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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

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 that 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 under 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 place where the debtor lives or is resident, or in the place where the urban property governed by regulations on urban properties in joint ownership is located.

1.3 Formal requirements

A written claim identifying the creditor and the debtor must be submitted, along 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 Registries or Central Services. The [form](#) can be downloaded by clicking on the link.

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. If, however, the applicant wishes to be defended by a lawyer, the other party must be informed so that they can take whatever measures 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 independently evaluate whether or not any unfair terms are present. Should the judge consider that unfair terms may be present, he or she will submit a proposed order for payment to the applicant that subtracts the amount resulting from the implementation of unfair terms from the total amount requested. The applicant may accept or reject the proposed reduction from the total amount; the proposal is considered accepted if no communication is received before the deadline set. If rejected, it is understood that proceedings will be discontinued. If accepted, the order for payment procedure for the proposed amount will be implemented.

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. of the next working 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, so 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 €15 000, 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 fast-track 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 €15 000 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 to the defendant, who has 20 days in which to contest it, and the case proceeds under the ordinary procedure.

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 can be done 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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