

1 Existence of an order for payment procedure

In addition to the European order for payment procedure set out in Regulation (EC) No 1896/2006 of 12 December 2006, Luxembourg law also allows debts of more than €10 000 to be recovered swiftly by means of an application to the district court for a provisional order. For debts of up to €10 000, small claims proceedings can be brought before the justice of the peace (*judge de paix*): see 'Small claims - Luxembourg'.

1.1 Scope of procedure

The person concerned can either bring a summary action for an interim measure (*action en référé*) or apply for a provisional payment order (*ordonnance sur requête, provision sur requête*).

Summary proceedings for an interim measure have to be followed by full proceedings on the substance of the claim, with the result that, overall, the action tends to be expensive.

The provisional payment order provides the fastest and most economic method of recovery.

The procedure varies depending on the amount of the claim to be recovered.

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

A provisional payment order can be made for money claims where the principal sum (excluding interest and costs) is more than €10 000.

A provisional payment order can be made only against a debtor whose address (*domicile*) is in Luxembourg.

The provisional payment order procedure can be used only for money claims substantiated by written documents. It cannot be used, for example, to obtain a rapid order for damages.

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

No.

1.1.3 Is the use of that procedure optional or obligatory?

Optional.

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

The European order for payment procedure.

1.2 Competent court

A creditor wishing to obtain a provisional order for an amount of more than €10 000 should apply to the president of the district court with jurisdiction for the place where the debtor has their address (*domicile*), unless the creditor can rely on a valid choice of jurisdiction clause. There are two district courts in the Grand Duchy of Luxembourg, one in Luxembourg and one in Diekirch.

The ordinary rules on jurisdiction apply.

1.3 Formal requirements

The application for a provisional payment order should be sent to the registry (*greffe*) of the district court. To be valid, it must contain the surnames, forenames, occupations and addresses or habitual residences of the claimant and defendant, the matter to which the application relates, a statement of grounds, and documents in support of the application.

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

There is no standard form.

1.3.2 Is representation by a lawyer required?

The creditor does not need to be represented by a lawyer in order to apply for an order for payment.

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

The creditor must indicate the matter to which the application relates (i.e. the amount being claimed) and provide a statement of grounds (i.e. the reasons for which the money is owed). While this statement may be brief, it must set out the relevant grounds. The extent of the explanations to be given will vary in practice depending on the complexity of the case: if the documents are self-explanatory, only a brief explanation needs to be given.

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

It is mandatory for creditors to produce documents in support of their application. The judge will decide whether or not the application is admissible essentially on the basis of these documents.

Only 'documents' can be produced: the creditor cannot – at this stage of the proceedings – propose to prove that his or her claim is well founded by other means, for instance by calling witnesses.

1.4 Rejection of application

The judge will refuse the application if he or she considers that the explanations given do not provide adequate evidence that the claim is justified.

Like any other judicial decision, the order refusing the application must state reasons.

1.5 Appeal

A refusal order may not be appealed. The creditor is nevertheless free to initiate full court proceedings on the substance of the claim, or summary proceedings for an interim measure.

1.6 Statement of opposition

A debtor served with a provisional order for payment has 15 days to object to the order.

The objection takes the form of a written statement lodged with the registry by the objector or his or her representative. It must give at least a brief statement of the grounds on which it is based, and should enclose any document that might help to substantiate the objection.

The registrar enters the statement of objection in the court registry, issues a receipt, and brings the objection to the attention of the claimant.

Although the time limit for entering an objection is 15 days, in reality it is possible to enter an objection for as long as the creditor has not applied for an enforceable order (*titre exécutoire*). As it is rare for creditors to ask for an enforceable order to be issued immediately after the 15-day period, debtors often have more time than is provided for by law, but do not enjoy the certainty they had in the first 15 days.

1.7 Effect of statement of opposition

The debtor's objection stays the proceedings, which means that an enforceable order cannot be issued immediately. Some effects of service continue, however; interest continues to accrue, for instance, from the date on which the order was served on the debtor.

The judge examines the objection. If the judge considers the objection to be well founded, he or she will record his or her finding in a reasoned order and rule that the order previously issued is null and void. If the objection is well founded only in part, the judge will order payment of the part of the claim that is justified. If the objection is dismissed, the judge will make an order finding against the debtor.

It is important to note that under this procedure the judge may give a ruling without hearing the parties. The judge may summon the parties to appear at a hearing, but it is not mandatory to hear pleadings in open court.

1.8 Effect of lack of statement of opposition

If the debtor does not lodge an objection within 15 days of service, the creditor may ask the court to issue an enforceable order (*titre exécutoire*).

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

The creditor or his or her representative makes a written application to the court registry which is entered in the court register.

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

If the provisional order was served personally on the debtor, the enforceable order has the effect of an order made in proceedings in which both sides have been heard, and can be appealed up to 15 days after it is served. If the provisional order was not served personally on the debtor, the enforceable order has the effect of an order made by default, and an application to have it set aside can be brought up to eight days from the date on which it is served.

Related links

<http://www.legilux.lu/>; <https://justice.public.lu/fr.html>

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