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MODULE II

UNIT VIII

European order for payment procedure: Regulation (EC) no. 1896/2006 of 12 December. **Small Claims:** Regulation (EC) no. 861/2007 of 11 July 2007 establishing a European Small Claims Procedure.

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SUMMARY

Following the decision of the 1999 European Council in Tampere to step up judicial cooperation in civil matters, in 2002 the Commission presented the Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation. The result of this was the approval 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 and Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

Both procedures are designed to simplify and speed up pecuniary claims and reduce costs. This enables the claimant to obtain a rapid court judgment in a standard procedure.

The European order for payment and the judgment on small claims are enforceable titles eligible for enforcement in another Member State without the need for a declaration of enforceability (*exequatur*).

In addition to the European rules, citizens who decide to go to court still have the option of claiming amounts owed under domestic law.



I. Introduction

On 20 December 2002, the Commission of the European Communities presented the Green Paper on European order for payment procedure and on measures to simplify and speed up small claims litigation¹. The aim was “to create a European order for payment procedure, that is to say a specific speedy and cost-efficient procedure for claims that are presumed to remain uncontested available throughout all Member States, and to simplify and speed up small claims litigation, an area in which it is particularly essential to streamline proceedings and to limit their costs in order to prevent the pursuit of these claims from becoming economically unreasonable.”²

In the Green Paper, the Commission referred to the proposals by a working group of experts led by Professor Marcel Storme, which in 1993 presented a proposal for a Directive on the approximation of the laws and rules of the Member States in relation to certain aspects of civil procedure. Said project presented detailed rules for an order for payment procedure, but they were ultimately not adopted by the Commission.

In 1998, the Commission presented a proposal for a Directive to combat late payment in commercial transactions. It included provisions that obliged the Member States to establish a fast-track procedure for the recovery of unchallenged claims. The Directive was finally approved on 29 June 2000³ and states that Member States will ensure that an enforceable title can be obtained within 90 calendar days.

Following the entry into force of the Treaty of Amsterdam and the integration of judicial cooperation in civil matters under the first pillar, the European Council highlighted the mutual recognition of decisions in civil matters as the aim of judicial cooperation in the future at its special meeting held on 15 and 16 October 1999 in Tampere. To be precise, it decided:

“V. Better access to justice in Europe

30. The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative, extrajudicial procedures should also be created by Member States.”⁴

After the approval of a programme of measures by the Commission and the Council for the application of the principle of mutual recognition to decision in civil and commercial matters, the Commission drew up a two-level strategy:

- the abolition of exequatur on the condition that all the enforceable titles for uncontested debts comply with certain minimum rules; and
- the creation of a European order for payment procedure.

¹ COM (2002) 746 final

² COM (2002) 746 final, p. 5

³ Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions, DO L 200/35

⁴ COM (2002), 746 final., p. 51



The programme of measures also included simplified and accelerated cross-border litigation for small claims.

II. Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure ⁵

1. General aspects

The Commission highlighted in the above-mentioned Green Paper that the rapid recovery of uncontested debts is of vital importance for the economic agents in the European Union. Ordinary civil procedures for this kind of debt entail a high cost and complex processing. In the majority of cross-border disputes the limit of proportionality is exceeded. Moreover, the requirement of the declaration of enforceability (exequatur) in the Member State of the debtor entails further delay and higher costs.

For this reason, the Commission referred to the rules on payment procedures in force in many Member States, in particular the French *l'injonction de payer* and the German *Mahnverfahren*. Finally, on 19 March 2004 the Commission presented a proposal for a regulation to create a European order for payment procedure.⁶ The Commission's proposal was based largely on the German order for payment procedure. The process was designed as a two-phase "evidence free" process.⁷ On 21 February 2006, the Commission presented a draft Regulation that was very different to the first proposal. Here a single-phase process was proposed.⁸

2. Particularities of the Regulation

2.1 General aspects

According to Article 1⁹ of the Regulation, the purpose 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 the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.

The defendants will have the option of making a claim in the context of a procedure under the law of a Member State or in accordance with Community law. Therefore, a creditor may freely decide to claim the credit in accordance with the rules of a domestic order for payment procedure. As such, in Germany the option of going through what is termed the international order for payment procedure still exists, under Article 688

⁵ OJ L 399 de 30/12/2006, p. 1, in the version with the correction of errors published in OJ L 46 2008, p. 52 and in OJ L 333 2008, p. 17 (^{NT}: *During the translation process it was confirmed that these two corrections only appear in the German language versions of the OJ*).

⁶ COM (2004) 173 final

⁷ Véase Sujecki, en: Gebauer/Wiedmann, *Zivilrecht unter europäischem Einfluss*, 2nd ed. 2010, EuMVVO, S. 2006, section-. 12

⁸ COM (2006) 57 final

⁹ Unless I state otherwise, all the articles mentioned in Chapter II are Articles 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.



section 3 of the Civil Procedure Act, in relation to Article 32, section 1 of the Germany law on recognition and enforcement (AVAG being the German acronym),
In Germany, the Regulation was integrated and assimilated into domestic law in Articles 1087 to 1096 of the Civil Procedure Act.

2.2 Scope

The Regulation entered into force on 12 December 2008 and applies to all Member States with the exception of Denmark (Article 2 section 3 or whereas 32).

The Regulation applies to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It does not extend to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (Article 2 section 1). Section 2 of Article 2 rules out the sphere of rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy and social security. Claims arising from non-contractual obligations can only be made if they have been the subject of an agreement between the parties or there has been an admission of debt. Moreover, claims may also be made in relation to liquidated debts arising from joint ownership of property. By virtue of Article 4, the order for payment procedure is established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

Article 3 of the Regulation contains a legal definition of what is understood by the cross-border cases, namely a case 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 to which the application was made. Domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.¹⁰

2.3 Jurisdiction

Jurisdiction is covered in Article 6, which in turn refers to the provisions of Regulation (EC) no. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In cases of claims related to a contract concluded by a consumer where the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled shall have jurisdiction (Article 6 section 2).

2.4 Application process

The application for a European order of payment should be presented using a form (attached in Annex I) (Article 7), in which the claimant will state the parties involved in the procedure, the court in question, the amount of the claim (including the principal, interest, contractual penalties and costs), interest, the cause of the action, including a description of the circumstances invoked as the basis of the claim, the evidence supporting the claim and the grounds for jurisdiction. The form will be filled out in a language accepted by the court with jurisdiction. This may mean that, when applying for the European order of payment in another Member State, the claimant may not be able to use his/her own language.¹¹

The application shall be submitted in paper form. It may also be presented in electronic format if accepted by the Member State of origin and available to the court of origin. The application must be signed. Where the application is submitted in electronic form it must have an electronic signature.

¹⁰ OJ L 12, 16-01-2001, p. 1; A Regulation whose last amendment constitutes Commission Regulation (EC) no. 2245/2004 (OJ L 381, 28-12-2004, p.10)

¹¹ Sujeci, *Das Europäische Mahnverfahren*, NJW 2007, p. 1623 *et seq.* (1624)



Once the application is received, the court in question will examine it to ensure the formal requirements are met (Article 8). Moreover, the court will also examine whether there are grounds for the application, which may be done in the form of an automated procedure. The Regulation does not establish the scope of the obligation for the court to examine the application. The question therefore arises whether it is the plausibility that should be examined or the internal consistency. It is ultimately for the national legislator to determine the scope of the examination in the adaptation of the Regulation to domestic law. In Germany, the European order for payment is regulated in Articles 1087 *et seq* of the Civil Procedure Act which makes no reference whatsoever in this regard. As such, the bibliography calls for an interpretation of Article 8 in the sense that, even if there is no examination of internal consistency, manifestly groundless claims may be dismissed.¹² Whereas 16 of the Regulation states that the court may examine *prima facie* the merits of the claim (*examinar prima facie los fundamentos de la petición* in the Spanish version; *schlüssig prüfen* in German; *d'examiner prima-facie* in French). As it is not necessary to present any means of evidence to the court for the purposes of this examination, but simply mention the existence of the same, it is only possible to check whether there are merits for the claim on the basis of the information supplied by the claimant.¹³

When the information supplied by the claimant is incomplete or requires rectification, the court will inform the claimant using form B included in Annex I. The court will set a time limit for the completion or rectification of said information (Article 9). If, in the context of its examination pursuant to Article 8, the court reaches the conclusion that the requirements for the issue of an order for payment are only partially met, the claimant will be invited, using form C in Annex I, to accept or reject the European order for payment for an amount set by the court (Article 10). The claimant will return form C within the term indicated by the court. Any failure to do so will result in the rejection of the order for payment (Article 11).

2.5 Issue of a European order for payment

When the requirements are met, the court will usually issue a European order for payment using form E in Annex V within 30 days of the presentation of the application (Article 12). The defendant will be notified in accordance with national law by any means that meets the minimum requirements established in Articles 13, 14 and 15. This is a reproduction of the minimum requirements set out in Articles 13, 14 and 15 of Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.¹⁴

The defendant must be notified that he/she may present a statement of opposition. Moreover, he/she will be informed that the order was issued exclusively on the basis of the information supplied by the claimant, that the order will become enforceable unless a statement of opposition is presented and that the opposition procedure will proceed in accordance with the national legislation of the Member State of origin.

2.6 Appeals

The defendant may present a statement of opposition to the European order for payment before the court of origin using form F contained in Annex VI (Article 16). The statement of opposition must be sent within a term of 30 days as of notification of the

¹² Sujecki, as FN 11, p. 1624; as in FN 7, section 48

¹³ Schlosser, *EU-Prozessrecht*, 3rd Ed. 2009, Art. 8 MahnVO, section 2; Kropholler/von Hein, *Europäisches Zivilprozessrecht*, 9th Ed. 2011, Art. 8 EuMVVO, section 9 *et seq*.

¹⁴ OJ L 143 2004, p. 15



order for payment. It will not be necessary to provide grounds for the statement of opposition and it may be presented in paper form or via electronic means.

The presentation of the statement of opposition terminates the order for payment procedure. As of that point, the procedure will continue before the corresponding courts of the Member State of origin, pursuant to the rules governing ordinary civil procedure (Article 17), unless the claimant has explicitly requested that the proceedings be terminated in that event.

If the time limit for opposition expires, pursuant to the provisions of Article 20, the defendant will only have the option of a review of the order for payment in certain specifically defined exceptional cases. The defendant may apply for the review of the order for payment if it was notified in accordance with Article 14 without acknowledgement of receipt, if service was not effected in sufficient time to enable the defendant to arrange for his/her defence, without any fault on his/her part or if the defendant was prevented from objecting to the claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his part. A review of the order for payment may be requested if it was clearly wrongly issued.

2.7 Enforcement

If no statement of opposition is filed within the term established in section 2 of Article 16, the court will without delay declare the European order for payment enforceable, using form G in Annex VII (Article 18). A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement (Article 21). For enforcement in another Member State, the claimant shall provide the enforceable order for payment and a translation of the European order for payment into the official language of the Member State of enforcement, as the case may be.

Enforcement may be refused if the European order for payment is irreconcilable with an earlier decision or order previously given or involving the same cause of action between the same parties, which will at least have been recognised in the Member State of enforcement and the irreconcilability was not raised as an objection in the court proceedings in the Member State of origin (Article 22).

Enforcement may be refused or limited if a review process is initiated by virtue of the provisions of Article 20.

2.8 Miscellaneous

The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment shall not exceed the court fees of ordinary civil proceedings. The fees of the order for payment procedure will be set in accordance with national law (Article 25).

By virtue of Article 29, Member States will notify the Commission: which courts have jurisdiction to issue a European order for payment, of the review procedure and the competent courts for the purposes of the application of Article 20, the means of communication available and the accepted languages.

The Regional Court (*Sąd Okręgowy*) of Breslau (Poland) asked the Court of Justice of the European Union on the ninth of May 2011 in the Iwona Szyrocka/SIGER Technologie GmbH case¹⁵ for a preliminary decision on the interpretation of Article 7. It wanted to know whether said Article should be interpreted as a thorough regulation of all the requirements that an application should meet or merely as establishing a series

¹⁵ Case C-215/11; see <http://curia.europa.eu> or <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:219:0007:0007:EN:PDF>



of minimum principles, meaning that national law should be applied in a complementary manner. The Court considered that the question was relevant, as in the main proceedings, the application did not meet the formal requirements established by Polish law. The Polish court also asked about Article 4 and letter c) of section 2 of Article 7 in relation to the claim for interest in addition to the main debt. It was not possible to find decisions published by the German courts.

III. Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure ¹⁶

1. General aspects

In the Green Paper of 20 December 2002, the Commission addressed the question of the recovery of small claims in Member States. Following on from the conclusions of the Tampere Council, it asked Member States to set the corresponding national procedures, in the context of which the huge differences existing between the different national rules was highlighted, in terms of a limit of the *petitum* of the claim, the possible types of lawsuits, how proceedings were brought or the alternatives for dispute resolution. These important differences between the procedures gave rise to a distortion of competition in the single market, meaning that urgent action needed to be taken. However, in the process of gathering this information, it also became clear that many Member States had developed simplified civil law procedures for small claims, as “costs, delays and vexation connected with judicial remedies do not necessarily decrease proportionally with the amount of the claim. On the contrary, the weight of these obstacles increases, the smaller the claim is.”¹⁷ Ultimately, all these problems are exacerbated in the case of cross-border claims, as they involve additional costs for foreign lawyers’ fees, translation expenses and possible travel expenses. For this reason, there is a possibility that these costs may end up far exceeding the value of the claim in question and render judicial action completely unviable from a financial point of view. Therefore, the Commission attempted to introduce the single small claims procedure in the rest of the rules on judicial cooperation in the European Union.

2. Particularities of the Regulation

2.1 General aspects

According to Article 1¹⁸, this Regulation establishes a European procedure for small claims intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs.¹⁹ The European process offers litigants an alternative to the national processes existing in the Member States. This Regulation also removes the need for intermediate procedures for the recognition and enforcement of judgments rendered in other Member States in the European small claims procedure.

¹⁶ OJ L 199 of 31/07/2007, p. 1

¹⁷ COM (2002), 746 final, p. 60

¹⁸ Unless I state otherwise, all the articles mentioned in Chapter III are Articles of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

¹⁹ See also whereas 7 and 8.



Parallel to the provisions of the Regulation on the European order for payment procedure, in the recovery of a small claim the claimant has the option of recovering his/her claim in the context of a procedure in accordance with the national law of a Member State or pursuant to Community law. In Germany the procedure exists under the provisions of Article 495 of the Civil Procedure Act for claims of up to € 600 and the procedure under the provisions of Articles 688 *et seq* of the Civil Procedure Act for claims of any amount. In each specific case it is not easy to determine which of the two procedures is faster, cheaper and more effective. If, by virtue of the European rules governing competition, it is decided that the case corresponds to the court where the domicile of the creditor is located, the right exists to choose between the possible procedures.²⁰ For this reason, the creditor must weigh up the pros and cons of the procedures available and in particular whether a national enforceable title can be enforced in another Member State.

As the Regulation does not establish any conclusive rules, Article 19 clarifies that, unless the Regulation states otherwise, national procedural legislation will apply. In Germany, the Regulation was integrated into national law in the form of Articles 1097 to 1109 of the Civil Procedure Act.

2.2 Scope

The Regulation was issued on 11 July 2007 and entered into force on 1 January 2009. It is applicable in all Member States with the exception of Denmark (Article 2 section 3 and whereas 38).

This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed € 2000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements (Article 2). It does not extend to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority. Section 2 of Article 2 rules out the field of rights in property arising out of a matrimonial relationship, wills and succession, bankruptcy, social security and employment law. Moreover, the Regulation does not apply in cases of arbitration or tenancies of immovable property either, provided they are non-monetary claims, or violations of privacy and of rights relating to personality.

If the Member State in which the claim is filed has not introduced the euro yet, the amount in dispute will be calculated at the exchange rate in force at the time the claim was filed.

Article 3 of the Regulation establishing a European small claims procedure contains a legal definition of cross-border matters that is identical to the one contained in Article 3 of the Regulation establishing the European order for payment procedure. As such, we refer you to point II.2.2 above.

2.3 Jurisdiction

The Regulation does not contain explicit rules on court with which the claim should be filed. Article 4 merely mentions the “the court or tribunal with jurisdiction” without providing a detailed definition. As such, it is worth highlighting the provisions of Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.²¹ Insofar as this Regulation does not adopt any provision, the national procedural rules will apply. The

²⁰ See Sujecki, in: Gebauer/Wiedmann, *Zivilrecht unter europäischem Einfluss*, 2nd Ed. 2010, EuGFVO, p. 2073, section. 24 s.

²¹ OJ no. L 12, S. 1 the version with the corrections published in OJ no. L 307, p. 28, also known as the Brussels I Regulation.



Regulation does not include special rules regarding procedures against consumers either. The objective and functional jurisdiction of the national courts is governed by their procedural codes.

2.4 Procedure

The claimant begins the small claims process when he/she lodges form A, contained in Annex I of the Regulation, directly with the court or tribunal with jurisdiction, duly filled in, or sends it by post or by any other accepted means of communication (Article 4). The form must contain a description of the evidence on which the claim is based. The application may also be accompanied by other relevant documents.

Where a claim is outside the scope of the Regulation, the court or tribunal shall inform the claimant to that effect. In this case, unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted. If the information provided by the claimant is inadequate or insufficiently clear or if the claim form is not filled in properly, the court will give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies, unless the claim appears to be clearly unfounded or the application inadmissible. Where the claim appears to be clearly unfounded or the application inadmissible, the application shall be dismissed.

The procedure as such is a written one. The court or tribunal shall hold an oral hearing if it considers this to be necessary or if a party so requests (Article 5). However, the court may reject the request, but must give the reasons in writing.

After receiving the complaint, the court will send the defendant a copy of the claim form, together with any supporting documents, and standard answer Form C, within 14 days. As of that moment, the defendant has 30 days to reply. Any relevant supporting documents must be sent to the court within said time limit.

The court will dispatch these documents to the claimant within 14 days. In the case of a counterclaim, the claimant will have a term of 30 days to reply. If the sum of the amounts of the claim and the counterclaim exceeds € 2000, the Regulation will not apply. In such cases, the rules of national law will be observed.

Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it (Article 14).

All documents shall be submitted in one of the languages of the court (Article 6). The court or tribunal may require a translation of a document only if the translation appears to be necessary for giving the judgment. The same applies when a party has refused to accept a document because he/she does not understand the language in which it is drafted or the language in question is not one of the official languages of the Member State addressed.

2.5 Conclusion of the process

The court shall give a judgment within 30 days of receipt of the response from the defendant or the claimant, unless it demands new documentation, takes evidence or summons the parties to an oral hearing (Article 7), regardless of whether or not the parties have replied to the request on the part of the court.

The court or tribunal may hold an oral hearing via video conference or other communication technology if the technical means are available (Article 8).

The court or tribunal shall determine the means of taking evidence and the extent of the evidence necessary. Evidence may also be taken in the form of written statements or through video conference or other communication technology as in the case of the



oral hearing (Article 9). When deciding on taking evidence, the court will take into account the costs envisaged and choose the simplest and least burdensome method. Representation by a lawyer or another legal professional shall not be mandatory (Article 10).

The parties are not required to make any legal assessment of the claim. On the contrary, the court or tribunal shall inform the parties about procedural questions and whenever appropriate, it shall seek to reach a settlement between the parties (Article 12). However, the details of the same will have to be in accordance with national procedural legislation.

Documents shall be served by postal service attested by an acknowledgement of receipt. If possible pursuant to national procedural legislation, service may be effected by any of the methods provided for in Articles 13 or 14 of Regulation (EC) No. 805/2004.²²

The judgment shall be enforceable notwithstanding any possible appeal and it will not be necessary to provide a security (Article 15). If an appeal is filed, enforcement may be suspended or limited by virtue of Article 23.

The unsuccessful party shall bear the costs of the proceedings (Article 16), although the court or tribunal shall not award costs to the successful party where they were incurred unnecessarily or are disproportionate to the claim.

2.6 Appeal

The Regulation does not govern the appeals against the judgments issued; here national law applies. In fact, Member States must notify the Commission what appeals are permitted under their procedural legislation and what the time limits are. With regard to appeals, it only expressly states that Article 16 will apply to decisions on costs.

In Article 18, the Regulation defines minimum rules for the review of judgments. The defendant shall be entitled to apply for a review of the judgment given before the court or tribunal with jurisdiction if the claim form or the summons to an oral hearing were served by a method without proof of receipt by him/her personally according to Article 14 of Regulation (EC) 805/2004, if service was not effected in sufficient time to enable him/her to arrange for his defence without any fault on his/her part or if he/she was prevented from objecting to the claim by reason of *force majeure*, or due to extraordinary circumstances, also without any fault on his/her part. The court will then ratify the judgment or decide that the review is justified, in which case the judgment will be declared null and void.

2.7 Enforcement

A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition (Article 20). Enforcement shall be governed by the law of the Member State of enforcement (Article 21) and must be requested. In order to do so a copy of the judgment must be presented, together with a certificate from the court with jurisdiction, using form D in Annex IV, drafted in one of the official languages accepted in the Member State of enforcement.

Upon application by the person against whom enforcement is sought, enforcement will be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given is irreconcilable with an earlier judgment given in any Member

²² See section II. 2.5



State or in a third country, if it involves the same cause of action and was between the same parties, the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition therein and the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State of origin (Article 22).

According to the provisions of Article 23, enforcement may be suspended or limited in the event of a review of the judgment.

2.8 Miscellaneous

By virtue of Article 25, the Member States will notify the Commission of what courts have jurisdiction to issue judgments in the European small claims procedure, which means of communication are accepted and available, the appeals permitted, the languages accepted and which authorities have competence with respect to enforcement and with respect to the measures set out in Article 23. As yet there is not case law from the Court of Justice of the European Union on the small claims procedure. This may be due, among other things, to the fact that Article 267 of the Treaty on the Functioning of the European Union stipulates that only national courts of last instance are allowed to raise preliminary questions to the Court of Justice on judicial cooperation in preliminary proceedings, by virtue of the provisions of Articles 234, 68 of the Treaty establishing a Constitution for Europe in force at the time.

The Court of First Instance of Geldern, in a judgment of 9 February 2011²³, stated that a claim may also be rejected without notifying the defendant, if it is clearly groundless in accordance with the provisions of the third sentence of section 4, Article 4. In this case, a claim is clearly groundless and must therefore be rejected even if the defendant has not made a statement. In these cases there is no reason for an oral hearing.

²³ Exp. 4 C 4/11; cited according to juris GmbH



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Links:

European payment order procedure and measures to simplify and speed up small claims litigation: Green Paper:

http://europa.eu/legislation_summaries/other/l33212_en.htm

Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure:

http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l16023_en.htm

Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0001:0022:EN:PDF>

