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French

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Small claims

Luxembourg

1 Existence of a specific small claims procedure

In addition to the European small claims procedure set out in Regulation (EC) No 861/2007 of 11 July 2007, there is a simplified procedure for the recovery of claims up to a threshold of €10 000 (excluding interest and costs) under Luxembourg law, known as the 'order for payment' (*ordonnance de paiement*).

1.1 Scope of procedure, threshold

The order for payment procedure may be used to recover any pecuniary debt of up to €10 000, provided that the debtor is domiciled in Luxembourg.

1.2 Application of procedure

It is up to claimants to decide whether or not to use the order for payment procedure to recover debts, as they can also apply for a summons (*citation*) to appear before a justice of the peace.

One of the differences between the order for payment procedure before a justice of the peace and the application to the District Court for a provisional payment order is that the proceedings before the justice of the peace may culminate in a full judgment (*jugement*), whereas proceedings before a District Court can lead only to a court order (*ordonnance*).

1.3 Forms

An application for an order for payment may be made orally or in writing to the registry of a justice of the peace court.

To be valid, the claim must contain the names, first names, occupations and domicile or residence of the claimant and defendant, a statement of grounds and the amount claimed and an application for a conditional order for payment.

The creditor must attach or lodge any documents that constitute evidence of the existence of the debt and its amount and establish that it is well founded. A comparison of the texts shows that the statement of grounds required for claims that are to be heard by the justice of the peace is less extensive, as it is sufficient in that case to specify the amount of the debt and its origin.

1.4 Assistance

The legislation imposes no obligation on bailiffs or the courts to assist the parties.

1.5 Rules concerning the taking of evidence

The ordinary rules of evidence apply.

1.6 Written procedure

If the debtor files an objection, and the creditor wishes to continue proceedings, there must be a public hearing of the claim.

1.7 Content of judgment

Judgments given in order for payment cases are subject to the same principles and rules as judgments given in ordinary proceedings.

1.8 Reimbursement of costs

In Luxembourg law, the losing side is normally ordered to pay costs, although the court may decide by special and reasoned decision whether all or a proportion of the costs should be awarded against another party. If the party winning the case has incurred costs for the proceedings it can require the other party to reimburse them.

Contrary to the rule which exists in other countries, lawyers' costs are not systematically reimbursed. Under Luxembourg law, the 'costs' referred to in Article 238 of the New Code of Civil Procedure include the costs of bailiffs, experts, any expenses paid to witnesses, translations, etc., but not lawyers' costs.

The judge may award the successful party a lump sum intended to cover costs incurred as a result of an action, including lawyers' costs. This is particularly the case when it would be inequitable to leave one party to bear expenses which it has incurred and which are not included as costs; the judge can order the other party to make such payment as the judge sees fit.

The decision to award a payment, together with the amount of the award, is at the judge's discretion.

1.9 Possibility to appeal

The ordinary rules apply in order for payment cases. Judgments handed down by a justice of the peace can be subject to an appeal if the amount at issue exceeds €2000.

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