

Cross-border claim enforcement (1): how can you find the most effective means?

Rapidly increasing trade within the European Union inevitably brings about a great deal of unpaid invoices, and contested and uncontested claims alike. In this two-part article the expert of Kovács Réti Szegheő Attorneys at Law provides guidance to the solutions available for creditors, information on competent courts to turn to, and the most effective means of legal action for successful claim enforcement by the creditors.

Dr Andrea Bayer stressed that today, if creditors are doing business across borders in the internal EU market, i.e. in cases in which at least one of the parties is domiciled or has its registered seat in an EU member state other than the member state of the court hearing the action, they may choose an existing European claims collection method, or alternatively avail of one of the existing domestic claim enforcement procedures.

There are several procedural tools designed to help cross-border debt recovery in the EU. To name but a few, in case of uncontested pecuniary claims the European Enforcement Order, the so called European order for payment procedure applies, and then there is the so called European Small Claims Procedure as well.

In addition to the already existing tools, some further regulations are in prospect in the near future. In January 2017 the European order for the attachment of bank accounts will be introduced, in order for improving the efficiency of the enforcement of monetary claims between EU member states, which will create the possibility for the attachment of debtors' bank accounts even if the account is located in another member state.

Regulation (EC) No 44/2001 (Brussels I)

The expert of Kovács Réti Szegheő Attorneys at Law pointed out: Council Regulation (No 44/2001 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters) "Brussels I" sets out the rules for deciding which courts should hear a given cross-border case. Pursuant to this Regulation, any judgement reached by the court in a given member state, for instance judgements establishing that the claim is justifiable, would be acknowledged in another member state automatically, without any special procedure required.

In this context "Judgement" means any judgement given by a court or tribunal of a member state whatever the judgement may be called, including a decree, order, decision, a writ of execution as well as a determination of costs or expenses by an officer or the court.

The term "without any special procedure required" implies that under no circumstances may the foreign judgement be reviewed on the merit. The competent court of the member state in which enforcement is sought - upon request by either of the parties to the case - shall declare the judgement given in another member state enforceable immediately upon the completion of a purely administrative control.

Dr Andrea Bayer pointed out that the aforementioned "Brussels I" Regulation has been replaced by an amended "recast regulation" of the same, which applies only for proceedings initiated after 10 January



2015. However, proceedings initiated prior to 10 January 2015, will continue to fall under the effect of Regulation (EC) No 44/2001.

Although the recast regulation does not contain significant new features as regards claim enforcement or related questions of jurisdiction, it paves the way for the EU to sign a convention that will apply outside the borders of the EU in questions of jurisdiction agreements.

However, if the debt in question is a pecuniary claim uncontested by the debtor, then the European Enforcement Order applies. This order has been created by a specifically drawn up regulation, which is Regulation (EC) 805/2004 of the European Parliament and of the Council creating a European Enforcement Order for uncontested claims.

The European Enforcement Order is a certification that renders unnecessary any intermediate proceedings for the enforcement of judgements, court settlements and authentic instruments pertaining to uncontested pecuniary claims in other member states, whereby it also renders those automatically enforceable by other member states. The order is applicable in all EU member states with the exception of Denmark.

When should a claim be considered uncontested?

Claims should be considered undisputed, if the debtor has acknowledged the existence of the claim in the course of a judicial proceeding or by way of an authentic public document; or, if he did not raise objections against the claim in the course of the judicial proceeding.

Furthermore, it should also be considered undisputed if the debtor did raise objections against the claim in the course of the judicial proceeding, but failed to appear at the hearing. The European Enforcement Order may be issued in either of the above cases, while its enforcement will be governed by the domestic law of the member state in which the enforcement is requested.

In the case of Hungary for instance, the certificate of enforcement will be issued by the court of competence based on the domicile or registered seat of the debtor - or in the absence of such, by the court of competence based on the debtor's enforceable assets - and in case of Hungarian branches or commercial representations of companies registered abroad, by the competent court based on the location of such branch or representative office.