

The European Order for Payment

How to use an EOP to enforce cross-border debt.

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THE European Order for Payment (EOP) is an under-used but highly effective tool which allows for enforcement of cross-border debts. Council Regulation (EC) 1896/2006 brought about the EOP process, which allows a creditor to enforce a debt against a debtor residing in another European Member State (with the exception of Denmark). The procedure is administrative in nature and is faster and less costly than litigating uncontested money claims.

For a claim to have a cross border element, at least one of the parties must be domiciled or habitually resident in an EU Member State other than the state where the Court is dealing with the EOP application. Article 3(3) of the Regulation outlines that the appropriate point at which to determine if a case can be considered as being of a 'cross-border' nature is the point at which the application is made as opposed to the point at which the subject matter of the claim arose.

The procedure is available for 'civil and commercial matters in cross border cases irrespective of the nature of the court or tribunal'. The Regulation expressly excludes revenue, customs, administrative and state liability claims.

Jurisdiction is determined in accordance with the Brussels I Regulation except in the cases of disputes arising from consumer contracts where the defendant is a consumer. In that instance, the Brussels I Regulations provides that the jurisdiction must be the Member State where the defendant is domiciled.

The EOP procedure is particularly helpful in money claims for a specific amount, due and owing at the time the application is submitted.

The procedure is that the creditor completes a series of forms in their own Member State. The initiating document is a Form A, which sets out the details of the parties, the amount claimed including principal, any interest or contractual penalties, a summary of the claim and supporting evidence.

The Court first examines the application but does not consider the evidence. There is a Form B stage which affords applicants an opportunity to rectify applications if the Court deems it necessary. If the Court rejects the claim, it will issue a form D. If the Court only finds that part of the claim should proceed, it will issue a Form C.

If the Court finds that the claim has merit, an EOP will issue by means of Form E. This contains the names and addresses of the parties and the order to pay the amount claimed, the interest, contractual penalties and costs. The debtor is notified by means of the Form E of the obligation to (1) pay the amount owed or (2) dispute the EOP by lodging a statement of opposition by means of Form F within 30 days. Form E also notifies the debtor that if a statement of opposition is lodged, the matter must thereafter be dealt with by the courts of the Member State of origin.

Form E must be served on the debtor in accordance with the national law of the Member State of origin and the method of service must comply with Articles 13 to 15

of the Regulation.

The procedure to proceed from Form A to Form E should take no more than 30 days, but this does not include where a Form B amendment or rectification is required.

If the debtor wishes to challenge the EOP a Form F must be lodged. There is no requirement to state grounds for the opposition.

If no opposition is lodged, the Court will issue Form G which is a declaration of enforceability. Any EOP that has been declared enforceable in its Member State of origin is therefore enforceable in other Member States.

The law of the Member State of enforcement will determine the means by which the EOP may be enforced. Any remedies which are available in relation to a judgment or order made within a Member State are also available in relation to the enforcement of the EOP.

This procedure is well worth considering as a means to cut through lengthy and costly procedures when dealing with debtors outside of your own jurisdiction. The procedure affords the opportunity to have an enforceable order in a very short timeframe. In conventional civil litigation, the court proceedings can be lengthy and costly only to be followed by what can be equally lengthy and costly enforcement procedures. Where available, the EOP can have creditors at enforcement state in the Member State of enforcement significantly sooner than they would be if court proceedings were pursued.

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