

**APPLICATION OF THE PROVISIONS ON THE EUROPEAN ORDER
FOR PAYMENT IN THE CONTEXT OF AMENDED POLISH CIVIL
PROCEDURE**

*Mirosław Dela**

ABSTRACT

Six years have passed since the introduction of the proceedings on the European order for payment in December 2008 – the proceedings that is considered the first true European civil procedure. The procedure is optional and its purpose is to facilitate pursuing claims in cross-border cases using understandable and clear forms. The author of this article while researching the subject of European order for payment focused on the following issues: objective scope and procedure, jurisdiction, formal requirements for the claim, effect of issue and service of the order, procedure and effect of lodging a statement of opposition to an order as well as declaration of enforceability. The provisions were analyzed from the point of view of the procedure applied by the court of the Republic of Poland issuing or enforcing the order.

Key words: European order for payment, claim, issue, service, statement of opposition, enforceability

INTRODUCTION. THE OBJECTIVE OF THE PROCEEDINGS

The proceedings on the European order for payment (hereinafter referred to as the “EOP”) was introduced to the Community legal order by the Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating the European order for pay-

¹ PhD candidate at Administration and Economics, University of Wrocław, Email: mirosław.dela@prawo.uni.wroc.pl.

ment procedure (hereinafter referred to as the “Regulation”)². On the basis of the order the creditor may claim from the debtor, who resides in or has a registered office in a European Union Member State (hereinafter referred to as the “EU”), collection of pecuniary claims³. The Regulation provides the creditor many solutions facilitating pursuing a claim. The procedure is simplified and is based on ready-made forms⁴. In the event that the claim is rejected, the claimants may without any restrictions pursue their claims again in the same manner and file it with the same court, or in other alternative procedures.

The Regulation is founded upon the desire to develop an area of freedom, security and justice, where there is a free movement of persons, capital, goods and services that can be achieved by simplifying, speeding up and reducing the costs of civil litigation. Achieving this goal requires adoption of specific measures in the field of judicial cooperation in cross-border civil cases that would remove barriers to efficient and speedy civil proceedings and eventually lead to recovery of outstanding pecuniary claims that are uncontested (so-called uncontested claims)⁵. This for the economic operators is of great importance, as late payments constitute payment backlogs that are one of the major threats to the existence of particularly small and medium-sized enterprises, and in consequence lead to bankruptcy of these entities and the loss of large number of workplaces.

² O. J. 30.12.2006, L-399, p. 1.

³ The term „Member State” in respect of the aforementioned Regulation does not concern Denmark. In consequence, one cannot file with Danish courts claims for issuing the EOP and the orders issued in other member countries are refused to be enforced in Denmark. For further reference see: Article 2(3) of the Regulation and *Practice Guide for the application of the Regulation on the European Order for Payment*, European Union 2011, p. 9, source: <https://e-justice.europa.eu/fileDownload.do?id=6bc50a8f-698a-401a-a92b-c2b9a34d102d> [accessed on: 12.09.2014]; the guide is available in number of different languages.

⁴ The forms constitute an attachment to the aforementioned Regulation creating the EOP. Current template forms can be found on the European portal “e-Justice”, https://e-justice.europa.eu/content_european_payment_order_forms-156-en.do [accessed on: 12.09.2014]. Additional information can be found on the website of the European Judicial Atlas in Civil Matters, http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_information_en.htm?countrySession=23& [accessed on: 12.09.2014].

⁵ Article 1(1) (a) of the Regulation.

Establishing a procedure on the EOP as well as allowing for the free movement of such orders in the area of all European Union Member States, required adoption of certain minimum standards⁶, compliance with which renders unnecessary any intermediary proceedings in the Member State of enforcement, prior to recognition and enforcement of the order.

THE RELATION OF THE PROVISIONS OF THE REGULATION TO NATIONAL LEGISLATION

The procedure established by the aforementioned Regulation is in its assumption an additional legal remedy for the claimant and at the same time it is optional procedure⁷. This procedure does not interfere with the proceedings of similar nature that exist in the legislation concerning civil proceedings in different Member States, but it rather complements these proceedings in situations where the civil case extends beyond one, internal legal system.

Polish civil procedure is comprehensively regulated by the Act of 17 November 1964 – the Code of Civil Procedure (hereinafter referred to as the “CCP”)⁸. In the Polish system of procedural law, the EOP therefore coexists with two other procedures: payment-order proceedings (Article 484¹ et seq. CCP) and proceedings by writ of payment (Article 497¹ and et seq. CCP). The EOP may replace those proceedings only in cases where the cross-border element exists⁹. Moreover, as it is optional procedure, it is only the claimant who can decide whether to use this procedure¹⁰.

⁶ Article 1(1) (b) of the Regulation. These standards should be viewed primarily from the perspective of respect earned in the achievements of the European model of the right to trial, K. Flaga-Gieruszyńska [in:] A. Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz [The Code of Civil Procedure. Commentary]*, C.H. Beck, Warsaw 2014, p. 974.

⁷ The EOP proceedings is optional in the sense that the claimant can choose this procedure among all available ways of pursuing a claim. The claimant still retains the possibility to use the ordinary procedure provided in the national legislature.

⁸ In Polish: *Kodeks postępowania cywilnego* (Polish O. J. 2014, item 101, as amended).

⁹ K. Flaga-Gieruszyńska, op. cit., p. 974.

¹⁰ *Ibidem*

The legislator excluded the possibility to combine the proceedings in question, in any respect and at any stage, with other separate proceedings functioning in the Polish civil proceedings. It is therefore specific form of separate proceedings in the doctrine referred to as autonomous proceedings¹¹.

THE SCOPE OF APPLICATION OF THE EUROPEAN ORDER FOR PAYMENT

Article 2(1) of the Regulation limits the scope of application of the Regulation only to cross-border civil and commercial cases (*acta iure gestionis*), regardless of the type of the court or tribunal. At the same time its application to fiscal and administrative cases and customs, as well as cases concerning the responsibility of the State for act and omissions in the exercise of official powers (*acta iure imperii*), are excluded¹². The provisions of the Regulation are also not applicable to cases relating to property rights arising out of a matrimonial relationship, wills and succession, bankruptcy, proceedings relating to the winding up insolvent companies or other legal persons, judicial arrangements, compositions and other parallel proceedings, as well as claims arising out of social security, non-contractual

¹¹ Ibidem., p. 975 and M. Osowska-Grzelak, *Wzajemna relacja postępowań odrębnych występujących w procesie cywilnym w ujęciu ogólnym [The mutual relationship of separate proceedings occurring in the civil procedure in general overview]*, part 1, Monitor Prawniczy 2008, No 13, p. 694 et seq.; part 2, Monitor Prawniczy 2008, No 14, p. 750 et seq.

¹² It is recognized that in determining whether the dispute is a civil or commercial dispute, two elements are taken into account, namely: subject matter of the dispute and the nature of the legal relationship between the parties to the dispute. For example, the case cannot be considered civil or commercial, if the dispute concerns the individual and public authority that exercised its official powers. As a result of many problems with differentiating the nature of the dispute the European Court of Justice issued several rulings on this matter e.g. C-29/76 LTU, Rec. 1976, p. 1541; C-814/79 Rüffer, Rec. 1980, p. 3807; C-172/91 Sonntag, Rec. 1993, p. I-1963 C-271/00 Gemeente Steenberg, Rec. 2002, p. I-10489; C-266/01 Préservatrice foncière, Rec. 2003, p. I-4867; C-265/02 Frahuil, Rec. 2004, p. I-1543; C-292/05 Lechouritou, Rec. 2007, p. I-1519. For further reference see *Practice Guide ...*, p. 10 et seq. The primary selection criteria whether the case is a civil or commercial should be: type of claim, which the party pursues and the type of activities that constitute the reason for bringing an action, as well as their legal basis.

obligations, unless they are subject of the agreement between the parties or the debt was acknowledged or if it concerns debts arising out of joint ownership of the property (Article 2(2) of the Regulation).

Article 4 of the Regulation states that the aim of establishing the EOP proceedings is to pursue monetary claims for a specific amount that have fallen due at the time when the claim was filed. It must be remembered that this procedure can be used to enforce already existing judgments or court settlements¹³.

Although the procedure itself is available as of 12 December 2008, the provisions on the EOP may be applicable even to cases where the issues that led to the dispute occurred before that date, provided, however, that the limitation period, applicable to the claim under legislation of the court where the claim was filed, has not expired¹⁴.

Polish procedural law does not specify, obviously, the conditions allowing for the initiation of EOP proceedings. Article 505¹⁵ § 1 CCP refers to the Regulation in this respect.

LEGAL DEFINITIONS

Article 3(1) of the Regulation defines a cross-border case as a case 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 hearing the case, wherein the place of residence shall be determined in accordance with Article 59 and 60 of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (so-called “Brussels I”)¹⁵. It

¹³ When in a certain case competent court has rendered a judgment (or if the claim arises out of official act or judicial settlement) and the judgment is to be enforced abroad, the claimant may apply, to the competent authority of the Member State issuing the judgment, the EOP, if the matter relates to uncontested claim. *Practice Guide* ..., p. 6.

¹⁴ *Practice Guide* ..., p. 12.

¹⁵ O. J. 16.01.2001, L-12, p. 1. The findings of whether a party is a resident in the territory of the Member State of origin shall be based on the law of that state. A negative result obliges the court to examine whether the party is domiciled in another Member State, for example in the country “X”. The findings of that shall be in turn based on the law of that

should be noted that on 10 January 2015 amendment to this Regulation enters into force (so-called “Brussels I bis”)¹⁶, which will also change the numbering of the articles¹⁷.

Whether the case is a cross-border case, it is evaluated as of the date of filing the claim for the EOP and not as of the date of occurrence of the events giving rise to the asserted claim¹⁸.

Article 5 of the Regulation contains a number of subsequent, relevant legal definitions. The Regulation defines the term “Member State of origin” as a Member State in which the EOP is issued. “Member State of enforcement” is the Member State in which enforcement of the EOP is sought. The “Court” is in turn any authority in a Member State (in a broader sense) with competence regarding the EOP or any other related matters. The “Court of Origin” means the court which issues the EOP. Although the Article 5 of the Regulation does not define this directly, *per analogiam* “Court of Enforcement” would be the court before which the creditor requests to take enforcement actions against the debtor.

Member State “X”. According to Article 60(1) of the Regulation Brussels I it is assumed that companies and legal entities are established (what is called “the place of residence of the company”) in the place where they have their registered office or central administration or principal place of business. In Great Britain this matter as well as transnational trust are regulated differently (Article 60(2) and (3) of the Brussels I). On the basis of Polish civil law issue of residence is governed by Article 25 et seq. of the Civil Code and the matter of registered offices by Article 41 of the Civil Code (in Polish: *Kodeks cywilny*, Polish O. J. 2014, item 121, as amended).

¹⁶ See Regulation of the European Parliament and of the Council (EU) No 1215/2012 of 12 December 2012 on jurisdiction and recognition of judgments and their enforcement in civil and commercial matters (the so-called ‘recast’) (O. J. 20.12.2012, L-351, p. 1).

¹⁷ E.g. the equivalent of Article 59 and 60 of the Brussels I will be Article 62 and 63 of the Brussels I bis. See Attachment III to the Regulation Brussels I bis, which contains a table showing the correlation of articles numeration.

¹⁸ Article 3(3) of the Regulation. In practice, domicile or habitual residence of the parties shall be determined on the basis of information provided by the claimant in the “A” form. The court checks whether the specified address of one of the parties is located in other Member State than the Member State of the court where the claim was filed. In some situations, the EOP proceedings may be used by the claimant who is not EU citizen. For further reference see *Practice Guide ...*, p. 12.

JURISDICTION

The competent courts for the purposes of the EOP are courts appointed by the Member States and officially notified to the Commission¹⁹. In accordance with Article 6 of the Regulation, jurisdiction shall be determined in accordance with the relevant provisions of Community law, in particular Article 2(1) Brussels I, which states that a claim shall be submitted to the competent court in the country where the defendant is domiciled (or has a registered office). However, there are many exceptions, e.g. special jurisdiction applied for the claims arising from contracts where the jurisdiction is determined by the place of performance of the obligation²⁰. For claims relating to contracts entered into by the consumer, and thus unrelated to his business or professional activity, when the consumer is the defendant, only the courts in the Member State in which the defendant (consumer) is domiciled shall have the jurisdiction²¹.

Article 23(1) Brussels I provides the parties with the opportunity to identify the competent court by way of contract prorogation (so-called contractual jurisdiction)²². Although the Brussels I Regulation extensively regulates the issues of jurisdiction, it does not change the fact that in order to establish jurisdiction national law also applies²³, in particular, in the case of Polish procedure, Article 505¹⁶ § 1 CCP, which confers competence to

¹⁹ Reported data are published in the European Judicial Atlas in Civil Matters. In case of filing a claim to the court which has no jurisdiction, any transfer of the case by the court to the competent court will be held according to the provisions of national law. *Practice Guide ...*, p. 17. See also Article 29(1) (a) of the Regulation. See search engine for the courts in different languages http://ec.europa.eu/justice_home/judicialatlascivil/html/cc_searchmunicipality_en.jsp#statePage0 [accessed on: 12.09.2014].

²⁰ Such place, in accordance with Article 5 of the Brussels I Regulation, in the case of contracts for the sale of goods and the provision of services will be respectively the place where the goods under the contract were to be delivered or were delivered and where services were to be provided or were provided.

²¹ Article 16 (2) Brussels I. The findings of the place of residence shall be on the basis of Article 59 of Brussels I.

²² It is essential that when entering into a contract with foreign contractor it is explicitly stated in the contract what is the jurisdiction in the event of a dispute (contractual jurisdiction); in such a way the claimant could pursue a claim before a court in his/her country.

²³ Article 67 of Brussels I.

hear cases in European payment order proceedings to district and regional courts . This is important especially when determining the subject matter jurisdiction of the court depending on the amount in dispute²⁴, as referred to in Article 17 point 4 CCP. In the event that the case is brought before the wrong court Article 200 § 1 CCP is applicable, which instructs the court to issue a decision to refer the case to the competent court. Such error does not cause any negative effects for the claimant, but only delays hearing the case.

APPLICATION FOR THE EUROPEAN ORDER FOR PAYMENT

In accordance with Article 7 of the Regulation the application for the EOP shall be made using the “A” form. It contains the names of the parties (name of the company - in case of an institution, name and surname - in case of a natural person) and their addresses, as well as information on representatives (if they were appointed by legal act or if their legitimacy stems from the Act)²⁵ and indication of the court to which the application is made. It is also necessary to determine precisely the amount of the claim with the division on the principal amount, interest (together with the rate and the period for which they are requested)²⁶, contractual penalties and

²⁴ See the website of the Polish Agency for Enterprise Development, Point of contact for Service Providers and Clients “e-POINT” (e-PUNKT), http://www.web.gov.pl/rozwiazywanie_sporow/300_927.html [accessed on: 14.09.2014].

²⁵ Under the Polish procedure the provisions relating to the general legal capacity are applicable, in particular Article 66 et seq. CCP and the provisions on legal representative for the purpose of litigation Article 86 et seq. CCP. Also the rights of proxies should not be omitted Article 109¹ et seq. of the Civil Code.

²⁶ It is not necessary to mention the amount of interest. If the interest are requested for the period up to the date of the judgment of the court, the field should be left blank. In the “E” form the court indicates the total amount to be paid to the claimant as of the date of issue of the order. Provisions of the Regulation do not regulate the possibility of requesting the interest after that date. Regulation in this area should be sought in the legislation of the Member State of enforcement. According to the Article 7(2)(c) of the Regulation, it is not required for the claimant to indicate the interest rate or the point when the statutory interest should be counted from and to, unless the law of a Member State provides for the automatic addition of statutory interest to the main claim. *Practice Guide ...*, p. 15 and 16. Polish law

costs²⁷. The statement of claim shall include reasons²⁸ where the circumstances of the case are described, a description of the evidence supporting the claim, the grounds for jurisdiction and the cross-border nature of the case within the meaning of Article 3 of the Regulation. The application shall also contain a statement by the claimant that the information given are (to the best knowledge and belief) true and that the claimant acknowledges that any deliberate false statement could lead to sanctions provided for by the law of the Member State in which the order is to be issued. Such sanctions in the Polish procedure are provided for in Article 103 § 1 CCP; this Article in accordance with the so-called the principle of culpability, imposes the obligation to pay the costs caused by negligent act or obvious misconduct.

In an attachment to the claim, the claimant may express lack of consent to refer the case to ordinary civil proceedings in the event that the

upholds the principle of nominalism (Article 358¹ § 1 of the Civil Code). In the EOP the creditor may claim interest as a whole, that is, from the time when the claim became due until payment of the principal claim. See Judgment of the Tribunal of 13 December 2012 on the matter of C- 215/11, source: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CJ0215:EN:HTML#Footnote* [Accessed on: 15.09.2014]. The Polish procedure under Article 20 CCP, the interest do not constitute the amount in dispute. It is common practice to request interest from the day following the due date until the date of payment.

²⁷ The concept of cost is to be understood among others as agent's fees and the costs of pre-court proceedings. According to the Article 25(2) of the Regulation court fees include fees and charges for the court determined in accordance with the national law. If the claimant does not know the amount of the court fees, the empty box for the amount can be filled in by the court. See guidance on filling the form "A", as well as *Practice Guide ...*, p. 16.

²⁸ The Regulation does not specify requirements as to the level of detail of the information provided by the claimant, nor is it indicated in what way the court should examine the merits of the claim. It is not indicated whether the court could request submitting documents proving the legitimacy of the claim. It is not required that they are attached to the claim, but the claimants in order to authenticate their claims often provide these attachments. See Article 7 and 8 of the Regulation. It should be remembered, however, that the claimants must present their arguments in such a way that the court could pre assess the claim and at the same time eliminate claims that are clearly unfounded or unacceptable. The information provided by the claimant in the claim is the basis for the defendant's decision whether he/she contests the claim, or considers it indisputable. *Practice Guide ...*, p. 16. It is right to say that it is necessary that the claimant describes in the claim at least one evidence. See J. Gołaczyński (ed.), *Kodeks postępowania cywilnego. Postępowanie zabezpieczające i egzekucyjne. Komentarz [Code of Civil Procedure. Protection and enforcement proceedings. Commentary]*, Wolters Kluwer 2012, p. 307.

defendant has lodged an opposition to the order issued²⁹. This declaration may also be made later, but only before issuing the order.

The claim may be filed in paper form or by electronic means of communication, which is accepted by the Member State of origin and available to the court of origin³⁰. The application shall be signed by the claimant or his representative³¹.

According to the Article 8 of the Regulation, the claim shall be examined by the court as soon as possible. The examination is limited, and is conducted in terms of checking whether the requirements set out in Article 2, 3, 4, 6 and 7 of the Regulation are met, as well as on terms of substantive grounds for the claim.³²

²⁹ In the absence of such a declaration by the claimant it shall be presumed that in the event of an opposition by the defendant, the claimant agrees to transfer the case to ordinary civil proceedings (Article 17(1) of the Regulation).

³⁰ Member State accepting electronic means of communication should also ensure that this means is technically available to the court deciding on the matter. It is questionable, however, why the possibility of using means approved in a given country is dependent on its physical availability. There is also the question of whether the claimant is obliged to seek the information in the court issuing the order each time if the court has this accepted means of communication. Also unclear are legal consequences of using by the claimant the measure, which was accepted by the court, but was not available to the court ruling on the case, which prevented the claim from reaching the court. Each Member State must accept filing of the claim in the paper form, however, some countries accept claims in paper form only when they are sent by mail (usually by registered mail). Member States may also accept the submission of claims by fax or e-mail. Before filing a claim it should be checked in the European Judicial Atlas in Civil Matters, whether the method is accepted by the specific Member State; see http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_communicationshtml_pl_en.htm?countrySession=23&#epo_communicationshtml2 [accessed on: 14.09.2014].

³¹ If the application is submitted in electronic form in accordance with Article 7(5) of the Regulation it must be signed in accordance with Article 2(2) of the Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (O. J. 19.01.2000, L-13, p. 12). This electronic signature is not required if the Member State of origin has alternative safe systems of electronic communication that are accessible to authorized (previously registered) users, allowing them to secure identification, and if these systems have been notified to the Commission. *Practice Guide ...*, p. 17 and 18.

³² This examination may take the form of an automated procedure (if such procedure is provided for by internal law of the Member State), which may verify the formal requirements; it cannot verify the validity of the claim. See E. Silvestri, *Simplification of Debt Collection in the EU (European Order for Payment Procedure and the European Small Claims Procedure)*

Article 9 of the Regulation grants the claimant the right to complete or rectify the claim in the event that it does not meet the requirements laid down in Article 7 of the Regulation³³, unless the claim is clearly unfounded or the application inadmissible. Court requesting the claimant to complete or rectify the application sets an appropriate in a given circumstances term, which may extend later at its sole discretion (Article 9(2) of the Regulation). No answer on the part of the claimant within this period results in rejection of the claim.

The statement of claim in accordance with Article 11 of the Regulation is subject to the rejection if the claim is clearly unfounded, and if the claimant did not meet the requirements laid down in Article 8 of the Regulation. The claimant is informed about the reasons for rejecting the claim by means of the “D” form. In the event that the claim is rejected, the claimant is not entitled to any form of appeal. Rejection of the claim does not prevent the claimant from pursuing a claim in the new application for the EOP or of any other procedures provided for in the procedures of the Member State (Article 11(2) and (3) of the Regulation).

ISSUE OF THE EUROPEAN ORDER FOR PAYMENT

A) AN ORDER FOR PAYMENT ISSUED IN RESPECT OF ALL CLAIMS

The EOP procedure does not provide for a trial. There is no mention about it in the Regulation. It is confirmed by Article 505¹⁷ CCP, which provides only for the closed hearing. The proceeding is only in writing, with the first stage of identifying and resolving the matter being of *ex parte* nature. The exception is when an order is challenged or opposition is filed. In such a situation a trial is possible as a part of national proceedings.

Italian Report, University of Pavia, p. 11, source: http://www.academia.edu/2511267/Simplification_of_Debt_Collection_in_the_EU_European_Order_for_Payment_Procedure_and_European_Small_Claims_Procedure_Italian_Report [accessed on: 14.09.2014]. At this stage of the proceedings, the court examines only the claim does not however, assess the evidence. *Practice Guide ...*, p. 18.

³³ The „B” form is used to complete or rectify the claim.

In accordance with Article 12 of the Regulation if the claimant meets the requirements set out in Article 8 of the Regulation, the court usually within 30 days³⁴ of the lodging of the claim issues the EOP using the “E” form³⁵. EOP is issued together with the copy of the claim, but without the information provided by the claimant in attachments No I and II to the “A” form³⁶.

The order specifies the principal amount as well as interest and the period for which it was calculated (usually to the payment date), as well as contractual penalties and costs described in Article 25 of the Regulation indicated in the currency specified in the form. The order also includes instructions which state that the defendant may pay the amount indicated in the order or to send to the court that issued the order, an opposition within 30 days of service of the order³⁷. The defendant is also informed that the order was issued solely on the basis of the information provided by the claimant and that the information is not verified by the court, and that the order will become enforceable if the defendant does not file an opposition in accordance with the rules laid down in Article 16 of the Regulation. The order also states that, in the event of opposition, proceedings will continue before the competent court in the Member State of origin, in accordance with the rules of ordinary civil procedure unless the claimant explicitly requested termination of the proceedings in such event.

³⁴ The period of 30 days does not include the time required for the claimant to complete, rectify or modify the claim. The above mentioned term is calculated in accordance with the provisions of Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (O. J. 08.06.1971, L-124, p. 1.) see *Practice Guide* ..., p. 20. Use of the phrase “normally within (...)” is not known to the Polish procedural law. It clearly indicates to the practice of application of the law, that is why its use may be surprising in the act of creating the law.

³⁵ In any case is the defendant informed about the proceedings prior to issuing of the order.

³⁶ Attachment I contains information on the claimant’s credit card or bank account number, if the claimant thereby intends to regulate the court costs. Attachment II contains the claimant’s decision about discontinuing the proceedings in the event that the defendant lodges an opposition.

³⁷ Article 12(3) of the Regulation.

B) AN ORDER OF PAYMENT ISSUED WITH REGARDS TO A PART
OF THE CLAIM

As set forth in Article 10 of the Regulation if the claimant meets the requirements of Article 8 of the Regulation only in respect of part of the claim, the court shall notify the claimant on the „C” form, by sending him a proposal for issue of the EOP as to that part³⁸. If the claimant agrees to this proposal, the court issues EOP in accordance with Article 12 of the Regulation in respect of the specified part of the claim. The consequences with respect to the remaining part of the original claim are determined by national law (Article 10(2) of the Regulation).

In the event that the claimant does not respond within the prescribed time limit as well as if the claimant does not agree to the proposed solution, the court rejects the whole claim. If the claimant does not accept the court’s proposal, the claimant may also withdraw the claim and refer the matter to ordinary civil proceedings.

In the case of Polish civil procedure, a judgment issued only as to the part of the claim it does not have *res iudicata* effects in relation to the rest of the original claim. Article 505¹⁸ § 1 CCP *in fine* allows for hearing the case and issue of the order as to the remaining part of the claim under the provisions on separate proceedings, but excludes the possibility to hear the case in payment order proceedings and proceedings by writ of payment³⁹.

In both cases discussed above, the EOP may be issued by the court clerk. The clerk may also issue orders⁴⁰, for example an order to return the claim (Article 505¹⁶ § 2 and 3 CCP)⁴¹.

³⁸ The claimant is asked to accept or reject the proposal for the EOP concerning partial amount of the claim determined by the court; the claimant is also informed of the consequences of such decision. The claimant replies within prescribed period of time, in accordance with Article 9(2) of the Regulation, returning completed “C” form send by the court together with the proposal.

³⁹ Reasons: Parliamentary Printed Matter No 949, the sixth term, <http://orka.sejm.gov.pl/Druki6ka.nsf/0/E4ED2CC9236FADCCC12574C6004C1D66?OpenDocument> [accessed on: 12.09.2014] and K. Flaga-Gieruszyńska, op. cit., p. 976 and 977.

⁴⁰ Understood as a kind of “instruction”, not as an order of payment (in Polish – “zarządzenie”).

⁴¹ It often concerns the case when the judge hearing the case and issuing a substantive judgment, but in order to facilitate the conduct entrusts some of the “technical” activities

THE SERVICE OF THE EUROPEAN ORDER FOR PAYMENT

Proper procedure of service is of highest importance in every trial. It determines whether an order will cause legal consequences and if the defendant will have the opportunity to defend himself or herself by filing an opposition. Therefore, proper service of the order guarantees the defendant the right to actively participate in the proceedings, which is one of the basic principles, determining fair conduct of the process.

The court serves the defendant with the EOP in accordance with the national law of the Member State in which it is to be served, but at the same time taking into account the minimum procedural standards set out in Article 13, 14 and 15 of the Regulation.

Typically, there are two types of service – service with acknowledgment of receipt by the debtor (Article 13 of the Regulation) and service without acknowledgment of receipt by the debtor (Article 14 of the Regulation)⁴². Among methods belonging to the first group, there are four possibilities: personal service with acknowledgment of receipt signed by the defendant⁴³ or statement of the bearer that the defendant has received the document or unreasonably refused its reception⁴⁴, or postal service with acknowledgment of receipt signed by the defendant and returned to the court, or service by electronic means (fax or email) for a receipt signed and returned to the court by the defendant. It should be noted that each receipt contains the date of receipt.

Service of the second type, thus without acknowledgment of receipt by the debtor or by his representative, can be used only when there is certainty

with the court clerk, e.g. the removal of formal deficiencies. K. Flaga-Gieruszyńska, *op. cit.*, p. 975.

⁴² Both of the types of services may also be used in relation to the debtor's attorney. See *Practice Guide ...*, p. 20.

⁴³ If the service is to be enforced in another Member State, the documents must be sent to the other Member State in accordance with Regulation (EC) No 1393/2007 of the European Parliament and of the Council on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (O. J. 10.12.2007, L-324, p. 79). See *Practice Guide ...*, p. 20.

⁴⁴ The right to refuse to accept the document stems from Article 8 of the Regulation No 1393/2007.

as to the defendant's address⁴⁵. Among this group are: service to the address of the defendant to a member of the household residing with the defendant or to a person employed in his household. In case of the defendant doing business or as a legal person, documents may be served at the business premises of the defendant to the person employed by the defendant. In such cases, the service must be certified either by a receipt signed by the person who received the document, or by a document signed by the bearer, indicating the manner of service, date of service and the name of the person who took the service, as well as the relationship of that person to the defendant.

The order may also be submitted to the defendant's mailbox or post office, or at the premises of the competent public authority. The last two methods require, however, leaving at the defendant's mailbox a written notification of choosing this form of service⁴⁶.

Postal service without acknowledgment is also permitted, when the defendant has his address in the Member State of origin, another possibility is e-mail service by an automatic confirmation of delivery, provided that the defendant has expressly accepted this method of service for his/her correspondence.

In accordance with Article 15 of the Regulation, the service can also be made to the defendant's representative. Matters not covered by Article 13-15 of the Regulation, the rules the Polish civil procedure (Article 131-147 CCP) are applicable. In particular, this will apply to the waiting period for the receipt of shipment (139 § 1 CCP). The broad, teleological interpretation of Article 14(2) of the Regulation seems to exclude the possibility of the institution of guardianship (Article 143 and 144 CCP)⁴⁷.

⁴⁵ Any fiction of service (e.g. known in French law "*remise au parquet*", which means that the effective service shall be understood as submission by the court enforcement officer of the letters to the prosecutor) is excluded. See *Practice Guide ...*, p. 21, and the *Opinion Of Advocate General L.A. Geelhoed* from 17.03.2005 re C-522/03 Scania Finance France SA v. Rockinger Spezialfabrik für Anhängerkupplungen GmbH & Co., source: <http://curia.europa.eu/common/recdoc/convention/gemdoc2006/html/1-2006/01-a-en-06.htm> [accessed on: 14.09.2014].

⁴⁶ In such case, written notice must clearly specify the nature of the document as a court document, or inform about the legal effect the notification made (the consequence is that the order is deemed served and limitation periods begin). *Practice Guide ...*, p. 21.

⁴⁷ It seems that in this situation there are grounds for rejecting the claim due to impossibility of effective delivery of the claim to the defendant. Appointment of a guardian for

Service in the Republic of Poland in detail is regulated by the regulation of the Minister of Justice of 12 October 2010 on the detailed mode and manner of service of judicial documents in civil proceedings⁴⁸.

OPPOSITION TO THE EUROPEAN ORDER FOR PAYMENT
AND ITS CONSEQUENCES

The defendant in accordance with Article 16(1) of the Regulation is entitled to issue an opposition from the EOP to the court using the “F” form. This form is to be served on the defendant together with the EOP. The opposition must be sent within 30 days of service of the order on the defendant⁴⁹. Although the opposition does not require stating reasons therein, it must be clear that the defendant disputes the claimant’s claim. Like the claim, the opposition may be filed in paper form or by accepted by the court means of electronic communication. It is required that the defendant or defendant’s representative sign the opposition⁵⁰.

Article 17 of the Regulation states that filing of the opposition within the period provided for in Article 16(2) of the Regulation results in further continuing of the proceedings before the competent court in the Member State of origin according to the rules governing ordinary civil procedure unless the claimant has explicitly requested in such case termination of the

the person whose whereabouts are unknown will be conducted in ordinary proceedings according to the rules of national law.

⁴⁸ In Polish: *Rozporządzenie Ministra Sprawiedliwości w sprawie szczegółowego trybu i sposobu doręczania pism sądowych w postępowaniu cywilnym* (Polish O. J. 2013, item 1350, as amended).

⁴⁹ The date is calculated in accordance with the previously quoted Regulation (EEC, Euratom) No 1182/71 of the Council, determining the rules applicable to periods, dates and time limits. When calculating the date, the day of service is not counted. When it comes to the days of public holidays, it should be understood as all the days recognized as such in the Member States or within the Community institutions, in which action must be taken (see Article 2(1) and (2) of Regulation No 1182/71).

⁵⁰ All the comments made earlier in relation to signing of the claim are applicable to signing of the opposition.

proceedings⁵¹. The court shall inform the claimant whether the defendant has lodged an opposition and whether the case was transferred to ordinary civil proceedings.

Pursuing a claim by the claimant in the proceedings on the EOP does not in any way affect the legal situation of the claimant in the course of the subsequent ordinary civil proceedings⁵².

According to the Article 17(2) of the Regulation, referring the case to ordinary civil proceedings is governed by the laws of the Member State of origin.

In accordance with Article 505¹⁹ § 1 CCP opposition results in expiration of the EOP and continuation of the proceedings according to the national law. This means that the court hears the case in due course of the proceedings, and in cases referred to in the Act also according to the provisions of separate proceedings, but excluding the provisions on payment order proceedings and proceedings by writ of payment.

Should the claimant request a termination of the proceedings as a result of filing of the opposition by the debtor, the court mandatorily discontinues the proceedings, ruling on the costs as in withdrawal of the claim (Article 505¹⁹ § 4 CCP). This means that the defendant has two weeks to submit a claim for reimbursement of the expenses incurred (Article 203 § 3 *in medio* CCP).

ENFORCEABILITY OF THE ORDER

The general rule laid down in Article 12(4)(b) of the Regulation states that the order becomes enforceable, if the defendant does not object to the court of origin. More specifically, in accordance with Article 18(1) of

⁵¹ In the event that the defendant files of an opposition, further proceedings will take place in ordinary proceedings in the Member State in which the order was issued. If the foreign court is competent in the case, it will cause for the claimant numerous difficulties and increase the costs. Submission of a statement by the claimant that in the event of opposition, the claimant does not agree to refer the case to ordinary proceedings, should take place before the order is issued, preferably already in the content of the claim (Article 7(4) of the Regulation).

⁵² Article 17(1) *in fine* of the Regulation.

the Regulation, if within the date specified in Article 16(2) of the Regulation⁵³, extended to the time needed for the delivery of the correspondence to the court issuing the order, opposition is not filed, the court (*ex officio*) declares the EOP enforceable, using for this purpose the “G” form and sends it to the claimant. Formal requirements with reference to enforceability shall be governed by the national law of the Member State issuing the order. In case of an order issued by a Polish court, mainly Articles 795⁶ and 795⁷ CCP are applicable, under which the court by means of a decision *ex officio* declares the order enforceable, the decision may be appealed. This decision may also be issued by the clerk of the court⁵⁴.

The court shall send the enforceable EOP only to the claimant. Article 19 of the Regulation states that the EOP which has become enforceable in the Member State of origin shall be recognized and enforced in the other Member States without the need for a declaration of enforceability and without any possibility of opposing its recognition. This provision is intended to eliminate the so-called *exequatur* procedure, i.e. the need to obtain permission to enforce the judgment issued in another country⁵⁵. The order for payment cannot be subjected to re-examination of its merits in a Member State enforcing the order⁵⁶.

Article 20(1) of the Regulation provides that, after the deadline specified in Article 16(2) of the Regulation the defendant may, in specific cases,

⁵³ The opposition should be sent within 30 days from the date of serving the order to the defendant.

⁵⁴ Other provisions regarding enforceability of the clam (Article 776 et seq. CCP) should be applied accordingly to the nature of the proceedings discussed.

⁵⁵ It is worth mentioning that the *exequatur* (sometimes called “declaration of enforceability”) in respect of judgments given in another Member State of the EU in certain categories of civil cases was abolished earlier by Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims (O. J. 30.04.2004, L-143, p. 15). The abolition of this procedure is not a threat, because the debtor is entitled to two defenses - one in the State of origin (Article 20 of the Regulation), the second in the State of enforcement (Article 22 of the Regulation). K. Flaga-Gieruszyńska, op. cit., p. 974, and Parliamentary Printed Matter No 949, the sixth term (see footnote No 39).

⁵⁶ *Practice Guide ...*, p. 27. The authorities of the Member State of enforcement may not therefore re-examine the circumstances or procedures, which led to the issue of the EOP.

apply for a re-examination of the EOP by the competent court in the Member State of origin. Such action justifies the service of an order for payment by one of the methods provided for in Article 14 of the Regulation⁵⁷ and where the service was not effected in sufficient time to enable the defendant to arrange for his defense, and when the defendant was prevented from objecting to the claim by reason of force majeure (*vis maior*) or due to extraordinary circumstances which were not defendant's fault. In order for the application to be allowed for, it is required that the defendant takes immediate⁵⁸ actions. With respect to the circumstances described in Article 20(1) of the Regulation the legislator in the Polish civil procedure introduced Article 168 § 1 CCP, which is a protective measure of the defendant. It involves the possibility to restore the opposition period, if there was no fault on the part of the party to comply with the time limit⁵⁹. In such situation the application of the party is necessary, the occurrence of negative procedural consequences and meeting the formal requirements, as referred to in Article 169 § 1-5 CCP⁶⁰.

Based on the Article 20(2) of the Regulation 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 EOP before the competent court in the Member State of origin where the EOP was clearly wrongly issued, having regard to the requirements laid down in this Regulation, or due to other exceptional circumstances. If the court finds that these circumstances occurred, the EOP shall expire. Otherwise, the court rejects the defendant's application and shall keep the order in force.

Revocation of the EOP is provided for in Article 505²⁰ § 1 CCP, as long as the criteria set out in Article 20 of the Regulation occur. It is required that the defendant's application satisfies formal requirements for pleadings

⁵⁷ Service without confirmation of receipt by the defendant.

⁵⁸ Polish civil procedure avoids in such case, the imprecise term "without delay", replacing it with a term of one week (Article 169 § 1 CCP).

⁵⁹ K. Flaga-Gieruszyńska, *op. cit.*, p. 978.

⁶⁰ It is required to submit an application for the time limit to be restored to the court in which the action was to take place within a week after the circumstances that prevented conforming to the time limit ceased, along with the circumstances justifying the request. Simultaneously with filing of the application the party should perform the procedural action that has not been fulfilled.

(Article 126 § 1 CCP) and the circumstances justifying its submission are provided. The application may be considered at a closed hearing (Article 505¹⁷ CCP). However, the claimant must be able to comment on the case either by means of the so-called hearing at a meeting of the court, or by submitting a written statement (Article 505²⁰ § 3 CCP). Revocation of the EOP is performed by the court which issued the order, and in the case of an order issued by the clerk of the court – the court seised. Article 505²⁰ § 4 CCP allows the parties to submit a complaint against the decision on the revocation of the EOP.

Under the new, introduced by amendment⁶¹, Article 1153¹⁴ item 3 of the CCP, in order for the EOP, issued by a court in another EU Member State, to be recognized as enforcement order and be enforceable in the Republic of Poland it is necessary to declare its enforceability in the issuing State.

ENFORCEMENT OF THE ORDER

In accordance with Article 21(1) of the Regulation enforcement procedures shall be governed by the law of the Member State of enforcement. The EOP, which has become enforceable, shall be enforced under the same conditions as an enforceable judgment issued in a Member State of enforcement⁶². For enforcement of the EOP in another Member State, the claimant shall provide the competent enforcement authorities of the Member State⁶³ with a copy of the EOP, and its enforceability declared

⁶¹ See recent significant changes introduced by the Act of 5 December 2014 amending the Act - Code of Civil Procedure and the Law on court costs in civil matters (in Polish: *Ustawa o zmianie ustawy – Kodeks postępowania cywilnego oraz ustawy o kosztach sądowych w sprawach cywilnych*, Polish O. J. 2015, item 2).

⁶² If no opposition is filed the court declares the EOP to be enforced, whereby it is recognized and enforced in other Member States without the need for a declaration of enforceability abroad and without any possibility of opposing its recognition. This order provides the basis for referring to the court enforcement officer in the Member State of the EU an application for the initiation of enforcement proceedings.

⁶³ In various Member States these are different bodies. For further information on this, look at the European portal “e-Justice”. In Poland, the enforcement authorities are defined in Article 758 CCP (these are the district courts and court enforcement officers).

by the court of origin (“G” form) and it satisfies the conditions necessary to establish its authenticity. If necessary, the EOP is accompanied by its translation to the official language of the Member State of enforcement. The translation shall be certified by a person qualified in one of the Member States⁶⁴.

The claimant applying in one of the Member States for the execution of the EOP issued in another Member State is exempt from paying the security, despite the fact that the claimant is a foreigner or is not domiciled or a resident in the Member State of enforcement.

According to the Article 22 of the Regulation the competent court in the executing Member State mandatorily refuses to comply with the EOP when it is not possible to reconcile it with earlier judgment or order issued in one of the Member States or in a third country. Such a situation may occur when earlier judgment (or order) was issued in respect of the same cause of action and between the same parties (*res iudicata*)⁶⁵, and it

Enforcement fees are governed by Article 43 et seq. of the Act of 29 August 1997 on Judicial Enforcement Officers and Enforcement Proceedings (in Polish: *Ustawa o komornikach sądowych i egzekucji*, Polish O. J. 2011, No 231, item 1376, as amended).

⁶⁴ See Article 21(2)(b) of the Regulation. The EOP should be presented in the official language or one of the official languages of the Member State of enforcement, unless the Member State accepts orders in other languages. Information, about which languages are accepted by each Member State, is available in the European Judicial Atlas in Civil Matters http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_communications_pl_en.htm#rc_eeo_communications3 [accessed on: 15.09.2014]. In Poland it is only the Polish language. Please note that in some Member States where there is more than one official language, it may be necessary to provide a translation into the language assigned to a specific part or a particular region of a Member State. Translations must be certified by a person qualified to do so in one of the Member States See Act of 25 November 2004 on the profession of translator (in Polish: *Ustawa o zawodzie tłumacza przysięgłego*, Polish O. J. 2004, No 273, item 2702, as amended). See also https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-pl.do [accessed on: 15.09.2014] and a list of certified translators (search by town and language), maintained by the Ministry of Justice of the Republic of Poland <http://bip.ms.gov.pl/rejstry-i-ewidencje/tlumacze-przysiegli/lista-tlumaczy-przysieglych/> [accessed on: 14.09.2014].

⁶⁵ See Article 366 § 1 CCP. The authority of *res iudicata* depends not only on the identity of the parties, but also on the identity of the subject matter and the identity of the settlement to the dispute. Re-examination of the same issue violates the Latin principle of *ne bis in idem*. However, changing of the facts justify the consideration of the same matter in the new process. A. Zieliński [in:] A. Zieliński (ed.), op. cit., p. 630 et seq. See also on *res*

meets the conditions necessary for its recognition in the Member State of enforcement. In addition, in order for a refusal of enforcement to occur, it is necessary to show that the defendant was not able, in the Member State of origin, to raise the objection that the order cannot be reconciled with other, previously issued judgment or order. It is required that all three above-mentioned reasons are fulfilled and application is submitted by the defendant.

The court also denies enforcement of the order at the request of the defendant, if the defendant has already paid the claimant the amount of ordered by the EOP⁶⁶. It resembles the prerequisite of initiation of anti-enforcement suit, based on the objection of performance of the consideration (Article 840 § 1 point 2 CCP). Excluded, however, is the possibility of re-examination of the merits of the EOP in the Member State of enforcement.

Article 23 of the Regulation provides that if the defendant has applied for a review of the order in accordance with Article 20 of this Regulation, the competent court in the Member State of enforcement may, upon application of the defendant, limit the enforcement proceedings only to protective measures or make the execution of the EOP conditioned upon submitting by the claimant security specified by the court. In exceptional cases, the court may also suspend the enforcement proceedings.

The overall impression seems to be that the conditions laid down in Articles 20, 22 and 23 of the Regulation, on which the powers of the parties to re-examine, refuse to execute, suspend or limit the execution of the order are based, significantly extend the opportunity to defend the interests of the debtor, thus providing *sui genesis* extraordinary means of appeal.

iudicata E. Marszałkowska-Krześ (ed.), *Postępowanie cywilne [Civil Procedure]*, C.H. Beck, Warsaw 2011, *passim*. In the Polish procedure occurrence of *res iudicata* is an a negative procedural condition and is the basis for rejection of the application at the stage of initiation of the proceedings (Article 199 § 1 point 2 CCP). However, when this condition is revealed later, Article 355 § 1, Article 379 point 3 and Article 403 § 2 CCP are applicable. See also T. Wiśniewski, *Przebieg procesu cywilnego [Conduct of Civil Procedure]*, Wolters Kluwer 2013, p. 95 et seq.

⁶⁶ If the defendant has paid the claimant only a part of the amount ruled in the EOP, refusal of enforcement may occur only for this part.

The amendment, which is currently underway (January 2015), introduced new, more precise regulations. It is worth quoting the most significant ones.

Article 1153²⁰ § 1 of the CCP allowed the courts to optionally suspend the enforcement proceedings on the debtor's request when such a possibility arises from the provisions of Regulation No 1896/2006. In turn Article 1153²⁰ § 2 of the CCP gave the court the possibility of limiting the enforcement to protective measures or condition execution of the enforcement order on submission, by the creditor, relevant security where such a possibility stems from the said Regulation. In this case also the request of the debtor is required. While limiting the enforcement to protective measures, the court determines the manner of the security, applying accordingly the provisions on the manner to secure claims in the proceedings. Court's decision issued pursuant to Article 1153²⁰ § 2 of the CCP may be appealed.

Enforcement authority mandatorily discontinues the enforcement proceedings in whole or in part, at the request of the debtor, when a final and non-appealable judgment denied recognition or execution of an enforcement order (Article 1153²¹ item 2 of the CCP).

Under Article 1153²³ §1 of the CCP the debtor is entitled to file a motion for refusal of execution of the EOP. The motion is examined by the regional court with jurisdiction over the place of residence or registered office of the debtor (in the absence of the possibility to establish the court in such a manner, the motion is examined by the regional court, in whose jurisdiction the enforcement proceedings is or is to be conducted). The process adversary may present its standpoint within the period prescribed by the court. The motion is heard in a closed session.

In accordance with Article 1153²⁴ of the CCP the party may appeal against the decision refusing execution of the EOP, refusing recognition of the EOP or refusing stating the absence of grounds for refusal of recognition. The decision of the court of appeals may be appealed by notice of appeal. For the same reasons, the party may also request to resume the proceedings, as long as the proceedings was completed and final and non-appealable decision was issued. The party may also request for declaring final and non-appealable decision, issued in this regard, illegal.

Practical application of these provisions will show how the changes will improve the execution of the EOP under the national law. So far, the changes have not yet been subject of case-law or extensive statements of the doctrine.

OTHER PROVISIONS, REPRESENTATION AND FEES

Article 24 of the Regulation provides that representation by a lawyer or another legal professional shall not be mandatory when entering the claimant's application for the EOP and lodging an objection to the EOP by the defendant.

There is a rule contained in Article 25 of the Regulation, according to which the sum of legal fees stemming from proceedings concerning the EOP and ordinary civil proceedings, which goes after opposition cannot exceed the amount of court fees resulting from ordinary civil proceedings, which would take place without the preceding EOP proceedings in that Member State. Court fees include fees and charges to the court, the amount of which is determined in accordance with national law. Applicable here is the Act on Judicial Costs in Civil Cases (hereinafter referred to as the "AJCCC") of 28 July 2005⁶⁷ and in particular Article 13 subpar. 1 of the AJCCC concerning the fee for the claim⁶⁸, Article 19 subpar. 1 of the AJCCC⁶⁹ as well as Article 79 subpar. 1 point 2 item "d" of the AJCCC⁷⁰.

⁶⁷ In Polish: *Ustawa o kosztach sądowych w sprawach cywilnych* (Polish O. J. 2014, item 1025, as amended).

⁶⁸ Relative fee is 5% of the value of the dispute, which is the amount claimed from the debtor, but not less than PLN 30 and not more than PLN 100 000.

⁶⁹ Half of the fee is collected from the opposition to the request for setting aside the EOP.

⁷⁰ In the event that the EOP becomes final and non appealable (if the debtor fails to lodge an opposition) the court *ex officio* returns $\frac{3}{4}$ of the fee paid on account of the court, the remaining $\frac{1}{4}$ fee is however awarded against the debtor. In the event that the defendant lodges an opposition the whole fee is awarded against the debtor in the judgment.

CONCLUSION

The unification of Europe provided the possibility of free movement of factors of production on an unprecedented scale. In addition to the undoubted economic benefits it also resulted in many problems. Conducting trade with a counterparty having its registered office in another country thousand kilometers away is often associated with greater risk. Due to opening of the borders many debtors changed their place of residence, in an attempt to avoid the justice system and repaying their obligations. Regulation laying down the procedure for the EOP certainly fulfils the needs of creditors, who as a result of cross-border economic relations acquired debt claims and who in the course of pursuing their claims encountered numerous obstacles. Regulation is in force for six years already, but the frequency of its use (at least in Polish courts) is marginal. What is more, many entrepreneurs do not know about its existence and often in fear of complicated procedures of judicial redress resign from pursuing their claims against unfair foreign trade partners. This matter is rarely the subject of scientific studies. The gap in the doctrine is filled with publications posted on the websites of the EU institutions.

Rules of conduct for the EOP seem to be clear and do not cause serious problems in interpretation. The procedure, although is simplified compared to the traditional procedure, also effectively protects the interests of the defendant. The EOP issued on the basis of the facts established by the creditor become ineffective as a result of the defendant's opposition. This may result in an unfavorable situation for the claimant, in which the case will be referred to the ordinary procedure and will be conducted in the defendant's State, in a foreign language to the claimant, and according to an unknown for the claimant procedure. This in turn will require the presence of an interpreter and a professional foreign attorney, which will significantly raise costs of the proceedings⁷¹. Therefore, in the face of uncertainty as to the outcome of the process, many creditors resign from pursuing their claims in ordinary civil proceedings, fearing non-repayable

⁷¹ And thus raising the so-called transaction costs *ex post*. See, on the theory of transaction costs B. Klimczak, *Mikroekonomia (Microeconomics)*, Publ. AE Wroclaw 2006, p. 85 and 342.

high costs, language barriers, lack of knowledge of foreign law, not to mention the distance separating them from the court's ruling on the case. It seems that in this matter, the EOP proceeding, conducted in writing and without the attendance of the parties can effectively overcome the aforementioned obstacles, but only if the order has not become invalid as a result of the defendant opposition⁷². Otherwise, the matter will return to the "starting point"⁷³.

According to the Article 26 of the Regulation, all procedural issues not specifically dealt with in this Regulation shall be governed, based on subsidiarity principle, by national law. This requires, in many cases, the use of the comparative approach, to avoid a conflict with the standards of EU law with national law. In accordance with the general rule, it is unacceptable that national regulations impose, on the party filing the form instituting the proceedings for the EOP, additional requirements and raise the costs of the proceedings. National rules may be applied only in cases where they are not less favorable than the rules of the EU and when they not impede the exercise of the powers conferred by EU regulations⁷⁴.

The provisions discussed constitute the single European instrument for pursuing uncontested cross-border claims. They contribute to the creation of a true area of justice in the EU, promoting the implementation of

⁷² In cases where the claim without the expenses and interest does not exceed the amount of € 2000 and there is a high probability that the defendant exercises his right to object, it may be better to use a European procedure for small claims, due to the lack of an objection possibility in the proceedings. See also *Practice Guide ...*, p. 6 and Article 20(1) of the Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European procedure for small claims (O. J. 31.07.2007, L-199, p. 1).

⁷³ In such a situation, there is a potential opportunity to find out the position of the opponent, which in the content of the opposition may (but need not) reveal his/her intentions and cite the arguments at his/her disposal, which may give the claimant an advantage to initiate the proceedings in the event of commencing ordinary proceedings later. On the other hand, the defendant gets time to take action hindering any potential enforcement proceedings addressed to his property (e.g. by divesting of the assets).

⁷⁴ See Judgment of the Court of 13 December 2012, Case C-215/11, source: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=131803&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=21604> [accessed on: 15.09.2014].

the idea of the Single Market⁷⁵. Any legislative efforts leading to the unification of the civil procedure in the EU and facilitating conducting commercial transactions between parties located in different Member States should be appreciated.

REFERENCES

1. Flaga-Gieruszyńska K., [in:] A. Zieliński (ed.), *Kodeks postępowania cywilnego. Komentarz [The Code of Civil Procedure. Commentary]*, C.H. Beck, Warsaw 2014;
2. Gołaczyński J., (ed.), *Kodeks postępowania cywilnego. Postępowanie zabezpieczające i egzekucyjne. Komentarz [Code of Civil Procedure. Protection and enforcement proceedings. Commentary]*, Wolters Kluwer 2012;
3. Klimczak B., *Mikroekonomia (Microeconomics)*, Publ. AE Wrocław 2006;
4. Marszałkowska-Krześ E., (ed.), *Postępowanie cywilne [Civil Procedure]*, C.H. Beck, Warsaw 2011;
5. Osowska-Grzelak M., *Wzajemna relacja postępowań odrębnych występujących w procesie cywilnym w ujęciu ogólnym [The mutual relationship of separate proceedings occurring in the civil procedure in general overview]*, part 1, Monitor Prawniczy 2008, No 13, 694 et seq.; part 2, Monitor Prawniczy 2008, No 14, 750 et seq.
6. *Practice Guide for the application of the Regulation on the European Order for Payment*, European Union 2011, 9, source: <https://e-justice.europa.eu/file-Download.do?id=6bc50a8f-698a-401a-a92b-c2b9a34d102d>
7. Silvestri E., *Simplification of Debt Collection in the EU (European Order for Payment Procedure and the European Small Claims Procedure) Italian Report*, University of Pavia, 11, source: http://www.academia.edu/2511267/Simplification_of_Debt_Collection_in_the_EU_European_Order_for_Payment_Procedure_and_European_Small_Claims_Procedure_Italian_Report;
8. Wiśniewski T., *Przebieg procesu cywilnego [Conduct of Civil Procedure]*, Wolters Kluwer 2013.

⁷⁵ The idea is furthered by the introduction of a combination of three procedures, i.e. next to the described EOP, as mentioned above the European procedure for small claims and a European Enforcement Order for uncontested claims. This triad provides a comprehensive solution, implementing the principle of mutual recognition of court rulings in civil matters. This leads to simplification and acceleration of cross-border recognition and enforcement of creditors' rights in the EU. See *Practice Guide ...*, p. 5.

