

NATIONAL REPORT

- BELGIUM -



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GENERAL OVERVIEW

National Legal system

Regarding Belgian internal law, the Constitution is the highest-ranking norm. In a judgment given on 27 May 1971 the Court of Cassation held that all international and supranational instruments ranked higher in the hierarchy than any internal instruments and thus higher than the Constitution. If a European Regulation were in conflict with the Constitution, the Regulation would prevail.

The internal legislative instruments in Belgium are found mainly at two parallel levels: the federal level (basically the national level) and the component level (the communities and regions). Each is sovereign in relation to the other. Federal legislative instruments are known as Acts or laws, whereas instruments issued by the three Communities – the Flemish, French and German-speaking Communities – and by the Flemish and Walloon Regions are called Decrees. Instruments issued by the Brussels Capital Region are called Ordinances. The implementing instruments for Acts are Royal or Ministerial Decrees, whereas the implementing instruments for Decrees and Ordinances are governmental or ministerial decrees.

The rules applicable to civil procedures are set at the federal (Belgian) level and can mainly be found in the Judicial Code, which was implemented by the Act of 10 October 1967. Since then, more than 150 acts have modified the Judicial Code. Besides the Judicial Code, a number of other Acts and Royal Decrees are important for civil procedures, such as (among others) the Act of 15 June 1935 on the use of languages in court cases and the Royal Decree of 26 October 2007 on the tariffs of procedural indemnities.

<p>Court jurisdiction and different types of litigation for debt collection</p>	<p>Court's jurisdiction is divided according to the nature of the dispute (or the parties), the amount at stake, hierarchy and territory.</p> <p>Apart from a from the summary order for payment procedure for claims up to a maximum amount of EUR 1,860 (art. 1338-1344 J.C.), Belgium does not have a separate debt collection procedure that is designed specifically for the speedy recovery of pecuniary claims.</p> <p>As the Belgian summary order for payment procedure is very formal, it is seldomly used and debt collection is normally done through the use of the normal procedures (introduced by writ of summons, petition or voluntary appearance).</p>
<p>National summary procedures for recovery of money clames</p>	<p>Apart from a from the summary order for payment procedure for claims up to a maximum amount of EUR 1,860 (art. 1338-1344 J.C.), Belgium does not have a separate debt collection procedure that is designed specifically for the speedy recovery of pecuniary claims.</p> <p>It can be attempted by a creditor to obtain a provisional sentence by applying for a summary judgment if urgency is involved and there is sufficient 'appearance of right' (<i>fumus boni iuris</i>). Such intermediate sentence can also be requested in the course of proceedings on the merits as intermediate relief.</p> <p>It must however be recognized that Belgian courts are reluctant to grant provisional amounts in summary proceedings or as intermediate relief.</p>

State of IT operational options in judicial procedures for recovery of money claims	<p>On July 10, 2006 the Act on Electronic Procedure was voted, and on August 5, 2006 the Act on Electronic Evidence, changing several articles of the Judicial Code relating to the notification and service of deeds by electronic means. In these Acts equivalence is found between electronic and postal mail and reference is made to the judicial data system Phenix (as the computerization project for the Judiciary was called). Unfortunately, after years of investment, the Phenix project failed. It re-emerged from its ashes under the name 'Cheops'. The Act and actual computerization has not yet been implemented and executed in practice. Notwithstanding the fact that this is a valuable legal initiative, the date of commencement of most of the articles in these Acts has been postponed to January 1, 2013.</p> <p>Currently, no specific IT operational options are available for the recovery of pecuniary debts.</p>
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SCOPE OF THE PROCEDURE

Eligible claims	Pecuniary claims up to a maximum amount of EUR 1,860 for which the Justice of Peace (or the Police court in case of damages related to traffic or train accidents) are competent, can be handled in accordance with the summary order for payment procedure as laid down in articles 1338-1344 JC. (In Dutch and French the Justice of Peace is called: <i>Vredegerecht</i> – <i>Justice de Paix</i> .) The use of this procedure is purely optional.
Limit regarding value of claim	EUR 1,860, which coincides with the competence <i>ratione summae</i> of the Justice of Peace.
Rules on using the procedure	The procedure is optional.
Possibility of using national procedure in cross border cases	The summary order for payment procedure can only be used if the debtor has its domicile or residence in Belgium. If this is the case, a foreign creditor could use the procedure if the case pertains to the competence of the Justice of Peace (<i>ratione summae</i> and no exclusion, see 14) or the Police court.
Number of steps	Three steps: notice of payment, application (unilateral) and contestation.
Rules on representation by a lawyer	Mandatory, the petition needs to be signed by a lawyer.

COMPETENT COURTS

According to matter	<p>The amount of EUR 1,860 coincides with the competence <i>ratione summae</i> of the Justice of Peace as laid down in art. 590 Judicial Code. No limitations exist regarding the legal basis of the payment obligation, it may concern contractual claims or claims in tort, with exception to those claims explicitly excluded from the competence of the Justice of Peace by the Judicial Code (e.g. specific conflicts regarding corporations, labour conflicts,...) and those that pertain to the competence of the Police court.</p> <p>The Police court is competent in case of damages related to traffic or train accidents (art. 601 Judicial Code).</p>
According to territory	<p>All Justices of Peace and Police courts have a designated territory of competence which needs to be respected.</p> <p>In general, territorial competence is based on:</p> <ol style="list-style-type: none">1) domicile of the defendant or one of them;2) place where the litigious obligation or one of them originated or needs to be executed;3) chosen domicile for the execution of a deed.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS

Availability of standardized form and form description	No standardized form.
Rules on representation by a lawyer	See above.
Description of the reasons for the claim	The petition needs to mention the subject of the claim and a precise statement of the amount claimed, with specification as to the composing elements of the claim and the basis therefore.
Need for written evidence and documents admissible as proof	<p>1) a copy of the written document emanating from the debtor on which the claim is based. The documents that have not been accepted in case law are: order form , invoice , financing contract, lease contract or insurance contract. Considering this narrow interpretation, the applicability of the procedure is very limited.</p> <p>2) the bailiff's writ or registered letter containing the obligatory prior notice of payment (and in case a registered letter was sent: proof of reception or of refusal of the registered letter, and a statement that proves that the debtor is registered at the address that is mentioned in the population register).</p>
Option of electronically filing the form	Not available.

ISSUE OF THE ORDER OF PAYMENT

Specific rules for dealing with submitted apps for order of payment and court decision

The existing procedure can be summarized as follows:

A notice of payment must be sent to the debtor either by bailiff's writ or by registered letter with proof of reception, prior to the filing of the petition.

This notice letter needs to contain:

- 1) the text of the articles 1338-1344 JC;
- 2) a notice to pay within fifteen days as from the service or sending of the letter;
- 3) the amount claimed;
- 4) the judge before whom the claim will be brought in the absence of payment;

These requirements are sanctioned by nullity of the notice and inadmissibility of the subsequent proceedings.

Within fifteen days after the expiry of the fifteen day deadline the debtor has to pay, two written copies of a petition need to be filed with the Justice of Peace (or the Police court). This petition can be submitted directly to the court's docket, or can be sent to the docket by the lawyer representing the creditor. The petition needs to contain:

- 1) the exact date, month and year;
- 2) applicant's name, surname, profession and domicile, as well as of his legal representatives;
- 3) subject of the claim and a precise statement of the amount claimed, with specification as to the composing elements of the claim and the basis therefore;
- 4) indication of the competent court;
- 5) signature of the applicant's lawyer;
- 6) Optional: the reasons why the applicant is opposed to any deferral of payment.

The exhibits as mentioned under 19 need to be attached to the petition.

Decision of the court on the payment order	Within 15 days after the submission of the petition, the court can grant the petition or deny it. It can also partially grant the petition or grant a deferral of payment. A copy of the decision is sent to the attorney of the petitioner.
Existence of guidelines for submitting application	<p>Within fifteen days after the expiry of the fifteen day deadline the debtor has to pay (as mentioned in the prior notice letter), two written copies of a petition need to be filed with the Justice of Peace (or the Police court). This petition can be submitted directly to the court's docket, or can be sent to the docket by the lawyer representing the creditor. The petition needs to contain:</p> <ol style="list-style-type: none">1) the exact date, month and year;2) applicant's name, surname, profession and domicile, as well as of his legal representatives;3) subject of the claim and a precise statement of the amount claimed, with specification as to the composing elements of the claim and the basis therefore;4) indication of the competent court;5) signature of the applicant's lawyer;6) Optional: the reasons why the applicant is opposed to any deferral of payment. <p>The exhibits as mentioned under 19 need to be attached to the petition.</p>

Defendant's service of the order of payment	<p>When the decision is served upon the defendant (in accordance with the normal rules of service), this writ needs to contain a copy of the petition and needs to mention:</p> <ol style="list-style-type: none">1) the deadline by which the debtor should file opposition proceedings;2) the competent court for such opposition proceedings;3) the due form that needs to be respected; <p>Finally, the debtor needs to be warned that if he does not file opposition or appeal, he can be forced to pay by all legal means available.</p> <p>Non-respect of these requirements is sanctioned by nullity.</p> <p>The decision is not provisionally enforceable, so in case of timely opposition or appeal, it cannot be enforced upon the defendant.</p>
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REJECTION OF THE APPLICATION

Grounds for rejecting application	<p>The petition can be denied if the specific requirements have not been respected or it concerns an ineligible claim (e.g. no written proof, absence of an adequate notice letter, claim above EUR 1,860,...).</p> <p>The petition can also be denied if the judge find the claim to be without merit.</p>
Existence of prima facie of claim	<p>Not relevant.</p>
Appeal availability (creditor)	<p>The creditor cannot appeal in case the claim is (partially) denied. He can however introduce the entire claim again through the normal procedure.</p>

OPPOSITION BY THE DEFENDANT

Procedural rules	<p>Opposition or appeal can be lodged against the court decision in accordance with the normal procedural rules as laid down in art. 1047 – 1049 Judicial Code (opposition) and art. 1050 – 1072bis Judicial Code (appeal).</p> <p>Opposition is filed by bailiff's writ, comprising summons of the creditor before the original court, or by voluntary appearance. In general, appeal can be lodged by writ of summons or by filing a petition in appeal with the court, or, against all parties present or represented during the appeal proceedings, by submitting a brief of arguments.</p> <p>As a specific feature in the summary order for payment procedure, and contrary to art. 1047 Judicial Code, opposition can also be filed by filing a petition, which will be communicated by the court clerk to the creditor and its lawyer by judicial letter.</p>
Substantiated order of payment requirement	No other requirements exist.
Effects of notice of opposition	The opposition or appeal procedure will proceed according to the normal rules of procedure.
Nature of the structure of the procedure	No special features, normal procedure.

EFFECTS OF ABSENSE OF TIMELY OPPOSITION

Consequences on not filing opposition	<p>As the service of the decision ordering the defendant to pay as rendered by the Justice of Peace or Police court will occur in accordance with the normal rules of service, this decision will become final and definitive upon the expiry of one month as from the date of service. Once the decision has become final and definitive, it can be enforced.</p> <p>The decision is not provisionally enforceable, so in case of timely opposition or appeal, it cannot be enforced upon the defendant.</p>
How to obtain an enforcement judgement	<p>There is no separate declaration of enforceability. The decision has to become final and definitive by lack of timely opposition or appeal.</p>
Effects for the order of payment	<p>Not relevant. As is the case in all procedures, disputes regarding the enforcement of the decision will have to be brought before the attachment judge.</p>

COURT FEES

In order to submit a petition, an amount of EUR 27 needs to be paid to the court's registry.

Furthermore, a procedural indemnity will be awarded to the victorious petitioner. This indemnity is determined in relation to the amount of the claim. Article 5 of the Royal Decree of 26 October 2007 provides that the minimum amounts are applicable to the unilateral phase of the procedure, whereas the normal regime provides for basic, minimum and maximum amounts, which will become applicable in case of opposition or appeal (or if the case is reintroduced through the normal procedure):

Claim	Basic amount	Min. amount	Max. amount
From € 0 to € 250	€ 165	€ 82.50	€ 330
From € 250.01 to € 750	€ 220	€ 137.50	€ 550
From € 750.01 to € 1,860	€ 440	€ 220	€ 1,100

ENFORCEMENT OF NATIONAL ORDER OF PAYMENT

Domestically	The enforcement of the decision domestically will occur in accordance with the general rules of enforcement.
Abroad	As the defendant needs to be domiciled or have its residence in Belgium, this situation would only rarely occur, but the enforcement of the decision abroad would normally have to occur in accordance with the general rules of enforcement of the local jurisdiction in respect of applicable international regulation.

COMPARING NATIONAL AND EU ORDER FOR PAYMENT

From the above it is clear that the Belgian summary order for payment procedure has little to do with the European order for payment procedure. It is a highly formal and evidence based procedure for claims up to EUR 1,860. This procedure is rarely used.

Apart from the unilateral petition (only after a highly formal notice letter warning the debtor), the opposition, appeal, service and enforcement are not different from normal Belgian civil or commercial procedure.

It was attempted to modify and modernize this procedure in the wake of the European order for payment, but although the draft bill was passed in the Senate, the government fell before the draft bill could be voted in the Chamber of Representatives. It is not clear whether the draft bill will make its reappearance any time soon.