



## ITALY

### To apply for a European order for payment procedure in Italy

#### ❖ Summary of the objectives and principles of the European order for payment procedure:

In order to ensure swift and efficient recovery of outstanding debts, the European institutions adopted Regulation (EC) No 1896/2006 of 12 December 2006 creating a *European order for payment procedure*, which came into force on 12 December 2008.

This procedure is uniformly applicable in the different Member States. It is autonomous, optional and additional to the national procedures. This European procedure does not substitute itself for the existing national procedures and is optional in consideration of the other existing European mechanisms – Article 1 (2): “*This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law* ».

Recital 9 of Regulation 1896/2006 states that its purpose “is to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure, and to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement”.

The regulation in fact abolishes the *exequatur*: the order for payment is recognised and enforceable in all the Member States.

#### ❖ Reminder of the general provisions of the Regulation:

##### Article 24 - Legal representation

*Representation by a lawyer or another legal professional shall not be mandatory:*

- (a) for the claimant in respect of the application for a European order for payment;*
- (b) for the defendant in respect of the statement of opposition to a European order for payment.*

##### Article 25 - Court fees

- 1. The combined court fees of a European order for payment procedure and of the ordinary civil proceedings that ensue in the event of a statement of opposition to a European order for payment in a Member State shall not exceed the court fees of ordinary civil proceedings without a preceding European order for payment procedure in that Member State.*
- 2. For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the court, the amount of which is fixed in accordance with national law.*

##### Article 26 - Relationship with national procedural law

*All procedural issues not specifically dealt with in this Regulation shall be governed by national law.*





### **Article 27 - Relationship with Regulation (EC) No 1348/2000**

*This Regulation shall not affect the application of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters.*

### **Article 28 - Information relating to service costs and enforcement**

*Member States shall cooperate to provide the general public and professional circles with information on:*

*(a) costs of service of documents;*

*and*

*(b) which authorities have competence with respect to enforcement for the purposes of applying Articles 21, 22 and 23,*

*in particular via the European Judicial Network in civil and commercial matters established in accordance with Council Decision 2001/470/EC.*

### **Article 29 - Information relating to jurisdiction, review procedures, means of communication and languages**

*1. By 12 June 2008, Member States shall communicate to the Commission:*

*(a) which courts have jurisdiction to issue a European order for payment;*

*(b) the review procedure and the competent courts for the purposes of the application of Article 20;*

*(c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;*

*(d) languages accepted pursuant to Article 21(2)(b).*

*Member States shall apprise the Commission of any subsequent changes to this information.*

*2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the Official Journal of the European Union and through any other appropriate means.*

#### **❖ Reminder of the scope of the Regulation:**

The regulation applies to civil and commercial matters in accordance with Community law. It does not extend to revenue, customs or administrative matters and excludes matrimonial relationships, wills and successions, bankruptcy, judicial arrangements, compositions and analogous proceedings, as well as social security.

The regulation applies to cross-border cases, namely cases 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. The cross-border character is determined at the time of application for a European order for payment. The territorial jurisdiction of the court is determined in accordance with the rules of Community law on jurisdiction, in particular the Brussels I regulation. However, the regulation does make one exception to the Brussels I rules: a claim made against a consumer (a person who has concluded a contract "for a

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purpose which can be regarded as being outside his trade or profession”) may be brought only before the courts in the Member State in which the consumer is domiciled (which has sole jurisdiction).

The regulation applies only to a pecuniary claim for a specific amount that has fallen due at the time when the application for a European order for payment is submitted and arises from a contract. Accordingly, claims of a non-contractual origin are excluded unless they have been the subject of an agreement between the parties or there has been an admission of debt, or if they relate to liquidated debts arising from joint ownership of property. On the other hand, there is no limitation on the amount of the claim.

## TO APPLY FOR A EUROPEAN ORDER FOR PAYMENT PROCEDURE IN ITALY

### I. The application for the order for payment

The application is made using standard form A.

*Read the form in English:*

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_form1\\_en.jsp?txtPageBack=epo\\_filling\\_fr\\_fr.htm&countrySession=2&](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_en.jsp?txtPageBack=epo_filling_fr_fr.htm&countrySession=2&)

*Read the form in Italian:*

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_form1\\_it.jsp?countrySession=5&txtPageBack=epo\\_filling\\_it\\_it.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_form1_it.jsp?countrySession=5&txtPageBack=epo_filling_it_it.htm)

- **Competent jurisdiction**

Member States were invited by the regulation to indicate to the European Commission their national jurisdictions which would be competent to issue an European order for payment procedure.

In Italy, the following courts have jurisdiction to issue a European order for payment: The magistrate's court in the case of disputes involving up to:

- 1) €5 000,00, where the dispute concerns movable property;
- 2) €20 000,00, where the dispute concerns compensation for damage caused by the circulation of vehicles and boats in cases covered by Article 2(2)(d)(i) of Regulation (EC) No 1896/2006.

The magistrate's court, whatever the amount concerned, in cases of claims for damages arising out of relations between holders or possessors of residential property in connection with the emission of smoke, heat or fumes, noise, jolts and similar phenomena over and above normal levels of tolerance, as provided for in section 7(3)(3) of the Italian Code of Civil Procedure (CPC), where covered by Article 2(2)(d)(i) of Regulation (EC) No 1896/2006.

The magistrate's court also has jurisdiction in cases involving interest and incidental charges for late payment of social security or welfare contributions.

The ordinary civil court or the court of appeal as court of first and final instance in all other cases and in every case covered solely by Italian law. In particular, in the fields not excluded by Article 2 of the Regulation, ordinary civil courts have jurisdiction in cases involving:

- 1) claims for rent for accommodation or company premises (Section 447 bis CPC);





- 2) claims relating to agricultural contracts (in such cases jurisdiction lies with the division of the ordinary courts specialised in agricultural matters within the meaning of Section 9 of Act No 29 of 14 February 1990);
- 3) claims relating to companies, banks and securities firms and loans for public works within the meaning of Section 1 of Legislative Order No 5 of 17 January 2003;
- 4) claims concerning patents and trademarks (in such cases jurisdiction lies with the division of the ordinary courts specialised in intellectual and industrial property rights, within the meaning of Sections 1 et seq. of Legislative Order No 168 of 27 June 2003);
- 5) claims relating to shipping law, in particular where damage is caused by collisions, by vessels when anchoring or mooring or performing any other manoeuvres in ports and other stopping places, damage caused by the use of loading and unloading mechanisms and the handling of goods in ports, damage caused by vessels to nets and other fishing equipment, charges and compensation for assistance, rescue and recovery, reimbursement of expenditure and awards for recovering wreckage under Article 589 of the Shipping Code.

In cases not excluded under Article 2 of the Regulation, jurisdiction for claims for damages arising from restrictive competitive practices and abuse of a dominant position resides with the court of appeal as court of first and final instance (Section 33(2) of Act No 287 of 10 October 1990).

- **Submission of the application**

The regulation states 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”.

In Italy, communications accepted for the purposes of the payment order procedure must be in paper form and sent by post.

With regard to procedural costs, Article 25(2) of the Regulation states that these shall be fixed in accordance with national law. The amount payable, therefore, is the single court fee as laid down by the Consolidated Act on Legal Costs [Testo Unico delle spese di giustizia], Presidential Decree 115 of 30 May 2002.

The single fee, updated to 2011, amounts to:

- for judicial proceedings to a value of up to EUR 1,100, the fee is EUR 37;
- for proceedings to a value of EUR 1,100- EUR 5,200, the fee is EUR 85;
- for proceedings to a value of EUR 5,200-EUR 26,000, the fee is EUR 206;
- for proceedings to a value of EUR 26,000-EUR 52,000, the fee is EUR 450;
- for proceedings to a value of EUR 52,000-EUR 260,000, the fee is EUR 660;
- for proceedings to a value of EUR 260,000-EUR 520,000, the fee is EUR 1,056;
- for proceedings to a value of over EUR 520,000, the fee is EUR 1,466.

**The European order for payment is also subject to registration tax, similar to the provision for the payment procedure regulated by Italian law. The single fee is halved for payment proceedings.**

If payment is not made or if it is not made in full, the court registry records the amount payable and initiates the procedure laid down for the recovery of the single fee. The receipt for payment must be

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attached to the case files if payment is made voluntarily before the case is entered into the cause list or to the claims recovery office folder if the payment has to be collected.

In addition to the single fee, the amount of € 8 is payable as a flat-rate advance by individuals to the Treasury for notifications by official request. In the event of non-payment, Article 285 of the Consolidated Act on Court Fees, which requires the clerk of the court to refuse to enter the case in the cause list, is not applied.

This statutory rule is incompatible with the criteria stated by the European Regulation in question and therefore is not applicable if this fee is not paid. The office will take steps to collect the amount owed, using the same procedures as prescribed in the event of non-payment of the single fee.

There is no objection to the party having recourse to state-funded legal aid.

## II. Court examination of the application

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:

- . 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**);
- . 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.)
- . Issue a European order for payment using **form E**.

**These forms are available on the European judicial atlas in civil matters Website:**

[http://ec.europa.eu/justice\\_home/judicialatlascivil/html/epo\\_filling\\_it\\_en.htm?countrySession=5&](http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_it_en.htm?countrySession=5&)

If the applicant lives in Italy, the service is made by the jurisdiction

If the applicant lives in another Member State, the service shall be performed pursuant to the provisions of (EC) Regulation n° 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). In Italy, transmitting agencies are the Central offices of judicial officers at courts (uffici giudiziari) which send the form to be served to the receiving agency which has jurisdiction in the Member State of the addressee.

## III. Service of the European order for payment

The order to pay must be served on the defendant in accordance with the national rules of law, by procedures complying with minimal standards (Articles 13 and 14 of the regulation – service or notice with proof of receipt by the defendant/service or notice without proof of receipt by the defendant).

The claimant serves a certified copy of form A and form E on the defendant. The form for the opposition (form F) is attached to the notice of service.







In Italy, the service of documents as referred to in Article 12(5) of the Regulation is to be understood as being the responsibility of the parties. The court registry, on the other hand, will notify the claimant of the measure accepting or rejecting the application, expressly stating that, in the case of the issue of a European order for payment, the document must be served on the defendant by the party.

If the defendant lives in Italy, the service of documents in civil proceedings is governed by Articles 137 et seq. of the Code of Civil Procedure. Article 138 of the Code states that the judicial officer normally serves notice by the personal delivery of a copy to the addressee at his home or, if this is not possible, wherever he is located within the limits of the judicial officer's territorial jurisdiction. Article 139, on the other hand, specifies that if service is not made in the manner stated in Article 138, it must take place in the municipality in which the addressee resides, seeking him at his home or the place at which he has his office or conducts his industrial or commercial business. If personal service on the addressee is not possible at the said locations, Article 139 of the Code of Civil Procedure allows the document to be delivered to a person other than the addressee (the consignee), but one that has relations with him of such a nature as to ensure that it will be handed to him.

Cost of service within Italy include the single fee, the transfer charge and 10% of Treasury tax on the transfer charge).

For the service of documents in civil matters, the single fee is payable at the following rates:

- a) for documents served on up to two addressees: EUR 2.58;
- b) for documents served on three to six addressees: EUR 7.75;
- c) for documents served on over six addressees: EUR 12.39.

The transfer charge is fixed at the following rates:

- d) up to six kilometres: EUR 1.74;
- e) up to twelve kilometres: EUR 3.16;
- f) up to eighteen kilometres: EUR 4.36;
- g) over eighteen kilometres, for each distance of six kilometres or a fraction of over three kilometres thereafter, at the rate specified in c), plus EUR 0.93

If the defendant lives in another Member State, the judicial officer serves the document in accordance with the provisions of Regulation 1393/2007, together with the customary attachments. There is no cost for the judicial officers, acting as the transmitting agencies. The charges for service payable to the receiving agency, on the other hand, pursuant to the provision of Regulation 1393/2007, shall be advanced by the claimant to the judicial officer before the document is forwarded.

In the case of cross border service of documents, the addressee may refuse to accept the document to be served if it is not written in, or accompanied by a translation into, either a language which the addressee understands or the official language of the Member State addressed. So, documents must be translated if necessary. But only the entries made by the applicant in the Form A and by the judge in the Form E are to be translated because the forms are available in the different languages of the European Union on the website of the European Judicial Atlas. In accordance with the Regulation 1393/2007, it is not required that the translation must be certified by a person qualified to do so in one of the Member States. However, in practice, it is advisable to ask a person qualified to translate entries made in the forms.

In Italy, there are translators qualified to provide a sworn translation. The list of sworn translators is contained in the Register of Court-appointed experts held within each Court.

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#### IV. Opposition

The defendant must send the statement of opposition within 30 days of service of the application, using the form F transmitted to him at the same time as the European order for payment; this time limit may be extended as necessary to allow the statement to arrive.

In Italy, the opposition form F must be lodged with the registry (at the court of the judge who has issued the order for payment) and the tax element settled by payment of the single fee (reduced by half).

The opposition form F must be lodged with the registry (at the court of the judge who has issued the order for payment) and the tax element settled by payment of the single fee (reduced by half). Payment on behalf of the opponent (if he lives outside Italy) must be made by bank transfer within one month of the notice of payment served by the judicial office registry. Proof of payment shall be sent to the judicial office by post or fax, within ten days of the payment.

In the event of non-payment, action for execution will be taken by debiting of interest incurred from the date on which the application for the order for payment is submitted, plus the charges.

If late payment is made after the time limit indicated above, under Italian law, pursuant to Article 16 paragraph 1bis of Presidential Decree 115 of 30 May 2002, a penalty is imposed by a separate subsequent measure, as follows:

- one quarter of the decreed minimum, equivalent to twenty five per cent of the unpaid outstanding amount, if payment of the single fee is made after expiry of the time limit for compliance stated in the request for payment but by the sixtieth day from service of the document;
- one hundred and fifty per cent of the unpaid outstanding amount, if payment is made between the sixtieth and the eightieth day of service of the request for payment;
- two hundred per cent of the unpaid outstanding amount, if payment of the single fee is made thereafter or is not made.

#### V. Effects of the opposition:

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 he opposes the transfer to ordinary civil proceedings: termination of the procedure
- 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.

After the statement of opposition is received, the court registry passes the file to the judge, who, having verified that the opposition has been submitted in good time and in accordance with the formalities, issues an order in which the judge:

- takes note of the opposition and indicates the date of its filing;
- gives the parties two separate, staggered time limits to allow them to add to their respective initial applications;
- fixes the date for the first hearing;





- instructs the court register to give notice of the measure to the claimant only and orders the claimant, on expiry of the time limit for its supplementary statement of its case, to serve notice of the court order and its own statement on the other party;

After service has been effected, the claimant will enter an appearance within the customary term. Representation by a lawyer is mandatory.

#### **VI. Effects of the absence of a statement of opposition within the time limit of 30 days and any additional period to allow a statement to arrive:**

Article 18 (1): If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.

Article 18 (2): Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.

Article 13 (3): The court shall send the enforceable European order for payment to the claimant.

In Italy, it is the court officer who arranges to append the enforcement clause [to the enforcement order] immediately after the expiry of the time limit for filing a statement of opposition.

Its transmission is, as stated by the rules, normally effected by forwarding to the registry of the court of origin to the applicant.

Article 476 of the Code of Civil Procedure states, as regards the other copies in enforceable form, that no more than one copy in enforceable form may be forwarded to the same party without proper grounds.

Further copies are requested by the party concerned, in the case of a measure with an appeal, to the office by which the measure has been issued, and in other cases to the President of the court in whose jurisdiction the document has been formed. A court order will be issued on the application. Public official improperly issuing copies in enforceable form may be sentenced to a fine of up to EUR 5,000.

#### **VII. Review of the order to pay (article 20):**

##### **Article 20 - Review in exceptional cases**

*1. After the expiry of the time limit laid down in Article 16(2) the defendant shall be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where:*

*(a) (i) the order for payment was served by one of the methods provided for in Article 14,*

*and*

*(ii) service was not effected in sufficient time to enable him to arrange for his defence, without any fault on his part,*

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or

*(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.*

*2. After expiry of the time limit laid down in Article 16(2) the defendant shall also be entitled to apply for a review of the European order for payment before the competent court in the Member State of origin where the order for payment was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances.*

*3. If the court rejects the defendant's application on the basis that none of the grounds for review referred to in paragraphs 1 and 2 apply, the European order for payment shall remain in force.*

*If the court decides that the review is justified for one of the reasons laid down in paragraphs 1 and 2, the European order for payment shall be null and void.*

In Italy, the court which conducts the review under Article 20(1) of Regulation (EC) No 1896/2006 and the proceedings pertaining thereto is the court which issued the payment order within the meaning of Section 650 CPC.

The court which conducts the review under Article 20(2) of Regulation (EC) No 1896/2006 and the proceedings pertaining thereto is the ordinary court which issued the payment order and to which the matter should be referred in accordance with its general rules of procedure.

## **VIII. Enforcement of the order for payment**

### **Article 21 - Enforcement**

*1. Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.*

*A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.*

*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;*

*and*

*(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. 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.*





*3. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.*

In Italy, before the enforcement of the order, under Article 479 of the Code of Civil Procedure, the European order for payment must be personally served on the defendant, pursuant to Articles 137 et seq. of the Code. Judicial officers (ufficiali giudiziari) are the competent authority to enforce the European order, at the request of the claimant.

#### **IX. Stay, limitation or refusal of enforcement**

On certain conditions the defendant may obtain a stay, limitation or refusal of enforcement of the “European order for payment” by the “competent court in the Member State of enforcement” (*article 22(1)*).

- The limitation or stay can be obtained only if an application for review has been made to the original court. The competent court or authority in the Member State of enforcement may either limit the enforcement proceedings to protective measures, or make enforcement conditional on the provision of such security as it may determine or, under exceptional circumstances, stay the enforcement proceedings.
- The refusal may be obtained only if the European order for payment is irreconcilable with an earlier decision given between the same parties and involving the same cause of action, and if the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.

In Italy, the enforcement judge is the “competent court”. Article 615 et seq of the Code of Civil Procedure apply. The procedure for obtaining a stay, limitation or refusal of enforcement entail payment of the single fee (for opposition to enforceable instruments (Article 617 of the Code of Civil Procedure) €146.00 / for opposition to enforcement: the single fee is paid depending on the value of the case (see table above)).

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