

European order for payment procedure

2004/0055(COD) - 07/02/2006 - Modified legislative proposal

The Commission presents an amended proposal which adapts the original proposal in response to amendments voted by the European Parliament. 34 of the Parliaments amendments were accepted by the Commission, 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. Almost all the key amendments voted by Parliament were accepted. (For key amendments please see the summary of 13/12.2005.)

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 805/2004/EC creating a European enforcement order for uncontested claims. However, one technical modification is needed, resulting from the definition of “cross-border cases”. 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. The text should therefore refer to the rules of service of the “State” rather than “Member State”.

A further 13 amendments were accepted in principle, subject to redrafting. These include the following amendments:

- clarifying that Regulation 1182/71/EC determining the rules applicable to periods, dates and time limits applies for purposes of computing time limits;
- the courts must 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;
- Parliament has provided 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 between the date of entry into force and the date of entry into application of the Regulation, it is more appropriate to refer, in 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;

The Commission accepted three amendments partially:

- one 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 defence, 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;
- 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 44/2001/EC. 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.

- one amendment 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 redrafted 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.

The Commission rejected one amendment in its entirety for technical reasons.