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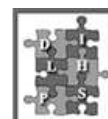
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# EFFORTS Practice Guide for the application of the Regulation on the European Order for Payment – France

Author: Marco Buzzoni (Research Fellow, MPI Luxembourg)\*

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- Prof C. Bléry (*Université Polytechnique Hauts-de-France*)
- Prof B. Deffains (*Université Paris-Panthéon-Assas*)
- Mr Luc Ferrand (*Chambre nationale des commissaires de justice*)
- Prof Fabienne Jault-Seseke (*Université de Versailles Saint-Quentin-en-Yvelines – UVSQ*)
- Mrs T. Jewczuk (*Cheffe du Département de l'entraide, du droit international privé et européen, Ministère de la Justice*)
- Prof R. Laher (*Université de Limoges*)
- Mrs I. Peni-Trouillas (*Chambre nationale des commissaires de justice*)
- Dr A. Raccah (Lawyer, *EleaAvocat*)
- Dr N. Reichling (Lawyer, *Barreau de Caen*)
- Dr V. Richard (Lawyer, *Wurth Kinsch Olinger*)
- Judge C. Roth (*Chef du pôle de l'exécution, Tribunal judiciaire de Paris*)
- Mrs Catherine Rumeau (*Adjointe du Département de l'entraide, du droit international privé et européen, Ministère de la Justice*)



<b>I.</b>	<b>INTRODUCTION.....</b>	<b>4</b>
<b>II.</b>	<b>SCOPE OF APPLICATION OF THE EOP PROCEDURE .....</b>	<b>4</b>
<b>III.</b>	<b>THE EOP PROCEDURE.....</b>	<b>5</b>
	A. APPLICATION FOR AN EOP .....	5
	B. CONDUCT OF THE PROCEDURE BEFORE THE COURT.....	13
	C. ISSUING & SERVING THE EOP .....	15
	D. OPPOSITION (DEFENDANTS' RIGHTS/OPTIONS).....	17
	E. POSSIBLE REMEDIES/DEFENCES FOR THE PARTIES .....	19
<b>IV.</b>	<b>RECOGNITION AND ENFORCEMENT OF EOP IN OTHER MEMBER STATES .....</b>	<b>22</b>



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## I. Introduction

*The paragraphs below address the implementation of Regulation No 1896/2006 (as amended by Regulation No 2015/2421) creating a European order for payment (hereinafter indicated as “EOP” and “EOP Reg.”) into the national law of France. In doing so, it integrates and supplements the European Practice Guide published by the Commission on the [e-Justice Portal](#)<sup>(1)</sup>, which expressly recognizes that questions that are not regulated by the Regulation itself should be governed by national procedural law<sup>(2)</sup>.*

*Following the structure of the European Practice Guide, the present section will address in turn the questions related to the scope of application of the EOP procedure (II), the issues arising in connection with the procedure itself (III), and finally the procedural rules related to the recognition and enforcement in France of EOPs rendered in another Member State (IV).*

## II. Scope of application of the EOP procedure

**1. Cross-border case.** The EOP Regulation applies only in cross-border cases. Art. 3 EOP Reg. defines such a case as one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seized (EC PG II.2.2.). In this respect, Art. 3(2) EOP Reg. provides that the domicile should be determined according to Art. 59 and 60 Brussels I Regulation (today Art. 62 and 63 BI bis). According to these provisions, the domicile of physical persons should be determined in accordance with internal law.

Under French national law, Art. 102(1) of the Civil Code (hereinafter, “**CC**”) sets out the general rule: “The domicile of any French person, as regards the exercise of his civil rights, is the place where he has his main establishment”.

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<sup>1</sup> The European Practice Guide prepared by the Commission is available at: ‘European e-Justice Portal – European payment order’, <[https://e-justice.europa.eu/41/EN/european\\_payment\\_order](https://e-justice.europa.eu/41/EN/european_payment_order)> accessed 13 April 2022.

<sup>2</sup> As explained by the Practice Guide of the Commission (EC PG I): “National law is applicable, on a subsidiary basis, to questions which are not regulated in the EOP Regulation”.



Additionally, Arts 102 ff CC provide specific rules that may apply in special circumstances.

These rules may nevertheless lead to jurisdictional gaps in cases where a defendant resides in France without having their domicile in the country nor fulfilling the conditions to be domiciled in another Member State according to the applicable foreign law. In such cases, the Court of Cassation held – in a case involving the old Brussels Convention – that the jurisdiction of French courts may be determined following Art. 43 of the French Code of Civil Procedure (hereinafter, “**CCP**”) (Cass. Civ. 1, 04.01.1984, No 82-15.835). According to this provision, defendants whose place of domicile is unknown may be sued before the courts of the place of their residence.

### III. The EOP procedure

When France is the Member State of origin

#### A. *Application for an EOP*

1. **Amount claimed.** Pursuant to Article 7 EOP Reg., an application for an EOP shall be made using the annexed standard Form A and should state the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs.

a. **Principal.** The EOP procedure is available for the collection of pecuniary claims for a specific amount that has fallen due. Nevertheless, procedural rules of the Member State of origin may regulate certain aspects regarding the amount of money to be claimed.

b. **Calculation of interest.** The EOP Regulation provides that details of the interest rate and the period of time for which interest is demanded should be provided in section 7 of Form A (EC PG III.1.1.), unless statutory interest is automatically added to the principal under the law of the Member State of origin (Art. 7(2)(c) EOP Reg.). Regarding the relevant time period for the calculation of interest, the guidelines for the completion of Form A state that if interest is demanded up to the date of the decision of the court the last date box should be left blank, while the



Regulation is silent about whether interest can be claimed after that date (EC PG III.1.1.).

- c. Costs.** The details of any costs due are included in section 9 of Form A. While the main costs envisaged here are court fees, the guidelines for the completion of Form A state that other costs could include the fees of a claimant's representative or pre-litigation costs. In accordance with Art. 25 court fees can include fees and charges paid to the court, the amount of which is fixed in accordance with national law. The guidelines also clarify that if the court fees are not known by the claimant the amount box can be left blank to be completed by the court (EC PG III.1.1.).

**Principal.** Under Art. 1343-3(1) CC: "The payment of a monetary obligation in France is made in euros". However, Art. 1343(2) CC provides that: "the payment may be made in another currency if the obligation so denominated arises from an international transaction or a foreign judgment" and that "The parties may agree that payment shall be made in a foreign currency if it is made between professionals, where the use of a foreign currency is commonly accepted for the transaction concerned".

Therefore, a creditor may seek the recovery of a debt calculated in a foreign currency under the EOP Regulation without converting the amount due into euros, unless the parties agreed otherwise. On the other hand, if the application is granted and the payment takes place in France, the debtor should always have the option to settle the claim in euros. In this case, the amount due will be determined based on the exchange rate applicable on the day of the payment.

When a creditor applies for an EOP whose amount is calculated in a foreign currency, issues may arise when determining the competence *ratione valoris*. In the absence of any explicit guidance on this point, one might consider applying the rule set out in Art. 2 ESCP Reg., according to which the amount of the claim should be determined "at the time when the claim form is received by the court or tribunal with jurisdiction".

**Interests.** From a substantive law point of view, Art. 1231-6 CC provides that monetary obligations produce interest at the legal rate calculated from when the debtor received the notice of default. Nevertheless, a higher interest rate may apply if the parties have so agreed, provided the judge does not consider





it as manifestly excessive or derisory (see Art. 1231-5 CC). These rules apply if the underlying claim is governed by French law.

From a procedural standpoint, legal interests are automatically added to the principal by operation of law, do not need to be included in the application, and run until the date of the payment (see Civ. 2, 23.09.2004, No 02-20.943). If the enforcement of the claim is carried out in France, Art. L313-3 of the Monetary and Financial Code provides that the legal interest rate is increased by 5% after two months from the day of the notification of a (provisionally or finally) enforceable decision on the debtor (Cass. Civ. 2, 04.04.2002, No 00-19.822).

The legal interest rate applicable in France is revised every six months and may be consulted at: <https://www.service-public.fr/particuliers/vosdroits/F783>.

**Costs.** When an application for an EOP is filed before civil courts, French law does not provide for any court fees. By contrast, a small fee may apply when an application is filed before French commercial courts<sup>3</sup>.

Regarding other costs, Arts 695 ff CCP distinguish between “The costs of the proceedings, acts and enforcement procedures” (Art. 695 CCP), on the one hand, and “expenses incurred and not included in the costs” (Art. 700 CCP, including especially lawyers’ fees):

- The judgment must order the losing party to pay the costs falling in the first category unless the court awards all or part of them to another party by a reasoned decision (Art. 696 CCP). If in doubt, the parties may also, after the judgment, informally ask the court clerk to verify the amount of the costs mentioned in Art. 695 CCP (Art. 704 CCP);
- Additionally, each party may request payment of expenses corresponding to the second category, which the court may allocate at its discretion based on a lump-sum determination in the judgment itself (Art. 700 CCP).

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<sup>3</sup> According to the information publicly available online, the current fee for issuing a EPO in commercial cases is 33,47 euros. See e.g. data pulished on the online service platform of the French commercial court registries (“*Infogreffe*”): *Formalités Entreprise : Injonction de Payer - Infogreffe*, available at <https://www.infogreffe.fr/formalites-entreprise/injonction-de-payer.html> [last visited 25 May 2021]; this information is also consistent with the data published on the website of the Paris commercial court: *Tarifs Fond/Référés/Requêtes - Greffe Du Tribunal de Commerce de Paris*, available at [https://www.greffe-tc-paris.fr/procedure/tarifs\\_fond](https://www.greffe-tc-paris.fr/procedure/tarifs_fond) [last visited 25 May 2021]



**2. Cause of action and description of evidence.** The EOP Regulation requires the claimant to state the cause of the action – including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded – and to provide the court with a description of evidence supporting the claim (Art. 7(2)(d)(e) EOP Reg.). *The Regulation does not specify the level of detail that an applicant should provide, nor does it prescribe the way that a court should carry out the examination of a claim (EC PG III.1.2.).*

- a. General rule.** There is no requirement to attach supporting documentation, but applicants are free to do so if they wish. Section 11 allows the applicants to provide additional statements and further information, if necessary (*ibid.*).
- b. Consumer contracts.** The European Court of Justice has clarified that in cases involving consumer contracts, the competent authority is allowed to request from the creditor additional information relating to the terms of the agreement relied on in support of the claim at issue, in order to carry out an *ex officio* review of the possible unfairness of those terms <sup>(4)</sup>.

According to Art. 1424-2 CCP, claimants shall submit their application for an EOP using Standard Form A set out in Annex I to the Regulation and deliver it by hand or post to the competent court registry. The Standard Form may be accessed online on the European e-Justice Portal<sup>5</sup>.

Contrary to domestic payment order proceedings (see Arts 1407 and 1411 CCP), claimants applying for an EOP are only required to describe the evidence supporting the claim without attaching any additional supporting documents to their initial application nor communicating them to the debtor before their opposition.

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<sup>4</sup> CJEU, 19 December 2019, in cases C-453/18 and C-494/18, *Bondora AS v. Carlos V.C.* and *Bondora AS v. XY*.

<sup>5</sup> See 'European e-Justice Portal - European Payment Order forms', <[https://e-justice.europa.eu/content\\_european\\_payment\\_order\\_forms-156-en.do](https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do)> accessed 8 July 2022.



In the absence of any provision to the contrary, professionals applying for an EOP against a consumer should nonetheless be allowed to attach additional information to their initial application, such as the contractual terms upon which their request is based. This approach would enable the competent court to conduct an *ex officio* review of the possible unfairness of those terms without requesting the claimant to rectify or complete the application according to Art. 9 EOP Reg., which might potentially reduce the length of the procedure.

**3. Competent courts.** The competent courts for the EOP are those that have been designated by the Member States and officially notified to the Commission (EC PG III.1.3). Should the application be sent to a court that is not competent, it is a matter for national law what action that court should take (*ibid.*). Hence, the EOP Regulation does not directly designate the national court competent to deal with applications under the EOP procedure. Indeed, Art. 5 EOP Reg. defines the term “court” as “any authority in a Member State. Similarly, Art. 6 EOP Reg. provides that the jurisdiction for claims made under the EOP procedure is to be established in accordance with the Brussels I Regulation<sup>6</sup>), but does not lay out any rules of territorial competence allocating cases among the competent national authorities.

Art. 1424-1 CCP allocates the jurisdiction to issue EOPs following the jurisdictional rules set out in the Brussels I bis Regulation. Furthermore, where that Regulation only confers international jurisdiction upon French courts in general, Art. 1424-1 CCP specifies that territorial competence to issue an EOP shall lie with the court where the defendant (or one of them, in case of multiple defendants) has their domicile or residence.

Regarding subject-matter jurisdiction, the communication made by the French Government to the Commission indicates that: “Jurisdiction to issue European orders for payment lies with the chamber for the protection of vulnerable adults (*juge des contentieux de la protection*), the president of the civil court (*tribunal*

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<sup>6</sup> Which has today been replaced by the BI bis Regulation (Regulation No 1215/2012). This rule is however subject to one exception. When the case concerns a consumer contract and the consumer is the defendant, the jurisdiction has to be that of the Member State where the defendant is domiciled (EC PG II.4).



*judiciaire*) and the president of the commercial court (*tribunal de commerce*) within the limits of their subject-matter competence”.

In the absence of more specific provisions, the reference to the “subject-matter competence” of these courts shall be interpreted by applying the ordinary rules laid out in the Code of Judicial Organisation (hereinafter, “**CJO**”) and the Commercial Code (hereinafter, “**CCom**”). In particular, Arts L213-4-1 ff CJO set out the jurisdictional rules applicable to the chamber for the protection of vulnerable adults (which include, *inter alia*, disputes concerning unpaid rent and consumer credit), while Art. 722-3-1 CCom provides that the president of the commercial court shall rule on EOP applications within the limits of the jurisdiction of the commercial court.

**4. How to submit an application for an EOP.** Art. 7(5) EOP Reg. provides that: “The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin”. Furthermore, Art. 7(6) EOP Reg. provides that the application shall be signed by the claimant or, where applicable, by his representative, and that where the application is submitted in electronic Form in accordance with par. 5, it shall be signed in accordance with Art. 2(2) of Directive 1999/93/EC. However, the last requirement does not apply if the Member State of origin has set up an electronic communications system which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner.

Even though the communication made by France under Art. 29(1)(c) states that: “Applications for European orders for payment may be submitted to the relevant court by post or electronically”<sup>7</sup> Art. 1424-2 CCP provides that “The application form for a European order for payment is delivered or sent by post to the court registry”. Therefore, French courts only allow initial applications for

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<sup>7</sup> ‘European e-Justice Portal - European payment order’, <[https://e-justice.europa.eu/353/en/european\\_payment\\_order?FRANCE&member=1](https://e-justice.europa.eu/353/en/european_payment_order?FRANCE&member=1)> accessed 11 July 2022.



an EOP to be filed in person (by the claimant or one of their representatives) or by post.

Furthermore, Art. 1424-4 CCP provides that the application form is part of the record that the court clerk must keep at the court registry.

Regarding the language of the application, the French Ministry of Justice indicated, in a Circular dated 26 May 2009<sup>8</sup>, that the forms set out in the EPO Regulation should be filled out in French but that competent courts can accept them in a different language, provided the information is completed in French.

**5. Appendix to the application.** Pursuant to Art. 7(4) EOP Reg., the claimant may indicate to the court whether s/he opposes a transfer to civil proceedings within the meaning of point (a) or point (b) of Art. 17(1) EOP Reg. in the event of opposition by the defendant. Alternatively, the claimant may also indicate which, if any, of the procedures listed in points (a) and (b) of Art. 17(1) EOP Reg. s/he requests to be applied to his claim in the subsequent civil proceedings in the event that the defendant lodges a statement of opposition against the European order for payment. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.

There are no specific rules concerning the submission of a declaration made under Art. 7(4) EOP Reg. Presumptively, claimants should exercise their right of option by filling out Appendix 2 to the application for a European Order for Payment set out in standard Form A and submitting it to the court clerk in accordance with the provisions of Art. 1424-2 CCP.

Under French national law, the “appropriate national civil procedures” correspond to the ordinary procedures applicable before the court before which the EOP application has been filed (chamber for the protection of vulnerable

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<sup>8</sup> *Circulaire de la DACS C3 06-09 du 26 mai 2009 relative à l'application du règlement (CE) No 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer*, <[http://www.textes.justice.gouv.fr/art\\_pix/boj\\_20090004\\_0000\\_0016.pdf](http://www.textes.justice.gouv.fr/art_pix/boj_20090004_0000_0016.pdf)> accessed 11 July 2022.



adults, Regional Court, or Commercial Court). Alternatively, the claimant may request the application of Arts 1382-1391 CCP, implementing the European Small Claims Procedure into French national law.



## **B. Conduct of the procedure before the court**

**1. Examination of the application.** Pursuant to Art. 8 EOP Reg., The court seized on an application for an EOP shall examine, as soon as possible and on the basis of the application form, whether the claim falls within the scope of the EOP procedure, whether the application complies with the requirements set out in Art. 7 EOP Reg., and whether the claim appears to be founded. Furthermore, the Regulation makes clear that the examination of an application for an EOP need not be carried out by a judge and, under Art. 8 EOP, may take the Form of an automated procedure (EC PG III.1.2).

France has not enacted any specific rule concerning the initial examination of EOP applications. Accordingly, the court clerk transmits the application upon receipt to the judge responsible for dealing with EOP applications within the relevant court, and the application is examined case-by-case.

**2. Completion and rectification.** If the application for an EOP does not meet the requirements of Art. 7 EOP Reg., i.e., it is incomplete or contains an error, the court which has jurisdiction shall give the claimant the opportunity to complete or rectify the application (see Art. 9 (1) EOP Reg.) using the standard Form B as set out in Annex II (EC PG III.5.1.1.). Where the court requests the claimant to complete or rectify the application, it shall specify a time limit it deems appropriate in the circumstances. The court may, at its discretion, extend that time limit (EC PG III.2.1.)<sup>(9)</sup>.

French law does not contain any specific rule concerning requests for completion or rectification of EOP applications. Presumably, the court clerk will therefore communicate the court's request by notifying standard Form B to the claimant, following the ordinary rules set out in Arts 665 ff CCP. Furthermore, these communications may be carried out through electronic means provided that the requirements set out in Arts 748-1 ff CCP are met (this is the case, in particular, where the applicant is represented by a lawyer or where they have

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<sup>9</sup> See also EC PG III.5.1.1.





expressly consented to electronic communications in the course of the proceedings).

**3. Modification of the application.** If the requirements are met for only part of the claim, the court shall inform the claimant to that effect. The claimant shall be invited to accept or refuse a proposal for an EOP for the amount specified by the court and shall be informed of the consequences of his decision, by using form C.

**a. Acceptance of the proposal.** If the claimant accepts the court's proposal, the court shall issue an EOP for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law (EC PG III.2.1.)<sup>(10)</sup>.

**b. Time limits.** The claimant shall reply within the time specified by the court (see Art. 9(2) EOP Reg.) using standard form C. If the claimant fails to send his reply within the time limit specified by the court, the court shall reject the application in its entirety. See above §2 "Completion and rectification".

In France, the only provision concerning the modification of the application is Art. 1424-3 CCP, which states that: "The judge may issue a European payment order for part of the claim, after the claimant has accepted the judge's proposal to this effect. In this case, the claimant can no longer take legal action to claim the remaining amount, unless he does not serve the order and proceeds according to the ordinary rules".

Accordingly, communications between the court and the applicant should be carried out handled by the court registry in accordance with the rules set out above (see **pt III.B.2**).

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<sup>10</sup> See Art. 10 EOP Reg.





Furthermore, the creditor should not be allowed to sue for the remaining part of the initial claim unless they renounce to the EOP by not serving it to the debtor.

**4. Rejection of the application.** The court shall reject the application, using form D, if: (i) the requirements set out in Art. 2, 3, 4, 6 and 7 EOP Reg. are not met; or (ii) the claim is clearly unfounded; or (iii) the claimant fails to send his reply (in response to the court's proposal to modify the application) within the time limit specified by the court; or (iv) the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, in accordance with Art. 10 EOP Reg. The claimant shall be informed of the grounds for the rejection (EC PG III.2.2.).

If the court rejects the application, the court clerk notifies the refusal to the claimant following the ordinary rules described above (see **pt III.B.2**). Art. 1424-4 CCP provides that the original of the refusal and the application are kept at the registry.

### **C. Issuing & serving the EOP**

**1. Completion of Form E.** Once the application (Form A) has been lodged and, if necessary, duly modified or rectified at the court's request, the court issues the EOP using form E as set out in Annex V when, if applicable, the relevant court fees have been paid (EC PG III.3.1.).

France did not enact any specific provisions concerning the judge's issuance of the initial EOP using standard form E.

Before commercial courts, the claimant is required to settle the applicable court fees (see **pt III.A.1.c**) when filing of the initial application.



**2. Service of the EOP on the defendant.** The EOP has to be served on the defendant in accordance with the national law of the Member State of origin. However, such a method has to meet the requirements set as minimum procedural standards in the Regulation (Art. 13 to 15 EOP Reg.). In general, two types of service are possible: either service with proof of receipt by the debtor (Art. 13 EOP Reg.) or service without proof of receipt by the debtor (Art. 14 EOP Reg.); each of them can be used in relation to the defendant's representative (EC PG III.3.3.). Additionally, Form E reminds the defendant of his rights and options (EC PG III.3.1.).

In France, Art. 1424-5 of the Code of Civil Procedure provides that a certified copy of the application form and the decision shall be served, at the initiative of the claimant, on each of the defendants, together with a copy of the standard form F set out in Annex VI of the EOP Regulation. According to Art. 1424-5 of the Code, service should be made by "*signification*", i.e. by the judicial officer pursuant to the rules set out in Art. 653 to 664-1 of the French Code of Civil Procedure.

The same provision also specifies that, under penalty of nullity, the notification shall contain: - an indication of the court before which the opposition must be brought, of the time limit and of the forms in which it must be made; - a warning to the defendant that if he fails to lodge an objection within the time limit indicated, he may be required to pay the sums claimed by all legal means; and - information the defendant of his right to apply for a review of the European order for payment before the court that issued it, after expiry of the time limit for opposition, in the exceptional cases provided for in Art. 20 of the EOP Reg.

Furthermore, Art. 1424-6 of the French Code of Civil Procedure also provides that any time that the EPO is served personally on the defendant, the judicial officer must verbally bring to his attention the relevant information laid out in the standard Form and the points mentioned in Art. 1424-5, and that the accomplishment of this formality must be mentioned in the notification.

Finally, Art. 1424-7 of the same Code also provides that the judicial officer shall send a copy of the writ of service to the court of origin.



#### **D. Opposition (defendants' rights/options)**

**1. Opposition to the EOP.** A defendant can lodge a statement of opposition to the EOP by making use of Form F in accordance with Art. 16 EOP Reg. It is not necessary for the defendant to give reasons for his/her opposition. The statement of opposition should be sent within 30 days of service of the order on the defendant. The period is calculated in accordance with Council Regulation (EC) No 1182/71 determining the rules applicable to periods, dates and time limits (OJ. EC 1971 L 124/1) (EC PG III.4.1.)<sup>(11)</sup>. The statement of opposition should be submitted in either paper form or by any other means of communication, including electronic, accepted in the Member State of origin and available to the court of origin. The statement of opposition can also be made by a representative of the defendant (*ibid.*).

Pursuant to Art. 1424-8 CCP, the opposition should be lodged with the court of origin and should be filed either in person or by mail addressed at the court registry. The opposition should be lodged in French. However, the respondent may use the multilingual dynamic forms published on the e-Justice Portal<sup>12</sup>. Legal authors have raised doubts about the possibility of filing an opposition without using standard form F<sup>13</sup>.

**2. Effect of the lodging of a statement of opposition.** In accordance with Art. 17(1) EOP Reg. if a defendant submits an admissible statement of opposition the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Under Art. 7(4) EOP Reg. the claimant can make such a request at any time until the EOP is issued (see *supra*, pt. 5). In accordance with Art. 17(2) EOP Reg. the transfer to ordinary civil proceedings is governed by the law of the Member State of origin. Nothing under national law shall prejudice the claimant's position in any subsequent ordinary civil proceedings (EC PG III.4.1.).

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<sup>11</sup> See also EC PG III.5.2.1.

<sup>12</sup> 'European e-Justice Portal - European Payment Order forms' (cit n 5).

<sup>13</sup> Guillaume Payan, 'Injonction de payer européenne' Répertoire Dalloz procédure civile, no 122.



France implemented the rules applicable to the effects of opposition in Arts 1424-9 to 1424-13 CCP.

According to Art. 1424-9 CCP, the court shall rule on the initial claim and all incidental claims and defenses on the merits within the limits of its jurisdiction. Where it decides that it lacks jurisdiction to hear the claim, the court shall refer the case to the competent court following the ordinary rules laid down in Art. 82 CCP.

Furthermore, Art. 1424-10 CCP provides that, upon receipt of the opposition, the court clerk then convenes the parties to the hearing by a registered letter with acknowledgement of receipt. This letter is addressed to all the parties, including those who did not oppose the EPO.

However, Art. 1424-11 CCP provides that the court shall terminate the proceedings and declare the EOP null and void if none of the parties appears at the hearing. Otherwise, the court's decision replaces the original EOP and is subject to appeal following the ordinary rules of French civil procedure. The termination of proceedings according to Art. 1424-11 CCP does not prevent the creditor to file a new claim before the appropriate forum (see Art. 385 CCP).

Finally, Arts 1424-12 and 1424-13 CCP provide that, in case of opposition, the court's judgment replaces the original EOP and is subject to the ordinary appeal or to appeal in Cassation, depending on the value of the dispute.

**3. Enforceability.** If no statement of opposition is lodged within the 30-day period the EOP is declared enforceable, subject to the court allowing sufficient time for the statement of opposition to arrive. (EC PG III.4.1.). The court will use Form G to declare that the EOP is enforceable and will send this to the claimant (*ibid.*). In accordance with Art. 18(2) EOP Reg., the formal requirements for enforceability are governed by the law of the Member State of origin (*ibid.*).

In France, Art. 1424-14 CCP provides that: "When no opposition has been lodged within the time limit, and after taking into account an additional period of ten days necessary for the forwarding of the appeal, the clerk of the court shall declare the European order for payment enforceable by means of the form



provided for that purpose and shall affix to the European order for payment the execution formula”.

In this respect, the Circular of the Ministry of Justice dated 26 May 2009<sup>14</sup> specifies that the court clerk should affix the national execution formula on the initial EOP (standard form E), which should then be delivered to the claimant together with standard form G, containing the declaration of enforceability necessary for enforcing the EOP in another Member State.

### ***E. Possible remedies/defences for the parties***

1. **Remedies available to the claimant.** See *supra*, pts. (B) 2-4.
2. **Lodging of a statement of opposition.** See *supra*, pts. (D) 1-2.
3. **Review in exceptional cases in the Member State of origin (Art. 20(1) EOP Reg.).** Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin in the following cases:
  - a. The order was served by one of the methods provided for in Art. 14 EOP Reg., i.e. without proof of receipt by the defendant, and service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his or her part.

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<sup>14</sup> *Circulaire de la DACS C3 06-09 du 26 mai 2009 relative à l'application du règlement (CE) No 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer*, <[http://www.textes.justice.gouv.fr/art\\_pix/boj\\_20090004\\_0000\\_0016.pdf](http://www.textes.justice.gouv.fr/art_pix/boj_20090004_0000_0016.pdf)> accessed 11 July 2022.



- b. The defendant was prevented from objecting to the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part, provided in either case that he acts promptly (EC PG III.5.2.2.).

**4. Review in the Member State of origin where the European Order for Payment was wrongly issued (Art. 20.2 EOP Reg.).** Once the 30-day period for lodging a statement of opposition has expired, the defendant shall be entitled to apply for a review of the EOP before the competent court in the Member State of origin where the order was clearly wrongly issued, having regard to the requirements laid down in the Regulation, or due to other exceptional circumstances (EC PG III.5.2.3.).

According to Art. 1424-15 CCP, the procedure for review in exceptional cases is subject to the same rules governing the opposition procedure set out in Arts 1424-8 to 1424-13 CCP (see above). Therefore, in France, review applications must be submitted to the same court that would have been competent if the opposition had been timely filed.

Concerning the interpretation of the requirements laid out in Art. 20(1) EOP Reg., recent case law suggests that debtors who want to avail themselves of the review procedure must overcome a presumption that compliance with the requirements set out in Art. 14 EOP Reg. sufficiently protects their right of defence. In a judgment issued on 17 January 2019, the Douai Court of Appeal (Cour d'appel de Douai, ch. 2 section 2, 17.01.2019, No 16/03957) held, for instance, that Art. 20 EOP Reg. should not be construed to provide the debtor with a second opportunity to oppose the claim, and that where service of the initial EOP was in accordance with the requirements of Art. 14 of the EOP Reg. the debtor could not simply argue that it had not had sufficient time to organize its defence, but had to provide additional evidence of force majeure or other extraordinary circumstances..



**5. Remedy in case of lack of service of the initial EOP.** In cases C-119/13 and C-120/13, the European Court of Justice held that the procedures laid down in Art. 16 to 20 EOP Reg. are not applicable where it appears that a EOP has not been served in a manner consistent with the minimum standards laid down in Art. 13 to 15 EOP Reg.<sup>(15)</sup>.

According to the judgment of the CJEU in cases C-119/13 and C-120/13, the procedures set out in Arts 16-20 EOP Reg. are not applicable where it appears that the service of the initial order did not comply with the minimum standards laid down in Articles 13 to 15 of the Regulation. According to the CJEU, in fact: “where it is only after a European order for payment has been declared enforceable that such an irregularity is exposed, the defendant must have the opportunity to raise that irregularity, which, if it is duly established, will invalidate the declaration of enforceability” .

Even though Arts 1424-1 to 1424-15 CCP are silent on this issue, the defendant might seek a leave from the court to be allowed to oppose the EOP in accordance with Art. 540 CCP. Specifically, this article provides that when a decision has been issued without the defendant entering an appearance, the president of the court competent to hear the opposition may allow a challenge if: “the defendant, without any fault on his part, did not learn of the judgment in time to exercise his recourse, or if he found it impossible to act”.

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<sup>15</sup> CJEU, 4 September 2014, in cases C-119/13 and C-120/13, *eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy*, and *Raiffeisenbank St. Georgen reg. Gen. mbH v Tetyana Bonchuk*.





## IV. Recognition and enforcement of EOP in other Member States

When France is the Member State of enforcement

**1. Competent authorities and applicable law.** The authorities in the Member State of enforcement cannot review the circumstances or procedures that led to the issuing of the order except in the situations provided for by Arts. 22 and 23 (see *below*). No review as to the substance is allowed in the Member State of enforcement (EC PG IV.1.). The procedure for enforcement is governed by the law of the Member State of enforcement, without prejudice to the provisions of the Regulation (*ibid.*). The claimant must apply for enforcement to the court or authority competent for enforcement in the Member State where enforcement is required (EC PG IV.2.).

According to Art. 503(1) CCP “Judgments can only be enforced against those against whom they are issued after they have been served, unless enforcement is voluntary”.

In a judgment issued on 27 February 2020, the Paris Regional Court (Tribunal judiciaire de Paris, 27.02.2020, No 20/80041) vacated a third-party debt order carried out by a creditor on the basis of a foreign EOP because the creditor had not served the order (Form E) accompanied with the declaration of enforceability (Form G) on the debtor prior to the first enforcement measure.

**2. Documents for enforcement.** The claimant should provide the competent court or authority with a copy of the order, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity, and a declaration of enforceability (form G) (EC PG IV.2.).

**3. Languages and translations.** The claimant may be required to provide a copy of the EOP in a different language from that used by the court of origin. As a general rule the EOP should be provided in the official language, or one of the official languages, of the Member State of enforcement unless that Member State





has indicated that it will accept orders in another official language or languages of the European Union. Details of which languages are accepted by each Member State are available on the European Judicial Atlas. When checking the details a claimant should also bear in mind that in Member States where there is more than one official language it may be necessary to provide a translation into the language specified for a particular part or region of that Member State. Any translation shall be certified by a person qualified to do so in one of the Member States (EC PG V.3.).

According to the Circular of the Ministry of Justice dated 26 May 2009<sup>16</sup>, French enforcement authorities may accept declarations of enforceability issued through standard form G in French, English, German, Spanish, and Italian. However, it has to be noted that this provision does not concern the enforceable EPO itself, which is established using standard form E. This rule should not affect the debtor's right to refuse to accept a document under Art. 12 of the Service Regulation 2020/1784.

In cases where a translation is required, the creditor should contact an accredited translator. An updated list of the accredited translators is maintained by each Court of Appeal and is accessible online on the French Ministry of Justice website<sup>17</sup>.

The costs vary depending on the length of the document and the languages involved. If the translation concerns the contents of a foreign judgment or certificate into French and is necessary to enforce the creditor's rights, the creditor may recover translation costs during the enforcement proceedings.

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<sup>16</sup> *Circulaire de la DACS C3 06-09 du 26 mai 2009 relative à l'application du règlement (CE) No 1896/2006 du Parlement européen et du Conseil du 12 décembre 2006 instituant une procédure européenne d'injonction de payer*, <[http://www.textes.justice.gouv.fr/art\\_pix/boj\\_20090004\\_0000\\_0016.pdf](http://www.textes.justice.gouv.fr/art_pix/boj_20090004_0000_0016.pdf)> accessed 11 July 2022.

<sup>17</sup> 'Traduction d'un document : comment trouver un traducteur agréé ? | Justice.fr', <<https://www.justice.fr/fiche/traduction-document-trouver-traducteur-agree>> accessed 16 June 2022.



**4. Application for refusal of enforcement under Art. 22 EOP Reg.** The defendant has the possibility to apply for a refusal of enforcement if one of the grounds for refusal set out in Art. 22 EOP Reg. apply (see EC PG IV.4.1.).

In the absence of any specific provisions implementing the enforcement procedure of a EOP in France, and absent any declaration made by the French government pursuant to Art. 28 EOP Reg., any application for refusal, stay or limitation of enforcement shall be lodged before the enforcement judge (*juge de l'exécution*). In principle, the debtor has an option to file the application either before the court of the place of his domicile or before the court where the enforcement measure has been carried out.

Except where the circumstances require that an urgent measure be taken *ex parte*, the procedure is adversarial in nature, meaning that the debtor has the duty to serve the application on the defendant, and that the court will rule on it only after a hearing has been held in the presence the parties. Pursuant to Art. R121-14 of the Code of Civil Enforcement Procedures and unless otherwise indicated, the judgments issued by the enforcement judge have the authority of *res judicata* as to the claims they settle. Since 1 January 2020, the parties must be represented by a lawyer unless otherwise provided by law.

**5. Stay or limitation of enforcement Art. 23 EOP Reg.** The defendant may apply for a stay or limitation of enforcement of the EOP (see Art. 23 EOP Reg.) where the defendant has applied for a review within the meaning of Art. 20 EOP Reg. In such cases, the competent court in the Member State of enforcement may: (i) limit the enforcement proceedings to protective measures; or (ii) make enforcement conditional on the provision of such security as it shall determine; or (iii) under exceptional circumstances, stay the enforcement proceedings (see EC PG IV.4.2.).

In the absence of any specific provisions implementing Art. 23 EOP Reg. into French domestic law, applications made under this provision should be filed before the French enforcement judge by the person against whom enforcement is sought within the context of a challenge directed against a concrete protective or enforcement measure that has been carried out against them. The procedure



is adversarial, and the powers of the enforcement judge arguably depend on the different possible scenarios:

- Firstly, the possibility of limiting the enforcement proceedings to protective measures seems to be quite narrow in light of the extrajudicial nature of French enforcement measure. In principle, the enforcement judge has the power to order the release of any unnecessary or abusive measure and to order the creditor to pay damages in case of abuse (Art. L121-2 CCEP). However, this power does not necessarily extend to converting an existing enforcement measure into a protective one; more plausibly, the person against whom enforcement is sought will rather sought a delay in accordance with Art. R121-1 CCEP. If the judge grants the request, no enforcement measure can be carried out during this time, but the creditor has the right to seek conservatory measures (see Art. 513 CCP);
- In some cases, the French enforcement judge should nonetheless have the possibility to make enforcement conditional on the provision of such security as it shall determine, at least in some specific cases. In particular, Art. L512-1 CCEP allows the enforcement judge to replace a conservatory measure that has already been carried out with “any other measure appropriate to safeguard the interests of the parties”. Furthermore, it is also important to mention that, under the same provision, “The posting of an irrevocable bank guarantee in accordance with the measure requested in the provisional attachment shall entail the release of the measure, subject to the provisions of Art. L511-4 CCEP”;
- Finally, even though the enforcement judge may neither modify the terms of the court decision on which the proceedings are based, nor suspend its enforceability of the decision, they have the power to grant a delay to the person against whom the enforcement is sought. During this time, no enforcement measure can be carried out by the creditor (Art. R121-1 CCEP). The delay is discretionary and subject to the provisions laid out in Art 1343-5 CC and Arts 510 to 513 CCP; it cannot exceed two years; it does not prevent the creditor from seeking conservatory measures.