



KAIMAKLIOTIS | AND
CO
Corporate & Legal Consultants

European Enforcement Order as a Debt Collection Tool.

During the deliberations of the Tampere Council 1999, which aspired to fabricate a European Society from which its citizens would be availed from the Treaty of Lisbon's objectives, an emphasis has been given in making the European Union among others an area of 'freedom, security and justice, without internal borders'. For this to be attained, the Council introduced the mutual recognition prerogative which formed the basis of 'judicial co-operation' as per Article 67 § 4 of the Treaty of Functioning of the European Union. Among the several freedoms, the EU safeguards its citizens the fifth one is the 'free movement of judgments'.

The European Enforcement Order (EEO) has therefore been introduced with the European Parliament's Regulation (EC) No 805/2004 to promote the rights of the European Union's citizens and open them the door to justice. The approach's purpose is to enable any judgment deriving from any Member State to be recognisable to any other Member State of the union without the need of undertaking any intermediate formalities. This is applicable to all European Union member states except Denmark which has chosen not to participate in this consensus.

What is a European Enforcement Order?

Briefly, the EEO is a certificate attached with a judicial ruling, or settlement, or a public certificate and enables a decision to be distributed across the Union borders and diverse jurisdictions without any complication. Alternatively called as 'European Judicial Passport'. It needs to be clarified that it concerns undisputed claims. What constitutes an undisputed claim varies in accordance with a state's domestic legislation.

When is the European Enforcement Order needed?

The EEO is needed for executing a decision issued by a Member State of the European Union to another Member State of the Union. This order attests to the existence of conciliation made in court or any public document that has been transcribed by other member states which involves an undisputed claim.



What are the undisputed claims?

Article 3 of the Regulation establishes that undisputed or else called uncontested claims include the ones which:

1. the debtor has expressly agreed to it by admissions or by means of settlement which has been approved by a court or concluded before a court in the course of proceedings; or
2. the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
3. the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
4. the debtor has expressly agreed to it with an authentic instrument.

The EEO can be issued in relation to either civil and commercial matters or pecuniary claims which can fall into any of the two categories considering the nature of the dispute and the correspondence between the parties.

There are certain specifications where a creditor cannot seek a EEO more precisely in relation to civil or commercial matters, and these instances include an administrative act, tax or custom or social insurance cases that refer to a member state's acts, nor can it be issued for cases involving a person's legal capacity or for any estate matrimonial disputes, nor for any arbitrary cases, or for either liquidation or bankruptcy proceedings of a company.

On the other end of the spectrum though, a EEO can be granted with any court judgment either if this is a decree, or an order, or a decision or writ or judgment. The European Enforcement procedures vary depending on the nature of the certificate to be sought. The person seeking to get a EEO does not need to prove his/hers country of residence to justify the reason for obtaining such a certificate, nor does the legislative frameworks of the country where the EEO needs to be shown need to be coherent with the country issuing it.

It is a precondition that the creditor in order to obtain a EEO prove that a claim exists, and this will be achieved through following the procedural guidelines set by Articles 16 and 17 of the Regulation. Primarily, the debtor needs to be aware of the claim and this will be attained by notifying the debtor of the relevant information. Article 16 explicitly specifies that the information includes: the names and the addresses of the parties and the amount of the claim, whether interest on the claim is demanded, and for which duration does the party demand this interest. Besides these specifications, the creditor needs to vindicate the reason for the claim. Moreover, Article 17 of the Regulation mandates how a debtor can dispute the creditor's claim.

Our offices will provide guidance for any creditors seeking to undertake these procedures to issue a EEO in Cyprus or advise on what procedures need to be initiated so as to acknowledge a EEO within a Cypriot jurisdiction deriving from another European Union's member state. Similarly, provided a debtor wishes to dispute a EEO, we are more than willing to assist the clients in doing so.

Practicalities of the issuance of a European Enforcement Order

If the matter for which a EEO needs to be issued falls into any of the above-stated categories vis a vis civil or commercial, then pursuant to the country's domestic legal system, the applicants ought to apply for such order to the 'competent authority of the Member State' and comply with the national regimes of the country. A EEO might be demanded either before or after the court proceedings have been finalised.



Certifying the decision

In issuing the EEO the courts need to complete a standard form provided in Annex I and examine whether the criteria mentioned above coincide. To be more precise, the nature and the amount of the claim, whether the disputed amount is indeed overdue, and whether the debtor opposed the outstanding amount specified in the claim.

Lastly, the court judgment needs to be enforceable or provisionally enforceable.

Focusing on Cyprus' exemplar of issuing a EEO, the interested party when applying for such, needs also to prepare either an ex-parte application with an affidavit (if there is no other party to the application/case) or an application of summons with an affidavit (which needs to be brought to the notice of the other party to the case) that will be accompanied with the standardized form in Annex I.

If a client seeks enforcement of a foreign judgment deriving from a country that is not a European Union member, then the abovementioned procedures are not applicable. The relevant procedure for such instances is dictated in Law 121(I)/2000 and provides that an application of summons needs to be prepared and accompanied by an affidavit. If there is no other party to the case, then an ex-parte application accompanied with an affidavit is the method to seek enforcement of the foreign judgment. Besides the application, the party needs to present a translation of the foreign judgment to the Greek language along with proof from the lawyer he/she has been advised from the foreign jurisdiction in obtaining the relevant judgment.

Provided clients wish that a EEO that has been issued in another Member State be acknowledged within the Cypriot jurisdiction, our offices will assist them with the relevant procedures so that their order is recognised in Cyprus. Likewise, we are able to aid clients who wish to issue a EEO in the Cypriot courts and advise them whether one can be issued given it does not fall in any of the specified categories that do not allow the issuance of such. The service for a EEO will be tailored to the needs of each client as it is a service that will be provided on an ad-hoc basis and will vary according to the facts of each case. Similarly, this applies to persons from foreign jurisdictions that wish to enforce a decision in Cyprus.

Issuing an EEO is fast and effective, allowing individuals or companies to concentrate on the enforcement of the EEO/court decision, without worrying about any last-minute defences put forward by the respondent in the country of issuance or enforcement of the EEO. Especially in Cyprus applications may be filed immediately in Court to enforce the EEO. Individuals can be benefited from various enforcement orders available by the Cyprus Courts i.e. freezing of Bank accounts belonging to respondent, selling movable assets to satisfy the court decision, attaching the court decision to shares belonging to the respondent and blocking any sale of shares and even arranging monthly payments until full satisfaction of the court decision.

Any client, once a court decision has been issued in any EU country including Cyprus may contact us, so that we may advise how this Court decision as per the EEO regulations may be utilized.

Disclaimer:

The purpose of this article is informative and should not in any way be considered as a substitution of legal advice. Moreover, it aims to provide some guidance to people wishing to learn and commence proceedings for a European Enforcement Order in Cyprus for another member state abroad or others who wish to acknowledge a EEO in Cyprus. Provided a reader has more inquiries in relation to this matter they can contact the author at: info@kaimakliotislaw.com