

European Payment Order – Spain

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1 Existence of an order for payment procedure

Yes, there is an Order for Payment Procedure. Its main purpose is to protect credit. It operates by creating an enforceable instrument for those debts that satisfy a series of requirements laid down in legislation.

Legal counsels are authorised to deal with and decide on order for payment procedures in accordance with the procedures laid down in procedural legislation.

1.1 Scope of procedure

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims, etc.)?

It applies to pecuniary debts that are certain, due and payable for a specified sum. Since 31 October 2011 there has been no limit on the amount involved. The debt must be evidenced in one of the following ways:

- a) By means of documents, whatever their form, type or physical medium, signed by the debtor or bearing the debtor's stamp, mark or trade mark or any other sign, physical or electronic.
- b) By means of invoices, delivery notes, certificates, telegrams, faxes or any other documents which, even if created unilaterally by the creditor, are normally used to document credits and debts in relationships of such a type as that existing between the creditor and the debtor.
- c) Where, together with the document recording the debt, commercial documents are produced which prove the existence of a long-standing previous relationship.

1.1.2 Is there an upper limit regarding the value of the claim?

No, there has been no upper limit since 31 October 2011.

1.2 Competent court

The Court of First Instance in the domicile or residence of the debtor, or in the place where the urban property that is governed by the regulations on urban properties in joint ownership is located.

1.3.2 Is representation by a lawyer required?

When presenting the initial application for the order for payment procedure, representation by a court representative or legal representative is not necessary. But if the applicant wishes to be defended by a lawyer, the other party must be informed so that they can take whatever steps they consider necessary in their defence.

1.3.4 Is it necessary to present written evidence of the claim at issue? If yes, which documents are admissible as proof?

See section 1.1.1 above.)

1.4 Rejection of application

Failure to satisfy the above requirements regarding territorial jurisdiction and the provision of prima facie evidence, or failure to make good a procedural defect will mean that the court will reject the application. A decision to reject the application can be appealed to the Provincial Court (Audiencia Provincial).

In the case of contracts between traders and consumers, the judge must assess of his or her own motion whether or not any unfair terms are present. Should the judge consider after hearing the parties that unfair terms are present, he or she will determine the consequences of this conclusion, which may be that the claim is inadmissible or that the procedure is to continue without application of the unfair terms.

1.5 Appeal

A decision to reject the application can be appealed to the Provincial Court. The appeal must be filed within 20 days with the original court.

1.6 Statement of opposition

The debtor has a period of 20 days from the date of the demand for payment, and then until 3 p.m. on the day following the expiry of that period, in which to pay or to lodge an objection. The objection must be made in writing. It is not possible to make it orally in court.

The statement of opposition should be submitted in either paper form or by any other means of communication, including electronic, accepted in the Member State of origin and available to the court of origin. The statement of opposition can also be made by a representative of the defendant. (Practice Guide for the application of the Regulation on the European Enforcement Order, p. 22)

1.7 Effect of statement of opposition

If the amount of the claim is not more than €6 000, the legal counsel will make an order bringing the order for payment procedure to an end and stating that the case must proceed under the fast-track procedure. Notice of the objection is served on the applicant, who has 10 days in which to lodge a written challenge. In their respective objections and challenges the parties may ask for a hearing to be held.

1.8 Effect of lack of statement of opposition

If the debtor fails to reply to the demand for payment or does not appear, the legal counsel will issue an order bringing the order for payment procedure to an end and will notify the creditor of the order to enable the creditor to begin enforcement action, which he or she may do by means of a simple application.