European payment order

Tyskland

1 Existence of an order for payment procedure

1.1 Scope of procedure

Yes. The rules of civil procedure provide for an order for payment procedure (Mahnverfahren) to obtain payment for money claims that are not necessarily contested. This is governed by Sections 688 et seq. of the Code of Civil Procedure (Zivilprozessordnung).

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

This procedure may generally be used when the claim is for payment of a fixed sum of money in euros.

However, it cannot be used in the following cases:

claims arising out of a consumer credit agreement with an interest rate of more than 12% above the base rate,

claims dependent on the performance of obligations that have still to be performed,

if the order for payment would have to be served by a published notice because the respondent's address is unknown.

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

There is no upper limit on the sum that can be claimed.

1.1.3 Is the use of that procedure optional or obligatory?

Use of the order for payment procedure by the creditor is optional. The creditor can choose between this procedure and ordinary proceedings.

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

In principle, the German order for payment procedure may also be used if the respondent is resident in another Member State or in a third country. However, it should be noted that Section 688(3) of the German Code of Civil Procedure provides that in cases where the order for payment would have to be served abroad the order for payment procedure can be used only if this is provided for in the Act on the Recognition and Enforcement of Judgments (Anerkennungs- und Vollstreckungsausführungsgesetz). Currently, this includes all Member States of the European Union, Iceland, Norway, Switzerland and Israel.

1.2 Competent court

Sole jurisdiction for the order for payment procedure lies with the local court (Amtsgericht) with ordinary jurisdiction for the applicant. This is determined by the person's place of residence or, in the case of a legal entity, by its registered office. However, many German federal states have established central courts for payment order cases (Mahngerichte) (such as the local court of Wedding in Berlin). This means that jurisdiction for order for payment proceedings has been concentrated in a number of local courts or even in a single local court in that state. In such cases the applicant's place of ordinary jurisdiction is at the central payment order court that has jurisdiction for their place of residence.

If the applicant has no place of ordinary jurisdiction in Germany, the local court of Wedding in Berlin has exclusive jurisdiction. If the respondent has no place of ordinary jurisdiction in Germany, jurisdiction lies with the local court that would have jurisdiction for the dispute irrespective of any distinction of jurisdiction by subject-matter (generally the local courts only have jurisdiction up to €5 000). Here too there may be central payment order courts in some federal states.

1.3 Formal requirements

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

Use of a pre-printed form is obligatory in so far as such forms exist for the declaration or application concerned. Forms exist, for example, for applications for the issue and re-service of orders for payment and enforcement.

Order for payment procedures are automated in all federal states. Here applications can either be made on pre-printed paper forms or by electronic data exchange. A number of software providers offer software programs for the electronic filing of applications in automated order for payment procedures. In some local courts it is also possible to make online applications over the internet.

Pre-printed paper forms for order for payment procedures can be purchased in stationers' shops.

1.3.2 Is representation by a lawyer required?

No, legal representation is not required.

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

The grounds on which the claim is based do not have to be described in detail. All that is required is a brief statement of the claim and the specific amount of money demanded. This is done by filling out the boxes in the pre-printed form designed for the order for payment procedure. The principal and subsidiary claims must each be listed separately.

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

Documentary evidence for the claims made does not have to be submitted.

1.4 Rejection of application

The application for an order for payment will be rejected if the order for payment procedure is not admissible, if the court applied to does not have jurisdiction, or if the application for payment does not comply with the formal requirements. The application will also be rejected if an order for payment can be issued only for part of the claim. The applicant must be heard before the order is refused.

The court does not examine whether the claim is justified before it issues the order for payment.

1.5 Appeal

A refusal of an order for payment cannot generally be appealed. An immediate objection (sofortige Beschwerde) is possible only if the application was transmitted solely in machine-readable form and was rejected on the grounds that it does not appear to the court to be suitable for its system of electronic processing; however, in practice this rule is of little significance.

1.6 Statement of opposition

If the order for payment is issued and served on the respondent, the latter has two weeks in which to object to it. However, an objection is still valid even after this deadline has passed, as long as no order for enforcement has been issued.

When the order for payment is served the respondent receives a pre-printed form that enables him or her to object. Use of this pre-printed form is, however, optional. This means that an objection can be entered in another form; the only formal requirement is that it must be in writing.

1.7 Effect of statement of opposition

If the respondent disputes the claim in time, no order for enforcement may be issued, and the claim in the order for payment cannot be enforced. However, the case will not automatically be dealt with thereafter by ordinary litigation. This requires an express application for ordinary proceedings, which may be made either by the applicant or the respondent in the order for payment procedure. The applicant may choose to make such an application as soon as the applicant becomes aware of the objection, and may even append it to the order for payment itself as a precautionary measure.

1.8 Effect of lack of statement of opposition

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

The court will, on application, issue an order for enforcement. The application cannot be made before the end of the time allowed for objection; it has to contain a declaration of what payments, if any, have been made in respect of the order for payment. If part payments have been made, the applicant must reduce the amount applied for accordingly.

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

The order for enforcement is equivalent to a provisionally enforceable default judgment. An objection may be entered within two weeks after service.

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