

European Order for Payment Procedure

April 22nd, 2008

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Order for payment - concept

- Procedure unknown to the common law countries, exists in most European countries national law
- Various names: *Mahnverfahren*, *injoction de payer*, *injunction to pay*
- Creditor needs a court decision to recover a debt via enforcement proceedings because the defendant is unable or unwilling to pay (e.g. no dispute about the sum)

Basic explanation

- court in a **written proceeding** issues an ex parte order based on the allegations of (or evidence) the plaintiff
- Defendant-debtor has to start the proceeding with a hearing and taking of evidence, debtor has to object on time (that complies with art. 6 ECHR fair trial requirement)
- Without objection the order becomes final and enforceable

Reasons

- Regular oral proceedings is most valuable for the taking of evidence, participation of parties, exercise of their rights, public observes = control function
- BUT
- For finding out whether defendant contests a claim, a written procedure is more appropriate – saves time, effort and costs, relieves the court, standardised decision form (use of computers)

Two basic models

- **"evidence" model** - claimant is required to produce written evidence to substantiate the claim, which is examined by a judge;
- **"no evidence" model** - courts do not assess the claim's validity. Whenever a claim is admissible and satisfies the basic formal requirements, the court issues an order for payment without it being necessary to submit supporting documents.

European Order for Payment - Background

- ECT art. 61(c), 65(c) – judicial cooperation, good functioning of civil proceedings – compatibility of the rules on civil procedure
- Tampere 1999 issues
- 2002 Green paper adopted
- 2004 Hague Programme
- EP EC Regulation 1896/2006 (effective december 2008)

EPO reasons

- Recitals 6 - 9.
- Swift and efficient recovery where no legal controversy exists, late payments are main reason for insolvency
- Varying legislation distorts competition = need for a minimum standard, level for EU creditors and debtors enabling free and quick circulation of PO = **simplified system for collecting uncontested debts between member States**

EPO nature

- Recitals 10, 17, 27, art. 1
- Facultative procedure = claimant may choose the national law procedure = no replacement or harmonisation of existing national mechanisms
- No right to appeal against rejection of the applicaiton for PO
- Enforceable throughout EU, mutual trust

Application scope and relation to other instruments

- Art. 2
- Cross-border case (art.3)
- Civil and commercial matters (contractual and non-contractual debts/claims)
- NO revenue, customs, administrative matters, acta iure imperii + par. 2 exceptions
- Not in Denmark
- Time – art. 33
- Uncontested pecuniary claims (art. 1, 4)
- Procedural rules out of EPO scope – national law art. 26
- Service of documents regulation art. 27
- Jurisdiction under Brussels I

EPO outline

- Standard form A request (annex 1)
- Issued by court having jurisdiction under Brussels I (art. 6, consumer exception)
- Creditor requests, debtor is served
- Debtor may oppose the claim
- YES: the proceedings will continue before the court that issued the order as normal civil or commercial litigation
- NO: order becomes enforceable and no further exequatur is necessary

EPO

- Application requirements art. 7 (paper, electronic - signature)
- Examination by court art. 8:
- B form for completion or rectification w/i time limit (art. 9)
- C form for modification (claim partially accepted art. 10, remaining part by national law)
- Rejection grounds: art. 11 (D form)
- No appeal but may file new application under EC law or national law

Issue of EPO art. 12

- form E, w/i 30 days (not counting completion etc.)
- Two options for defendant:
 - A) pay the amount indicated
 - B) oppose the order (30 days) art. 16
- Notice of consequences for debtor

Service of EPO

- Lex specialis to the service regulation No 1393/2007 (effective November 2008) –art. 27
- Arts. 13 – 15
- MAY be served
- With and without proof of receipt
- Methods in accordance with national law = regulation sets minimum procedural standards
- May be served on defendant's representative

Opposition to EPO art. 16

- Form F (paper, electronic + signature)
- w/i 30 days of service
- No statement of reasons necessary
- Effects: art. 17 – proceedings continue
- Enforceability in case of no opposition: art. 18 (form G) – recognised and enforced art. 19, 21 X art. 22, 23
- Conditions for review – art. 20

Refusal of enforcement art. 22

- Earlier decision by any MS or 3rd country in the same cause, b/w same parties
- Conditions met for recognition and enforcement
- Irreconcilability not objected
- BUT – no review of substance!
- Art. 23 stay or limitation of enforcement during review procedure

