

1.1 With the proposal for a regulation creating a European judicial order for payment procedure <sup>(1)</sup>, the Commission is pursuing a number of initiatives gradually creating and developing an area of freedom, security and justice, removing barriers and helping to make it easier to conduct civil proceedings at European level, as specifically laid down in its Action Plan adopted by the Justice and Home Affairs Council of 3 December 1998 <sup>(2)</sup>.

1.2 This proposal fulfils one of the key goals of the Green Paper of 20 December 2002 <sup>(3)</sup>; the other goal of creating a European procedure for small claims litigation is being dealt with separately by the Commission.

1.3 With a view to establishing a European order for payment procedure, the Commission has taken into account the comments and recommendations made by the European Parliament and the EESC respectively regarding the aforementioned Green Paper, and is now presenting a draft regulation seeking to establish a single order for payment procedure applicable throughout the European Union.

1.4 The Commission's grounds for this initiative are based on the fact that Member States' civil procedural law systems differ, resulting in high costs and the delays entailed in cross-border litigation, which can become disproportionate, particularly where proceedings for the recovery of uncontested debts are concerned.

1.5 The Commission has decided to extend the scope of the single order for payment procedure to national disputes, in order to ensure equal treatment for all and to prevent distortion of competition between economic operators, in line with the EESC's opinion on the Green Paper, whilst ensuring that the procedure is compatible with the principles of proportionality and subsidiarity.

1.6 The text makes it quite clear that the order for payment procedure is optional, as the creditor can always opt for a different, more formal procedure provided for by domestic law. This, too, is in line with the EESC's opinion.

1.7 The Commission followed the following fundamental principles when defining the procedure:

- a) the procedure should be as simple as possible and based on the use of standard forms;
- b) no examination of the merits of a claim;
- c) presentation of documentary evidence not to be required;

<sup>(1)</sup> COM(2004) 173 final of 19.03.04.

<sup>(2)</sup> OJ C 19 of 23.01.99.

<sup>(3)</sup> COM(2002) 746 final of 20.12.02, rapporteur: Mr Von Fürstenwerth (OJ C 220 of 16.9.2003).

- d) adequate protection of the defendant's rights;
- e) no need for appeals;
- f) enforceability;
- g) representation by a lawyer not to be compulsory.

1.8 The Commission also ensures mutual exchange of information concerning the courts with jurisdiction to issue European orders for payment in the different Member States; this information is to be updated regularly.

1.9 The Committee is pleased to learn that the United Kingdom and Ireland are looking into the possibility of joining the scheme, as has been the case with similar initiatives in the past. In order to ensure that the system now being proposed operates more smoothly, however, the Committee would have preferred Denmark not to completely opt out of implementing the regulation and hopes that, in future, the constraints hindering its full membership of a single European judicial area will be overcome.

1.10 The territorial scope of the proposal may cause difficulties as regards its implementation. To surmount these difficulties, account should be taken of i) the specific characteristics of certain territories, as set out in Article 299 TEC, and ii) the responsibilities that some Member States have assumed for these regions. It should therefore be pointed out that, irrespective of the actual implementation of the order procedure, appointment of the competent bodies concerned must be carried out by the relevant national authority which is to fulfil these responsibilities on behalf of the State, thereby ensuring the legitimacy of those bodies.

## 2. Precedents and parallel initiatives

2.1 For a long time, the Community institutions, including the European Parliament <sup>(1)</sup> and the EESC <sup>(2)</sup>, had been producing documents expressing their desire to see the standardisation and simplification of civil procedures, in order to ensure faster, more effective implementation of justice.

2.2 Echoing these concerns, which had mainly been expressed by economic operators, professionals and consumers, the Commission, too, had long been reflecting on the best way to proceed; the progress made in the pioneering field of consumer law was particularly significant <sup>(3)</sup>.

2.3 However, it was clearly with the *Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation* that the issue was addressed with a view to a potential legislative initiative.

<sup>(1)</sup> See EP resolutions A2-152/86 of 13.3.1987, A3-0212/94 of 22.4.1994 and A-0355/96 of 14.11.1996

<sup>(2)</sup> See in particular opinions on the Green Paper on consumer access to justice (rapporteur: Mr Ataíde Ferreira, OJ C 295 of 22.10.1994) and on the single market and consumer protection: opportunities and obstacles (rapporteur: Mr Ceballos Herrero, OJ C 39 of 12.2.1996).

<sup>(3)</sup> In this connection, of the following documents:

- Commission communication on Consumer redress (COM(84) 692 final of 12.12.1981) and supplementary communication on the same subject (COM(87) 210 final of 7.5.1987) in supplement 2/85 to the Bulletin of the European Communities
- Commission communication on A new impetus for consumer protection policy (COM(85) 314 final of 23.7.1985) in OJ C 160 of 1.7.1985
- Commission action plan of 14 February 1996 (COM(96) 13 final)
- Commission Communication on Towards greater efficiency in obtaining and enforcing judgments in the European Union (COM(97) 609 final of 22.12.1997, OJ C 33 of 31.1.98)
- Green Paper on consumer access to justice and the settlement of consumer disputes in the single market (COM(93) 576).
- Green Paper on alternative dispute resolution in civil and commercial law (COM(2002) 196 final of 19.4.2002)

2.4 This initiative is part of a series of extremely important measures which have been taken in the field of judicial cooperation in civil matters over recent years<sup>(1)</sup>:

2.5 Regulation (EC) No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims<sup>(2)</sup> deserves special mention and is particularly relevant when considering the current Commission proposal, in that the two texts address two aspects of the same situation — the need for simpler, more effective civil law enforcement in a single area of justice.

### 3. Legal instrument and basis

3.1 In line with most of the initiatives adopted in this field, the Commission has opted to propose the adoption of a regulation, taking Articles 61(c) and 65 of the Treaty as a basis.

3.2 In its earlier opinion, the EESC firmly endorsed the adoption of a regulation, and therefore fully supports the Commission's decision.

3.3 It also fully endorses the Commission's choice of legal basis, which goes beyond a merely formal interpretation of the relevant legal concepts. This is the only way to fulfil the objective of creating a single EU judicial area.

### 4. General comments

4.1 The EESC welcomes the draft regulation, which, as has been said, has incorporated most of its comments regarding the *Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation*, and which rightly aims to implement the right enshrined in Article 47 of the EU Charter of Fundamental Rights.

(<sup>1</sup>) These include:

- Commission Recommendation of 12 May 1995 on payment periods in commercial transactions, and the related Commission Communication (OJ L 127 of 10.6.1995 and OJ C 144 of 10.6.1995)
  - Directive 98/27/EC of 19.5.1998 on injunctions for the protection of consumers' interests (OJ L 166 of 11.6.1998, p.51)
  - Directive 2000/35/EC of 29 June 2000 on combating late payment in commercial transactions (OJ L 200 of 8.8.2000)
  - Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I) (OJ L 12 of 16.1.2001). EESC rapporteur: Mr Malosse (OJ C 117 of 26.4.2000)
  - Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174 of 27.6.2001). EESC rapporteur: Mr Bataller (OJ C 139 of 11.5.2001)
  - Programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters (OJ C 12 of 15.1.2001)
  - Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Ravoet (OJ C 75 of 15.3.2000)
  - Regulation (EC) No. 1347/2000 of 29 May 2000 on the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Braghin (OJ C 368 of 20.12.1999)
  - Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 160 of 30.6.2000). EESC rapporteur: Mr Bataller (OJ C 368 of 20.12.1999)
  - Council Decision of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174 of 27.6.2001). EESC rapporteur: Mr Retureau (OJ C 139 of 11.5.2001)
  - Commission Communication concerning a New Legal Framework for Payments in the Internal Market [COM(2003) 718 final of 2.12.2003]. EESC rapporteur: Mr Ravoet (OJ C 302 of 7.12.2004).
- (<sup>2</sup>) COM(2002) 159 final, OJ C 203 of 27.8.2002. EESC rapporteur: Mr Ravoet (OJ C 85 of 8.4.2003).

4.2 The EESC urges the Commission to consider the possibility of extending this proposal for a regulation to cover the European Economic Area.

4.3 The need to create a European procedure for the rapid recovery of uncontested debts is well documented in the responses of the various Member States to the aforementioned Green Paper, as is the concern to guarantee adequate defence rights for the debtors on whom the order for payment is served

4.3.1 The EESC considers, however, that the Commission proposal would be improved by the inclusion of statistics on the estimated numbers of dispute proceedings, both cross-border and national, that will be subject to the new instrument now being proposed, and also a cost/benefit analysis of the instrument's implementation — a matter on which the Commission's explanatory memorandum is silent.

4.4 In its opinion on the Green Paper, the EESC stated, in particular, that 'When formulating a European small claims procedure, the key aim will be to define suitable measures for speeding up such litigation without, at the same time, jeopardising the guarantees afforded to the parties in question under the rule of law.'

4.5 The EESC believes that, although the proposal needs to be carefully and closely revised so as to enable it to achieve its goals more effectively, it does represent a balanced response to the twin requirements of rapid debt recovery and guaranteed defence rights.

4.6 Nonetheless, the EESC points out that it is important to bear in mind that businesses must not be able to use orders for payment as a cover for irregular procedures such as, in particular, exerting pressure or the recovery of debts arising from disregard for consumer protection rules. Similarly, it is important to ensure that the procedure adopted does not encourage instances of collusion between businesses in different Member States, with uncontested orders for payment being used as a cover for transferring money of dubious and/or even criminal origin and a legal procedure thus used to launder money.

4.7 The EESC also points out that a significant number of recovery proceedings which come before the courts, even if uncontested, are related to aggressive and/or misleading advertising which promotes products by convincing the consumer that their purchase and use or consumption of a product will not entail increased costs or, if they do, will not affect the family finances.

4.8 The EESC therefore feels that the proposal only addresses one aspect of what is a much wider, more complex issue. Accordingly, it again urges the Commission to propose legislation defining the liability of suppliers in cases of household over-indebtedness incurred as a result of unfair practices on their part <sup>(1)</sup>.

4.9 The Commission considers that it will be possible for the European order for payment procedure to co-exist alongside other identical procedures serving the same purpose and contained in Member States' national legislation.

4.9.1 The EESC, however, believes that there should only be one order for payment procedure, namely the procedure laid down and regulated by the proposal under consideration. By definition, this procedure must be deemed the most appropriate for the situations it covers, as otherwise it would lose its legitimacy. Accordingly, when this regulation is adopted, the order for payment procedures provided for in the national legislation of some Member States should cease to have effect.

<sup>(1)</sup> See the EESC opinion and information report on household over-indebtedness (rapporteur: Mr Ataíde Ferreira, OJ C 149 of 21.6.2002).

4.9.2 The European order for payment procedure should be optional only if there is an alternative common procedure, not when the alternative would be a national order for payment procedure.

4.9.3 For these reasons, the explanatory memorandum and recital 8 of the proposal should be reworded to stipulate clearly that the European order for payment procedure is an alternative only to other common — summary or ordinary — procedures, and not to any similar national procedures.

4.10 The proposal frequently employs the term 'debtor' to refer to the person on whom the European order for payment is served. The EESC feels that this term is incorrect, as it conveys the idea that the person on whom the order is served is a debtor, whereas, until the order for payment is enforced, there is, strictly speaking, no debtor and may never be.

4.10.1 The EESC therefore believes that the term 'debtor' should be replaced with the term 'defendant' wherever it is used in the text so that the same term is used throughout.

4.11 All the time frames laid down in the proposal should be measured in days rather than weeks. The rules for calculating them and the days not counted (e.g. court recesses, public holidays, Saturdays and Sundays) should be clearly specified, for obvious reasons of legal certainty. The EESC suggests using the rules set out in Article 80 et seq. of the rules of procedure of the Court of Justice.

4.12 In procedural law, 'common procedure' and 'ordinary procedure' are two different concepts. In some Member States, the main distinction is between common procedures and special procedures. A procedure is special when the law lays down a specific procedure for specific types of litigation, and it is common in all other cases. A common procedure may be ordinary, summary or accelerated, depending on the value of the claim.

4.12.1 The proposal uses the term 'ordinary procedure' loosely, without making this distinction. Article 2(2) refers to an ordinary procedure as distinct from a summary procedure. Article 6(5), Article 8 and Article 12 use the term 'ordinary procedure/proceedings' to mean the same as common procedure.

4.12.2 Thus, the term 'ordinary procedure/proceedings' used in Article 6(5), Article 8 and Article 12 should be replaced with the term 'common procedure/proceedings'.

## 5. Specific comments

### 5.1 Article 2 — European order for payment procedure

5.1.1 The phrase 'uncontested pecuniary claims for a specific amount that have fallen due' should be replaced with 'uncontested pecuniary claims for a specified net amount that have fallen due'.

5.1.2 For a particular debt to be executable, it must be of a specified amount, which must be net, and it must have fallen due. This kind of concept is very clearly specified in the different legal systems and should be preserved here in order to ensure greater legal certainty in law enforcement.

## 5.2 Article 4 — Requirements for the delivery of a European order for payment

5.2.1 In Article 4(1), the clause ‘... if the requirements as set out in Articles 1, 2 and 3 are met’ should be amended, as Articles 1 and 2 do not actually refer to requirements. Article 1 defines the scope of the regulation and Article 2 specifies the procedure it creates.

5.2.1.1 The EESC therefore suggests the following wording: ‘... if the conditions and requirements as set out in Articles 1, 2 and 3 respectively are met’.

5.2.2 Article 4(2) gives courts the opportunity to require the claimant to complete or correct the application.

5.2.2.1 In the interests of legal certainty and economy of procedure, the EESC asks the Commission to consider turning this option into an obligation, at least in cases where the application contains particularly blatant errors or omissions.

5.2.2.2 Moreover, the proposal should lay down a specific — of necessity, short — time limit for the claimant to comply with the court’s request. If the claimant does not correct the application before the time limit expires, it would then be rejected without further consideration.

## 5.3 Article 5 — Rejection of the application

5.3.1 Under procedural law, generally speaking, an objection or appeal may be lodged against a decision to reject an order for payment application. However, Article 5(2) is intended to ensure that the decision cannot be contested in any way.

5.3.2 Therefore, given the way the order for payment procedure is conceived and the fact that it is optional (which means that there is nothing to prevent other judicial procedures being used), appeal is unnecessary.

5.3.3 In view of this, Article 5(2) should read: ‘No objection or appeal shall lie against the rejection of an application for a European order for payment’, in order to be consistent with the information given in the explanatory memorandum. (\*)

## 5.4 Article 6 — European payment notification

5.4.1 According to the second sentence of Article 6(2), if the defendant’s address (as stated previously, the term ‘debtor’ should be replaced by ‘defendant’) is known with certainty, methods of service without proof of receipt by the defendant are admissible.

5.4.1.1 The EESC draws the Commission’s attention to the fact that the clause ‘if the defendant’s address is known with certainty’ is too vague and could lead to situations of great legal uncertainty with harmful consequences for defendants.

---

(\*) Translator’s note: The Portuguese version of the explanatory memorandum uses the word ‘recurso’ (appeal), while Article 5(2) uses the word ‘impugnação’ (objection). The English version uses the word ‘appeal’ in both cases.

5.4.1.2 Some Member States have the system of an address for service: under this system, if the notification is served to the address for service by a contractual party, it is assumed to have been received, and there is therefore no need for proof of receipt. The EESC considers that the establishment of an address for service would not be sufficient to fulfil the requirement of knowing an address with certainty.

5.4.1.3 If this system — i.e. dispensing with the requirement of service with proof of receipt by the defendant — is combined with the system of seizure of goods in default of payment before the notification is actually served on the defendant, a situation could arise where the defendant only becomes aware of the order for payment at the point when it is executed and his or her goods are seized.

5.4.1.4 The EESC believes that this serious situation, which is distressing for people whose goods are seized without them having the opportunity to oppose it, is to be avoided<sup>(1)</sup>. It therefore proposes, as stressed in its opinion on the aforementioned Green Paper, that the use of methods of service without proof of receipt by the defendant should not be admissible and that the clause 'if the defendant's address is not known with certainty' should therefore be deleted from the end of Article 6(2).

5.4.2 The time limit of three weeks laid down in Article 6(3)(b) should be specified in terms of the equivalent number of days, so as to make it easier to calculate the length of time involved.

5.4.3 In the Portuguese version of the proposal and in some other versions, the nature of the time frame laid down in Article 6(5) should be clarified, e.g. in the Portuguese version the words 'de prescrição' ('of the statute of limitations') should be added after the word 'prazo'. (\*)

5.4.4 In its opinion on the aforementioned Green Paper, the EESC also recommended to the Commission 'that the legal instrument should spell out the consequences of failure to provide information on appeals'.

5.4.4.1 The current proposal does not include any such provisions, and so the EESC once again urges the Commission to lay down provisions to this effect.

## 5.5 Article 8 — *Effects of a statement of defence*

5.5.1 The EESC does not feel that the proposal makes it clear that, once a statement of defence has been lodged, the proceedings are to continue in accordance with the rules of civil procedure of the Member States concerned without the parties having to instigate any further procedures.

5.5.2 Therefore, in Article 8(1), the words 'proceedings shall continue' should be followed by the clause 'automatically, without the need for a new procedure to be instigated'.

## 5.6 Article 9 — *European order for payment*

5.6.1 As stated with regard to Article 6(2), the second sentence of Article 9(2) stipulates that if the defendant's address (here too, the term 'debtor' should be replaced by 'defendant') is known with certainty, methods of service without proof of receipt by the defendant are admissible.

<sup>(1)</sup> Article 14 of Regulation (EC) No. 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims provides for a debtor to be served without proof of receipt by the debtor but does not consider this admissible if the debtor's address is not known with certainty. Of the various situations provided for, only those described in points c), d) and e) justify the objections raised by the EESC in this opinion and in the opinion on the relevant Green Paper.

(\*) Translator's note: The Portuguese version of the explanatory memorandum uses the word 'recurso' (appeal), while Article 5(2) uses the word 'impugnação' (objection). The English version uses the word 'appeal' in both cases.

5.6.2 The EESC draws the Commission's attention to the fact that the clause 'if the defendant's address is known with certainty' is too vague and could lead to situations of great legal uncertainty with harmful consequences for the defendants.

5.6.3 For this reason, the EESC feels that exactly the same proposal as it made with regard to Article 6 applies here, in other words that the use of methods of service without proof of receipt by the defendant should not be admissible and that, therefore, the clause 'if the defendant's address is not known with certainty' should be deleted from the end of Article 9(2).

#### 5.7 *Article 11 — Opposition to the European order for payment*

5.7.1 If the Commission accepts the EESC's suggestion that the use of methods of service without proof of receipt by the defendant should not be admissible, Article 11(4)(a)(i) should be deleted to ensure consistency.

5.7.2 The expression 'acts promptly' in the final sentence of Article 11(4) is very vague and is open to many different interpretations.

5.7.2.1 In order to ensure legal certainty, the EESC therefore proposes that the Commission specify a time limit within which the rights set forth in Article 11(4) must be exercised.

#### 5.8 *Article 12 — Effects of the lodging of a statement of opposition*

5.8.1 As stated with regard to Article 8, the proposal does not make it clear that, once a statement of defence has been lodged, the proceedings are to continue in accordance with the rules of civil procedure of the Member States concerned without the parties having to instigate any further procedures.

5.8.2 Therefore, the words 'proceedings shall continue' should be followed by the clause 'automatically, without the need for a new procedure to be instigated'.

#### 5.9 *Article 13 — Legal representation*

5.9.1 The EESC believes that making representation by a lawyer or another legal professional non-mandatory may be admissible when the value of the claim is sufficiently low as to make it not worth the expense of engaging experts of this kind.

5.9.2 However, unlike some Member States' laws, the proposal does not specify ceilings for application of the order for payment procedure, with the result that it could be used to recover large sums which, under the laws of certain Member States, ought to require use of an ordinary procedure if opposition is expressed.

5.9.3 In such circumstances, it is not sensible for a legal professional only to be engaged when a case is being transferred to an ordinary civil procedure. Indeed, when completing the proposed response form, a debtor is required not only to state whether or not he acknowledges the debt but also to lodge a statement of opposition relating to the claim in its entirety or, in respect of the principal claim, only to the interest or only to the costs. If a debtor completes this form, he might inadvertently weaken any defence that his lawyer might adopt, should a lawyer be involved from the beginning of the order procedure.

5.9.4 On the other hand, making representation by legal professionals non-mandatory could have a negative impact where the parties involved are very unevenly matched (consumers against professionals, large businesses against small or family businesses).



5.9.5 For these reasons, the EESC advises the Commission to consider making representation by a lawyer or another legal professional mandatory where the sums involved exceed a set amount (such as EUR 2 500).

#### 5.10 *Article 14 — Costs*

5.10.1 The EESC believes that a paragraph 2 should be added to Article 14, worded as follows: 'There shall be no charge for the European order for payment procedure if no statement of defence or opposition is lodged.'

5.10.2 Given that the order for payment procedure is an out-of-court procedure, it is proposed that a single, initial, small fee be established, irrespective of the value of the claim.

5.10.3 If this is not thought advisable, the regulation should make it clear that Member States' national legislation transposing Directive 2003/8/EC of 27 January 2003 on access to justice in cross-border disputes is applicable in the present case (\*).

#### 5.11 *Annexes: Forms*

5.11.1 The proposed system rests on the use of the forms reproduced in annexes 1, 2 and 3 (\*). The procedures will only run smoothly if the forms serve the purpose for which they are intended.

5.11.2 The EESC has well-founded doubts about the effectiveness and practicality of the forms used in cross-border disputes.

5.11.3 For example: if an Italian company which is owed money by a Polish consumer submits an application for a European order for payment to an Italian court, will the Polish consumer receive the payment notification in Italian or Polish? If it is in Italian, what guarantee is there that the consumer will understand it and be able to decide whether to make a statement of defence? If it is in Polish, who will be responsible for translating it?

5.11.4 The claimant does not merely have to tick boxes in the form; he also has to add written information. Who will be responsible for translating this? And who will certify that the translation is accurate?

---

(\*) Translator's note: The English version already mentions the statute of limitations.

(\*) Translator's note: The English version already mentions the statute of limitations.

5.11.5 Regulation 1348/2000, of 29 May 2000, on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters, does not allay the concerns referred to above, due to the rather informal and unhurried nature of the European order procedure now under examination.

5.11.6 Indeed, even if the aforementioned hypothetical Polish consumer were to receive a European order for payment in his mother tongue, in which language would he reply? Who would provide a translation from Polish into Italian? Conversely, if he does not receive the notification in Polish, he could, legally speaking, refuse to accept it. Any situation of this nature, however, would create barriers that would adversely affect the swiftness of the European order for payment.

5.11.7 The EESC therefore asks the Commission to consider the most effective way of ensuring that the use of these forms in cross-border disputes does not jeopardise the swift recovery of debts or the defendant's right of defence.

5.11.8 The EESC also thinks that all the forms apart from the response forms are too complicated to be filled in by people without legal training.

5.11.9 A number of terms (statutory interest rate; % above the base rate of the ECB; order for payment; 'can be enforced against you') could be unclear to the layman. As the Commission proposes to make legal representation non-mandatory (although the EESC thinks that this should only be the case for small sums), action is needed to ensure that the users of the forms understand them and can fill them in correctly.

5.11.10 In Portugal at least, the terms 'rent' and 'hire' relate to two separate concepts (immovable property is rented, movable property is hired). In the Portuguese version of point 8.2 of the application for a European order for payment and in point 9.3 of the European payment notification, the term 'contrato de locação' should therefore be used for movable property. The terminology used in the other language versions should also be checked against the terms to be found in Member States' civil law.

5.11.11 Lastly, point 11 of the application for a European order for payment and point 12 of the European payment notification will be very difficult for the layman to complete. The EESC suggests that this matter be analysed by the court on the basis of the place of residence of the claimant and defendant.

Brussels, 9 February 2005.

The President  
of the European Economic and Social  
Committee  
Anne-Marie SIGMUND

---