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Practice Guide for the Application of the Regulation on the European Enforcement Order

<http://ec.europa.eu/civiljustice/>



European Judicial Network
in civil and commercial matters

Foreword



Individuals and businesses should be able to exercise their rights in all the Member States, irrespective of their nationality.

The principle of mutual recognition is the cornerstone of judicial co-operation in civil matters within the Union. Regulation (EC) No 805/2004 of the European Parliament and of the Council created the European Enforcement Order for uncontested claims. The European Enforcement Order permits the use of judgments, court settlements and authentic instruments throughout all Member States. It abolishes intermediate proceedings ("exequatur") in the Member State of enforcement.

With this Practical Guide, the Commission seeks to give guidance to parties, judges and lawyers. I hope it will be of help to you and provide a better understanding of Regulation 805/2004 benefiting citizens and companies alike.

With best wishes,

A stylized, handwritten signature in white ink, appearing to read 'J. Barrot', with a long horizontal stroke extending from the bottom.

Vice-President of the European Commission

Jacques Barrot

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► I. Introduction: a European judicial passport

1. What is the European Enforcement Order?

The European Enforcement Order is a certificate which accompanies a judgment, a court settlement or an authentic instrument and which allows this judgment, settlement or instrument to freely circulate in the European Union. As such, this certificate constitutes a «European judicial passport» for decisions, settlements, and authentic instruments.

2. When is a European Enforcement Order needed?

A European Enforcement Order is needed to enforce in a Member State a judgment given, a court settlement approved by or concluded before a court or an authentic instrument drafted in another Member State and which concerns an uncontested claim.¹

When a European Enforcement Order is obtained, there is no need to obtain a declaration of enforceability in the Member State where the enforcement of the judgment, court settlement or authentic instrument is sought.

¹ A judgment on an uncontested claim may be obtained through the civil procedures foreseen in national law. It must be noted, however, that as of 12 December 2008, use may be made of the uniform procedure laid down in Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure (O.J. L 399, 30.12.2006, p. 1). If a European order for payment is obtained, this order is automatically enforceable without the need for a declaration of enforceability nor a European Enforcement Order certificate. In addition, if the claim is for less than 2,000 €, a judgment rendered in the European Small Claims Procedure (see Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, *OJ L 199, 31.7.2007, p. 1*) is also automatically enforceable without the need for a declaration of enforceability nor a European Enforcement Order certificate.

3. Alternative ways to enforce a judgment, court settlement or authentic instrument abroad

At Community level, two ways exist to seek enforcement abroad of a judgment, court settlement or authentic instrument. A creditor seeking enforcement abroad of a judgment, court settlement or authentic instrument can choose:

- Either to obtain a European Enforcement Order in the Member State where the judgment, court settlement or authentic instrument is issued/drafted; or
- to obtain a declaration of enforceability in the Member State where enforcement is sought, pursuant to the exequatur procedure laid down in Regulation (EC) No 44/2001 on jurisdiction, recognition and enforcement of judgments in civil and commercial matters («Brussels I»)²

When a creditor makes his choice between the two different ways to seek enforcement abroad, he should consider that the European Enforcement Order enables him to obtain quick and efficient enforcement without involving the courts in the Member State of enforcement

²O.J. L 12, 16.1.2001, p. 1.

in time-consuming and costly formalities which are connected with the declaration of enforceability pursuant to the exequatur procedure under Regulation (EC) No 44/2001. On the other hand, he must be aware that a European Enforcement Order can only be obtained for uncontested claims and that such order will only be granted if certain conditions are fulfilled.

4. For which judgments, court settlements and authentic instruments may a European Enforcement Order be obtained?

4.1. Application in time

A European Enforcement Order may be obtained with respect to judgments given, court settlements approved or concluded and authentic instruments drafted after 21 January 2005, in the case of Bulgaria and Romania after 1 January 2007.

4.2. Material scope of application

The judgment, court settlement or authentic instrument to be certified as a European Enforcement Order must concern an uncontested pecuniary claim in a civil or commercial matter. This can include maintenance obligations.

4.3. Geographical scope of application

A European Enforcement Order certificate may be obtained for judgments, court settlements, and authentic instruments issued, concluded, approved or drafted by or before a court or competent authority in all Member States of the European Union with the exception of Denmark.

4.4. The different mechanisms for judgments, authentic instruments, and court settlements

A European Enforcement Order certificate is delivered upon request by the creditor. The procedure to obtain a European Enforcement Order will differ according to whether the certificate is requested with respect to

- A judgment to be given (you may go directly to point II below);
- A judgment which has already been rendered (you may go directly to point III below);
- An authentic instrument (you may go directly to point IV below.)
- A court settlement (you may go directly to point V below).

The procedures spelt out in points II and III below also apply *mutatis mutandis* to decisions delivered following challenges to judgments, court settlements or authentic instruments certified as European Enforcement Orders (see Art. 3(2)).

The enforcement of judgments, authentic instruments, and court settlements certified as European Enforcement Orders is dealt with in point VI below.

The notion “civil or commercial matters”

The European Court of Justice has consistently held that the term “civil and commercial matters” must be given an autonomous meaning derived from the objectives and scheme of the Community legislation concerned and the general principles underlying the national legal systems as a whole (C-29/76 LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol, ECR 1976, 1541). The Court held that two elements are relevant for deciding whether or not a dispute is of a civil and commercial nature:

- the subject matter of the dispute; and
- the nature of the relationship between the parties involved.

In particular with respect to actions involving a public authority, the Court specified that a matter is not “civil or commercial” when it concerns a dispute between a public authority and a private person when the first acted in the exercise of public power. The Court therefore distinguishes between *acta iure imperii*, which are excluded from the notion of “civil or commercial matters”, and *acta iure gestionis*, which are, a contrario, included in such notion. The distinction between *acta iure imperii* and *acta iure gestionis* is not always easy to make in practice. The following guidelines have been given through the Court’s case law.

In *Eurocontrol*, the Court held that a claim by a public authority created by an international treaty to recover from a private party charges for the use of its equipment and services where such use was obligatory and the charges were fixed unilaterally is not a civil or commercial matter.

In *Rüffer* (C-814/79 *Netherlands v Rüffer*; ECR 1980, 3807), the Court held that a claim by a public authority suing a shipowner for the recovery of costs incurred during the removal of a collision wreck also does not qualify as a civil or commercial matter.

In *Sonntag* (Case C-172/91, ECR 1993, I-1963), on the contrary, the Court held that a civil action for compensation for injury to an individual resulting from a criminal offence is civil in nature. However, such an action falls outside the scope of the term “civil or commercial matters” where the author of the damage must be regarded as a public authority which acted in the exercise of public powers (in that case a teacher supervising pupils was not considered to fall within the definition of “acting in the exercise of public power”).

- ■ ■ In *Gemeente Steenberghe* (Case C-271/00, ECR 2002, I-10489), the Court held that the concept of “civil matters” encompasses an action under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations. Where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that action cannot be regarded as being brought in “civil matters”.

In *Préservatrice foncière* (Case C-266/01, ECR 2003, I-4867), the Court held that the notion “civil or commercial matters” covers a claim by which a State seeks to enforce against a person governed by private law a private-law guarantee contract which was concluded in order to enable a third person to supply a guarantee required and defined by that State, in so far as the legal relationship between the creditor and the guarantor, under the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals.

In *Frahuil/Assitalia*, (Case C-265/02, ECR 2004, I-1543), it was held that an action brought by way of legal subrogation against an importer who owed customs duties by the guarantor who paid those duties to the customs authorities in performance of a contract of guarantee under which it had undertaken to the customs authorities to guarantee payment of the duties in question by the forwarding agent, which had originally been instructed by the principal debtor to pay the debt, must be regarded as coming within the concept of “civil and commercial matters”.

Finally, in *Lechouritou*, (Case C-292/05, ECR 2007, I-1519), the Court confirmed that redress for loss or damage caused in wartime by government troops is not encompassed by “civil matters”. ■





► II. The European Enforcement Order for judgments to be given

A creditor may request a European Enforcement Order certificate with respect to a judgment to be given, either at the time of the starting of judicial proceedings or at any time during court proceedings. When the order is asked at the start of judicial proceedings, it is possible to make the request in the application filed with the court (e.g. in the document introducing proceedings).

1. In which cases can the creditor request a European Enforcement Order?

1.1. Pecuniary claim

The claim which is the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (see Art. 4(2)).

1.2. Civil or commercial matter

- The claim must concern a civil or commercial matter.

On the notion “civil or commercial matter”, see point I.4.2 above.

- A European Enforcement Order may not be obtained in the following matters:
 - revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“*acta iure imperii*”).
 - the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

The recognition or enforcement of these matters are either covered by other existing Community instruments (see, for instance, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility)³ or are not yet covered by Community law.

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

The recognition and enforcement of judgments in matters of insolvency is governed by Council Regulation (EC) No 1346/2000 on insolvency proceedings.⁴

- social security;
- and arbitration.

This matter is not covered currently by Community law.

1.3. Judgment

A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (see Art. 4(1)).

³O.J. L 338, 23 December 2003, p. 1.

⁴O.J. L 160, 30 June 2000, p. 1.

1.4. Enforcement in another Member State

A European Enforcement Order certificate may be requested for the purpose of enforcement of the judgment in another Member State. However, it is not required to show an international element. In particular, it is not required that one of the parties is domiciled or habitually resident abroad, nor must it be shown that enforcement will take place abroad. Of course, in the end the certificate will only be useful in case of enforcement in another Member State.

2. Requirements to be complied with at the time of the institution of the proceedings on the merits

A creditor wishing to obtain a European Enforcement Order certificate should ensure that the following procedural requirements are complied with. In particular, the document instituting the proceedings on the merits must be served on the debtor and must contain specified information for the attention of the debtor:

2.1. Mandatory information

The debtor must receive the information prescribed by Art. 16 and 17 of the Regulation, i.e.

2.1.1. Due information about the claim (Art. 16)

The document instituting the proceedings on the merits must include:

- the names and addresses of the parties;
- the amount of the claim;
- if interest on the claim is sought, the interest rate and the period for which interest is sought, unless statutory interest is automatically added to the principal under the law of the Member State where the judgment is issued;
- a statement of the reason for the claim.

2.1.2. Due information about the procedural steps necessary to contest the claim (Art. 17)

In addition, the debtor must be informed of which procedural steps he needs to undertake in order to contest the claim.

This information may be contained in the document instituting the proceedings or in an accompanying document. It may also be contained in any subsequent summons to a court hearing.

This information must include:

- the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing (as applicable);
- the name and address of the institution to which to respond or before which to appear (as applicable);
- whether or not it is mandatory to be represented by a lawyer;

- the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

2.2. Service of the document instituting the proceedings and any summons to a court hearing

The document instituting the proceedings as well as any summons to a court hearing must be served by way of a method recognised by the Regulation.⁵ The methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service with proof of receipt by the debtor (Art. 13) or service without proof of receipt by the debtor (Art. 14).

2.2.1. Service with proof of receipt by the debtor or the debtor's representative

The methods of service with proof of receipt are specified in Art. 13. An exhaustive list of these methods can be found in this article.

In summary, these methods allow:

- personal service with acknowledgement of receipt signed by the debtor;

⁵If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (O.J. L 324, 10.12.2007, p. 79).

- declaration by the competent person who effected the service that the debtor received the document or refused to receive it without any legal justification;⁶
- service by post confirmed by an acknowledgment of receipt signed by the debtor;
- electronic service with an acknowledgment of receipt signed by the debtor.

2.2.2. Service without proof of receipt by the debtor or the debtor's representative

The debtor may be served also by one of the methods without proof of receipt specified in Art. 14. These methods may only be used if the address of the debtor is known with certainty. They exclude any form of fictitious service (e.g. remise au parquet).

In summary, these methods allow:

- service at the debtor's address on persons who are living in the same household as the debtor or are employed there. In the case of a self-employed or a legal person, service may also be effected at the debtor's business premises on persons who are employed by the debtor.

In these cases, service must be attested:

- either by an acknowledgement of receipt signed by the person who received the service; or

⁶See in particular the right to refuse service under Art. 8 of Council Regulation 1393/2007.

- by a document signed by the person who effected service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the debtor.
- deposit of the document in the debtor's mailbox or at a post office or with competent public authorities.

In the case of a deposit at the post office or with competent authorities, a written notification of the deposit must have been placed in the debtor's mailbox, clearly stating the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits.

In these cases, service must be attested by a document signed by the person who effected service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the debtor.

- postal service without proof of receipt where the debtor has his address in the Member State seized of the substance of the case; or
- electronic means attested by an automatic confirmation of delivery, provided that the debtor has expressly accepted this method of service in advance.

3. How and when to ask for the European Enforcement Order?

3.1. Before which court

A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits.

3.2. How to obtain the certificate

The request must be made in accordance with the national law of the court seized.

3.3. When may the European Enforcement Order be asked

The request may be made at any time when or after proceedings have been initiated.

4. The decision of certification

In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I.

In doing so, the court must check the following items:

4.1. Scope

The court must check that

4.1.1. The claim concerns a civil and commercial matter

See point II.1.2 above.

4.1.2. The claim is for the payment of a specific sum of money that has fallen due

See point II.1.1 above.

The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (see Art. 7).

4.2. The claim has remained uncontested

A claim is considered to be uncontested in the following situations:

4.2.1. the debtor has expressly agreed to it by admission (see Art. 3(1)(a));

4.2.2. the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of court proceedings (see Art. 3(1)(b));

When the debtor has never objected to the claim, the court must check that his silence or inaction can be considered as a tacit acceptance of the claim under the law of the Member State of origin. Typical examples of such a situation are default judgments or orders for payment.

4.2.3. the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (see Art. 3(1)(c)).

This situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit admission of the claim or of the facts under the law of the Member State of origin.

4.3. The judgment is enforceable

The judgment to be certified as a European Enforcement Order must be enforceable. However a certificate may also be issued when the judgment is provisionally enforceable.

4.4. Jurisdiction

4.4.1. Insurance matters

If the judgment to be given concerns an insurance matter, the court must check that the judgment does not conflict with the rules on jurisdiction as laid down in section 3 of Chapter II of Regulation (EC) No 44/2001.

4.4.2. Exclusive jurisdiction

If the judgment to be given concerns rights in rem in or tenancies of immoveable property, certain matters of company law, public registers, industrial property rights, enforcement, for which Art. 22 of Regulation 44/2001 lays down exclusive rules on jurisdiction, the court must check that the judgment does not conflict with these rules.

4.5. Additional checks in case the debtor has not expressly agreed to the claim

If the debtor has not expressly agreed to the claim, i.e. in the situations described under points 4.2.2 and 4.2.3 above, the court must check:

4.5.1. Jurisdiction

If the judgment to be given concerns a consumer contract and it is given against the consumer, the court must check that the consumer has his/her domicile in the Member State of the court within the meaning of Article 59 of Regulation (EC) No 44/2001.

4.5.2. Minimum standards

The court must check:

4.5.2.1. Service of the document instituting proceedings or summons to a court hearing

The debtor has been notified in accordance with Articles 13 through 15 (see points 2.2.1 and 2.2.2 above).

If the document instituting proceedings or any summons to a court hearing has not been served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence (see Art. 18(2)).

4.5.2.2. Mandatory information of the debtor

The debtor has duly received the information prescribed in Art. 16 and 17 (see points 2.1.1 and 2.1.2 above).

If the minimum standards on service and provision of information have not been complied with, such a non-compliance may be cured and the court may issue the certificate if the following happens:

- The judgment is served on the debtor in compliance with the requirements pursuant to Art. 13 or 14; and
- It is possible for the debtor to challenge the judgment by means of a full review and he has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- The debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

In addition, if the document instituting proceedings or any summons to a court hearing was not served in accordance with Articles 13 or 14, the court may nevertheless deliver the certificate if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence.

4.5.2.3. Review in exceptional cases (Art. 19)

The Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where:

- the document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Article 14; and
- service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part; or
- The debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part.

4.6. Partial European Enforcement Order

If only parts of the judgment to be certified meet the requirements for certification as laid down above, the court may issue a European Enforcement Order certificate for those parts only (see Art. 8).

5. Possible remedies/defences for the parties

5.1. What can a claimant do if the European Enforcement Order is refused or contains an error

5.1.1. If the European Enforcement Order is refused due to non-compliance with minimum standards on service (Art. 18(1))

If the European Enforcement Order certificate was refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 or due to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the following happens:

- The judgment is served on the debtor in compliance with the requirements pursuant to Art. 13 or 14; and
- It is possible for the debtor to challenge the judgment by means of a full review and he has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- The debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

If these requirements are fulfilled, the court may deliver the European Enforcement Order certificate.

5.1.2. If the European Enforcement Order certificate is refused due to other reasons

The claimant has two options:

- Either appeal the refusal to grant a European Enforcement Order if such possibility exists under national law;
- Or pursue the enforcement of the judgment in another Member State following the exequatur procedure laid down in Regulation 44/2001.

5.1.3. If the European Enforcement Order contains an error

If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having delivered the certificate requesting a rectification of the certificate (see Art. 10(1)(a)). The claimant may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

5.2. What can a debtor do if a European Enforcement Order is issued

In principle, no appeal is possible against the issuing of a European Enforcement Order certificate (see Art. 10(4)).

However, the following possibilities exist, in the Member State of origin or in the Member State of enforcement.

5.2.1. What can the debtor do in the Member State of origin

The debtor can undertake the following actions in the Member State where the judgment was given:

5.2.1.1. If the European Enforcement Order contains an error

If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the debtor may apply to the court which was seised on the merits of the claim requesting a rectification of the certificate (see Art. 10(1)(a)). The debtor may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

5.2.1.2. If the European Enforcement Order was clearly wrongly granted

If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court which was seised on the merits of the claim requesting that

the European Enforcement Order certificate be withdrawn (see Art. 10(1)(b)). The debtor may use the standard form laid down in Annex VI. The procedure for such a withdrawal is governed by national law. Information on the national law in the Member States on this point can be found at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

5.2.1.3. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited

If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the judgment was delivered, the debtor may apply to the court having given the judgment for a certificate indicating the lack or limitation of enforceability (see Art. 6(2)). The debtor may use the standard form laid down in Annex IV.

5.2.1.4. Appeal against the judgment

The debtor may challenge the judgment on the merits in accordance with the national procedural law of the Member State where the judgment was issued.

If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (see Art. 6(3)).

5.2.1.5. Review in exceptional cases

The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued in the following circumstances (see Art. 19(1)):

- The document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Art. 14 ; and
- service was not effected in sufficient time to enable the debtor to arrange for his defence, without any fault on his part; or
- The debtor was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his/her part.

In applying for this special review, the debtor must act promptly.

The procedure for this review is laid down in the national procedural law of the Member State where the judgment was given. All information on the special review procedures under Art. 19 is available on the European Judicial Atlas in civil and commercial matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm).

5.2.2. What can the debtor do in the Member State of enforcement

The debtor can undertake the following actions in the Member State of enforcement, although these possibilities can never lead to a review in the Member State of enforcement of the substance of the judgment or its certification as a European Enforcement Order (see Art. 21(2)).

5.2.2.1. Refusal of enforcement

The debtor has the possibility to apply for a refusal of enforcement of the judgment (see Art. 21) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- The earlier judgment involved the same cause of action and was between the same parties; and
- The earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- The irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

5.2.2.2. Stay or limitation of enforcement

The debtor may apply for a stay or limitation of enforcement of the judgment in the following circumstances (see Art. 23):

- The debtor has challenged a judgment certified as a European Enforcement Order, including an application for review within the meaning of Art. 19; or
- The debtor has applied for the rectification or withdrawal of a European Enforcement Order certificate in accordance with Art. 10.

In such cases, the competent court or authority in the Member State of enforcement may

- limit the enforcement proceedings to protective measures; or
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings.



► III. The European Enforcement Order for existing judgments



A creditor may also request a European Enforcement Order certificate with respect to a judgment which was already given.

1. In which cases can the creditor request a European Enforcement Order?

1.1. Pecuniary claim

The claim which was the subject of the dispute must be a claim for payment of a specific sum of money that has fallen due (see Art. 4(2)).

1.2. Civil or commercial matter

- The claim must concern a civil or commercial matter.

On the notion “civil or commercial matter”, see point I.4.2 above.

- A European Enforcement Order may not be obtained in the following matters:
 - revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“acta iure imperii”).

These matters are not covered by Art. 65 EC Treaty.

- the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

The recognition or enforcement of these matters are either covered by other existing Community instruments (see, for instance, Council

Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility)⁷ or are not yet covered by Community law.

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

The recognition and enforcement of judgments in matters of insolvency is governed by Council Regulation (EC) No 1346/2000 on insolvency proceedings.⁸

- social security;

This matter is generally not covered by Art. 65 EC Treaty.

- and arbitration.

This matter is not covered currently by Community law.

1.3. Judgment

A European Enforcement Order may be requested with respect to judgments, i.e. any judgment given by a court of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court (see Art. 4(1)).

⁷O.J. L 338, 23.12.2003, p. 1.

⁸O.J. L 160, 30.6.2000, p. 1.

A European Enforcement order may only be requested with respect to judgments given after 21 January 2005 (in all Member States except Romania and Bulgaria) or 1 January 2007 (for Romania and Bulgaria).

1.4. Enforcement in another Member State

A European Enforcement Order certificate may be requested for the purpose of enforcement of the judgment in another Member State. However, it is not required to show an international element. In particular, it is not required that one of the parties is domiciled or habitually resident abroad, nor must it be shown that enforcement will take place abroad. Of course, in the end the certificate will only be useful in case of enforcement in another Member State.

2. How and when to ask for the European Enforcement Order?

2.1. Before which court

A request for a European Enforcement Order must be addressed to the competent authority in the Member State of origin. In principle this is the court seized on the merits.

2.2. How to obtain the certificate

The request must be made in accordance with the national law of the court seized.

2.3. When may the European Enforcement Order be asked

The request may be made at any time after the judgment was given, taking into account that the latter must be enforceable.

3. The decision of certification

In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex I.

In doing so, the court must check the following items:

3.1. Scope

The court must check that

3.1.1. The claim concerns a civil and commercial matter

See point III.1.2 above

3.1.2. The claim is for the payment of a specific sum of money that has fallen due

See point III.1.1 above.

The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the judgment if the debtor has not specifically objected to his obligation to bear such costs in the course of the court proceedings in accordance with the law of the Member State of origin (see Art. 7).

3.1.3. The date of the judgment

If the judgment is given in a Member State other than Romania and Bulgaria, the judgment must have been given on or after 21 January 2005. If the judgment was given in Romania or Bulgaria, it must have been given on or after 1 January 2007.

3.2. The claim has remained uncontested

A claim is considered to be uncontested in the following situations:

3.2.1. the debtor has expressly agreed to it by admission (see Art. 3(1)(a));

3.2.2. the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of court proceedings (see Art. 3(1)(b));

When the debtor never objected to the claim, the court must check that his silence or inaction can be considered as a tacit acceptance of the claim under the law of the Member State of origin. Typical examples of such a situation are default judgments or orders for payment.

3.2.3. the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin (see Art. 3(1)(c)).

This situation occurs when the debtor did participate in the procedure and objected to the claim, but did no longer appear or was no longer represented at a subsequent hearing concerning the claim. In this situation, the court must check that the conduct of the defendant can amount to a tacit admission of the claim or of the facts under the law of the Member State of origin.

3.3. The judgment is enforceable

The judgment to be certified as a European Enforcement Order is enforceable. However a certificate may also be issued when the judgment is provisionally enforceable.

3.4. Jurisdiction

3.4.1. Insurance matters

If the judgment concerns an insurance matter, the court must check that the judgment does not conflict with the rules on jurisdiction as laid down in section 3 of Chapter II of Regulation (EC) No 44/2001.

3.4.2. Exclusive jurisdiction

If the judgment concerns rights in rem in or tenancies of immovable property, certain matters of company law, public registers, industrial property rights, enforcement, for which Art. 22 of Regulation 44/2001 lays down exclusive rules on jurisdiction, the court must check that the judgment does not conflict with these rules.

3.5. Additional checks in case the debtor has not expressly agreed to the claim

If the debtor has not expressly agreed to the claim, i.e. in the situations described under points III.3.2.2 and III.3.2.3 above, the court must check:

3.5.1. Jurisdiction

If the judgment concerns a consumer contract and it was given against the consumer, the court must check that it has been given in the Member State where the consumer has his/her domicile within the meaning of Article 59 of Regulation (EC) No 44/2001.

3.5.2. Minimum standards

The court must check:

3.5.2.1. Service of the document instituting proceedings or summons to a court hearing

The document instituting the proceedings as well as any summons to a court hearing must have been served by way of a method recognized by the Regulation.⁹ The methods of service accepted are specified in Art. 13 and 14. In general, two types of service are possible: either service

with proof of receipt by the debtor (Art. 13) or service without proof of receipt by the debtor (Art. 14).

3.5.2.1.1. Service with proof of receipt by the debtor or the debtor's representative

The methods of service with proof of receipt are specified in Art. 13. An exhaustive list of these methods can be found in this article.

In summary, these methods allow:

- personal service with acknowledgment of receipt signed by the debtor;
- declaration by the competent person who effected the service that the debtor received the document or refused to receive it without any legal justification;¹⁰
- service by post confirmed by an acknowledgment of receipt signed by the debtor;
- electronic service with an acknowledgment of receipt signed by the debtor.

3.5.2.1.2. Service without proof of receipt by the debtor or the debtor's representative

The debtor may have been served also by one of the methods without proof of receipt specified in Art. 14. These methods may only be used if

⁹If service needs to take place in another Member State, documents must be transmitted to that other Member State in accordance with the rules of Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (O.J. L 324, 10.12.2007, p. 79).

¹⁰See in particular the right to refuse service under Art. 8 of Council Regulation 1393/2007.

the address of the debtor was known with certainty. They exclude any form of fictitious service (e.g. remise au parquet).

In summary, these methods allow:

- service at the debtor's address on persons who are living in the same household as the debtor or are employed there. In the case of a self-employed or a legal person, service may also have been effected at the debtor's business premises on persons who are employed by the debtor.

In these cases, service must be attested:

- either by an acknowledgement of receipt signed by the person who received the service; or
- by a document signed by the person who effected service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the debtor.
- deposit of the document in the debtor's mailbox or at a post office or with competent public authorities.

In the case of a deposit at the post office or with competent authorities, a written notification of the deposit must have been placed in the debtor's mailbox, clearly stating the character of the document as a court document or the legal effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits.

In these cases, service must be attested by a document signed by the person who effected service, indicating the method of service used, the date of service, and the name of the person who received the service as well as the latter's relation to the debtor.

- postal service without proof of receipt where the debtor had his address in the Member State seized of the substance of the case; or
- electronic means attested by an automatic confirmation of delivery, provided that the debtor had expressly accepted this method of service in advance.

If the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14, the court may nevertheless certify the judgment as a European Enforcement Order if it is proved by the conduct of the debtor in the court proceedings that he has personally received the document to be served in sufficient time to arrange for his defence (see Art. 18(2)).

3.5.2.2. Mandatory information of the debtor

The debtor must have received the information prescribed by Art. 16 and 17 of the Regulation, i.e.

3.5.2.2.1. Due information about the claim (Art. 16)

The document instituting the proceedings on the merits must have included:

- the names and addresses of the parties;
- the amount of the claim;

- if interest on the claim is sought, the interest rate and the period for which interest is sought, unless statutory interest is automatically added to the principal under the law of the Member State where the judgment is issued;
- a statement of the reason for the claim.

3.5.2.2.2. Due information about the procedural steps necessary to contest the claim (Art. 17)

In addition, the debtor must have been informed of which procedural steps he needs to undertake in order to contest the claim.

This information may have been contained in the document instituting the proceedings or in an accompanying document. It may also have been contained in any subsequent summons to a court hearing.

This information must include:

- the procedural requirements for contesting the claim, including the time limit for contesting the claim in writing or the time for the court hearing (as applicable);
- the name and address of the institution to which to respond or before which to appear (as applicable);
- whether or not it is mandatory to be represented by a lawyer;
- the consequences of an absence of objection or default of appearance, in particular, where applicable, the possibility that a judgment may be given or enforced against the debtor and the liability for costs related to the court proceedings.

If the document instituting proceedings or any summons to a court hearing was not served on the debtor in accordance with Art. 13 or 14 and/or if the debtor was not informed in accordance with Art. 16 and 17, such a non-compliance with the minimum standards may be cured and the court may deliver the European Enforcement Order if the following happens:

- The judgment is served on the debtor in compliance with the requirements pursuant to Art. 13 or 14; and
- It is possible for the debtor to challenge the judgment by means of a full review and he has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- The debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

3.5.2.3. Review in exceptional cases (Art. 19)

The law of the Member State of the court which has given the judgment must offer the debtor the right to apply for a review of the judgment where:

- the document instituting the proceedings or an equivalent document or, where applicable the summons to a court hearing, was served by one of the methods provided for in Article 14; and
- service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part; or

- The debtor was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part.

3.6. Partial European Enforcement Order

If only parts of the judgment to be certified meet the requirements for certification as laid down above, the court may issue a European Enforcement Order certificate for those parts only (see Art. 8).

4. Possible remedies/defences for the parties

4.1. What can a claimant do if the European Enforcement Order is refused or contains an error

4.1.1. If the European Enforcement Order is refused due to non-compliance with minimum standards on service (Art. 18(1))

If the European Enforcement Order certificate was refused by the court due to a lack of due service of the document instituting the proceedings or any summons to a court hearing under Art. 13 or 14 or due to a deficient provision of information under Art. 16 or 17, such non-compliance with the minimum standards may be cured and the claimant may make a new application for a European Enforcement Order to the court having delivered the judgment if the following happens:

- The judgment is served on the debtor in compliance with the requirements pursuant to Art. 13 or 14; and
- It is possible for the debtor to challenge the judgment by means of a full review and he has been duly informed in or together with the judgment about the procedural requirements for such a challenge, including the name and address of the institution with which it must be lodged and, where applicable, the time limit for so doing; and
- The debtor has failed to challenge the judgment in compliance with the relevant procedural requirements.

If these requirements are fulfilled, the court may deliver the European Enforcement Order certificate.

4.1.2. If the European Enforcement Order certificate is refused due to other reasons

The claimant has two options:

- Either appeal the refusal to grant a European Enforcement Order if such possibility exists under national law;
- Or pursue the enforcement of the judgment in another Member State following the exequatur procedure laid down in Regulation 44/2001.

4.1.3. If the European Enforcement Order contains an error

If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having delivered the certificate requesting a rectification of the certificate (see Art. 10(1)(a)). The claimant may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2. What can a debtor do if a European Enforcement Order is issued

In principle, no appeal is possible against the issuing of a European Enforcement Order certificate (see Art. 10(4)).

However, the following possibilities exist, in the Member State of origin or in the Member State of enforcement:

4.2.1. What can the debtor do in the Member State of origin

The debtor can undertake the following actions in the Member State where the judgment was given:

4.2.1.1. If the European Enforcement Order contains an error

If there is a discrepancy between the judgment and the European Enforcement Order certificate which is due to a material error, the debtor may apply to the court which was seized on the merits of the claim

requesting a rectification of the certificate (see Art. 10(1)(a)). The debtor may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2.1.2. If the European Enforcement Order was clearly wrongly granted

If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court which was seized on the merits of the claim requesting that the European Enforcement Order certificate be withdrawn (see Art. 10(1)(b)). The debtor may use the standard form laid down in Annex VI. The procedure for such a withdrawal is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2.1.3. If the judgment has ceased to be enforceable or its enforceability has been suspended or limited

If the judgment has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the judgment was delivered, the debtor may apply to the court having given the judgment for a certificate indicating the lack or limitation of enforceability (see Art. 6(2)). The debtor may use the standard form laid down in Annex IV.

4.2.1.4. Appeal against the judgment

The debtor may challenge the judgment on the merits in accordance with the national procedural law of the Member State where the judgment was issued.

If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (see Art. 6(3)).

4.2.1.5. Review in exceptional cases

The debtor may lodge a special review against the judgment before the competent court of the Member State where the judgment was issued in the following circumstances (see Art. 19(1)):

- The document instituting the proceedings or an equivalent document or, where applicable, the summons to a court hearing, was served by one of the methods provided for in Art. 14 ; and
- service was not effected in sufficient time to enable the debtor to arrange for his defence, without any fault on his part; or
- The debtor was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his/her part.

In applying for this special review, the debtor must act promptly.

The procedure for this review is laid down in the national procedural law of the Member State where the judgment was given. All information on the special review procedures under Art. 19 is available on the

European Judicial Atlas in civil and commercial matters (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm).

4.2.2. What can the debtor do in the Member State of enforcement

The debtor can undertake the following actions in the Member State of enforcement, although these possibilities can never lead to a review in the Member State of enforcement of the substance of the judgment or its certification as a European Enforcement Order (see Art. 21(2)).

4.2.2.1. Refusal of enforcement

The debtor has the possibility to apply for a refusal of enforcement of the judgment (see Art. 21) if the judgment certified as a European Enforcement Order is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- The earlier judgment involved the same cause of action and was between the same parties; and
- The earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- The irreconcilability was not and could not have been raised as an objection in the court proceedings in the Member State of origin.

4.2.2.2. Stay or limitation of enforcement

The debtor may apply for a stay or limitation of enforcement of the judgment in the following circumstances (see Art. 23):

- The debtor has challenged a judgment certified as a European Enforcement Order, including an application for review within the meaning of Art. 19; or
- The debtor has applied for the rectification or withdrawal of a European Enforcement Order certificate in accordance with Art. 10.

In such cases, the competent court or authority in the Member State of enforcement may

- limit the enforcement proceedings to protective measures; or
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings.



► IV. Authentic instruments



A European Enforcement Order may also be obtained for the enforcement in a Member State of an authentic instrument drawn up in another Member State.

1. In which cases can the creditor request a European Enforcement Order?

1.1. Pecuniary claim

The claim which is the subject of the authentic instrument must be a claim for payment of a specific sum of money that has fallen due (see Art. 4(2)).

1.2. Civil or commercial matter

- The claim must concern a civil or commercial matter.

On the notion “civil or commercial matter”, see point I.4.2 above.

- A European Enforcement Order may not be obtained in the following matters:

- revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“acta iure imperii”).

These matters are not covered by Art. 65 EC Treaty.

- the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

The recognition or enforcement of these matters are either covered by other existing Community instruments (see, for instance, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility)¹¹ or are not yet covered by Community law.

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;

The recognition and enforcement of judgments in matters of insolvency is governed by Council Regulation (EC) No 1346/2000 on insolvency proceedings.¹²

- social security;

This matter is generally not covered by Art. 65 EC Treaty.

- and arbitration.

This matter is not covered currently by Community law.

1.3. Authentic instrument

An authentic instrument is (see Art. 4(3)):

- a document which has been formally drawn up or registered as an authentic instrument and the authenticity of which:

¹¹O.J. L 338, 23.12.2003, p. 1.

¹²O.J. L 160, 30.6.2000, p. 1.

- relates to the signature and the content of the instrument; and
- has been established by a public authority or other authority empowered for that purpose by the Member State in which it originates;¹³ or
- an arrangement relating to maintenance obligations concluded with administrative authorities or authenticated by them.¹⁴

There are no additional requirements concerning the content or form of the instrument in order to be certified as a European Enforcement Order. In particular, it is not required that the instrument itself mentions that it will circulate as a European Enforcement Order.

1.4. Enforcement in another Member State

A European Enforcement Order certificate may be requested for the purpose of enforcement of the authentic instrument in another Member State. However, it is not required to show an international element. In particular, it is not required that one of the parties is domiciled or habitually resident abroad, nor must it be shown that enforcement will take place abroad. Of course, in the end the certificate will only be useful in case of enforcement in another Member State.

¹³The authentic instrument covers the notarial deeds as they are known in the following Member States: Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Italy, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia and Scotland in the United Kingdom.

¹⁴This point refers to the arrangements relating to maintenance obligations concluded with or authenticated by Swedish and Finnish social welfare boards.

2. How and when to ask for the European Enforcement Order?

2.1. Before which authority

The European Enforcement Order certificate must be requested from the competent authorities in the Member State where the instrument was drawn up. In some Member States, the competent authority to deliver the certificate is the notary who has drawn up the act or a representative organisation (e.g. Austria, Belgium, France, Germany, Greece, Italy, Lithuania, Luxembourg, and Spain). In other Member States, the competent authority is a court (e.g., the Netherlands, Slovakia, Hungary, Poland, Czech Republic).

The list of competent authorities may be found on the European Judicial Atlas ((http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm)).

2.2. When may the European Enforcement Order be asked

The European Enforcement Order may be asked at the time when the authentic instrument is being drafted or any time thereafter.

3. The decision of certification

In order to issue a European Enforcement Order, the competent authority shall fill in the standard form included in Annex III to the Regulation.

In doing so, the competent authority must check the following items:

3.1. Scope

The competent authority must check that

3.1.1. The claim concerns a civil and commercial matter

See point IV.1.2 above

3.1.2. The claim is for the payment of a specific sum of money that has fallen due

See point IV.1.1 above.

The European Enforcement Order certificate may cover also the amount of costs related to the drafting of the instrument which are included in the instrument (see Art. 7).

3.1.3. The date of the authentic instrument

If the instrument is or has been drafted before a competent authority in a Member State other than Romania and Bulgaria, it must have been drafted on or after 21 January 2005. If the instrument was drafted in Romania or Bulgaria, it must have drafted on or after 1 January 2007.

3.2. The authentic instrument is enforceable

The authentic instrument to be certified as a European Enforcement Order must be enforceable.

3.3. Partial European Enforcement Order

If only parts of the authentic instrument to be certified meet the requirements for certification as laid down above, the competent authority may issue a European Enforcement Order certificate for those parts only (see Art. 8).

4. Possible remedies/defences for the parties

4.1. What can a claimant do if the European Enforcement Order is refused or contains an error

4.1.1. If the European Enforcement Order is refused

The claimant has two options:

- Either appeal the refusal to grant a European Enforcement Order if such possibility exists under national law;
- Or pursue the enforcement of the authentic instrument in another Member State following the exequatur procedure laid down in Regulation 44/2001.

4.1.2. If the European Enforcement Order contains an error

If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the competent authority in the Member State of origin requesting a rectification of the certificate (see Art.

10(1)(a)). The claimant may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2. What can a debtor do if a European Enforcement Order is issued

In principle, no appeal is possible against the issuing of a European Enforcement Order certificate (see Art. 10(4)).

However, the following possibilities exist, in the Member State of origin or in the Member State of enforcement:

4.2.1. What can the debtor do in the Member State of origin

The debtor can undertake the following actions in the Member State where the authentic instrument was drafted:

4.2.1.1. If the European Enforcement Order contains an error

If there is a discrepancy between the authentic instrument and the European Enforcement Order certificate which is due to a material error, the debtor may apply to the competent authority requesting a rectification of the certificate (see Art. 10(1)(a)). The debtor may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the

following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf

4.2.1.2. If the European Enforcement Order was clearly wrongly granted

If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the competent authority in the Member State of origin requesting that the European Enforcement Order certificate be withdrawn (see Art. 10(1)(b)). The debtor may use the standard form laid down in Annex VI. The procedure for such a withdrawal is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2.1.3. If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited

If the authentic instrument has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where the instrument was drafted, the debtor may apply to the competent authority indicating the lack or limitation of enforceability (see Art. 6(2)). The debtor may use the standard form laid down in Annex IV.

4.2.2. What can the debtor do in the Member State of enforcement

The debtor can undertake the following action in the Member State of enforcement:¹⁵

4.2.2.1. Stay or limitation of enforcement

The debtor may apply for a stay or limitation of enforcement of the authentic instrument in the following circumstances (see Art. 23):

- The debtor has challenged an instrument certified as a European Enforcement Order; or
- The debtor has applied for the rectification or withdrawal of the European Enforcement Order certificate in accordance with Art. 10.

In such cases, the competent court or authority in the Member State of enforcement may

- limit the enforcement proceedings to protective measures; or
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings.

¹⁵ It must be pointed out that Art. 25(3) does not make an exception to the application of Art. 21(2) in the context of the enforcement of authentic instruments.



➤ V. Court settlements



The background image features a magnifying glass with a black frame, focusing on a document. The document has several lines of text, with some sections highlighted in red ink. The text is somewhat blurry, but the red highlights are prominent. The overall color scheme of the image is dominated by reds and browns, matching the header and footer bars.

A creditor may request a European Enforcement Order certificate with respect to a court settlement.

1. In which cases can the creditor request a European Enforcement Order?

1.1. Pecuniary claim

The claim which is the subject of the settlement must be a claim for payment of a specific sum of money that has fallen due (see Art. 4(2)).

1.2. Civil or commercial matter

- The claim must concern a civil or commercial matter.

On the notion “civil or commercial matter”, see point I.4.2 above.

- A European Enforcement Order may not be obtained in the following matters:
 - revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority (“acta iure imperii”).

These matters are not covered by Art. 65 EC Treaty.

- the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;

The recognition or enforcement of these matters are either covered by other existing Community instruments (see, for instance, Council

Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility)¹⁶ or are not yet covered by Community law.

- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- The recognition and enforcement of judgments in matters of insolvency is governed by Council Regulation (EC) No 1346/2000 on insolvency proceedings.¹⁷
- social security;

This matter is generally not covered by Art. 65 EC Treaty.

- and arbitration.

This matter is not covered currently by Community law.

1.3. Court settlement

A European Enforcement Order may be requested with respect to court settlements, i.e. a settlement which has been approved by a court or concluded before a court in the course of proceedings (see Article 3(1) (a) and Article 24).

A European Enforcement order may only be requested with respect to court settlements approved or concluded on or after 21 January 2005

¹⁶O.J. L 338, 23.12.2003, p. 1.

¹⁷O.J. L 160, 30.6.2000, p. 1.

(in all Member States except Romania and Bulgaria) or 1 January 2007 (for Romania and Bulgaria).

1.4. Enforcement in another Member State

A European Enforcement Order certificate may be requested for the purpose of enforcement of the court settlement in another Member State. However, it is not required to show an international element. In particular, it is not required that one of the parties is domiciled or habitually resident abroad, nor must it be shown that enforcement will take place abroad. Of course, in the end the certificate will only be useful in case of enforcement in another Member State.

2. How and when to ask for the European Enforcement Order?

2.1. Before which court

A request for a European Enforcement Order must be addressed to the court which approved the court settlement or before which it was concluded.

2.2. How to obtain the certificate

The request must be made in accordance with the national law of the court seized.

2.3. When may the European Enforcement Order be asked

The request may be made at any time during the court proceedings or after the approval or conclusion of the court settlement.

3. The decision of certification

In order to issue a European Enforcement Order, the court shall fill in the standard form included in Annex II to the Regulation.

In doing so, the court must check the following items:

3.1. Scope

The court must check that

3.1.1. The claim concerns a civil and commercial matter

See point V.1.2 above

3.1.2. The claim is for the payment of a specific sum of money that has fallen due

See point V.1.1 above.

The European Enforcement Order certificate may cover also the amount of costs related to the court proceedings which are included in the court settlement (see Art. 7).

3.1.3. The date of the court settlement

If the court settlement is or was approved or concluded before a court of a Member State other than Romania and Bulgaria, it must have been approved or concluded on or after 21 January 2005. If the court settlement is or was approved or concluded before a court in Romania or Bulgaria, it must be concluded or approved on or after 1 January 2007.

3.2. The court settlement is enforceable

The court settlement to be certified as a European Enforcement Order must be enforceable.

3.3. Partial European Enforcement Order

If only parts of the court settlement to be certified meet the requirements for certification as laid down above, the court may issue a European Enforcement Order certificate for those parts only (see Art. 8).

4. Possible remedies/defences for the parties

4.1. What can a claimant do if the European Enforcement Order is refused or contains an error

4.1.1. If the European Enforcement Order is refused

The claimant has two options:

- Either appeal the refusal to grant a European Enforcement Order if such possibility exists under national law;
- Or pursue the enforcement of the court settlement in another Member State following the exequatur procedure laid down in Regulation 44/2001.

4.1.2. If the European Enforcement Order contains an error

If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the claimant may apply to the court having delivered the certificate requesting a rectification of the certificate (see Art. 10(1)(a)). The claimant may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2. What can a debtor do if a European Enforcement Order is issued

In principle, no appeal is possible against the issuing of a European Enforcement Order certificate (see Art. 10(4)).

However, the following possibilities exist, in the Member State of origin or in the Member State of enforcement:

4.2.1. What can the debtor do in the Member State of origin

The debtor can undertake the following actions in the Member State where the court settlement was given:

4.2.1.1. If the European Enforcement Order contains an error

If there is a discrepancy between the court settlement and the European Enforcement Order certificate which is due to a material error, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting a rectification of the certificate (see Art. 10(1)(a)). The debtor may use the standard form laid down in Annex VI. The procedure for such a rectification is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf

4.2.1.2. If the European Enforcement Order was clearly wrongly granted

If the European Enforcement Order was granted in violation of the requirements laid down in the Regulation, the debtor may apply to the court having approved the settlement or before which the settlement was concluded requesting that the European Enforcement Order certificate be withdrawn (see Art. 10(1)(b)). The debtor may use the standard form laid down in Annex VI. The procedure for such a withdrawal is governed by national law. Information on the national law in the Member States on this point can be found on the European Judicial Atlas at the following address: http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/vers_consolide_eeo805_en.pdf.

4.2.1.3. If the court settlement has ceased to be enforceable or its enforceability has been suspended or limited

If the settlement has ceased to be enforceable or its enforceability has been suspended or limited under the law of the Member State where it was approved or concluded, the debtor may apply to the court having approved the settlement or before which the settlement was concluded for a certificate indicating the lack or limitation of enforceability (see Art. 6(2)). The debtor may use the standard form laid down in Annex IV.

4.2.1.4. Appeal against the court settlement

The debtor may challenge the court settlement on the merits in accordance with the national procedural laws of the Member States.

If the challenge is unsuccessful and the judgment on appeal is enforceable, the claimant may obtain a replacement certificate using the standard form in Annex V (see Art. 6(3)).

4.2.2. What can the debtor do in the Member State of enforcement

The debtor can undertake the following action in the Member State of enforcement:¹⁸

¹⁸It must be pointed out that Art. 24(3) does not make an exception to the application of Art. 21(2) in the context of the enforcement of court settlements.

4.2.2.1. Stay or limitation of enforcement

The debtor may apply for a stay or limitation of enforcement of a court settlement in the following circumstances (see Art. 23):

- The debtor has challenged the court settlement certified as a European Enforcement Order; or
- The debtor has applied for the rectification or withdrawal of the European Enforcement Order certificate in accordance with Art. 10.

In such cases, the competent court or authority in the Member State of enforcement may

- limit the enforcement proceedings to protective measures; or
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings.

The image features a close-up of a hand holding a silver pen, poised to sign a document. The background is a soft-focus red surface with a pattern of small, glowing white dots. A semi-transparent red rectangular box is overlaid on the right side of the image, containing white text. The entire composition is framed by a decorative border at the top and bottom, consisting of a series of colored squares in shades of yellow, gold, brown, and purple.

► VI. Enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order

Once the claimant has obtained a judgment, authentic instrument or court settlement certified as a European Enforcement Order, he/she may apply for enforcement in the Member State of enforcement without the need to obtain a declaration of enforceability in that State. The judgment, court settlement or authentic instrument certified as a European Enforcement Order is treated as if it was given in the Member State of enforcement and it shall be enforced in the same way as a “national” judgment, court settlement or authentic instrument.

The procedure for enforcement is laid down in the national law of the Member State of enforcement, without prejudice to the following:

1. Competent court or authority

The claimant must apply for enforcement with the court or authority competent for the enforcement of a judgment, authentic instrument or court settlement certified as a European Enforcement Order in the Member State of enforcement. The list of competent courts and authorities can be found on the website of the European Judicial Network in civil and commercial matters (see http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm).

2. Documents to be produced by the claimant

In order to request in a Member State enforcement of a judgment, authentic instrument or court settlement certified as a European

Enforcement Order in another Member State, the claimant shall produce the following documents (see Art. 20):

- a copy of the judgment, authentic instrument or court settlement which satisfies the conditions necessary to establish its authenticity; and
- a copy of the European Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity; and
- 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, 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. The translation must be certified by a person qualified to do so in one of the Member States.

The list of languages accepted in the Member States for the completion of the certificate may be found on the European Judicial Atlas (http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm).

3. Enforcement authorities

The enforcement authorities must check whether the claimant produces the necessary documents for enforcement (see point VI.2 above).

If the necessary documents are produced, the judgment, authentic instrument or court settlement certified as a European Enforcement

Order shall be enforced under the same conditions as a judgment, authentic instrument or court settlement handed down in the Member State of enforcement. In particular:

- the substance or the certification as a European Enforcement Order may never be reviewed in the Member State of enforcement (see Art. 21(2));
- no security, bond or deposit, however described, may be required of the claimant on the ground that he/she is a foreign national or that he/she is not domiciled or resident in the Member State of enforcement.

Without prejudice to the above, the grounds of refusal or suspension of enforcement under national law continue to apply. For instance, the debtor could oppose enforcement on the ground that the debt has already been paid.

4. Limitations on enforcement

The competent enforcement authorities:

- must refuse enforcement of the judgment certified as a European Enforcement Order if, following an application by the debtor, they consider that the judgment is irreconcilable with an earlier judgment given in any Member State or in a third country under the conditions laid down in points II.5.2.2.1 or III.4.2.2.1 as applicable;
- may stay or limit enforcement of the judgment, authentic instrument or court settlement certified as a European Enforcement Order if the debtor has challenged the judgment, instrument or settlement or applied for a rectification or withdrawal of the European Enforcement Order certificate under the conditions laid down in points II.5.2.2.2, III.4.2.2.2, IV.4.2.2.1 or V.4.2.2.1 as applicable.



Annex 1: Decision matrix for the court

■ 1. Does the request for a European Enforcement Order concern an enforceable judgment given on or after 21 January 2005 (for RO, BU: 1 January 2007)?



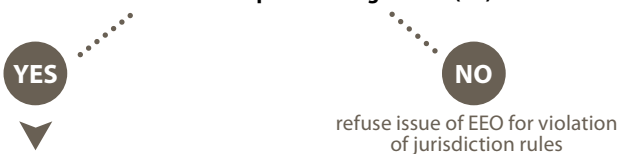
■ 2. Does the request concern a civil and commercial matter?



■ 3. Does the judgment concern an uncontested claim for the payment of a specific sum of money that has fallen due?



■ 4. Does the judgment respect the jurisdiction rules laid down in Sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001



■ 5. Does the request concern a judgment where the claim was not expressly agreed by the debtor (e.g. default judgment, payment order)?



■ 6. Does the claim concern a contract concluded by a consumer and the consumer is the debtor?

YES



NO

■ 8. Has the document instituting the proceedings or any summons to a court hearing been served on the debtor in accordance with Articles 13 or 14 of the Regulation?

YES



NO

inform the claimant that deficient service may be cured (Art. 18)

■ 7. Was the debtor domiciled in the Member State of origin at the time of the institution of proceedings?

YES



NO

refuse issue of EEO because a judgment against a consumer may only be certified as an EEO if it was given in the Member State of the consumer's domicile

■ 9. Was the debtor duly informed about the names and addresses of parties, amount of claim, interest, grounds of claim and procedural steps necessary to contest the claim?

YES



NO

inform the claimant that deficient information may be cured (Art. 18)

■ 10. Does the Member State of origin offer the debtor the right to apply for a review of the judgment in the circumstances described in Art. 19 of the Regulation?

YES



issue EEO

NO

refuse issue of EEO because national law does not comply with minimum standards of the Regulation.

Annex 2: Overview of EEO procedure

1.

Creditor applies

- » To court of origin
- » For certification as EEO of
- » Judgment on an uncontested claim, court settlement or authentic instrument



2.

Court issues EEO certificate

- » Using standard form (Annex I)
- » If conditions under the Regulation are fulfilled



3.

Creditor provides competent enforcement authorities of MS of enforcement with:

- » Copy of judgment, court settlement or authentic instrument
- » Copy of EEO certificate; and
- » Where necessary, transcription of EEO certificate or translation thereof



4.

Competent enforcement authorities of MS of enforcement

- » enforce EEO under same conditions as judgment of MS of enforcement



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Practice Guide for the Application of the Regulation on the European Enforcement Order

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, O.J. L 143, 30.4.2004, p. 15

This document has been drawn up by the Commission Services in consultation with the European Judicial Network in Civil and Commercial Matters (<http://ec.europa.eu.int/civiljustice>)


The content of this guide is without prejudice to legal interpretation of Regulation 805/2004 by the Court of Justice

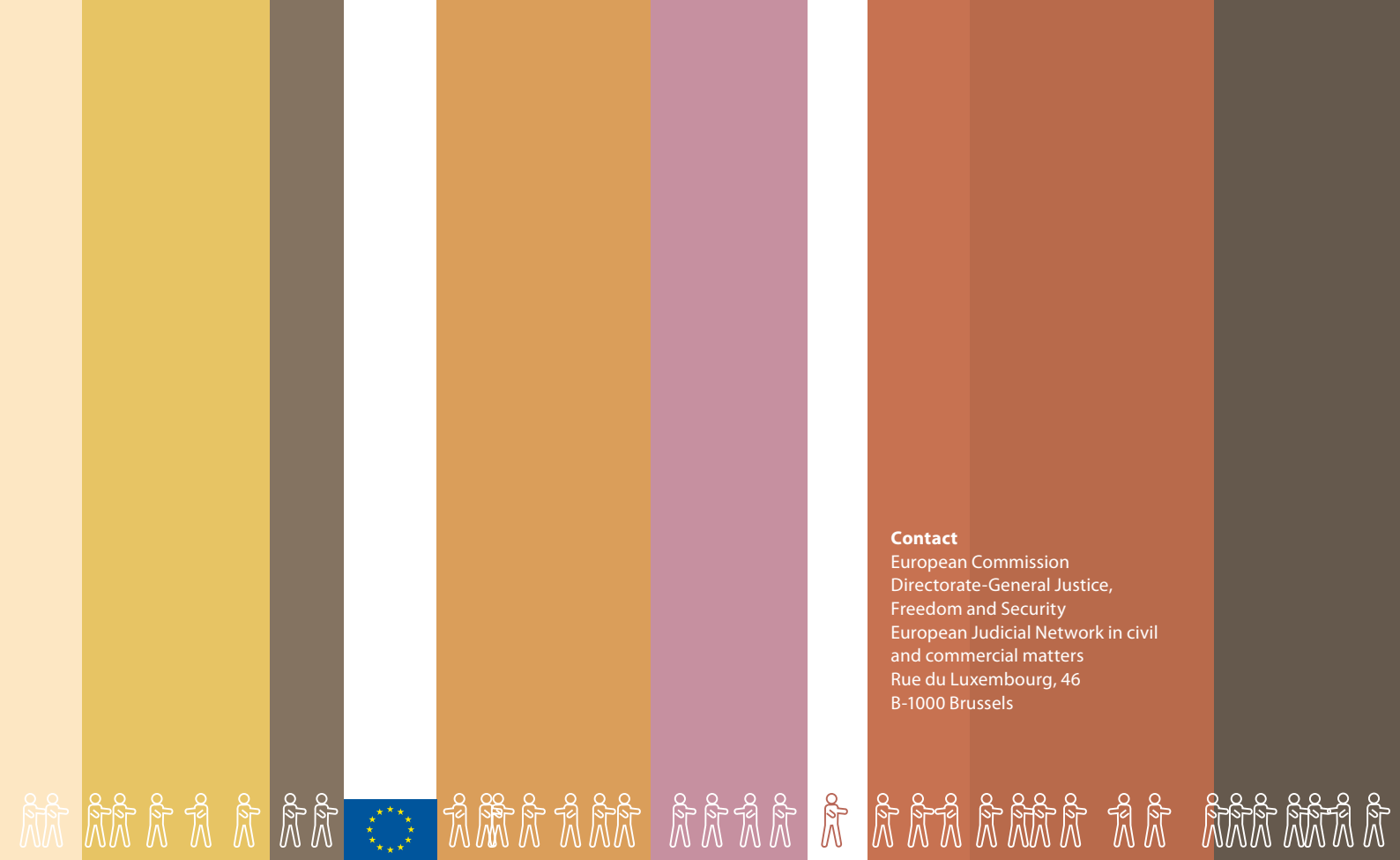
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Contact

European Commission
Directorate-General Justice,
Freedom and Security
European Judicial Network in civil
and commercial matters
Rue du Luxembourg, 46
B-1000 Brussels

<http://ec.europa.eu/civiljustice/>