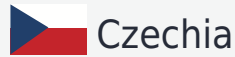


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European payment order



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European Judicial Network
(in civil and commercial
matters)

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 174a of 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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