

“Order for payment” procedures - Romania

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1 Existence of an order for payment procedure

The order for payment procedure is provided for in Articles 1013-1024 of the new Code of Civil Procedure 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 unquestionable, liquidated and payable claims corresponding to obligations to pay certain amounts of money under a civil agreement, including agreements concluded between a professional and a contracting authority, ascertained in a document or established under a statute, a regulation or another document, acknowledged by the parties with a signature or by other means admissible under the law. The scope of this Section does not include claims made by a body of creditors 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 the court under general provisions.

The order for payment procedure is a special procedure, which is far more simple than the procedure provided for by generally applicable law and which allows the creditor to obtain an enforceable title under conditions which differ 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 generally applicable law if the court rejects the order for payment claim, if the court issues an order for payment for part of the claims — in this case, a legal action can be filed under generally applicable law in order to oblige the debtor to pay the remaining debt — or if 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 in regard to the defendant's residence, the order for payment procedure being applicable whether or not the defendant lives in another Member State or in a third country.

1.2 Competent court

The order for payment claim may be filed to the court which is competent to judge the case on its merits in the first instance. In the case of the order for payment, the judge verifies the competence of the court on their own initiative.

Is this procedure governed by the general rules on the competence of courts (a link to this sheet could be included in this case) or is it subject to different principles?

The competence for the settlement of the order for payment claims is established in accordance with the general rules in matters of competence of courts.

Claims with assessable monetary value of up to RON 200 000 fall under the competence of district courts. Claims with 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 type/standardised form, however the creditor – claimant must comply with minimum formal rules for their claim, which must include a certain number of details, namely: the creditor's name and domicile or, where applicable, their designation and registered office; the debtor's name and domicile as a natural person and, where the debtor is a legal person, their designation and registered office, and, where applicable, the registration certificate number from the trade register or from the register of legal entities, the fiscal code and the bank account; the amounts due; the facts and legal grounds for the payment obligations, their reference period, the due date for payment and any other element that is needed in order to establish the claim.

At the same time, the contract or any other document will be annexed to the claim, showing the amounts due, and the proof of service of the order for payment on the debtor. As regards the service of the order, the creditor must serve the order on the debtor, through the bailiff or in a registered letter, with declared content and acknowledgment of receipt, whereby the debtor is required to pay the amount due within 15 days from the receipt of that notification. This order discontinues the limitation period.

The claim and the documents annexed thereto are submitted in copy in the number of 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 lodged is provided for by the law. The creditor – claimant must indicate: the amount being claimed; the facts and legal grounds of the payment obligation and their reference period; the due date for payment; any other elements needed in order to establish the claim.

If the parties did not establish the level of the interest rate for late payment, the reference interest rate set by the National Bank of Romania will be applied. The reference interest rate in force on the first calendar day of the semester is applicable over the entire semester. The claim generates interest as follows:

- for contracts concluded between professionals, from the date when the claim became payable;

- for contracts concluded between professionals and a contracting authority, without the need for the debtor to be informed that payment is overdue: if a due date was set in the contract, from the day following that due date; if a due date is not 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; should the law or the contract provides for 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 the control date or before that date, on the expiry of a 30-day period from this date;
- in other cases, from the date when the debtor's payment was or is lawfully declared overdue under the law.

The creditor may claim additional damages for all the expenses incurred for the recovery of the amounts as a result of 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 contract or any other document standing as proof for the amounts due are annexed to the request (invoice, cashier receipt, hand-written receipt etc.). The proof of the service of order on the debtor is to be annexed to the claim, failing which the request will be deemed inadmissible.

For the settlement of the claim, the judge summons the parties, in accordance with the provisions on urgent matters, in order to provide explanations and clarifications and to insist on the debtor's execution of the payment due or to have the parties reach an agreement on the methods of payment. The writ of summons is to be served to the party concerned ten days before the hearing date. The creditor's claim and the documents submitted thereby are to be annexed to the writ on the debtor in a copy as proof of the claim. The writ is to indicate that the debtor is bound to file any objection at least three days before the hearing date, specifying that, in the event of failure to offer any objections, the court may consider, with regard to the circumstances of the case, that this is a recognition of the creditor's claims. The claimant will not be informed of the objection, but will become aware of its contents from the case file.

If the creditor declares that they have received the due payment, the court acknowledges this circumstance in a final judgment, declaring the case closed. When the creditor and the debtor have reached an agreement on the payment, the court acknowledges this fact and issues an expeditious decision. The expeditious order is final and deemed an enforceable title.

Where the court, having verified the claim against the submissions, and the declarations of parties, has found that the creditor's claims are justified, it will issue an order for payment indicating the amount and the deadline for payment. If the court, having reviewed the evidence in the case, has found that only part of the creditor's claims are justified, it will issue the order for payment only for that part, also determining the deadline for payment. In this case, the creditor may file a legal action under generally applicable law in order to bind the debtor to pay the remaining claim. The deadline for payment will be at least ten days and will not exceed 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.

Where the debtor does not challenge the claim by presenting objections, the order for payment will be issued within not more than 45 days from the date when the claim was lodged. This time limit does not include the period needed to serve procedural documents and the delay caused by the creditor, including as a result of an amendment or completion of the claim.

1.4 Rejection of application

If the debtor challenges the claim, the court reviews whether the claim is justified based on the documents on file, and on the explanations and clarifications provided by parties. If the debtor's defence is justified, the court will reject the creditor's claim in a judgment. If the defence arguments brought by the debtor on the merits of the case entail handling other evidence than the existing evidence, and the evidence in question would be lawfully admissible under the standard procedure, the court will reject the creditor's claim for an order for payment in a judgment. Subsequently, the creditor may file a legal action under generally applicable law.

1.5 Appeal

The debtor may file an action for annulment of the order for payment within 10 days from the date when that order was handed over to or served on them. Within the same time limit, the creditor may also file an action for annulment against a judgment refusing the order and against a partial order for payment. The claims of the action for annulment may only be 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 action for annulment is to be settled by the court that delivered the order for payment, with a panel of two judges. The action for annulment does not suspend enforcement. Suspension may however be granted at the debtor's request, but only against a security deposit, the amount of which will be set by the court. If the competent

court admits the action for annulment totally or partially, it will annul the order wholly or partially, where appropriate, delivering a final judgment.

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

The decision rejecting the action for annulment is final.

1.6 Statement of opposition

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1.7 Effect of statement of opposition

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1.8 Effect of lack of statement of opposition

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

The order for payment is enforceable even if challenged with an action for annulment and acquires provisionally the force of res judicata until the settlement of the action for annulment. The action for annulment does not suspend enforcement. Suspension may be however granted at the debtor's request only against a security deposit, the amount of which will be set by the court. The order for payment becomes final if an action for annulment has not been filed by the debtor or has been rejected. If the competent court admits the action for annulment filed by the creditor, it will deliver a final judgment whereby the order for payment will be issued.

The interested party may challenge the enforcement of the order for payment under generally applicable law. The objection can only invoke irregularities in regard to the enforcement procedure and causes leading to the extinction of the obligation arising after the order for payment has become final.

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

Please see the response for Question 1.8.1.

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