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EUROPEAN ORDER FOR PAYMENT

Application, Procedure, Issuing and
Opposition



|

INTRODUCTION

1. Introduction

- Regulation EC 1896/2006 created the first genuine European civil procedure – the European Order for Payment procedure (EOP)
- EOP can be issued only in a single procedure common to 27 Member States
- National law is applicable, on a subsidiary basis, to questions which are not regulated in the EOP Regulation
- Principle of mutual recognition of judgements
- Main aim: simplification, speed-up
- Procedure is purely written, except if the EOP is opposed

II

SCOPE OF APPLICATION OF THE NEW PROCEDURE

1. Territorial scope of application

- All Member States
- Exception for Denmark

2. Material scope of application

- Uncontested pecuniary claims for a specific amount
- Civil and commercial matters
- Cross-border cases
- Several exclusions Art. 2(2) EOP

2.1 Uncontested pecuniary claims

- Regulation applies for uncontested pecuniary claims of a specific amount that have fallen due at the time when the application for a EOP is submitted

2.2 Civil and commercial matters

- Autonomous meaning according to the European Court of Justice
- Two relevant elements
 - Subject matter of the dispute
 - Nature of the relationship between the parties involved
- Distinction between *acta iure imperii* and *acta iure gestionis*

2.3 Cross-border case

- EOP applies only in cross-border cases
- Art. 3 EOP: „ (...) 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“
- The domicile should be determined in accordance with the Brussels I Regulation
- Relevant point of time: date of application

2.4 Exclusion

- Rights in property arising out of a matrimonial relationship, wills and successions
- Bankruptcy, proceedings relating to winding-up of insolvent companies, judicial arrangements, compositions and analogous proceedings
- Social security
- Claims arising from non-contractual obligations

3. Jurisdiction

- Shall be determined in accordance with the relevant rules of community law
- In particular with Brussels I (EC 44/2001)
- Exception: Defendant is a consumer (Art. 6 II EOP)
 - Courts in the Member State in which the defendant is domiciled have jurisdiction

III

THE EUROPEAN ORDER FOR PAYMENT - PROCEDURE

1. Application for a European Order for Payment

- Amount of the claim & interest
- Cause of action & description of evidence
- Competent courts
- How to submit

1.1 Application – amount & interest

- Application should include the amount of the claim
- Application should also provide details regarding the interest rate and the time for which interest is demanded

1.2 Application – cause of action & description of evidence

- Application must include cause of the action, incl. description of the circumstances, basis of the claim and the interest (Art. 7 EOP)
- Application also has to provide a description of the evidence supporting the claim
- No specification of the level of detail
- No description of the judicial examination

1.3 Application – competent courts

- Those that have been designated by the Member States
- The specific Court can be found in the „Court Atlas“
- If the application is sent to a court that is not competent, it is a matter for national law what action that court should take

1.4 Application – How to submit

- By paper
- Member States may also accept other methods, including electronic (fax, email)
- It is advisable to check in the European Judicial Atlas which method is accepted before submitting an application

2. Conduct of the procedure before the court

- Court will examine the application
- No evaluation of evidence
- Check of the requirements according Art. 7 EOP
- If the claim is clearly not unfounded, the court shall give the opportunity to complete or rectify the application (Form B)

2.1 Procedure – modification & rectification

- Rectification (Form B) Art. 9 EOP
- Modification (Form C) Art. 10 EOP
- Court states a deadline
- Possibility of extension of the limit

2.2 Procedure – rejection of the application

- Rejection by using Form D
- Claimant shall be informed of the grounds for the rejection Art. 11(1) EOP
- No possibility to appeal
- The rejection prevents the claimant not from a new application for an EOP

3. Issueing & serving

- Completion of Form E
- Time limits
- Service on the defendant

3.1 Issuing & serving – completion of Form E

- Once the application has been lodged and, if necessary, modified or rejected, the court issues the EOP by using Form E
- Form E includes names, addresses and other details of the parties
- Form E also informs the defendant about his rights and options

3.2 Issueing & Serving – time limits

- If the requirements are met, the court issues the order as soon as possible
- EOP does not become final as soon as it has been issued
- Pay or contest
- 30-days limit for the statement of opposition

3.3 Issueing & serving – service on the defendant

- EOP has to be served in accordance with the national law of the Member State of origin
- Service with proof of receipt by the debtor (Art. 13 EOP)
- Service without proof by of receipt by the debtor (Art. 14 EOP)
- Each method can also be used in relation to the defendant's representative

4. Opposition to the European Order for Payment

- Defendant can lodge a statement of opposition to the EOP (Form F)
- Not necessary to give reasons for the opposition
- 30-days time limit
- Review in exceptional cases after the expiry of the time limit (Art. 20 EOP)
- Paper form/electronic communication
- Proceedings continue before the competent courts of the Member State of origin with the rules of ordinary civil procedure (Opt-out possible)

5. Enforceability

- EOP is declared enforceable if no opposition is lodged
- The court uses Form G to declare the enforceability
- The formal requirements for enforceability are governed by the law of the Member State of origin (Art. 18 EOP)
- EOP must be recognized and enforced in other Member States without *exequatur*

IV

RECOGNITION AND ENFORCEMENT OF THE EOP IN OTHER MEMBER STATES

1. Recognition & enforcement – general principles

- Abolition of *exequatur* (Art. 19 EOP)
- No need to obtain a declaration of enforceability in the Member State of enforcement
- No right to review (except in situation provided for by Art. 22 and 23 EOP)
- Procedure of enforcement is governed by the law of the Member State of enforcement

2. Recognition and enforcement - submission

- Apply for enforcement to the court or authority competent for enforcement in the Member State where enforcement is required
- Details in the European Judicial Network
- Claimant should provide a copy of the order and a declaration of enforceability (Form G)

3. Recognition and enforcement - translation

- Claimant may be required to provide a copy of the EOP in a different language from that used by the court of origin
- General rule: EOP should be provided in the official language of the Member State of enforcement
- Translation by a qualified person

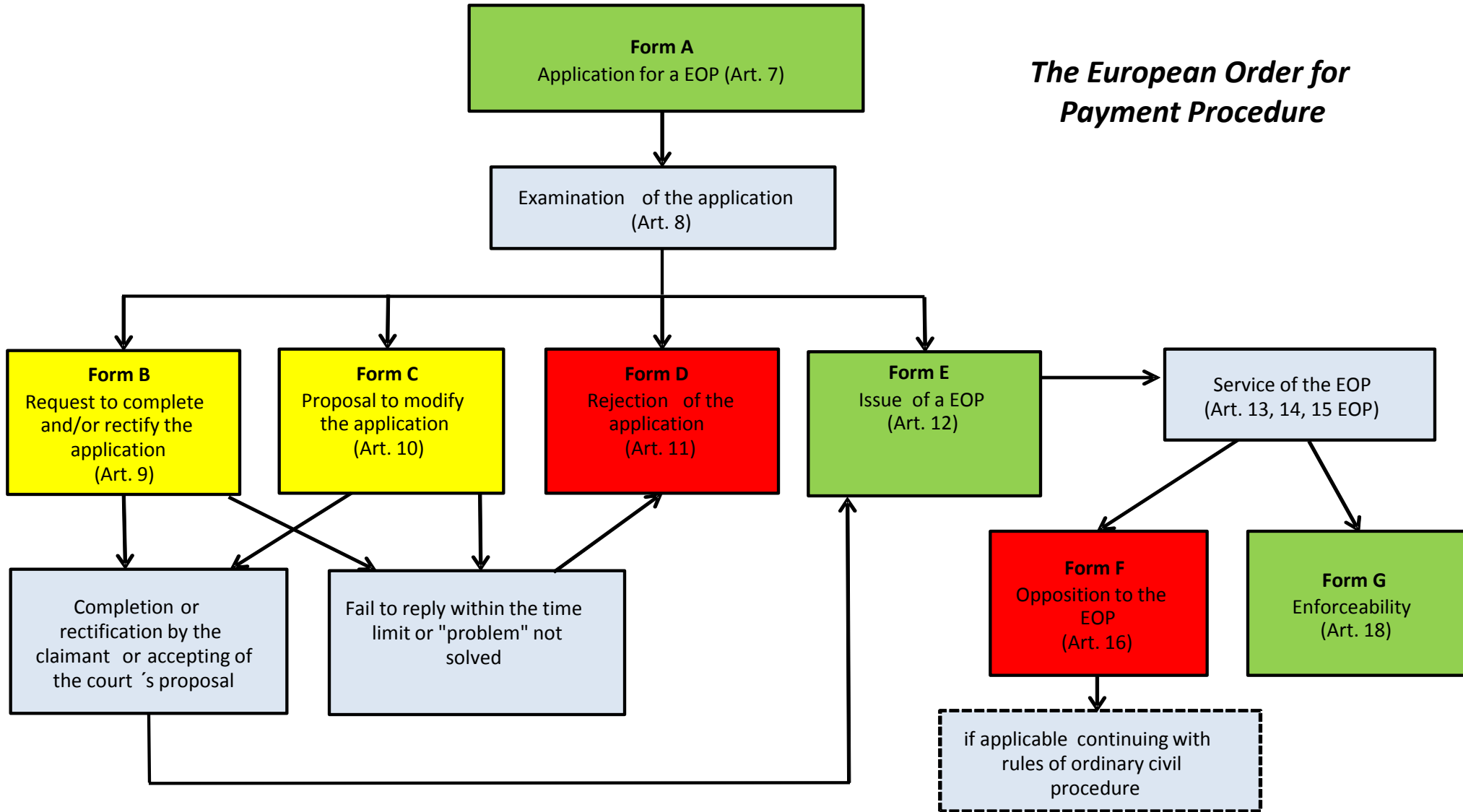
4. Recognition and enforcement - refusal

- Defendant has two options in the Member State of enforcement
- None of these actions can lead to a review of the substance of the EOP
- Art. 22 EOP: apply for a refusal of enforcement (*res iudicata*)
- Art. 23 EOP: apply for a stay or limitation of enforcement (cave: necessary prerequisite - application for a review in accordance with Art. 20 at the court of origin)

V

SUMMARY

The European Order for Payment Procedure





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