

“Order for payment” procedures - Bulgaria

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1 Existence of an order for payment procedure

Chapter XXXVIII ‘Order for payment procedure’ of the Civil Procedure Code (State Gazette No 59 of 20 July 2007, with effect from 1 March 2008, as amended in SG No 42/2009, and last amended in SG No 13/2017) provides a simplified procedure by means of which the claimant may recover his/her claim when that 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.)?

Issue of a payment order may be requested by the creditor under the following claims:

- pecuniary claims or claims for fungible things where the claim is under the jurisdiction of the district court.
- transfer of a chattel which the debtor has received with the obligation to return it, or which is subject of pledge, or which has been transferred by the debtor with the obligation to surrender possession where the claim is under the jurisdiction of the district court

Furthermore, according to the express provision of Article 417 of the Civil Procedure Code (CPC), the applicant may also request the issue of a payment order where the claim, regardless of its cost, refers to:

- an administrative act under which admission of enforcement is entrusted to the civil courts;

- a document or extract from books of accounts which establish claims of government offices, municipalities and banks;
- a deed, agreement or other type of contract, with notary certification of the signatures referring to the liabilities contained therein for payment of money or other fungible things, as well as any obligations to transfer certain property;
- an extract from the pledge registry for a registered security and for commencement of enforcement – regarding the transfer of pledged assets;
- an extract from the pledge registry for a registered sales contract retaining ownership until the price is paid, or a leasing agreement – regarding the return of sold or leased assets;
- a pledge agreement or 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 Civil Procedure Code;
- a notice of deficiency;
- a promissory note, bill of exchange or their equivalent security, as well as a bond or coupons thereto.

Where the application is accompanied by a document under Article 417 CPC which the claim refers to, the creditor may ask the court to order immediate enforcement and to 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 CPC, there is no upper limit in terms of its amount.

Pursuant to the remaining provisions on pecuniary claims, claims for fungible things or transfer of chattels, a payment 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 cost 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 procedure is optional. Even if prerequisites for the issue of a payment 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?

A payment 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 corresponding to 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 considers that the case does not fall within their jurisdiction, it sends it to the appropriate 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 payment orders, applications for the issue of a payment order and other papers related to the 'order for payment' procedure, issued by the Minister of Justice.

1.3.2 Is representation by a lawyer required?

It is not obligatory.

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

The application should lay down the circumstances upon which the claim is based and what the essence of the request is.

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 attach to the application any evidence for establishing the claim. The applicant may attach such evidence, however he/she is not obliged to, 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 payment 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 a payment order is rejected in the following cases

- where the claim does not meet the requirements of Article 410 CPC, i.e. it does not refer to payment of money or fungible things with a price up to BGN 25,000, or chattels of the category pursuant to Paragraph 1, Point 2 of Article 410 CPC, 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) CPC) 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 payment order is not subject to appeal by the parties, except for the part of the expenses. 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 CPC is also subject to appeal. A private appeal against the order for immediate enforcement must be submitted together with the objection against the issued payment order and may be based only on considerations derived from the acts under Article 417 CPC.

1.6 Statement of opposition

Following the receipt of the payment order by the debtor, the latter may submit a written objection within two weeks. An objection within the meaning of Article 414 CPC is anything which in its content is inconsistent with the enforcement, any form of disagreement, any statement from which it is obvious that the debtor is not willing to pay. It is explicitly stated that there is no need to justify the objection.

1.7 Effect of statement of opposition

When the debtor submits an objection in due time, the court instructs the applicant that he/she may bring an action for establishment of the claim within one month by paying the balance of the due stamp fee. If the applicant does not present evidence that he/she has brought the 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 CPC, if there is no objection submitted in due time, or the objection is withdrawn, the payment 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 the payment order, the debtor who has been deprived of the option to contest the claim may lodge an objection to the appellate court, if:

- the payment order was not properly served;
- the payment order was not served to him/her personally and he/she did not have habitual residence in the territory of the Republic of Bulgaria on the day of the service
- he/she had not been informed in good time of the service due to special unforeseen circumstances
- he/she had not submitted the objection due to special unforeseen circumstances which could not have been overcome

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.

The court accepts the objection if availability of the prerequisites listed above is found. If the appellate court 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 payment order and the writ of execution issued thereon. Otherwise, if the appellate court 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.

Furthermore, the debtor may contest, in a claims procedure, the claim for which a payment 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.

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