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The Northern Ireland Court Service

Making a cross border claim in the EU

**Using the European Order for Payment procedure or
the European Small Claims procedure**



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This leaflet will be made available in a range of alternative formats.

Requests for alternative formats should be made to Communications Group,
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Northern Ireland Court Service

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Contents

Getting Help	page 4
What is a cross border claim?	page 5
Where should I issue my claim?	page 5
What type of claim might it be?	page 7
European Order for Payment Procedure (EOP)	page 8
European Small Claims Procedure (ESCP)	page 13

Getting help

You can seek help from Citizens Advice or a consumer advice centre. If you are a consumer, you can contact Consumerline on 0854 600 6262 (alternative number 028 9025 3900), or visit the Consumerline website at www.consumerline.org, where you can obtain useful advice or make a complaint online.

The European Commission's Judicial Atlas website has information on the names and addresses of all civil courts in the Member States and the geographical areas with which they deal and you can find this by using the link: http://ec.europa.eu/justice_home/judicialatlascivil/html/cc_information_en.htm

If you want to make a cross border claim there are a number of ways you can do so and the rest of this leaflet tells you more about them.

What is a cross border claim?

Cross border claims are cases, in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court where the action is brought.

Where should I issue my claim?

Before considering suing another person or body in a different country, it is vital to establish beforehand where you are required to start such proceedings. It is worth bearing this in mind as by starting your proceedings abroad you may well face additional costs and inconveniences. For example, you may be required to translate your documents, hire a lawyer or travel to court hearings in another country.

Claims where the defendant is in another EU Member State

If your dispute is against a person or business in a different Member State, you will have to find out which Member State's courts have jurisdiction to deal with your case. Jurisdiction in cross border cases is governed by EU Council Regulation (EC) No 44/2001 on jurisdiction, and the recognition and enforcement of judgments in civil and commercial matters (otherwise known as the Brussels Regulation).

Normally the country in which the defendant lives is the country with jurisdiction to process the case. People who normally live in a particular Member State must, whatever their nationality, be sued in the courts of that Member State.

However, there are exceptions as some claims can be brought in another Member State other than where the defendant lives. These exceptions mainly occur in matters relating to:

- a contractual obligation
- actions for damages
- matters relating to maintenance
- matters relating to consumer contracts, insurance and to individual contracts of employment

- matters relating to patents and trademarks
- matters relating to ownership or tenancy of immovable property

For example –

The French vendor of a motorbike can be sued in Northern Ireland if that is where the motorbike was due to be delivered.

In the case of a traffic accident that happened in Germany between a German local and a tourist from Northern Ireland, the German claimant can use the German courts.

As an alternative you can also choose to sue the defendant in the courts of the Member State in which that defendant lives or is resident.

The Regulation does offer special protection to consumers, who can sue in their own courts.

Please note that the above description of the Brussels Regulation is merely a short summary of key points. For more information please visit the European Judicial Network by using this link:

http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_information_en.htm

Outside the European Union

There are different Regulations in place for claims brought involving parties in countries outside the European Union who are members of the European Free Trade Association (EFTA). The Lugano Convention of 6 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters govern these. At present apart from EU Member States, Switzerland, Norway and Iceland are contracting parties to this convention.

Similar provisions on jurisdiction apply to parties under this Convention.

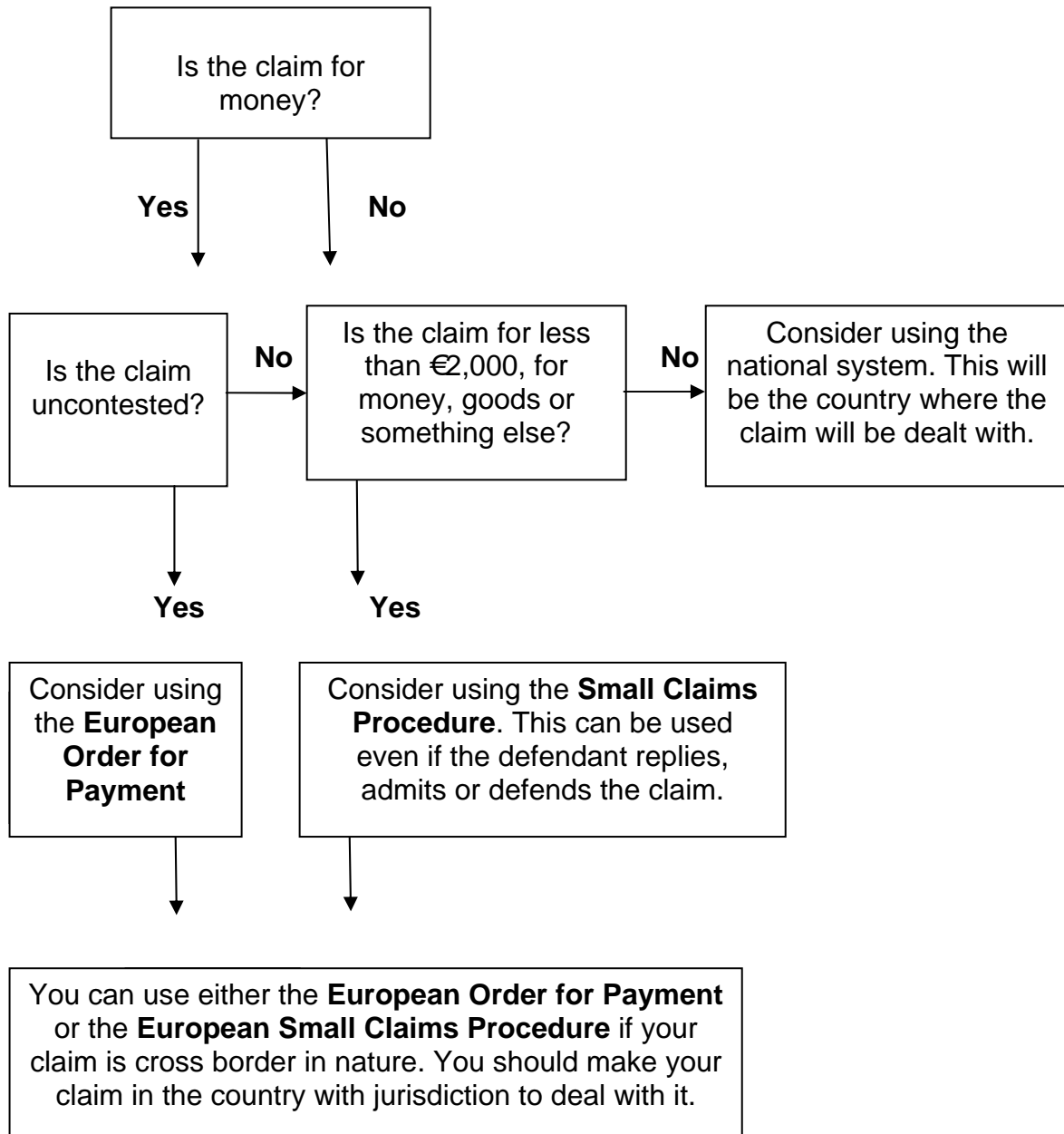
For example –

The vendor of a lorry in Northern Ireland can be sued in Norway if that is where the vehicle was to be delivered.

What type of claim might it be?

The decision tree that follows can help you decide what type of claim to make.

I want to make a claim across EU borders



European Order for Payment Procedure (EOP)

What is the European Order for Payment?

The EOP is a new procedure that makes it easier and quicker for creditors to recover uncontested monetary debts in cross border cases. The procedure operates on the basis of standard forms and a uniform process across all EU Member States. It can be used in both civil and commercial matters and does not require the use of lawyers. The procedure is optional and can be used instead of existing procedures under national law.

A creditor who obtains an order using this procedure will not have to undertake any intermediate steps to enforce the decision in another EU Member State.

You **cannot** use this procedure if the claim:

- is against a Member State because of its actions or its failure to act
- is about property involved in a marriage or a will
- is about bankruptcy or insolvency
- concerns social security
- does not involve a contract, unless there was an agreement or the debt was admitted
- is about settling debts from joint ownership of a property
- not for a specific amount of money or that sum is not yet due to be paid

A copy of the full Regulation is available at the Europa website:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:399:0001:0032:EN:PDF>

I am a claimant - what will I have to do to get an EOP?

All forms for the EOP are available on our website and in addition are annexed to the Regulations. They are also available on the European Commission's Judicial Atlas website:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

To start the claim you should complete **Form A**. You will be asked to provide enough information about the evidence you have available to prove your claim so the defendant can decide whether to oppose the claim. There are certain requirements that have to be met, such as the grounds for the court's jurisdiction and the cross border nature of the case. Please refer to the guidance notes contained on the application form.

How much will it cost?

Once you have completed your claim form send or take the form to the appropriate court. There is a court fee payable for this process. In Northern Ireland, the form should be delivered or posted to:

Front of House Office
Royal Courts of Justice
Chichester Street
Belfast
BT1 3JF

Guidance on court fees is available on the Northern Ireland Court Service website www.courtsni.gov.uk [click on the link to Court Fees and select Supreme Court Civil Business Court Fees].

What happens next?

The court will check to see if the form is properly completed and that it satisfies the requirements of the Regulation (i.e. the cross border nature of the case in civil and commercial matters, the jurisdiction of the court in question, etc.).

If the conditions for applying for an EOP are met, the court issues and serves the order as soon as possible and normally within 30 days of lodging the application. The 30 day period does not include the time taken by the claimant to complete, rectify or amend his or her application.

An EOP informs a defendant that he or she may either pay the claimant the amount of the claim or contest it. If the claim is to be contested, the defendant must lodge a **statement of opposition** with the court that issued the EOP. The statement of opposition must be sent within 30 days of the service of the order on the defendant.

The order becomes enforceable automatically unless the defendant lodges a statement of opposition with the court of origin.

If the application form is not complete, the court will return the form and allow the claimant an opportunity to complete or rectify the application by a certain date (normally within 30 days).

If the requirements are met for only part of the claim, the court may propose that the application be amended. For example, if a creditor attempts to claim a sum of £5,000 but is only able to substantiate half of that amount, the court will amend the EOP to £2,500. The claimant is asked to accept the proposed EOP for the amount specified by the court within 30 days.

If the claimant accepts the court's proposal, the court will issue an EOP for the part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim are governed by national law. If the claimant fails to reply within the time limit specified by the court or refuses the court's proposal, the court rejects the application for an EOP in its entirety.

The court will **reject** an application if:

- it fails to meet the necessary conditions
- it is not founded
- applicants fail to return a completed or modified application in time
- applicants fail to reply within the time limit or refuse the court's proposed amendment.

There is no right of appeal against this decision but this does not prevent you from making another claim perhaps using another method of claim.

What can the defendant do?

The person who receives an EOP i.e. the defendant, may lodge a statement of opposition with the court that issued the EOP. The statement of opposition must be sent within 30 days of the order being served on the defendant.

Statements of opposition are lodged using Form F, which the defendant will have received from the court with the EOP.

The defendant can:

- pay the amount due to you
- object to the order by completing and returning a statement of opposition within 30 days of service of the order or
- they may do nothing.

What happens if the defendant objects?

If a defendant opposes your claim, then the case will normally be transferred to the national system of the country issuing proceedings. You may not want this to happen because e.g. under the ordinary civil procedures, the costs may be higher. You can choose not to have the case transferred to the national system by completing Appendix 2 of Form A.

In Northern Ireland, the claim will continue as if begun by a Writ of Summons in the Queen's Bench Division and will be subject to the provisions of the Rules of the Supreme Court (Northern Ireland) 1980.

What happens if the defendant does nothing?

If the defendant does not lodge a statement of opposition with the court within the time set, the court will declare the EOP enforceable and send a **Declaration of Enforceability** (Form G) to you.

How do I enforce an EOP?

An enforceable EOP will be treated as if it were a judgment by a court of the Member State where you are trying to enforce the claim.

The rules about enforcement vary from Member State to Member State. The European Judicial Network website has more information about other Members States: http://ec.europa.eu/civiljustice/index_en.htm

Follow the links: European Judicial Network - Enforcement of judgements - Community law (click on the icon in the right column for information relevant to each Member State).

You must send the enforcement authorities of that Member State a copy of the EOP which has been declared enforceable and if necessary a translation into the language of that Member State.

Enforcement in Northern Ireland

For enforcement options in Northern Ireland please visit the Northern Ireland Court Service website www.courtsni.gov.uk and click on the link to “Services” and select ‘Enforcement of Judgments Office’ for further help and advice.

Is there anything that can stop enforcement?

The defendant can, where certain requirements are met:

- apply for a review of the EOP
- apply to have enforcement refused
- in very limited circumstances, apply to have enforcement stopped or limited.

European Small Claims Procedure

What is the European Small Claims Procedure?

The European Small Claims Procedure (ESCP) for the first time provides consumers and businesses all over Europe with a uniform, speedy and affordable debt recovery process for low value claims in cross border cases. The procedure will apply in civil and commercial matters where the value of a claim does not exceed EU 2000. The procedure applies to non monetary claims as well as to monetary claims.

The ESCP introduces standard forms to be used by the parties and the court across the European Union and establishes time limits for the parties and for the court in order to simplify and speed up litigation concerning small claims.

The procedure is a written one unless the court considers an oral hearing is necessary. The court may hold a hearing or take evidence through a video conference or other communications technology if the technical means are available. You do not need to be legally represented. However, if the other party does seek legal representation you may be liable for those costs if you lose. The unsuccessful party will be liable for the costs of the proceedings which may include such legal costs. However, the court can decide not to award costs to the successful party to the extent that they were unnecessarily incurred or disproportionate to the claim.

A judgment given under this procedure shall be recognised and enforced in another Member State automatically and without any possibility of opposing its recognition.

A copy of the full Regulation is available at the Europa website:
http://eurlex.europa.eu/LexUriServ/site/en/oj/2007/l_199/l_19920070731en00010022.pdf

The procedure cannot be used in claims concerning:

- the status or legal capacity of natural persons
- property involved in a marriage or a will or maintenance obligations
- bankruptcy or insolvency
- social security
- arbitration
- employment law
- tenancies, with the exception of actions on monetary claims
- privacy or defamation.

What will I have to do?

All forms for the ESCP are available on the European Commission's Judicial Atlas website:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

The procedure introduces standard forms and Form A must be used to start proceedings. The form itself contains detailed guidance notes to assist you in completing it. It is important that you read them carefully. You will be asked to provide enough information about the evidence you have available to prove your claim and to enable the defendant to be able to choose whether to defend the claim. This may include any relevant supporting documents where appropriate.

How much will it cost?

Once you have completed your claim form send or take the form to the appropriate court. In Northern Ireland, the form should be posted to:

Small Claims Civil Processing Centre
Royal Courts of Justice
Chichester Street
Belfast
BT1 3JF

There is a court fee payable for this process. The fee payable is determined by the amount of the claim. Guidance on court fees is available on the Northern Ireland Court Service website www.courtsni.gov.uk [click on the link to Court Fees and select County Court Business Court Fees].

What happens next?

If the form does not meet the requirements for the ESCP, your claim will be transferred into the national procedure of the court dealing with the claim unless you ask to withdraw your claim e.g. because you think that the costs of the case under the national system will be too high.

If the form is incorrectly completed the court will send it back to you allowing you 30 days to complete/rectify the claim form.

If the form is properly completed and it satisfies the requirements for the ESCP, the court will send the defendant a copy of the claim form and a reply form so they can decide whether or not to defend the claim. The defendant will have 30 days from service of the claim to respond to it.

What can the defendant do?

The defendant can

- pay the amount due to you – you should tell the court if he does
- dispute the whole or part of your claim or make a counter claim or
- do nothing.

He may also make an offer to settle. It is for you to decide whether or not to accept an offer but check what will happen about the costs of the claim.

What happens if the defendant disputes the claim or makes a counter claim?

You will receive a copy of the defence form and/or the counter claim and you can tell the court whether you agree or disagree with the defence and if you disagree explain why.

The claim will be considered by the judge who can ask for more information from the parties, take evidence or summon you to a hearing which may be by

video conference or telephone. The judge will give a decision within 30 days of any oral hearing or after having received all the necessary information and a copy of the decision will be sent to all parties.

What happens if the defendant does nothing?

If the defendant has not replied within 30 days of the court serving the claim and the judge does not want additional information, evidence or to hold a hearing, he will give a decision, a copy of which will be sent to you.

What other costs might I be able to claim if I win?

Other costs you may be allowed include:

- any court fees you have paid
- costs of the proceedings (e.g. translation costs, lawyers' fees etc.).

It is important to note that the unsuccessful party will have to pay the costs of the proceedings as long as they were necessary and not disproportionate to the claim.

Can I appeal if I lose?

The availability of an appeal under this procedure is determined by each individual Member State. In Northern Ireland, there is no right of appeal against this decision.

However, the defendant may apply to the court that gave judgment for a review if:

- the claim form or summons to an oral hearing were served by an method without proof of receipt by him personally
- service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part
- he was prevented from objecting to the claim due to extraordinary circumstances, without any fault on his part.

How do I enforce the claim?

The court's judgment will be recognised and enforceable in all other Member States. On request, the court will also issue a certificate concerning the judgment at no extra cost.

The rules about enforcement vary from Member State to Member State. The European Judicial Network website has more information enforcement procedures in other Members States:

http://ec.europa.eu/civiljustice/index_en.htm

Follow the links: European Judicial Network - Enforcement of judgements - Community law (click on the icon in the right column for information relevant to each Member State).

You must send the enforcement authorities of that Member State a copy of the judgment and a copy of the European Small Claims judgment certificate and if necessary a translation into the language of that Member State.

Enforcement in Northern Ireland

For enforcement options in Northern Ireland please visit the Northern Ireland Court Service website www.courtsni.gov.uk and click on the link to "Services" and select 'Enforcement of Judgments Office' for further help and advice.

Is there anything that can stop enforcement?

The defendant can, where certain requirements of the Regulation are met:

- apply for a review of the judgment
- apply to have enforcement refused
- in very limited circumstances, apply to have enforcement stopped or limited.

For further information on the work of the Northern Ireland Court Service please contact

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