

## 1 Existence of an order for payment procedure

### 1.1 Scope of procedure

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

The procedure applies whenever a party wishes enforceable status to be conferred on a request for fulfilment of pecuniary obligations arising from contracts amounting to no more than € 15 000.00 or obligations arising from commercial transactions, regardless of their value.

For the purposes of this procedure, a commercial transaction is deemed to be any business 'between undertakings or between undertakings and public entities that gives rise to the supply of goods or the provision of services against remuneration' - Article 3(b) of [Decree-Law No 62/2013](#) of 10 May 2013, which transposes Directive No 2011/7/EU of the European Parliament and of the Council of 16 February 2011 into Portuguese law.

Regarding commercial transactions, the procedure does not cover 'contracts concluded with consumers', 'interest on other payments that were not made to remunerate commercial transactions' or 'payments made for the purposes of compensation for civil liability, including payments by insurance companies' (Article 2(2) of the same Decree-Law).

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

As stated in the answer to the previous question, the pecuniary obligations arising from contracts are claimable under the Portuguese order for payments rules provided their value does not exceed € 15 000.00.

However, as already noted, there is no upper limit for commercial transactions.

#### 1.1.3 Is the use of that procedure optional or obligatory?

Use of the procedure is optional, i.e. it is not imposed on the creditor.

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

The legal rules on the order for payment procedure do not exclude cases where the debtor lives outside Portugal.

### 1.2 Competent court

Applications for orders for payment can be submitted on paper or in electronic format anywhere in the country, at the courts in each district competent to receive them. In these cases, the courts forward the application electronically to the National Payment Orders Office [*Balcão Nacional de Injunções*].

Lawyers and solicitors must deliver applications for orders for payment electronically and may do so from anywhere in the country - they do not need to go personally to a registry or court to submit them (cf. Article 19(1) of the rules annexed to [Decree-Law No 269/98 of 1 September 1998](#), as amended by [Decree-Law No 34/2008 of 26 February 2008](#)).

It is now possible for users to track the progress of the procedure electronically thanks to the establishment of a National Payment Orders Office, a single registry that channels the processing of orders for payment. Lawyers and solicitors can access the electronic form via <http://citius.tribunaisnet.mj.pt/>. An enforcement order can then be created electronically in respect of the application for the order for payment. The applicant can access this via the Ministry of Justice web page.

Each enforcement order is assigned a unique reference, enabling the applicant and any other entity to whom they provide the reference to check it.

The procedure is governed by specific rules laid down in the relevant law and, in areas not covered by those rules, by the general rules on jurisdiction.

In order to comply with Article 8(4) of the annex to [Decree-Law No 169/98 of 1 September 1998](#), a general registry called the National Payment Orders Office was set up via [Implementing Order No 220-A/2008 of 4 March 2008](#) and was granted exclusive competence for processing orders for payment throughout national territory.

### 1.3 Formal requirements

Under Article 10 of the above-mentioned annex to [Decree-Law No 269/98](#), in the application for an order for payment the claimant must:

- a) Identify the registry of the court to which the application is addressed;
- b) Identify the parties;
- c) Indicate the place where notification must be served, stating whether it is the place of 'residence' agreed in a written contract;
- d) Set out succinctly the facts underlying the claim;
- e) Formulate the request, specifying the value of the principal, the interest due and other amounts payable;
- f) Confirm that the court fees have been paid;
- g) State, where appropriate, that the claim relates to a 'commercial transaction' covered by the law laying down special arrangements for late payment in commercial transactions ([Decree-Law No 32/2003 of 17 February 2003](#));
- h) State his/her place of residence;
- i) State his/her email address, if he/she wishes to receive communications or to be notified by that means;
- j) State whether he/she wishes the case to proceed as a declaratory action, should notification be thwarted;
- k) Specify the court with jurisdiction to assess the documents, if the case is to proceed as a declaratory action;
- l) State whether he/she wishes notification to be served by an enforcement solicitor or a legal representative and, if so, state that person's name and business address;
- m) Sign the application.

[Implementing Order No 220-A/2008 of 4 March 2008](#) provides for the following as regards ways of submitting or delivering applications for orders for payment:

'1. With regard to the medium:

- a) Computer file in XML format, with the specifications published on the [Citius Portal](#);
- b) On [paper](#), using the form approved by [Implementing Order No 808/2005 9 September 2005](#);
- c) On an electronic form.

2. With regard to the delivery method:

2.1. On a computer file

a) Via the *internet* for users of the *Citius* system (currently only lawyers and solicitors);

b) In person at the National Payment Orders Office, on an appropriate physical medium (floppy disc, CD-ROM, USB flash drive), only for processes to be submitted in the district of Porto, in accordance with Article 8 of Decree-Law No 269/98 of 1 September, and only where applicants are not represented by lawyers or solicitors;

c) In person at the competent judicial registry, in accordance with Article 8 of the rules annexed to Decree-Law No 269/98 of 1 September 1998. Only applicants who are not represented by lawyers or solicitors may submit orders for payment on file at these judicial registries.

2.2. On paper and delivered in person

At the competent judicial registries, in accordance with Article 8 of the rules annexed to Decree-Law No 269/98 of 1 September 1998.

2.3. Using an electronic form

On the *Internet* (<http://citius.tribunaisnet.mj.pt/>) for users of the *Citius* system (currently only lawyers and solicitors).

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

An application form for orders for payment approved by Implementing Order of the Minister of Justice must be used.

The form can be downloaded in two widely used electronic formats via the *Citius* portal.

The model form is also available on request from court registries competent to receive applications for orders for payment.

The electronic form is available to lawyers and solicitors at <http://citius.tribunaisnet.mj.pt/>.

### **1.3.2 Is representation by a lawyer required?**

It is not necessary to be represented by a lawyer in this procedure, but there is nothing to prevent claimants from appointing a legal representative if they so wish.

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

The law laying down the rules for the order for payment procedure merely requires claimants to set out succinctly the facts underlying their claim.

### **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 not mandatory to present written evidence of the claim.

### **1.4 Rejection of application**

An application may only be rejected if:

a) it is not addressed to the competent court registry or the claimant has failed to specify 'the court with jurisdiction to assess the documents', if these are presented for distribution;

b) it contains no mention of the identity of the parties, the claimant's place of residence or the place where the debtor is to be notified;

c) it is not signed, only in the event that it was not submitted in electronic format;

d) it is not written in Portuguese;

e) it does not follow the model approved by the Implementing Order of the Minister of Justice;

f) there is no indication that the court fees have been paid;

g) the amount at stake exceeds € 15 000.00, and there is no indication that a commercial transaction is involved as referred to in the answer to question 1.1;

h) the request does not match the amount or the purpose of the procedure.

There is no preliminary assessment of the grounds of the request, as under this procedure the application is not submitted to any judicial body, i.e. a court in the proper sense of the term, but is merely examined by a justice official.

### **1.5 Appeal**

An appeal against a decision to reject an application may be lodged with the judge or, where the court has more than one judge, with the duty judge.

### **1.6 Statement of opposition**

If the request for an order for payment is accepted, the defendant has 15 days (from the date on which he was duly notified) to oppose the claim.

The statement of opposition must be submitted in duplicate.

Where there is more than one claimant, the defendant must provide the same number of copies of his statement of opposition as there are claimants living in separate households, unless they are represented by the same legal representative.

### **1.7 Effect of statement of opposition**

If the defendant challenges the claim in good time, enforceable status is not granted, i.e. the enforcement decision requested is not drawn up.

The case will then be dealt with automatically as a declaratory action.

### **1.8 Effect of lack of statement of opposition**

If after being notified the defendant does not submit a statement of opposition, the registrar attaches the following words to the application for an order for payment: 'This document has enforceable effect' (Article 14(1) of the rules annexed to Decree-Law No 269/98). This means that the document can be used as a basis for enforced judicial recovery of the claim.

The only exception to this is if the request does not match the amount or the purpose of the procedure, in which case the registrar does not grant enforceable status.

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

The granting of enforceable status by the registrar does not depend on the claimant taking any specific initiative, but happens automatically once it is clear that notification has been served and no statement of opposition has been lodged under the procedure.

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

This decision (the order to grant enforceable status) cannot be appealed against.

However, it should be borne in mind that the granting of enforceable status does not constitute a jurisdictional act, i.e. intervention by a court with a view to addressing a private dispute; it is simply an act generating an extrajudicial document.

### **Related links**

[Ministry of Justice](#)

[Directorate General for Justice Policy](#)

[Citius Portal](#)

[Official Journal](#)

[Legal Document Database](#)

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