

“Order for payment” procedures - Greece

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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:

1. the court to which the application is lodged (District Civil Court or Court of First Instance);
2. the legal instrument type, namely 'Application for a Payment Order';
3. 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;
4. 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;
5. 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;
6. 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;
7. a request for a payment order; and
8. 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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Last update: 27/07/2018