



FRANCE

To apply for a European order for payment procedure in FRANCE

❖ Summary of the objectives and principles of the European order for payment procedure:

In order to ensure swift and efficient recovery of outstanding debts, the European institutions adopted Regulation (EC) No 1896/2006 of 12 December 2006 creating a *European order for payment procedure*, which came into force on 12 December 2008.

This procedure is uniformly applicable in the different Member States. It is autonomous, optional and additional to the national procedures. This European procedure does not substitute itself for the existing national procedures and is optional in consideration of the other existing European mechanisms – Article 1 (2): “*This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law* ».

Recital 9 of Regulation 1896/2006 states that its 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 regulation in fact abolishes the *exequatur*: the order for payment is recognised and enforceable in all the Member States.

❖ Reminder of the general provisions of the Regulation:

Article 24 - Legal representation

Representation by a lawyer or another legal professional shall not be mandatory:

- (a) for the claimant in respect of the application for a European order for payment;*
- (b) for the defendant in respect of the statement of opposition to a European order for payment.*

Article 25 - Court fees

- 1. 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 in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.*
- 2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.*

Article 26 - Relationship with national procedural law

All procedural issues not specifically dealt with in this Regulation shall be governed by national law.





In France, was adopted the decree n°2008-1346 of 17 December 2008 concerning the European order for payment procedure and the European small claims procedure (adaptation of the code of civil procedure). This decree added to the code of civil procedure a new section II relative to the European order for payment procedure in the chapter concerning the order for payment procedure, (new Chapter II of the Title IV of the book III of the code of civil procedure). New articles 1424-1 and following ones deal with the European order for payment procedure.

Article 27 - Relationship with Regulation (EC) No 1348/2000

This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters .

Article 28 - Information relating to service costs and enforcement

Member States shall cooperate to provide the general public and professional circles with information on:

(a) costs of service of documents;

and

(b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23,

in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC.

Article 29 - Information relating to jurisdiction, review procedures, means of communication and languages

1. By 12 June 2008, Member States shall communicate to the Commission:

(a) which courts have jurisdiction to issue a European order for payment;

(b) the review procedure and the competent courts for the purposes of the application of Article 20;

(c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;

(d) languages accepted pursuant to Article 21(2)(b).

Member States shall apprise the Commission of any subsequent changes to this information.

2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

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❖ **Reminder of the scope of the Regulation:**

The regulation applies to civil and commercial matters in accordance with Community law. It does not extend to revenue, customs or administrative matters and excludes matrimonial relationships, wills and successions, bankruptcy, judicial arrangements, compositions and analogous proceedings, as well as social security.

The regulation applies to cross-border cases, namely cases 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 cross-border character is determined at the time of application for a European order for payment. The territorial jurisdiction of the court is determined in accordance with the rules of Community law on jurisdiction, in particular the Brussels I regulation. However, the regulation does make one exception to the Brussels I rules: a claim made against a consumer (a person who has concluded a contract “for a purpose which can be regarded as being outside his trade or profession”) may be brought only before the courts in the Member State in which the consumer is domiciled (which has sole jurisdiction).

The regulation applies only to a pecuniary claim for a specific amount that has fallen due at the time when the application for a European order for payment is submitted and arises from a contract. Accordingly, claims of a non-contractual origin are excluded unless they have been the subject of an agreement between the parties or there has been an admission of debt, or if they relate to liquidated debts arising from joint ownership of property. On the other hand, there is no limitation on the amount of the claim.

TO APPLY FOR A EUROPEAN ORDER FOR PAYMENT PROCEDURE IN FRANCE

I. **The application for the order for payment**

The application is made using standard form A.

Read the form in English:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_en.jsp?txtPageBack=epo_filling_fr_fr.htm&countrySession=2&

Read the form in French:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_fr.jsp?countrySession=2&txtPageBack=epo_filling_fr_fr.htm

• **Competent jurisdiction**

Member States were invited by the regulation to indicate to the European Commission their national jurisdictions which would be competent to issue an European order for payment procedure.

The French government has indicated to the European Commission that Jurisdiction to issue a European order for payment lies with the district judge (court of first instance – tribunal de première instance) and the president of the commercial court within the limits of its jurisdiction.





- **Submission of the application**

The regulation states that “The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin”.

The application for a European order for payment may be submitted to the court by post or by electronic means. The application could also be handed over to the Clerk's Office of the jurisdiction (Article 1424-2 of the code of civil procedure says that «The request form of the European order for payment procedure is handed over or sent to the clerk's office ”).

The order for payment procedure is free, except when it is delivered by the Commercial court. The new article 1425 CPC, which concerns so much the European procedure that the National procedure, underlines that: « Before the commercial Court, the costs for the order bearing an injunction to pay are covered by the creditor and deposited at the clerk's office no later than fifteen days from the application, failing which the latter will lapse. The motion to set aside is received without any costs for the clerk of the court. The latter asks forthwith the creditor, by recorded letter with the advice of delivery slip sought, to deposit the costs of the motion to set aside at the clerk's office within a time-limit of fifteen days under penalty of nullity of the action. However, lapsing is not incurred in case of European procedure ”.

II. Court examination of the application

Once the conditions prescribed for the issue of an order to pay are met, the Court must examine the application as soon as possible and must “normally” decide within a period of **30 days** from the lodging of the application.

The Court may:

- Invite the claimant to complete his application within a given time limit (**form B**) or to accept the proposal of a partial order to pay (**form C**);
- Reject the application: **form D for one of the reasons restrictively** listed by the regulation, and which must be notified to the claimant through a specific form. (There is no right of appeal against the rejection of the application.)
- Issue a European order for payment using **form E**.

These forms are available on the European judicial atlas in civil matters Website:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_fr_en.htm

If the applicant lives in France, the service of these forms is made by the jurisdiction : the jurisdiction send to the applicant a recorded letter with the advice of delivery slip sought. If the addressee is not found by the services of the Post office, the service must be made through a judicial officer.

If the applicant lives in another Member State, the service of these forms is made in accordance with Regulation (EC) no 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The court departments (Clerk's Offices, registries, secretariats, etc.) responsible for the

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service of documents are transmitting agencies in accordance with the (EC) regulation n°1393 / 2007 – So they transmit documents to be served to the receiving agency of the Member State of the applicant.

III. Service of the European order for payment

The order to pay must be served on the defendant in accordance with the national rules of law, by procedures complying with minimal standards (Articles 13 and 14 of the regulation – service or notice with proof of receipt by the defendant/service or notice without proof of receipt by the defendant). The claimant serves a certified copy of form A and form E on the defendant. The form for the opposition (form F) is attached to the notice of service.

At the request of the creditor, the order is served on the debtor through a judicial officer. If the order must be served in another Member State, the judicial officer, who is a transmitting agency in accordance with the (EC) regulation n°1393/2007, transmit the documents to be served to the receiving agency of the Member State of the defendant. A certified true copy of the form A and of the form E must be served and the form of opposition (form F) is annexed.

Article 1424-5 Code of civil procedure:

A certified true copy of the petition and of the order is served, at the request of the creditor, on each of the debtors. The form of opposition is annexed.

Under penalty of inadmissibility, the service of the order bearing an injunction to pay contains, in addition to the particulars provided for processes served through a judicial officer, the time-limit within which the statement of opposition to set aside is to be brought, the court before which it is to be brought and the manner in which it must be carried out.

Under the same penalty, the service of process:

- Warns the defendant that without opposition within the time-limit indicated, calculated in accordance with the (EEC, EURATOM) regulation n°1182 / 71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, he may be compelled by any appropriate legal means to pay the money claimed;

- Informs the defendant of his right to apply for a review of the European order for payment before the competent court in the Member State of origin, after the expiration of the time-limit, in the exceptional cases planned in the article 20 of the (EC) regulation n°1896 / 2006.

Article 1424-6:

If the order is served on the debtor personally, the judicial officer must inform orally the debtor of the information qualified as important by the form (E) and of the particulars referred to under Article 1425-4; the compliance with this formality is stated in the service of process.

Article 1424-7:

The judicial officer sends a copy of the act of service to the jurisdiction which issued the order.

Regarding the costs of the service:

- Costs of the internal service of documents: variable cost according to amount of the claim - For a 5000 € claim, the cost will be about 80€

- Costs when the French judicial officer is the transmitting agency: 43,5 €

- Costs when the French judicial officer is the receiving agency: 50 €. This fee must be paid when documents are transmitted except where the applicant is receiving legal aid.

In the case of cross border service of documents, the addressee may refuse to accept the document to be





served if it is not written in, or accompanied by a translation into, either a language which the addressee understands or the official language of the Member State addressed. So, documents must be translated if necessary. But only the entries made by the applicant in the Form A and by the judge in the Form E are to be translated because the forms are available in the different languages of the European Union on the website of the European Judicial Atlas. In accordance with the Regulation 1393/2007, it is not required that the translation must be certified by a person qualified to do so in one of the Member States. However, in practice, it is advisable to ask a person qualified to translate entries made in the forms.

In France, translator under oath can certify a translation. Translators under oath are registered on a list available in Courts of appeal

IV. Opposition

The defendant must send the statement of opposition within 30 days of service of the application, using the form F transmitted to him at the same time as the European order for payment; this time limit may be extended as necessary to allow the statement to arrive.

In France, the statement of the opposition is brought before the court that issued the order for payment. It is presented to the clerk's office of, by a declaration upon receipt or by registered letter (article 1424-8 CPC).

French law offers an additional period of 10 days to allow the statement to arrive (1424 CPC).

In France, the order for payment procedure is free, except when they are delivered by the Commercial court. The new article 1425 CPC, which concerns so much the European procedure that the National procedure, underlines that: « Before the commercial Court, the costs for the order bearing an injunction to pay are covered by the creditor and deposited at the clerk's office no later than fifteen days from the application, failing which the latter will lapse. The statement of opposition is received without any costs for the clerk of the court. The latter asks forthwith the creditor, by recorded letter with the advice of delivery slip sought, to deposit the costs of the motion to set aside at the clerk's office within a time-limit of fifteen days under penalty of nullity of the action. However, lapsing is not incurred in case of European procedure ».

V. Effects of the opposition:

Where a statement of opposition is lodged by the defendants, the proceedings continue *"before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event"*.

- If the claimant has explicitly stated, in the application form, that he opposes the transfer to ordinary civil proceedings: termination of the procedure
- In the absence of such a statement in the application form, the procedure continues as substantiated proceedings in accordance with the rules for national procedures.

In France, where a statement of opposition is lodged by the defendants and if the claimant has not explicitly stated, in the application form, that he opposes the transfer to ordinary civil proceedings, the court rules upon the action for recovery (of claims).

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It rules upon, within the limit of the specific jurisdiction that it entertains, the original claim and all interlocutory claims and defenses on the merits of the case. In the event of a decision declining jurisdiction, the matter will be transferred to the competent court in accordance with the rules laid down under Article 97 (article 1424-9 CPC).

The clerk of the court summons the parties to a hearing by recorded letter with the advice of delivery slip sought. The subpoena is sent to all the parties, even to those who have not applied to set aside the order. It contains: 1° its date; 2° The indication of the jurisdiction in front of which the opposition is brought ; 3° The indication of the date of the hearing to which the parties are summoned ; 4° The conditions of assistance and representation of the parties. The summons sent to the defendant specifies besides that, in case of no appearing, he exposes itself to a judgment to be issued on the only elements supplied by his opponent. These mentions are prescribed by nullity (Article 1424-10 CPC).

If no party appears, the court will record the extinction of the proceeding; the latter renders void the European order for payment (1424-11 CPC).

The judgment of the court replaces the European order for payment (1421-12).

The court determines (the case and) whose ruling may be appealed against where the amount of the claim exceeds its jurisdictional value-limit of final instance (1424-13).

Before the “Tribunal d’instance” (district judge) or “Tribunal de commerce” (commercial court), representation by a lawyer or another legal professional is not mandatory. If the action for recovery of claims exceeds the limit of the specific jurisdiction of the district judge (10 000 €), the case is transferred to the “Tribunal de grande instance” and representation by a lawyer is mandatory.

VI. Effects of the absence of a statement of opposition within the time limit of 30 days and any additional period to allow a statement to arrive:

Article 18 (1) : If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

Article 18 (2) : Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

Article 13 (3) : The court shall send the enforceable European order for payment to the claimant.

In France, the clerk’s office declares the order for payment enforceable (by delivering the form G) and apposes the order of enforcement on the form E (article 1424-14 CPC).

These documents are served on the claimant by the clerk’s office. If the claimant lives in France, the clerk’s office send a recorded letter with the advice of delivery slip sought. If the claimant lives in another Member State, the clerk’s office transmits documents to be served to the competent receiving agency in the Member State of the claimant, in accordance with Regulation (EC) No 1393/2007.





VII. Review of the order to pay (article 20):

Article 20 - Review in exceptional cases

1. *After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:*

(a) (i) *the order for payment was served by one of the methods provided for in Article 14,*

and

(ii) *service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part,*

or

(b) *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,*

provided in either case that he acts promptly.

2. *After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.*

3. *If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.*

If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.

In France, the rules governing the review procedure are the rule of civil procedure governing the proceedings which continue before the competent courts where a statement of opposition is lodged by the defendants and the claimant hadn't explicitly requested that the proceedings be terminated in that event". The claim for the purposes of review is brought before the court that issued the European order for payment.

For reminder, in France, the court rules upon the action for recovery (of claims). It rules upon, within the limit of the specific jurisdiction that it entertains, the original claim and all interlocutory claims and defenses on the merits of the case. In the event of a decision declining jurisdiction, the matter will be transferred to the competent court in accordance with the rules laid down under Article 97 (article 1424-9 CPC). The clerk of the court summons the parties to a hearing by recorded letter with the advice of delivery slip sought. The subpoena is sent to all the parties, even to those who have not applied to set aside the order. It contains: 1° its date; 2 ° The indication of the jurisdiction in front of which the opposition is brought ; 3 ° The indication of the date of the hearing to which the parties are summoned ; 4 ° The conditions of assistance and representation of the parties. (Article 1424-10 CPC). If no party appears, the court will record the extinction of the proceeding; the latter renders void the European order for payment (1424-11 CPC). The judgment of the court replaces the European order for payment (1421-12). The court determines (the case and) whose ruling may be appealed against where the amount of the claim exceeds its jurisdictional value-limit of final instance (1424-13).

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VIII. Enforcement of the order for payment

Article 21 - Enforcement

1. *Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.*

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.

2. *For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:*

(a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity;

and

(b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.

3. *No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.*

In France, the order must have been served (through a judicial officer) on the party against which it has been made for it to be enforced (art 503 and 675 CPC).

Article 503: Judgments may not be executed against the parties standing liable thereto unless they have been notified, save where the enforcement is voluntary.

Article 675: Judgments will be notified by way of service (through a judicial officer), save where the law provides otherwise.

At the request of the creditor, the judicial officer is competent to enforce the European payment order which is enforceable.





IX. Stay, limitation or refusal of enforcement

On certain conditions the defendant may obtain a stay, limitation or refusal of enforcement of the “European order for payment” by the “competent court in the Member State of enforcement” (*article 22(1)*).

- The limitation or stay can be obtained only if an application for review has been made to the original court. The competent court or authority in the Member State of enforcement may either limit the enforcement proceedings to protective measures, or make enforcement conditional on the provision of such security as it may determine or, under exceptional circumstances, stay the enforcement proceedings.
- The refusal may be obtained only if the European order for payment is irreconcilable with an earlier decision given between the same parties and involving the same cause of action, and if the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

The enforcement judge is competent for ruling a stay, limitation or refusal of enforcement. An application must be submitted to the enforcement judge in accordance with articles 15 and the following ones of the decree 92-755 (see E-sheet France n°2).

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