Europäischer Zahlungsbefehl

Der Europäische Zahlungsbefehl kann im Falle grenzüberschreitender Geldforderungen, die der Antragsgegner nicht bestreitet, in einem vereinfachten Verfahren ergehen; für den Europäischen Zahlungsbefehl werden Formblätter verwendet.

Für den Europäischen Zahlungsbefehl sind Formblätter erstellt worden, die hier in allen EU-Sprachen abgerufen werden können. Unter diesem Link finden Sie auch weitere Informationen darüber, welche Gerichte einen Europäischen Zahlungsbefehl erlassen können und an welche Stellen die Antragsformulare zu senden sind.

Zur Einleitung des Verfahrens muss das Formblatt A ausgefüllt werden; dabei müssen alle Angaben zu den Parteien und zur Art und zur Höhe der Forderung erfolgen. Das Gericht prüft den Antrag und erlässt innerhalb von 30 Tagen den Europäischen Zahlungsbefehl, wenn das Formblatt korrekt ausgefüllt ist.

Der Europäische Zahlungsbefehl muss dem Antragsgegner dann vom Gericht zugestellt werden. Der Antragsgegner kann dann den Forderungsbetrag entrichten oder aber die Forderung bestreiten. Er kann innerhalb von 30 Tagen Einspruch gegen den Europäischen Zahlungsbefehl einlegen. In diesem Fall wird das Verfahren vor den zuständigen Gerichten gemäß den nationalen Regeln eines ordentlichen Zivilprozesses weitergeführt; oder nach Maßgabe eines Europäischen Verfahrens für geringfügige Forderungen weitergeführt oder eingestellt.

Legt der Anspruchsgegner keinen Einspruch ein, so wird der Europäische Zahlungsbefehl automatisch vollstreckbar. Eine Kopie des Europäischen Zahlungsbefehls und erforderlichenfalls eine Übersetzung sind an die Behörden des Vollstreckungsmitgliedstaats zu übermitteln. Die Vollstreckung erfolgt im Einklang mit den einzelstaatlichen Regeln und Verfahren des Mitgliedstaats, in dem der Europäische Zahlungsbefehl vollstreckt wird. Weitere Einzelheiten zur Vollstreckung sind dem Abschnitt über die Vollstreckung von Gerichtsentscheidungen zu entnehmen.

Es sei darauf hingewiesen, dass die **zwei Änderungen**, die am 14. Juli 2017 in Kraft getreten sind, nicht berücksichtigt sind. **Mit der ersten Änderung** wird die Option eingeführt, ein Verfahren im Fall eines Einspruchs im Einklang mit den Bestimmungen der Verordnung (EG)Nr. 861/2007 zur Einführung eines europäischen Verfahrens für geringfügige Forderungen fortzuführen. **Mit der zweiten Änderung wird die Anwendung des Verfahrens für geringfügige Forderungen auf Forderungen mit einem Wert von bis zu 5 000 EUR ausgeweitet.**

Weiterführende Informationen hierzu sind dem neuen Artikel 17 der Verordnung **sowie dem Artikel 2 der Verordnung (EG) Nr. 861/2007 in der durch die Verordnung (EU) 2015/2421 geänderten Fassung** zu entnehmen.

Dokumente zum Thema

Leitfaden zur Anwendung der Verordnung über das Europäische Mahnverfahren PDF (5830 Kb) de

Europäischer Zahlungsbefehl – Mitteilungen der Mitgliedstaaten und Suchwerkzeug zur Ermittlung des/der zuständigen Gerichts/Stelle

Es gibt auch nationale Mahnverfahren, über die Sie sich mit einem Klick auf die Flagge des betreffenden Landes informieren können.

Letzte Aktualisierung: 16/01/2023

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European payment order - Belgium

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?

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European payment order - Bulgaria

1 Existence of an order for payment procedure

Chapter 37 – 'Enforcement Proceedings' – of the Code of Civil Procedure (State Gazette No 59 of 20 July 2007; in force from 1 March 2008; last amended in State Gazette No 86/2017) lays down a simplified procedure whereby claimants can collect receivables if their claim is unlikely to be contested by the defendant.

1.1 Scope of procedure

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

Enforcement orders may be issued under Article 410 of the Code of Civil Procedure at the request of creditors for the following claims:
claims for sums of money or substitutable goods, if the claim comes within the jurisdiction of the district court;
the transfer of movable goods given to the debtor on condition that he/she return them, or that constituted collateral, or were made over by the debtor on condition that ownership be transferred, if the claim comes within the jurisdiction of the district court.
The application must meet the requirements of Article 127(1) and (3) and Article 128(1) and (2) of the Code of Civil Procedure, and indicate a bank account or other method of payment.
Furthermore, Article 417 of the Code of Civil Procedure expressly provides that the applicant may also request the issue of an enforcement order where the claim, regardless of its value, concerns
an act of an administrative authority, in accordance with which the civil courts are competent to grant enforcement;
a document or statement of accounts establishing claims of government institutions, municipalities or banks;
a notarial act, settlement or other contract bearing notarised signatures in respect of the obligations contained therein to pay amounts of money or other substitutable goods, as well as obligations to transfer particular goods;
an extract from the Special Pledges Register concerning a registered security and initiation of enforcement in the case of the transfer of goods that constitute collateral;
an extract from the Special Pledges Register concerning a registered hire purchase sales contract, or a leasing contract in the case of the return of sold or leased goods;
a contract of pledge or a mortgage deed pursuant to Article 160 and Article 173(3) of the Obligations and Contracts Act;
a valid deed for the establishment of a private, State or municipal claim when its enforcement is done under the procedure of the Code of Civil Procedure;
a notice of deficiency;
a promissory note, bill of exchange or other equivalent bearer security, as well as a bond or the corresponding coupon bond.
If the application is accompanied by a document under Article 417 of the Code of Civil Procedure, on which the claim is based, the creditor may request the court to order immediate enforcement and issue a writ of execution.

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

Where the claim originates from some of the deeds under Article 417 of the Code of Civil Procedure, there is no upper limit in terms of its value.
Pursuant to the remaining provisions on pecuniary claims, claims for substitutable goods or transfer of moveable property, an enforcement order may be issued only where the claim falls within the jurisdiction of the district court. The district court is responsible for the claims in civil and commercial matters with value of the claim up to BGN 25,000, and all claims for maintenance, labour disputes and claims from notice of deficiency.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the procedures is not obligatory. Even if prerequisites for the issue of an enforcement order exist, the claimant is not obliged to choose this procedure of defence, but may bring a claim under the general claims procedure.

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

An enforcement order is not issued where the debtor has no permanent address and usual residence, or seat and place of business in the territory of the Republic of Bulgaria.

1.2 Competent court

The application is submitted to the district court for the permanent address or seat of the debtor, and the court has three days to carry out an official check of local jurisdiction. If the court declines jurisdiction, it passes the case on to the competent court.

1.3 Formal requirements

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

The use of application forms approved by the Minister of Justice is obligatory. The applications constitute an annex to Regulation No 6 of 20 February 2008 on the approval of forms for enforcement orders, applications for the issue of an enforcement order and other papers related to the 'order for payment' procedure, issued by the Minister of Justice (Article 425 of the Code of Civil Procedure).

1.3.2 Is representation by a lawyer required?

Not compulsory

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

The application must set out the circumstances upon which the claim is based and the essence of the request.

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

Under Article 410 of the Code of Civil Procedure it is not necessary to attach to the application any evidence for establishing the claim. The applicant may attach such evidence; however, he/she is not obliged to do so, because the procedure is intended only to verify whether the claim is questionable. It is sufficient for the applicant to maintain that his/her claim exists. If the debtor contests the enforcement order, the verification of the existence of the claim is carried out within the claim proceedings. The application must be accompanied by a power of attorney if submitted by a proxy, as well as a proof of paid stamp fees and legal expenses, where appropriate.

1.4 Rejection of application

The application for the issue of an enforcement order Under Article 410 of the Code of Civil Procedure is rejected in the following cases:

where the claim does not meet the requirements of Article 410 of the Code of Civil Procedure, i.e. it does not refer to payment of money or substitutable goods with a price up to BGN 25,000, or moveable goods of the category pursuant to Paragraph 1, Point 2 of Article 410 of the Code of Civil Procedure, respectively; also if the application does not comply with the requirements of regularity, then the application does not stay without motion, but is directly rejected. Only in exceptional cases, where the applicant did not use the approved application form, or used an improper form, the court gives him/her instructions to remedy this irregularity, attaching the relevant form (Article 425(2) of the Code of Civil Procedure) to the notice.

where the claim is in conflict with the law or good morals.

where the debtor has no permanent address or seat in the territory of the Republic of Bulgaria, or when he/she has no usual residence or place of business within the territory of the Republic of Bulgaria.

1.5 Appeal

The enforcement order may not be appealed by the parties, except in the part regarding the costs. An order rejecting, wholly or partially, the application may be appealed by the applicant to the relevant regional court with a private appeal of which no copy of service is submitted. The order for immediate enforcement which the court issues in the cases of a document submitted in accordance with Article 417 of the Code of Civil Procedure is also subject to appeal. A private appeal against the order for immediate enforcement must be submitted together with the objection against the issued enforcement order and may be based only on considerations derived from the acts under Article 417 of the Code of Civil Procedure.

1.6 Statement of opposition

Once debtors have received the enforcement order, they may lodge a written objection to it or part thereof within two weeks and no justification is required, except in the cases referred to in Article 414a of the Code of Civil Procedure:

- they have fulfilled their obligation
- they did not incur any costs because their conduct did not give rise to the lodging of the claim. In such cases, the objection must be sent to the applicant for observations within 3 days. If the applicant fails to submit observations, the court invalidates the order for payment, in whole or in part, including the part relating to costs. If a writ of execution has been issued on the basis of the enforcement order, it will also be invalidated in accordance with Article 208 of the Code of Civil Procedure.

1.7 Effect of statement of opposition

Where the debtor lodges an objection within the time limit, when the enforcement order is served under the conditions of Article 47(5) of the Code of Civil Procedure (affixing a notice to the address) and where the court has refused to issue an enforcement order, the court instructs the applicant that he/she may bring an action to establish his/her claim within one month, paying the State fee due and ordering suspension of enforcement if it has issued a writ of execution under Article 418 of the Code of Civil Procedure. If the applicant fails to provide evidence that he/she has brought declaratory action within the specified deadline, the court invalidates the payment order, whether in whole or in the part for which no claim has been made.

1.8 Effect of lack of statement of opposition

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

Pursuant to Article 416 of the Code of Civil Procedure, if there is no objection submitted in due time, or the objection is withdrawn, the enforcement order becomes effective and on its basis the court issues a writ of execution, which will accordingly be stated on the order.

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

Within one month of becoming aware of an enforcement order, a debtor who has not been given the opportunity to contest the claim may submit an objection to the court of appeal, if:

the enforcement order was not duly served on him/her;

the enforcement order was not served on him/her personally and, on the date of its being served, he/she was not habitually resident in Bulgaria;

the debtor was unable to know in time about the enforcement order being served owing to specific unforeseen circumstances;

the debtor was unable to submit an objection owing to specific unforeseen circumstances that proved to be insurmountable.

The submission of this objection does not suspend the enforcement of the order, but at the request of the debtor and following presentation of the appropriate security by the latter, the court may suspend the enforcement (Article 423(2) of the Code of Civil Procedure).

The court accepts the objection if availability of the prerequisites listed above is found. If the court of appeal accepts the objection because the debtor has no permanent address or seat in the territory of the Republic of Bulgaria, or has no habitual residence or place of business in the territory of the Republic of Bulgaria, then it officially invalidates the enforcement order and the writ of execution issued thereon. Otherwise, if the court of appeal accepts the objection, it suspends the enforcement of the issued order and returns the case to the district court instructing the applicant that he/she may bring an action in respect of his/her claim within one month by paying the balance of the due stamp fee (Article 423(3) of the Code of Civil Procedure),

Furthermore, the debtor may contest, in a claims procedure, the claim for which an enforcement order has been issued if new facts or new written evidence of essential importance for the case are found that could not have been known to him/her during the period for filing the objection, or which he/she could not obtain within the same time limit. The action may be brought within three months from the date on which the new circumstance has become known to the debtor, or from the date on which he/she was able to obtain the new written evidence, but not later than one year from the end of the compulsory recovery of the claim (Article 424 of the Code of Civil Procedure).

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European payment order - Czechia

1 Existence of an order for payment procedure

In addition to proceedings on an European order for payment regulated by Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, there are another three types of such procedures in the Czech Republic – order for payment procedure, electronic order for payment procedure, and bill-of-exchange or cheque order for payment procedure (provisions of Sections 172 to 175 of Act No 99/1963, Code of Civil Procedure (*občanský soudní řád*)).

1.1 Scope of procedure

An order for payment may be issued even without an explicit application by the claimant, on the basis of an action claiming the fulfilment of a financial receivable, if the right arises from facts stated and documented by the claimant. It is always up to the court's discretion whether it deals with a case by issuing an order for payment; if a court does not issue an order for payment, it orders a hearing. An order for payment cannot be issued if it is to be delivered to a defendant abroad, or if the whereabouts of the defendant are unknown (provisions of Section 172 (2) of Act No 99/1963, Code of Civil Procedure).

An electronic order for payment may only be issued at the claimant's request, submitted on a designated electronic form and signed with a certified electronic signature, provided that the receivable claimed does not exceed CZK 1,000,000; accessories are not included in the amount of a receivable. An electronic order for payment cannot be issued if it is to be delivered to a defendant abroad, or if the whereabouts of the defendant are unknown (provisions of Section 174a (3) of Act No 99/1963, Code of Civil Procedure).

A bill-of-exchange or cheque order for payment can grant rights arising from a bill of exchange or a cheque. Provided that the formal requirements are met, a court is obliged to rule in summary proceedings by issuing a bill-of-exchange (cheque) order for payment. A bill-of-exchange or cheque order for payment may only be issued at the initiative of the claimant, and it may be issued even if it is to be delivered abroad. A bill-of-exchange or cheque order for payment may only be served on the defendant personally; substitute forms of service are excluded.

The purpose of the initiation of a European order for payment procedure is to collect undisputed financial receivables of a certain amount. Undisputed financial receivables must be due for payment at the time of the filing of an action for the issuance of a European order for payment. Form A must be completed to file an action, in which all information about the parties and about the nature and amount of the claim is given. The court will review the application and, if the form is filled out correctly, it should issue a European order for payment within 30 days.

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

Decisions in the form of an order for payment, electronic order for payment, or European order for payment may only be made with respect to financial receivables.

A bill-of-exchange or cheque order for payment may only be issued with respect to the performance of financial obligations arising from a bill of exchange or a cheque.

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

A maximum limit of CZK 1,000,000 (plus accessories) applies in the case of an electronic order for payment; there is no maximum limit for a European order for payment or for a bill-of-exchange (cheque) order for payment.

1.1.3 Is the use of that procedure optional or obligatory?

The procedure for an order for payment is not mandatory; a claimant may claim his financial receivable through the regular civil procedure. However, if a claimant files an "ordinary" action and the receivable claimed therein meets the requirements for issuing an order for payment, the court may issue an order for payment even though the claimant did not explicitly apply for it. An electronic order for payment, a European order for payment, and a bill-of-exchange (cheque) order for payment may only be issued at the claimant's request.

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

An order for payment or an electronic order for payment cannot be issued if it is to be delivered to a defendant abroad. In that case, the court carries on in the proceedings in line with regular civil procedure rules.

If a European order for payment issued by a Czech court or a court of another Member State is to be delivered in the Czech Republic, it must be served on the defendant personally; substitute forms of service are not permitted (provisions of Section 174b (1) of Act No 99/1963, Code of Civil Procedure).

1.2 Competent court

A decision about an order for payment or electronic order for payment is made by the district court (*okresní soud*) having territorial jurisdiction. A decision about a bill-of-exchange (cheque) order for payment is always made by a regional court (*krajský soud*) (provisions of Section 9 of Act No 99/1963, Code of Civil Procedure). For jurisdiction to submit an action for the issuance of a European order for payment, see Article 6 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

1.3 Formal requirements

No standardised form is available for an action for the issuance of an order for payment or a bill-of-exchange (cheque) order for payment.

A court may issue an order for payment without an explicit application by the claimant; this does not apply for electronic orders for payment and for bill-of-exchange and cheque orders for payment.

An action, or application for the issuance of an order for payment or a bill-of-exchange or cheque order for payment must therefore meet the general requirements for a submission to court – if no other particulars are required by law for a submission of a certain type, at least the following must be evident from a submission: the court to which it is addressed, the person submitting it, the matter to which it pertains and what is sought, and it must be signed and dated. The obligation of signature and dating does not apply to submissions in electronic form in a format compliant with specific provisions. A submission must be made in writing, and it may be submitted either on paper or in electronic form through a public data network or by fax (provisions of Section 42 (1) and (4) of Act No 99/1963, Code of Civil Procedure). A submission made in electronic form or by fax must be supplemented by the original within three days, or by a written submission of the same wording. This does not apply to electronic submissions featuring a certified electronic signature based on a certified certificate issued by an accredited provider (provisions of Section 42 (3) of Act No 99/1963, Code of Civil Procedure).

An application for the issuance of an electronic order for payment may only be submitted on a prescribed form in electronic format (the form is available at https://www.justice.cz/). In addition to general requirements (provisions of Section 42 (4) of Act No 99/1963, Code of Civil Procedure), the application must also state the first names, surnames, and addresses of the parties, and the personal identification numbers or identification numbers (as the case may be) of the parties (the company name or name and registered office of a legal entity, identification number, designation of a state and of the relevant organisational unit of the state which represents the state in court), and if relevant, also the names of their representatives, a depiction of decisive facts, and the designation of the proof that the claimant proposes, and make clear what the claimant is seeking (provisions of Section 79 (1) of Act No 99/1963, Code of Civil Procedure). An application must also state the date of birth of an individual, the identification number of a legal entity or the identification of an individual engaged in business (provisions of Section 174a (2) of Act No 99/1963, Code of Civil Procedure). An application must be signed with a certified electronic signature of the claimant based on a certified certificate issued by a certified provider.

To submit an application for a European order for payment, form A provided in Annex I to Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 must be completed. All information about the parties and the nature and amount of the claim must be provided in the form.

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

Only in the case of an electronic order for payment. The form is available at https://www.justice.cz/. An application must be signed with a certified electronic signature of the claimant based on a certified certificate issued by a certified provider. (provisions of Section 174aof Act No 99/1963, Code of Civil Procedure). For formal requirements for the submission of an application for the issuance of a European order for payment, see above, section 1.3.

1.3.2 Is representation by a lawyer required?

No.

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

An order for payment or an electronic order for payment can be issued only if the right claimed stems from facts stated and documented by the claimant (see section 1.3.4.). The conclusion that the right claimed arises from the facts stated by the claimant assumes a depiction of the decisive facts sufficiently supported with proof that is enclosed and that allow the court to subject the facts of the case claimed by the claimant to a legal examination. The circumstances of the case must be stated in their entirety such as to make it possible to evaluate which legal right is being claimed (which legal regulation is to be applied); and furthermore, the claimant must claim all the facts to which regulation links the creation, change, or cessation of rights and obligations, all of which must be duly supported with proof.

In procedure pertaining to the issuance of a bill-of-exchange or cheque order for payment, it is required that the claimant submit the original of the bill of exchange or cheque, the authenticity of which is not reasonably questioned, and other documents required for the exercise of the right.

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

Yes. As the nature of the proceedings suggests, documentary evidence must be submitted that documents the right claimed by the claimant. In the case of an application for the issuance of an electronic order for payment, documentary evidence must be enclosed in electronic form. The original of a bill of exchange or cheque must be enclosed with an application for the issuance of a bill-of-exchange (cheque) order for payment. The right of the claimant to submit various means of proof is in no way restricted in terms of scope.

1.4 Rejection of application

If an order for payment cannot be issued, the court will not strike the application for its issuance down, but carry on in line with regular rules of civil procedure (in particular, it will order a hearing). An order for payment cannot be issued if the claimant is not claiming a financial receivable, if the whereabouts of the defendant are unknown, or if the order for payment is to be delivered to a defendant abroad.

A court will reject an application for the issuance of an electronic order for payment if it does not contain all the particulars required by law or if it is incomprehensible or ambiguous and such defects make it impossible to carry on in the proceedings. In this case, the court does not invite the claimant to correct or supplement his submission.

If an application for the issuance of a bill-of-exchange or cheque order for payment cannot be granted, the court will order a hearing.

1.5 Appeal

A court will not issue a decision setting aside an order for payment, electronic order for payment or a bill-of-exchange (cheque) order for payment; the question of an appeal against a struck-down order for payment is therefore irrelevant.

1.6 Statement of opposition

A statement of opposition may be filed to challenge an order or payment or an electronic order for payment. The defendant may file a statement of opposition within 15 days of the service of an order for payment or electronic order for payment. A statement of opposition challenging an electronic order for payment may also be filed on an electronic form signed with a certified electronic signature. A statement of opposition need not be supported with reasons, but it should meet the general requirements for a submission to a court, i.e., in particular, it must be signed and dated, and it should be evident from the submission to which court it is addressed, who is making it, to which matter it pertains, and what is sought.

Objections may be filed in challenging a bill-of-exchange (cheque) order for payment, within 15 days of its service. In his objections, the defendant must state everything to which he objects about the bill-of-exchange (cheque) order for payment.

In the European order for payment procedure, the defendant may either pay the amount claimed or challenge the claim within 30 days, by filing a statement of opposition at the court that issued the European order for payment; to file a statement of opposition, he uses Form F set out in Regulation (EC) No 1896 /2006 of the European Parliament and of the Council of 12 December 2006. The case is then forwarded to ordinary civil courts and dealt with in line with national legislation.

1.7 Effect of statement of opposition

If even one defendant files a statement of opposition within the time allotted, the order for payment or electronic order for payment is set aside in full, the court will order a hearing, and the procedure will proceed in accordance with regular rules of civil procedure.

If a defendant files objections against a bill-of-exchange (cheque) order for payment within the time allotted, the court will also order hearings to deliberate on them. Depending on the outcome of the procedure pertaining to the objections, the court will rule by a judgement, either leaving the bill-of-exchange (cheque) order for payment standing (objections are found to be unfounded), or setting it aside in part or in full by its judgement (the objections are to be founded in part or in full). This judgement can be appealed. Unlike a statement of opposition filed against an order for payment or an electronic order for payment, a bill-of-exchange (cheque) order for payment is not set aside by the submission of objections.

1.8 Effect of lack of statement of opposition

An order for payment, electronic order for payment, and European order for payment which have not been challenged with a statement of opposition has the effect of an enforceable judgement. If the defendant fails to file, or withdraws, objections against a bill-of-exchange (cheque) order for payment, this, too, has the effect of an enforceable judgement.

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

Upon request, a court will attach a clause of legal effect and enforceability to an order for payment, electronic order for payment, or a bill-of-exchange (cheque) order for payment. An order for payment with such clauses constitutes an enforceable title.

In proceedings pertaining to a European order for payment, if the defendant fails to file a statement of opposition by the deadline set, the European order for payment becomes automatically enforceable. Enforcement takes place in line with national rules and procedures of the Member State in which the European order for payment is to be enforced.

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

No regular means of remedy are available to challenge an order for payment, electronic order for payment, or a bill-of-exchange (cheque) order for payment against which a statement of opposition or objections have not been filed and which has the effect of an enforceable judgement. In cases specified by law, the defendant may only use extraordinary means of remedy, an action for confusion, and in the case of an enforceable payment order also an action for renewal of proceedings (provisions of Section 228 (2) and Section 229 (2) of Act No 99/1963, Code of Civil Procedure).

After the expiration of the 30-day period set for the submission of a statement of opposition against a European order for payment without such a statement being submitted, the defendant may ask for a review of a European order for payment subject to the conditions stated in Article 20 of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006. Jurisdiction in proceedings concerning an application for the review of a European order for payment belongs to the court that issued it. An application for the review of a European order for payment is the only means of remedy that the defendant has against an enforceable European order for payment in the state in which the order for payment was issued. A decision (ruling) concerning the application for a review of a European order for payment is delivered to the claimant as well as the defendant (provisions of Section 174b (2) and (3) of Act No 99/1963, Code of Civil Procedure).

Related links

http://www.justice.cz

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European payment order - Germany

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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European payment order - Estonia

1 Existence of an order for payment procedure

Yes. Chapter 49 of the Code of Civil Procedure (*tsiviilkohtumenetluse seadustik*, TsMS) governs expedited procedure in the case of payment orders.

1.1 Scope of procedure

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

This procedure applies to claims arising from private law relationships and is intended to cover the payment of certain sums of money.

Expedited procedure in the case of payment orders does not apply to non-contractual claims, except for:

specific claims arising from the Motor Third Party Liability Insurance Act (*liikluskindlustuse seadus*);

claims where the debtor has issued an acknowledgement of obligation or where another agreement obligating performance has been entered into.

Expedited procedure for orders for payment is not applied if:

the claim has not yet fallen due at the time the petition is filed, except for the claims for penalties for late payment as a collateral claim, or the filing of the claim depends on the performance of a mutual obligation and such obligation has not yet been performed;

the object of the claim is compensation of non-proprietary damage;

the claim is filed against a bankrupt;

the claim is filed against several debtors and does not arise from the same basis or obligation.

The expedited procedure in the case of payment orders does not apply to collateral claims, if they are in excess of the main claim.

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

Yes. Yes. The expedited procedure in the case of payment orders does not apply to claims exceeding EUR 8 000. This amount covers both principal and collateral claims.

1.1.3 Is the use of that procedure optional or obligatory?

The application of the expedited procedure in the case of payment orders is voluntary. The creditor may decide if they wish to apply for an expedited procedure in this case or initiate an ordinary procedure.

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

Yes. National legislation does not contain any limitations regarding the applicability of the expedited procedure in the case of payment orders to defendants who are resident in another country. Within the EU, the jurisdiction of the defendant is determined under Regulation (EU) No 1215/2012 of the European Parliament and of the Council.

1.2 Competent court

Petitions for expedited procedure in the case of payment orders are conducted by Pärnu County Court Haapsalu courthouse Payment order department (*Pärnu Maakohtu Haapsalu kohtumaja maksekäsu osakond*).

1.3 Formal requirements

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

The expedited procedure in the case of payment orders is conducted electronically and, as such, may only be filed to a court via the *Avalik E-toimik* portal or via the *X-tee* data exchange layer of information systems.

Petitions can be filed via *E-toimik* at the webpage: https://www.e-toimik.ee/

Under subsection 485(2) TsMS, an objection may be submitted on the form attached to the proposal for payment, or on another form. The form can be found in the *Riigi Teataja* (State Gazette).

1.3.2 Is representation by a lawyer required?

No, it is not obligatory to appoint a representative.

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

A petition for an expedited procedure in the case of payment orders should contain a short description of the circumstances constituting the basis for the claim and a short description of the evidence the petitioner would be able to submit in support of the claim in an action. A claim must be based on facts and be supported by documentary evidence. A claim is clearly without grounds if, when taking into account the circumstances specified in the petition as the basis of the payment order, the claim cannot be legally satisfied.

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 necessary to include documentary evidence in order to confirm that the claim has been filed. However, the petition should contain a short description of the evidence the petitioner would be able to submit in support of his or her claim in an action.

1.4 Rejection of application

The court refuses to satisfy a petition for the application of expedited procedure in the case of a payment order if:
the application of the expedited procedure is not permitted in the case of payment orders pursuant to the Code of Civil Procedure;
the petition does not comply with the requirements provided for in the Code of Civil Procedure;
the proposal for payment has not been served on the debtor within a reasonable time and it cannot be served by public announcement and the petitioner has explicitly asked for the termination of proceedings in the case where an objection has been filed;
the petitioner fails to inform the court of the results of the service to the participant in the proceedings within the term set for them to do so;
any basis for the suspension of proceedings becomes evident.

1.5 Appeal

A ruling on the refusal to satisfy a petition for application of a procedure in the case of a payment order is not subject to appeal. Refusal to satisfy a petition does not restrict the right of the petitioner to file the claim in an action or in an expedited procedure in the case of payment orders.

1.6 Statement of opposition

The debtor has the right to file an objection to a claim or a part thereof with the court which made the proposal for payment within 15 days, or within 30 days in the case of service of the proposal for payment abroad.
An objection may be submitted on the form attached to the proposal for payment, or on another form. An objection need not be substantiated.

1.7 Effect of statement of opposition

If the debtor submits an objection to the proposal for payment by the specified deadline, the court which has prepared the proposal for payment shall continue the hearing of the matter in an action or refer the matter to the court specified in the petition for expedited procedures in the case of payment orders or to the court specified in the joint application of the concerned parties. In matters of apartment ownership or common ownership, proceedings on petition are continued unless the petitioner has requested for actions to be conducted or proceedings to be terminated. For the purpose of actions, an action is deemed to be filed as the moment that a petition for application of an expedited procedure in the case of payment orders is filed.
If the petitioner has explicitly asked for the termination of proceedings in the case where an objection has been filed, the proceedings are terminated.
If the debtor acknowledges in part the petitioner's claim in the objection filed to the proposal for payment, the court hearing the matter in action makes a payment order by way of a ruling to call in the amount acknowledged by the debtor and continues to hear the remainder of the case in action or on petition.

1.8 Effect of lack of statement of opposition

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

If the debtor fails to pay the amount indicated in the proposal for payment and does not file an objection to the proposal for payment in time, the court makes a payment order for that amount by way of a ruling.

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

A payment order should include an explanation for the debtor concerning the debtor's right to file an appeal against the ruling within 15 days, or within 30 days in the case of service of the proposal for payment abroad. An explanation is to be provided to the debtor that an appeal against the ruling may be filed only on the basis of one of the following circumstances:
the proposal for payment was served on the debtor in any manner except personal delivery against a signature or electronically and, by no fault of the debtor, it was not served in time and therefore the debtor was unable to file an objection in time;
the debtor was unable to file an objection to the proposal for payment for a good reason beyond their control;
the prerequisites for the expedited procedure in the case of payment orders were not fulfilled or the conditions of the expedited procedure in the case of payment orders were otherwise materially violated or the claim to which the expedited procedure pertains is clearly unfounded.
A legal representative of the debtor or the universal successor of the debtor may file an appeal against the payment order within two months of learning about the payment order if it has become evident that grounds for suspension existed at the time the court decision was made, but the court was not or could not have been aware of these. The person filing an appeal against the ruling should do so on the basis of one of the circumstances specified above.

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European payment order - Ireland

1 Existence of an order for payment procedure

There is no specific “order for payment” procedure in Ireland but a plaintiff who is owed a specific amount of money or whose claim is easily quantifiable may receive judgment in default.

1.1 Scope of procedure

If the defendant fails to enter an appearance or a defence to the plaintiff’s claim, then the plaintiff may obtain judgment in default. Where the original claim is for a liquidated or definite sum, final judgment may be entered in the Central Office of the High Court or in the Circuit Court Office, depending on the amount of the claim (except in a small number of cases e.g. moneylending matters, in which case the plaintiff must make an application for judgment in default or obtain the leave of the court to have judgment entered in their favour). In other words, in many straightforward debt collection cases, the plaintiff/claimant can obtain judgment in default without having to go to court and can obtain the judgment from the relevant court office though an administrative procedure.
If the claim is not for a definite sum of money, then the plaintiff must apply to court for judgment and judgment may not be obtained otherwise than through going to court.

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

Judgment may be obtained by default in almost any type of case. This procedure is not limited to contractual or pecuniary claims, although the system is even more straightforward for such cases. The main exceptions include moneylending matters.

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?

The use of the procedure is optional, as the plaintiff must take certain steps before he or she will be granted judgment in default: for example lodging the necessary papers in the relevant court office or issuing and serving a notice of motion and affidavit on the defendant. Where a defendant has failed or refused to answer a plaintiff’s claim and if the plaintiff does not pursue the judgment in default procedure, then the only alternative for the plaintiff is not pursuing the claim any further.

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

Subject to agreements between countries on the recognition and enforcement of judgments between Ireland and other Member States (Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters now replaced by Council Regulation (EU) No 1215/2012), or similar agreements made with third countries, the procedure is available if the defendant lives in another jurisdiction. Where the defendant resides outside the jurisdiction, the plaintiff must ensure that the defendant is properly served in accordance with the relevant rules of court that apply to service out of the jurisdiction. If a defendant who resides in another jurisdiction fails to enter an appearance or a defence to the claim, the plaintiff can apply to court for judgment in default in the normal way.

1.2 Competent court

The competent court depends on the nature or amount of the claim involved. The plaintiff should apply to the court where he or she instituted the proceedings and that court is in a position to ascertain whether or not the defendant entered any appearance or defence and whether the time for so doing has elapsed. If the amount of the claim is less than €75,000 (€60,000 for personal injuries actions), then the plaintiff may bring their claim in the Circuit Court. If it is greater than that amount, the claim must be brought in the High Court. If the amount of the claim is less than €15,000, the claim must be brought in the District Court. If the claim is for less than €2,000, the claim may be brought in under the Small Claims procedure.

1.3 Formal requirements

The plaintiff must ensure that they follow the correct procedures as prescribed by the rules of court. They must serve the proceedings on the defendant. If the defendant fails to enter an appearance or a defence, then the plaintiff may seek judgment in default. If the claim is for a liquidated sum, then all the plaintiff has to do is to have made the request or demand for payment and once that has been done, the plaintiff is generally entitled to judgment from the office of the relevant court without the need for a court order or for an application to a judge. The relevant staff of the court office involved then check to see if the defendant has acknowledged the claim, whether the time limits for so doing have expired and that the plaintiff has provided the office with the necessary evidence such as an affidavit of service and an affidavit of debt specifying the sum then actually due.

Where the claim is for an unspecified amount or if the claim is not readily quantifiable, then the plaintiff must make an application to the court for judgment in default.

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

Yes. In the High Court, the relevant Rule for judgment in default of appearance is Order 13 of the Rules of the Superior Courts 1986 as amended and for judgment in default of defence it is Order 27. In the Circuit Court, an application for judgment in default must be supported by certain documentation including the original claim document itself and a declaration of service of the claim. In addition, the application for judgment must be in accordance with Forms 9 and 10 of the Schedule of Forms annexed to the Circuit Court Rules 2001. The forms can be obtained in a schedule attached to the Rules.

Similarly, in the case of the District Court the forms are available as a Schedule to the District Court Rules.

1.3.2 Is representation by a lawyer required?

No. However, if the claim is worth over €75,000 (€60,000 for personal injuries actions), then it is a Circuit Court claim and if it involves complicated issues, then it is advisable, though not obligatory, to have legal advice and representation.

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

The initial claim must set out the parties names, addresses and, if applicable, occupation. It must also set out the amount of the claim, a description of how the claim arose/the cause of action and the details of any demands that were made for payment.

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

In the initial claim, the plaintiff/claimant sets out all the relevant details regarding the claim such as the amount owed/being claimed, the details of how the claim arose, the demands for payment and a description, if applicable and depending on the nature of the claim, of any other relevant facts such as details of any injuries or losses suffered, treatment received or any other adverse consequences stemming from the cause of action

1.4 Rejection of application

The court will reject a request or application for judgment in default where the applicant has failed to comply with the requirements of the rules of court. For example, if the rules regarding to service of the documents have not been properly complied with, the claim for judgment in default will fail.

1.5 Appeal

If the court refused to grant judgment in default it is usually because the plaintiff was not in compliance with the rules of court and so it may be necessary for the plaintiff to begin again by serving a new claim against the defendant in accordance with the applicable rules of court.

A defendant may apply to set aside a judgment given in default. In order to successfully appeal a judgment in default, a defendant would have to satisfy the court of his or her reason for failing to enter the appearance or defence and the court would have to be satisfied that the reasons given explain or justify that failure. If the defendant successfully appeals against the judgment, it will then be set aside and the defendant will have an opportunity to defend the proceedings.

1.6 Statement of opposition

If the court is of the view that the judgment ought to be set aside, then the defendant may defend the proceedings and enter a defence and the case will proceed in the normal way.

1.7 Effect of statement of opposition

If a defendant enters a defence within the time allowed by the rules or by the court as the case may be, then the case will proceed in the normal way. The judge will determine how the case is to proceed in the event of any directions being necessary in this regard.

1.8 Effect of lack of statement of opposition

The failure to file a defence may result in the plaintiff entering judgment in default of defence.

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

Judgment in default is an enforceable judgment. See the answers to 1.3.d) above.

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

The defendant may apply to court to have the judgment varied or set aside. This application would be heard by the same court. The court can set aside the judgment if of the view that it would be just to do so and if there was any impropriety involved in obtaining the judgment or if it is satisfied the defendant has a real prospect of defending the claim. Either party can appeal against an order setting aside the judgment or refusing to set aside judgment.

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European payment order - Greece

1 Existence of an order for payment procedure

There is a possibility to issue a payment order. The provisions of Articles 623 – 634 of the Code of Civil Procedure, i.e. Presidential Decree 503/1985, as amended and in force, are applicable.

1.1 Scope of procedure

Civil and commercial matters: disputes governed by private law if the law does not make them subject to the jurisdiction of other courts (Article 1 of the Code of Civil Procedure)

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

Money claims or claims for securities, namely, claims from cheques, bills, promissory notes, if the claim and the amount due are certified by a public or private document, and if these claims are expressed in euro or in another foreign currency (Article 623 of the Code of Civil Procedure).

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

No, there is no upper limit regarding the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

The payment order procedure is optional since the creditor may always bring an ordinary action for which a declaratory trial of his/her claim starts after which a judgment on his/her claim is given, in contrast with the payment order procedure, whereby the payment order, which is not a judgment but an enforceable instrument, is given (Article 631 of the CCP).

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

No, a payment order cannot be issued (and if issued, is null and void) if it is to be served on a person who resides abroad or his/her domicile is unknown, unless that person has legally appointed a representative *ad litem* in Greece (Article 624 of the Code of Civil Procedure). Venue is the place where the debtor is physically (*corpore*) established at the time of service.

1.2 Competent court

The magistrate is responsible for money claims of up to twenty thousand euros (EUR 20 000), and the judge of the Court of First Instance for all other money claims. Territorial jurisdiction, namely the court having jurisdiction *ratione loci,* is determined on the basis of the general provisions on local competence, namely, on the basis of the provisions of Articles 22 to 41 of the Code of Civil Procedure. For example, on the basis of these provisions, the court (District Civil Court or Court of First Instance) for the debtor's place of domicile or for the place of issue of the debt instrument (e.g. cheque) or for the place of acceptance or payment of the bill of exchange, may have jurisdiction *ratione loci*.

1.3 Formal requirements

The application is made:

(A) orally before the magistrate through the preparation of a relevant report (Article 626 (1), in conjunction with Article 215 (2) of the Code of Civil Procedure) without excluding the option to submit a written application or

(B) mandatorily in writing to the judge of the Court of First Instance upon written request to the Registry of the Court of First Instance which must contain:

the court to which the application is lodged (District Civil Court or Court of First Instance);

the legal instrument type, namely 'Application for a Payment Order';

the name, surname, father's name and place of domicile of all parties: the creditor and the debtor - and/or their legal representatives, and, if they are legal persons, their trade name and registered office;

the subject-matter of the legal instrument, in a clear, defined, succinct and legible manner, written in Greek, and if it contains documents in a foreign language, e.g. invoices in a foreign language, a statutory translation thereof must be furnished;

the date and signature of the party or his/her legal representative or authorised representative and, where the presence of an attorney is mandatory, the attorney's signature;

the address and, in particular, the street and number of the dwelling or office or shop of the party bringing the action, of his/her legal representative and of his /her authorised representative;

a request for a payment order; and

the claim and the exact amount of money or securities, together with any interest due on the requested payment (Article 626(1) and (2) in conjunction with Articles 118 and 119 (1) of the Code of Civil Procedure).

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

No, the use of a standard form is not mandatory.

1.3.2 Is representation by a lawyer required?

Yes, if the application is lodged to the Court of First Instance and concerns claims of more than twenty thousand euros (EUR 20 000), or to the District Civil Court for claims of twelve thousand euros (EUR 12 000) to twenty thousand euros (EUR 20 000).

If the application is lodged to the District Civil Court and concerns a claim of up to twelve thousand euros (EUR 12 000), the party may bring or defend court proceedings without being represented by an authorised attorney (Article 94 of the Code of Civil Procedure).

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

The application for a payment order must specify at least very briefly the type of legal act from which the claim owed (= debt) resulted, e.g. claims under loan contracts or sale contracts, lease receivables or outstanding cheques. The type of contract or legal act in general also constitutes the grounds for payment and the time when it arose, for example, the time when the debtor should have paid the amount requested and failed to do so must be stated specifically. The application must then list the documents furnished from which the type and amount of the claim result according to such application.

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

The existence of the claim for a payment order may be proved only by documents since witnesses cannot be examined under this procedure. These documents shall be submitted with the application and retained at the Registry of the Court until the time limit for opposition expires, so that the party against which the payment order is directed - debtor of the claim is notified thereof. All documents (private and public) that have probative value pursuant to Articles 432 – 465 of the Code of Civil Procedure, including securities (e.g. cheques, bills of exchange), are accepted as evidence. These documents must state unambiguously the capacity and details (full name) of the creditor - beneficiary, the capacity and details of the debtor, as well as the reasons and amount of the claim.

In particular, any document which is not public and which, pursuant to Article 443 of the Code of Civil Procedure, must bear the issuer's handwritten signature in order to have probative value is considered as a private document and any person who undertakes obligations arising from the document is considered as an issuer.

Any document which has been drawn up in the proper form by a public official or by a person who performs public services is considered as a public document (e.g. notarised deeds).

1.4 Rejection of application

The application shall be rejected:

(A) if the legal requirements for issuing the payment order are not met and thus, if the claim or its amount or the debtor or beneficiary are not proved immediately and unambiguously by the accompanying documents or
(B) if the applicant does not provide explanations requested by the judge or refuses to comply with the recommendations on the filling in or correction of his /her application or on certification of the authenticity of the signatures on any private documents furnished (Articles 628 and 627 of the Code of Civil Procedure). Since the competent judge may request further details, documents and corrections from the applicant, if the latter does not comply, the application is rejected on this ground.
The rejection is indicated at the end of the application, and the ground for rejection is stated briefly. This means that the competent judge does not issue a judgment and, therefore, this note concerning the rejection cannot be contested by appeal. Of course the applicant - creditor may still bring an ordinary action concerning his/her claim (see supra, 1.1.3) or lodge a new application for a payment order (Article 628(3) of the Code of Civil Procedure).

1.5 Appeal

No right of appeal may be exercised if the application for a payment order is rejected.

1.6 Statement of opposition

If the application for a payment order is accepted and a payment order is issued, the debtor against whom it is directed may lodge an opposition against the payment order within fifteen (15) working days from the date of service of the payment order (Article 632(1) of the Code of Civil Procedure). The opposition may also be lodged before the payment order is served.
The court having jurisdiction *ratione loci* and *ratione materiae* is the court, District Civil Court or a Court of First Instance, which issued the payment order.
The opposition shall be heard (Article 632(2) of the Code of Civil Procedure) in accordance with the combined provisions of Articles 643, 649 and 650 of the Code of Civil Procedure, which fall within the special procedures for debt instruments and tenancy disputes, in conjunction with the provisions on ordinary proceedings which are not contrary to the provisions on the above-mentioned special procedures (Article 591(1)(a) of the Code of Civil Procedure).
The opposition, the service of which must be effected within the above-mentioned time limit of fifteen (15) working days and which is otherwise inadmissible, must be served either on the attorney who signed the application for the payment order or at the address of the person against whom the payment order is directed, stated in the payment order, unless any change of address has been notified by means of a legal instrument (Article 632(1)(b) of the Code of Civil Procedure).

1.7 Effect of statement of opposition

The lodging of an opposition shall not suspend the enforcement of the payment order, which is a directly enforceable instrument (Article 631 of the Code of Civil Procedure). However, the Court that issued the payment order may, using the procedure for interim measures laid down in Article 686 of the Code of Civil Procedure and after an application is lodged by the party against which the payment order is directed, order suspension, with or without guarantee or conditionally, until the final judgment on the opposition which must have been lodged is given.
The conditions for acceptance of the application for suspension of enforcement of the payment order are the following: (a) lodging of the opposition in due time and (b) speculation on the success of at least one ground of the opposition.
The judgment ordering suspension deprives it of its enforceable nature and weakens its enforceability as an instrument.

1.8 Effect of lack of statement of opposition

If an opposition is not lodged in due time (within fifteen days from the service of the payment order), the party in favour of which the payment order has been issued may again serve the order on the debtor, who has a second opportunity to lodge an opposition. Namely, the latter may lodge an opposition within ten working days from the date of fresh service. In this case, the above-mentioned suspension shall not be ordered (see note 1.7).
If this time limit of ten days is also exceeded, the payment order acquires the force of *res judicata*, which means that not only the payment order but also the claim are fully valid, on the basis of the historical and legal ground stated in the payment order.
The *res judicata* of the payment order against which an opposition was not lodged in due time may be reversed only using the extraordinary remedy of reopening of the case. This may be brought on very limited, mainly formal grounds (Articles 633(2) and 544 of the Code of Civil Procedure) and within the time limit laid down in Article 544(3) and (4) of the Code of Civil Procedure before the court which issued the payment order.

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

The payment order is an instrument which is enforceable from its date of issuance (Article 631 of the Code of Civil Procedure). Thus, no other actions are required in order for it to become enforceable and, therefore, if suspension of the enforcement is not ordered, the enforcement proceedings shall be initiated, in summary, as follows:
The order for enforcement is added to the original payment order, namely the phrase ‘In the name of the Greek people’ is added at the beginning of the text of the payment order and the phrase ‘Each bailiff is ordered to enforce this decision, etc.’ is added at the end, an official copy (writ of execution) thereof is issued and an order (call) for payment of the amount of the payment order is subsequently served on the debtor.
However, if the payment order is not served within two (2) months from its issuance, it ceases to be in force (Article 630 A of the Code of Civil Procedure)

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

The judgment on the opposition is not final but is subject to all rights of appeal.

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European payment order - Spain

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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1 Existence of an order for payment procedure

Provision is made for a simplified order for payment procedure, known as the '*procédure d'injonction de payer*', in Articles 1405 to 1425 of the Code of Civil 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 is available for the recovery of all claims of contractual origin, or resulting from an obligation imposed by the rules governing a profession or occupation, and of fixed amount.

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

The procedure is available for the recovery of all claims of contractual origin, or resulting from an obligation imposed by the rules governing a profession or occupation, and of fixed amount.

1.1.3 Is the use of that procedure optional or obligatory?

The procedure is optional.

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

Proceedings of this kind must be brought before the court with jurisdiction for the place of residence of the debtor or one of the debtors concerned, which excludes recourse to the procedure when the sole debtor lives abroad.

1.2 Competent court

The application must be brought before the district court (*tribunal d'instance*), the local court (*juridiction de proximité*), the president of the commercial court (*tribunal de commerce*) or, from 1 January 2013, the president of the regional court (*tribunal de grande instance*), depending on which court has jurisdiction in a case of the kind at issue.

The court of the place of residence of the debtor or one of the debtors against whom proceedings are brought has exclusive jurisdiction. This is a rule of public policy (*ordre public*), and the court must raise any question of lack of jurisdiction of its own motion.

1.3 Formal requirements

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

The formal requirements list certain information that must be included in the application:

the surnames, first names, professions and home addresses (*domiciles*) of the creditors and debtors, or, for legal persons their form, name and registered office;

a precise indication of the amount claimed, with the breakdown of the various components of the claim, and its basis.

There is a form which though not compulsory is strongly recommended. This is a CERFA form available from the Ministry of Justice website and from the clerk's office (*greffe*) of all the courts concerned.

1.3.2 Is representation by a lawyer required?

The application can be submitted by the creditor himself or herself or by any representative.

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

The reason for the claim does not have to be presented in detail, but only in summary (see reply 1.3.1 above).

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

The application must be accompanied by supporting documents showing the validity of the claim (invoices, lease agreement, contract of sale, credit agreement, statements, etc.). The rules of ordinary law governing civil procedure are applicable.

1.4 Rejection of application

Before issuing an order to pay the court will examine the validity of the application and may reject it, in whole or in part, if it deems that the claim is not well-founded.

1.5 Appeal

If the application is rejected the creditor has no right of appeal, but is free to follow the procedures of ordinary law, i.e. to sue for payment of a debt in the ordinary way.

1.6 Statement of opposition

The debtor has a period of one month in which to object (*former opposition*), either in person at the clerk's office of the court which issued the order or by registered letter addressed to the same clerk's office. There are no other requirements of form for such objection .

1.7 Effect of statement of opposition

The submission of an objection initiates proceedings. The clerk of the court summons all the parties to a hearing (even those who have not entered an objection). Within the limits of the jurisdiction given to it, the court will consider not only the initial application but also any ancillary applications and pleas in defence on the merits.

1.8 Effect of lack of statement of opposition

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

After a period of one month following notification has passed, the creditor applies to the clerk's office of the court which issued the order, asking it to append an order for enforcement. There are no formal requirements for this application (the creditor may simply make a statement or send a letter by ordinary post). The enforcement order confers on the order for payment all the effects of a judgment in a defended case.

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

The decision is not subject to ordinary appeal (*appel*) or appeal on a point of law to the Court of Cassation (*pourvoi en cassation*). The only possible challenge is to bring an appeal on a point of law to the Court of Cassation against the way in which the enforcement order was appended by the clerk of the court.

Related links

Ministry of Justice website

Legifrance website

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European payment order - Croatia

1 Existence of an order for payment procedure

The Republic of Croatia applies the European order for payment, and the procedure for issuing such orders is governed by the provisions of the Civil Procedure Act (*Zakon o parničnom postupku*) (Narodne Novine (NN; Official Gazette of the Republic of Croatia), Nos 53/91, 91/92, 112/99, 129/00, 88/01, 117/03, 88/05, 2/07, 96/08, 84/08, 123/08, 57/11, 25/13, 89/14 and 70/19) and the Rules on the Manner of Lodging an Application for the Issuing of a European Order for Payment and a Statement of Opposition against a European Order for Payment (*Pravilnik o načinu podnošenja zahtjeva za izdavanje europskog platnog naloga i prigovora protiv europskog platnog naloga*) (NN No 124/13).

1.1 Scope of procedure

The European order for payment procedure applies to the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted. A European order for payment procedure was created by means of Regulation (EC) No 1896 /2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, and that Regulation applies in cross-border civil and commercial legal matters, irrespective of the type of court, with the derogations provided in the Regulation.

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

Claims that relate to claims on money (pecuniary claims). Only claims that are contractual or non-contractual liabilities and that have been nominally determined may form the subject of a claim.

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

There is no upper limit to the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the procedure is not obligatory because the applicant (claimant) is free to decide on the manner in which he or she will make their claim, as long as it does not contradict the mandatory rules and the rules on public morality. The payment order will be issued by the court even though the applicant did not suggest the issuing of a payment order in their claim, if all the requirements for issuing an order have been met. Therefore, the issuing of the payment order is mandatory for the court if the requirements for issuing it have been met.

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

Yes.

1.2 Competent court

The decision on applications to issue and review — and to provide a certificate of enforceability for — the European order for payment pursuant to Regulation (EC) No 1896/2006 lies with the municipal court (*općinski sud*), or commercial court *trgovački sud*) in cases concerning matters under the jurisdiction of commercial courts, according to the place of residence or usual place of residence or registered office of the defendant.

1.3 Formal requirements

The application for a European order for payment and the statement of opposition to the order are to be submitted solely in machine-readable form if the court deems that these acts are suitable for machine processing. The application form may be submitted in paper form or by any other means of communication accepted by the court.

The manner of submitting applications for the European order for payment and the statement of opposition against that order are governed by the Rules on the Manner of Lodging an Application for the Issuing of a European Order for Payment and a Statement of Opposition against a European Order for Payment, which entered into force on 17 October 2013.

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

The application for issuing a European order for payment and the statement of opposition against the order are to be submitted on the forms prescribed by Regulation (EC) No 1896/2006 to the competent court. This means that the use of a standardised form in the procedure for issuing a European order for payment is obligatory, and the forms can be downloaded from the website of the e-Justice portal.

1.3.2 Is representation by a lawyer required?

Any party – natural or legal person – is authorised to freely choose whether they will represent themselves in the proceedings, or will engage an intermediary, who is usually a lawyer. This means that representation by a lawyer is not obligatory in the procedure of issuing a European order for payment.

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

The party must complete form A (application for a European order for payment) in machine-readable form, which allows the party to provide additional statements and further information to explain the claim in more detail if necessary.

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

Point 10 of form A provides for the party to attach evidence available to them and to describe what the specific evidence refers to. Evidence and the taking down of evidence are governed by Articles 219-271 of the Civil Procedure Act, and the court decides which of the evidence submitted is to be used to establish the facts of the case. Furthermore, the court decides, acting according to its own convictions, which facts are deemed to have been proved, based on a thorough and careful appraisal of each item of evidence separately and of all the evidence together, and on the result of the proceedings as a whole.

1.4 Rejection of application

The general rule laid down in Article 109 of the Civil Procedure Act is applied to the rejection of applications. This article states that if the application is not comprehensible or does not contain everything necessary to act on it, the court will order the submitting party to correct the submission, i.e. to amend it in accordance with the instructions provided, and will return it for the purposes of correction or amendment. The submission is to be deemed withdrawn if it is not returned to the court and corrected in line with the instructions received from the court within the time limit provided. If it is returned without any correction or amendment, it will be dismissed.

1.5 Appeal

A statement of opposition is the legal remedy available to the defendant when an application for a European order for payment has been lodged. In addition, the parties have the option to review the European order for payment in exceptional cases pursuant to Article 20 of Regulation (EC) No 1896/2006, subject to the conditions laid down therein.

1.6 Statement of opposition

The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F, which is supplied to him or her together with the European order for payment. The statement of opposition is to be sent within 30 days of service of the order on the defendant, and the defendant is to indicate in the statement of opposition that he or she contests the claim, without having to specify the reasons for this.

1.7 Effect of statement of opposition

If the defendant lodges a statement of opposition against the European order for payment within the meaning of Article 16 of Regulation (EC) No 1896/2006, the further procedure will be carried out in accordance with the rules of the European Small Claims Procedure laid down in Regulation (EC) No 861/2007, if applicable and, if not, in accordance with the provisions of the Civil Procedure Act on statements of opposition against orders for payment (Article 445a, Articles 451-456), while taking into account Article 17 of Regulation (EC) No 1896/2006.

1.8 Effect of lack of statement of opposition

If no statement of opposition has been lodged with the court within 30 days of the order for payment being served on the defendant, taking into consideration an appropriate period for the receipt of the statement of opposition, the court is to declare the enforceability of the European order for payment using the standard form G.

An enforceable European order for payment (Articles 18 and 19 of Regulation (EC) No 1896/2006), issued by a court in the territory of the European Union, is an enforcement instrument that can be used to seek enforcement in the Republic of Croatia in the same manner as on the basis of an enforcement decision by a Croatian court.

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

As a rule, the applicant must request that the court issue an enforceability clause, and the court declares the enforceability of the European order for payment using the standard form G.

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

The defendant may request a review of a European order for payment issued in Croatia on the basis of Article 507n of the Civil Procedure Act, taking into account Article 20 of Regulation (EC) No 1896/2006. The court deciding on the request may postpone the enforcement by applying the appropriate rules of the enforcement proceedings regarding postponement of enforcement at the debtor's request. An appeal against a writ of execution for reasons relating to the claim laid down in the European order for payment is permitted only if these reasons occurred after the order was served and if they could no longer be presented in the statement of opposition pursuant to Article 16 of Regulation (EC) No 1896/2006.

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European payment order - Italy

1 Existence of an order for payment procedure

Among other summary proceedings, the Italian Code of Civil Procedure (*Codice di procedura civile*) lists an order for payment procedure (*procedimento di ingiunzione*) (Sections 633 *et seq.*). This is an *ex parte* proceeding, since the Court rules on the creditor's application without hearing the debtor or allowing him or her to submit a response or remarks.

The debtor is heard only subsequently, if he or she challenges the order for payment.

The order for payment can be sought only in respect of certain claims (claim to payment of a sum of money or to delivery of a specific quantity of fungible goods etc.), and subject to certain conditions set out in the Civil Code (*Codice civile*), e.g. creditors must provide written proof of their claim.

If the court hearing the claim finds it to be well founded, it will order the debtor to pay the sum within a certain time limit, usually 40 days, but it will also advise the debtor that he or she may challenge the order within the same period and that, if no objection is lodged, the order for payment will become final and may be enforced.

1.1 Scope of procedure

The procedure applies to claims brought by creditors owed money or a specific quantity of fungible goods or by anyone with the right to receive a specific movable asset.

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

Where the procedure relates to a claim to money, the sum must be precisely defined. This in effect rules out the possibility of seeking an order for payment in respect of non-contractual claims, for example to claim compensation for damage suffered as a consequence of an unlawful act.

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

No, there is no upper limit. An order for payment may be sought for claims having any value.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the payment order procedure is optional. A creditor may always bring an ordinary action.

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

Yes.

1.2 Competent court

The order for payment must be sought from the justice of the peace (*giudice di pace*) or the general court (*tribunale*) that would have jurisdiction in ordinary proceedings. The justice of the peace is competent to hear only small claims, according to the criteria set out in Section 7 of the Code of Civil Procedure. When the application is lodged with the general court, the court sits with a single judge.

Claims concerning fees for legal services provided, whether in connection with litigation or out of court, or the reimbursement of costs payable to lawyers, bailiffs or any other person who has rendered services in the course of legal proceedings, are examined by the court which heard the case to which the creditor's claim refers.

Lawyers may apply for an order for payment against their clients to the court of the place where they are registered with the bar association (*consiglio dell' ordine*). Similarly, notaries may lodge claims before the court of the place where they are registered with the association of notaries (*consiglio notarile*) (see also the factsheet on 'Jurisdiction').

1.3 Formal requirements

The payment claim must contain the information set out in Section 638 of the Code of Civil Procedure, and must be lodged with the office of the clerk of the court together with its enclosures. Under Article 16-*bis* of Decree Law No 179 of 18 October 2012 (converted by Law No 221 of 17 December 2012): 'From 30 June 2014, in proceedings before the court referred to in Book IV, Title I, Chapter I of the Code of Civil Procedure, the filing of measures and of the parties' submissions and documents shall be carried out solely by electronic means (except for objections)'. Therefore, for all applications for *ex parte* proceedings after 30 June 2014, any submission of paper copies will be deemed inadmissible. For European Payment Orders, pursuant to Regulation

EC 1896/2006, Article 16-*bis* of Decree Law No 179/2012 does not apply; therefore applications for such an order must be submitted on paper and not by electronic means.

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

No, there is no special form.

1.3.2 Is representation by a lawyer required?

As a rule it is. However, in certain cases claimants may represent themselves in court. One such case is when the claim is heard by the justice of the peace and concerns an amount of €1 100 or less; another is when the claimant is qualified to act as a lawyer before the court hearing the case.

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

The application must set out the claim and the reasons justifying it. The reasons for the claim need not be detailed, and may be provided by a summary description of the relevant facts and documents.

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

Yes. Written evidence for the claim includes, in particular, acknowledgments of delivery and unilateral promises in writing. When the claim relates to the supply of goods or services, and such supply was made by a business to another business or to a person not engaged in professional or business activities, written evidence of the claim may also consist of authentic extracts from the accounts of the creditor enterprise, provided they are duly kept in the manner required by law. Commercial invoices may also constitute suitable written proof of the claim, provided they are accompanied by the stamped copy from the claimant's register of invoices.

Specific rules on supporting evidence apply to fee and reimbursement claims by lawyers, notaries and members of other professions, and to claims by the State and public authorities.

1.4 Rejection of application

If the court finds that the claim is insufficiently substantiated, it will so inform the claimant via the clerk of the court, asking the claimant to produce additional evidence. If the claimant fails to respond or to withdraw the application, or if the application cannot be accepted, the court will dismiss it by a reasoned ruling. In such cases, the claim may be re-submitted, by the special procedure or by the ordinary procedure.

1.5 Appeal

The dismissal may not be contested either by ordinary appeal or in Cassation.

1.6 Statement of opposition

If the court accepts an application, and it issues an order for payment, that order must be served on the defendant. In Italy it must be served within 60 days of the ruling, compared to 90 days if served outside Italy.

Upon receiving the order for payment, the debtor has 40 days to contest the claim.

Where there is sound reason for so doing, the deadline for lodging an objection to the claim may be reduced to 10 days or increased to 60 days. If the defendant lives in another EU country, the deadline is 50 days and may be reduced to 20. If the defendant lives in a non-EU country, the deadline is 60 days and may be reduced to 30 or increased to 120 days.

Defendants may challenge the claim even after expiry of the deadline, if they can prove that they were not informed in due time owing to irregular service of the order, or to any unforeseen event or force majeure. No challenge may be brought after 10 days from the first enforcement measure.

An objection challenging the order (*opposizione*) is brought before the court that issued it, by means of a writ of summons (*citazione*) to be served on the claimant at the address indicated in the application. The summons objecting to the order must contain the information usual in summonses generally. In particular, the objector must state the grounds of the objection to the claim.

1.7 Effect of statement of opposition

An objection of this kind triggers ordinary court proceedings in which the court examines the validity of the claim for payment.

1.8 Effect of lack of statement of opposition

If no objection is lodged within the prescribed time, or if the defendant fails to appear before the court, the court that issued the order will declare it enforceable on the claimant's application.

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

There are four possible scenarios.

The first occurs when the deadline for objecting to the claim has not yet expired. The applicant can request the court to declare the order provisionally enforceable with immediate effect. This request can be granted only if the special conditions for provisional enforcement set out in the Code of Civil Procedure are met: for example, if the claim is based on a bill of exchange or cheque, or if delay in enforcement would cause serious harm to the creditor. As a condition for provisional enforcement at this early stage, the court may require the creditor to lodge a security in the debtor's favour.

The second scenario occurs when a debtor who has been served the order for payment fails to lodge an objection in the required time. When this occurs, the creditor can file a request for enforcement of the order.

The third scenario occurs when the debtor has indeed lodged an objection and the case is still pending. In this case, the creditor can file a request for provisional enforcement of the order. This request can be granted only when the conditions laid down in the Code are met (for example, when the objection is not supported by any written evidence). The court may also order provisional enforcement of only part of the order, i.e. up to the amount not contested by the debtor. The court can also grant provisional enforcement of the order if the creditor provides a security covering the amount for possible reimbursement, plus costs and damages.

The fourth scenario occurs when the objection is dismissed: as a consequence of dismissal, the order for payment becomes enforceable, if it was not already so.

Orders for payment which have been declared enforceable under any of the above scenarios also allow the creditor to register a judgment mortgage on the debtor's assets.

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

An order which has become enforceable owing to the debtor's failure to file an objection may be revoked in exceptional cases provided for by law (for example if it is found that the court's decision was issued on the basis of evidence subsequently found to be false). When the order for payment affects a third party's rights, the third party may also file an objection.

A judgment closing opposition proceedings may be appealed in accordance with the ordinary procedures.

Link correlati

►*The Italian Constitution* (EN)

https://www.senato.it/sites/default/files/media-documents/COST_INGLESE.pdf

►*Le leggi e i codici italiani*

https://www.normattiva.it/?language=en

► *Codice di procedura civile italiano*
http://www.altalex.com/documents/codici-altalex/2015/01/02/codice-di-procedura-civile
► *The Code of administrative trial* (EN)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/mzk3/~edisp/nsiga_4276977.pdf
► *Code de justice administrative* (FR)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/njiz/~edisp/nsiga_4506451.pdf
► *Italienische Verwaltungsprozessordnung* (DE)
https://www.giustizia-amministrativa.it/cdsintra/wcm/idc/groups/public/documents/document/mday/nda5/~edisp/nsiga_4289867.pdf
► *Il sistema giudiziario italiano*
https://www.csm.it/web/csm-internet/magistratura/il-sistema-giudiziario=
► *Codice del processo tributario*
http://def.finanze.it/DocTribFrontend/getAttoNormativoDetail.do?id=%7BECD81E71-D37B-4722-AA36-116B5BCB2232%7D
► *Ministero della Giustizia*
https://www.giustizia.it/giustizia
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European payment order - Cyprus

1 Existence of an order for payment procedure

There is no specific national 'order for payment' other than that provided for in Regulation 1896/2006, for the application of which a procedural regulation has been adopted.

1.1 Scope of procedure

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

Not applicable.

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

Not applicable.

1.1.3 Is the use of that procedure optional or obligatory?

Not applicable.

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

Not applicable.

1.2 Competent court

Not applicable.

1.3 Formal requirements

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

Not applicable.

1.3.2 Is representation by a lawyer required?

Not applicable.

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

Not applicable.

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

Not applicable.

1.4 Rejection of application

Not applicable.

1.5 Appeal

Not applicable.

1.6 Statement of opposition

Not applicable.

1.7 Effect of statement of opposition

Not applicable.

1.8 Effect of lack of statement of opposition

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

Not applicable.

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

Not applicable.

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European payment order - Latvia

1 Existence of an order for payment procedure

In Latvia the uncontested enforcement of obligations is possible (Articles 400-406, Chapter 50 of the Law on civil procedure (*Civilprocesa likums*), as is the enforcement of obligations on court notice (Articles 406.1-406.10 of Chapter 50.1 of the same law).

1.1 Scope of procedure

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

The uncontested enforcement of obligations is permitted:

(1) under agreements regarding obligations which are secured with a publicly registered mortgage or a commercial pledge;
(2) under notarised term agreements or term agreements of equivalent legal effect regarding money payments or the return of movable property;
(3) under term property lease or rental agreements that are notarised or entered in the Land Register according to which the lessee or tenant is under the obligation, owing to expiry of the term or failure to pay the lease or rent, to vacate the leased or rented property and under the obligation to pay the lease or rental payments;
(4) for protested promissory notes that do not take the form of a notarial deed.
The obligations indicated cannot be performed under uncontested enforcement if:
(1) enforcement concerns State or local authority property;
(2) the obligation has lapsed over time, where the end of the time period is indisputably apparent from the act itself.
The enforcement of obligations on court notice is permitted for payment obligations which are substantiated by a document and for which the term for enforcement is due, as well as payment obligations regarding the payment of such compensation provided for in a contract regarding the supply of goods, purchase of goods or provision of services if such obligations are substantiated by a document and for which the time period for enforcement has not been specified.
The enforcement of obligations on court notice is not permitted:
(1) for payments related to unfulfilled considerations;
(2) if the declared place of residence or the place of residence of the debtor is not known;
(3) if the declared place of residence, the place of residence, the whereabouts or the registered office of the debtor is not in Latvia;
(4) if the requested penalty exceeds the amount of the principal debt;
(5) if the interest requested exceeds the amount of the principal debt;
(6) for payment obligations where the amount of the debt exceeds EUR 15 000;
(7) for joint payment obligations.

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

The enforcement of obligations on court notice is not permitted for payment obligations where the amount of debt exceeds EUR 15 000.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the procedures is not obligatory.

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

The enforcement of obligations on court notice is not permitted if the declared place of residence, the place of residence, the whereabouts or the registered office of the debtor is not in Latvia.

1.2 Competent court

Applications for the uncontested enforcement of obligations are to be made to the land registry office of the district/city court:
(1) of the declared place of residence of the debtor or, failing that, the debtor's *de facto* place of residence, where the application concerns monetary payments, the return of movable property or obligations under contracts which are secured by a commercial pledge;
(2) of the location of the immovable property, where the application for the uncontested enforcement of obligations concerns documents pledging immovable property or an obligation to vacate or return leased or rented immovable property. If an obligation is secured against several immovable properties, and the applications would fall within the jurisdiction of the land registry offices of multiple district or city courts, the application is to be adjudicated by the land registry office of the district or city court of the place where one immovable property is situated, at the choice of the applicant;
(3) of the place of registration of the ship mortgage, if the application is based on a mortgage obligation for the vessel.
An application for the enforcement of obligations on court notice must be submitted to the land registry office of the district or city court of the declared place of residence of the debtor, or failing that the debtor's *de facto* place of residence or registered office

1.3 Formal requirements

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

Applications for the enforcement of obligations on court notice may only be submitted electronically, using the online form available in the online courts system (e-case portal (*e-lietas portāls*)).
The debtor may reply using the online form available in the online system or draw up their reply in accordance with Annex 3 to Cabinet Regulation No 792 of 21 July 2009 on the forms to be used in the enforcement of obligations on court notice. The form is available here.
No form has been drawn up for applications for uncontested enforcement of obligations, which must be made pursuant to Article 404 of the Law on civil procedure.

1.3.2 Is representation by a lawyer required?

No, it is not mandatory. The general rules on representation are laid down in Chapter 12 of the Law on civil procedure on 'Representatives'.

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

Applications do not have to be substantiated in detail.
An application for the uncontested enforcement of obligations must indicate the obligation, and the legal act from which it derives, of which the creditor is seeking enforcement through the uncontested procedure, specifying the principal debt, contractual penalty and interest, and, for promissory notes, also the expenses related to the protest and the compensation laid down by law. Applications for the uncontested procedure are to include the enforceable act and a copy thereof, and for promissory notes, also the notarial protest, as well as proof of the notice served on the debtor, unless it follows from the law that no such notice is required.
Applications for the enforcement of obligations on court notice are submitted by completing the online form available in the online courts system (e-case portal), in which information is given on the applicant and the debtor, the payment obligation, information identifying the documents substantiating the obligation and the time limits for enforcement of the obligation, the amount sought and how it is calculated, as well as a statement by the applicant that the claim does not depend on the performance of any counter-party now or in the past.

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

An application for undisputed enforcement of obligations must be accompanied by the document to be enforced and a true copy thereof, or in the case of a promissory note the protest notification, and proof that notice has been given to the debtor, unless it follows from the law that no such notice is required (the evidence that notice has been given may be a statement drawn up by a certified bailiff or their assistant declaring that the addressee has refused to accept such notice).
For the enforcement of obligations on court notice, no written evidence of the claim needs to be submitted, but the application must identify the documents substantiating the obligation and the time limit for performance of the obligation. If the debtor contests the validity of the payment obligation within 14 days of receipt of the notice sent by the court, the court proceedings for the enforcement of obligations on court notice are terminated. The decision to terminate the

proceedings for the enforcement of obligations on court notice upon objection by the debtor does not prevent an action from being brought under the ordinary court procedure.

1.4 Rejection of application

For the undisputed enforcement of obligations, – a judge, sitting alone, takes a decision within seven days of the day the application is submitted, on the basis of the application and the documents attached to it, without giving prior notice to the applicant and the debtor. The judge will dismiss the application if it is unfounded, or the penalty indicated in the application is disproportionate to the principal debt, or the document to be enforced contains unfair contractual provisions that violate consumer rights.

In the case of the enforcement of obligations on court notice, if the court accepts the application but within 14 days of receiving the notice sent by the court the debtor submits a statement of opposition contesting the validity of the payment obligation, the judge will terminate the proceedings on the enforcement of obligations on court notice.

1.5 Appeal

A judge's decision on an application for undisputed enforcement of obligations or enforcement of obligations on court notice is not subject to appeal.

Where the debtor holds that the applicant's claim is, on the merits, unfounded, they may file an application against the creditor to dispute the claim within three months from the date that the ruling is sent. When the debtor brings such an action, they may request a stay of the enforcement of obligations; if the creditor has already received satisfaction through the enforcement process, the debtor may apply to have their claim secured.

1.6 Statement of opposition

On an application for undisputed enforcement of obligations, a judge takes a decision sitting alone, and the debtor's opinion is not taken into account.

On an application for enforcement of obligations on court notice, a judge gives notice to the debtor proposing that the debtor pay the amount indicated in the application or submit a statement of opposition to the court within 14 days of the notice being sent.

1.7 Effect of statement of opposition

Enforcement of obligations on court notice – if the debtor contests the validity of the payment obligation within 14 days of the notice being sent, the court proceedings for the enforcement of obligations on court notice are terminated. If the debtor accepts part of the application, the applicant will be notified of the debtor's answer and a time limit laid down within which the applicant is to notify the court whether the portion of the obligation whose enforcement is accepted has been surrendered. If the debtor accepts part of the application, the judge adopts a ruling on the enforced performance of the accepted part, but the court proceedings for the remainder will be terminated.

1.8 Effect of lack of statement of opposition

On an application for the enforcement of obligations on court notice, if the debtor fails to submit a statement of opposition within the time specified in the notice, the judge will take a decision, within seven days from the date of expiry of the time allowed for a statement of opposition, ordering the enforcement of the payment obligation specified in the application and the recovery of court costs.

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

Enforcement of obligations on court notice: the judge's decision on the enforcement of the payment obligation indicated in the application takes effect at once; it is an enforceable document that may be enforced in accordance with the rules on the enforcement of judgments.

Undisputed enforcement of obligations: the judge, having examined the validity of the application and having found that it should be accepted, takes a decision determining which obligation is to be enforced and how far. The judge's decision takes effect at once; it is an enforceable document that can be enforced in accordance with the rules on the enforcement of judgments. The judge's decision is lodged for enforcement together with a true copy of the document being enforced.

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

A judge's decision on an application for undisputed enforcement of obligations or for enforcement of obligations on court notice is not subject to appeal; however, if the debtor is of the opinion that the applicant's claim is, on the merits, unfounded, they may bring an action against the creditor to dispute the claim (in the case of undisputed enforcement of obligations, within six months from the date when the true copy of the judge's decision is sent, and in the case of enforcement of obligations on court notice, within three months from the date when the true copy of the decision is sent). When the debtor brings such an action, they may request a stay of the enforcement of obligations; if the creditor has already received satisfaction, the debtor may apply to have their claim secured.

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European payment order - Lithuania

1 Existence of an order for payment procedure

Applications for a European Order for Payment are examined in accordance with the rules set out in Chapter XXIII of the Code of Civil Procedure of the Republic of Lithuania (*Lietuvos Respubklikos civilinio proceso kodeksas)*, subject to the exceptions provided for therein.

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 set out in Chapter XXIII of the Code of Civil Procedure of the Republic of Lithuania is applied to cases involving a creditor's application relating to monetary claims (arising from a contract, tort, employment relations, the award of maintenance, etc.).

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?

Cases heard in accordance with Chapter XXIII of the Code of Civil Procedure may also be heard in contentious or documentary proceedings according to the creditor's choice.

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

In accordance with Chapter XXIII of the Code of Civil Procedure, applications are not considered if the debtor lives or has its registered office abroad.

If a case has been initiated on the basis of a creditor's claim and it transpires, after a court order has been issued, that the debtor's place of residence or place of work is unknown, the court will revoke the court order and the creditor's application will remain unsettled. Such a court ruling may not be contested by filing a separate appeal. In these circumstances, the court may revoke the court order and leave the creditor's application unsettled only if the court had previously set a time-limit for the creditor to clarify the debtor's place of residence or place of work or to take action enabling the court to serve procedural documents by other means.

1.2 Competent court

Cases based on applications for a court order are heard by district courts according to the place of residence.

1.3 Formal requirements

Apart from the general requirements laid down for the content and form of procedural documents, an application for a court order must specify:

the name, surname, personal identification code and address of the creditor or, where the creditor is a legal entity, the full name, registered office, identification code and current account number of the creditor, details of the relevant credit institution and, if the application is filed by a representative, the name and address of the creditor's representative;

the name, surname, personal identification number (if known), address and place of work (if known) of the debtor and, where the debtor is a legal entity, the full name, registered office, identification code and current account number (if known) of the debtor and details of the relevant credit institution (if known);

the claim amount;

when a claim concerns the award of interest or a late payment penalty, the rate, amount and calculation period of the interest or the late payment penalty;

the claim, its factual basis and supporting evidence;

a reasoned request for the application of interim measures to the debtor where there are grounds for such action and information is available on the debtor's assets;

confirmation that there are no ground as specified in Article 431(2) of the Code of Civil Procedure of the Republic of Lithuania (when the court order is issued, the obligation (or part of the obligation) incumbent on the creditor for which payment is claimed has not been performed and the debtor requires that it be performed; some of the obligation cannot be performed and the creditor requires that part of it be performed; the debtor lives or has its registered office abroad; the debtor's place of residence and place of work are unknown).

a list of the documents annexed to the application.

An application for the award of maintenance must also contain the date and place of birth of the debtor, the date of birth and place of residence of the beneficiary (if the application is filed by a person other than the beneficiary himself/herself), the requested amount of monthly maintenance and the period for which payment is sought.

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

It is recommended that the standard form approved by the Minister of Justice be used.

A template of the court order application form is provided at the Electronic Services Portal of Lithuanian Courts https://e.teismas.lt/lt/public/documentstemplates/

1.3.2 Is representation by a lawyer required?

No.

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

This is not regulated.

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

An application for a court order does not have to be accompanied by any evidence.

1.4 Rejection of application

The court will reject an application for a court order in the following cases:

– in the circumstances specified in Article 137(2) of the Code of Civil Procedure of the Republic of Lithuania (the dispute should not be subject to civil proceedings before a court; the claim does not fall within the jurisdiction of the particular court; the person who has applied to the court has failed to comply with the prior extra-judicial adjudication procedure established by law for that particular category of cases; an effective court or arbitration judgment has been issued on a dispute between the same parties involving the same subject matter and based on the same grounds or there is an effective court ruling admitting the plaintiff's waiver of the claim or approving the parties' reconciliation agreement; there is a case pending before the court relating to a dispute between the same parties involving the same subject matter and based on the same grounds; the parties have concluded an agreement to refer the dispute to an arbitration court; the application has been filed on behalf of a person with legal incapacity; the application has been filed on behalf of the interested party by a person not authorised to conduct the case);

- the application does not meet the admissibility requirements set forth in Article 431(1) and (2) of the Code of Civil Procedure of the Republic of Lithuania or is clearly not justified.

1.5 Appeal

A ruling refusing to admit an application may be contested by filing a separate appeal.

1.6 Statement of opposition

The debtor may file a statement of opposition to the creditor's application or part of it to the court that has issued the court order. If the debtor has fulfilled part of the creditor's claim or acknowledges part of the claim but has nevertheless not fulfilled it, he may oppose the validity of the remaining part of the creditor's claim.

The debtor's statement of opposition to the creditor's application must be filed in writing within twenty days of the court order being served on the debtor. Statements of opposition must meet the general requirements laid down for the content and form of procedural documents, except for the requirement to indicate the grounds of the opposition. If, for compelling reasons, the debtor has filed a statement of opposition after the specified time-limit has expired, the court may restore the time-limit at the debtor's request. A ruling rejecting such a request by the debtor may be contested by filing a separate appeal.

1.7 Effect of statement of opposition

When the court receives a debtor's statement of opposition, it must notify the creditor not later than within three working days that the creditor may file a claim in accordance with the general rules governing contentious proceedings (including the jurisdiction rules) and pay the extra share of the court fee not later than within fourteen days of receiving the court notification. Any interim measures applied by the court may not be lifted before the time-limit for lodging the claim expires.

If the debtor fulfils part of the creditor's claims as ordered by the court or acknowledges part of the claim but nevertheless does not fulfil it and opposes only the remaining part of the creditor's claim, the court will issue a new order granting the claim to the extent not opposed by the debtor in accordance with the rules of the relevant Chapter. If the debtor opposes the court order only to the extent relating to the award of procedural costs, the court will decide on the matter of compensation for those costs by means of a ruling. The creditor may file an action for the unsatisfied part of his claims in accordance with the procedure set out in the relevant Article.

1.8 Effect of lack of statement of opposition

If the creditor fails to file a duly drawn-up claim to the court within fourteen days, the creditor's application will be deemed not to have been filed and will be returned to the creditor by means of a court ruling, and the court order and any interim measures which have been applied will be revoked. This ruling may be contested by filing a separate appeal, although this does not prevent the creditor from filing a claim in accordance with the general procedure.

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

A court order comes into effect if the debtor does not file any opposition to the creditor's application within twenty days. A court order may not be implemented as a matter of urgency.

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

A court order may not be contested by means of appeal or cassation proceedings.

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European payment order - Luxembourg

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 €15 000 to be recovered swiftly by means of an application to the district court for a provisional order. For debts of up to €15 000, small claims proceedings can be brought before the justice of the peace (*juge 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 €15 000.

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 €15 000 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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European payment order - Hungary

1 Existence of an order for payment procedure

There is an order for payment procedure in Hungary, governed by Act L of 2009 on Order for Payment Procedures. Order for payment procedures are simplified, out-of-court civil law proceedings for the enforcement of payment claims and fall within the competence of civil law notaries. The order for payment procedure entails automated processing of data, for which the civil law notary uses the uniform online IT system of the Hungarian Chamber of Civil Law Notaries (MOKK) available nationwide to civil law notaries and the parties and other persons involved in the procedure. As out-of-court civil law proceedings, the notary's proceedings have the same effect as court proceedings.

1.1 Scope of procedure

Except in certain cases, an overdue pecuniary claim may be pursued through an order for payment procedure.
If the sum in dispute, calculated in accordance with the relevant rules laid down in Act CXXX of 2016 on the Code of Civil Procedure, does not exceed HUF 3 000 000, an overdue claim limited exclusively to the payment of money may be pursued only through an order for payment procedure or an attempt to reach a pre-trial settlement. This provision only applies if
a) each party has a known place of residence or, failing this, place of stay, or seat or branch office ('address for service') in Hungary, and
b) the claim for payment did not arise from a legal relationship established under Act I of 2012 on the Labour Code, employment in the public sector, a service relationship, participation in a public employment scheme, a labour contract concluded under the Act on Sports, an apprenticeship contract concluded in vocational training, a student internship contract under the Act on National Higher Education or a work relationship established with a social cooperative or an employment cooperative by its member or a public service relationship or administrative contract within the meaning of Act I of 2017 on the Code of Administrative Court Procedure. Pecuniary claims arising from these legal relationships may only be pursued through an order for payment procedure if the case is not related to the entry into, modification or termination of the legal relationship or a legal consequence of a culpable breach by the employee of the obligations arising from the legal relationship, or a legal consequence of misconduct on the part of the employee.
If the sum in dispute, calculated in accordance with the relevant rules laid down in the Code of Civil Procedure, exceeds HUF 30 000 000, a pecuniary claim may not be pursued through an order for payment procedure.
The pursuit of a claim for the payment of money should be understood as not including the pursuit of mortgage claims against mortgagees.
No payment order can be issued if a party does not have a known address for service in Hungary.

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

See the answer in Section 1.1.

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

Yes, HUF 30 000 000.

1.1.3 Is the use of that procedure optional or obligatory?

Below HUF 3 000 000 it is mandatory, as indicated in Section 1.1; in all other cases, it is optional.

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

No payment order can be issued if the debtor does not have a known address for service in Hungary.

1.2 Competent court

In order for payment procedures civil law notaries have competence across the country. In order for payment procedures no stipulations may be made in terms of jurisdiction.
Claims submitted orally or on paper are dealt with by the civil law notary to whom the claim was submitted, while electronic claims are assigned automatically to a civil law notary by a computer program.

1.3 Formal requirements

Applications to have an order for payment issued must be submitted either in writing, on the corresponding form, or orally.

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

It is obligatory to use a standardised form for both electronic and paper-based submissions. The form may be downloaded from the website of the MOKK or obtained from the notaries.

1.3.2 Is representation by a lawyer required?

No.

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

The application must include:

- the legal relationship on which the claim is based, the right claimed, and the amount of the principal claim and related charges;
- the starting date of the underlying legal relationship and the due date of the claim;
- the data on the basis of which the claim can be identified.

The application may contain a short presentation of the facts underlying the right claimed and an indication of the supporting evidence.

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

No evidence is taken in order for payment procedures. However, the application may contain a short presentation of the facts underlying the right claimed and an indication of the supporting evidence. This provision does not prevent a civil law notary from examining whether an application for partial exemption from costs, payment in instalments or deferral of payment is well founded.

1.4 Rejection of application

The civil law notary will reject the application if it can be established that

a) the jurisdiction of Hungarian civil law notaries or, in the case of transfer to ordinary civil proceedings, the jurisdiction of Hungarian courts is excluded by law, a binding legal act of the European Union or an international convention, or a foreign court has exclusive jurisdiction;

b) the enforcement of the claimant's claim falls under the exclusive jurisdiction of the courts or other authority;

c) the law provides that no order for payment may be issued;

d) there is an ongoing order for payment procedure between the parties for the same rights and on the same factual basis, or the legal consequences of bringing an action have already arisen, or an effective order for payment or other final ruling has already been made in the case;

e) a party has no legal capacity to act in the case;

f) the claimant does not have an address for service in Hungary when submitting the application for an order for payment, or the claimant's Hungarian address for service ceases to exist after the submission of the application, or service could not be effected on the claimant at the Hungarian address for service specified by the claimant;

g) the claimant requests service by publication of the order for payment;

h) service of the order for payment at the Hungarian address of the defendant has failed repeatedly, except in cases where service is presumed to have taken place;

i) the claimant's application is premature or, for a reason other than limitation, cannot be enforced by a court;

j) the claimant has failed to meet the time limit set by separate legislation for enforcing the claim in civil proceedings;

k) an application submitted by a legal representative does not comply with the requirements for its content laid down in the applicable law or in delegated legislation, or it does not contain the power of attorney of the legal representative, or the costs of the proceedings were not paid;

l) a legal person or another person having an e-administration obligation under the law failed to submit its application by electronic means, with the exception of applications for partial exemption from costs submitted by a natural person with a legal representative;

m) after the court's call on the claimant to remedy deficiencies, the application (or the part required) is not submitted within the specified time limit, or the submitted application is still incomplete, preventing it from being examined, or the claimant has failed to pay in advance the administrator's fee; or

n) the claimant claims procedural costs in a claim under substantive law.

Except in cases where service is presumed to have taken place, if the order for payment could not be served on the defendant, the claimant must be informed and simultaneously requested to notify the defendant's new address for service in Hungary within thirty days. If the claimant provides the data requested, service must be attempted again, and if the repeated attempt is unsuccessful, the application must be rejected for the reason in point h).

If the claimant fails to provide the data requested, or if the data provided by the applicant are incomplete, the application must be rejected for the reason in point m).

The order rejecting the application for a payment order must be served on the claimant and sent to the defendant. The claimant may appeal against the order, without having to send the appeal to the defendant for observations.

1.5 Appeal

The claimant may appeal against the order rejecting the application for an order for payment. Generally, appeals are heard in a non-litigious procedure by the regional court (*törvényszék*) with jurisdiction over the area where the seat of the civil law notary is located, in accordance with the rules on appeals against orders. An appeal may be submitted within 15 days of the notification of the decision. If an application for an order for payment is rejected, the claimant may choose to pursue the claim through another application for an order for payment, a court action, or by other lawful means. In that case, the legal effects of submitting an application persist if the new application for an order for payment or application initiating proceedings is submitted or sent by registered post within thirty days of the date on which the rejection order becomes final, or the claim is pursued through other lawful means within the same time limit. No application for extension will be accepted if this time limit is not met. A new application for an order for payment must quote the reference number of the order rejecting the previous application. An application initiating proceedings must append the order itself.

In other cases, a decision in an order for payment procedure may be subject to appeal if the Act on Order for Payment Procedures or the Code of Civil Procedure allows appeal.

There is no right of appeal against an order for payment, but the defendant may lodge a statement of opposition, as described in Section 1.6.

Since a final order for payment has the same effect as a judgment, an application for its revision may be filed in accordance with the rules laid down in the Code of Civil Procedure. The revision falls within the jurisdiction of the court which would have had jurisdiction as a court of first instance if the procedure had been transferred to ordinary civil proceedings as a result of a statement of opposition. If an application for revision is filed, the court receives the documents of the case on paper from the civil law notary or obtains them electronically from the MOKK's system.

No review lies against a final order for payment.

1.6 Statement of opposition

The defendant may lodge a statement of opposition against the order for payment with the civil law notary within 15 days of its service. Applications submitted by the defendant simply for a deferral of payment or payment in instalments are not considered as a challenge to the order for payment. Such applications may only be submitted within the time limit set for statements of opposition. If the defendant submits in the statement of opposition that the claim being pursued had already been paid before the order for payment was served, the civil law notary invites the claimant at the time of the service of the notification of the statement of opposition to indicate within fifteen days if the claim still exists. If there is a document supporting payment or the payment

transaction has a unique identifier, the defendant must indicate in the statement of opposition the number and date of the supporting document or the details identifying the transaction (transaction identifier, payer, etc.) and the date of the transaction. If the claimant accepts the statement of the defendant or fails to respond, the civil law notary will terminate the procedure. If the claimant contests the statement of the defendant, the order for payment procedure is transferred to ordinary civil proceedings. If, on the basis of the statement of the defendant, the claimant reduces the claim pursued through the order for payment procedure, the court will deal with the reduced claim in the civil proceedings. It should be noted that the order for payment is not considered challenged if the defendant states that the claim being pursued was paid after receiving the order for payment. In that case, the order for payment becomes final on the day following the end of the time limit for lodging a statement of opposition. If the defendant fails to receive the order for payment (it is returned as 'unclaimed') and, for that reason, it must be deemed to have been served, the defendant may lodge a statement of opposition within 15 days of the service of the document implementing the decision. As a condition for this, at the time of submitting the statement of opposition, the defendant must pay to the bailiff the enforcement costs, which were paid in advance by the claimant, and must also provide documentary evidence of this fact to the civil law notary.

1.7 Effect of statement of opposition

A statement of opposition filed within the time limit leads to transfer to ordinary civil proceedings of the part of the order for payment procedure concerned by the statement of opposition.

1.8 Effect of lack of statement of opposition

If an order for payment is not challenged by a statement of opposition within the time limit, it will have the same effect as a final court judgment.

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

If an order for payment is not challenged by a statement of opposition within the time limit, it will have the same effect as a final court judgment.
Consequently, the civil law notary provides a copy of the order for payment with a clause giving it legal effect and has it served on the claimant.

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

The decision is final; however, if the defendant fails to receive the order for payment and, for that reason, it is deemed to have been served under the law, the defendant may lodge a statement of opposition within 15 days of the service of the document implementing the decision.
There is a possibility to apply for the revision of a final order for payment in accordance with the rules laid down in the Code of Civil Procedure, as described above in Section 1.5.

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European payment order - Malta

1 Existence of an order for payment procedure

Maltese law provides for special proceedings with regard to unopposed claims pursuant to Section 166A of Cap 12 of the Laws of Malta (Code of Organisation and Civil Procedure)

1.1 Scope of procedure

This procedure may be used in actions where the debt does not exceed €25,000.

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

Eligible claims are those for the payment of debts which are certain, liquid and due and do not entail performance of an act, and when, as stated, the amount does not exceed €25,000. When the debt is not liquid, the creditor may proceed according to this section if he limits his credit to an amount which does not exceed €25,000 and expressly renounces to any part of his claim that may exceed that amount when liquidated.
The creditor may proceed according to this section only if the debtor is present in Malta and is not a minor or an incapacitated person according to law, and the debt is not due from a vacant succession.

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

Yes, the upper limit is €25,000.

1.1.3 Is the use of that procedure optional or obligatory?

The use of this procedure is optional.

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

No, this procedure can only be used if the debtor is present in Malta.

1.2 Competent court

The competent court for this procedure is the Court of Magistrates, Malta or Gozo (Inferior Jurisdiction), as the case may be.

1.3 Formal requirements

The creditor shall proceed by filing a judicial letter, the contents of which must be confirmed on oath by the creditor, to be served upon the debtor and which shall state clearly the cause of the claim, the reasons why the claim should be upheld, and a statement of facts in support of the claim, failing which it will be null and void. The judicial letter must also include, in order to be valid, an intimation to the debtor that if he does not reply within thirty days from service upon him of the said judicial letter by presenting a note in the record of the said judicial letter rebutting the claim, such judicial letter shall constitute an executive title.

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

No standardised form exists. However it is mandatory that at the beginning of the judicial letter the following words are inserted:
"*This judicial letter is being sent pursuant to Article 166A of Chapter 12, and if you do not reply to it within thirty (30) days, it shall constitute an executive title. Therefore it is in your interest to consult a lawyer or a legal procurator without delay.*"

1.3.2 Is representation by a lawyer required?

Yes, a judicial letter must be signed by a lawyer. However the debtor wishing to answer the said judicial letter to rebut the claim does not need to be represented by a lawyer or legal procurator.

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

The reason for the claim must given in detail. In fact, the judicial letter must include the reason on which the claim is founded, the reasons why the claim should be upheld and a declaration of the factual grounds for the claim, failing which it will be null and void.

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

No, the law does not require the presentation of written evidence regarding the claim in question. However, the law stipulates that there should be a sworn statement of the factual grounds for the claim.

1.4 Rejection of application

This procedural order for payment is not made by an application but by means of a judicial letter. Therefore, the court cannot reject the claim if there is no opposition from the debtor. If the debtor opposes the claim, the creditor would not be able to recoup the amount due to him under this payment order and would thus have to file a lawsuit. It should be noted that when the debtor duly opposes the claim, the payment order cannot be reused against the debtor with regard to the same claim as was contained in the judicial letter served on the debtor.

1.5 Appeal

Appeals are not possible in this procedure. If the debtor opposes the claim, the creditor must file a lawsuit. However, if the debtor does not file his opposition within thirty days from the day of service of the order for payment (judicial letter), that order constitutes an executive title. The debtor, at this stage, can oppose this executive title within twenty days from the first service of an executive title or other judicial act. This executive title is rescinded and declared null if the court is satisfied that:

(i) the debtor was unaware of the said judicial letter because he was not duly notified; or

(ii) the judicial letter did not contain the required elements laid down in the legislation (mentioned above).

1.6 Statement of opposition

When the debtor receives the judicial letter he may reject the creditor's claim.

1.7 Effect of statement of opposition

When the debtor duly opposes the claim, the creditor is unable to pursue this procedure. Note that when the debtor duly opposes the claim, the special procedure described in this section cannot be reused against the debtor with regard to the same claim as was contained in the judicial letter served on the debtor.

1.8 Effect of lack of statement of opposition

In the absence of a statement of opposition, the creditor may continue the procedure to obtain an executive title.

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

A judicial letter filed according to this procedure (and which has not been contested) must be registered. The applicant seeking the registration of the judicial letter qualifying as an executive title must file a legal copy of the judicial letter, including proof of service and a copy of every reply received thereto, if any, with the Registrar of Courts.

Upon receipt of the documents mentioned in sub-article (2) the Registrar must examine the documents presented and must verify whether the debtor has filed a note of reply within the stipulated time and if he is satisfied that the conditions for the registration of the judicial letter as an executive title exist, he shall proceed to register the documents presented in a register, known as the Register of Judicial Letters as Executive Titles, which shall be maintained by the Registrar for the purposes of section 166A.

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, however, an executive title obtained according to the provisions of this section may be rescinded and declared null and without effect if a request is made by means of an application in the Courts of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, filed by the debtor within 20 days from first service of the executive warrant or other judicial act issued under that title and the court is satisfied that:

(a) the debtor was unaware of the said judicial letter because he was not duly notified; or

(b) the judicial letter did not contain all the required elements.

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European payment order - Netherlands

1 Existence of an order for payment procedure

A distinction can be made between the European order for payment procedure and procedures relating to debt-collection and other claims within the Netherlands. For information on the latter please refer to 'Small claims'.

The European order for payment procedure (Regulation (EC) No 1896/2006, which entered into force on 12 December 2008), hereinafter 'EOP', allows uncontested, cross-border claims in civil and commercial matters to be collected by means of a uniform procedure based on standard forms (http://www.overheid.nl/).

A cross-border case is a dispute in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised. The European order for payment procedure has been established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.

The Regulation applies between all EU countries, with the exception of Denmark. The Netherlands introduced the EOP Regulation Implementing Act (*Uitvoeringswet (EBB-Vo)*) of 29 May 2009 to implement the European order for payment procedure in the Netherlands.

The Netherlands does not have a uniform procedure for the collection of uncontested, non-cross-border pecuniary claims. The order for payment was abolished at the end of 1991 with the introduction of the procedure before the cantonal court. Summons proceedings are required for a party to assert rights against a reluctant debtor in such cases. See also 'Small claims' and 'How to proceed?'

The European order for payment procedure has been established for claims in excess of €2 000.

Throughout the procedure the application for a European order for payment is made in writing using standard forms. These forms are available in all official languages under Dynamic forms on the European e-Justice Portal (https://e-justice.europa.eu).

In the Netherlands the District Court (*Rechtbank*) of The Hague has been designated as the competent court for dealing with applications under the European order for payment procedure. The Netherlands has opted only to accept forms presented in Dutch for the purposes of this procedure. The court dealing with an application for a European order for payment will charge court fees. For further information on the applicable rate please refer to http://www.rechtspraak.nl/.

EOP application

An application for a European order for payment is submitted to the District Court of The Hague using application form A (https://e-justice.europa.eu).

If application form A is incomplete, the court will use form B to give the claimant the opportunity to complete or rectify the application within a certain period.

If the application satisfies only some of the conditions set, the court will use form C to propose modifications to the original application to the claimant. The claimant must respond to this proposal within the period set by the court. If the claimant accepts the proposal, the court will issue the European order for payment for the part of the application that is accepted. If the claimant wishes, he or she may try to collect the remaining portion of the claim under national

law. If the claimant fails to respond within the period set by the court or refuses to accept the proposed modifications to his or her original application, the court will reject the original application in its entirety. Provided that the application form satisfies all the requirements, the court will normally issue a European order for payment within 30 days (using form E).

Opposition to the EOP

The court will notify the defendant of the European order for payment by sending it by registered post with acknowledgement of receipt or by means of a bailiff's notification. The defendant will be made aware that the following options are available:

to pay the amount indicated in the order for payment to the claimant or

within 30 days of the order being served on or notified to the defendant, to lodge a statement of opposition using standard form F.

If a statement of opposition is lodged, the European order for payment procedure is terminated. The procedure then continues in accordance with the rules of national procedural law (see also section 1.7). If the defendant fails to lodge a statement of opposition within the set time limit, the court of origin will declare the European order for payment enforceable (using standard form G) and send this declaration to the claimant.

An order for payment that has been declared enforceable in the Member State of origin will be recognised in every Member State and may be enforced in every Member State without the need for a declaration of enforceability.

1.1 Scope of procedure

A European order for payment can be obtained for pecuniary claims in civil or commercial matters that have fallen due and have the character of 'cross-border claims' (see also section 1.1.1). A cross-border claim exists if the creditor and debtor are domiciled in different EU Member States.

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

The material scope of the European order for payment is restricted to civil and commercial matters. The following are excluded from the scope of the European order for payment:

revenue matters;

customs matters;

administrative matters;

matters concerning the liability of the state;

matters in the area of insolvency law, matrimonial property law, inheritance law and social security; and

matters relating to non-contractual obligations (in particular on the basis of unlawful acts), unless they are the subject of an agreement between the parties or there has been an admission of debt or they relate to liquidated debts arising from joint ownership of property.

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

There is no upper limit for the European order for payment procedure or for internal debt-collection procedures.

1.1.3 Is the use of that procedure optional or obligatory?

The European order for payment procedure is optional.

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

If the judgment is intended to be executed in a country outside the EU, whether the order for payment procedure can be implemented and, if so, whether the European order for payment can be enforced will depend on the private international law of that country. In many cases an enforcement order (exequatur) will be required.

1.2 Competent court

In the Netherlands the District Court of The Hague has been designated as the competent court for dealing with applications under the European order for payment procedure. The Netherlands has opted only to accept forms presented in Dutch for the purposes of this procedure. The claimant will be required to pay court fees when the application for a European order for payment is submitted. For the applicable rate please refer to http://www.rechtspraak.nl/.

1.3 Formal requirements

The European order for payment must be issued as quickly as possible and in any case within 30 days of the application being submitted.

An application for a European order for payment is submitted using standard form A (https://e-justice.europa.eu). The Netherlands has opted only to accept forms presented in Dutch.

The application form may be submitted in paper form or using any other means of communication accepted by the court.

On the basis of Article 7(2) of the EOP Regulation the application must state:

(a) the details of the parties and of the court to which the application is made;

(b) the amount of the claim;

(c) if interest is demanded: the interest rate and interest period;

(d) the cause of the action, including a description of the circumstances invoked as the basis of the claim;

(e) a description of evidence;

(f) the grounds for jurisdiction; and

(g) the cross-border nature of the case.

In a European order for payment procedure the claimant must declare that he or she has completed form A truthfully and in good faith. The European order for payment is issued solely on the basis of the information provided by the claimant and is not verified by the court.

The European order for payment is notified to the defendant by registered post with acknowledgement of receipt or by means of a bailiff's notification. The act of returning the acknowledgement of receipt to the court registry allows the court to determine whether the European order for payment can be declared provisionally enforceable. If the order is served by bailiff's notification, the court will engage a bailiff for that purpose.

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

Yes, the use of standard forms is obligatory for a European order for payment procedure. These can be downloaded at https://e-justice.europa.eu.

1.3.2 Is representation by a lawyer required?

No, for the European order for payment procedure representation by a lawyer is not required and the parties do not need to appear before the court. In the case of a debt-collection procedure within the Netherlands, whether representation by a lawyer is required depends on the nature of the procedure and the level of the claim. See also 'Small claims' and 'Bringing a case to court'.

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

The reason for the claim, including a description of the evidence on which the claim is based, must be included on standard form A of the European order for payment procedure, but a more detailed description is not required.

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

In principle, it is not necessary to provide further substantiation of the claim within the framework of a European order for payment procedure. The available evidence should be described on form A.

1.4 Rejection of application

The application will be rejected if it does not satisfy the requirements set. If the application for a European order for payment satisfies only some of the conditions set, the claimant will be given the opportunity to complete or rectify it or to accept the modifications proposed by the court. If the claimant fails to send back his or her response within the time limit set by the court or refuses to accept the court's proposal, the application for a European order for payment will be rejected in its entirety. There is no right of appeal against the rejection of the application. The claimant may, however, still assert his or her claim by submitting another application for a European order for payment or using another procedure provided for by the law of a Member State.

1.5 Appeal

There is no right of appeal. However, the defendant has the option of requesting a review. For further information please see section 1.8. In the case of a procedure within the Netherlands a right of appeal will, in principle, be available.

1.6 Statement of opposition

The defendant may lodge a statement of opposition within 30 days of service or notification of the order for payment. He or she must lodge this objection using standard form F (https://e-justice.europa.eu) and is only required to contest the claim. No further substantiation is required.

1.7 Effect of statement of opposition

If the defendant lodges a statement of opposition in due time (within 30 days) using standard form F, the European order for payment procedure is terminated. The procedure is then continued in ordinary substantive proceedings, unless the claimant opposes a transfer to ordinary civil proceedings in an appendix to the application for a European order for payment. The claimant may also do this at a later stage, but must do so before the order for payment is issued (Article 7(4) of the EOP Regulation).

1.8 Effect of lack of statement of opposition

If the defendant fails to lodge a statement of opposition within the 30day period, the court will use standard form G to declare the European order for payment enforceable of its own motion and will send the enforceable European order for payment to the claimant. The European order for payment that has been declared enforceable will be enforceable in any Member State without the need for a declaration of enforceability. Article 9 of the EOP Regulation Implementing Act offers the defendant the opportunity to lodge an application for a review (see also section 1.8.2).

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

The enforcement of a European order for payment is governed by the national law of the Member State of enforcement, unless the EOP Regulation stipulates otherwise. A copy of the European order for payment, as declared enforceable by the court of origin, must be provided to the court or enforcement authority. This document must satisfy the conditions necessary to establish its authenticity. A translation of the European order for payment into Dutch must also be provided.

During the enforcement phase enforcement may only be refused upon application by the defendant. Such refusal is possible if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country. This earlier decision (or order) must involve the same cause of action and must fulfil the conditions necessary in the Member State of enforcement and it must not have been possible to raise the irreconcilability as an objection in the court proceedings in the Member State of origin.

Enforcement will be refused if the defendant has already paid the amount awarded in the European order for payment. Under no circumstances will the European order for payment be reviewed as to its substance by the court.

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

The European order for payment is final, unless the defendant applies for a review.

This possibility is provided for in Article 9 of the EOP Regulation Implementing Act. This means that, under certain circumstances, the defendant may apply to the court of origin for a review of the European order for payment, even after the 30day time limit for lodging a statement of opposition has expired. This application must be filed within 4 weeks of the order for payment being notified to the defendant, of the exceptional circumstances that prevented an objection ceasing to apply or of the defendant becoming aware that the European order for payment was clearly wrongly issued.

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European payment order - Austria

1 Existence of an order for payment procedure

1.1 Scope of procedure

The Austrian Code of Civil Procedure includes a fully tried and tested order for payment procedure (*Mahnverfahren*) for payment claims. Most payment claims in Austria are processed online in a simplified, fast-track order for payment procedure.

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

The order for payment procedure is limited to payment claims other than those which have to be decided in a special type of 'non-contentious' procedure (*Ausserstreitverfahren*). The order for payment procedure is incompatible with the principle behind the non-contentious procedure, which requires the court to clarify all facts relevant to its decision ex officio, i.e. without an application by a party. As special procedural requirements also apply to cases involving social security law and claims based on cheques or bills of exchange, these cannot be enforced under the order for payment procedure.

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

The order for payment procedure has been limited to amounts in dispute of up to EUR 75,000 since 1 July 2009. Claims for amounts over that limit must be filed under the 'ordinary' civil procedure in the form of preparatory pleadings.

1.1.3 Is the use of that procedure optional or obligatory?

The order for payment procedure is mandatory in Austria for claims up to the limit referred to above.

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

The Austrian order for payment procedure cannot be used if the defendant is domiciled or habitually resident or has its registered office abroad. Such disputes must be settled under the 'ordinary' civil procedure. Depending on the claim, the court with jurisdiction will either ask the defendant to submit a defence within four weeks or set a date for a hearing.

Alternatively, payment claims against defendants resident in another Member State may be enforced under the European order for payment procedure.

1.2 Competent court

Payment claims for amounts of up to EUR 15,000 (since 1 January 2013) must be filed with a District Court (*Bezirksgericht*). Claims for amounts over EUR 15,000 must be filed with a Court of First Instance, unless they come under the special jurisdiction of the District Courts.

Jurisdiction under the Austrian order for payment procedure is governed by the general rules, i.e. there are no special jurisdiction rules. See the fact sheet on the 'Jurisdiction of the courts' for information on Austrian jurisdiction rules. Information on which court has jurisdiction for specific civil cases can be found on the Austrian Federal Ministry of Justice website under 'e-Justice' ('*Gerichtssuche*' (Court search)).
The Vienna District Court for Commercial Matters (*Bezirksgericht für Handelssachen*) has sole jurisdiction in Austria for proceedings under the European order for payment procedure.

1.3 Formal requirements

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

Payment claims must be submitted using a standard form. Different forms are used for order for payment proceedings in Austria depending on whether the payment claim is being enforced under the 'ordinary' order for payment procedure, through order for payment proceedings through a labour court or under the European order for payment procedure. Forms are available to download from the Federal Ministry of Justice website under '*Bürgerservice*' or can be completed online.

1.3.2 Is representation by a lawyer required?

Claimants applying for payment orders for amounts in dispute of over EUR 5,000 must have legal representation. This does not apply in cases which must by law be heard by a District Court (i.e. by a court with subject-matter jurisdiction), regardless of the amount in dispute. In such cases, legal representation is a 'relative' requirement, i.e. parties may act on their own behalf but, if they wish to be represented, they must be represented by a lawyer.
There is no requirement for legal representation under the European order for payment procedure.

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

Requirements governing the contents of an application for a payment order do not essentially differ from the requirements governing claims filed under the 'ordinary' procedure. However, claimants need not substantiate the legal grounds on which the claim is based in an application for a payment order. Nevertheless, the circumstances referred to in support of the claim must be described in sufficient detail to identify the claim and derive a specific demand (i. e. the application has to be 'convincing').

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

The order for payment procedure in Austria is a procedure under which there is no obligation to produce evidence. Therefore no documents need to be submitted in support of the claim in order to apply for a payment order. However, claimants who obtain or who try to obtain a payment order fraudulently, by including false or incomplete information in their application, will be fined under the Austrian Code of Civil Procedure.

1.4 Rejection of application

The court merely carries out a summary evaluation of the application. It does not check that the contents are accurate; it merely assesses the legal merits of the claim (i.e. whether the claim is 'convincing'). If the application for a payment order meets the requirements in terms of form and content (i.e. it contains a specific demand, states the facts from which the demand can be derived, cites evidence and details of jurisdiction and allows the claim to be identified), the court will issue a payment order. There is no provision in the Austrian Code of Civil Procedure for applications for payment orders to be rejected on formal grounds. If the court considers that the requirements for a payment order have not been met, it will immediately initiate 'ordinary' proceedings; it will not reject the application. However, in the case of certain formal shortcomings, the court may first initiate a correction procedure by ordering the claimant to remedy the shortcomings.

1.5 Appeal

As the Austrian Code of Civil Procedure does not provide for applications for payment orders to be rejected and automatically transfers them to the 'ordinary' procedure, there is no need for a right of appeal.

1.6 Statement of opposition

The deadline for objecting to a payment order is four weeks, starting on the date of service of a written copy of the payment order on the defendant. The court cannot extend or shorten this deadline.
Objections to payment orders granted by a Court of First Instance (in cases where the amount in dispute is between EUR 15,000 and EUR 75,000) must take the form of a defence. This means that the objection must contain a specific demand and a description of the facts and circumstances in support of the objection, together with evidence in support of the defendant's assertions. Legal representation is mandatory for the purpose of lodging objections before the court.
Legal representation is not mandatory for the purpose of lodging an objection in proceedings before a District Court (i.e. for amounts in dispute of up to EUR 15,000 or, if the court has subject-matter jurisdiction, up to EUR 75,000). For written objections, it suffices in such proceedings for the defendant to send a signed letter to the court which granted the payment order, stating that he/she intends to lodge an objection to the payment order. There is no requirement, as in proceedings before a Court of First Instance, for the defendant to substantiate his or her objection. The defendant may also register an objection orally at the court which granted the payment order or at the District Court in the district where he/she is resident.

1.7 Effect of statement of opposition

If the defendant lodges an objection in time, the payment order lapses and the court automatically transfers the appeal to the 'ordinary' procedure and hears the allegations in the claim and the objections to them.

1.8 Effect of lack of statement of opposition

The order for payment procedure in Austria is a one-step procedure. If the defendant does not contest the payment order or fails to do so on time, it automatically becomes enforceable without the need for another application by the claimant. There is therefore no provision in law for a decision by a second court.

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

The court confirms of its own motion that the payment order is enforceable. The claimant can use a certified copy of the payment order to initiate enforcement proceedings against the defendant.

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

Payment orders issued under the Austrian order for payment procedure can only be contested by lodging an objection. The defendant has no other rights of appeal. The decision on costs contained in the payment order may be contested by the claimant and the defendant within 14 days of service in an appeal on costs (*Kostenrekurs*). The defendant can claim for serious irregularities in service of the payment order at any time, by applying for the confirmation of enforceability to be cancelled. Defendants who were prevented by unavoidable and unforeseeable events from lodging an objection on time can apply, within 14 days of removal of the obstacle which caused them to miss the deadline for objection, for the previous position to be restored.

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European payment order - Poland

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 court issues an order for payment if the claimant purses a money claim or another, substitute performance.

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

An order for payment may be issued irrespective of the amount of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

The procedure is optional. The court issues an order for payment at the written request of the claimant raised in the statement of claim.

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

An order for payment procedure cannot be instituted if the order for payment cannot be served on the defendant in Poland.

1.2 Competent court

The order for payment procedure is subject to the jurisdiction of district (*rejonowy*) and regional (*okręgowy*) courts.

1.3 Formal requirements

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

There is no standardised form.

1.3.2 Is representation by a lawyer required?

It is not mandatory to be represented by a lawyer (*przymus adwokacki*) in an order for payment procedure.

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

The statement of claim should specify the claim precisely and set out the factual circumstances justifying the claim.

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

Circumstances justifying the claim must be proven by enclosing the following documents with the statement of claim:

a) an official document;
b) a bill accepted by the debtor;
c) a demand for payment addressed to the debtor and the debtor's written statement of acknowledgment of the debt;
d) a demand for payment accepted by the debtor, returned by the bank and unpaid due to the lack of funds in the bank account.

The court also issues an order for payment against the obligor under a properly completed promissory note, cheque, warrant or IOU, the authenticity and content of which is beyond doubt.

1.4 Rejection of application

The court will reject the statement of claim:
if a judicial procedure is not permissible;
if the case for the same claim between the same parties is pending or has already been finally adjudged;
if one of the parties has no capacity to be a party to legal proceedings or if the claimant has no capacity to carry out procedural acts and is not represented by a statutory representative, or if the composition of the governing bodies of the claimant organisational unit is deficient to an extent that prevents it from acting.

1.5 Appeal

See paragraph 1.6.

1.6 Statement of opposition

A written statement of opposition is to be lodged with the court that issued the order for payment. In the statement, the respondent should specify whether they are opposing the order in its entirety or in part and present the pleas in law, which must be submitted before entering the dispute concerning the substance of the case, failing which the right to raise them will be lost, as well as the factual circumstances and evidence. The court will disregard assertions and evidence submitted late, unless the party shows that they were not at fault for the failure to submit them as part of the statement of opposition or that allowing late assertions and evidence will not delay hearing the case or that other exceptional circumstances apply.

1.7 Effect of statement of opposition

If a statement of opposition has been submitted correctly, the judge sets the date for the hearing and orders the statement to be served on the claimant.

1.8 Effect of lack of statement of opposition

Once issued, an order for payment constitutes a preservation order (*tytuł zabezpieczenia*) and can be enforced without having to be declared enforceable.

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

After the expiry of the time limit for submitting a statement of opposition, the order for payment becomes enforceable without further formalities.

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

An order for payment issued under the order for payment procedure is not open to appeal.

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European payment order - Portugal

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 order for payment procedure applies to:

• Financial obligations arising from contracts not exceeding €15 000 pursuant to Article 1 of Decree-Law No 269/98 of 1 September 1998.

• Regardless of value, late payment in commercial transactions ('a transaction between companies or between companies and public bodies for the purpose of supplying goods or providing services in exchange for remuneration'), pursuant to Article 10(1) of Decree-Law No 62/20213 of 10 May 2013.

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

For claims arising from contracts, there is an upper limit of €15 000.

For claims arising from commercial transactions, there is no upper limit.

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?

Yes, the legal rules on the order for payment procedure apply to cases where the defendant lives outside Portugal.

1.2 Competent court

In Portugal, the application for a payment order can be lodged with:

The registry of the court of the place of performance of the obligation (Article 8 of the Rules for Proceedings (*Regime de Procedimentos*) annexed to Decree-Law No 269/98 of 1 September 1998);

The registry of the court of the debtor's domicile (Article 8 of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998);

The registry of the National Payment Orders Office (*Balcão Nacional de Injunções*) (BNI) – see the contact details here .

1.3 Formal requirements

The formal requirements and content of the application for a payment order are set out in Article 10 of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998);

As regards the format of the application for a payment order, Article 5 of Ministerial Implementing Order No 220-A/2008 of 4 May 2008 provides for the following formats:

1) In electronic format, by filling in and sending the form available in the CITIUS IT system, or by sending the electronic file via CITIUS.

2) On paper, delivered to the registry.

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

Yes, an obligatory form is provided for under Ministerial Implementing Order No 21/2020 of 28 January 2020. The form can be downloaded by clicking on this link.

The court registries competent to receive the paper application for a payment order can make the standard form available to individuals on request.

The electronic form is available to lawyers and solicitors via CITIUS.

1.3.2 Is representation by a lawyer required?

Representation by a lawyer is not compulsory.

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

In the application for a payment order you must set out the facts underlying your claim in accordance with Article 10(2)(d) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998.

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 necessary to present written evidence of the claim at issue.

1.4 Rejection of application

The application for a payment order may be rejected on the grounds set out in Article 11(1) of the Rules for Proceedings annexed to Decree-Law No 269 /98 of 1 September 1998.

1.5 Appeal

An appeal against a decision to reject an application for a payment order may be lodged with the judge or, where the court has more than one judge, with the duty judge, in accordance with Article 11(2) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998.

1.6 Statement of opposition

The time limit for opposing the payment order is 15 days, pursuant to Article 12(1) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998

1.7 Effect of statement of opposition

If the defendant challenges the order, the case is then transferred back to the ordinary cases, taking the form of a special or ordinary declaratory action in accordance with the cases provided for in Article 3 of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998. and Article 10 (2) and (4) Decree-Law No 62/2013 of 10 May 2013.

1.8 Effect of lack of statement of opposition

If, after being duly notified, the defendant does not submit a statement of opposition, the registrar attaches the following words to the application for a payment order: 'This document has enforceable effect' (*'Este documento tem força executiva'*), as laid down in Article 14(1) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998.

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

Once the enforcement clause has been attached, the registrar makes the order available to the applicant, preferably by electronic means (Article 14(5) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998).

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

An appeal against refusal of enforceability can be brought before the court, in accordance with Article 14(4) of the Rules for Proceedings annexed to Decree-Law No 269/98 of 1 September 1998).

Applicable legislation

Decree-Law No 269/98 of 1 September 1998 – Proceedings Compliance with Obligations arising from Contracts – Payment Order

Decree-Law No 62/2013 of 10 May 2013 – Measures against late payment in commercial transactions

Ministerial Implementing Order No 220-A/2008 of 4 March 2008 – National Payment Orders Office

Ministerial Implementing Order No 21/2020 of 28 January 2020 – Model payment order application

Notice:

The European Judicial Network-Civil Contact Point, the courts and other entities and authorities are not bound by the information contained in this factsheet, which may be subject to changes in interpretation by the case-law. Although the factsheets are updated on a regular basis, it is still necessary to read the legislation in force.

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European payment order - Romania

1 Existence of an order for payment procedure

The order for payment procedure is provided for in Articles 1014-1025 of the new Code of Civil Procedure entered into force on 15 February 2013.

1.1 Scope of procedure

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

The order for payment procedure applies to unquestionable, liquidated and payable claims corresponding to obligations to pay certain amounts of money under a civil agreement, including agreements concluded between a professional and a contracting authority, ascertained in a document or established under a statute, a regulation or another document, acknowledged by the parties with a signature or by other means admissible under the law. The scope of this Section does not include claims made by a body of creditors under insolvency proceedings.

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?

The order for payment procedure is optional and the interested party can make a request to the court under general provisions.

The order for payment procedure is a special procedure, which is far more simple than the procedure provided for by generally applicable law and which allows the creditor to obtain an enforceable title under conditions which differ from those set out in the Code of Civil Procedure.

Also, where the debtor's objection to the order for payment claim is justified, the court may reject the creditor's claim in a final judgment.

The creditor may file a legal action under generally applicable law if the court rejects the order for payment claim, if the court issues an order for payment for part of the claims — in this case, a legal action can be filed under generally applicable law in order to oblige the debtor to pay the remaining debt — or if the order for payment was annulled.

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

Yes. The new Code of Civil Procedure makes no distinction in regard to the defendant's residence, the order for payment procedure being applicable whether or not the defendant lives in another Member State or in a third country.

1.2 Competent court

The order for payment claim may be filed to the court which is competent to judge the case on its merits in the first instance. In the case of the order for payment, the judge verifies the competence of the court on their own initiative.

Is this procedure governed by the general rules on the competence of courts (a link to this sheet could be included in this case) or is it subject to different principles?

The competence for the settlement of the order for payment claims is established in accordance with the general rules in matters of competence of courts. Claims with assessable monetary value of up to RON 200 000 fall under the competence of district courts. Claims with assessable monetary value of at least RON 200 000 fall under the competence of tribunals.

The competence rule in the special procedure for orders for payment is supplemented by the general rules of competence according to value.

1.3 Formal requirements

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

There is no type/standardised form, however the creditor – claimant must comply with minimum formal rules for their claim, which must include a certain number of details, namely: the creditor's name and domicile or, where applicable, their designation and registered office; the debtor's name and domicile as a natural person and, where the debtor is a legal person, their designation and registered office, and, where applicable, the registration certificate number from the trade register or from the register of legal entities, the fiscal code and the bank account; the amounts due; the facts and legal grounds for the payment obligations, their reference period, the due date for payment and any other element that is needed in order to establish the claim.

At the same time, the contract or any other document will be annexed to the claim, showing the amounts due, and the proof of service of the order for payment on the debtor. As regards the service of the order, the creditor must serve the order on the debtor, through the bailiff or in a registered letter, with declared content and acknowledgment of receipt, whereby the debtor is required to pay the amount due within 15 days from the receipt of that notification. This order discontinues the limitation period.

The claim and the documents annexed thereto are submitted in copy in the number of parties, plus one for the court.

1.3.2 Is representation by a lawyer required?

No, representation by a lawyer is not required, but it is recommended.

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

The minimum content of the claim lodged is provided for by the law. The creditor – claimant must indicate: the amount being claimed; the facts and legal grounds of the payment obligation and their reference period; the due date for payment; any other elements needed in order to establish the claim.

If the parties did not establish the level of the interest rate for late payment, the reference interest rate set by the National Bank of Romania will be applied. The reference interest rate in force on the first calendar day of the semester is applicable over the entire semester. The claim generates interest as follows:

for contracts concluded between professionals, from the date when the claim became payable;

for contracts concluded between professionals and a contracting authority, without the need for the debtor to be informed that payment is overdue: if a due date was set in the contract, from the day following that due date; if a due date is not set in the contract: 30 days after the debtor has received the invoice or, if this is questionable, 30 days after acceptance of goods or provision of services or, if the order for payment was served before the receipt of goods /services, on the expiry of a 30-day period after the receipt of goods/provision of services; should the law or the contract provides for an acceptance or control procedure, enabling certification of conformity of the goods or services concerned, and the debtor received the invoice or order for payment on the control date or before that date, on the expiry of a 30-day period from this date;

in other cases, from the date when the debtor's payment was or is lawfully declared overdue under the law.

The creditor may claim additional damages for all the expenses incurred for the recovery of the amounts as a result of the debtor's failure to meet their obligations on time.

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

Yes, the contract or any other document standing as proof for the amounts due are annexed to the request (invoice, cashier receipt, hand-written receipt etc.). The proof of the service of order on the debtor is to be annexed to the claim, failing which the request will be deemed inadmissible.

For the settlement of the claim, the judge summons the parties, in accordance with the provisions on urgent matters, in order to provide explanations and clarifications and to insist on the debtor's execution of the payment due or to have the parties reach an agreement on the methods of payment. The writ of summons is to be served to the party concerned ten days before the hearing date. The creditor's claim and the documents submitted thereby are to be

annexed to the writ on the debtor in a copy as proof of the claim. The writ is to indicate that the debtor is bound to file any objection at least three days before the hearing date, specifying that, in the event of failure to offer any objections, the court may consider, with regard to the circumstances of the case, that this is a recognition of the creditor's claims. The claimant will not be informed of the objection, but will become aware of its contents from the case file.
If the creditor declares that they have received the due payment, the court acknowledges this circumstance in a final judgment, declaring the case closed. When the creditor and the debtor have reached an agreement on the payment, the court acknowledges this fact and issues an expeditious decision. The expeditious order is final and deemed an enforceable title.
Where the court, having verified the claim against the submissions, and the declarations of parties, has found that the creditor's claims are justified, it will issue an order for payment indicating the amount and the deadline for payment. If the court, having reviewed the evidence in the case, has found that only part of the creditor's claims are justified, it will issue the order for payment only for that part, also determining the deadline for payment. In this case, the creditor may file a legal action under generally applicable law in order to bind the debtor to pay the remaining claim. The deadline for payment will be at least ten days and will not exceed 30 days from the date of service of the order. The judge will not set another deadline for payment, unless the parties have agreed to this. The order will be handed over to the parties present or served on each party as soon as possible, in accordance with the law.
Where the debtor does not challenge the claim by presenting objections, the order for payment will be issued within not more than 45 days from the date when the claim was lodged. This time limit does not include the period needed to serve procedural documents and the delay caused by the creditor, including as a result of an amendment or completion of the claim.

1.4 Rejection of application

If the debtor challenges the claim, the court reviews whether the claim is justified based on the documents on file, and on the explanations and clarifications provided by parties. If the debtor's defence is justified, the court will reject the creditor's claim in a judgment. If the defence arguments brought by the debtor on the merits of the case entail handling other evidence than the existing evidence, and the evidence in question would be lawfully admissible under the standard procedure, the court will reject the creditor's claim for an order for payment in a judgment. Subsequently, the creditor may file a legal action under generally applicable law.

1.5 Appeal

The debtor may file an action for annulment of the order for payment within 10 days from the date when that order was handed over to or served on them. Within the same time limit, the creditor may also file an action for annulment against a judgment refusing the order and against a partial order for payment. The claims of the action for annulment may only be non-compliance with the requirements for the issue of the order for payment and, where applicable, the causes underlying the extinction of the obligation after the issue of the order for payment. The action for annulment is to be settled by the court that delivered the order for payment, with a panel of two judges. The action for annulment does not suspend enforcement. Suspension may however be granted at the debtor's request, but only against a security deposit, the amount of which will be set by the court. If the competent court admits the action for annulment totally or partially, it will annul the order wholly or partially, where appropriate, delivering a final judgment.
Where the creditor has filed an action for annulment and the competent court has admitted that action, it will deliver a final judgment whereby the order for payment will be issued.
The decision rejecting the action for annulment is final.

1.6 Statement of opposition

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1.7 Effect of statement of opposition

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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 order for payment is enforceable even if challenged with an action for annulment and acquires provisionally the force of res judicata until the settlement of the action for annulment. The action for annulment does not suspend enforcement. Suspension may be however granted at the debtor's request only against a security deposit, the amount of which will be set by the court. The order for payment becomes final if an action for annulment has not been filed by the debtor or has been rejected. If the competent court admits the action for annulment filed by the creditor, it will deliver a final judgment whereby the order for payment will be issued.
The interested party may challenge the enforcement of the order for payment under generally applicable law. The objection can only invoke irregularities in regard to the enforcement procedure and causes leading to the extinction of the obligation arising after the order for payment has become final.

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

Please see the response for Question 1.8.1.

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European payment order - Slovenia

1 Existence of an order for payment procedure

Slovenia recognises the following two payment order procedures:
– a payment order procedure regulated by the Articles 431 to 441 of the Civil Procedure Act (Zakon o pravdnem postopku, ZPP)
– an enforcement procedure based on an authentic document (invoice, bill of exchange or a 'cheque protest', accompanied, where appropriate, by return invoices in order to establish a claim, a public document, an extract from accounting records certified by the responsible person, an authenticated private document, a written statement of income from employment) before the Local Court in Ljubljana (Okrajno sodišče v Ljubljani), where the court, upon creditor's proposal, issues an enforcement order by way of an automated procedure and based on an authentic document within 3–4 days, by which:
a) the debtor is obliged to pay the amount required by the creditor (payment order or the condemnatory part of the enforcement order);
b) enforcement against the debtor's property indicated in the creditor's claim is authorised, provided that the debtor does not file an objection to the decision (authorisation of enforcement) within 8 days;
c) the debtor is obliged to pay the costs of proceedings (see paragraphs 23, 40c and 41 of the Enforcement and Securing of Claims Act (Zakon o izvršbi in zavarovanju, ZIZ)).

1.1 Scope of procedure

The payment order procedure is a special, fast-track procedure for enforcing a pecuniary claim that has fallen due, where the claim is supported by a document which the law determines as having greater evidential value (authentic document). A payment order is issued in both domestic and cross-border cases.

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

A claim that forms the basis for a payment order may only contain the pecuniary liability (pecuniary claim). Only claims that are contractual or non-contractual liabilities and that have been nominally determined may form the subject of a claim. One exception is the notice of termination of commercial premises and the consequent emptying of stocks, where rules apply under a special procedure to issue a payment order. This exception is laid down in Article 29 of the Commercial Buildings and Premises Act (Zakon o poslovnih stavbah in poslovnih prostorih), which states that, on the basis of a notice of termination given by a lessor and a request to vacate a commercial building or commercial premises, a court shall issue an order to vacate the commercial building or commercial premises if it ensues from the notice of termination or request and from the tenancy agreement or the evidence referred to in the preceding Article that the lessor has the right to terminate or request that the commercial building or commercial premises be vacated.

Only contractual claims based on an authentic document may be the subject of payment order procedures.

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

There is no upper limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

Under the provisions of the Civil Procedure Act, a court also issues a decision on issuing a payment order ex officio when a claimant in an action has not made application to this effect but the conditions for issuing a payment order have been met, i.e. the claimant files an ordinary action and does not propose that a payment order be issued. The issuing of a payment order is therefore obligatory for a court (a payment order is issued by an associate at the court) and does not depend on a claim from a claimant if the legally prescribed conditions for its issuing have been met.

The creditor may choose whether to file a mandatory payment action and propose a payment order be issued pursuant to Article 431 of the ZPP or file an electronic application for enforcement pursuant to Article 41 of the ZIZ, on the basis of which the central court issues a payment order by way of an automated procedure.

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

Yes.

1.2 Competent court

In Slovenia, jurisdiction to decide on a proposal to issue a payment order is determined in the same way as with other actions; this means that jurisdiction ratione materiae for issuing a payment order is held by district courts (okrožna sodišča) as well as local courts (okrajna sodišča). Jurisdiction ratione materiae is determined with regard to the value of the dispute (or with regard to the nature of the case, e.g. in commercial cases). Local courts have jurisdiction to adjudicate in disputes on property claims when the value of the item in question does not exceed EUR 20 000. District courts have jurisdiction to adjudicate in disputes on property claims when the value of the item in question exceeds EUR 20 000. Only district courts have the jurisdiction to hear and adjudicate on cases relating to commercial law at the first instance. Commercial disputes are those in which one party in a civil case is a legal person (company, institution, collective). Commercial disputes also include cases in which one of the parties is the state or another self-governing local community, such as a municipality.

Territorial jurisdiction determines which of the courts with jurisdiction ratione materiae have jurisdiction to rule on a specific case. The general rule regarding territorial jurisdiction stipulates that in an action filed against a natural or legal person, the action must be filed with the court covering the area in which the defendant has permanent residence or in which the legal person has its registered office. If it is a case against a non-national natural or legal person, the court with general territorial jurisdiction is the court covering the area in which the natural person has residence in Slovenia or in which the legal person has its branch office. Slovenian law also has a rule on special territorial jurisdiction, which is determined in relation to the subject of the dispute and parties thereto.

For an enforcement procedure based on an authentic document in which payment orders are also issued, the Local Court of Ljubljana has exclusive jurisdiction.

For more on this, see the replies under ‘Bringing a case to court’.

1.3 Formal requirements

Under Article 431 of the ZPP, the two conditions applying to the issuing of a payment order are as follows: the claim must refer to the pecuniary claim fallen due and there must exist an authentic document from which the claim derives. An action or motion to issue a payment order must contain all the elements that every action is obliged to contain: a reference to the court, the names and permanent or temporary residence of the parties, the names of the legal representatives or agents, a specific request setting out the main subject of the case and the side claims, the facts supporting the claimant’s request, evidence substantiating those facts, the value of the dispute and a signature. In addition, the authentic document (original or a certified copy) must be attached to the action.

The condition for issuing a payment order, which is contained in an enforcement order based on an authentic document (Article 41 of the ZIZ) is that an application for enforcement based on an authentic document must be filed electronically, a court fee must be paid and the application for enforcement based on an authentic document must include the following:

– names of the creditor and debtor including their identification data (e.g. tax number, personal identification number or date of birth);
– authentic document;
– debtor’s liability;
– means and subject of enforcement;
– other information necessary, depending on the subject of enforcement, for the enforcement to be carried out; and
– request that the court order the debtor to pay the amount claimed, including costs incurred, within eight days, and in cases relating to bills of exchange and cheques, within three days after the order is served.

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

Under Article 431 of the ZPP, there is no requirement in Slovenia to submit a motion to issue a payment order on a standardised form; indeed, no such form exists. The motion must contain the legally defined elements referred to above under point 1.3 (obligatory elements of an action).

In the process of issuing a resolution on enforcement based on a credible document (Article 41 of the ZIZ) containing a payment order, the application must be filed on a standard form (Article 29(2) of the ZIZ, the Rules on forms, types of enforcement and the course of the automated enforcement procedure) electronically (https://evlozisce.sodisce.si/esodstvo/index.html) or in writing.

1.3.2 Is representation by a lawyer required?

There is no requirement for parties to be represented by a lawyer in proceedings to issue a payment order (nor is this required in proceedings under Article 431 of the ZPP, nor under Article 41 of the ZIZ).

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

Under Article 431 of the ZPP, a mandatory payment action must state the basis and amount of debt, and proof that enables the truth of the claims made therein to be established; it must also indicate the amount and the currency, as well as the date the pecuniary claims fell due. If interest is being claimed, that interest must also be precisely defined (interest rate and the period for which the claim is being made). The due date of the claim must be clear from the authentic document.

In an enforcement based on an authentic document, the claim does not need to be further substantiated; an indication of an authentic document is sufficient (Article 41 of the ZIZ).

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

Yes, the original or a certified copy of the authentic document must be attached to the action or the motion to issue a payment order. There is no requirement to attach the original or a certified copy of the authentic document to issue a payment order in a commercial dispute. It is sufficient for a copy of this document to be certified by an authorised body of a legal person.

An authentic document is a document that does not have the quality of an executory title, but expresses a high degree of probability that the claim exists. A document is authentic if it is determined as such by the Civil Procedure Act or another act. Under the Civil Procedure Act, authentic documents are: public documents, private documents on which the signature of the debtor has been authenticated by a body authorised for authentication, bills of exchange and cheques, with the objection and the return invoices if these are required to give rise to a claim, extracts from authenticated books of account, invoices, and documents that have the character of a public document under special regulations. A foreign document that meets the conditions for use in Slovenia may also constitute an authentic document.

Exception: without the submission of an authentic document, the court issues a payment order against a defendant when the claim relates to a pecuniary claim that has fallen due that does not exceed EUR 2 000 and the action indicates the basis and level of the debt, and proof that enables the truth of the claims made therein to be established, where this exception does not apply to commercial disputes (Article 494 of the ZPP).

In an enforcement procedure based on an authentic document where a payment order is issued, it is not actually possible to submit an authentic document (since the information system does not allow this); but a declaration regarding the authentic document is sufficient (Article 41 of the ZIZ).

1.4 Rejection of application

The court will reject a payment order request if the preconditions for its issuing are not met, i.e. a pecuniary claim fallen due and the existence of an authentic document from which the claim derives.

Where the court does not dismiss the motion to issue a payment order, it continues the procedure on the basis of an action.

The Local Court in Ljubljana rejects the application for enforcement based on an authentic document if the claim is not due or if the defendant is bankrupt.

1.5 Appeal

No appeal is permitted against a decision dismissing a motion to issue a payment order, neither may the claimant contest this decision by means of an appeal against the judgement.

The legal remedy available to the defendant against a payment order issued is an objection. The deadline for an objection is eight days from the serving of a payment order on a defendant (three days in the case of disputes involving bills of exchange and cheques). An objection must be substantiated, otherwise it shall be deemed to have no grounds. An appeal may be lodged against the decision in which the court rules on the objection.

Where a defendant contests a payment order only with regard to the ruling on costs, this ruling may only be contested by means of an appeal against the decision.

The claimant may appeal against the Local Court in Ljubljana's decision rejecting the application for enforcement based on an authentic document within 8 days, the appeal being ruled on by the Higher Court in Ljubljana.

1.6 Statement of opposition

The defendant may issue an objection against the claimant's claim. An objection must be justified. The objection must state the facts that support the objection and adduce evidence, otherwise it shall be deemed to be unfounded (Article 435(2) of the ZPP). The defendant must therefore state in the objection the legally significant facts, i.e. the facts based on which the claim could be dismissed (if they are proved to be true). Assertions of these facts must be concrete and specific.

An objection may be lodged within 8 days against a Local Court in Ljubljana's decision granting an application for enforcement based on an authentic document and issuing an enforcement order based on an authentic document. An objection must be justified. An objection is considered justified when the debtor has indicated the facts based on which the claimant's claim could be dismissed (e.g. that the debt had been paid) and adduced evidence supporting the facts alleged in the objection (Article 61 of the ZIZ). The Local Court in Ljubljana decides on an objection.

1.7 Effect of statement of opposition

Where a court does not reject a defendant's objection as having been filed too late or being incomplete and unlawful, or does not dismiss it, it shall continue the procedure in accordance with the action.

If a defendant submits a justified objection, the court issues a decision annulling the payment order and, after the decision has become final, proceeds with the main issue.

The parties may state new facts and submit new evidence at the first main hearing, while the defendant may also make new objections regarding the contested part of the payment order.

If the Local Court in Ljubljana upholds an objection against an enforcement order based on an authentic document, the court annuls the part of the enforcement order permitting the enforcement and naming the executor, as well as the acts of execution performed (i.e. the court does not annul the payment order, but rather decides whether the payment order is to remain in force or whether it is to be annulled in a later judgment). The court then proceeds with the proceedings as in the case of an objection to a payment order; if it does not have jurisdiction, it declares that it is not competent and the case is referred to the competent court. In doing so, the court takes into account the agreement on territorial jurisdiction if the creditor claimed and specified it in the application for enforcement, or if the debtor claimed it in the objection against the enforcement order and submitted it to the court. An application for enforcement based on an authentic document that served as the basis for issuing an annulled enforcement order is considered an action in civil proceedings (Article 62 of the ZIZ).

1.8 Effect of lack of statement of opposition

Unless the opposing party lodges an objection or an appeal, the decision or the payment order shall become final and enforceable.

If the debtor does not object to an enforcement order based on an authentic document within 8 days, the enforcement order based on an authentic document becomes final and enforceable (this also applies to the payment order), and the enforcement of the creditor's claim will result in an enforcement against the debtor's objects of enforcement stated in the claimant's application for enforcement.

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

The claimant must explicitly request the court to issue a certificate of enforceability. A court ruling is enforceable if it becomes final and if the deadline for voluntary compliance with the obligations has passed (Article 19(1) of the Enforcement and Securing of Claims Act).

The Local Court in Ljubljana issues a certificate of finality and enforceability of an enforcement order based on an authentic document ex officio and sends it to the creditor and (together with the enforcement order) to all those responsible for the enforcement of the order (the executor, the bank, the employer, etc.).

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

A payment order against which no objection has been lodged, or where an objection has been refused or dismissed, shall become final and may no longer be contested by means of an appeal.

A final payment order may be contested by means of extraordinary legal remedies.

A final payment order based on an authentic document containing a payment order may be contested by means of extraordinary legal remedies (motions for reopening a case and appeals on a point of law, Article 10 of the ZIZ).

Related links

http://www.pisrs.si/Pis.web/pregledPredpisa?sop=1998-01-2303

http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212

http://www.pisrs.si/Pis.web/

https://www.uradni-list.si/

http://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/preciscenaBesedilaZakonov

http://www.sodisce.si/

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European payment order - Slovakia

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.)?

An order for payment comes under so-called summary court procedures. The procedure is regulated in Section 265 and ff. of Act No 160/2015, Code of Civil Procedure (*zákon č. 160/2015 Z.z. Civilný sporový poriadok*) (hereinafter referred to as “CCP”).

An order for payment may only be issued if a claimant is seeking to exercise a right to the payment of a financial amount on the basis of facts claimed by the claimant about which the court has no doubts, in particular if those facts are documented by documentary evidence. A decision on a claim may be rendered in the form of an order for payment issued without requesting the defendant’s statement and without ordering a hearing. In the decision, the defendant is mandated to pay the financial amount or a part thereof and cover the costs of the procedure within 15 days of service, or to file a statement of opposition within the same time limit. For the purpose of order for payment proceedings, a statement concerning the costs of procedure is deemed to constitute a ruling.

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

No, there is not.

1.1.3 Is the use of that procedure optional or obligatory?

The use of the procedure is optional, the purpose being to deal with the matter in an efficient and cost-effective manner. The issuance of an order for payment is not dependent on the claimant’s explicit request; a court may issue an order for payment even if the claimant asked the court to decide by means of a judgement.

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

If an order for payment is served abroad, the European order for payment. The application for the issuance of a European order for payment is submitted on Form A pursuant to the Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure.

1.2 Competent court

The court competent in first-instance proceedings is the district court. Proceedings take place at the court that has substantive and local jurisdiction.

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 form in these proceedings is not mandatory, but if the claimant submits, together with his application for the initiation of proceedings, an order for payment on a form published on the website of the Ministry of Justice of the Slovak Republic (*Ministerstvo spravodlivosti Slovenskej republiky*) https://www.justice.gov.sk, then, provided that the statutory conditions for the issuance of an order for payment have been met and the court fee has been paid, the court will issue an order for payment within 10 business days of the day on which the conditions are met.

1.3.2 Is representation by a lawyer required?

Representation by a lawyer in these proceedings is not required.

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

These are summary proceedings in which the case is based only on the facts claimed by the claimant. It is therefore necessary that the facts underlying the right claimed by the claimant be sufficiently documented, and that the performance requested must be permitted by objective law.

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

A claim must be documented, for example, by a contract. In all cases, proof by which the claim is supported must be enclosed with claims.

1.4 Rejection of application

If the court does not issue an order for payment, the procedure described in Section 168 (1) CCP is followed, i.e., the procedure is as it would be in any other dispute.

If a claim is lodged for the payment of a financial amount on the basis of a consumer contract and the defendant is a consumer, the court will not issue an order for payment if the contract or other contractual documents contain unconscionable terms (Section 299 (2) CCP).

1.5 Appeal

A remedy is sought in proceedings contesting the issuance of an order for payment by means of a statement of opposition. An appeal may be employed in seeking a remedy only against the decision concerning the costs of the procedure. A court decides on it summarily, i.e., without a hearing.

1.6 Statement of opposition

A statement of opposition employed in seeking a remedy is to be filed within 15 days of its service at the court that issued it. It must be supported with reasons. A court fee is paid for the filing of a statement of opposition employed in seeking a remedy.

1.7 Effect of statement of opposition

As soon as even one defendant files a statement of opposition within the time required with relevant justification, the order for payment is set aside and the court will order a hearing.

1.8 Effect of lack of statement of opposition

Upon the expiration in vain of the time limit for the submission of a statement of opposition, the order for payment takes full effect.

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

An order for payment must be made legally effective – it must bear a stamp of validity and enforceability, which is provided at the court that issued the order for payment. Subsequently, an application for execution must be filed.

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

If a statement of opposition is not filed within the statutory time limit for seeking a remedy against an order for payment, the order has the same effect as an enforceable judgement. An extraordinary appeal may be filed to challenge an enforceable decision within the meaning of the OSP, but only provided that all statutory requirements have been met. The possibility of filing an extraordinary appeal depends on the circumstances and facts of each case.

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European payment order - Finland

1 Existence of an order for payment procedure

In Finland there is a special order for payment procedure, which is designed specifically for collecting uncontested debts. In these cases the defendant can be ordered to pay his or her debt to the claimant by a so-called default judgment.

Actions can also be brought using an electronic application for a summons, which is submitted using an electronic form on the website of the Finnish judicial administration (https://oikeus.fi/en/). For more information, see “Automatic processing – Finland”.

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 can be used for all types of pecuniary claims that parties can agree on contractually between themselves.

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

No. There is no upper or lower limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

The procedure is voluntary.

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

There is, in principle, no rule that stipulates that the defendant must live in Finland. However, a Finnish court must have jurisdiction for it to be possible to apply the procedure. For example, under the Brussels I Regulation, the forum is determined according to the main rule so that a case involving a demand for payment must be processed in a court of the defendant’s place of residence.

1.2 Competent court

The competent court in these matters is the general court of first instance. In Finland, these courts are known as district courts (*käräjäoikeus*). The general rule is that the competent court is the district court of the locality where the defendant has his or her place of residence. The normal provisions concerning jurisdiction apply to the order for payment procedure (see “Jurisdiction – Finland”).

1.3 Formal requirements

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

Applications for a summons must be in writing and they must include specific details: the claim, the grounds (briefly), any claim for the costs of bringing the action and contact details for the claimant and the defendant. Applications for a summons must be signed.

No forms exist on a national level. Certain district courts have produced forms but there is no obligation to use these.

Uncontested claims can also be filed using an electronic application for a summons, which is submitted using an electronic form on the website of the Finnish judicial administration (https://oikeus.fi/en/).

1.3.2 Is representation by a lawyer required?

Neither the claimant nor the defendant needs to use a lawyer. However, using a lawyer is always allowed.

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

The grounds for the claim must be identified so that it can be distinguished from other claims.

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

No evidence is required in cases involving the collection of an uncontested debt. The claimant must only present sufficient evidence if the defendant contests the claim.

1.4 Rejection of application

In practice, one impediment to a default judgment is if the defendant, with reasonable cause, contests the claim set out in the application for a summons, whereby the claim will no longer be uncontested. Other situations that can arise include the application for a summons being dismissed; this mainly happens if the district court in question does not have jurisdiction or if the claimant, despite being urged to do so, fails to remedy shortcomings in his or her application for a summons. In principle, it is also possible for an action to be rejected immediately by a judgment if the claim is clearly groundless, i.e. the claim has absolutely no basis in law. The court will not otherwise examine the validity of the claim.

1.5 Appeal

The claimant has no recourse to appeal against a finding that a claim cannot be processed as uncontested if the defendant decides to contest the claim. In these circumstances, the case will be processed by the district court in a normal civil proceeding. The claimant can, however, appeal against a dismissal or a rejection of his or her claim.

1.6 Statement of opposition

This question has been formulated with the kind of system in mind in which a “default judgment / order to pay” is issued first and only then is the defendant given an opportunity to object. In Finland the claim is first sent to the defendant and, if the defendant does not contest the claim, a default judgment is then given.

The district court will urge the defendant to respond to the action in writing by a specific deadline. The deadline will be set by the district court, and it is usually between two and three weeks. The defendant's response must indicate whether he or she contests the claim and, if so, on what grounds. The defendant can also indicate in the response which evidence, if any, he or she intends to present and make a claim for costs. The defendant must also disclose his or her contact details and sign the response.

1.7 Effect of statement of opposition

If the defendant submits his or her statement of opposition within the deadline, the claim will no longer be uncontested and a default judgment cannot be given. In these circumstances, the case will automatically proceed to a normal civil proceeding.

1.8 Effect of lack of statement of opposition

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

If the defendant does not contest the claim within the deadline, a default judgment in the amount claimed is given. The judgment is enforceable immediately.

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

The defendant cannot appeal against a default judgment to a Court of Appeal (*hovioikeus*), but he or she has the option of filing an application with the district court for what is known as "recovery". An application for recovery means that the case will be returned to the district court that issued the default judgment, for reconsideration. Applications for recovery must be submitted within 30 days of the date on which the defendant received notice of the default judgment. If no application for recovery is submitted, the default judgment will stand.

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European payment order - Sweden

1 Existence of an order for payment procedure

Yes, in Sweden you can apply for a payment order (*betalningsföreläggande*) to the Enforcement Authority (*Kronofogdemyndigheten*). You should send your application to

Kronofogdens inläsningscentral [Enforcement Authority Input Centre], Supro, Luleå, FE 7502, 105 81 Stockholm.

More information is available on the Enforcement Authority website, in Swedish, English, Finnish, North Sami, Polish, Arabic and Farsi.

1.1 Scope of procedure

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

An application for a payment order must relate to an obligation on the defendant to pay a financial debt. The debt must be overdue and mediation must be permissible in the case.

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

No, claims may be heard regardless of the amount involved.

1.1.3 Is the use of that procedure optional or obligatory?

It is not obligatory to apply for a payment order. A summons before the district court (*tingsrätt*) may be sought instead.

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

The option of using the payment order procedure is based on the assumption that the defendant is resident in Sweden, but it is also possible to apply for a payment order against a defendant who is resident outside Sweden. A decision on an application for a payment order can be enforced in other EU Member States in accordance with the Brussels I Regulation (Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

1.2 Competent court

Applications must be submitted to the Enforcement Authority.

1.3 Formal requirements

An application for a payment order must be made in writing and signed. In the application, the plaintiff must state the claim and the grounds for it. The amount of the claim, the due date and the interest claimed must be stated, as must any costs for which compensation is sought. The application must also specify who the parties are.

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

No. But for anyone who wishes, there is an application form available in Swedish and in English, together with instructions on how to fill it in, on the Enforcement Authority website (http://www.kronofogden.se/).

1.3.2 Is representation by a lawyer required?

No, there is no need to be represented by a lawyer when applying for a payment order. You are entitled to plead your own case, and you need not have any representative or counsel at all.

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

The grounds must be sufficiently detailed that the defendant knows what the claim is about and can decide whether or not to dispute it. It must be objectively clear what the scope of the claim is, so that once a decision has become enforceable it is possible to tell exactly what it covers.

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

There is no requirement for written evidence to be provided.

1.4 Rejection of application

The general rule is that the correctness of the claim is not examined before an order is issued. If, however, it appears that the plaintiff's claim is unfounded or unjustified, the application must be dealt with as though the defendant had contested it.

An application may be rejected if it is defective.

1.5 Appeal

The Swedish system is based on the principle that the case does not have to be examined. If the claim is contested, the application is not rejected but is submitted to a court for further consideration. Please see question 1.6 below. There is therefore no rejection decision that might be open to appeal.

Where the application is indeed rejected as described in section 1.4, the decision rejecting it is open to appeal.

1.6 Statement of opposition

The time limit for contesting an order is stated in the order. The time limit is normally set at ten days from the date on which the order was issued. Any statement of objection must be in writing.

1.7 Effect of statement of opposition

If the defendant contests the application, the plaintiff will be informed immediately. If the plaintiff wishes to persist in the claim, he or she may request that the case be submitted to the district court (*tingsrätt*).

1.8 Effect of lack of statement of opposition

If the defendant does not contest the application within the time allowed, the Enforcement Authority will issue a decision on the application as soon as possible.

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

A decision by the Enforcement Authority is enforceable, and once it has been issued will be enforced in Sweden by the Enforcement Authority on its own initiative, unless the plaintiff when applying for the payment order expressly requests that the decision should not be enforced.

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

The defendant may apply for the case to be re-opened within one month of the date of the decision. In that event the case is passed to a district court for further consideration.

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European payment order - England and Wales

1 Existence of an order for payment procedure

There is no specific order for payment procedure for cases entirely in England and Wales; there being a procedure whereby the claimant may obtain a judgment by default. The European Order for payment is available in cases of cross-border disputes within the EU.

1.1 Scope of procedure

The default judgment procedure is part of the normal civil court procedures in England and Wales. Once a claimant issues a claim (see "How to proceed - England & Wales) the defendant should respond within 14 days of having received notification of the claim form. If the defendant does not reply to the claim, the claimant can ask the court to enter judgment 'by default' (that is, make an order that the defendant pay the amount claimed because no reply has been received). A claimant should do this as soon as possible after the 14 days have passed. Until the court receives the request to enter judgment, the defendant can still reply to the claim. If the court receives the defendant's reply before the claimant's request, that reply will have priority even if it had been filed late.
If a claimant does not request judgment within six months of the end of the period for filing a defence, the claim is 'stayed' (stopped or halted) and the only action a claimant can take is to apply to a judge for an order lifting the stay.

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

Default judgment can be granted in almost all types of case/action in the civil courts in England and Wales. They are not limited to pecuniary and contractual claims. Unless specifically excluded by the rules of court (known as the Civil Procedure Rules) a default judgment can be sought by the claimant in any civil action in England and Wales except on a claim for delivery of goods where the agreement is regulated by the Consumer Credit Act 1974.
In order to obtain default judgment the claimant must provide evidence that he or she has complied with procedural requirements and also that the defendant has failed to comply with those procedural requirements.
Exceptionally, part 8 of the Civil Procedure Rules allows an alternative procedure for a claim to be followed in cases where a claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact or where this procedure is allowed in specific proceedings. In such circumstances a default judgment is not available.

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

There is no upper limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

As mentioned above, the procedure for a judgment by default is part of the normal civil proceedings. It is not a separate procedure as known in many other Member States. The use of the procedure is optional in the sense that default judgment is not automatically granted upon the defendant's failure to respond to a claim in the relevant time limit. This time limit is clearly given on the claim form that is served upon the defendant. In order to obtain default judgment, the claimant must either make a request or an application for a default judgment. Alternatively the claimant can choose not to pursue the claim.

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

Disputes between businesses or persons in a different member state are governed by various pieces of legislation, the most relevant being the EU Council Regulation (EC) no 44/2001 on jurisdiction and the recognition of enforcement of judgments n civil and commercial matters, known as the Brussels Regulation.
There is the European Order for Payment (EOP) makes it easier for creditors to recover uncontested (ie admitted) monetary debts in cross boarder cases within the European Union; the procedure is optional to the existing procedures.

1.2 Competent court

A default judgment is available from both the County Court and the High Court. The claimant should apply to the court where he or she filed his or her claim. That court can then check that no acknowledgement of service or defence was lodged by the defendant and that the time period for filing these documents had expired.
The procedure follows the general jurisdiction rules for courts in England and Wales (see the pages on "Juridiction"). In summary, if a claim is for less than £100,000 (in personal injury cases the claim is less than £50,000) it should be issued in the County Court unless a claimant is advised otherwise. Claims for less than £10,000 can be considered in the County Court in the small claims track which provides a simple and informal way of resolving disputes, often without the need for a lawyer. Any claim over £100,000 can be issued in either the High Court or the County Court. The nature and complexity of the case will determine which is the competent court.
More information on the procedural rules for judgments by default followed in these courts can be found at the Ministry of Justice website.

1.3 Formal requirements

In addition to the requirements listed above - i.e. that the claimant followed the correct procedures in issuing the claim and that the defendant did not respond in the required time - the formal requirements to obtain a judgment by default depend on the type of claim.
Generally speaking, if the claim is for a specified sum a claimant is only required to make a request for a default judgment. Such requests are usually dealt with by the administrative staff of the court, rather than a judge. In such cases the court staff check that there has been no acknowledgement of service or defence lodged by the defendant, that the relevant time periods have expired and that the claimant has provided the court with the necessary evidence.

Where the claim is for an unspecified amount a claimant must make an application to the court. In such cases a judge considers the matter. He or she decides whether a court hearing is necessary and what the claimant will need to provide to help the judge to decide the amount of money to which the claimant is entitled - e.g. what evidence should be provided.

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

For both types of claim the use of a standard form is obligatory.

Where a claim is for a specified amount and the court has issued the claim, the court sends the claimant form N205A - Notice of Issue (Specified Amount). This form includes a section for the claimant to complete and return to the court to request a default judgment in the event that the defendant fails to respond to the claim in the required time. There are notes for guidance on the form to help complete it.

Before a claimant completes the form he or she should think carefully about how he or she wants the defendant to pay the amount owing. A claimant may want the money paid immediately but may be more likely to get it if the defendant is allowed to pay by instalments over a period of time. This will depend on the defendant's circumstances.

If a claimant started his or her claim using Money Claim Online a request for a default judgment can submitted to the court online.

If the claim was for an unspecified amount, the claimant would have received form N205B - Notice of Issue (Unspecified Amount) from the court when the claim was issued. This form also includes a section where the claimant can ask the court to make an order that the defendant is 'liable' (responsible) for the claim. The court will decide what amount the defendant should pay. This is called 'entering judgment for an amount to be decided by the court'.

Certain types of cases require an application to be made for a judge to decide whether a default judgment can be granted. These include cases where the claim is served upon a defendant in another jurisdiction, where the defendant is a State, the Crown or a person or body immune from civil proceedings. An application is also necessary where the claim is against a child or patient, or is a claim in tort by one spouse against another. In such cases Form N244 (Application Notice) should be used.

Many court forms, including N244, are available on the website of the Ministry of Justice. All forms can be obtained from any civil court in England and Wales.

1.3.2 Is representation by a lawyer required?

As with all types of cases, there is no requirement for a person to seek the advice of, or be represented by, a lawyer. As a general rule, however, if a claim is for a sum over £5000 and particularly if it includes complicated issues, it is advisable to seek the advice of a solicitor. More details about the advisability of legal representation can be found on the page Bringing a Case to Court.

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

As a request or an application for a default judgment is part of normal civil court procedures in England and Wales, it will have been necessary for a claimant to issue a claim in the normal way - see the page Bringing a Case to Court. In general terms, a claim form must contain details of the parties, brief details of the claim and, if possible, a statement as to the amount of money being claimed and whether the amount expected to recover falls into one of the following bands:

not more than £10000

more than £10000 but not more than £25000

more than £25000.

In claims for personal loss or injury the claimant should state whether he or she expects to recover:

not more than £1000

more than £1000.

If a claimant is unable to put a value on the claim he or she should say “I cannot say how much I intend to recover”. The form includes notes for guidance for both the claimant and the defendant.

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

In addition to the claim form a claimant should provide the particulars of claim which include:

a concise statement of the facts

a statement (if applicable) to the effect that the claimant is seeking particular types of damages.

details of any interest claimed

any other matters required for the type of claim as set out in the court rules.

Where court staff are able to issue a judgment by default they need to be satisfied that the particulars of the claim have been served on the defendant; that the defendant has not responded to the claim in the relevant time period; and that the defendant has not satisfied the claim.

If these requirements are fulfilled, court staff issue a judgment for the claimant which tells the defendant how much to pay, when to pay it and the address to which the money should be sent. A copy of the judgment is sent to the claimant and the defendant.

Where it falls to a judge to make the decision, as mentioned above, where a claim is for an unspecified amount he or she may decide whether a hearing is necessary or whether further evidence is required. This is called giving directions. Once the judge has made a decision, the claimant and the defendant will be sent an order. The judge may give directions either allocating the claim to the small claims track; or directing that the claim is given a disposal hearing.

At the disposal hearing the judge will either: give more detailed directions about, for example, the documents and evidence needed, to help the judge make a final decision about the amount; or decide the amount the defendant has to pay, if it is a simple case which does not need a lengthy hearing.

Which will happen depends on the likely amount of the damages; whether the defendant is likely to dispute the amount of damages; and whether the judge feels there is sufficient proof in the papers available at the hearing to make a final decision.

A judge will not normally use the disposal hearing to make a final decision unless any written evidence provided to the court was sent to the defendant at least three days before the disposal hearing was due to take place.

After the disposal hearing, court staff set out what the judge decided in an order. Copies are sent to the claimant and the defendant.

In addition to the above, where the defendant does not reside in England and Wales the court must satisfy itself under the relevant international agreements etc. that it has power to hear and decide the claim; that no other court has exclusive jurisdiction; and that the claim has been properly served.

1.4 Rejection of application

The court will reject a request or application for default judgment where the claimant has not complied with the rules of court. For example if the particulars of the claim form or its service do not comply with the Civil Procedure Rules the court will not grant a default judgment. The court will also reject the application for default judgment where the claimant does not provide the necessary evidence required to satisfy the court (see above). Providing these procedural requirements are followed, whether the court examines the justification of the claim before issuing a judgment by default depends (as mentioned above) on whether the claim is for a specified amount or not, or whether it falls into the category of claims that can only be considered on application by a judge (see 1.3).

1.5 Appeal

Refusal to grant a default judgment will only arise as a result of the claimant's failure to satisfy the court that he or she followed the correct procedures. The claimant cannot appeal this decision. Where the court refuses to grant judgment in default the claimant can normally start afresh by serving a new claim form against the defendant in accordance with the procedures and requirements of the Civil Procedure Rules.
An order for a default judgment which has been wrongly granted can be varied or set aside on application by the defendant. An application can be made to have the default judgment varied (e.g. changed to a lower amount where part of the debt was paid prior to judgment) or set aside (i.e. cancelled).
Where the claimant has reason to believe that the particulars of the claim did not reach the defendant before default judgment, he or she has a duty to apply to the court to ask the court to set aside the default judgment which was granted in his or her favour.

1.6 Statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the time required (see above). If the defendant defends the claim then the case proceeds as a normal defended claim.
If a defendant wishes to have an order for default judgment cancelled or changed after it has been granted he or she must act promptly to apply to the court to have the judgment set aside or varied. The court can vary or cancel the default judgment if it considers that there is good reason for doing so or that the defendant has a real prospect of successfully defending the case.

1.7 Effect of statement of opposition

If the defendant lodges a defence to the claim within the required time the case proceeds as a normal contested claim as described in the page Bringing a Case to Court.
As the system of judgment by default is part of ordinary civil proceedings such a transfer is not applicable in England and Wales. However, if a default judgment is set aside after a successful challenge a case might have to start again or a defendant might be given the opportunity to issue a defence to the claim. What happens will be determined by the judge in the light of the circumstances of the case.

1.8 Effect of lack of statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the required time. Only then can the claimant file a request or application for judgment in default.

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

The default judgment is a decision that the claimant can enforce against the defendant. The procedures that need to be followed to obtain the judgment are described in 1.3.4 above.

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

As described above, the defendant can ask the court to vary or set aside (i.e., to change the terms of the judgment or to cancel it in its entirety) the default judgment. This is not an appeal as such as it is heard by the same court that would have heard the original case had the defendant defended the claim. The court can vary or set aside the default judgment if it considers that there was some procedural impropriety or that the defendant has a real prospect of successfully defending the claim or that there is a good reason for doing so.
Either party can appeal against a decision to set aside or to refuse to set aside a default judgment, subject to obtaining permission from either the court that made the decision or the appeal court.

Related links

Ministry of Justice
Court addresses

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European payment order - Northern Ireland

1 Existence of an order for payment procedure

There is no specific 'order for payment' procedure in Northern Ireland. There is, however, a procedure by which an applicant (or plaintiff) can claim a 'judgment in default' where a defendant (or respondent) fails to indicate his intention to defend the proceedings (a 'default judgment procedure').
It may also be possible in a cross border claim within the EU to use the European Order for Payment or the European Small Claims Procedures.

1.1 Scope of procedure

The 'default judgment procedure' is part of the normal civil court procedures in Northern Ireland.
In the High Court, when an applicant ('plaintiff') issues a claim, the defendant (respondent) is required to acknowledge this within 14 days after he has been served with the claim unless the respondent resides outside NI when the time limit depends on where the respondent lives, but this is reflected on the face of the writ of summonses.
In the County Court for civil bills and small claims cases, the period is 21 days. If the defendant (respondent) does not acknowledge that he has received papers relating to the claim and wishes to defend the action, the applicant ('plaintiff') may apply for judgment in default by lodging the appropriate papers in the designated court office.

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

In Northern Ireland, a judgment in default may be obtained in the following types of proceedings, although in certain circumstances, permission of the court will be required:
debt;
damages;
detention of goods;
recovery of land.
In other instances, application must be made to the court for judgment.

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

In the High Court, there is no upper limit on the value of the claim.
The County Court has general civil jurisdiction to hear and determine any action in which the amount claimed, or the value of specific chattels claimed, does not exceed £30,000.
The small claims process is part of the County Court and can deal with claims which do not exceed £3,000.

1.1.3 Is the use of that procedure optional or obligatory?

The procedure for obtaining a judgment in default is part of the normal civil proceedings. It is not a separate procedure. The use of the procedure is optional in the sense that judgment in default is not automatically granted upon the defendant's (respondent's) failure to respond to a claim in the relevant time limit. In order to obtain judgment in default, the applicant ('plaintiff') must either make a request or an application. Alternatively, the applicant ('plaintiff') can choose not to pursue the claim.

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

Subject to agreements between countries on the recognition and enforcement of judgments between UK and other Member States or similar agreements made with other countries, the procedure is available if the defendant (respondent) lives in another Member State or in another country.

The applicant ('plaintiff') must ensure that he has properly served the claim form on a defendant (respondent) in accordance with the rules that apply to service of documents outside Northern Ireland.

Where the defendant (respondent) fails to respond to the claim, the applicant ('plaintiff') must make an application to the court for permission to obtain judgment in default in the usual way.

1.2 Competent court

In Northern Ireland, a judgment in default can be obtained from the court in which the proceedings were initiated.

1.3 Formal requirements

In addition to the requirements listed above - i.e. that the applicant ('plaintiff') followed the correct procedures in issuing the claim and that the defendant did not respond in the required time - the formal requirements to obtain a judgment in default are as follows:

In the High Court, an applicant ('plaintiff') entitled to judgment in default of appearance or defence may obtain judgment by producing the following documents to the appropriate office of the High Court:

Default of Appearance

the original document ('writ') by which the proceedings were begun;

Affidavit of Service confirming that the original proceedings have been served

Affidavit of Debt if the claim is for a liquidated sum;

If Possession of land a certificate stating that the property is non residential

Default of Defence

Original document (writ) by which the proceedings were begun;

Copy of the memorandum of appearance served by the respondent

Affidavit of Debt if the claim is for a liquidated sum or a copy of the plaintiff's Statement of Claim

A certificate stating that a defence has not been served

If possession of land a certificate stating that the property is non residential

In the County Court, an applicant ('plaintiff') entitled to judgment in default of an indication of the defendant's intention to defend may enter judgment by lodging in the office of the court, a similar set of documents to those set out above.

In small claims cases there is a specific form entitled an "Application for a default decree" which the applicant must complete and lodge with the relevant court office.

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

The necessary forms which should be used for initiating proceedings and those required at other stages of the processes can be found in the following court rules:

The Rules of the Court of Judicature (Northern Ireland) 1980 [S.R. 1980 No. 346]

County Court Rules (Northern Ireland) 1981 [S.R.1981 No.225]

These can be accessed on the Northern Ireland Courts and Tribunals Service website.

1.3.2 Is representation by a lawyer required?

No, however, as a general rule, it is advisable to seek the advice of a solicitor. Court staff are not qualified to give applicants or respondents legal advice.

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

As an application for judgment in default is part of the civil court procedures in Northern Ireland, it will have been necessary for an applicant ('plaintiff') to issue proceedings in the usual way and details of the claim will have been included in the originating papers. The application for judgment in default must indicate why this is sought.

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

Written evidence of the claim at issue will be included as part of the documents provided to the court when an application for a judgment in default is made.

1.4 Rejection of application

When an applicant (plaintiff) issues a claim against a defendant (respondent) for a claim in which the amount needs to be determined by the court, and the defendant (respondent) fails to indicate his intention to defend, the applicant (plaintiff) may seek a judgment which states that the amount is to be assessed by the court. In such cases, the amount of the claim shall be assessed by the judge. the judge may decide on the amount due or may decide that nothing is due under the claim.

There are other cases that require an application to be made to a judge to decide whether a judgment in default can be granted. These include cases where the claim is served upon a defendant (respondent) in another jurisdiction, where the defendant (respondent) is a State, the Crown or a person or body immune from civil proceedings.

An application is also necessary where the claim is against a child or patient, or is a claim in negligence ('tort') by one spouse against another.

1.5 Appeal

An application can be made by a defendant (respondent) to have the judgment in default varied (e.g. changed to a lower amount where part of the debt was paid prior to judgment) or set aside (i.e. cancelled).

Where the applicant (plaintiff) has reason to believe that the details of the claim did not reach the defendant (respondent) before the judgment, he has a duty to apply to the court to ask the court to set aside the judgment in default.

1.6 Statement of opposition

If a defendant (respondent) wishes to have an order for judgment in default cancelled or changed after it has been granted, he must act promptly to apply to the court to have the judgment set aside or varied.

The court can vary or set aside the judgment in default if it considers that there is good reason for doing so or that the defendant (respondent) has a real prospect of successfully defending the case.

1.7 Effect of statement of opposition

If the defendant (respondent) lodges a defence to the claim within the required time the case proceeds as a normal contested claim.

If a judgment in default is set aside after a successful challenge, a case might have to start again or a defendant (respondent) might be given the opportunity to issue a defence to the claim. What happens will be determined by the judge depending on the circumstances of the case.

1.8 Effect of lack of statement of opposition

The judgment in default procedure only becomes available as a result of the defendant's (respondent's) failure to defend or acknowledge the claim in the required time. Only then can the applicant (plaintiff) file a request or application for judgment in default.

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

The judgment in default is a decision that the applicant (plaintiff) can enforce against the defendant (respondent). The procedures that need to be followed to obtain the judgment in default are described in paragraph 1.3) above.

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

As described above, the defendant (respondent) can ask the court to vary or set aside the judgment in default (i.e., to change the terms of the judgment or to cancel it in its entirety).

The court can vary or set aside the judgment in default if it considers that there was some procedural impropriety or that the defendant (respondent) has a real prospect of successfully defending the claim or that there is a good reason for doing so.

Related links

Further information regarding the procedures can be obtained from the Northern Ireland Courts and tribunals Service website.

Assistance for Disabled Litigants

Some court offices have designated Customer Service Officers who might be able to assist. If they cannot help, the disabled litigant can contact the Northern Ireland Courts and Tribunals Service Communication Team on +44 300 200 7812.

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European payment order - Scotland

1 Existence of an order for payment procedure

All claims go through a process where the opportunity is available to defend or respond to the case. If claims remain undefended or undisputed they do not have to be called in court and can dealt with in absence - in effect a simplified procedure for uncontested claims.

1.1 Scope of procedure

Such procedure is available in the Sheriff Court in simple procedure, summary cause and ordinary procedure and in the Court of Session by ordinary summons procedure.

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

Simple Procedure deals with monetary claims up to £5000.

Summary Cause deals with some types of monetary claims up to £5000 i.e. Personal Injury. Simple Procedure has replaced Summary Cause Procedure, but only where it relates to actions for payment, delivery or for recovery of possession of moveable property, or actions which order someone to do something specific.

Ordinary Cause deals with claims over £5000.

The Court of Session deals with claims over £100,000.

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

Simple Procedure - limit £5000.

Summary Cause - limit £5000.

Ordinary Cause in the Sheriff Court and Court of Session - no limit.

1.1.3 Is the use of that procedure optional or obligatory?

Each of simple procedure, summary cause and ordinary cause in the Sheriff Court has separate procedures and it is obligatory to follow them. In addition, the Court of Session has separate procedure for ordinary summons and only those claims with a value over £100,000 can be raised in that court.

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

Yes.

Simple Procedure - if the respondent is domiciled in another Contracting State the Sheriff shall not make a decision until it has been shown that the respondent has been able to receive the claim form in sufficient time to respond or that all the necessary steps have been taken to that end.

Summary Cause - if the defender is domiciled in another Contracting State the Sheriff shall not grant decree until it is shown that the defender has been able to receive the summons in sufficient time to arrange his defence or that all the necessary steps have been taken to that end.

Ordinary Cause - the Brussels I Regulation provides jurisdictional rules which must be followed by United Kingdom courts in proceedings whenever the defender is domiciled in another European Union State.

1.2 Competent court

Summary cause and simple procedure applications should be made to the Sheriff Court. Unless other grounds of jurisdiction can be established applications should be made to the court in the area where the defender (or respondent) resides.

Ordinary actions can normally be made either to the Sheriff Court or the Court of Session. The Court of Session has jurisdiction throughout Scotland. Again, in so far as the Sheriff Court is concerned, unless other grounds of jurisdiction can be established applications should be made to the Court in the area where the defender resides.

The procedures are all governed by separate rules of court, which are available on the Scottish Courts and Tribunals Service website.

1.3 Formal requirements

Simple Procedure - shall be commenced by claim form (Form 3A) with a statement to give the respondent fair notice of the claim, details of the basis of the claim and details of the goods etc if the claim arose from the supply of goods.

Summary Cause - shall be commenced by summons (Form 1) with a statement to give the defender fair notice of the claim, details of the basis of the claim and details of the goods etc if the claim arose from the supply of goods.

Ordinary Cause in the Sheriff Court - shall be commenced by initial writ in Form G1. An article of condescendence shall be included in the initial writ covering -

a. the ground of jurisdiction: and
b. the facts upon which the ground of jurisdiction is based.

Ordinary Cause in the Court of Session - by summons, a description and the form of which are set out in the Court of Session rules.

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

Yes, in simple procedure a Form 3A and in summary cause a Form 1 must be completed. In ordinary cause the action shall be commenced by initial writ in the Sheriff Court and summons in the Court of Session. These are available on the Scottish Courts and Tribunals Service website under the rules for the respective forms of procedure.

1.3.2 Is representation by a lawyer required?

No, you can present an application on your own behalf but for ordinary cause it is advisable to have a solicitor, as the procedure is relatively complicated. A party litigant (a person not represented by a solicitor) can ask the court for permission for someone to help in civil court proceedings - this person is referred to as a Lay Representative. Further information on Lay Representatives is available on the Scottish Courts and Tribunals Service website.

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

The proceedings should include details of the claim including relevant dates. The larger and more complex the claim the greater is the need for description.

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

No.

1.4 Rejection of application

The court establishes from the content of the application that the debt is due. The order could be rejected because the forms may be incomplete, the Sheriff may not be satisfied that a ground of jurisdiction exists or the action may have been raised at the wrong court.

1.5 Appeal

Can the applicant appeal against the refusal of a decree in absence? Yes.

Ordinary cause - an appeal can be marked to the Court of Session or Sheriff Appeal Court.

Summary Cause - appeal to the Sheriff Appeal Court.

Simple Procedure - appeal to Sheriff Appeal Court.

In the Court of Session the appeal procedure is called “reclaiming”.

1.6 Statement of opposition

Summary cause - the defender is allowed 21 days within which to complete a form of response which includes a statement giving the pursuer fair notice.

Simple Procdure - the respondent must send a completed Response Form 4A to the court by the last date for a response, indicating that they dispute the claim or part of the claim (such as the amount the respondent should pay the claimant). They must submit any response to the court by the response date specified in the timetable served along with the claims form.

Ordinary Cause in the Sheriff Court - defender allowed 21 days within which to complete a notice of intention to defend in Form 07 and send a copy to the pursuer. The last date by which the notice of intention to defend is to be sent to the Sheriff Court is specified in Form 07.

In the Court of Session the defender if he wishes to oppose the application requires to “enter appearance” by marking a note to this effect on the summons within three days of the case “calling”. This case will not call until the period of notice has expired. The normal period of notice is 21 days.

1.7 Effect of statement of opposition

Simple Procedure - the Sheriff will issue a written order within 2 weeks of the response which which may do any of the following:

(a) refer parties to alternative dispute resolution

(b) arrange a case management discussion

(c) arrange a hearing

(d) if the Sheriiff thinks that a decision could be made without a hearing, indicate that the Sheriff is considering doing so

(e) use the Sheriff's powers to dismiss a claim or decide a case under rule 1.8(11), (12) and (13).

Summary Cause - parties attend a first hearing where the Sheriff will seek to negotiate a settlement.

Ordinary Cause in both the Sheriff Court and the Court of Session - defences require to be lodged, and thereafter the case will follow the rules for defended causes, which unless settled earlier between the parties, will culminate in a proof of the facts in dispute between parties.

1.8 Effect of lack of statement of opposition

In Summary Cause and Ordinary Procedure in both the Sheriff Court and the Court of Session the pursuer could lodge a minute or motion for decree.

In Simple Procedure the claimant can complete an Application for a Decision.

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

The pursuer (or claimant) would lodge a minute or motion for the decree (or Application for a Decision) and the Sheriff or Judge may grant decree or other competent order in terms of that minute (or Application).

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

Although the Sheriff or Judge grants decree (or makes a decision) it is open to the defender (or respondent) to apply to the court for a recall of that decree (or decision).

Related links

The Scottish Courts and Tribunals Service website includes the Ordinary, Summary Cause and Simple Procedure rules.

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European payment order - Gibraltar

1 Existence of an order for payment procedure

There is no specific order for payment procedure in Gibraltar. There is, however, an equivalent procedure by which a claimant can obtain a judgment by default.

1.1 Scope of procedure

The default judgment procedure is part of the normal civil court procedures in Gibraltar. Once a claimant issues a claim the defendant should respond within 14 days of having received notification of the claim form. If the defendant does not reply to the claim, the claimant can ask the court to enter judgment 'by default' (that is, make an order that the defendant pay the amount claimed because no reply has been received). A claimant should do this as soon as possible after the 14 days have passed. Until the court receives the request to enter judgment, the defendant can still reply to the claim. If the court receives the defendant's reply before the claimant's request, that reply will have priority even if it had been filed late.

If a claimant does not request judgment within six months of the end of the period for filing a defence, the claim is 'stayed' (stopped or halted) and the only action a claimant can take is to apply to a judge for an order lifting the stay.

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

Default judgment can be granted in almost all types of case/action in the civil courts in Gibraltar. They are not limited to pecuniary and contractual claims. Unless specifically excluded by the rules of court (known as the Civil Procedure Rules) a default judgment can be sought by the claimant in any civil action in Gibraltar.

In order to obtain default judgment the claimant must provide evidence that he or she has complied with procedural requirements and also that the defendant has failed to comply with those procedural requirements.

Exceptionally, part 8 of the Civil Procedure Rules allows an alternative procedure for a claim to be followed in cases where a claimant seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact or where this procedure is allowed in specific proceedings. In such circumstances a default judgment is not available.

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

There is no upper limit on the value of the claim.

1.1.3 Is the use of that procedure optional or obligatory?

As mentioned above, the procedure for a judgment by default is part of the normal civil proceedings. It is not a separate procedure as known in many other Member States. The use of the procedure is optional in the sense that default judgment is not automatically granted upon the defendant's failure to respond to a claim in the relevant time limit. This time limit is clearly given on the claim form that is served upon the defendant. In order to obtain default judgment, the claimant must either make a request or an application for a default judgment. Alternatively the claimant can choose not to pursue the claim.

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

Subject to agreements between countries on the recognition and enforcement of judgments between Member States (e.g. Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) or similar agreements made with third countries, the procedure is available if the defendant lives in another Member State or in a third country. The claimant must ensure that he has properly served the claim form on a defendant in accordance with the rules that apply to service of documents outside Gibraltar (e.g. Council Regulation (EC) No 1393 /2007 of of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters). Where the defendant fails to respond to the claim, the claimant must make an application to the court to obtain a default judgment in the normal way.

1.2 Competent court

The Supreme Court of Gibraltar in its various jurisdictions would be a competent court. This includes the Small Claims Jurisdiction of the Supreme Court which deals with claims of up to £10,000.

1.3 Formal requirements

In addition to the requirements listed above - i.e. that the claimant followed the correct procedures in issuing the claim and that the defendant did not respond in the required time - the formal requirements to obtain a judgment by default depend on the type of claim.

Generally speaking, if the claim is for a specified sum a claimant is only required to make a request for a default judgment. Such requests are usually dealt with by the Registrar of the court, rather than a judge. In such cases the court staff check that there has been no acknowledgement of service or defence lodged by the defendant, that the relevant time periods have expired and that the claimant has provided the court with the necessary evidence.

Where the claim is for an unspecified amount a claimant must make an application to the court. In such cases a judge considers the matter. He or she decides whether a court hearing is necessary and what the claimant will need to provide to help the judge to decide the amount of money to which the claimant is entitled - e.g. what evidence should be provided.

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

For both types of claim the use of a standard form is obligatory.

Where a claim is for a specified amount and the court has issued the claim, the court sends the claimant form N205A - Notice of Issue (Specified Amount). This form includes a section for the claimant to complete and return to the court to request a default judgment in the event that the defendant fails to respond to the claim in the required time. There are notes for guidance on the form to help complete it.

Before a claimant completes the form he or she should think carefully about how he or she wants the defendant to pay the amount owing. A claimant may want the money paid immediately but may be more likely to get it if the defendant is allowed to pay by installments over a period of time. This will depend on the defendant's circumstances.

If the claim was for an unspecified amount, the claimant would have received form N205B - Notice of Issue (Unspecified Amount) from the court when the claim was issued. This form also includes a section where the claimant can ask the court to make an order that the defendant is 'liable' (responsible) for the claim. The court will decide what amount the defendant should pay. This is called 'entering judgment for an amount to be decided by the court'.

Certain types of cases require an application to be made for a judge to decide whether a default judgment can be granted. These include cases where the claim is served upon a defendant in another jurisdiction, where the defendant is a State, the Crown or a person or body immune from civil proceedings. An application is also necessary where the claim is against a child or patient, or is a claim in tort by one spouse against another. In such cases Form N244 (Application Notice) should be used.

For further information, including obtaining copies of the relevant forms, contact the Supreme Court Registry, 277 Main Street, Gibraltar, telephone number (+350) 200 75608.

1.3.2 Is representation by a lawyer required?

As with all types of cases, there is no requirement for a person to seek the advice of, or be represented by, a lawyer. As a general rule, however, if a claim is for a sum over £10,000 and particularly if it includes complicated issues, it is advisable to seek the advice of a solicitor. More details about the advisability of legal representation can be found on the page Bringing a Case to Court.

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

As a request or an application for a default judgment is part of normal civil court procedures in Gibraltar, it will have been necessary for a claimant to issue a claim in the normal way - see the page How to proceed. In general terms, a claim form must contain details of the parties, brief details of the claim and, if possible, a statement as to the amount of money being claimed and whether the amount expected to recover falls into one of the following bands:

not more than £10000

more than £10000 but not more than £15000

more than £15000.

In claims for personal loss or injury the claimant should state whether he or she expects to recover:

not more than £1000

more than £1000.

If a claimant is unable to put a value on the claim he or she should say “I cannot say how much I intend to recover”. The claim form includes notes for guidance for both the claimant and the defendant.

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

In addition to the claim form a claimant should provide the particulars of claim which include:

a concise statement of the facts

a statement (if applicable) to the effect that the claimant is seeking particular types of damages.

details of any interest claimed

any other matters required for the type of claim as set out in the court rules.

Where court staff are able to issue a judgment by default they need to be satisfied that the particulars of the claim have been served on the defendant; that the defendant has not responded to the claim in the relevant time period; and that the defendant has not satisfied the claim.

If these requirements are fulfilled, court staff issue a judgment for the claimant which tells the defendant how much to pay, when to pay it and the address to which the money should be sent. A copy of the judgment is sent to the claimant and the defendant.

Where it falls to a judge to make the decision, as mentioned above, where a claim is for an unspecified amount he or she may decide whether a hearing is necessary or whether further evidence is required. This is called giving directions. Once the judge has made a decision, the claimant and the defendant will be sent an order. The judge may give directions either allocating the claim to the small claims track; or directing that the claim is given a disposal hearing.

At the disposal hearing the judge will either: give more detailed directions about, for example, the documents and evidence needed, to help the judge make a final decision about the amount; or decide the amount the defendant has to pay, if it is a simple case which does not need a lengthy hearing.

Which will happen depends on the likely amount of the damages; whether the defendant is likely to dispute the amount of damages; and whether the judge feels there is sufficient proof in the papers available at the hearing to make a final decision.

A judge will not normally use the disposal hearing to make a final decision unless any written evidence provided to the court was sent to the defendant at least three days before the disposal hearing was due to take place.

After the disposal hearing, court staff set out what the judge decided in an order. Copies are sent to the claimant and the defendant.

In addition to the above, where the defendant does not reside in Gibraltar the court must satisfy itself under the relevant international agreements etc. that it has power to hear and decide the claim; that no other court has exclusive jurisdiction; and that the claim has been properly served.

1.4 Rejection of application

The court will reject a request or application for default judgment where the claimant has not complied with the rules of court. For example if the particulars of the claim form or its service do not comply with the Civil Procedure Rules the court will not grant a default judgment. The court will also reject the application for default judgment where the claimant does not provide the necessary evidence required to satisfy the court (see above). Providing these procedural requirements are followed, whether the court examines the justification of the claim before issuing a judgment by default depends (as mentioned above) on whether the claim is for a specified amount or not, or whether it falls into the category of claims that can only be considered on application by a judge (see 1.3).

1.5 Appeal

Refusal to grant a default judgment will only arise as a result of the claimant's failure to satisfy the court that he or she followed the correct procedures. The claimant cannot appeal this decision. Where the court refuses to grant judgment in default the claimant can normally start afresh by serving a new claim form against the defendant in accordance with the procedures and requirements of the Civil Procedure Rules.

An order for a default judgment which has been wrongly granted can be varied or set aside on application by the defendant. An application can be made to have the default judgment varied (e.g. changed to a lower amount where part of the debt was paid prior to judgment) or set aside (i.e. cancelled).

Where the claimant has reason to believe that the particulars of the claim did not reach the defendant before default judgment, he or she has a duty to apply to the court to ask the court to set aside the default judgment which was granted in his or her favour.

1.6 Statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the time required (see above). If the defendant defends the claim then the case proceeds as a normal defended claim.

If a defendant wishes to have an order for default judgment cancelled or changed after it has been granted he or she must act promptly to apply to the court to have the judgment set aside or varied. The court can vary or cancel the default judgment if it considers that there is good reason for doing so or that the defendant has a real prospect of successfully defending the case.

1.7 Effect of statement of opposition

If the defendant lodges a defence to the claim within the required time the case proceeds as a normal contested claim as described in the page Bringing a Case to Court.

1.8 Effect of lack of statement of opposition

The default judgment procedure only becomes available as a result of the defendant's failure to defend or acknowledge the claim in the required time. Only then can the claimant file a request or application for judgment in default.

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

The default judgment is a decision that the claimant can enforce against the defendant. The procedures that need to be followed to obtain the judgment are described in 1.3 above.

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

As described above, the defendant can ask the court to vary or set aside (i.e., to change the terms of the judgment or to cancel it in its entirety) the default judgment. This is not an appeal as such as it is heard by the same court that would have heard the original case had the defendant defended the claim. The court can vary or set aside the default judgment if it considers that there was some procedural impropriety or that the defendant has a real prospect of successfully defending the claim or that there is a good reason for doing so.

Either party can appeal against a decision to set aside or to refuse to set aside, a default judgment, subject to obtaining permission from either the court that made the decision or the appeal court.

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