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**THE PRACTICAL EFFECT OF THE
REGULATION NR 1896/2006 REGARDING
THE EUROPEAN PAYMENT ORDER:
LEGAL MATTERS AND JUDICIAL
PRACTICE**

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I hereby declare that the work submitted is mine and that where I have made use of another's work, I have attributed the source(s) according to the Regulations set in the Student's Handbook.

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Abstract

This dissertation was written as part of the MSC in Legal Studies (LLM) at the International Hellenic University. In summary, the thesis at the beginning starts from explaining the reasons for which the Regulation was considered necessary to be adopted and it analyzes the practical significance and the importance of this legal regime.

Following, the present thesis makes an attempt to approach the way that the Regulation was actually applied in practice in European Union in general, providing statistical data from several member states and more analytical in Greece. Regarding the Greek way of application, the present thesis present also a comparison of the European payment order regime and the regime of the national payment order.

Finally, there is a presentation of matters relating to enforcement procedure and some examples of the case-law of the ECJ but also of a Greek Court regarding an appeal at the enforcement procedure.

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Preface

Being a practicing lawyer specialized in the field of transnational commercial law, one may always seek for practical solutions on main legal matters that arise during the everyday working life. As a legal advisor of commercial entities, the lawyer has to be ready to provide, easily and effectively, answers and proposals to the clients, who try to find fast and effective legal solutions regarding their debt recovery problems. The aim of the present thesis is to become a useful guide for lawyers and trade-companies regarding the application of the Regulation Nr 1896/2006 for the European Payment Order. The European Payment Order regime has the objective to facilitate and fasten the procedure of debt recovery in cross-border commercial transactions. The application of the Regulation from the time that it came into force till now has indicated some implications in practice but has also confirmed the importance of the Regulation for the traders who, in the time of financial and debt crisis, struggle to survive. In a uniform European market, a uniform legal regime regarding the commercial undisputed demands is always a need, because this is a condition for the continuance and existence of the common market. The facilitation of the debt recovery procedure in another member-state is a factor that encourages the traders to broaden their activity within the European territory. The simplification of the procedure has not brought into light many problems and the Regulation has been proved to be an effective tool in the hands of the traders. Moreover, the lawyers have a simple and effective alternative choice to propose to their clients, who can really appreciate those legal advisors who can overcome their actual problems. To sum up, the present thesis starts from a professional need to face legal situations, using the possibilities that the concrete European Regulation offers, with the ultimate objective to become a useful and effective tool in the hands of practicing lawyers.

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Introduction

During the last decades, important steps have been taken towards the ultimate objective of the European Union which is to achieve the completion of the internal market. Through legislative instruments, either guidelines or regulations, the EU, particularly the years before the debt crisis expanded, i.e. the years 2000-2007 took important initiatives, which were considered to be able to contribute to the achievement of this goal. One of these instruments is the regulation nr 1896/2006 regarding the European Payment Order procedure, which can be approached and analyzed only under the perception of the “internal market” element.¹ The reason for that perception to be adopted is the fact that the European Payment Order regime concerns cross-border transactions and particularly the undisputed claims which arise out of this kind of transactions. It is clear therefore, that the process is not applied to domestic cases of each member state, but only to cross-border relations.²

The innovative step that is taken with the European Payment order regime, is the fact that the relevant European title that is created can be enforced directly in any member state within EU, without prior need of recognition and declaration of the enforceability (exequatur) from the Courts of the member state where the enforcement is asked. Therefore, the creation of a uniform process regarding the issuance of the European Payment Order, led to the creation of a unique and uniform European title which is directly enforceable in the territory of any European Member State. This way, the European Legislator made a turn in the way that the judgments used to become enforceable in the European Union, abolishing the previous regime of exequatur for the cases that are covered by the Regulation, i.e. for civil cases and undisputed claims within the frame of cross-border transactions.³ Moreover, the Regulation was considered to be the first civil procedure with uniform implementation all over Europe.⁴

The main goal of the regulation is to create an easy process through which the claimant can acquire in short time and without many requirements an enforceable European title for the claims that are not disputed.⁵ This way the legislator tries to facilitate mainly the traders to recover their debts at a brief and effective way.⁶ This goal is a priority for the European legislator who overcomes the fact that the process itself might hide important dangers, since it could be used as way to transfer money under a legal “cover”, without further legal justification. Despite this kind of dangers however, the legislator decided that it is more important to protect and facilitate the

¹ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.11-17

² Pantazopoulos, “European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece”, Sakkoula SA Publications, 2012, p. 23-24

³ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.22-24

⁴ Sujecki Bartosz, Das Europaische Mahnverfahren in NJW 23,2008, p.1622

⁵ Fradeani R., I presupposti per la concessione dell’ ingiunzione di pagamento europea, in Verso Il prodedimento ingiuntivo europeo, Milano 2007, p.124-125

⁶ Guinchard E., Commentaire sur la proposition de reglement instituant une injonction de payer europeenne , Pet.Aff. 2006, p.4

traders to recover their debts, encouraging this way the cross-border trade and promoting the relevant transactions.⁷

To sum up, the regulation has a significant importance and effect on the cross-border trade. Its application over the years has proven this importance, because it is easily chosen from claimants as a way to support their attempt for recovery of the debt. During this period of crisis a low cost, speed and effective way of recovery of debts is considered to be crucial for the maintenance and the future of many businesses in European territory.⁸

⁷ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.29

⁸ Stone Pet., EU Private International Law, Edward Elgor Publishing Limited, Third Edition, p.267

CHAPTER 1: PRACTICAL SIGNIFICANCE OF THE REGULATION

For the European payment order regime to be adopted there was a previous comparative research of the relevant regimes regarding payment orders all over the European member states.⁹ This research had as an object, among others, the finding of those rules and regulations that would better fit to the regime that was about to be created with the European payment order and specifically those that would better serve the scope of the new regulation.¹⁰

The scope of the regulation which is strongly related with its practical significance was multiple:

- 1) **Unification of the proceedings**: Creation of the regime that would lead to European enforceable title, that would be easily enforced to any European member state, without the need of recognition and the declaration of enforceability by the Courts of each member state, where the enforcement was to be done.¹¹ This unified regime offers much more legal certainty for the cross-border transactions, because the satisfaction of the claim does not depend anymore on the legal tradition and recognition of each member state. The procedure is one and the same for all the member states and rules to follow also the same for all, overcoming the barriers set by diverse languages within EU. This unification achieves an equal level of legal protection in any European Member State as regards to undisputed claims in civil and commercial matters.¹²

Of course this unification was not an unpredictable result. It was the outcome of a long gradual procedure within European Union which step by step leads to the abolition of the procedure of the declaration of the enforceability (exequatur) in each member state. This procedure started with the judicial cooperation among the member states in civil matters, but the most important legislative steps towards this scope were done with the Regulation 2201/2003 regarding the

⁹ Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, COM/2002/0746 final*/ , ch.3.1.1, p.8-9

¹⁰ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.61-70

¹¹ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.2-3

¹² Ontanu Elena Alina and Pannebakker Ekaterina, Tackling Language Obstacles in Cross-border litigation: The European Order for Payment and the European Small Claims Procedure Approach, www.erasmuslawreview.nl Erasmus Law Review, Volume 5, Issue 3 (2012)

jurisdiction and the recognition and enforcement of the judgments in marriage matters. Following the most important step before the regulation for the European Payment order, there was the regulation 805/2004 for the European Enforcement title. Within this frame, the Regulation 1896/2006 regarding the European Payment order came into force and after that the Regulation 861/2007 for the unified procedure for small claims and the Regulation 4/2009 regarding nutrition matters. Therefore, the European legislator, with all these rules reveals the ultimate purpose which is the gradual abolition of the exequatur within European Union. The European Payment order regime therefore has to be seen under this concept.¹³

2) **Provision of low cost, fast and effective legal protection**: The above European enforceable title, would also contribute to the effective and fast judicial protection, within the European territory, overcoming delays, coming out from complicate court proceedings, at least for the undisputed commercial claims that come from transnational commercial transactions. Therefore, the European payment order is capable to be enforced immediately when it becomes final (provided that no statement of oppositions is filed by the defendant) in the territory of every European member state without further proceedings.¹⁴ This is the main characteristic of the European payment order that makes it so useful and important, because before the introduction of this regime, the traders that had a claim against a debtor who was registered in another member state, they had to follow complicate legal proceedings to obtain an enforcement title, capable to be enforced to the territory of the member state that the debtor had property. An example can easily show the important step that has been taken with the European payment order regime:

- A is company registered in France
- B is a company registered in Belgium
- A has an undisputed and due claim against B, coming from commercial transactions (unpaid due invoices)

¹³ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.11-17

¹⁴ Kramer X., "Enhancing enforcement in the European Union. The European Order for Payment Procedure and its Implementation in the Member States, Particularly in Germany, the Netherlands, and England", Published in C.H. van Rhee and A.Ucelac (eds), *Enforcement and Enforceability*, ch.3.1

- B has property in Belgium and in Netherlands,

Under the previous regime, before the entry into force of the Regulation 1896/2006, A had to follow normal legal proceedings to acquire a judgment against either in France or in Belgium (or elsewhere), according to the jurisdiction determined as per the Regulation 44/2001. For the judgment to become enforceable in Belgium (in case it was not issued by a Belgian Court) and in Netherlands (in case it was not issued by a Dutch Court), where B has its property, A had to file a petition at the relevant Courts (different for each member state) to ask for the recognition and the enforceability of the judgment at these member states. The Court of these member states would examine whether the judgment is in accordance with their order public and their legislation and then they might recognize and declare the judgment enforceable in their territory. At this point, we can also discriminate the uncertainty that is created due to different legal traditions and regimes among the member states, that can lead to different results (for example the same judgment might be declared enforceable in Belgium but not in Netherlands). Moreover, if B acquired property in other member states, A had to repeat this procedure to every member state where there would be interest to enforce the judgment. This whole procedure, from the moment that A will first file a main action for its claim before the Court till the moment that will be able to enforce this judgment, would take much time (even 2-3 or more years) and would cost a lot (expenses for legal fees, court fees etc).

On the other hand, under the regime of European payment order, A would have the possibility to file a petition for the issuance of a European payment order at the competent Court. Provided that the requirements are fulfilled, the European payment order would be issued in brief time frame and it would be served to the opposite party the soonest possible. If B does not object to the European payment order within 30 days from its service, the European payment order acquires direct enforceability and it can be immediately enforced in any European member state. Therefore A within a time frame of about 2-4 months would be able to enforce the European payment order in any member state where B has property without further proceedings.

The difference is now clear and the relevant consequences easily understandable. A can easily and under fast proceedings satisfy its claim against B, having satisfactory and effective legal protection.

- 3) **Psychological effect- facilitate cross-border transactions**: Given the fact that the European payment regime is mainly directed to commercial matters, we can easily reach to the further practical effect that the European payment order regime has. It is not only the effective protection of the traders after the creation of the claims, which is pretty important for the field of commerce, especially during this period of debt crisis. It is also the positive psychological effect that the above regime has to the traders who can feel more certain and encouraged to commit cross-border transactions, since there is a unified legal regime that protects them which is far from any uncertainty that the unknown legal regimes of the other member states would create.¹⁵

The significant advantages of the procedure are factors for the facilitation of the cross- border transactions, since the whole procedure offers fast recovery of the debts, important reduction of the necessary time to have an enforceable title, without restriction regarding the geographical distances, easy access to the procedure for all the traders, abolishment of any problem regarding the language differentiation.¹⁶ Based on these advantages of the procedure the merchants feel more safe and certain for any cross-border transaction within the European Union and they are more close to feel the same safety within **the** Union as being in their country. As a result of the above certainty that the unified regime offers, the cross-border commerce is significantly encouraged.

¹⁵Green Paper on a European order for payment procedure and on measures to simplify and speed up small claims litigation, COM/2002/0746 final*/ , ch.2.3, p.5

¹⁶ E-codex, Online European Payment Orders in Europe, General information, Making justice faster.eu

CHAPTER 2: APPLICATION OF THE REGULATION

Statistical data

The regulation 1896/2006 was put into force in December 2008 and it has been applied since then in every European member state except from Denmark. According to the report COM (2015) 495/13-10-2015 that was issued by the Commission pursuant to article 32 of the Regulation, according to which the Commission has to inform the European Parliament, the Council and the European Economic and Social Committee regarding its application, the objectives of the introduction of the Regulation were fulfilled as it offered the option for a fast, simple and low cost procedure capable to lead to easy debt collection within the territory of the 27 Member States. The statistical data however showed that the payment order procedure is not broadly used and in many countries is not broadly known (the percentage regarding the awareness of the existence of the procedure was only 6% in 2010). To justify this percentage we should take into account the fact that European payment order procedure is mainly used by lawyers and traders who have cross-border transactions. The major part of the citizens of each member state does not belong in these categories and therefore there is no need for them to be aware of this regime.

The number of the payment orders that are issued every year in the European Union is about 12-13.000. Even if the initial objective of the Regulation was to have a broader application, this number is still satisfactory, if we consider that these cases are resolved in a fast and simple way regarding cross-border claims. The first in the row (and with great distance from the rest member states) are Austria and Germany, where more than 4.000 applications for European payment orders per year are filed. Other member states like Belgium, Czech Republic, France, Hungary, the Netherlands, Portugal and Finland accept between 300 to 700 applications per year; while in the rest member states the procedure is not extensively followed. For example in 2012 German Courts accepted 4.130 applications and 90% of them led to European payment orders. Austrian Courts accepted 4.367 applications and issued 4.092 European payment orders the same year, while in 2013 the same courts accepted 2.119 applications and 2.074 European payment orders. French Court accepted 335

applications in 2012 and issued 305 European payment orders and Belgian Courts accepted 319 applications and issued 261 European payment orders. Greek Courts accepted 168 applications the same year and issued 149 European payment orders. Among the countries with a very low percentage in using the Regulation is Lithuania with 9 applications the same year (2012) and 7 European payment orders issued. Malta, Latvia and Romania present zero usage of the Regulation.¹⁷

It is also useful to note that Germany has introduced the European payment procedure in its Civil Procedural Code (articles 1087-1096).¹⁸ Germany and Austria also developed a project for electronic processing of the European payment order, making the whole procedure much easier and faster. This could be a justification for the broad usage of this regime in these countries.¹⁹ Another reason however can be grounded to the fact that these two member states had already an efficient regime for payment orders, but also implemented the Regulation by adopting new special rules.²⁰ United Kingdom, despite the fact that it does not present such a broad application of the Regulation, also made the same choice, by creating its own regime, however England did not have a previous similar national regime.²¹ Latvia and Estonia introduced the payment order regime just modifying some articles in their Civil Procedural Code.²² Spain also issued a law with the purpose to implement successfully the Regulation.²³

Conditions for application and followed practice

Regarding the conditions that are valid for the application of the regulation in relation with the practice followed by the applicants we have to note the following:

¹⁷REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council Creating a European Order for Payment Procedure, COM (2015) 495, Brussels 13.10.2015, Annex, p.13-15

¹⁸ Gesetz zur Verbesserung der grenzüberschreitenden Forderungsdurchsetzung und Zustellung, BGBl 2008, Teil I, Nr 50, 2122..

¹⁹ Schweighofer Eva, European Order for Payment Application, <https://joinup.ec.europa.eu/node/134513>

²⁰ Kramer, Enhancing Enforcement in the European Union. The European Order for Payment Procedure and its implementation in the Member States, Particularly in Germany, the Netherlands, and England, Ch. Van Rhee and A. Uzelac (eds), Enforcement and Enforceability. Tradition and Reform (2010), p.17 next, 34 next.

²¹ Kramer, Enhancing Enforcement in the European Union. The European Order for Payment Procedure and its implementation in the Member States, Particularly in Germany, the Netherlands, and England, Ch. Van Rhee and A. Uzelac (eds), Enforcement and Enforceability. Tradition and Reform (2010), p.17 next, 34 next.

²² KAČEVSKA INGA, RUDEVSKA BAIBA, Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States, http://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsivilkohtumenetlust_reguleerivate_maar_uste_rakenduspraktika.balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf

²³ Ley 4/2011, de 24 de Marzo, de modificación de la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil, para facilitar la aplicación en España de los procesos europeos monitorio y de escada cuantía, BOE 2011, I-5392

- a) The regulation 1896/2006 applies only to cross-border claims. Regarding this element, it has been noticed that many entities which have used the regime of the European payment orders and have been benefited by its advantages, many times make attempts to be submitted to this regime, even if they do not comply with this criterion, by giving a cross-border element to a purely national dispute.²⁴ This point shows the importance of the regime, especially for those who are aware of it and have used it in practice, being benefited by it.
- b) Regarding the authority which is competent to issue a European payment order, there are different rules among the member states. Most of them have chosen the regional courts to be competent to issue the European payment orders, while five member states have chosen to assign this competence to a specific authority, which is specialized on the issuance of the European payment order. These two choices both share advantages and disadvantages. For example it is more convenient for the citizens of a member state to be able to file an application for a European payment order on every regional court of their country, while on the other hand specialized authorities that deal only with European payment orders offer more effective and advantaged services to this purpose, being able to overcome the difficulties easier and having the knowledge to handle the applications appropriately.²⁵
- c) Except from the capital amount the claimants can demand also the interests that can be claimed on the date that the debt is paid. The Court has accepted in case C-215/11²⁶ that the national Court is free to calculate the interests under the condition that the opposite party will be informed through the form E of the European payment order for the part of interests. Following this judgment of the Court the Commission issued the Regulation 936/2012, which promoted some changes in the regime of the European payment order, among which was the advice of the defendant regarding the calculation of interests (despite

²⁴ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council Creating a European Order for Payment Procedure, COM (2015) 495, Brussels 13.10.2015, p. 4

²⁵ As above, p.5

²⁶ Judgment of the Court of 13-12-2012 C-215/11, Iwona Szyrocka

however to clarify the way of calculation which is still up to the national court/authority to decide).²⁷

- d) As far as it concerns the language of the procedure, most member states require that is used their own official language. However, some member states like France, which accepts also English, German, Italian and Spanish language, Sweden, Cyprus, Estonia and Czech Republic also accept foreign languages (one or more). From the practice till now, it occurs that the procedure would be significantly facilitated if all member states accepted at least one foreign language, because this is a requirement arising out of the character of the procedure as a cross-border procedure. Anyway, the application form itself is easy to be translated to any language because is the same for all the member states and follows the tick-boxes method of completion.²⁸
- e) There is also a tendency for the creation of an electronic environment through which the applications for a European payment order will be filed and the payment orders will be issued. Some member states have already used such technology, while 9 of them (among which Greece also) take part in a pilot program for electronic submission. Austria and Germany have succeeded to apply this technology in their system.²⁹ This might be a reason which justifies why these two member states have the bigger percentage –with great difference from the next- in using the regulation 1896/2006. The next target is to create a central system which will accept applications for European payment orders, which will be forwarded to the member state that is competent to take it over, provided that the relevant member state is prepared to handle the matter electronically, having adopted the necessary technology and having created the relevant system.³⁰
- f) It has been noticed in practice and has been reported by Germany, The Netherlands and Sweden that many applications are wrongly completed and have to be returned to the petitioners to be corrected. In view of that point,

²⁷ REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE on the application of Regulation (EC) 1896/2006 of the European Parliament and of the Council Creating a European Order for Payment Procedure, COM (2015) 495, Brussels 13.10.2015, p.5

²⁸ The same as above, p.6

²⁹ Schweighofer Eva, European Order for Payment Application, <https://joinup.ec.europa.eu/node/134513>

³⁰ The same as footnote 24

there is an attempt that is conducted through the European e-justice Portal, where there are helpful instructions for the right completion of the applications.³¹ Lately, an application has been added in the portal which defines the competent Court which should take over the petition for the issuance of a European Payment order. In general, the procedure of the regulation is so simple that the usage of technology and automation is very appropriate for this procedure since there is no requirement for evidence to be provided.³²

- g) Another, a bit problematic, area in the application of the Regulation is the non - consistency of the national courts/authority with the time limit in which the order for payment should be issued. While the Regulation provides 30 days as a time frame in which the relevant authority should issue the order for payment, only 6 out of 27 Member States apply in practice this provision, while the rest are out of time, with the delay to be between 1 to 9 months. In Greece the usual time is 1-2 months, 9 member states need about 4 months while the one which presents the bigger delays is Slovakia which reaches the 9 months. Such a delay is unacceptable and can be easily considered as an infringement of the Regulation, with the relevant further consequences.³³
- h) As far as it concerns the service of the European orders for payment, no many problems have been reported by the member states. The Regulation 1393/2007 has contributed in speeding up the service procedure and this is a reported outcome in many countries, like Greece. In general, there is a tendency to choose the simplest and less cost effective methods of service among them which are available in the territory of each member state. What has not been applied in practice is the method of electronic service. For this method to be followed there is a need for provision of this method in each legal order of the member states, something that is not yet a possibility or a reality in many European countries.³⁴

³¹ Practice Guide for the application of the Regulation on the European Order for payment, <http://ec.europa.eu/justice/civil/>

³² The same as footnote 26

³³ The same as above, p.7

³⁴ The same as above, p.7-8

- i) The Regulation 1896/2006 does not provide a common method for the calculation of the costs and fees regarding the issuance of the payment order but it leaves it up to each state to define. What is just a requirement from the Regulation is that the fees for the European payment order procedure cannot be higher than the normal court procedures of each member state.³⁵ However, this approach of the regulation has led to significant differentiations regarding the court fees among member states. Anyway, what seems to be more important than the amount of the fees, is the way that this amount is calculated, because complaints have been filed that the way of calculation is not always clear and understandable to the applicants.³⁶
- j) Defendants do not often oppose to the European payment orders. However, the frequency of oppositions differs from state to state, for example in Austria it rarely appears (not at a bigger percentage than 4%) while in Greece is very frequent (more than 50%). When the opposition is filed, the claim is automatically transferred to normal court proceedings.³⁷ There is also the proposal made by the Commission, according to which after the opposition there must be the possibility for the claim to be transferred to the European Small Claims procedure, when the claim belongs to the frame of this procedure.³⁸
- k) Pursuant to article 20 of the Regulation, the opposite party has the possibility to file a petition for a review, in cases that due to exceptional circumstances, the defendant did not have the possibility to oppose in time in the European payment order. The important element here is that the procedure of this article applies only to exceptional cases.³⁹ Therefore the Court in case C-324/12⁴⁰ judged that the mistake made by the defendant's lawyer regarding the time-limit of the opposition cannot justify the procedure of the review. In general, however, when the defendant does not take proper notice of the European payment order, in case for example the address, where the payment order is

³⁵ The same as above, p.8

³⁶ https://e-justice.europa.eu/content_court_fees_epo-305-en.do

³⁷ The same as footnote 31, p.9

³⁸ Proposal for a Regulation amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 creating a European order for payment procedure, COM (2013) 794 final

³⁹ The same as footnote 33

⁴⁰ Judgment of the Court of 21 March 2013, C-324/12 Novontech-vs- Zala

served, is wrong, there is valid ground for the procedure of article 20 to take place.⁴¹ In Cases C-119/13 and C120/13⁴², which were jointly heard by the Court, the scenario had to do with the change of domicile of the defendants, which fact had a direct effect to the proper service of the European payment orders. The Court concluded that when the service procedure does not meet the minimum requirements set by articles 13 to 15 of the regulation, then the defendant must have the opportunity to oppose even at a later stage, after the time limit of the opposition to be filed has passed⁴³, presenting the problematic aspect of the service, which can be proved adequate reason to lead to invalidation of the enforceability of the European payment order. The conclusion reached by the Court in the above joint cases is that the Regulation protects at a uniform manner the minimum standard of proper service giving to the defendant the right to proceed with a review. However the irregularity or not claimed by the defendant is left up to the national law to be accepted or not since the Regulation does not provide uniform rules regarding the substantive examination of the claims arisen by the defendant during the review procedure .⁴⁴

- l) As far as it concerns the enforcement procedure, there are no significant reports for problematic aspects of it, except from the fact that it is not always easy to learn and accessible to everyone the property condition of the defendant. Of course this is not something that relates only to this procedure but to any legal proceedings in cross-border cases.⁴⁵

Application in Greece

Pursuant to the statistical data referred above, Greece does not present broad application of the regulation under examination. However, the procedure is indeed applied in some extent. The receipt of more than one hundred applications for

⁴¹ The same as footnote 36

⁴² Judgment of the Court of 4-9-2014, C-120/13, Eco cosmetics GmbH & CO KG vs Virginie Laetitia Barbara Dupuy (C-119/13) and Raiffisenbank St. Georgen reg. Gen. mbH vs Tetyana Boncyk

⁴³ Stone Peter, EU PRIVATE INTERNATIONAL LAW, Published by Edward Elgor Publishing Limited, 2014

⁴⁴ The same as footnote 37, p.10

⁴⁵ The same as footnote 40

European payment order per year indicates a low, however an existing, interest for the usage of the procedure.

a. –Comparison of the European payment order regime with the national payment order procedure

The regime of a payment order is not unknown in Greece, since the Greek Civil Procedure Code provides the option of the payment order procedure in articles 623-634. The main differences between the national regime and the European payment order can be noted as following:

- 1) The legal basis of these two procedures is different, since in the national procedure the legal basis is found in the Greek Civil Procedure Code, while in the European payment order procedure the legal basis is the European regulation 1896/2006. The competent authority to deal with the national payment order procedure is defined in the national law while the competent authority of the European payment order procedure is defined by European procedural rules and more specifically by the Regulation 44/2001.⁴⁶
- 2) Both national and European payment order procedures have an optional and not an obligatory character⁴⁷, since they provide an alternative to other legal ways of debt collection and they do not qualify as a unique legal option. The point here is that in the case of European payment order regime, the alternative options are found either in national or European law, while in the case of national payment orders the alternatives can be found only in the national law and they usually concern the main action procedure.⁴⁸
- 3) Both procedures apply in pecuniary claims that do not depend from terms conditions or deadlines, but the national payment order procedure applies also to a claim for provision of security. Moreover, since the meaning of the pecuniary claim in European law is broader than the one in national law,

⁴⁶ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.36

⁴⁷ Karameros St, "The Regulation 1896/2006 for the down of the European order for payment", Greek Justice, 2008.348

⁴⁸ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.36

there might be cases that a European payment order can be issued while a national payment order could not. However, in the case of heritage claim there is the option for a national payment order to be issued while there is not such a possibility under the Regulation 1896/2006.⁴⁹

- 4) The national payment order is valid only when the defendant is resident in Greek territory and under this condition a foreigner can file the relevant application, while on the other hand the European payment order applies only in cases that have a cross-border character, i.e. the applicant and the defendant reside in different member states.⁵⁰ Therefore there are cases that a European payment order is issued in Greece but the defendant resides abroad and the service takes place abroad or cases where the European payment order is issued abroad and it is served in Greece. There is the possibility that the European payment order is issued in Greece and is served also in Greece but in that case the applicant has to be resident of another member state so that the cross-border element is satisfied.
- 5) In Greek payment order procedure there is the necessity that the claim is proved by written official documents that have to be filed to the competent court together with the application. On the other hand, in the European payment order procedure the description of the claim and the simple reference of the proofs in the application (which is always written) is considered to be adequate.⁵¹ That is because the Greek Civil Procedure Code follows the principle of written proof (following the French paradigm)⁵² while the European legislator chose the more simple system of non-proof. The reference of proofs in the application serves the necessity of the defendant to know the real basis of the claim, based on which he might file or not his statement of oppositions. This choice of the European legislator is obviously closer to the general concept of a simple and fast

⁴⁹ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.36-37

⁵⁰ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.37

⁵¹ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.37

⁵² Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.70

procedure that wanted to offer creating the regime of the European payment order for a more efficient debt recovery system.⁵³ As a result the Greek Judge has to examine the legal and real basis of the application taking under consideration the written proof that is provided to support it, while the competent authority for the issuance of the European payment order will proceed to it when there is the indication that there is a valid claim without having to examine further proof.

- 6) In both procedures (national and European) in case of rejection of the application for the issuance of a payment order, there is no limit for the applicant to file a new application or to try other legal procedures.⁵⁴ There is no matter of *Lis pendens*,⁵⁵ but when there are two applications filed for the same claim, the second one will be rejected due to lack of legal interest⁵⁶.
- 7) The Greek payment order is served to the defendant after having been declared enforceable, while the European payment order is declared enforceable after the service takes place and when the time limit for the defendant to file objections expires. The Greek payment order has to be served to the defendant within two months from its issuance, while there is not such a time limit for the European payment order. Moreover the service of the European payment order takes place under the auspices of the Court, while the Greek payment order is served with the applicant's initiative.⁵⁷
- 8) The European payment order, when it becomes enforceable, can be directly enforced in any European member state without the necessity of *exequatur*. On the other hand, the Greek payment order can be enforced only in Greece, while it has to be recognized and be declared enforceable in

⁵³Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.81

⁵⁴ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.38

⁵⁵ Karameros St., , "The Regulation 1896/2006 for the down of the European order for payment", Greek Justice, 2008.351

⁵⁶ Papastamou Chr., The European order for payment as a tool for the contemporary lawyer regarding the handling of cross-border civil disputes, NoB 2011.503

⁵⁷ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.39

another country pursuant to the European relevant rules or on the rules of a convention that might be applicable. ⁵⁸

9) Since the two procedures follow different systems (principle of written proof in Greek payment order and non-proof in European payment order)⁵⁹ the ways of protection of the defendant are also different. In Greek payment order procedure the defendant has the right to file an appeal against the validity of the payment order mentioning analytically the reasons for which he asks the invalidity, which reasons may concern either the typical elements for the issuance of payment order or the substantive existence of the claim, within 15 days of the service. On the other hand, the defendant of the European payment order has just to file his objections without having to support these with analytical reasoning. After the objection is filed, the case is automatically transferred to normal court proceedings where both parties will have to support/prove their claims, except from the cases where the applicant has declared that he does not wish to automatically transfer the case to normal court proceedings. When the defendant files a statement of oppositions in the European payment order procedure, the European payment order does not become enforceable. ⁶⁰

10) The appeal of the Greek procedure, as well as the statement of opposition and the application for a review of the European procedure are filed at the Court who issued the payment order. Greek appeal however has to be filed within a certain time limit (15 working days after the first service or 10 working days after the second service). This is not valid for the application for a review, which can be filed at any time, since the regulation does not provide a time-limit for it. The review procedure is a special procedure that is put by the legislator to certify that the defendant does not lose any right to oppose to a certain legal act, remaining and examining only the typical

⁵⁸ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p. 39-40

⁵⁹ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.70, 81

⁶⁰ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.41-42

side of the facts (if the defendant had the possibility to object in time, if the service of the payment order took place as it should). On the other hand, the Greek appeal itself is considered to be the realization of the defendant's opposition and it invades in the substance of the litigation, dealing with the existence or not of the claim as well as with the existence of typical elements of the payment order.⁶¹

11) When the defendant files the application for a review, he also has the right to file a petition asking for the stop of the enforcement proceedings, because the European payment order has become enforceable from the moment that the deadline to file a statement of opposition has passed. In the case of Greek appeal also, the defendant has the right to file a petition for stop of the enforcement proceedings. The difference in the two procedures is that in case of the European review, the application for the stop of enforcement proceedings is filed before the Court of the place of enforcement, i.e. at a probably different Court from the one who issued the payment order, while in the case of Greek, the petition for the stop of enforcement proceedings is always filed before the Court who issued the payment order.⁶²

12) The Regulation 1896/2006 does not provide any rule regarding the interruption of the statute of limitations as a result of initiating the European payment procedure. This is not valid however in the case of Greek payment order since the Greek Civil Procedural Code provides that the service of the payment order stops the statute of limitations. In the case of the European payment order the interruption of the statute of limitations can be provided by the national legislation of each member state. This however cannot be considered as adequate protection because the legislation among member states is not common on the matter. That is

⁶¹ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.42

⁶² Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.43

why a European legal act should regulate this legal matter at a uniform way for legal certainty⁶³

b. -How the regulation 1896/2006 has been applied in Greece so far

When we speak about the application of the regulation in a member state, we mainly have to examine two aspects of the regulation, the issuance of the payment order on the one hand and its service and enforcement on the other hand. Therefore, we have to analyze the procedure of issuance of the payment order, when it is issued in Greece and its service and enforcement in Greece, when it is issued either in Greece or in another member state.

First of all, at the first stage of issuance of the payment order, we have to note the following points:

- 1) The application for the issuance of the payment order is filed in written, in Greek language and it has a certain form (same for all the member states) which is filled in. In Greece, there is no option to send the application by post or by fax but there is the possibility for electronic filling of it. Since the Regulation provides⁶⁴ that there is no necessity for the application to be filed by a lawyer, it is allowed also in Greece for the application to be filed by the applicant himself, even in cases that the competent Court is the First Instance Court.⁶⁴ Greece has not chosen a special authority to deal with the issuance of European payment orders but has assigned this competence to the Courts and the competence is defined based on the amount of the claim, like in pure Greek cases. Therefore, the claims up to 20.000 euro are filed before the Peace Courts and the claims from 20.000 euro and more are filed before the First Instance Courts.⁶⁵
- 2) In case that the Court proposes a correction of the application to the claimant and the last one does not respond to the proposal of the Court, the Court has to reject the application without having the possibility to accept it partly (article 10 paragraph 3 of the Regulation). The partly acceptance of the application is a possibility for the Greek Procedure

⁶³ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012

⁶⁴ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.85-87

⁶⁵ As above, p.94

(article 629 of the Greek Civil Procedure Code), however it cannot be applied to the European payment order, due to the different provision of the regulation⁶⁶.

3) Pursuant to article 17 of the Regulation the application for the European payment order does not interrupt but as it is broadly accepted stops the statute of limitations. The statute of limitations is interrupted when, according to the Greek Civil procedure Code (article 634), the enforceable European payment order is served to the defendant. Moreover, when the European payment order is declared enforceable, the statute of limitations is broadened to 20 years, pursuant to Greek Law (article 268 Civil Code).⁶⁷

As far as it concerns the service of the payment order:

- 1) The service is made with the initiative of the authority (Court or Notary) who issued the European payment order. This provision is justified based on the purpose of the regulation, which is the fast and immediate debt recovery. It is accepted however that for European payment orders that are issued in Greece and are to be served within Greek territory the article 141 paragraph 2 of the Greek Civil Procedure Code can be applied in parallel and the claimant can file a written application asking to arrange on his own the service of the European payment order, provided that he will file the service report within a certain time-limit to the Court.⁶⁸ This possibility can be in many cases a faster and a more safe choice for the claimant who wants to avoid the bureaucracy of and the delays due to overload created by the Court.
- 2) When the European payment order which is issued by a Greek Court has to be served to another member state, then the Court has to ask

⁶⁶ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.101-102

⁶⁷ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.103-107

⁶⁸ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.116-118

from the relevant authority (Public Prosecutor) to arrange the transfer of the European payment order to the correspondent authority of the member state where the service has to be made.⁶⁹

- 3) Regarding the service of the European payment order, the national law is applied, provided that it follows the minimum standards that are imposed by the Regulation. Therefore, in case of service in Greece, the provisions of Greek Civil Procedural Code apply. The Regulation moreover provides the possibility for a service of the European payment order through post. This option grants the possibility to the member states to serve the European payment orders directly without using the authorities of the state where the service is to be made. However, in Greece and for the European payment orders that are issued in Greece and are to be served in the Greek territory, the provision for a service through post does not apply since this is not provided by the Greek Law.⁷⁰ The opposite opinion however has been followed and accepted, grounded on the article 7 par.5 of the Regulation, according to which the application can be served by post. It is also accepted that the statement of opposition can be sent by post to the Court. What is not accepted in Greece is the filling of the statement of opposition through fax, while the electronic submission is found at a pilot stage. In the case of the judgment nr 11168/2014 of the First Instance Court of Thessaloniki, the hearing of the statement of opposition was judged to be unacceptable, because the statement of opposition had been sent by post and therefore the defendant was not informed about the hearing. This judgment led to the conclusion that in such cases, the claimant should take over the burden to inform the defendant about the hearing. This matter however is not common in any Court in Greece, because in Athens for example, there is no definition of a hearing as a result of

⁶⁹ As above, p.118-119

⁷⁰ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.125-130

filling of a statement of opposition. At this point, there is also a legislative vacuum that leads to contradictable arrangements.⁷¹

According to the statistical data mentioned above, the usage of the European payment order regime is not really broad, especially if it is compared with the usage that is made in Germany or Austria. It is also worth noticing that in Greece more than 50% of the European payment orders are objected by the defendants.⁷² This really high percentage, which is much higher than in any other member state might be explained by the Greek legal culture or even by the deep financial crisis that Greece faces the last years, which “obliges” Greek debtors to try to gain time by transferring the litigation in normal court procedures that are usually long lasting.

Regarding the matter of statement of opposition and the fact that the Greek system of payment order is totally different as explained above, as per the requirements of filling an appeal, which has to be fully justified and well founded in contrary to the statement of opposition of the European procedure, which has to be a simple refusal of the debt, it has been noticed that there is lack of procedural rules in Greek Civil Procedural Code that make easily applicable the procedure of transferring the claim in normal court proceedings in case of objections, pursuant to the European Regulation. That is because the provisions regarding Greek appeal cannot be applied in the European payment order procedure since they follow a different legal system. As a result, the Greek legislator should take any necessary step to provide the rules that would make the application of the Regulation regarding the transfer of the claim to normal court proceedings, easily possible. This lack of legislation could be accused as an impediment of the application of the Regulation in Greece. Article 17 of the Regulation is for sure directly applicable in Greece and anyone can make usage of it, but there are not the procedural detailed rules that could guide the transfer of the claim to normal court proceedings with legal certainty.⁷³ However, pursuant to the last modifications of the Greek Civil Procedural Code (articles 224 par.1 and 236), it should be accepted

⁷¹ Anthimos, Study, “SPECIAL MATTEL”, STATEMENT OF OPPOSITION AND CONTINUANCE OF THE PROCEDURE PURSUANT TO ARTICLES 16-17 OF THE REGULATION 1896/2006 (EUROPEAN PAYMENT ORDER), ARMENOPOULOS 2014/2001

⁷²The same as footnote 14

⁷³ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.155-157

that even an oral statement in front of the Court, that is written at the minutes or written statement filed by the defendant should be considered adequate for the continuance of the procedure.⁷⁴

In any case the Greek Case-law regarding the matter, despite the fact that is pretty poor, is also contradictory. The Judgment nr 3278/2012 of the First Instance Court of Thessaloniki accepted that an additional main action should be filed for the claim to be specified, while the judgment 11410/2014 of the same Court accepted the opposite, i.e. that there is no need for an additional application to be filed. The Judgment 9461/2014 of the same Court expressed the opinion that the written statement before the Court is adequate for the continuance of the procedure. There is an obvious unsolved problematic which has been created due to legislative vacuum, since the Greek legislator has not taken the steps that will lead to a smooth transition from the filling of the statement of opposition to the normal court proceedings.⁷⁵

Italy had faced almost the same problem, where the legal world proposed as a solution the filling of supplementing legal documents after the objections arise, so that the whole procedure is found in accordance with national law.⁷⁶

⁷⁴ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.228-230

⁷⁵ Anthimos, Study, "SPECIAL MATTER", STATEMENT OF OPPOSITION AND CONTINUANCE OF THE PROCEDURE PURSUANT TO ARTICLES 16-17 OF THE REGULATION 1896/2006 (EUROPEAN PAYMENT ORDER), ARMENOPOULOS 2014/2001

⁷⁶ Silvestri, Simplification of Debt Collection in the EU, <https://www.academia.edu/2511267/Simplification> of Debt Collection in the EU European Order for Payment Procedure and European Small Claims Procedure Italian Report

CHAPTER 3: MATTERS OF ENFORCEMENT

One of the main characteristics of the procedure set by the Regulation 1896/2006 is the direct enforceability of the European payment order in every European member state without the need of prior exequatur. The abolishment of exequatur is one of the most important initiatives of the Regulation and one of the most important steps towards the single market and the European integration. Under this view, the main matters that arise out of the enforcement procedure of the European payment order are the following:

- 1) The applicable law during the enforcement procedure is the national law of the state where the enforcement takes place. However, the Regulation provides uniform rules as regards the declaration of enforceability of the European payment order. The European payment order is declared enforceable when the time-limit of filing objections (i.e. 30 days after the service of the payment order to the defendant) has expired without any reaction from the defendant's side. There is no provision for preliminary enforceability of the European payment order during this period, so there is no option that the payment order is enforced before the time-limit of 30 days passes.⁷⁷ The claimant cannot base such a petition for preliminary enforceability neither on relevant provisions of the national law.⁷⁸
- 2) Usually, the Court (the authority that issued the payment order) does not and should not declare immediately the European payment order enforceable but leaves some time to pass, because the statement of opposition that is sent by post might reach at the Court after the time-limit has passed.⁷⁹ The usual time that the Court waits for the Objections is about 7 to 14 days after the 30-days period has passed.⁸⁰ What really counts for the Statement of opposition to be considered as filed in time is not the time that the document reaches to the Court but the time that the

⁷⁷ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.238-239

⁷⁸ Romano A., Il procedimento europeo di ingiunzione di pagamento, Regolamento (CE) N1896/2006 del 2 dicembre 2006, Milano 2009, p. 165

⁷⁹ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.242-243

⁸⁰ Pernfuss A., Die Effizienz des Europäischen Mahnverfahrens, Baden-Baden 2009, p. 309

defendant sends the document to the Court. That is why the relevant authority has to give some more time before declares the payment order enforceable. In case the Statement of Opposition reaches to the Court after the Court has declared the payment order enforceable but before the payment order is sent to the claimant, the Court has the possibility to recall the enforceability and send the case to normal civil proceedings. The requirement however, remains that the statement of opposition had been sent within the time-limit set by the law. In case, however, the statement of opposition reaches to the Court after the payment order has been declared enforceable and after it has been sent to the claimant, then the defendant is left only with the right to file an application for a review. After the payment order is declared enforceable, the Court does not proceed to a new service of the enforceable payment order. This kind of service usually takes place by the claimant, who adds to the payment order, the order for enforcement, starting this way the enforcement procedure.⁸¹

The Court cannot deny enforceability if no in-time objections have been filed, even in case the defendant has paid part of the claim.⁸²

- 3) The fact that the European payment order is directly enforceable in every member state without the prior need of the declaration of enforceability by the national Courts is a step forward regarding the European integration, because this regime actually overcomes the traditional consideration that the declaration of enforceability is a power of the state. The European payment order regime establishes the possibility according to which a supra-national enforceable title moves freely within European Union, without any impediment set by the member states. This has happened thanks to some “guarantees” that the Regulation provides. First of all, the guarantee that the defendant has the right to object and in general has adequate legal protection against an unfair and fake claim. The Regulation actually sets a minimum protection for the defendant, by setting minimum

⁸¹ Pantazopoulos, “European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece”, Sakkoula SA Publications, 2012, p.242

⁸² Romano A., Il procedimento europeo di ingiunzione di pagamento, Regolamento (CE) N1896/2006 del 2 dicembre 2006, Milano 2009, p.167-168

standards for a certain service of the payment order to ensure that the defendant takes knowledge of it, by providing the right of objection within adequate time limit, by providing the extra protecting tool of the “review” procedure. Under this minimum protection provided by the regulation, the state in which the enforcement is asked has to trust the relevant authority of the state which issued the payment order and declared it enforceable; accepting that the minimum standards set by the Regulation must have been followed. Moreover, during the enforcement stage, the defendant has still the possibility to object to it according to the national law, in case there is already a different judgment or payment order that is in conflict with the European payment order.⁸³

- 4) For the European payment order there is also the general idea that there is no any need for a census to be issued. There is however the different view followed by Carratta⁸⁴ and also followed by 3 european payment orders issued by the First Instance Court in Athens (9/2009, 5/2010 and 6/2011), according to which a census should be issued without the prior need of payment of the relevant fees for its issuance.⁸⁵
- 5) A matter also arises regarding the persons against whom the European payment order can be enforced. For example, a question is imposed when we have as a defendant a general partnership, where the partners are also personally liable for the payment of the debt. Pursuant to the Greek law the enforcement of a payment order issued against a company under this form, can also take place against its partners, without the prior need that it is also issued against them. This could happen also in case of a European payment order that is issued and enforced in Greece but it is not provided as a possibility from other national laws. In case for example the payment order is issued by another member state, the law of that member state should define against whom the enforcement can take place but this

⁸³ Podimata E., **European Payment Order According to the Regulation (EC) 1896/2006**, Publications Sakkoula SA, 2011, p.187-191

⁸⁴ Carratta A., Il procedimento ingiuntivo europeo e la “comunitarizzazione” del diritto processuale civile, R.D.P.2007. 1519, in Verso p.32

⁸⁵ Pantazopoulos, “European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece”, Sakkoula SA Publications, 2012, p.244

definition cannot be broader than the one provided by the member state where the enforcement is asked. This matter in general seems to be a weakness of the Regulation, since there is no uniform rule that could regulate the matter in a same way for all the member states.⁸⁶

- 6) There is an interesting discussion of whether the European payment order can be the legal base for writing a notice of mortgage or preliminary seizure on the defendant's property. The matter should be resolved taking into consideration that according to the Regulation, the enforceable European payment order is considered to be similar to an enforceable judgment which is issued by the member state where the enforcement is asked. Therefore the national law will regulate that possibility, according to the legal interest of the person who asks the interim measures. Interim measures should be accepted for example for the period that starts when the application for a European payment order is filed until its declaration of enforceability.⁸⁷
- 7) In case, after the declaration of enforcement, the defendant files an application for "review", pursuant to article 20 of the Regulation, he also has the right to file simultaneously an application for interim measures asking for a stop of enforcement proceedings until the issuance of the judgment regarding the review procedure.⁸⁸
- 8) Finally, during the enforcement procedure, the defendant has the right to object to the enforcement for the reasons that are mentioned in article 22 of the Regulation. These reasons have to do with typical matters, like the existence of a previous judgment regarding the same claim or the payment of the claim before the initiation of the enforcement. There is no case however for examination of the substance of the case at this stage.⁸⁹

⁸⁶ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.245-246

⁸⁷ Pantazopoulos, "European Payment Order-Interpretation per article- The Regulation 1896/2006 as applied in Greece", Sakkoula SA Publications, 2012, p.260-261

⁸⁸ As above, p.320-321

⁸⁹ As above, p.297-301

CHAPTER 5: CASE-LAW

Within these years of the application of the regulation, the Court was called to interpret and guide the national Courts and relevant authorities regarding the right meaning of its provisions. Some examples of the judgments of the European Court but also of national Courts regarding the regulation 1896/2006 are the following:

- 1) In *Case 215/2011*, the national Court of Poland, filed imposes some questions to the ECJ regarding the interpretation of the Regulation. The first question dealt with the exclusivity or not of the requirements set by the regulation regarding the issuance of the payment order. In concrete, the Polish Court was asking whether the requirements set by the Regulation were exclusive or are the minimum requirements to which the requirements set by the national law of the state where the issuance is asked, can be added. The Court replied to this question that since the procedure of the European payment order is an additional legal manner of claiming a debt, the requirements set by the Regulation for the issuance of the European payment order should be considered exclusive. This occurs from the fact that the only reason for rejection of the relevant application is the non-fulfillment of the requirements of those that are mentioned in articles 2, 4, 6 and 7 of the Regulation. Therefore the non-fulfillment of requirements of the national law could not lead to the rejection of the application. Furthermore, we reach at the same conclusion, based on the general objective of the regulation, which is analyzed in 8th, 9th and 29th recitals, according to which the Regulation creates a new uniform (additional to the already existing) regime for all the citizens of the European Union and does not substitute or transform any other national regime. Moreover, the ECJ clarifies that the legal expenses are defined pursuant to national law, but cannot be higher than the relevant expenses for the national legal procedures.

Regarding the relevant question for the calculation of the interests and in concrete, whether the interests should be mentioned exactly

defined in the application or not, the Court replied that there is no need for an exact reference of the amount of the interests, because this interpretation could lead to more than one applications in case the claimant wanted to collect the full interests of the debt until its full payment. That is because in case the claimant had to put in the application the exact amount of the interests, this could be calculated until the date of filing of the application, since the claimant cannot be aware of the exact date of full payment of the debt. As a result, the claimant must have the possibility with his initial application to claim also the interests until the full payment of the debt, just mentioning the interest rate and the date from which the calculation starts. Regarding the filling of the pre-printed document, in which there is not such a written indication, the national Court can add freely the relevant indication regarding the defendant's obligation for payment of full interests till the time of full payment of the capital amount, provided that the interest rate, the date that the calculation of interests starts and the order according to which the defendant has to pay this amount of the interests are mentioned clearly.⁹⁰

- 2) In the Case 0144/2012, the European Court of Justice had to decide upon a preliminary question imposed by the Austrian Supreme Court, whether the filling of the Objections can be considered as "representation" before the Court, where the defendant has to mention the exact reasons for which he files the Objections. The facts of the case had to do with the defendant filing objections against a European payment order issued by the Austrian Court, reasoning that the claim did not exist and anyway it was not yet due. During the normal civil proceedings that were continued also before the Austrian Court, the defendant claimed for first time, that the Austrian Courts were not competent pursuant to the Regulation 44/2001, because he was resident in Italy. The Austrian Supreme Court, accepting that there is no

⁹⁰ Judgment of the European Court of Justice 0215/2011, issued on 13-12-2012, Iwona Szyrocka-vs- Siger Technologie GmbH

jurisdiction for the Austrian Courts pursuant to Regulation 44/2001, filed a question for preliminary ruling to the ECJ, whether the legal act of filling the Objections had to be considered as legal representation before the Austrian Courts and whether since the defendant did not claim within the text of the Objections the lack of jurisdiction of the Austrian Courts, he actually accepted the relevant jurisdiction. The ECJ accepted that the legal act of filling Objections should not be considered as a unified act with the main legal proceedings that start after the filling of the Objections. The reasons which are mentioned in the Objections, are not binding for the main proceedings and do not play a role for the substantial protection of the defendant. The objections should not be considered as the first substantial act of defense against the claim, but it has only the meaning that the defendant disputes the claim and the case should be transferred to the Civil Courts for further examination.⁹¹

- 3) In case 0324/2012 the ECJ, after a petition for preliminary ruling was filed by the Austrian Court, dealt with the interpretation of the article 20 of the Regulation, regarding the review procedure. In concrete, the case concerned a mistake made the defendant's lawyer in calculating the thirty-day period within which there was the possibility of filling the Objections. While the European payment order had been served to the defendant on 13-12-2011, the defendant's lawyer wrongly considered that it had been filed on 14-12-2011 and the filed the Objections on 13-1-2012, i.e. after the time limit of thirty days had passed. The defendant claimed that this mistake made by its lawyer could justify the review procedure of article 20 of the Regulation. The ECJ however, concluded that such a mistake made by defendant's legal representative could not be considered as an extreme or unpredicted circumstance under the

⁹¹ Judgment of the European Court of Justice 0144/2012, issued on 13-6-2013, Goldbet Sportweten GmbH-vs-Massimo Sperindeo

meaning of the relevant provision of the Regulation and could not justify such a procedure of the review.⁹²

- 4) The judgment number 3365/2013 of the First Instance Court of Piraeus has also touched some matters of the European payment order regime at the stage of the enforcement and in the frame of an appeal filed against the enforcement procedure. The Court rejected the petition of the defendant according to which the European payment order should be cancelled, claiming that this is a matter that should be decided only by the Court that issued the European payment order and not at the stage of the enforcement. The defendant also asked from the Court not to accept the enforcement procedure based on the European payment order because the service of the payment order was not right since it took place through registered post and not in the Greek language. The Court rejected also this claim, since Greece has declared that accepts the service through registered post but the service should be proven by a document signed by the recipient. Moreover, in case the European payment order is served in a language other than the language of the country where the service takes place, the defendant has the right to return it to the Court within a week from the receipt. If so, the European payment order should be serviced again in the language of the country where the service is made. In the case under examination, the service took place by registered post and the person who received it was the employee of the defendant. The employee gave the European payment order to the defendant but he did not return it to the Court that issued it, despite the fact that it was not served in Greek language. The employee is a person to whom the service may be made, according to the Greek Civil Procedural Code, provided that the defendant is absent when the service is made. From the factual background of the case, did not occur that the defendant was present when the service was made to his employee. Therefore, the Court did not find any

⁹² Judgment of the European Court of Justice 0324/2012, issued on 21-3-2013, Novontech-Zala Kft –vs- Logicdata Electronic & Software Enticklungs GmbH

missing element or mistake in the service of the European payment order that could justify the stop of enforcement procedure. Anyway, this matter was also judged by the competent Dutch Court which issued the European payment order in the frame of the review procedure. Moreover, the Greek Court stated that after the European payment order is declared enforceable, it produces res, meaning that any objection that could be arisen before the Court and it did not is covered by it. Under this concept, the second reason o of the appeal according to which the claim had been time-barred, should be filed before the Court at the stage of the objections and it could not be arisen for first time during the enforcement procedure. With the same justification the Court rejected also the claim of the defendant that the Court that issued the European payment order did not have the jurisdiction to do so, because this claim should not be arisen at the enforcement stage for first time. Furthermore, the Court that examines appeal against the enforcement cannot examine also if the European payment order is against public order, because it has to trust the conclusions reached by the Court that issued the payment order and should accept it. In addition, the Greek Court denied deciding upon the claim of the defendant that the claim was not clear and due, because that is a matter of the substance of the case, with which the Court does not deal at the enforcement stage. At the end the Court rejected also as indefinite the claim of the defendant that the order for payment that was served to him was invalid because at the official translation of the application for the issuance of the payment order did not include the text regarding the jurisdiction of the Dutch Court.⁹³

- 5) A more recent judgment of the First Instance Court of Thessaloniki nr 11143/2014, dealt with the matter of the right legal procedure of continuance in normal Court Proceedings in case of filling a statement of opposition. The Court judged that the filling of the Greek Appeal of the article 632 of the Greek Civil Procedural Code cannot be considered as the right way of continuance of

⁹³Judgment nr 3365/2012 of the First Instance of the Court of Piraeus issued on 6-7-2012, NOMOS

the procedure with normal court proceedings in case of a statement of opposition is filed in time. The Greek Appeal has as an object to cancel the Payment Order, while the Regulation provides the possibility of continuance to normal court proceedings not as a “vehicle” to the cancellation of the European Payment Order but to the substantial resolution of the dispute, since the claim is not considered anymore undisputed. The fact that the European Payment Order is not an enforceable title and is never declared enforceable in case a statement of opposition is filed in time, leads to conclusion that there is no sense for the Court to cancel the European Payment order after that. The Greek Appeal is the legal vehicle for the review procedure, in case no statement of opposition is filed.⁹⁴

- 6) A similar matter regarding the continuance of the procedure with normal Court proceedings after the filling of a statement of Opposition was previously the object of the Judgment nr 3278/2012 of the Multimember Court of Thessaloniki. The Court accepted in this case that the provisions of the Greek Civil Procedural Code regarding the appeal against the payment order do not apply in case of in-time filling of statement of opposition. It also stated that the claimant should file an additional application to the Court specifying the claim and providing all the details regarding it, that were not provided with the initial application for the issuance of the European payment order, following the opinion expressed by Podimata (see above p.21-22). In that case, however, as *“application initiating proceedings” is considered to be the initial application for the issuance of the payment order and not the statement of opposition*. As a result the Court accepted the action filed by the claimant regarding the obligation of the defendant to pay the debt but rejected the petition according to which the claimant asked for the cancellation of the European Payment Order, because the European Payment Order had already been invalidated by the filling of the statement of opposition.⁹⁵

⁹⁴ Judgment 11143/2014 of the First Instance Court of Thessaloniki, published in NOMOS, ARMENOPOULOS 2014/1895

⁹⁵ Judgment 3278/2012 of the Multimember Court of Thessaloniki, published in NOMOS, ARMENOPOULOS 2014/102

Conclusions

The innovative steps that were made with the European payment order regime, abolishing the exequatur and establishing a European enforceable title that acquires immediate enforceability in any European member state, are steps towards the European integration. The creation of this regime intended to abolish the impediments that are imposed in transnational commercial activities for the recovery of the debts. During this period of deep financial crisis in Europe and all over the world, tools like this one, are useful for the merchants and in general the commercial entities to be helped during their attempt to survive. The fast recovery of pecuniary claims many times is proved to be crucial for the commercial entities all over the Europe. The application of the Regulation 1896/2006 however in practice however, indicates some weaknesses of the regime that should be overcome by some correction movements. First of all, based on the statistical data, the European payment order regime is not well known within European territory, because, despite the advantages that it offers, there are states that present zero usage of it. Therefore, a first attempt should be the wide awareness of the regime and its advantages, so that it is actually available to the European citizens. Moreover, despite the fact that the Regulation had as a purpose to create an independent and unified regime for all the European member states, there is still strong connection of the European payment order with the national laws, since the national laws intervene to cover matters that are not regulated clearly or at all by the Regulation. This, however, means that the Regulation cannot be applied in a uniform way in all the member states, since the national law plays a role. As a result, there might be cases that a citizen of a member state is faced more generously than the citizen of another member state.

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