

NATIONAL REPORT

- GERMANY -



*Prof. Dr. JOACHIM MÜNCH & Dipl. Jur. MEIK THÖNE, Georg-August-University Göttingen,
Faculty of Law, Institute for Private and Procedural Law, Chair of Civil Law, Commercial Law,
German and foreign Civil Litigation*

GENERAL OVERVIEW

National Legal system	The German law code that deals with civil procedure law was developed in its form at the end of the 19th century. From that point some changes and adjustments have been made.
Court jurisdiction and different types of litigation for debt collection	Court's jurisdiction differs from the territory and matter in dispute. Judicial courts have general jurisdiction. Generally the courts of first instance are county courts. If the dispute deals with matters of labour, labour courts have general jurisdiction. Both can solve all disputes.
National summary procedures for recovery of money claims	The correct proceeding depends on the matter in dispute and on the amount of dispute. There are different proceedings for undisputed claims for example. If a claim is 600 EUR or less, a faster and easier proceeding can be used.
State of IT operational options in judicial procedures for recovery of money claims	In general it is possible to submit briefs, annexes, petitions or statements electronically. Still the court needs to be equipped with an IT system that is able to handle the electronic forms. Besides the proceedings for money claims the use of IT is not very common. Still there are other facilitations like the hearing by a videoconference. An ordinary email is not adequate for submitting. The web portal, www.justiz.de , has to be used by the lawyers that have an own mailbox on www.egvp.de , so that a qualified electronic signature and standard is guaranteed.

SCOPE OF THE PROCEDURE

Eligible claims	The payment order procedure is applicable to all monetary claims except from high-interest consumer loan agreements and claims that depend on the consideration.
Limit regarding value of claim	There are no limits regarding the value of claim.
Rules on using the procedure	The procedure is an additional way for collecting debts and used willingly in the case of a clear legal situation.
Possibility of using national procedure in cross border cases	A cross-border dunning procedure is possible, if a German court is internationally in charge and the case is covered by the Anerkennungs- und Vollstreckungsgesetz (AVAG) [law of acceptance and enforcement]. This includes all member states of the EU, Denmark, Norway, Switzerland, Iceland and Israel.
Number of steps	The procedure consists of two steps. The request and court order are part of the first step; the enforcement order is part of the second step.
Rules on representation by a lawyer	A lawyer is not needed.

COMPETENT COURTS

According to matter	If the claim is up to 5.000 EUR, the local court is competent. If the dispute refers to labour, the labour court is competent.
According to territory	Generally the territorial jurisdiction depends on the residence of the applicant. Though the states are also authorized to concentrate mechanical proceedings to one local court. Only if the applicant does not have a competent German court, the local court of Berlin-Wedding is competent, as long as the defendant has a German court of jurisdiction.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	A standard form is necessarily needed. The prototype is viewable at § 703c Abs. 1 S. 2 Nr. 1 ZPO annex 3. If you use the barcode procedure you can use the website http://www.online-mahntrag.de to fill out the form directly, print it, and send it with your signature to the court.
Rules on representation by a lawyer	A lawyer is not needed.
Description of the reasons for the claim	Since the reform in 1976 the claim has to be named accurately. Though it has not to be constituted. There is no need to present the facts of the case.
Need for written evidence and documents admissible as proof	No written evidence is required.
Option of electronically filing the form	The form can be submitted electronically on http://www.online-mahntrag.de/ which is similar to the barcode procedure. For the technical requirements visit http://www.egvp.de/technik/index.php .

ISSUE OF THE ORDER OF PAYMENT

Specific rules for dealing with submitted apps for order of payment and court decision	<p>Further requirements of the dunning procedure have to be checked in addition to the general civil judgment requirements. Such further requirements are:</p> <ul style="list-style-type: none"> - Admissibility of the dunning procedure - Necessary minimum content including the signature and the correct form - Competent Jurisdiction <p>The court does not deal with the matter in general. Only the applicant abuses the dunning procedure roughly and clearly, the court dismisses the claim. Afterwards the court order is sent to the defendant on the next working day.</p>
Decision of the court on the payment order	<p>There is not a substantive control before the court order is sent. The request does not even need to be justified. The court order points this out moreover.</p>
Existence of guidelines for submitting application	<p>The court order has to be sent to the defendant ex officio. The applicant is informed formlessly. The time limit for filing an objection is two weeks. The court order repeats the statements from the application und explains the proceeding:</p> <ul style="list-style-type: none"> - explicit notice that there has not been a substantive control - order to pay or file an objection in the next two weeks - explicit explanation of inactivity: enforcement order and compulsory execution - demand to file an objection, the form is attached - announcement for the upcoming proceeding, if an objection is filed

Defendant's service of the order of payment	The defendant can file an objection and is requested to do so. There are different explanations that show the consequences of inactivity. The defendant can contact a lawyer, different consumer advice centers or similar people and facilities. Moreover the costs for the objection are shown to prevent the defendant from unnecessary expenses, if the claim is accurate.
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REJECTION OF THE APPLICATION

Grounds for rejecting application	The formal requirements have to be fulfilled. The court does not deal with the matter in general. Only the applicant abuses the dunning procedure roughly and clearly, the court dismisses the claim.
Appeal availability (creditor)	A dismissal by a judge is unappealable. The applicant can appeal to a decision by a judicial officer or registrar and a judge decides. If the application is rejected for form reasons, the applicant can also appeal directly.

OPPOSITION BY THE DEFENDANT

Procedural rules	<p>The time-limit for filing an objection is two weeks. Still the defendant can object until the enforcement order is not issued. An objection that is filed after the issue of an enforcement order is automatically changed to an objection against that enforcement order.</p> <p>The objection needs to be addressed to the court that issued the court order. The defendant is advised to use the form that is attached to the court order. Again no lawyer is required. An authorization is possible.</p>
Substantiated order of payment requirement	<p>The objection does not need to be well founded.</p>
Effects of notice of opposition	<p>If the defendant files the objection to the court on time, the court order is not valid anymore. An enforcement order cannot be issued.</p>
Nature of the structure of the procedure	<p>If one party applies for a further proceeding, the matter is handed ex officio to the competent trial court. The general rules are effective.</p> <p>Otherwise the proceeding stops.</p>

EFFECTS OF ABSENCE OF TIMELY OPPOSITION

Consequences on not filing opposition	<p>If the defendant does not file an objection, an enforcement order is issued at the request of the applicant. Afterwards the defendant is able to file an objection against the enforcement again. The time-limit is two weeks. The next actions are:</p> <ul style="list-style-type: none">- The matter is handed to the competent trial court- Submitting of the notice of appeal- A complete inquest of the matter by the court- Beginning of adversary proceedings including oral proceedings
How to obtain an enforcement judgement	<p>An enforcement order is issued by the court at the request of the applicant. Still the applicant has to fulfill formal rules. If those rules are not fulfilled by the applicant and the applicant is not able to correct it, the court dismisses the application and the court order is not valid anymore.</p>
Effects for the order of payment	<p>The defendant is able to file an objection in two weeks. After this time the enforcement order is legally valid. An objection only inhibits its effect.</p>

COURT FEES

The costs depend on the value of the claim. The minimum is a “halbe Gerichtsgebühr” [half of the court fee] (§ 34 Abs. 1 GKG iVm. Nr. 1100, 1. Var. der Anlage 1). This means for example:

- a claim up to 900 EUR: 23,00 EUR
- a claim up to 1.250 EUR: 27,50 EUR
- a claim up to 1.500 EUR: 32,50 EUR and so on

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically	The enforcement order is domestically an executory title.
Abroad	The enforcement takes place abroad by the rules of the concerning states.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

Both models use a standardized and automatic proceeding through forms. Indeed there are some requirements for the claims, but not limit of the claim. Also a lawyer is not needed. The model tries to advise and inform the parties.

The German proceeding offers to the defendant twice to file an objection. All in all both models have much in common.