1 Existence of an order for payment procedure

Among other summary proceedings, the Italian Code of Civil Procedure (*Codice di procedura civile*) lists an order for payment procedure (*procedimento di ingiunzione*) (Sections 633 *et seq.*). This is an *ex parte* proceeding, since the Court rules on the creditor's application without hearing the debtor or allowing him or her to submit a response or remarks.

The debtor is heard only subsequently, if he or she challenges the order for payment.

The order for payment can be sought only in respect of certain claims (claim to payment of a sum of money or to delivery of a specific quantity of fungible goods etc.), and subject to certain conditions set out in the Civil Code (*Codice civile*), e.g. creditors must provide written proof of their claim.

If the court hearing the claim finds it to be well founded, it will order the debtor to pay the sum within a certain time limit, usually 40 days, but it will also advise the debtor that he or she may challenge the order within the same period and that, if no objection is lodged, the order for payment will become final and may be enforced.

1.1 Scope of procedure

The procedure applies to claims brought by creditors owed money or a specific quantity of fungible goods or by anyone with the right to receive a specific movable asset.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

Where the procedure relates to a claim to money, the sum must be precisely defined. This in effect rules out the possibility of seeking an order for payment in respect of non-contractual claims, for example to claim compensation for damage suffered as a consequence of an unlawful act.

1.1.2 Is there an upper limit regarding the value of the claim?

No, there is no upper limit. An order for payment may be sought for claims having any value.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the payment order procedure is optional. A creditor may always bring an ordinary action.

1.1.4 Is the procedure available if the defendant lives in another Member State or in a third country?

Yes.

1.2 Competent court

The order for payment must be sought from the justice of the peace (*giudice di pace*) or the general court (*tribunale*) that would have jurisdiction in ordinary proceedings. The justice of the peace is competent to hear only small claims, according to the criteria set out in Section 7 of the Code of Civil Procedure. When the application is lodged with the general court, the court sits with a single judge.

Claims concerning fees for legal services provided, whether in connection with litigation or out of court, or the reimbursement of costs payable to lawyers, bailiffs or any other person who has rendered services in the course of legal proceedings, are examined by the court which heard the case to which the creditor's claim refers.

Lawyers may apply for an order for payment against their clients to the court of the place where they are registered with the bar association (*consiglio dell' ordine*). Similarly, notaries may lodge claims before the court of the place where they are registered with the association of notaries (*consiglio notarile*) (see also the factsheet on 'Jurisdiction').

1.3 Formal requirements

The payment claim must contain the information set out in Section 638 of the Code of Civil Procedure, and must be lodged with the office of the clerk of the court together with its enclosures. Under Article 16-*bis* of Decree Law No 179 of 18 October 2012 (converted by Law No 221 of 17 December 2012): 'From 30 June 2014, in proceedings before the court referred to in Book IV, Title I, Chapter I of the Code of Civil Procedure, the filing of measures and of the parties' submissions and documents shall be carried out solely by electronic means (except for objections)'. Therefore, for all applications for *ex parte* proceedings after 30 June 2014, any submission of paper copies will be deemed inadmissible. For European Payment Orders, pursuant to Regulation EC 1896/2006, Article 16-*bis* of Decree Law No 179/2012 does not apply; therefore applications for such an order must be submitted on paper and not by electronic means.

1.3.1 Is the use of a standardised form obligatory? (if yes, where can that form be obtained?)

No, there is no special form.

1.3.2 Is representation by a lawyer required?

As a rule it is. However, in certain cases claimants may represent themselves in court. One such case is when the claim is heard by the justice of the peace and concerns an amount of €1 100 or less; another is when the claimant is qualified to act as a lawyer before the court hearing the case.

1.3.3 In how much detail do I have to describe the reason for the claim?

The application must set out the claim and the reasons justifying it. The reasons for the claim need not be detailed, and may be provided by a summary description of the relevant facts and documents.

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

Yes. Written evidence for the claim includes, in particular, acknowledgments of delivery and unilateral promises in writing. When the claim relates to the supply of goods or services, and such supply was made by a business to another business or to a person not engaged in professional or business activities, written evidence of the claim may also consist of authentic extracts from the accounts of the creditor enterprise, provided they are duly kept in the manner required by law. Commercial invoices may also constitute suitable written proof of the claim, provided they are accompanied by the stamped copy from the claimant's register of invoices.

Specific rules on supporting evidence apply to fee and reimbursement claims by lawyers, notaries and members of other professions, and to claims by the State and public authorities.

1.4 Rejection of application

If the court finds that the claim is insufficiently substantiated, it will so inform the claimant via the clerk of the court, asking the claimant to produce additional evidence. If the claimant fails to respond or to withdraw the application, or if the application cannot be accepted, the court will dismiss it by a reasoned ruling. In such cases, the claim may be re-submitted, by the special procedure or by the ordinary procedure.

1.5 Appeal

The dismissal may not be contested either by ordinary appeal or in Cassation.

1.6 Statement of opposition

If the court accepts an application, and it issues an order for payment, that order must be served on the defendant. In Italy it must be served within 60 days of the ruling, compared to 90 days if served outside Italy.

Upon receiving the order for payment, the debtor has 40 days to contest the claim.

Where there is sound reason for so doing, the deadline for lodging an objection to the claim may be reduced to 10 days or increased to 60 days. If the defendant lives in another EU country, the deadline is 50 days and may be reduced to 20. If the defendant lives in a non-EU country, the deadline is 60 days and may be reduced to 30 or increased to 120 days.

Defendants may challenge the claim even after expiry of the deadline, if they can prove that they were not informed in due time owing to irregular service of the order, or to any unforeseen event or force majeure. No challenge may be brought after 10 days from the first enforcement measure.

An objection challenging the order (*opposizione*) is brought before the court that issued it, by means of a writ of summons (*citazione*) to be served on the claimant at the address indicated in the application. The summons objecting to the order must contain the information usual in summonses generally. In particular, the objector must state the grounds of the objection to the claim.

1.7 Effect of statement of opposition

An objection of this kind triggers ordinary court proceedings in which the court examines the validity of the claim for payment.

1.8 Effect of lack of statement of opposition

If no objection is lodged within the prescribed time, or if the defendant fails to appear before the court, the court that issued the order will declare it enforceable on the claimant's application.

1.8.1 What needs to be done in order to obtain an enforceable decision?

There are four possible scenarios.

The first occurs when the deadline for objecting to the claim has not yet expired. The applicant can request the court to declare the order provisionally enforceable with immediate effect. This request can be granted only if the special conditions for provisional enforcement set out in the Code of Civil Procedure are met: for example, if the claim is based on a bill of exchange or cheque, or if delay in enforcement would cause serious harm to the creditor. As a condition for provisional enforcement at this early stage, the court may require the creditor to lodge a security in the debtor's favour.

The second scenario occurs when a debtor who has been served the order for payment fails to lodge an objection in the required time. When this occurs, the creditor can file a request for enforcement of the order.

The third scenario occurs when the debtor has indeed lodged an objection and the case is still pending. In this case, the creditor can file a request for provisional enforcement of the order. This request can be granted only when the conditions laid down in the Code are met (for example, when the objection is not supported by any written evidence). The court may also order provisional enforcement of only part of the order, i.e. up to the amount not contested by the debtor. The court can also grant provisional enforcement of the order if the creditor provides a security covering the amount for possible reimbursement, plus costs and damages.

The fourth scenario occurs when the objection is dismissed: as a consequence of dismissal, the order for payment becomes enforceable, if it was not already so.

Orders for payment which have been declared enforceable under any of the above scenarios also allow the creditor to register a judgment mortgage on the debtor's assets.

1.8.2 Is this decision final or is there still a possibility for the defendant to appeal against that decision?

An order which has become enforceable owing to the debtor's failure to file an objection may be revoked in exceptional cases provided for by law (for example if it is found that the court's decision was issued on the basis of evidence subsequently found to be false). When the order for payment affects a third party's rights, the third party may also file an objection.

A judgment closing opposition proceedings may be appealed in accordance with the ordinary procedures.

Link correlati

► *The Italian Constitution* (EN)
https://www.senato.it/sites/default/files/media-documents/COST_INGLESE.pdf
► *Le leggi e i codici italiani*
https://www.normattiva.it/?language=en
► *Codice di procedura civile italiano*
http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-di-procedura-civile
► *The Code of administrative trial* (EN)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/mzk3/~edisp/nsiga_4276977.pdf
► *Code de justice administrative* (FR)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/njiz/~edisp/nsiga_4506451.pdf
► *Italienische Verwaltungsprozessordnung* (DE)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/nda5/~edisp/nsiga_4289867.pdf
► *Il sistema giudiziario italiano*
https://www.csm.it/web/csm-internet/magistratura/il-sistema-giudiziario=
► *Codice del processo tributario*
http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?id=%7BECD81E71-D37B-4722-AA36-116B5BCB2232%7D
► *Ministero della Giustizia*
https://www.giustizia.it/giustizia

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