contrast



An unpaid cross-border invoice? Don't just sit there!

Imagine...

You work in the accounting department of a Swedish company that does business throughout the EU. It´s the end of the month, and you note that a Portuguese distributor, despite several demands and a formal notice of default, still hasn't paid an outstanding invoice - although the distributor hasn´t contested it, either.

You would like to commence a procedure to compel payment, but you pessimistically assume that doing so would cost more than the amount of the outstanding invoice itself.

At lunch you explain the situation to a colleague who works in the legal department. He refers to something called the "European order for payment procedure", as well as to a "European small claims procedure". This sounds like music to your ears, but is difficult to understand without legal background...

A brief clarification.

When there exists an - uncontested - cross-border monetary claim between any EU Member States (with the exception of Denmark), the **European order for payment procedure offers** a faster, cheaper and harmonised alternative to the classic national procedures.

The **procedure** takes place as follows: first you submit a **standard form** to the judge (with the exception of Hungary, where it goes to a notary public). The competent court is determined according to the normal rules contained in the Brussels Ibis Regulation. This regulation provides a general ground

of jurisdiction for the defendant's domicile, but also special and exclusive grounds of jurisdiction. For example, in case of a valid agreement or general terms and conditions with a forum selection clause, the court designated therein has exclusive jurisdiction.

Then the judge summarily examines the admissibility and foundation of the claim, without giving notification to or convening the debtor. The judge **issues a European order for payment (EOP)** if he finds that the claim is indeed admissible and well-founded.

The EOP is then **served on the debtor**. The court can do this itself or ask the plaintiff to arrange it. The service makes the debtor aware of the existence of the procedure.

After the service, the debtor has the choice of **paying his debt** or **defending himself** within a period of 30 days in writing against the order for payment. If he fails to do so, the court then declares the order for payment to be enforceable. If the debtor submits a protest in good time to the judge who issued the order for payment, the plaintiff can choose to either refer the case to the civil judge for a classic procedure or continue the claim with the European small claims procedure, if the conditions for this latter shortened procedure are fulfilled.

The **European small claims procedure** is also a harmonised procedure. It can be applied for resolving most civil and commercial disputes when the value of the claim does not amount to over 5,000 euros, excluding interest and costs. Contested monetary claims also qualify for this procedure.

Let us assume that the Swedish company in our example has a claim of no more than 5,000 euros against its Portuguese distributor, and that the distribution agreement contains a forum selection clause in favour of the Swedish courts: in this case, the Swedish company can unilaterally request an EOP before the Swedish judge. If the latter finds that the order is admissible and well-founded, then the order for payment is served on the Portuguese distributor, which will then have 30 days to defend itself in writing against that order before the Swedish court.

If the distributor fails to do so in a timely manner, the court declares the order to be enforceable and it can be executed in Portugal. If the distributor does conduct a timely defence, the plaintiff can either abandon the procedure or continue to pursue the case before the judge in Sweden, possibly by means of a European small claims procedure.

Concretely.

- If there is an uncontested cross-border monetary claim, you can make use of a European order for payment. The European order for payment procedure is a harmonised procedure based on the use of standard forms.
- As the first step, the creditor must submit a standard form to the competent judge, who decides whether or not to issue a European order for payment. If he does so, after service the debtor has 30 days to defend himself against that order.
- In the absence of a (timely) defence, the order for payment becomes enforceable and the plaintiff can compel the payment judicially against the debtor. In case of timely defence, the plaintiff can continue the case before the civil judge or by means of the European small claims procedure, so long as the claim involves a principal amount of no more than 5,000 euros.

Want to know more?

- You can consult the consolidated version of the Regulation creating a European order for payment procedure, with the standard forms attached, here.
- You can consult the consolidated version of the Regulation establishing a European Small Claims Procedure, with the standard forms attached, here.

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