European payment order

Spagna

1 Existence of an order for payment procedure

Yes, there is an Order for Payment Procedure. Its main purpose is to protect credit. It operates by creating an enforceable instrument for those debts that satisfy a series of requirements laid down in legislation.

Legal counsels are authorised to deal with and decide on order for payment procedures in accordance with the procedures laid down in procedural legislation

1.1 Scope of procedure

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

It applies to pecuniary debts that are certain, due and payable for a specified sum. Since 31 October 2011 there has been no limit on the amount involved.

The debt must be evidenced in one of the following ways:

a) By means of documents, whatever their form, type or physical medium, signed by the debtor or bearing the debtor's stamp, mark or trade mark or any other sign, physical or electronic.

b) By means of invoices, delivery notes, certificates, telegrams, faxes or any other documents which, even if created unilaterally by the creditor, are normally used to document credits and debts in relationships of such a type as that existing between the creditor and the debtor.

c) Where, together with the document recording the debt, commercial documents are produced which prove the existence of a long-standing previous relationship.

d) In cases concerning property under joint ownership (propiedad horizontal), where evidence of the debt is provided in the form of certificates of non-payment of sums due in respect of common expenses payable by the owners of properties in urban apartment blocks.

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

No, there has been no upper limit since 31 October 2011.

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?

No, except for debts for non-payment of common expenses payable by owners of properties in urban apartment blocks or condominiums, since in this case the court of the place where the property is located also has jurisdiction, at the choice of the applicant.

1.2 Competent court

The Court of First Instance in the domicile or residence of the debtor, or in the place where the urban property that is governed by the regulations on urban properties in joint ownership is located.

1.3 Formal requirements

The claimant must submit a written claim identifying the creditor and the debtor, with brief details of the origin of the debt and the amount.

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

It is not obligatory, but standard forms are available from the Court Clerk's Office or Common Procedural Services. The form can be downloaded by clicking on this link:form.

1.3.2 Is representation by a lawyer required?

When presenting the initial application for the order for payment procedure, representation by a court representative or legal representative is not necessary. But if the applicant wishes to be defended by a lawyer, the other party must be informed so that they can take whatever steps they consider necessary in their defence.

In the event of objection by the debtor or enforcement proceedings, legal representation by a lawyer and a court representative is mandatory if the amount of the claim is more than €2 000.

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

A brief explanation must be provided of how the debt arose.

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

See section 1.1.1 above.

1.4 Rejection of application

Failure to satisfy the above requirements regarding territorial jurisdiction and the provision of prima facie evidence, or failure to make good a procedural defect will mean that the court will reject the application. A decision to reject the application can be appealed to the Provincial Court (Audiencia Provincial).

In the case of contracts between traders and consumers, the judge must assess of his or her own motion whether or not any unfair terms are present. Should the judge consider after hearing the parties that unfair terms are present, he or she will determine the consequences of this conclusion, which may be that the claim is inadmissible or that the procedure is to continue without application of the unfair terms. This decision can also be appealed to the Provincial Court (Audiencia Provincial).

1.5 Appeal

A decision to reject the application can be appealed to the Provincial Court. The appeal must be filed within 20 days with the original court.

1.6 Statement of opposition

The debtor has a period of 20 days from the date of the demand for payment, and then until 3 p.m. on the day following the expiry of that period, in which to pay or to lodge an objection. The objection must be made in writing. It is not possible to make it orally in court. If the amount of the claim is more than €2 000 the objection must be signed by a lawyer and a court representative. There are no specific grounds for appeal, and the debtor may assert both substantive and purely formal or procedural grounds.

1.7 Effect of statement of opposition

If the amount of the claim is not more than €6 000, the legal counsel will make an order bringing the order for payment procedure to an end and stating that the case must proceed under the fasttrack procedure. Notice of the objection is served on the applicant, who has 10 days in which to lodge a written challenge. In their respective objections and challenges the parties may ask for a hearing to be held.
If the amount of the claim is more than €6 000 and the applicant does not file the relevant claim within one month of being served notice of the objection, the proceedings will be dismissed and the applicant will be ordered to pay costs.
If the applicant files a claim, notice of it is served on the defendant, who has 20 days in which to contest it, and the case proceeds under the ordinary procedure.
If the amount of the claim is more than €6 000, the court will allow the creditor a period of one month in which to submit a claim under the ordinary procedure. If, in the light of the arguments put forward in the objection, the creditor does not wish to continue the ordinary proceedings, he or she must expressly withdraw the claim.

1.8 Effect of lack of statement of opposition

If the debtor fails to reply to the demand for payment or does not appear, the legal counsel will issue an order bringing the order for payment procedure to an end and will notify the creditor of the order to enable the creditor to begin enforcement action, which he or she may do by means of a simple application.

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

The creditor needs to file an application for enforcement. If the amount is more than €2 000 the application must be signed by a lawyer and a court representative

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

There is no appeal. The only option is to file an objection against the enforcement action on specific grounds.

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