

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2002/0090(COD) Procedure completed
Civil judicial cooperation: European enforcement order for uncontested claims	
Subject 3.45.03 Financial management of undertakings, business loans, accounting 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market	PPE-DE <a href="#">WUERMELING Joachim</a>	20/06/2002
	Former committee responsible	PPE-DE <a href="#">WUERMELING Joachim</a>	20/06/2002
	Former committee for opinion	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs	The committee decided not to give an opinion.
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">2560</a>	10/02/2004
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2514</a>	05/06/2003
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2436</a>	13/06/2002
European Commission	Commission DG <a href="#">Justice and Consumers</a>	Commissioner	

Key events			
18/04/2002	Legislative proposal published	<a href="#">COM(2002)0159</a>	Summary
29/05/2002	Committee referral announced in Parliament, 1st reading		
13/06/2002	Debate in Council	<a href="#">2436</a>	
25/03/2003	Vote in committee, 1st reading		Summary
25/03/2003	Committee report tabled for plenary, 1st	<a href="#">A5-0108/2003</a>	

	reading		
08/04/2003	Decision by Parliament, 1st reading	<a href="#">T5-0135/2003</a>	Summary
05/06/2003	Debate in Council	<a href="#">2514</a>	Summary
11/06/2003	Modified legislative proposal published	<a href="#">COM(2003)0341</a>	Summary
06/02/2004	Council position published	<a href="#">16041/1/2003</a>	Summary
12/02/2004	Committee referral announced in Parliament, 2nd reading		
17/03/2004	Vote in committee, 2nd reading		Summary
17/03/2004	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A5-0187/2004</a>	
30/03/2004	Decision by Parliament, 2nd reading	<a href="#">T5-0193/2004</a>	Summary
21/04/2004	Final act signed		
21/04/2004	End of procedure in Parliament		
30/04/2004	Final act published in Official Journal		

### Technical information

Procedure reference	2002/0090(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	EC Treaty (after Amsterdam) EC 061
Stage reached in procedure	Procedure completed
Committee dossier	JURI/5/19452

### Documentation gateway

Legislative proposal	<a href="#">COM(2002)0159</a> <a href="#">OJ C 203 27.08.2002, p. 0086 E</a>	18/04/2002	EC	Summary
Economic and Social Committee: opinion, report	<a href="#">CES1348/2002</a> <a href="#">OJ C 064 08.04.2003, p. 0001-0007</a>	11/12/2002	ESC	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0108/2003</a>	25/03/2003	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0135/2003</a> OJ C 064 12.03.2004, p. 0022-0079 E	08/04/2003	EP	Summary
Modified legislative proposal	<a href="#">COM(2003)0341</a>	11/06/2003	EC	Summary
Council statement on its position	<a href="#">05868/2004</a>	02/02/2004	CSL	
Council position	<a href="#">16041/1/2003</a> OJ 0 079 30.03.2004, p. 0059-0082 E	06/02/2004	CSL	Summary
Commission communication on Council's position	<a href="#">COM(2004)0090</a>	09/02/2004	EC	Summary
Committee recommendation tabled for plenary,	<a href="#">A5-0187/2004</a>	17/03/2004	EP	

2nd reading					
Text adopted by Parliament, 2nd reading		<a href="#">T5-0193/2004</a> <a href="#">OJ C 103 29.04.2004, p. 0029-0130 E</a>	30/03/2004	EP	Summary
Implementing legislative act		<a href="#">32005R1869</a> <a href="#">OJ L 300 17.11.2005, p. 0006-0018</a>	16/11/2005	EU	

#### Additional information

European Commission

[EUR-Lex](#)

#### Final act

[Regulation 2004/805](#)  
[OJ L 143 30.04.2004, p. 0015-0039](#) Summary

## Civil judicial cooperation: European enforcement order for uncontested claims

**PURPOSE:** to establish a European Enforcement Order (EEO) for uncontested claims. **CONTENT:** judicial co-operation in civil matters was transferred from the third pillar of the TEU to the first pillar following the ratification of the Treaty of Amsterdam. This transfer from the third to the first pillar allows the European Commission the right of initiative in all civil matters relating to judicial affairs with cross border implications. As part of the on-going work into judicial co-operation in civil matters the Community is seeking to develop measures which improve and simplify the enforcement of decisions in civil and commercial cases - this within the context of mutual recognition. In March 2002 Council Regulation 44/2001 on jurisdiction and the recognition of judgements in civil and commercial matters came into force. Its purpose being to streamline procedures for obtaining a declaration of enforceability (exequatur) and replaces the previously used 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters. In spite of the improvements brought about by the Regulation there are nevertheless a number of shortcomings in the existing legislative structure, notably that not all the obstacles to the unhindered movement of judgements within the European Union have been removed. Further, the current legislative landscape allows for the continuation of restrictive intermediate measures. Consequently joint Commission/Council working committees have concluded that the complete withdrawal of the exequatur - in the case of uncontested claims - should become a Community priority and be replaced by the European Enforcement Order. As a first step it has been decided to apply the abolition of exequatur in cases where judgements have not been challenged by a debtor. The Commission is therefore proposing a Council Regulation for a European Enforcement Order - in the case of uncontested pecuniary claims. The aim is to eliminate all checks on judgements handed down in one Member State as a prerequisite for enforcement in another Member State. In the area of uncontested claims the Commission seeks to present a proposal which: - Eliminates all intermediate measures for the enforcement of decision attained in the absence of any dispute by the debtor over the nature or extent of the debt. (At the same time the Commission is preparing a Green Paper examining the creation of uniform or harmonised procedures for a European order for payment). - Establishes minimum standards with regard to the service of documents covering the admissible methods of service, the time of service enabling the preparation of defence and the proper information of the debtor. - Control for the compliance with the requirements of the proposal should be vested in the courts of the Member State where the judgement was given. - The creditor may decide to choose between either the EEO or for a declaration of enforceability under Council Regulation 44/2001.?

## Civil judicial cooperation: European enforcement order for uncontested claims

The committee adopted the report by Joachim WUERMELING (EPP-ED, D) amending the proposal under the 1st reading of the codecision procedure. In its key amendment, it said that the parties involved in a litigation procedure should be able to appeal according to their national law against the issuing of an enforcement order or the refusal thereof, whereas, in Article 8, the Commission proposal explicitly rules out the possibility of appeal. Other amendments adopted by the committee sought to ensure greater legal clarity and to ensure that the implementation of this new instrument will be as problem-free as possible.?

## Civil judicial cooperation: European enforcement order for uncontested claims

The European Parliament adopted a resolution based on the report by Joachim WUERMELING (EPP-ED, Germany) and made some amendments to the Commission's proposal. (Please refer to the summary dated 25/03/03).?

## Civil judicial cooperation: European enforcement order for uncontested claims

The Council had an orientation debate on the draft Council Regulation creating a European enforcement order (EEO) for uncontested claims. The debate focused on the following key issues: - the definition of an uncontested claim, - the minimum standards on the service of documents, - the possibility of appealing against the decision certifying a judgement as a EEO, - the enforceability of the judgement in the Member State of origin as a sufficient requirement for certification as a EEO, - the possibility of a refusal of enforcement in the Member State

of enforcement, including on the basis of the "public policy" criteria, and - the inclusion or not of consumer cases in the scope of application of the Regulation. In the light of the discussion, the Council agreed on general guidelines for future work and consequently instructed the preparatory instances of the Council to further examine the draft Regulation.?

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The Commission stated that it could 11 of the amendments made by Parliament in whole or in part. These include: - part of the definition of "uncontested claim"; - a judgement certified as a European Enforcement Order will be enforced in other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition; - amendments relating to the methods of service of the document instituting the proceedings; - one unsuccessful attempt at personal service on the debtor is sufficient to allow recourse to substituted service; - a very brief description of the justification of the claim will meet the requirement for certification as a European Enforcement Order. The Commission rejected 5 amendments, amongst them, the possibility of appeal for both judgement debtor and judgement creditor to the extent that the domestic law of the Member State of origin allows an appeal against a national enforcement order. The Commission gave several reasons, among them that the proposal deals with uncontested claims only.?

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The common position, adopted unanimously, remains largely faithful to the Commission's original proposal as modified by the amended proposal. The Council considers that the text of the common position on the creation of an enforcement order for uncontested claims achieves the balance desired between protection of the rights of the debtor on the one hand, and, on the other, the establishment of an efficient certification system so as to permit the free movement of judgements by removing obstacles to recognition and enforcement in the Member State of enforcement. It should be noted that the United Kingdom and Swedish delegations lifted their parliamentary scrutiny reservation on this common position. The main changes made in the common position concern the following issues: - the common position no longer requires the final nature of a judgement as a prerequisite for its certification as a European enforcement order but considers the enforceability of a judgement as being sufficient in spite of its being subject to the possibility of an appeal. If an appeal or another challenge materialises the decision following that challenge is enforceable in other Member States under the same conditions, i.e. without exequatur, even though the underlying claim is no longer uncontested since it would be unacceptable to invalidate the European enforcement order and oblige the creditor to start all over again with an exequatur procedure in that situation. Indeed, in the case of such a solution, any debtor against whom a certificate has been issued could delay enforcement of the judgement by lodging an appeal, even an obviously unfounded one, in the country of origin and annulling the beneficial effect of the use of the European enforcement order. This would undermine the very objective of the Regulation, the simplification and the acceleration of cross-border enforcement, to the point of rendering the instrument counter-productive. The debtor's legitimate interests in the event of an appeal subsequent to the issuance of a European enforcement order certificate are adequately safeguarded by Articles 8Y and 23 that relate to the stay or limitation of enforcement; - the common position retains the principle that no appeal lies against the issuing of the European enforcement order certificate. It newly introduces, however, the possibility for the debtor to apply for the rectification of material errors in the certificate (e.g. a typing error) and for the withdrawal of the certificate where it has been clearly wrongly granted; - consumers as judgement debtors are accorded special protection going beyond the control of compliance with the jurisdictional rules of Council Regulation 44/2001/EC ("Brussels I"). A judgement delivered against a consumer in the absence of an explicit admission of the claim in question can only be certified as a European enforcement order if the consumer is domiciled in the Member State of origin; - instead of a hierarchical structure of methods of service which would require an attempt to serve on the debtor in person before resorting to other means of service, the Council has agreed to permit the unrestricted choice of any of the admissible methods of service as exhaustively listed in the proposal and has added the possibility, under certain conditions, of postal service without proof of receipt or delivery; - on the other hand, all those methods of service that provide a high degree of likelihood but no full proof that the document served has reached its addressee are admissible only on the condition that under the law of the Member State of origin the debtor is entitled to apply for a full review of the judgement in those exceptional cases where in spite of service in compliance with this Regulation the debtor has not taken cognisance of the document at issue in sufficient time to be able to arrange for his defence. The amendments accepted by the Parliament and the Commission and which were incorporated into the common position: - take note of the applicability of the co-decision procedure since the entry into force of the Nice Treaty, has been taken on board with a slightly shortened wording but without any substantive change; - combine two modification of the definition of one sub-category of the term "uncontested claims". The first one aimed at clarifying that, in order to constitute a valid grounds for opposition of a claim, the debtor's conduct must be in conformity with the procedural requirements of the Member State of origin. The second modification which would render inadmissible as a valid objection to a claim "statements of opposition in pre-litigation proceedings if they automatically lead to court litigation proceedings" was rejected by the Commission and not taken on board by the Council either; - rephrase the description of the legal effect of the certification of a judgement as a European Enforcement Order, the abolition of exequatur, by explicitly equating it with a "national enforcement order"; - to equate the debtor's refusal to accept the document in question attested by the competent person effecting the service with successful personal service on the debtor; - clarify that the very brief description of the justification of the claim at issue that is usually sufficient in summary debt collection procedures (injonction de payer, Mahnverfahren) also meets the requirements for certification as a European Enforcement Order. As regards the amendments rejected by the Commission and not incorporated in the common position, they concern the following issues: - introducing the requirement of the debtor's fault in order to consider his non-appearance in a court hearing as a case of an uncontested claim; - adding the compliance with the domestic law of Member State of origin to the requirements for the admissibility of the use of a substitute method of service. The introduction of such a prerequisite would be new and alien to the proposal. The courts of the Member State of origin have to scrutinise compliance with the rules on the service of documents in the main proceedings anyway. Repeating the requirement of compliance with the law of the Member State of origin in the context of the certification would entail a duplication of work for the courts of the Member State of origin; - incorporating a new provision according to which every reference to a court hearing in the proposal shall be understood as a reference to the other procedure held in lieu of such hearing with the intention of duly taking into account those procedures that do not include a hearing. Such a new Article is superfluous since the provisions referring to a court hearing simply become irrelevant and inapplicable if no hearing has taken place. In that event there is only a need for those procedural minimum standards that do not presuppose a hearing. It remains unclear what should replace the hearing as a point of reference and what purpose such a modified reference should serve in practice.?

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The Commission accepts the common position in the light of the fact that it includes the key elements contained in its initial proposal and in Parliament's amendments as incorporated into its amended proposal. It remains faithful to the ambitious goal of the abolition of exequatur including any public policy-related control and strikes a fair balance between a major simplification of crossborder enforcement for creditors and the adequate protection of the debtors' rights. The Commission is of the opinion that the text represents a fair and balanced compromise and marks a major step ahead in the implementation of the principle of mutual recognition by allowing a considerable proportion of decisions on civil and commercial claims to circulate freely and without any intermediate measures in Member States other than the one where a judgement has been delivered as a prerequisite for enforcement there.?

## Civil judicial cooperation: European enforcement order for uncontested claims

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The committee adopted the report by Joachim WUERMELING (EPP-ED, D) approving the Council's common position without amendment under the 2nd reading of the codecision procedure. ?

## Civil judicial cooperation: European enforcement order for uncontested claims

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The European Parliament adopted a resolution drafted by Joachim WUERMELING (EPP-ED, D) approving the Council's common position.?

## Civil judicial cooperation: European enforcement order for uncontested claims

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**PURPOSE :** to create a European Enforcement Order for uncontested claims. **LEGISLATIVE ACT :** Regulation 805/2004/EC of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims. **CONTENT :** This Regulation creates a European Enforcement Order for uncontested claims to permit, by laying down minimum standards, the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement. The Regulation applies in civil and commercial matters, whatever the nature of the court or tribunal, with certain exceptions. These exceptions include rights in property arising out of a matrimonial relationship, wills and succession. The main points are as follows: - the concept of "uncontested claims" will cover all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument; - the absence of objections from the debtor can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case; - a judgement which has been certified as a European Enforcement Order in the Member State of origin will be recognised and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. A judgment that has been certified as a European Enforcement Order by the court of origin will, for enforcement purposes, be treated as if it had been delivered in the Member State in which enforcement is sought. In the United Kingdom, for example, the registration of a certified foreign judgment will therefore follow the same rules as the registration of a judgment from another part of the United Kingdom and is not to imply a review as to the substance of the foreign judgment. Arrangements for the enforcement of judgments will continue to be governed by national law. This has advantages over the exequatur procedure in that there is no need for approval by the judiciary in a second Member State with the delays and expenses that this entails; - minimum standards are established for the proceedings leading to the judgment in order to ensure that the debtor is informed about the court action against him, the requirements for his active participation in the proceedings to contest the claim and the consequences of his non-participation in sufficient time and in such a way as to enable him to arrange for his defence; - due to differences between the Member States as regards the rules of civil procedure and especially those governing the service of documents, this Regulation lays down a specific and detailed definition of those minimum standards. In particular, any method of service that is based on a legal fiction as regards the fulfilment of those minimum standards will be considered sufficient for the certification of a judgment as a European Enforcement Order; - all the methods of service listed in the Regulation are characterised by either full certainty (Article 13) or a very high degree of likelihood (Article 14) that the document served has reached its addressee. In the second category, a judgment will only be certified as a European Enforcement Order if the Member State of origin has an appropriate mechanism in place enabling the debtor to apply for a full review of the judgment under the conditions set out in the Regulation in those exceptional cases where, in spite of compliance with Article 14, the document has not reached the addressee; - the courts competent for scrutinising full compliance with the minimum procedural standards will, if satisfied, issue a standardised European Enforcement Order certificate that makes that scrutiny and its result transparent; - mutual trust in the administration of justice in the Member States justifies the assessment by the court of one Member State that all conditions for certification as a European Enforcement Order are fulfilled to enable a judgment to be enforced in all other Member States without judicial review of the proper application of the minimum procedural standards in the Member State where the judgment is to be enforced; - this Regulation does not imply an obligation for the Member States to adapt their national legislation to the minimum procedural standards set out herein. It provides an incentive to that end by making available a more efficient and rapid enforceability of judgments in other Member States only if those minimum standards are met; - application for certification as a European Enforcement Order for uncontested claims will be optional for the creditor, who may instead choose the system of recognition and enforcement under Regulation 44/2001/EC or other Community instruments; - when a document has to be sent from one Member State to another for service there, this Regulation and in particular the rules on service set out will apply together with Council Regulation 1348/2000/EC; - the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation; - Denmark does not take part in the adoption of this Regulation, and is therefore not bound by it or subject to its application. **ENTRY INTO FORCE :** This Regulation shall enter into force on 21 January 2004. It shall apply from 21 October 2005, with the exception of Articles 30, 31 and 32, which shall apply from 21 January 2005.?