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# European payment order

 Romania

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European Judicial Network  
(in civil and commercial  
matters)

## 1 Existence of an order for payment procedure

The order for payment procedure is described in Articles 1014-1025 of the new Code of Civil Procedure, which 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 claims that are certain, of a fixed amount and due, representing payment obligations under a civil agreement, including contracts between a professional and a contracting authority, ascertained in a document or established under a statute, regulation or some other document, acknowledged by the parties with a signature or by other legally admissible means. This does not include claims on the estate 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 court in accordance with common law.

The order for payment procedure is a special one, far simpler than that provided for by common law, and allows the creditor to obtain an enforceable title under conditions differing 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 common law if: the court rejects the order for payment claim, the court issues an order for payment for part of the claims, in which case a legal action can be filed under common law to oblige the debtor to pay the remaining debt, 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 regarding the defendant's place of residence, the order for payment procedure being applicable regardless of whether the defendant lives in another Member State or in a third country.

## 1.2 Competent court

Order for payment claims may be filed at the court with jurisdiction for hearing the case at first instance. In the case of orders for payment, the judge verifies the court's competence on their own initiative.

The competence for settling order for payment claims is established in accordance with the general rules on courts' competence.

Claims with an assessable monetary value of up to RON 200 000 fall under the competence of district courts. Claims with an 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 model/standardised form, but the creditor must comply with minimum formal rules when filing their claim, which must include a certain number of details, namely: their name and address or, where applicable, their company name and registered office; the debtor's name and address as a natural person and, if the debtor is a legal person, their company name and registered office, and, where applicable, the registration certificate number from the trade register or register of legal entities, fiscal code and bank account; the amounts due; the facts and legal grounds for the payment obligations, their time-frame, the due date for payment and any other elements needed in order to establish the claim.

The claim must also contain the contract or any other document showing the amounts due, as well as proof that the order for payment was served on the debtor. The creditor must serve the order on the debtor through the court bailiff or by registered letter, with declared content and acknowledgment of receipt, whereby the debtor is required to pay the amount due within 15 days of receiving that notification. This order interrupts the limitation period.

One copy of the claim and the documents annexed thereto must be sent to each of the 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 is prescribed by law. The creditor must indicate: the amount claimed, the facts and legal grounds for the payment obligations, their time frame, the due date for payment, any other elements needed in order to establish the claim.

Regarding interest, if the parties have not specified the interest rate for late payment, the reference interest rate set by the National Bank of Romania will be applied. The reference rate in force on the first calendar day of the half-year will apply over the whole half-year. The claim generates interest as follows:

- for contracts between professionals, from the date when the claim became payable,
- for contracts concluded between professionals and a contracting authority, without needing to inform the debtor that payment is overdue: if a due date was set in the contract, from the following day; if no due date was 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; if the law or the contract requires 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 or before that date, on the expiry of a 30-day period from that date;
- in other cases, from the date when the debtor's payment was or is lawfully declared overdue.

The creditor may claim additional damages for all expenses incurred in recovering the amounts due to 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 claim must contain the contract or any other document showing the amounts due (invoice, till receipt, handwritten receipt, etc.). Proof of service of the order on the debtor must be annexed to the claim, otherwise it will be deemed inadmissible.

With a view to deciding on the claim, the judge shall summon the parties, in accordance with the provisions on urgent proceedings, in order to obtain explanations and clarifications, and to insist that the debtor pay the amount due or that the parties reach an agreement regarding the payment methods. The writ of summons is to be served on the parties ten days before the hearing date. Copies of the creditor's claim and the documents submitted therewith must be annexed to the writ served on the debtor as proof of the claim. The writ must indicate that the debtor must file any objection at least three days before the hearing date, specifying that, if no objections are filed, the court may consider, given the circumstances of the case, that the debtor recognises the creditor's claims. The objection is not sent to the claimant, who will be informed of its contents in the case file.

If the creditor declares that they have received the due payment, the court acknowledges this in its final judgment, declaring the case closed. When the creditor and the debtor have reached an agreement on the payment, the court shall take note of this fact and issue a decree of consent. This decree is final and represents an enforcement order.

Where the court, having verified the claim based on the submissions and the declarations by the parties, has found that the creditor's claims are well-founded, it will issue an order for payment indicating the amount and the deadline for payment. Where the court, having examined the case evidence, finds that only part of the creditor's claims are well-founded, it will issue a payment order only for that part and will also indicate the payment deadline. In such cases, the creditor may submit an application for legal proceedings under common law with a view to the court obliging the debtor to pay the remainder of the debt. The deadline for payment will be at least 10 days and not more than 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.

If the debtor does not contest the claim by presenting objections, the payment order will be issued not more than 45 days from the introduction of the claim. This deadline does not include the period necessary to serve the procedural documents or delays caused by the creditor, including those resulting from amending or completing the claim.

## 1.4 Rejection of application

Where the debtor challenges the claim, the court verifies whether the challenge is well-founded, on the basis of the documents in the case file and the explanations and clarifications provided by the parties. If the debtor's defence is well-founded, the court will reject the creditor's request by issuing a decision. Where the substantive defence presented by the debtor involves the processing of evidence other than that referred to and that evidence would be admissible in ordinary civil proceedings, in accordance with the law, the court will dismiss the creditor's application for a payment order by issuing a decision. Alternatively, the creditor may file a legal action under common law.

## 1.5 Appeal

The debtor may lodge an application for annulment of a payment order within 10 days of its being served or notified. The creditor may also file an application for annulment against a judgment refusing the order and against a partial order for payment within the same time limit. The application for annulment may only invoke 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 court issuing the order for payment will settle the application for annulment, in the full panel of two judges. The application does not suspend enforcement. Suspension may, however, be granted at the debtor's request, but only after a financial security has been deposited, the amount of which will be set by the court. Where the court judging the case

admits the application for annulment in full or in part, it will annul the order in full or in part, as applicable, and will issue a final decision.

Where the creditor has filed an application for annulment and this has been admitted by the competent court, it will deliver a final judgment whereby the order for payment will be issued.

The decision rejecting the application for annulment is final.

Applications for the European payment order, introduced under Regulation (EC) No 1896/2006, as amended, are dealt with by the court with jurisdiction for hearing the case at first instance. Requests for review, formulated under the conditions and within the timeframe stipulated in Article 20 of the Regulation, fall within the competence of the court whose decision is being appealed, which hears the request in the full panel with two judges. (Article 1<sup>9</sup> of Government Emergency Order No 119/2006 on certain measures necessary to implement certain Community Regulations from the date of Romania's accession to the European Union, approved with amendments by Law No 191/2007, as amended).

## 1.6 Statement of opposition

According to Article 1025(2) of the new Code of Civil Procedure, the interested party may lodge an appeal under common law against the enforcement of the payment order.

According to Article 637(1) of the new Code, enforcement of a decision that constitutes an enforcement order may only be carried out at the creditor's risk if the decision can be challenged through an ordinary appeal or an appeal to the Supreme Court; if the order is subsequently amended or terminated, the creditor will be legally required to restore the debtor to their rights, in whole or in part, as the case may be.

## 1.7 Effect of statement of opposition

According to Article 720 of the new Code, the court, if it admits the appeal against enforcement, taking into account its subject matter, as the case may be, will correct or annul the contested enforcement act, order the annulment or termination of the enforcement itself, or annul or clarify the enforcement order. If the court rejects the appeal, the appellant may be required to pay compensation for damages caused by the delay in enforcement, as well as a fine if the appeal was made in bad faith.

The final decision on whether to admit or reject the appeal will also, ex officio and immediately, be sent to the bailiff.

If the appeal is admitted, the bailiff is obliged to comply with the measures taken or ordered by the court.

## 1.8 Effect of lack of statement of opposition

According to Article 1025(2) of the new Code, the payment order is enforceable, even if it is challenged with an appeal for annulment, and has the authority of provisional res judicata until the appeal is resolved. The payment order becomes final if no appeal for annulment is lodged or if it is rejected.

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

The payment order is enforceable, even if it is challenged with an appeal for annulment, and has the authority of provisional res judicata until the appeal is resolved. The application does not suspend enforcement. Suspension may, however, be granted at the debtor's request, but only after a financial security has been deposited, the amount of which will be set by the court. The payment order becomes final if no appeal for annulment is lodged by the debtor or if it is rejected. Where the court judging the case admits the application for annulment, it will issue a final decision imposing the payment order.

To enforce the decision in accordance with Article 666 of the new Code, after registering the application for enforcement, the bailiff asks the court which issued the decision to approve enforcement. The request for approval of enforcement is dealt with by the court, by a decision issued in closed session, without summoning the parties.

Approval of enforcement allows the creditor to request the bailiff who sought the approval to use all legal

enforcement methods in order to assert their rights.

The court may only reject the application for approval of enforcement if: the application for enforcement falls within the jurisdiction of another enforcement body than that notified; its decision or, as the case may be, document does not, according to the law, constitute an enforceable order; the document, unlike a court decision, does not meet all the formal conditions required by law or other requirements in specific cases provided for by law; the claim is not certain, of a fixed amount and payable; the debtor enjoys immunity from enforcement; the order contains provisions which cannot be met by enforcement; there are other legal impediments.

The decision by which the court admits the request for approval of the enforcement is not subject to appeal, but may be reviewed in the context of the appeal against the enforcement. The decision to reject the request is only appealable by the creditor, within 15 days of its service.

According to Articles 712, 718, 719 and 720 of the new Code of Civil Procedure, appeals may be filed against enforcement, decisions issued by the bailiff, as well as any enforcement act, by those concerned or harmed by the execution thereof. The decision on the appeal can only be challenged by an appeal to the Supreme Court.

The competent court may suspend enforcement until the enforcement appeal or other request for enforcement is resolved, at the request of the interested party and only for valid reasons.

The court, if it admits the appeal against enforcement, will correct or annul the contested enforcement act, order the annulment or termination of the enforcement itself, or annul or clarify the enforcement order.

If the court rejects the appeal, the appellant may be required to pay compensation for damages caused by the delay in enforcement, as well as a fine if the appeal was made in bad faith.

The final decision on whether to admit or reject the appeal will also, ex officio and immediately, be sent to the bailiff.

If the appeal is admitted, the bailiff is obliged to comply with the measures taken or ordered by the court.

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

See the reply to question 1.8.1.

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