

European Order for Payment Procedure

Set of Case Studies¹

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Case Scenario I

OneWeb GmbH is a company seated in Innsbruck (Austria) that provides internet services, including web hosting, cloud storing and web maintenance. It provides a wide array of internet services to both businesses and consumers, but mostly to smaller businesses. In December 2022, it concludes a contract with Galicia Turismo LLC, a small tourist agency located in Vigo, Spain.

The contract is concluded through the website of OneWeb, where it advertises its services and enables concluding contracts online. To conclude the contract a box ‘accept terms and conditions’ has to be clicked, which includes a hyperlink to the terms and conditions of services. The conditions provide, among others that *‘In the event of a dispute arising out of or in connection with this agreement, the courts of Innsbruck (Austria) will have exclusive jurisdiction.’*

Because Galicia Turismo, despite a number of reminders, fails to pay two outstanding invoices (for the total amount of €4,979), OneWeb decides to terminate the contract and accordingly informs Galicia Turismo. OneWeb claims the said amount of the invoices as well as an amount of €1,500 by way of contract termination charge fixed in the contract. It also wants to claim the costs of the proceedings.

For answering the questions consult the relevant regulations and make use of the information available on the e-Justice Portal where necessary.

Questions Case I

1. Which European procedures are available to cross-border money claims?
2. a) Which procedure is most suitable for this case? In your answer pay attention to the scope of application of the European Order for Payment Procedure in particular.
b) Could OneWeb use the European Small Claims Procedure to claim damages for lost profit now that it had to terminate the contract?
c) Suppose that OneWeb starts proceedings in Austria and would like to use the Austrian *Mahnverfahren*, a national debt collection procedure or another Austrian procedure. Is this possible?
d) What are the key differences in using the European Order for Payment procedure and a national procedure?
e) Would the European Order for Payment Procedure be available had OneWeb been located in Switzerland, assuming that all the other facts of the case remain the same, including the choice of court?

f)* Would the European Order for Payment Procedure be available if OneWeb, in the original scenario that it is situated in Austria and all other facts remaining the same, brought that claim against Tirana Turismo, located in Albania?

3. Returning to the original scenario, and assuming that OneWeb wants to apply for a European Order for Payment, which court(s) will have jurisdiction in relation to this claim?

Exercise: Which Member States have concentrated the handling of the European Order for Payment Procedure in (a) specific court(s)?

4. Does OneWeb need legal representation to apply for a European Order for Payment?

5. Suppose that OneWeb files the application in the Austrian court. How should the application be filed, and more specifically, can this be done electronically?

6. In its application, does OneWeb have to:

- a) specify the cause of action?
- b) specify the costs and interest it claims?
- c) attach supporting evidence?

7. Can the Austrian court require information with regard to the claim derived from Austrian law?

8. Can the court reject the application in case the application form lacks information regarding the cause of the action or a description of the evidence?

9. Does the court or another competent authority have to serve the Application Form A to Galicia Turismo?

Alternative scenario: Suppose that the contract had been concluded with Ms. Gonzalez, a consumer domiciled in Vigo (Spain), for the hosting and maintenance of a personal website.

10. + a) May the court examine whether the penalty of €1,500 in case of late payment is unfair – considering the relative low value of the contract – within the meaning of the Unfair Contract Terms Directive?

b) How can the court obtain additional information, including the full contract, to evaluate whether specific contract terms are unfair?

c) Is the court obliged to request this information to *ex officio* review the fairness the terms of the contract?

d) What is the position if a domestic payment order procedure had been initiated?

Answers Case I

1. Which European procedures are available to cross-border money claims? These are the European Order for Payment Procedure (Regulation No 1896/2006) and the European Small Claims Procedure (Regulation No 861/2007), as amended by 2015/2421. The latter amended Art. 17 as well as Arts. 30 and 31 of the EOP Regulation and became effective on 14 July 2017. These procedures are intended to simplify and speed up litigation and to reduce cost for the recovery of small claims or uncontested cases and they abolish the exequatur for the purpose of enforcement (see Art. 1 EOP and ESCP). Both are available to recover cross-border claims in civil and commercial matters and they are optional to available national procedures (see Arts. 1, 2 and 3 of the EOP and ESCP Regulation). This is a commercial case and not excluded from the scope (Art. 2, para 2). The two key differences are that:

(1) The EOP does not have a monetary limit. The ESCP has a monetary limit – this is €5,000 (Art. 2, para 1 ESCP) => this would in principle disqualify it for this claim.

(2) The EOP is only available in uncontested pecuniary claims (Art. 1 EOP). The ESCP applies to both contested and uncontested claims.

A wizard to decide which procedures are available can be found on the e-justice portal, see https://e-justice.europa.eu/content_dynamic_forms-155-en.do. (Home > taking legal action > online forms [Online forms may also be under the Featured tab])

The rules of the Regulations are binding and national law may not impose higher requirements, see Case C-215/11, *Iwona Szyrocka v SiGer Technologie GmbH*, ECLI:EU:C:2012:794, in relation to the EOP (but the same goes for the ESCP). National law does play a role in case the ESCP or EOP rules do not provide rules, see Art. 26 EOP and Art. 19 ESCP.

A third uniform European procedure is the European Account Preservation Order procedure (Regulation No 655/2014) (EAPO), which allows for protective measures (attachment of bank accounts) to secure enforcement, but that one is not relevant in this case.

2. a) Which procedure is most suitable for this case? The amount claimed in total is €6,479 excluding costs and interests. This would in principle disqualify it for the European Small Claims Procedure, which applies to claims the value of which does not exceed €5,000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements (Art. 2 ESCP). OneWeb could decide to not pursue the claim for the contractual penalty of €1,500 and thus ensure the claim is under the maximum amount for the European Small Claims Procedure.

The better option would be to use the European Order for Payment Procedure, though that will only work if Galicia Turismo does not contest the claim by lodging a statement of opposition in accordance with Art. 16 EOP.

Scope

For the scope of applicability of the EOP Regulation, the following points need to be considered.

By reference to Articles 2, 3 and 4 of the Regulation, the following elements are important:

- Art. 2(1): “This Regulation shall apply to **civil and commercial matters in cross-border cases**, 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*’).”
- Art. 2(2) lists exceptions to the scope.

Civil and commercial matters: This concept needs to be interpreted autonomously in accordance with the case law of the CJEU (see inter alia Case C-29/76, *LTU v Eurocontrol*, ECLI:EU:C:1976:137 and Case C-551/15, *Pula Parking d.o.o. v Sven Klaus Tederahn*, ECLI:EU:C:2017:193). In this case there is no doubt that this is a commercial matter. In addition, none of the exceptions of Art. 2, para 2 apply in this case. This is an ordinary service contract between two commercial parties.

Cross-border cases: this is further defined in Art. 3 that reads “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 Member State other than the Member State of the court or tribunal seised.” Domicile is to be determined in accordance with what is now Arts. 62 and 63 of the Brussels I Regulation (recast) (no 1215/2012) (Para 2; the original text refers to the old Regulation, Arts. 50 and 60 of Regulation 44/2001). The relevant moment to decide whether it is a cross-border case is that of submitting the application for an EOP (Para 3). In this case this condition is met since the parties have their seats in different countries (Austria and Spain), which implies that in any case the court having jurisdiction – to be determined on the basis of the Brussels I Regulation (recast) – will be a court other than the domicile or habitual residence of one of them.

Temporal and geographical scope: The Regulation has been applicable from 12 December 2008 for claims submitted after this date (Art. 33 EOP). It has been slightly amended as of 14 July 2017 (by Regulation No 2015/2421). This only concerns Art. 17 and Arts. 30 and 31 of the EOP Regulation.

The Regulation does not apply in Denmark (Preamble no 32). Denmark is not considered to be a Member State for the purpose of the Regulation, see Art. 3(1).

Pecuniary claims: Art. 4 requires that it concerns a pecuniary claim for a specific amount that has fallen due at the time the application is submitted. This requirement is fulfilled in this case, it concerns a specific amount that has fallen due. Costs and interest claimed will have to be specified in the Application Form A.

b) Could OneWeb use the European Small Claims Procedure to claim damages for lost profit now that it had to terminate the contract? It can in principle claim any amount related to the claim as there is no threshold. The application form A has a separate section on contractual penalties (see part 8 of the form). The main claim will need to go under part 6 of the claim. One may question whether lost profit is specific enough and in any case the amount would need to be specified including the reason (non-payment for the main claim). The

contractual penalty under part 8 would include the €1,500 penalty included in the contract in case termination is justified because of non-compliance with the contract – the duty to pay for the services – by Galicia Turismo. It is unlikely that the lost profit would qualify as such. Though the examination by the court is rather marginal, if part of the claim is outside the scope or otherwise part of it appears to be clearly unfounded, the claim would have to be rejected on the basis of Article 8 in conjunction with Article 11.

c) Suppose that OneWeb brings the claim in Austria and would like to use the Austrian *Mahnverfahren*, a national debt collection procedure or another Austrian procedure. Is this possible? The EOP is an optional procedure (as is the ESCP). This has to do with the proportionality and subsidiarity requirement of EU law. Article 1(2) refers to national procedures specifically with regard to claims coming under Article 4. Also Recital 10 clearly explains that the Regulation serves as an alternative to national procedures and that this Regulation neither replaces nor harmonises existing national procedures. OneWeb could therefore still apply for an order using the Austrian *Mahnverfahren* or another domestic procedure, subject to national law. This may be for reasons of familiarity with this procedure or other features that may make the domestic procedure more attractive. It is required that the Austrian court has international jurisdiction, which would not be a problem considering the choice of court and Article 25 of the Brussels I Regulation (recast). Some information on the national legal system and courts of Austria is available at the e-justice portal here: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-at-en.do?member=1.

*However, national rules may have impediments. In the case of the Austrian *Mahnverfahren*, according to § 244 (2) no. 3 of the Austrian Code of Civil Procedure, the order cannot be issued in case the defendant is domiciled, habitually resident or has its seat abroad. This would mean that only an ordinary procedure in accordance with Austrian law can be initiated.*

d) What are the key differences in using the European Order for Payment procedure and a national procedure? That depends on the modalities of the national procedure, but from the perspective of cross-border litigation in the EU, advantages of the EOP may be the simplicity and uniformity of the procedure throughout the EU, the forms being available in all EU languages, rules regarding service, translations and enforcement and the full abolition of exequatur. For a domestic procedure in a cross-border case the rules of the Service Regulation and those of Brussels I Regulation (recast) will be applicable. As to enforcement, the Brussels I Regulation (recast) has retained more grounds of refusal, see Article 45 thereof and see Article 22 EOP (only irreconcilability).

e) Would the European Order for Payment Procedure be available had OneWeb been located in Switzerland, assuming that all the other facts of the case remain the same, including the choice of court? The fact that Switzerland is not a Member State does not prohibit the applicability of this Regulation as such (see also [Order for Payment Practice Guide](#), par. 2.2 and the same would go for the ESCP, see the [European Small Claims Practice guide](#), par. 2.2.2). The requirement that it concerns a cross-border case applies. If the Austrian court is chosen (in which case the Brussels I Regulation (recast) provides that this court has

jurisdiction) while Galicia Turismo is in Spain, Article 3 qualifies this as a cross-border case. See also Case C-627/17, *ZSE Energia a.s. v RG*, ECLI:EU:C:2018:941 in this regard ('parties' only covers those involved as applicant and defendant, not third parties involved, and they must be domiciled in a MS other than that of the court seized). Referring to Case C-412/98, *Group Josi*, ECLI:EU:C:2000:399, it is clear that for the purpose of the Brussels I Regulation (recast) the domicile of the plaintiff is not relevant.

f) * Would the European Order for Payment Procedure be available if OneWeb, in the original scenario that it is domiciled in Austria and all other facts remaining the same, brought that claim against Tirana Turismo, located in Albania?

As in the situation of question sub (e), this case could still in principle be covered by the European Order for Payment Procedure as it is not required that the defendant is located in the EU. However, it would depend on whether an EU court would have jurisdiction and it is required that at least one of the parties is domiciled in *another Member State*. In the case of a valid choice of court for the Austrian court (see also question 3), this requirement would not be fulfilled as OneWeb is located in Austria as well while the other party is not situated in a Member State.

3. Returning to the original scenario, and assuming that OneWeb wants to apply for a European Order for Payment, which court(s) will have jurisdiction in relation to this claim? Art. 6, para 1 EOP refers to the Brussels I Regulation (this reference should be understood as referring to the latest version, the Recast, no 1215/2012). Para 2 regards consumer claims and is not relevant to this case. Application Form A also refers to this Regulation. The most recent forms, including the amendments brought about by amending Regulation 2015/2421, are available on the e-justice portal: https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do. Part 3 is on the grounds of jurisdiction. No. 12 thereof refers to the choice of court. In this case the contract concluded a choice of court clause. This is regulated by Art. 25 Brussels I Regulation (recast). The choice is made in the contract and an electronic contract is considered to be a written contract (Art. 25, para 1, sub a in conjunction with para 2). This is considered to be a communication by electronic means that provide a durable record. In Case C-322/14, *Jaouad El Majdoub v CarsOnTheWeb*, ECLI:EU:C:2015:334, the CJEU confirmed this, provided that it can be clicked, downloaded and saved. In Case C-358/21, *Tilman SA v Unilever Supply Chain Company AG*, ECLI:EU:C:2022:923, the CJEU considered that also if it is not a click-wrap contract the choice of court may be valid. This is the case if the clause is included in the general terms and conditions to which the contract refers by inclusion of a hypertext link to a website where those terms and conditions can be viewed, downloaded and printed prior to the contract being signed.

This gives exclusive jurisdiction to the court in Austria and more specific Innsbruck. However, the Member States are allowed to designate a specific court and Austria has done so: the Vienna Commercial Court has jurisdiction. The information, in accordance with Art. 29 is available here: See https://e-justice.europa.eu/content_european_payment_order-353-at-en.do?member=1

Article 29(1)(a) - Courts with jurisdiction

For applications for the issue of a European order for payment, only the Vienna Commercial Court has jurisdiction (§ 252(2) of the Austrian Code of Civil Procedure).

Exercise: Which Member States have concentrated the handling of the European Order for Payment Procedure in (a) specific court(s)?

=> Use the e-Justice Portal https://e-justice.europa.eu/content_european_payment_order-353-en.do and look per Member State. *It may be interesting to talk about why Member States have decided to do this, e.g. efficiency, a court that has specific expertise in handling international cases, because it coincides with the competence in national order for payment procedure.*

4. Does OneWeb need legal representation to apply for a European order for Payment?

One of the features of the EOP is that legal representation is not required, regardless of the value of the claim underlying the application for an order for payment. See Art. 24 EOP to this effect. This is regardless of what national civil procedure rules would require in such case and in that sense the rules on legal representation are harmonised by the EOP (the same goes for the ESCP). The reason for not requiring legal representation is to reduce costs and to simplify access. The standard forms, information items, the guidance of the e-justice portal including dynamic forms that can be filled out online should guide the user. In addition, a Practice Guide is available on the e-Justice portal, https://e-justice.europa.eu/content_order_for_payment_procedures-41-en.do.

5. Suppose that OneWeb files the application in the Austrian court. How should the application be filed, and more specifically, can this be done electronically?

Art. 7(1) EOP prescribes Application Form A (Annex I). Art. 7(2) 2 lists the information to be included (this is also guided by the Form). According to Art. 7(5) the application shall be submitted in paper form or by any other means or communication, accepted by the MS of origin and available to the court of origin. The use of electronic communication is encouraged in the European procedures. The Directive on electronic signatures applies unless there is a national system of identification (para 6). The EOP does not make it compulsory for the MS to enable electronic lodging of the claim (as this is intertwined with the court system and technological advancement). The MS have to inform which means are available (Art. 7, para 6; Art. 29, para 1, sub c) and the Commission shall make this information available to the public (Art. 29, para 2).

Turning to the e-Justice Portal, at https://e-justice.europa.eu/content_european_payment_order-353-at-en.do?member=1, the following information is available for Austria:

Article 29(1)(c) - Means of communication

Submissions in the European order for payment procedure may be made either in paper form or electronically using WebERV (web-based electronic justice). In principle WebERV is open to all natural and legal persons. The technical prerequisites for this are special software and the

existence of a transmitting agency. A list of current transmitting agencies can be found at <http://www.edikte.justiz.gv.at/edikte/km/kmhlp05.nsf/all/erv>.

Submission via fax or e-mail is not possible.

6. In its application, does OneWeb have to:

a) specify the cause of action? Yes, see Art. 7(2)(d). This should include a description of the circumstances invoked as the basis of the claims of the interest demanded. See also part 6 of the Application Form.

b) specify the costs and interest it claims? Yes, see Art. 7(2)(b) and (c) as well as Part 7 and 9 of the Application Form.

c) attach supporting evidence? The Application Form provide a description of the evidence, see Art. 7(2)(e) and part 10 of the Application Form (written evidence, oral evidence, expert evidence, inspection or other, to be specified). Evidence should not be attached. Pursuant to Article 11(1)(b) if the claim is clearly unfounded or (c), the claimant does not send a reply to complete or rectify the form should the evidence part not have been filled out, the court shall reject the application.

7. Can the Austrian court require information with regard of the claim derived from Austrian law? No, this is not allowed beyond what is required on the basis of Art. 7 EOP. This provision is exhaustive and no further requirements can be derived from Austrian law. See Case C-215/11 *Iwona Szyrocka v SiGer Technologie GmbH*, ECLI:EU:C:2012:794, in which the CJEU states that Art. 7 “must be interpreted as governing exhaustively the requirements to be met by an application for a European order for payment.” In this case the Polish court noted that the claimant had failed to specify the value of the subject-matter of the dispute, expressed in Polish currency, as required under Polish law to enable the fee for issuing the application to be calculated. This was not a valid requirement under the EOP.

8. Can the court reject the application in case the application form lacks information regarding the cause of the action or a description of the evidence? It can, as these are required by Art. 7, however, in accordance with Art. 9, the claimant should be given an opportunity to complete or rectify the application. For this the court shall use Form B (Annex II). In practice it occurs that more informal ways to obtain simple missing items are used, including sending an email or a phone call. This seems in line with the objectives of the Regulation. The court will have to set an appropriate time limit for completing or rectifying the application, see Art. 9(2).

Only when the claim is clearly unfounded or the application is inadmissible the court can dismiss the application.

9. Does the court or another competent authority have to serve the application form to Galicia Turismo? No, the EOP is a one-sided procedure. After the examination of the application in accordance with Art. 8 – in particular the requirements on the scope, jurisdiction

and the information required laid down in Arts. 2, 3, 4, 6 and 7, and reviewing whether the claim appears to be founded – the EOP should be issued. See also Article 12. The EOP itself needs to be served in accordance with Arts. 13-15 and this triggers the period for opposing the EOP.

10.* a) May the court examine whether the penalty of €1,500 in case of late payment is unfair – considering the relative low value of the contract – within the meaning of the Unfair Contract Terms Directive? In general Art. 8 on the examination of the application primarily requires review of the formal requirements, see previous question. However, it also has to review whether the claim appears to be founded and the part on the contractual penalty presented as such by the claimant may need to trigger an examination. The case law of the CJEU on the Unfair Terms Directive makes clear that these need to be reviewed *ex officio*. Especially important is Joined Cases C-453/18 and C-494/18, *Bondora* ECLI:EU:C:2019:1118, in which the CJEU ruled that Art. 2(2)(d) and (e) of the EOP Regulation in conjunction with Art. 6(1) and 7(1) of the Unfair Terms Directive (UTD) should be understood as allowing a court seised in the context of a European order for payment procedure to request additional information relating to the agreement to carry out an *ex officio* review of the possible unfairness of those terms. National legislation which that would not allow this will be precluded. See also the earlier case *Banco Español de Crédito* which did not concern the EOP, but also dealt with reviewing unfair contract terms in an order for payment procedure (see sub d).

b) How can the court obtain additional information, including the full contract, to evaluate whether specific contract terms are unfair? The court can make use of the possibility to request additional information pursuant to Art. 10 EOP on modification of the application, using form C (Annex III). The court can ask the claimant to modify the application as regards this part of the claim.

c) Is the court obliged to request this information to *ex officio* review the fairness the terms of the contract? In the *Bondora* case the CJEU did not specifically address this question (and neither in the *Banco Español*) case, but considering that is ruled that the EOP and UTD must be understood as *allowing* a court to request additional information to *ex officio* review the fairness of the terms, it does not seem to be an obligation. Also in view of the possibility of automatic review under Art. 8 of the EOP Regulation, this seems not to be an obligation. There may, however, be a tension with the general obligation to review unfair consumer contract terms *ex officio*.

d) What is the position if a domestic payment order procedure had been initiated? In Case C-618/10, *Banco Español de Crédito*, EU:C:2012:349 the CJEU had to deal with a (possible unfair) clause in a consumer contract in relation to a national (Spanish) order for payment procedure. The referring court had also raised the position under the EOP, but since it was a national case, the CJEU did not answer this question. In relation to the national procedure, the CJEU ruled that the judge (or court staff member) must be able to *ex officio* assess the fairness of a consumer clause before issuing the payment order.

Case Scenario II

Pragoboard s.r.o. is a company seated in Prague (Czech Republic) that produces and sells electronics to retailers throughout Europe. In 2021 it concludes a contract for the sales of a certain quantity of electronics each three months with Electromasters BV, a company seated in Rotterdam, the Netherlands. The contract provides that the electronics are to be delivered in Rotterdam. It includes a choice of court clause providing exclusive jurisdiction for the court of Prague in case a dispute arises out of or in connection with the contract.

Early October 2022, Pragoboard notices that the last three invoices, for a total amount of €854.799,20 are not yet paid. A reminder by email for the payment of the first invoice had been sent a month earlier already, but Electromasters did not respond to that. Pragoboard sends Electromasters a reminder for all three invoices. One month later Electromasters replies that there were some problems in paying invoices because of a new administration system, but that the two invoices will be paid before the end of the year, and the third in January. However, by the end of January none of the invoices have been paid and Pragoboard cancels the delivery scheduled for January. It sends Electromasters another reminder and warns it will terminate the contract and charge contractual interest and costs if the three invoices are not paid by 28 February 2023.

By this date the invoices are not paid and Pragoboard contacts a lawyer to take legal action. The lawyer advises to use the European Order for Payment Procedure. On 1 April 2023, the application for a European Order for Payment is lodged with the competent District Court in Prague. The application is made for the amount of €854.799,20 for the invoices, plus €3.567,59 interest and €3.945,25 for legal costs, including the court fee, lawyer fee, and translation costs.

Questions Case II

1. Supposing that the complete Application Form is lodged on 1 April 2023.
 - a) When should the court issue the European Order for Payment at the latest?
 - b) Would the European Order for Payment still be valid if it were issued after the date?
 - c) How should the European Order for Payment be issued?
 - d) How should the court proceed after issuing the order?

2. Suppose that Electromasters would want to oppose the European payment order.
 - a) Within what time should it oppose the order?
 - b) How can it lodge the statement of opposition?

Exercise: Does the competent Czech court enable lodging the statement of opposition electronically?

3. How should the court proceed in case it receives a statement of opposition?

4. ⁺ May domestic procedural rules enabling extending the period of opposition in exceptional cases be applied?

5. What should the court do if no (timely) statement of opposition is received?

Suppose that Electromasters did not oppose the European payment order in time because its lawyer mistakenly sent the statement of opposition not to the court, but to Pragoboard's lawyer who claims it only received the statement after the opposition period had expired.

6. Does this constitute a ground for review under the EOP Regulation?

Suppose that the review is rejected and Pragoboard seeks enforcement of the EOP.

7. How should Pragoboard seek enforcement?

***Exercise:** Which languages do the Dutch enforcement authorities accept for the Order for Payment and how is this regulated in France, should Electromasters also have assets in France?*

Answers Case II

1. Supposing that the complete Application Form is lodged on 1 April 2023.

a) When should the court issue the European order for payment at the latest? This is regulated by Art. 12 EOP which provides that the court should give the order as soon as possible and normally within 30 days of the lodging of the application. In other words, the order should be issued on 30 April (or 1 May). ‘Normally’ does give some leeway, and the EOP does not give further guidance on the point of time limits, but if the Application Form is complete and in absence of extraordinary circumstances, the EOP should be given within the specified time.

b) Would the European Order for Payment still be valid if it were issued after this date?

Yes, the time limit of 30 days is not fatal. In practice it happens regularly that the Order is issued after this date, and though not preferable, this does not impair the validity.

c) How should the European order for payment be issued? The court shall use the standard form E as set out in Annex V (available at https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do). This can be accompanied by the court judgment according to the ordinary format. According to Art. 12(2) a copy of the Application Form shall be included. The information listed in Art. 12(3) will have to be included.

d) How should the court proceed after issuing the order? The court will have to serve the order in accordance with national law and in compliance with Arts. 13-15. The form for opposition (Form F) will need to be served along with the EOP. This is crucial to ensure that the period for opposition starts to run. Failure to comply with this will mean that the Arts. 16-20 do not apply (Case 119/13, *eco cosmetics*, ECLI:EU:C:2014:2144).

2. Suppose that Electromasters would want to oppose the European payment order.

a) Within what time should it oppose the order? See Art. 16(2), within 30 days of service of the order to the defendant.

b) How can it lodge the statement of opposition? Art. 16(1), using form F (Annex VI). This form will need to be served to the defendant along with the order. The opposition should be lodged with the court that issued the order. It is not required to state reasons (see Art. 16(3) EOP) and Form F.

Exercise: Does the competent Czech court enable lodging the statement of opposition electronically?

=> The relevant information on the Czech Republic can be found on the e-justice portal: https://e-justice.europa.eu/content_european_payment_order-353-cz-en.do?member=1.

Article 29(1)(c) - Means of communication

In accordance with Section 42 of the Code of Civil Procedure, the following are acceptable means of communication:

- | |
|---|
| <p>(a) electronic mail with an advanced electronic signature in accordance with Electronic Signatures Act No 227/2000, as amended;</p> <p>(b) electronic mail without an advanced electronic signature;</p> <p>(c) fax.</p> |
|---|

Submissions by the means referred to in paragraphs (b) and (c) must be followed up by sending in the original copies of the forms within three days, failing which the court will not take the submissions into consideration.

3. How should the court proceed in case it receives a statement of opposition? If a timely statement of opposition within the meaning of Art. 16 is received, the proceedings shall continue in accordance with the rules of ordinary proceedings, unless the claimant had explicitly indicated in the application form that in that case it wants proceedings to be terminated. See Art. 17(1). The court shall transfer to ordinary civil proceedings in accordance with Czech civil procedural law and inform the claimant thereof, see Art. 17(2) and (3).

4.* May domestic procedural rules enabling extending the period of opposition in exceptional cases be applied? In general, national rules may only be applied when the EOP does not provide rules, see also Case C-215/11 *Iwona Szyrocka v SiGer Technologie GmbH*, ECLI:EU:C:2012:794. Applying national legislation that would prolong the period of opposition may undermine the effectiveness of the Regulation and would in principle not be allowed. However, in in Case C-18/21, *Uniqqa*, ECLI:EU:C:2022:682 the CJEU ruled that Articles 16, 20 and 26 of EOP Regulation does not preclude the application of national legislation which was adopted when the Covid-19 pandemic ensued and which interrupted the procedural periods for approximately five weeks. In such exceptional circumstances the period of opposition can thus be extended pursuant to national law.

5. What should the court do if no (timely) statement of opposition is received? In that case the court shall without delay declare the EOP enforceable, using form G (Annex VII). The court shall verify the date of service. See Article 18(1) EOP. The formal requirements for enforceability of Czech law apply (para 2) and the court shall send the enforceable EOP to the claimant (para 3).

6. Does this constitute a ground for review under the EOP Regulation? The review in exceptional cases is regulated by Article 20 and the CJEU case law indicates that it will have to be interpreted narrowly. This is clear from the leading case (Case 119/13, *eco cosmetics*, ECLI:EU:C:2014:2144) where in a case the service requirements of Arts. 13-15 were not observed, the CJEU did not interpret these rules to cover this situation, but ruled that the rules opposition did not apply and eventually a national remedy would have to resolve the issue. In the present case the most relevant CJEU ruling is Case C-324/12 *Novontech-Zala kft. v Logicdata Electronic & Software Entwicklungs GmbH*, ECLI:EU:C:2013:205. In that case the time-limit for stating an opposition had expired and the CJEU ruled that the failure to observe the time-limit for lodging a statement of opposition to a European order for payment, by reason of the negligence of the defendant's representative, does not justify a review of that order for

payment, since such a failure to observe the time-limit does not constitute extraordinary circumstances within the meaning of Article 20(1)(b) or exceptional circumstances within the meaning of Article 20(2) of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

In a similar vein, the competent court in the Netherlands, the District Court The Hague (18 February 2018, ECLI:NL:RBDHA:2018:1353) decided that the behaviour of the lawyer can be attributed to the party in a case where the statement of opposition was sent to the lawyer of the claimant (who claimed that it had not received such statement), also because Form F informs the defendant where to lodge the statement of opposition.

7. How should Pragoboard seek enforcement? According to Art. 19 no declaration of enforceability is necessary and recognition cannot be opposed. According to Art. 21 enforcement is governed by the law of the Member State of enforcement, which would be Dutch law if – as is most likely – enforcement would have to take place in the Netherlands. It will be enforceable under the same conditions as an enforcement decision issued in that Member State. The claimant will have to provide the competent enforcement authorities with a copy of the EOP as declared enforceable and where necessary a translation. Refusal is limited to irreconcilability within the meaning of Art. 22.

Exercise: Which languages do the Dutch enforcement authorities accept for the Order for Payment and how is this regulated in France, should Electromasters also have assets in France.

NL: https://e-justice.europa.eu/content_european_payment_order-353-nl-en.do?member=1

Article 29(1)(d) - Accepted languages

Article 8(2) of the Implementing Law EBB:

2. A European Order for Payment, as declared enforceable by the court of origin in another Member State, shall be made in compliance with Article 21(2)(b) of the Regulation or translated into Dutch.

FR: https://e-justice.europa.eu/content_european_payment_order-353-fr-en.do?member=1

Article 29(1)(d) - Accepted languages

The languages accepted under Article 21(2)(b) are: French, English, German, Italian and Spanish.

Surprisingly, France decided to accept five languages for this purpose!

Methodological advice

Training aims and approach

The aim is to get familiarised with the scope, the application requirements, the examination of the application, the issuing of the order, the service of the order and the consequences of the lodging of an opposition, as well as with the enforcement of a European Order for Payment. The first case scenario is a B2B service contract, with a variation for a consumer contract. The second one is a B2B sales contract. In the first case the scope of applicability and the first part of the procedure up to the examination of the application, including requests for the completion, modification and the possibility of rejecting the application are included. The second case focuses on the costs, issuing the order, service, review and enforcement. Some more advanced questions (marked with a '+' sign) have been added suitable for court staff/bailiffs that already have a basic comprehension of these European rules. The best way to approach it would be to divide the group in smaller groups that work on the case, while having online access to the various materials and in particular the e-Justice portal. The most important CJEU cases are integrated in the questions and answers and should be available.

Materials

Key materials are:

- The EOP Regulation
- The Brussels I Regulation (recast)
- CJEU case law on these Regulations
- The ESCP Regulation (only for question 1 of Case I)
- Access to the e-Justice Portal



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