

Cross-border claim enforcement (2): the European order for payment procedure

The European order for payment procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims in civil and commercial matters.

The expert of Kovács Réti Szegheő Attorneys at Law has pointed out in the previous article of this two-part series, that rapidly increasing trade within the European Union inevitably brings about a great deal of unpaid invoices, contested and uncontested claims alike.

The question arises, what solutions are available for creditors and which are the courts of competence they can turn to, in order to successfully enforce their claims?

In order to establish the jurisdiction, the rules laid down in the so called "Brussels I" regulation (Council Regulation No 44/2001) and, as of 10 January 2015 the recast version of the same must be observed. Based on these, if a given claim arises from a contract concluded by a consumer, where the consumer is the obligor, the competent courts will be exclusively the courts of the country in which the obligor is domiciled or habitually resident.

The EU regulation on the European order for payment procedure [Regulation (EC) No 1896/2006 of the European Parliament and of the Council creating a European order for payment procedure] permits the free circulation of European orders for payment throughout European Union (EU) countries by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the EU country of enforcement prior to recognition and enforcement.

The course of the procedure

Dr Andrea Bayer explained that a standard form for requesting the issuance of the European order for payment has to be filled in with the details of the claimed amount payable at the time of serving the claim form on a debtor, which then has to be submitted to the court which is competent pursuant to the above mentioned Brussels I Regulation.

The court to which the request for the European order for payment has been submitted will examine, as soon as practicable, whether the conditions for its applicability have been met (whether or not it is a cross-border claim, and whether the concerned court has jurisdiction to hear the case, etc.) and the well-foundedness of the claim.

If the requirements for the submission of the European order for payment have been met, the court issues the European order for payment, normally within 30 days of the lodging of the application, whereby the payment order becomes enforceable.

In the aforesaid manner this procedure will cancel the procedure for the declaration of enforceability in the other member state concerned. The enforcement procedure will be governed by the law of the member state in which the enforcement of the European order for payment has been requested. For instance, the European order for payment has to be served on the debtor in accordance with the national law in the member state in which the address for service is located, by observing the requirements set as minimum procedural standards in the Regulation.



If the claim does not exceed two thousand Euros

If the claimed amount does not exceed two thousand Euros, the European small claims procedure has to be applied (Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure). This procedure also provides for the recognition and enforcement of a judgement/decision brought in a given member state without any special procedure of declaration of enforceability.

The expert of Kovács Réti Szegheő Attorneys at Law underlined: the aforementioned procedures will apply to all EU member states with the exception of Denmark, and may be used as optional measures to complement the legal instruments provided for by domestic regulations. In cases concerning Denmark, the existing bilateral agreements concluded with the said country shall prevail.

Is representation by a lawyer specialised in claim-enforcement required?

In conclusion: the instruments described above have largely contributed to simplifying claim enforcement within the borders of the European Union.

However, considering the high number of available proceedings, and with view to an enhanced efficiency of enforcement, it is advisable to seek the advice of an attorney at law who is specialised in international claim enforcement - concluded Dr Andrea Bayer.