



Towards more Effective  
enFORcemenT of claimS in civil  
and commercial matters within  
the EU EFFORTS

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# EFFORTS Practice Guide for the application of the Regulation on the European Order for Payment - Belgium

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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 Belgium. 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 Belgium of EOPs rendered in another Member State (0).*

## 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.

In Belgium, the Civil Code defines domicile as the place where a person has her/his principal establishment, according to Artt. 102-111 Belgian Civil Code (hereinafter B.C.C.)<sup>3</sup>.

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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”.

<sup>3</sup> Belgian references of domicile:

- Civil Code, Articles 102 et s, 1837, 2018.
- BJC, Articles 689, 751, 836, 855, 682, 751, 973.
- Décret n°2007-1124 du 20 juillet 2007, sur la domiciliation des personnes sans domicile stable.
- Décret n°2016-632 du 19 mai 2016, relatif au lien avec la commune pour la domiciliation.

### III. The EOP procedure

When BE is the Member State of origin

#### A. Application for an EOP

1. **Amount claimed.** Pursuant to Article 7 EOP Reg., an application for a 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 have 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.).

Art. 31 Belgian Judicial Code (hereinafter: BJC): "A dispute is indivisible, within the meaning of Articles (735, § 5, 747, § 2, paragraph 7), 1053, 1084 and 1135, only when the joint enforcement of the separate decisions to which it would give rise would be materially impossible"<sup>4</sup>.

On 27 October 2021, the Federal Public Service (SPF) published a notice with updated interest rate for late payment. According to the notice, the interest rate is set at 4% for the 2022 calendar year, which is as same as the 2021 calendar year.

The government sets the statutory interest rate each year. The court can increase or lower the percentage, considering the significance of the failure or delay and other circumstances of the specific case.

Statutory interest in civil and commercial matters applies by default. The parties may agree on an interest rate. In Belgium there are different types of 'statutory' interest.

#### A. Default interests - Compensatory interests

It is fixed annually according to the calculation method specified by the law, and the General Administration of the Treasury of the FPS Finance publishes in the Belgian Official Gazette, during the month of January of each year, the legal interest rate applicable during the current calendar year. It applies from the date of the notice of default ('summons to pay', see Article 1153 of the Civil Code) in contractual matters (hence the term 'default interest'), or from the date on which the damage occurred for compensation for non-contractual damage (in this case 'compensatory' interest). It is also

<sup>4</sup> Law 2007-04-26/71, art. 3, 009; In force: 22-06-2007.

the rate of so-called 'judicial interest', applicable from the date of the judgment ordering payment of a sum, unless another specific rate (contractual, commercial) is mentioned in the judgment.

#### **B. *Interests applicable on late payments***

The interest applicable on late payments in commercial transactions mainly between companies is, however, significantly higher.

In case of late payment and unless the parties agreed otherwise, interest is due automatically from the day following the end of the period for payment and without the necessity of prior notice. The interest rate is currently 8%.

As for commercial transactions, the late payment interest is called "commercial interest", set pursuant to the Law of 02/08/2002 on combating late payment in commercial transactions, amended by the Law of 22 November 2013 (M. B. 10/12/2013) (legislation enacted pursuant to Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, replacing Directive 2000/35/EC of 29 June 2000).

This interest has the particularity of applying by right, i.e. without the need to have addressed a formal notification, to commercial transactions. But always on a supplementary basis, i.e. without prejudice to the freedom of the parties to have agreed on another rate or method of calculation.

The law refers to commercial transactions as 'any transaction between undertakings or between undertakings and public authorities, leading to the supply of goods, the provision of services or the design and execution of public works and construction and civil engineering works for a consideration...!.

Moreover, it must be borne in mind that interest accruing subsequent to the court application may be claimed either in the proceedings concerning the principal debt or in another claim subsequently brought.

#### **C. *Other specific rates***

Specific interest rates are also set by law in fiscal and social matters (Law of 05.05.1865: both are set (by legal amendment of 27.12.2006) at 7%, unless changed by a Royal Decree passed in the Council of Ministers).

The 'legal interest' derives from the law of 05 May 1865 on interest-bearing loans, M.B. 15/08/1865 (amended).

### **COSTS**

In Belgium, the charges that the claimant of a European payment order may include in the amount claimed and to be settled, according to the same procedure, are the following:

- before the justice of the peace, the applicant must pay a court registry fee (35 € - Art. 269 of the Code of registration fees, mortgage, and clerk's office fees).
- before the Court of First Instance, the Commercial Court or the Employment Tribunal, he must pay a court registry fee which is 82 € and a pleading fee of 2.50 € (in case of intervention of a lawyer).

There is no specific national rule regarding the inclusion in the amount claim of representative costs or prelitigation costs. About the practices in this field, it is to underline that in the EOP procedures, the creditor only must pay the court fee and, as the plaintiff's counsel does not have to appear in court, the costs of legal representation or pre-litigations ones, shall also be lower.

**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>5</sup>).

In the EPO application it is necessary to indicate in the form the documents demonstrating the basis of the application.

According to article 1338 BJC, the claim must be supported by a writing from the debtor. This writing does not necessarily have to be an acknowledgement of debt.

According to Belgian national law, the application for a summary payment proceeding is governed by articles 1338-1342 BJC.

The petition is preceded by a summons to pay, either served on the debtor by a bailiff's writ or sent by registered letter with acknowledgement of receipt.

The letter or writ must contain, in addition to the reproduction of the articles of this chapter, a formal demand to pay within fifteen days of the sending of the letter or service, the amount claimed and the indication of the judge who, in the absence of payment by the debtor, will be seized of the claim.

All of this shall be null and void.

Art. 1339 BJC. Within fifteen days of the expiry of the period provided for in article 1339, the claim is addressed to the judge by petition in duplicate, containing

1° an indication of the day, month and year

2° the surname, first name [2 ...]2 and domicile of the petitioner, as well as, where applicable, [1 his national register number or company number and]1 the surname, first name, domicile and capacity of his legal representatives;

3° (the object of the claim and the precise indication of the amount of the sum claimed with a breakdown of the various elements of the claim as well as the basis for the claim;)

4° the designation of the judge who is to hear it;

5° the signature of the party's attorney.

If he considers it appropriate, the petitioner shall indicate the reasons for which he objects to the granting of (periods of grace). Attached to the petition shall be:

1° a photocopy of the writing that serves as the basis for the request;

2° either the writ, or the copy of the registered letter to which is attached the acknowledgement of receipt, or the original of this letter to which is attached the proof of the refusal of receipt or the non-reclaim at the post office and a certificate establishing that the debtor is registered at the address indicated in the population registers.)

Art.1341 BJC. The petition shall be filed with the clerk's office, stamped on its date by the clerk and entered in a register kept for that purpose. It shall be placed in the file of the proceedings, as well as any communication addressed to the judge by the debtor, if any. It may also be sent by the lawyer to the clerk's office.

The request must be sufficiently detailed. Article 1340, first paragraph, point 3, BJC provides that the request must mention the object of the claim and the precise amount of the sum claimed with a breakdown of the various elements of the claim as well as the basis of the claim.

“*Ex officio*” review of the contractual terms in case of consumer contracts in Belgium

<sup>5</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*.

Under Belgian law, unfair terms are prohibited and void.

The CJEU has recognized that national courts have the power, and even the obligation, to raise of their own motion the unfairness of a term contained in a consumer contract (the "*ex officio*" doctrine). According to the CJEU's case-law, the court may find the unfairness "*ex officio*" without the consumer having to apply for it and draw all the consequences provided by national law<sup>6</sup>.

This obligation for the court to intervene of its own motion is justified as follows:

the objective pursued by Article 6 of the Directive 93/13/CEE, which obliges member states to provide those unfair terms do not bind consumers, could not be achieved if consumers were obliged to raise the unfairness of such terms.

When it deems a term abusive, the court must therefore annul it, unless the consumer objects. It is indeed possible for him, in the full knowledge of his rights, to renounce it, which again excludes any advance waiver.

Applying the "*ex officio*" doctrine to payment orders, it is to underline that the structural problem of default procedures and payment orders results from their basic framework; that is to say, these proceedings are initiated by the creditor against the consumer, usually for the non-payment of a debt arising out of a consumer contract. Often, the consumer does not defend the case (giving rise to the situation of the default judgment) or can only defend the case when the enforceable title (the payment order) has already been issued. Here, the question arises as to whether the possibility to advance a defence against the claim entails an effective remedy which also permits a full review of the validity of the consumer contract. The issue has been often raised in payment order proceedings where experience shows that consumers rarely use the review procedures.

In Belgium, there is an ongoing debate among judges, lawyers and academics as to whether all rules or only those of a public order nature should be invoked *ex officio* in default proceedings; the BJC provides (Art.806) that only the latter should be engaged. The situation also remains unclear in unilateral proceedings. The discussion is a broader one concerning the nature of consumer protection rules – whether or public order/protective nature (in respect of which traditionally on the former – a category into which consumer law did not fall – could be examined *ex officio*) – is therefore significant, for ordinary, default and unilateral proceedings.

**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 but does not lay out any rules of territorial competence allocating cases among the competent national authorities.

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<sup>6</sup> This judgment confirms a series of ECJ decisions: *Océano Grupo Editorial SA v Murciano Quintero*, C-240/98-C-244/98, [2000] Rec CE I-4963 [ *Océano* ]; *Cofidis SA v Fredout*, C-473/00, [2002] Rec CE I-10898; *Pannon GSM Zrt v Sustikné Győrfi*, C-243/08, [2009] Rec CE I-04713.



Belgium has five first instance courts: Justices of the Peace, Police Courts, Courts of First Instance, Commercial Courts and Labor Courts. There is one Justice of the Peace in each judicial canton, which is the smallest geographical subdivision of the country for judicial purposes.

The Justice of the Peace has a general jurisdiction over all claims that do not exceed 5,000 EUR.

It is regarded as a small claims court. Every judicial district counts one or more Police Courts<sup>7</sup>.

By law of July 11, 1994<sup>8</sup>, the Police Court has been provided with jurisdiction in civil matters, in addition to its traditional criminal jurisdiction. The Police Court is a traffic court. It deals with all compensatory claims, irrespective of their value, regarding traffic accidents, even when the accident happened in a place closed to the public. Before 1994, the other first instance courts (e.g., the Courts of First Instance) had jurisdiction over traffic accidents. This led to a judicial backlog in the Courts of Appeal. To eliminate this, the Police Courts were created. Their decisions can be appealed before the Court of First Instance and not before the Courts of Appeal.

The Civil Court has the power to adjudicate all claims, except for the ones that are to be brought directly before the Court of Appeal or the Court of Cassation<sup>9</sup>. It can judge cases belonging to the specific jurisdiction of another court (for example, the Justice of the Peace) as well as adjudicate disputes for which no other court or tribunal has jurisdiction. Hence, the Civil Court is said to dispose of a full general jurisdiction.

The Commercial Court (Tribunal de Commerce/ Rechtbank van Koophandel) consists of two kinds of judges: professional judges and lay judges. The latter are nominated by the various associations representing commerce and industry.

The Labor Courts (Tribunal de Travail/ Arbeidsrechtbank) are structured in the same way as the Commercial Courts, in the sense that they consist of professional and lay judges. The latter compromise employers as well as employees and self-employed people. The Labor Court has jurisdiction with regard to matters of labor law as well as social security law<sup>10</sup>.

In accordance with the respective jurisdiction under the Belgian BJC, the competent courts are:

- The justice of peace (Vrederechter/Juge de la paix/Friedensrichter)<sup>11</sup>,
- The Court of First Instance (Rechtbank van Eerste Aanleg/Tribunal de première instance/Gericht Erster Instanz)<sup>12</sup>,
- The police court (Politie rechtbank/Tribunal de police/Polizeigericht)<sup>13</sup> for disputes under Article 1338 BJC,
- The Commercial Court (Ondernemingsrechtbank/Tribunal de l'entreprise/Unternehmensgericht)<sup>14</sup>,
- The Labour Tribunal (Arbeidsrechtbank/Tribunal du travail/Arbeitsgerichtshof)<sup>15</sup>.

**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,

<sup>7</sup> There are 34 Police Courts.

<sup>8</sup> Loi du 11 juillet 1994 relative aux tribunaux de police et portant certaines dispositions relatives à l'accélération et à la modernisation de la justice pénale, Moniteur Belge, 21 juillet 1994, 19117.

<sup>9</sup> Article 568 of the Belgian BJC.

<sup>10</sup> Article 578 of the Belgian BJC. The Labor Court has no jurisdiction with regard to collective labor law, being conflicts that go beyond the individual employer-employee relationship, such as a strike, a lockout, etc. The Belgian legislator preferred that these disputes would be solved by means of negotiations and has therefore decided to keep those disputes away from the judiciary as a whole. Hence, no court has jurisdiction in this field. See on labor law in Belgium: Roger Blanpain, Labour Law in Belgium (5th ed., Wolters Kluwer 2012).

<sup>11</sup> See Articles 590-601 BJC.

<sup>12</sup> See Articles 568-583 BJC.

<sup>13</sup> See Articles 601bis-601ter BJC.

<sup>14</sup> See Articles 573-576 BJC.

<sup>15</sup> See Articles 602-607 BJC.



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.

In Belgium the only means of communication accepted for the purposes of this Regulation and available to the courts are (i) delivering an application for a European payment order using the model form A in Annex I, directly to the registry of the court which has jurisdiction or (ii) sending the application for a European payment order using form A, by registered post to the court which has jurisdiction. Other means of communications (including electronic) may be used if they are available to the court of origin.

The application is signed by the claimant or, where allowed, by his representative. The application submitted in electronic form should be signed in accordance with Art. 2(2) of Directive 1999/93/EC of 13 December 1999 on a community framework for electronic signatures. This signature is recognized in Belgium, as the Regulation provides that it is not possible to introduce additional requirements. However, such electronic signature is not required if and to the extent that an alternative electronic communications system exists in the Belgian courts, and which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner.

**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.

In Belgium, the transition to the internal ordinary civil proceedings has not been specifically ruled. So, where a statement of opposition is lodged by the defendants, the proceedings continue “before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event”.

If the claimant has explicitly stated, in the application form, that s/he opposes the transfer to ordinary civil proceedings, the procedure terminates.

In the absence of such a statement in the application form, the procedure continues as substantiated proceedings in accordance with the rules for national procedures.

In any case, in accordance with Art. 17 (3) of the Regulation, the clerk sends a registered letter to the parties to inform them about the statement of opposition and summon the parties to a hearing. The judge rules upon the initial claim and any incidental claims. At the end of the proceedings, the judge issues his decision, which replaces the European order for payment. Legal representation is not compulsory but strongly recommended when proceedings are conducted before the Court of First Instance, the Commercial Court or the Employment Tribunal. In Belgium, no supplementary conditions have been introduced to apply Art. 20 of the Regulation.

## ***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).

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

The Court may: a) invite the claimant to complete his application within a given time limit (form B) or to accept the proposal of a partial order to pay (form C); b) reject the application (form D) for one of the reasons restrictively listed by the regulation, and which must be notified to the claimant through a specific form. (There is no right of appeal against the rejection of the application.); c) issue a European order for payment (form E).

According to national rules, if the applicant lives in Belgium, these forms are sent to the applicant by ordinary letter, in accordance with the Belgian BJC.

If the applicant lives in another Member State, these forms are served in accordance with Regulation (EC) no 1393/2007 on the service and notification in Member States of judicial and extrajudicial documents in civil or commercial matters. Clerks of justice of peace, clerks of the Court of First Instance, clerks of the Commercial Court and clerks of the Employment Tribunal are transmitting agencies. As such, they transmit the documents to be served to the receiving agency of the Member State of the applicant. This transmission is free of charge.

**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>(16)</sup>.

There are no specific national rules or practices regarding these profiles. In any case, one can certainly turn to the Judge who issued the decision.

**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>(17)</sup>. In such cases does national law prevent the claimant from filing a new claim/action with respect to the remaining part of the initial claim?

<sup>16</sup> See also EC PG III.5.1.1.

<sup>17</sup> See Art. 10 EOP Reg.

- 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”.*

As specified above (B.1), the Court may invite the claimant to accept the proposal of a partial order to pay (Form C). If the applicant lives in Belgium, these forms are sent to the applicant by ordinary letter, in accordance with the Belgian BJC.

If the applicant lives in another Member State, these forms are served in accordance with Regulation (EC) no 1393/2007 on the service and notification in Member States of judicial and extrajudicial documents in civil or commercial matters. Clerks of justice of peace (*juge de paix*), clerks of the Court of First Instance, clerks of the Commercial Court and clerks of the Employment Tribunal are transmitting agencies. As such, they transmit the documents to be served to the receiving agency of the Member State of the applicant. This transmission is free of charge.

There are no specific national provisions in this matter.

- 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.).

According to national rules, if the applicant lives in Belgium, form D is sent to the applicant by ordinary letter, in accordance with the BJC.

If the applicant lives in another Member State, this form is served in accordance with Regulation (EC) no 1393/2007 on the service and notification in Member States of judicial and extrajudicial documents in civil or commercial matters. Clerks of justice of peace (*juge de paix*), clerks of the Court of First Instance, clerks of the Commercial Court and clerks of the Employment Tribunal are transmitting agencies. As such, they transmit the documents to be served to the receiving agency of the Member State of the applicant. This transmission is free of charge.

No other specific internal rule is to be mentioned, concerning the rejection decision.

### **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.).

In Belgium, the court legally seized is competent both to carry out the initial examination of the claim and to issue the EOP.

According to national rules, if the applicant lives in Belgium, form E is sent to the applicant by ordinary letter, in accordance with the Belgian BJC.

If the applicant lives in another Member State, this form is served in accordance with Regulation (EC) no 1393/2007 on the service and notification in Member States of judicial and extrajudicial documents in civil or commercial matters. Clerks of justice of peace (*juge de paix*), clerks of the Court of First Instance, clerks of the Commercial Court and clerks of the Employment Tribunal are transmitting

agencies. As such, they transmit the documents to be served to the receiving agency of the Member State of the applicant. This transmission is free of charge.

No other specific internal rule is to be mentioned, about the rejection decision.

In Belgium, initiating the EPO procedure incurs the following costs: 40 euros per claimant with the Justice of Peace (authorized to deal with disputes up to 5000 euros); 100 euros per claimant with the court of first instance (authorized to deal with disputes in excess of 5000 euros).

**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 the event of a service of documents through a jurisdiction, the clerk sends a registered letter if the defendant lives in Belgium. If the defendant lives in another Member State, the clerk transmits the document to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.

In the event of a service of documents through a judicial officer, the applicant (and not the court) must select and appoint a judicial officer for the purpose. Service by judicial officer is made in accordance with Belgian law, if the defendant lives in Belgium. If the defendant lives in another Member State, the judicial officer, who is also a transmitting agency under Regulation (EC) no 1393/2007, transmits documents to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.

The choice between these two options is within the competence of the court. This choice will obviously have consequences regarding legal certainty: the service of the forms through a judicial officer guarantees that procedure complies with minimal standards required by the European regulation (articles 13, 14 and 15).

The cost of the intervention of the judicial officer depends on the amount of the claims.

#### **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>(18)</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.*).

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<sup>18</sup> See also EC PG III.5.2.1.

In Belgium, the statement of opposition must be lodged with the clerk's office of the court which issued the European order for payment. The statement of opposition can be delivered directly to the clerk's office or sent by registered letter to the clerk's office.

Belgian law provides no additional time to allow the statement to arrive.

In terms of admissibility of an e-evidence in civil proceedings in Belgium since 1<sup>st</sup> November 2020 new rules have been entered in force. Accordingly, where the law does not require the production of a signed writing between the parties, evidence may be given by digital means (e.g., e-mails or/and text messages). In this sense, the Belgian legislator by the Act of 13 April 2019 that establishes new rules on evidence within the Belgian Civil Code, Book 8 (Chapter 2, Sections 1 and 2, Art. 8.8, 8.9 (§ 1), and 8.11 (§ 1))<sup>19</sup> allows the admission of digital evidence if it is submitted in a claim<sup>20</sup>:

- in relation to a party who is not a trader, and the cause of action does not have to be proved by a written document signed by the parties, provided that the value of the claims does not exceed 3,500 euros<sup>21</sup>, or;
- between companies, or against a company, regardless of the value of the claim.<sup>22</sup>

Therefore, digital evidence is admitted at courts, for the claims whose value is under the threshold of 3,500 euros.<sup>23</sup> As a result, in the capacity of the EOP proceedings, parties are allowed to present their means of proof in written or electronic (e.g., e-mail, text messages, etc.) format.<sup>24</sup>

An opposition is to be lodged in one of the three official languages admitted in Belgium (French, Dutch and German), because in the event of opposition, the competent Belgian court has to follow the same procedures of the ones used in standard civil procedural law.

The statement of opposition can be delivered directly to the clerk's office or sent by registered letter to the clerk's office.

**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

<sup>19</sup> Act of 13 April 2019 introducing Civil Code, Book 8 'Evidence' (Art. 1 –75), Belgian Official Gazette, 14 May 2019. For more information visit [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&cn=2019041328&table\\_name=wet](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2019041328&table_name=wet) accessed 18 September 2022.

<sup>20</sup> Article 8.8 provides that “*Free Evidence Except in cases where the law provides otherwise, evidence may be provided by any means.*”

<sup>21</sup> According to Article 8.9 (§ 1); “*Regulated Evidence*”

§ 1. *A legal act involving a sum or value equal to or greater than 3,500 euros must be proven by the parties in a signed writing.*

*This amount can be adapted by Royal Decree deliberated in the Council of Ministers, according to the evolution of the cost of living or social necessities.*

*It can only be proven in addition to or against a signed writing, even if the sum or value does not exceed this amount, by another signed writing.*”

<sup>22</sup> Article 8.11 (§ 1) stipulated that “*Evidence by and against companies*

§ 1. *Against companies or between companies, as defined in article I.1, paragraph 1, of the Code of Economic Law, evidence can be given by any means, except in special cases.*

*The rule stated in paragraph 1 does not apply to companies when they intend to prove against a party that is not a company. Non-enterprise parties who wish to prove against an enterprise may use any mode of evidence.*

*The rule set out in paragraph 1 shall also not apply, in respect of natural persons carrying on a business, to the proof of legal acts that are clearly unrelated to the business.*”

<sup>23</sup> Currently, any claim with a value of more than 3,500 euros must be in writing (according to Art. 1341 of the Belgian Civil Code), and the digital evidence is not admissible.

<sup>24</sup> As far as the amount of the claim does not exceed 3,500 euros.



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.).

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

If the claimant has explicitly stated, in the application form, that he opposes the transfer to ordinary civil proceedings, the procedure terminates.

In the absence of such a statement in the application form, the procedure continues as substantiated proceedings in accordance with the rules for national procedures.

In Belgium, the transfer to ordinary civil proceedings has not been specifically ruled. The clerk sends a registered letter to the parties to inform them about the statement of opposition (in accordance with Article 17.3 of the Regulation) and summon the parties to a hearing. The judge rules upon the initial claim and any incidental claims. The judge issues his decision, which replaces the European order for payment. Legal representation is not compulsory but strongly recommended when proceedings are conducted before the Court of First Instance, the Commercial Court or the Employment Tribunal.

**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 Belgium, the enforceable European order for payment is served by the clerk. Then, it is the clerk who sends a registered letter to the claimant. If the claimant lives in another Member State, the clerk transmits the document to be served to the receiving agency in the Member State of the defendant, in accordance with Regulation (EC) no 1393/2007.

The opposition may be lodged as soon as the default judgment has been given even if it has not yet been served. The term for lodging the opposition is generally one month from the date the judgment is served by a bailiff or notified by the court registry by means of judicial letter (Article 1048(1) BJC). This is a peremptory time-limit that is provided for by law under penalty of inadmissibility, which must be pronounced by the court (Article 860(2) j° 865 BJC). If the party who did not enter an appearance failed to introduce the opposition within the statutory time-limit, a petition for cassation may be filed (provided that the conditions of this extraordinary legal remedy are met – see below) (Article 1076 BJC). For the calculation, extension and suspension of the time-limit, please refer to what is set out below in relation to the (ordinary) appeal. Opposition is only available to persons who were summoned to appear as a party in the proceedings but defaulted and are aggrieved by the default judgment. Opposition is not possible by third parties, but an extraordinary appellate remedy, i.e. the third party opposition, is available to them (see Article 1122 et seq. BJC). If the party who has lodged the opposition defaults again, no opposition is allowed against the second default judgment (Article 1049 BJC).



*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.
- 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.5.2.3.).

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.).

In Belgium, no supplementary conditions have been introduced to apply Art. 20 of the Regulation.

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>(25)</sup>.

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<sup>25</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 Bonchyk*.

The cases dealt by the European Court of Justice concern the German system and not the Belgian one. However, with respect to a Belgian case, CJEU, C-300/14 has stated: “ Article 19(1) of Regulation No 805/2004 must be interpreted as meaning that, in order to certify a judgment delivered in absentia as a European Enforcement Order, the court ruling on such an application must satisfy itself that its national law effectively and without exception allows for a full review, in law and in fact, of such a judgement in the two situations referred to in that provision and that it allows the periods for challenging a judgement on an uncontested claim to be extended, not only in the event of force majeure, but also where other extraordinary circumstances beyond the debtor’s control prevented him from contesting the claim in question”.

The relevant rule of the Belgian BJC is Article 55:

“When the law provides that, regarding the party which has no domicile, place of residence or address for service in Belgium, the time-limits prescribed should be extended, that extension shall be:

- (1) fifteen days, when the party resides in a country bordering Belgium or in the United Kingdom of Great Britain [and Northern Ireland];
- (2) thirty days, when the party resides in another European country;
- (3) eighty days, when the party resides in another part of the world.”

If the competent court has declared the EOP enforceable, despite the lack of proper notice of it, the remedy available to the defendant can be found in the review under Section 20(2) EOP”.

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

When BE 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.).

In Belgium, the enforceable European order for payment must have been served (through a judicial officer) to the party against which it has been issued (article 1495 BJC). At the request of the creditor, the judicial officer is competent to enforce the European payment order which is enforceable.

Art.1495 BJC: Any decision pronouncing a sentence can only be enforced after being served on the party. Without prejudice to the seizure for safekeeping provided for in article 1414, an order for the payment of a sum of money, which is the subject of a decision subject to opposition or appeal by a defaulting party, may not be enforced before the expiry of one month following service of the decision, unless provisional execution has been ordered. These provisions are prescribed on pain of nullity of the acts of execution.

Recently, the Court of Justice of the European Union<sup>26</sup>, sitting in Grand Chamber and intervening on the matter of unfair terms in consumer contracts, reiterated that national procedural principles - such as *res judicata* - cannot stand in the way of the rights that individuals derive from Union law. The Court recalled that the system of protection established by Directive 93/13 is based on the idea that the consumer is in a position of inferiority vis-à-vis the trader as regards both the power of negotiation and the level of negotiation and the level of information. Considering such an inferior position, Directive 93/13 provides that unfair terms do not bind consumers. This is a mandatory provision aimed at replacing the formal balance of the contract a real balance. The Court then declares that the national court is required to examine of its own motion the character unfairness of a contractual term falling within the scope of Directive 93/13 and that member states are obliged to provide adequate and effective means to stop the insertion of unfair terms.

Regarding enforcement proceedings based on enforcement titles that have acquired *res judicata* authority, the Italian enforcement judges questioned the Court on the unfairness of the penalty clause and the clause that provides for default interest in financing contracts, as well as on the unfairness of certain clauses in contracts of surety bonds, on the basis of which creditors obtained injunctions that became final. The national courts noted that, by virtue of national procedural principles, in the event that the consumer fails to object, the *res judicata* of an injunction covers the non-abusive character of the terms of the contract of surety bond, and this even in the absence of any express examination, by the court that issued such a decree injunction, of the unfairness of such clauses.

The Court considers, however, that such national legislation may deprive of its content the obligation incumbent on the national court to conduct an *ex officio* examination of the possible unfairness of the contractual terms. The need of effective judicial protection requires that the enforcement court be able to assess, even for the first time, the possible unfairness of the terms of the contract underlying an injunction issued by a court upon the application of a creditor and against which the debtor did not file an opposition. Ultimately, the Court held that EU law precludes such national legislation.

<sup>26</sup> Judgments in Case C-600/19 Ibercaja banco, in Joined Cases C-693/19 SPV Project 1503, C-831/19 Banco di Desio e della Brianza and Others, and in Cases C-725/19 Impuls Leasing România and C-869/19 Unicaja Banco.

**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.).

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

- (a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity
- (b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept.

**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.).

Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States. Each court of first instance has a list of translators under oath<sup>27</sup>.

**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.).

The attachments judge (*juge des saisies/beslagrechter*) is competent for ruling a stay, limitation, or refusal of enforcement. An application must be submitted to the judge in accordance with Art. 1395, (2) BJC. The applicant must pay a court registry fee which is 82 € and a pleading fee of 2.50 € (in case of intervention of a lawyer).

**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

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<sup>27</sup> Consult the registry of translators in Belgium: <https://belgian-sworn-translator.be/registration-belgian-sworn-translators.html>.

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 general, provisional enforceability cannot be suspended.

By way of derogation, the enforceability of certain decisions can be suspended.

The judge can, by means of a specially reasoned decision, suspend the enforceability of the decision in the event of an appeal (art. 1397, para. 2, BJC).

In these cases, the judgment whose enforceability is suspended can only serve as a basis for conservatory measures, which render the property which is the subject of the judgment unavailable, but which cannot lead to its compulsory realization (art. 1397, 1414 and 1413 BJC).

Provisional enforceability can be stopped by the cantonment (art. 1404, para. 1, BJC), except when the enforceability is pursued to obtain payment of a claim of a maintenance nature (art. 1404, para. 1 initio) or if the judge has excluded the possibility of doing so (art. 1406 BJC).

As a general rule, each default judgment can be either opposed (Article 1047 BJC) or appealed (Article 616 BJC) by the party who defaulted. The (ordinary) appeal submits the case to the scrutiny of a higher court, whereas the opposition is lodged before the same court that delivered the default judgment (Article 1047(2) BJC).