The European Order for Payment

Overview & Case Study

Dr John Ahern

European Civil Procedure, Barcelona 7 & 8 July 2016
Regulation (EU) 2015/2421
Objective and Purpose

Article 1 & Art. 65 TEC (Art. 81 TFEU)

- Elimination of obstacles to the good functioning of civil proceedings
- Simplification of cross-border litigation
- Reduction in delay
- Reduction in cost
- Abolition of exequaretur (note impact of Brussels Ia)
- Alternative to, but do not replace, national procedure
What influences the choice of procedure?

• Are national procedures efficient / adequate?
• Is foreign legal advice necessary / wanted?
• Language
• Cost
• Unfamiliarity with European procedures
• Certainty of outcome
• Use of standard forms
• Automatically enforceable
Scope of Application

**Articles 2 – 4**

- Civil and Commercial Matters
- Exclusions similar to Brussels la (marriage, insolvency etc.)
- **EOP exclusions**: non-contractual obligations
- **EOP inclusions**: privacy/defamation, employment
- Cases must be cross-border in nature (i.e. at least one party habitually resident in another MS)
- Not applicable in Denmark
## Key Features

<table>
<thead>
<tr>
<th>EEO</th>
<th>EOP</th>
<th>ESCP</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Uncontested</td>
<td>• Uncontested Claims</td>
<td>• Tbc tomorrow!!</td>
</tr>
<tr>
<td>Claims</td>
<td>• Pecuniary, specific amount claims</td>
<td></td>
</tr>
<tr>
<td>• National</td>
<td>• No upper monetary limit</td>
<td></td>
</tr>
<tr>
<td>Procedure</td>
<td>• No upper monetary limit</td>
<td></td>
</tr>
<tr>
<td>• No upper</td>
<td>• Standard forms</td>
<td></td>
</tr>
<tr>
<td>monetary limit</td>
<td>• No exequatur</td>
<td></td>
</tr>
<tr>
<td>• No exequatur</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Key Features

- Prioritisation of simplicity
- Written procedures
- Standard forms (EOP x 4)
- Special rules of service (Art 13 – 15)
- Time limits to streamline procedure and control cost
- Legal representation not mandatory (Art 24)
- National law still relevant (costs, internal jurisdiction rules, language, service)
European Order for Payment - Application

- Brussels la determines jurisdiction except for consumer defendants (Art 6)

- Application should submitted to appropriate court (Art 7) – **Description of the case and evidence – Form A**

- Application should be examined as soon as possible (Art 8) – **Written procedure, no oral hearing!**

- Court may request completion/rectification/modification of claim (Art 9 – 10)

- Application may be rejected if (Art 11):
  - Formal requirements unsatisfied
  - Outside scope of the Regulation
  - Claim clearly unfounded
  - Failure to comply with modification request
  - **NO APPEAL – although certain review exceptions**
European Order for Payment – Issuing

- EPO should be issued as soon as possible – within 30 days (Art 12) – **Form E in the language of the court**


- Enforceable without declaration of enforceability (Art 19) after time limit expiration (Art 18)

- Enforceable under national law (Art 21)

- Should be refused if irreconcilable with existing judgment (Art 22)
European Order for Payment – Opposing

- Defendant should be advised of consequences of opposing / not

- Statement of opposition within 30 days (Art 16) has the effect of converting proceedings into an ordinary action in the member state of origin (Art 17) – **Form F**

- No reason is necessary to oppose and EOP

- Effect is to terminate the special EOP procedure – revert to ordinary cross border civil litigation

- Regulation 2015/2421 revision allows for reverting to ESCP
European Order for Payment – Review

- Strictly limited grounds to review a European Enforcement that has been issued and is enforceable (Art 20)
  - EOP was served without proof of receipt by defendant
  - Defendant was prevented from objecting by force majeure or other exceptional reasons
  - EOP was wrongly issued
  - Other exceptional circumstances
Case Study Introduction
Key Facts

- Antja Dekker is Dutch and lives in the UK
- Train to the France was cancelled until the next day
- Antja lost €250,000 in potential contracts
- Antja lost a further €100,000 in physical damage
- Eurotunnel is headquartered in France
- Antja seeks compensation from Eurotunnel
- Eurotunnel have ignored Antja
Questions

1. Is the European Order for Payment an option for Antja?
2. Can all the damage Antja suffered be recovered?
3. Can Antja seek an alternative form of compensation? e.g. a replacement car and equipment
4. Must Antja commence action in France?
5. How should Antja describe her claim?
6. Can the claim be lodged electronically?
7. Will the claim be expensive to commence?
Questions

8. If Antja doesn’t fully describe her claim or evidence will the action fail?

9. Will she have to bring lawyers to court?

10. Will she be waiting a long time for a decision from the court?

11. If Eurotunnel object and challenge the claim, what happens?

12. If Eurotunnel do not challenge the claim until after an Order is granted, what happens?

13. How is the order enforced in France?
Workshop
Discussion of Results
Gracias!