

E- COURT OF FIRST INSTANCE OR ELECTRONIC WRIT-OF-PAYMENT PROCEDURE (EPU)²³

The electronic writ-of-payment procedure makes an alternative to basic civil procedure. It was introduced into the Civil Procedure Code on 1 January 2010. It is provided for in respect of pecuniary claims pursued pursuant to Chapter 3, Section V of Title VII of Book VII of Part One, Book I of the Code of Civil Procedure. Electronic writ-of-payment proceedings have been introduced as separate proceedings in cases where the facts are not complicated and no evidence must be taken. This procedure is governed by the provisions on writ-of-payment proceedings with separations arising from Article 505²⁸ - Article 505³⁷ of the Code of Civil Procedure.

Aside of the Code of Civil Procedure, the use of electronic writ-of-payment proceedings is regulated by such legal acts as the Regulation of the Minister of Justice on the mode of creating and making available an account in an ICT system supporting court proceedings of 26 April 2016 (Journal of Laws of 2016, item 637) and the Regulation of the Minister of Justice on court actions related to appending electronic enforcement titles with the warrant of execution and the method of storage and use of electronic enforcement titles appended with the warrant of execution of 6 October 2016. (Journal of Laws of 2016, item 1739).

The E-Court, that is the District Court Lublin- Zachód in Lublin, VI Civil Division, is the court of competent subject-matter jurisdiction regardless of the value of the subject matter in dispute. It is the only court in Poland ruling on cases brought via the Internet. It jurisdiction in nationwide. For the e-court, the parties' place of residence is irrelevant, and the claim may also be brought from abroad,

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² Developed under: the Act of 17 November 1964. - Code of Civil Procedure (Journal of Laws of 2016, item 1822, as amended); Regulation of the Minister of Justice of 26 April 2016 on the procedure for opening and making available an account in an ICT system supporting court proceedings (Journal of Laws of 2016, item 637); Regulation of the Minister of Justice of 6 October 2016 on the activities of the court related to awarding an enforcement clause to electronic enforcement titles and on the manner of storing and using electronic enforcement titles. (Journal of Laws, item 1739).

³ Artykuł przetłumaczony ze środków finansowanych przez Ministerstwo Nauki i Szkolnictwa Wyższego na działalność upowszechniającą naukę (DUN), nr decyzji 810/P-DUN/2018. Article translated from funds financed by the Ministry of Science and Higher Education for the dissemination of science (DUN), Decision No. 810 / P-DUN / 2018.

provided that the parties' place of residence or registered office (or at least their mailing address) is located in Poland. The e-Court may be accessed via www.e-sad.gov.pl

With the current technical conditions claims of the value not exceeding PLN 100,000,000 (one hundred million zlotys) may be pursued in electronic writ-of-payment proceedings.

In order to file a statement of claim in an electronic writ-of-payment proceedings, an account must be opened in the e-Court ICT system and certificate obtained from the EPU Certification Centre, which is valid for a period of one year. It is necessary to provide such data as: name and surname, PESEL number, identity document number, place of birth, e-mail address, correspondence address. A secure electronic signature may also be used, verified via a valid qualified certificate within the meaning of Article 3(2) of the Act of 18 September 2001 on Electronic Signature.

In electronic writ-of-payment proceedings, the parties have the same rights as in traditional court proceedings, with the exception that communication between the applicant and the eCourt proceeds exclusively by electronic means. All decisions and orders shall be deemed to have been delivered upon logging in by the user on his account on the e-Court portal. Delivery takes place at the moment of the user's login - the addressee of the correspondence on his account - once the letter has been posted there or – in the absence of a correct login - 14 days of placing the letter in the ICT system of the e-Court.

One must also pay a fee to effectively file the lawsuit. Under Article 19 of the Act on Court Fees in Civil Law Proceedings, the fee amounts to $\frac{1}{4}$ of the fee paid in ordinary proceedings, accordingly the fee amounts to 1.25% of the value of the subject matter in dispute, but may not be lower than PLN 30.

Should the fee fail to be contributed, e-Court does not call for its payment, and the statement of claim does not have the effects of the Act on filing a pleading to court. To name further differences between electronic writ-of-payment proceedings and the traditional ones: the applicant may not apply for exemption from court costs.

If the Court of First Instance considers that there are grounds for upholding the action, a payment order shall be issued. Pursuant to Article 498 in conjunction with Article 505²⁸ of the Code of Civil Procedure, a payment order is issued if the applicant asserts a pecuniary claim in the application, therefore in every case of payment regardless of the amount of the claim and its legal title. In electronic writ-of-payment proceedings, the order for payment is exclusively in electronic form and is available in the ICT system of the e-court upon providing a unique order code (20 characters) placed in the upper left corner of the verification printout.

Conversely, where the facts put forward by the applicant raise doubts of the Court, the claim is manifestly unfounded, its satisfaction depends on consideration, or the defendant's whereabouts are unknown, or if the order for payment could not be served on him at home, no payment order shall be issued.

It should be emphasised that, at present, claims which have fallen due more than three years before the date of filing of the application cannot be pursued in electronic writ-of-payment proceedings. Where the e-Court established that the due date of the specific claimed amount is earlier than three years preceding the application, it shall declare that there are no grounds for issuing the order and shall refer the case to the court of general jurisdiction of the defendant.

Unlike the applicant, the defendant may choose the form of communication with the Court. The order for payment shall be served on the respondent in paper-based form (registered letter) along with instructions on, *inter alia*, how to submit an objection.

Once the order for payment has been delivered, the respondent may choose the method of communication with the e-Court - traditional paper-based mode or electronic form - by opening an account in the e-Court ICT system.

Until the defendant has lodged the pleading in electronic form, the communication will be proceeding in a paper-based form. Only effective submission of an electronic document by the respondent alters the form of contact between the respondent and the eCourt.

As in the case of the applicant, once the respondent has gone into an electronic form of communication, all decisions and orders issued in the course of proceedings shall be deemed to have been served upon the user logging in to his account in the eCourt.

If upon receipt of the order for payment issued by the eCourt the respondent, considers that it was issued unduly or in an inadequate amount, he or she may file a statement of opposition. The order for payment shall be then null and void and the matter shall be referred to the court of general jurisdiction, that is by the respondent's place of residence (seat).

Similarly to traditional proceedings, the statement of opposition shall be lodged within two weeks of the service of the order for payment. Failure to observe this time limit results in rejection of the opposition and, consequently, in the order becoming final and binding. If the respondent has failed to observe the time limit for submitting his statement of opposition for reasons not attributable to any fault of his own, he may request that the time limit be re-established. No fee shall be payable on the opposition.

If, upon receipt of the order for payment, the respondent fails to act, to satisfy the claim or to raise an objection, the order shall become final after a period of two weeks from the date of service on the respondent. On the other hand, the e-Court will append it with a warrant of execution *ex officio*. The applicant does not have to submit a separate application for its issue. The warrant of execution issued in electronic writ-of-payment proceedings shall be exclusively in electronic form.

Advantages of electronic writ-of-payment proceedings:

- simpler proceedings – a statement of claim may be filed from home, and preparation of pleadings consists in filling in ready-made forms
- cost-effective proceedings - in traditional proceedings, the fee on a claim amounts to 5% of the value of the subject-matter in dispute, in electronic procedure by writ of payment (EPU) it amounts to 1.25% (in both cases not less than PLN 30)
- shorter time to issue a payment order - an EPU payment order can be issued even within a few days
- no need to attach evidence to the statement of claim
- secure proceedings (certainty as to the identity of the parties) - in traditional proceedings the claimant must provide its PESEL number, NIP (number from the National Court Register or other register), but it does not have to provide this information to the respondent. However, it needs to do so in electronic writ-of-payment proceedings, that it is pending against the right person. Importantly, e-Court may fine the respondent if in bad faith or due to a lack of due diligence it incorrectly marked: PESEL, NIP, KRS or other register number, place of residence or registered office and addresses of the parties, their statutory representatives and attorneys.

Moreover, in electronic writ-of-payment proceedings, the system automatically verifies the respondents in the PESEL register, making it possible to determine at the filing stage whether the defendant's PESEL number matches the defendant's name and surname and whether the defendant's address matches the address in the PESEL register.

- no double *lis pendens* in the dispute - in the electronic writ-of-payment proceedings the system is equipped with a control mechanism preventing the practice of filing multiple claims for the same claim.