

# European Enforcement Order for Uncontested Claims

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## 1.0 Introduction

### European Enforcement Order for Uncontested Claims

On 30 March 2004 The President of the Justice and Home Affairs Council and Minister for Justice, Equality and Law Reform, Mr. Michael McDowell T.D., announced that “ today's Council meeting achieved significant progress on a number of important Directives which ensures progress on their adoption before the 1 May, 2004 deadline”. Consequent to the announcement the **European Parliament and Council Regulation of 21 April 2004 created a European enforcement order for uncontested claims.**

The Minister also announced that the proposal for a Regulation creating a **European Enforcement Order for Uncontested Claims** would be adopted shortly as the European Parliament had approved the Common Position of the Council on the proposal (The proposal is the first civil law measure in the Justice and Home Affairs area to go through the co-decision process). The Regulation will ensure that creditors who have obtained an enforceable judgment in respect of an uncontested claim in one Member State will be able to have that judgment enforced directly in another Member State. In other words, no additional intermediate measures will be required.

## 2.0 Setting up the Act

The European parliament and the council of the European Union having regard to the Treaty establishing the European Community, and in particular Articles 61(c) and the second indent of Article 67(5) thereof, Having regard to the proposal from the Commission(1), Having regard to the Opinion of the European Economic and Social Committee(2), Acting in accordance with the procedure laid down in Article 251 of the Treaty(3), Whereas:

(1) The Community has set itself the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is ensured. To this end, the Community is to adopt, inter alia, measures in the field of judicial cooperation in civil matters that are necessary for the proper functioning of the internal market.

(2) On 3 December 1998, the Council adopted an Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice(4) (the Vienna Action Plan).

(3) The European Council meeting in Tampere on 15 and 16 October 1999 endorsed the principle of mutual recognition of judicial decisions as the cornerstone for the creation of a genuine judicial area.

(4) On 30 November 2000, the Council adopted a programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters<sup>(5)</sup>. This programme includes in its first stage the abolition of exequatur, that is to say, the creation of a European Enforcement Order for uncontested claims.

(5) The concept of "uncontested claims" should cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument.

(6) The absence of objections from the debtor as stipulated in Article 3(1)(b) can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.

(7) This Regulation should apply to judgments, court settlements and authentic instruments on uncontested claims and to decisions delivered following challenges to judgments, court settlements and authentic instruments certified as European Enforcement Orders.

(8) In its Tampere conclusions, the European Council considered that access to enforcement in a Member State other than that in which the judgment has been given should be accelerated and simplified by dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. A judgment that has been certified as a European Enforcement Order by the court of origin should, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought. In the United Kingdom, for example, the registration of a certified foreign judgment will therefore follow the same rules as the registration of a judgment from another part of the United Kingdom and is not to imply a review as to the substance of the foreign judgment. Arrangements for the enforcement of judgments should continue to be governed by national law.

(9) Such a procedure should offer significant advantages as compared with the exequatur procedure provided for in Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(6), in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails.

(10) Where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence.

11) This Regulation seeks to promote the fundamental rights and takes into account the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full respect for the right to a fair trial as recognised in Article 47 of the Charter.

(12) Minimum standards should be established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence.

(13) Due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, it is necessary to lay down a specific and detailed definition of those minimum standards. In particular, any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards cannot be considered sufficient for the certification of a judgment as a European Enforcement Order.

## **2.1 The Act**

### **2.1.1 Summary**

The Regulation creates a European enforcement order for uncontested claims. It lays down minimum standards to ensure that judgments, court settlements and authentic instruments on uncontested claims can circulate freely. This entails the abolition of exequatur, i.e. the automatic

recognition and enforcement, without any intermediate proceedings or grounds for refusal of enforcement, of judgments handed down in another Member State.

### **2.1.2 Scope**

The Regulation applies in civil and commercial matters. It does not, in particular, cover revenue, customs or administrative matters. It is applicable in all Member States with the exception of Denmark.

### **2.1.3 European enforcement order**

A judgment on an uncontested claim is certified as a European enforcement order by the Member State of origin \* in accordance with certain conditions. Certification is carried out by means of the standard form. The certification may apply to only parts of the judgment, in which case the order will be known as "partial European enforcement order".

A judgment that includes an enforceable decision on the amount of costs related to the court proceedings may also be certified with regard to the costs unless the debtor has specifically objected to his obligation to bear such costs. The certificate can also be rectified if there is a discrepancy between the judgement and the certificate, or withdrawn where it was clearly wrongly granted. Nor is there any appeal against the judgment relating to certification. The certificate takes effect only within the limits of the enforceability of the judgment.

### **2.1.4 Minimum standards**

The court proceedings in the Member State of origin must meet certain procedural requirements for a judgment on an uncontested claim to be certified as a European enforcement order.

The Regulation lays down minimum standards with regard to the service of documents (the document instituting proceedings and, where applicable, the summons to a court hearing) to ensure that the rights of the defence are respected. Only the document service methods listed in the Regulation are allowed if the judgment is to be certified as a European enforcement order.

Furthermore, the document instituting proceedings must give details of:

- the claim (personal details of parties, amount of the claim, whether or not interest is incurred and for what period, etc.);

- the procedural arrangements required for contesting the claim (deadline for contesting the claim, consequences of failing to object, etc.).

The Regulation allows non-compliance with these requirements to be remedied, subject to certain conditions. For a judgment to be certified as a European enforcement order, the Member State of origin must provide for review in exceptional cases.

### **2.1.5 Enforcement**

Enforcement procedures are governed by the law of the Member State of enforcement. The creditor must supply the authorities responsible for enforcement in the enforcing Member State with:

- a copy of the judgment;
- a copy of the European enforcement order certificate;
- where necessary, a transcription of the European enforcement order certificate or a translation thereof into the official language of the Member State of enforcement or into another language accepted by the Member State of enforcement.

No security, bond or deposit can be required of creditors on the ground either that they are foreign nationals or are not domiciled or resident in the Member State of enforcement.

The competent court in the enforcing Member State may, subject to certain conditions, refuse to enforce a judgment if it is irreconcilable with an earlier judgment given in any Member State or in a third country. In certain cases, it can also stay or limit enforcement.

### **2.1.6 Final and general provisions**

All the information needed to apply the Regulation will be communicated by the Member States to the Commission, which will publish it. In addition, in order to facilitate access to enforcement procedures and related information, the Member States undertake to provide the general public and professional circles with relevant information within the framework of the European Judicial Network in civil and commercial matters.

Creditors remain free to seek recognition and enforcement of a judgment under Regulation (EC) No 44/2001. Moreover, this Regulation does not prejudice the application of Regulation (EC) No 1348/2000.

The Regulation is applicable from 21 October 2005.

### **Key terms used in the act**

- Judgment: any judgment given by a court or tribunal of a Member State, whatever the judgment might be called.
- Claim: a claim for payment of a specific sum of money that has fallen due or for which the due date is indicated in the judgment.
- Uncontested: the debtor has not objected to the claim in the course of court proceedings or has not appeared in court or has expressly agreed that the claim exists and is justified in the course of court proceedings, including by means of a settlement or in an authentic instrument.
- Authentic instrument: a document formally drawn up as an authentic instrument or an arrangement relating to maintenance obligations.
- Member State of origin: the Member State in which the judgment to be certified as a European enforcement order has been given.
- Member State of enforcement: the Member State in which enforcement of the judgment certified as a European enforcement order is sought.