European payment order

Belgio

1 Existence of an order for payment procedure

Belgium has a summary order for payment procedure (*procédure sommaire d'injonction de payer/summiere rechtspleging om betaling te bevelen*). The purpose of this simplified procedure, which is provided for in Sections 1338 to 1344 of the Judicial Code (*Code judiciaire/Gerechtelijk Wetboek*), is to obtain payment of small amounts in certain cases.

The legislation on the summary order for payment procedure is available from the website of the Federal Public Service for Justice:

Click on *Législation belge – Législation consolidée et index législatif/Belgische wetgeving - Geconsolideerde wetgeving en wetgevingsindex* (Belgian legislation – Consolidated legislation and legislative index) at the bottom left of the page.

Click on *Législation belge/Belgische wetgeving* (Belgian legislation).

Under *Nature juridique/Juridische aard* (Legal nature), select *CODE JUDICIAIRE/GERECHTELIJK WETBOEK* (Judicial Code).

In the *Mot(s)/Woord(en)* (Word(s)) field, enter '664'.

Click on *Recherche/Opzoeking* (Search) and then *Liste/Lijst* (List).

Click on *Détail/Detail* (Details).

Search for *Chapitre XV/Hoofdstuk XV* (Chapter XV).

1.1 Scope of procedure

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

Only pecuniary claims are eligible.

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

Article 1338 of the Judicial Code states that only claims for the payment of a liquidated debt of no more than €1 860 are eligible.

1.1.3 Is the use of that procedure optional or obligatory?

Use of the summary order for payment procedure is entirely optional.

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

No. Article 1344 of the Judicial Code states that the rules of the summary order for payment procedure apply only if the debtor has his or her address (*domicile/woonplaats*) or residence (*résidence/verblijfplaats*) in Belgium.

1.2 Competent court

This procedure can be used before the justice of the peace (*juge de paix/vrederechter*), provided that the claim falls within the court's jurisdiction (for information on the jurisdiction of the justice of the peace, see the factsheet on 'Jurisdiction – Belgium'). In the disputes referred to in Article 1338 of the Judicial Code, this procedure can also be used for any claims falling within the jurisdiction of the commercial court (*tribunal de commerce/rechtbank van koophandel*) or the police court (*tribunal de police/politierechtbank*).

1.3 Formal requirements

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

No standardised form needs to be used. However, the law does lay down a number of conditions regarding the information that must appear in the demand for payment and in the application by which the claim is made to the court.

Before filing the application with the court, the creditor must send the debtor a demand for payment (*sommation de payer/aanmaning tot betaling*). This requirement is laid down in Article 1339 of the Judicial Code. The demand for payment can be served on the debtor by a bailiff (*huissier de justice /gerechtsdeurwaarder*) or be sent by registered letter with acknowledgment of receipt. Article 1339 also indicates the information that the demand for payment must contain to be legally valid, namely:

a copy of the articles from the chapter of the Judicial Code on the summary order for payment procedure;

formal notice to pay within 15 days of the demand for payment being sent or served;

the amount claimed;

the court with which the claim will be filed if the debtor fails to pay.

Within 15 days of the expiry of the 15-day time limit set in the demand, the claim is filed with the court through an application (*requête/verzoekschrift*) submitted in duplicate. Article 1340 of the Judicial Code indicates what the application must contain:

the day, month and year;

the surname, forename, profession and address or residence of the applicant, and, if applicable, the surname, forename, address or residence and capacity of his or her legal representatives;

the measure applied for and precise information on the amount being claimed, including a breakdown of the various items forming the claim and the grounds on which the claim is based;

particulars of the court that is to hear the claim;

the signature of the party's lawyer.

The applicant can also choose to state his or her objections to the granting of any grace periods.

The application must be accompanied by:

a photocopy of the document on which the claim is based;

either the bailiff's record of service of the demand for payment, or a copy of the registered letter accompanied by the acknowledgment of receipt, or the original of that letter accompanied by evidence that the recipient refused to accept it or failed to collect it from the post office and by a certificate confirming that the debtor is registered in the population register at the address indicated.

1.3.2 Is representation by a lawyer required?

One of the items required in the application is a lawyer's signature. Article 1342 of the Judicial Code also provides that a copy of the order must be sent by ordinary mail to the applicant's lawyer. These are the only legal provisions that require the involvement of a lawyer.

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

The application must contain a reasonable level of detail. Article 1340, first paragraph, subparagraph 3, of the Judicial Code requires the application to state the measure applied for and provide precise information on the amount being claimed, including a breakdown of the various items forming the claim and the grounds on which the claim is based.

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

Yes. Under Article 1338, the claim must be substantiated by a written document issued by the debtor. This document need not, however, contain an acknowledgment of the debt.

1.4 Rejection of application

Within 15 days of the application being filed, the court accepts or rejects it by means of an order made in chambers (*en chambre du conseil/in raadkamer*). The court can grant grace periods and can choose to allow the application only in part (Article 1342 of the Judicial Code). The court has information before it on the various components of the debt and can reject some of these. It can take account of any payments that have been made in the meantime. The court can reject the claim outright if the required conditions have not been met (see Articles 1338 to 1344 of the Judicial Code).

Where the court allows the application in whole or in part, its order has the effect of a judgment given in default of appearance by the defendant.

The creditor must then serve the court's order on the debtor.

Article 1343(2) of the Judicial Code provides that in order to be valid the record of service of the order must contain the following:

a copy of the application;

an indication of the time limit within which the debtor can object to the order;

an indication of the court to which that objection must be submitted and the formalities to be fulfilled in that regard.

In order to be valid the record of service must also warn the debtor that, if he or she does not challenge the order within the stated time limit, all legal avenues may be used to force him or her to pay the sums demanded.

If the debtor does not lodge an objection or appeal within the time limits allowed, the order becomes final.

1.5 Appeal

Appeal by the creditor

The appeal options of creditors are set out in Article 1343(4) of the Judicial Code. Creditors cannot appeal against an order rejecting their application or allowing it only in part. But they can resubmit their claim through the ordinary procedure (and not through the summary procedure). If the claim is partly allowed, the creditor cannot resubmit it through the ordinary procedure after he or she has served the order on the debtor.

Objection or appeal by the debtor

Debtors can challenge the order in one of two ways: either by appeal to a higher court (*appel/hoger beroep*) or by an objection (*opposition/verzet*) brought before the same court that made the order (because the court order is treated as a judgment in default of appearance if it allows the creditor's application in whole or in part – see Article 1343(4) of the Judicial Code). In both cases, the time limit is one month from the date on which the judgment is served (see Articles 1048 and 1051 of the Judicial Code). This time limit is extended if one of the parties does not have their address or residence or an address for service (*domicile élu/gekozen woonplaats*) in Belgium.

The ordinary rules on objection and appeal apply, with one exception, which is laid down in Article 1343(3), second subparagraph, of the Judicial Code: by way of exception from Article 1047 (which requires service by a bailiff), an objection can be entered by lodging an application at the court registry (*greffe /griffie*), in as many copies as there are parties and lawyers, which is then served on the creditor and his or her lawyer by the court clerk (*greffier/griffier*) by special registered letter (*pli judiciaire/gerechtsbrief*).

In order to be legally valid, the objection must contain:

the day, month and year;

the surname, forename, profession and address or residence of the objecting party;

the surname, forename and address or residence of the creditor and the name of the latter's lawyer;

particulars of the contested order;

the objecting party's pleas.

The parties are called by the court clerk to appear at a hearing scheduled by the court.

1.6 Statement of opposition

In the summary procedure, Belgian law does not expressly provide for a statement of objection to the claim.

The debtor can send information to the justice of the peace, but this will not prevent the order from being treated as a judgment given in default of appearance.

1.7 Effect of statement of opposition

As stated above, no statement of objection can be submitted. The summary procedure will run its course whether or not the debtor seeks to defend himself or herself.

1.8 Effect of lack of statement of opposition

See the answer to question 1.7.

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

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

Last update: 24/10/2019

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