

# European order for payment procedure

2004/0055(COD) - 13/12/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Arlene MCCARTHY (PES, UK) and made several amendments to the Commission's proposal. The amendments are the result of an agreement between Parliament and Council to approve this regulation at first reading. The main amendments are as follows:

-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;

-Parliament's Legal Affairs Committee had voted to give member states or civil parties the option of applying the procedure to domestic cases. (Please see the summary of 14/07/2005.) However, Parliament decided that the procedure should only apply to cross-border cases, not domestic ones too as the European Commission wanted;

-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 seized. Domicile shall be determined in accordance with Regulation 44/2001/EC. 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 the Regulation;

-jurisdiction will be determined in accordance with the relevant rules of Community law, in particular Regulation 44/2001/EC. 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, will have jurisdiction;

-there are a number of amendments aiming to simplify the procedure, including new provisions regarding service of the EPO, the abolition of exequatur, enforcement and review in exceptional cases.

Those owed money should state in their application that the information they have provided is true. The order for payment should be issued within 30 days of the application being made.

The defendant would have 30 days to oppose the order after being served with it. If he/she does not

object, the court must enforce the order automatically. However, the defendant can lodge an appeal in specified "exceptional cases";

-Some exceptions to the use of the new system are also inserted. The EPO could not be used in case of contested property arising out of a matrimonial relationship, including wills and succession, or claims arising from non-contractual obligations except under certain circumstances;

- Five years after entry into force of the legislation, the Commission must present a detailed report reviewing the operation of the European order for payment procedure. That report must 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 EU is duly taken into account and reflects the principles of better legislation, Member States will provide the Commission with information relating to

the cross-border operation of the EPO. This information should cover court fees, speed of the procedure, efficiency, ease of use and the internal payment order procedures of the Member States.