



A Citizens' Guide to

Cross-border Civil Litigation in the European Union



European Judicial Network
in civil and commercial matters



Foreword to:

A Citizens' Guide to Cross-border Civil Litigation in the European Union

The European Union has a system of laws in place designed to help individuals and businesses with cross-border litigation. This is the case with the new procedural tools for simplifying cross-border debt recovery. The European Payment Order for uncontested pecuniary claims and the European Small Claims Procedure for claims of up to €2000 are remarkable legal tools. They offer citizens and businesses across EU the means for quicker, more efficient resolution of cross-border cases, by making it easier to enforce a claim against a defendant in another Member State.

Free movement is a core right of EU citizens. It must be more than an abstract idea. It must become a concrete reality across all EU Member States. EU law must be rigorously enforced wherever necessary. In the field of civil law, we can make the daily lives of citizens easier in Europe, in particular when you are moving or shopping across borders. The creation of a European area of justice without internal frontiers reinforces the single market. Facilitating the recovery of cross-border debts is a crucial element of a well-functioning single market.

This Citizens' Guide aims to explain these laws and the principles behind these European procedures and how you can choose whether you want to use them. It only covers civil and commercial cases.

I am convinced that this guide will ensure effective take-up and implementation of these tools and that it will be of practical help to you.

With best wishes,



Viviane Reding
Vice-President

Justice, Fundamental Rights
and Citizenship

A handwritten signature in black ink, appearing to be 'V. Reding', written in a cursive style.

1. INTRODUCTION

Did you buy something over the internet from another country in the European Union but it never arrived? Or maybe you bought a computer whilst on holiday and when you got home you found it didn't work properly? Did the construction company renovating your holiday home not do their work properly?

These are all examples of situations where you might think about taking legal action – but how does it work if the person or trader you want to sue is in another Member State?

The European Union has a system of laws in place designed to help individuals with cross-border litigation. This Citizens' Guide aims to explain some of those laws and the principles behind them, so you can choose whether you want to use them, and if so, where you can obtain application forms and more detailed information. It only covers civil and commercial cases, not criminal law, family law, bankruptcy or questions of inheritance. In addition, these rules do not apply in relation to Denmark*.

* However, the Brussels I Regulation does apply under a parallel agreement with Denmark.

Going to court can be stressful, time-consuming and expensive. Before doing so, try and resolve your dispute amicably, or consider alternative dispute resolution (ADR) or an Ombudsman. If this fails, be sure you know the name and address of the person you want to sue, and try and find out if they have assets to pay your claim, otherwise there is little point in litigating. For more information on ADR see:

http://ec.europa.eu/civiljustice/adr/adr_gen_en.htm

For more information on cross-border consumer rights, see:

http://ec.europa.eu/consumers/ecc/index_en.htm

“The European Union has a system of laws in place designed to help individuals with cross-border litigation.”

2. WHICH LEGISLATION AND WHICH COURTS?

The "Brussels I" Regulation (44/2001) sets out the rules for deciding which courts should hear a cross-border case. It is essential to know where you have to initiate legal proceedings. The normal rule is that the courts of the Member State where the defendant resides, or where the company is based, should hear the case, but there are exceptions. For more details, see Part 7 below.

4 | The EU has agreed the following procedures, which aim to simplify and speed up cross-border cases, as well as making it easier to enforce a claim against a defendant in another Member State:



A. The European Payment Order (Regulation 1896/2006)

This procedure applies when you are claiming money from someone who does not deny that they owe you the sum in question. This is known as an "uncontested pecuniary claim". The procedure is based on standard forms that you must fill in. These are available in all the EU languages, along with a lot of other information, on the website of the European Judicial Atlas in Civil Matters:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_en.htm

B. The European Enforcement Order (Regulation 805/2004)

The European Enforcement Order is a certificate which accompanies a national judgment, a court settlement or an authentic instrument, allowing it to be enforced in another Member State. This procedure also applies to claims against someone who does not contest the claim, where a national judge has already declared that you are owed the money in question. To apply for an enforcement order you would normally ask the court which passed judgment on the merits of your case, and you must comply with the national requirements in that Member State.

For this procedure, the claim will be considered uncontested if the defendant has agreed with your claim either in court, in a court-approved settlement or in an authentic act, or if he never objected to it, or if, having initially objected, he then failed to appear in court (tacit admission).

C. The European Small Claims Procedure (Regulation 861/2007)

This procedure applies to cross-border claims up to €2000, excluding interest. This is normally a written procedure, based on a standard form that you must fill in, and which the defendant can reply to:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_en.htm

A great deal of information on civil justice in the European Union, as well as on national procedures, can be Network on the website of the European Judicial Network in civil and commercial matters:

http://ec.europa.eu/civiljustice/homepage/homepage_ec_en.htm

The Judicial Atlas in civil matters gives you practical information on cross-border litigation, and has all the standard application forms you may need to fill in:

http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm

3. WHICH PROCEDURE IS RIGHT FOR ME?

Is your claim up to €2000? If so, you should consider using the European Small Claims Procedure. However if you do not expect the debtor to contest your claim you could also use either the European Enforcement Order or the European Payment Order. It is important to remember that the European Enforcement Order starts as a national procedure (you already have a court judgment against someone) and then becomes a European procedure, making it easier for you to enforce that

judgment in a different Member State. In contrast, the European Payment Order is a European procedure from the beginning. If you have to take action against someone in another Member State, it may be easier to use the European Payment Order as the forms and information will be available in your own language. If you already have a judgment against someone, then the European Enforcement Order is probably appropriate.

If you want to make a civil law claim which is for a higher amount, and/or you expect it to be contested, then other rules apply which are explained below.



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“Is your claim
up to € 2000 ?”

4. EUROPEAN ENFORCEMENT ORDER



The first step is to go before the courts and obtain a judgment in your favour against the debtor. The rules that set out which courts can hear the case are explained in Part 7 below (but note that if your debtor is a consumer it is always the courts in his country that must hear the case). Even though the case is uncontested, the debtor must be properly served with a document telling him the reason for the claim, the amount (including interest, if claimed) and the names and addresses of the parties. The judgment will order the debtor to right the wrong you have suffered by paying a sum of money.

You then need to apply to have the judgment certified as a European Enforcement Order (EEO). The judge (at the court that issued the judgment) does this using a standard form attached to the Regulation, which you can find on line in the appropriate language at: http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_fillingeeo_en.htm

Once the EEO has been issued by the court, it must be sent to the enforcement authority of the Member State where the debtor lives or where his assets are. The only reason that enforcement in another Member State can be refused is if it is irreconcilable with another judgment in the other Member State between the same parties. You can find details about enforcement in the Member States at: http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm

As well as the EEO you will have to provide a copy of the original judgment given in your favour, and you may be asked for a translation of the EEO certificate, depending on what languages are accepted by the enforcement authority in the other Member State (information on the languages accepted can be found on the Atlas site). No other formalities can be imposed, and you can now enforce the judgment in the other Member State. The enforcement is done under the normal rules of that Member State, so, for example, if a bailiff is normally used to enforce a judgment, you must do the same.

“No other formalities can be imposed, and you can now enforce the judgment in the other Member State.”

5. EUROPEAN PAYMENT ORDER

This procedure is similar to the one described above, covers cross-border monetary claims, and uses standard forms – but you do not need to obtain a judgment from a national court first. The procedure continues for as long as the defendant does not oppose the application – if he does it becomes a contested case and it can then be heard under the normal national civil procedure rules of the Member State where you started the case.

You can apply to have a cross-border claim certified as a European Payment Order (EPO) by filling in Form A which is set out in the Annex to the Regulation and which you can find in all languages at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_filling_en.htm

You must give the name and address of the parties (yourself and the defendant), explain your case, make clear that it is a cross-border claim and describe the evidence which supports the claim.

The following website will tell you which court can issue an EPO in your case and where you should send your application form:

http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsJurisd_en.htm

“If there is no statement of opposition by the defendant, the EPO will become automatically enforceable.”



The court will examine your application and, if you have filled in the form correctly and replied to any requests for further information, the court should issue the EPO within 30 days.

The EPO will now be served on the defendant by the court. He can either pay you the amount of the claim, or contest it. He has 30 days to lodge any statement of opposition to the EPO. If this happens, the case can be transferred to the normal civil law courts to be dealt with under national law.

If there is no statement of opposition by the defendant, the EPO will become automatically enforceable. The only reason that enforcement in another Member State can be refused is if it is irreconcilable with another judgment in the other Member State between the same parties. You must send a copy of the EPO, and if necessary a translation, to the enforcement authorities of the Member State in which you are trying to enforce the claim (where the defendant or his assets are). For details on enforcement, see:

http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm

6. SMALL CLAIMS

This is usually a written procedure for claims of up to €2000 (excluding interest) using standard forms, in order to keep it as short and simple as possible.

You must fill in your details and state your claim in "Form A" which is annexed to the Regulation and available electronically at:

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_filling_en.htm

If you have relevant supporting documents, such as receipts, invoices etc., attach these to the application form.

Once the court receives your application form it must fill in its part of the "Answer Form" (also on the Atlas site). Within 14 days of receiving your application form the court should serve a copy of it, along with the Answer Form, on the defendant. The defendant has 30 days to reply, by filling in his part of the Answer Form. The court must send a copy of any reply to you within 14 days.

Within 30 days of receiving the defendant's answer (if any) the court must either issue a judgment on your small claim, request further details in

writing from either party, or summon the parties to an oral hearing. If there is an oral hearing, you do not need to be represented by a lawyer.

Once the decision is issued in your favour, you can ask the court to fill in "Form D", which is found on the Atlas site, for which no fee is payable. With this form (which might need to be translated into the language of the other Member State), and a copy of the judgment, your judgment is enforceable in the other Member States of the European Union, without any further

“If there is an oral hearing, you do not need to be represented by a lawyer.”

formalities. The only reason that enforcement in another Member State can be refused is if it is irreconcilable with another judgment in the other Member State between the same parties. For information on enforcement in the different Member States, see: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsAuthorit_uk_en.htm

Under the Small Claims Regulation, the authorities in your Member State are required to give you assistance to help fill in the forms – for example at your local court.



7. GENERAL CIVIL LAW CLAIMS

The "Brussels I" Regulation (44/2001) sets out which courts should hear a cross-border dispute, and how a judgment can be recognised and enforced in another Member State.

The normal rule is that the courts of the Member State in which the defendant is domiciled should hear the case. However, if a consumer initiates a case, he has the choice between the courts of his own State, or the courts of the defendant's State. Questions of cost and language mean that consumers normally litigate before the courts of the Member State in which they live.

If the case is about a breach of contract, the courts of the place where the contract should have been carried out should hear the case. If the case is about non-contractual matters (tort or delict), the courts of the place where the harmful event took place are competent. For example, if you were injured by someone's negligence, the case would take place in the Member State where you were hurt.

The Regulation applies to all civil and commercial cases, and can be used if the claim is contested, or the amount is higher than €2000.

Having determined which court should hear the case, and assuming judgment is given in your favour, that judgment must be recognised in the other Member States. However, in order to enforce it in another Member State you must ask the court of the Member State of enforcement to issue a certificate of enforceability. As with the procedures explained above, once you have this certificate you must then use the enforcement mechanisms of the Member State of your debtor, for example a bailiff, attachment of earnings orders, etc.

8. CONCLUSION

Taking legal action against a person or company in another Member State can be daunting. But the fact that the defendant lives abroad should not allow him to escape liability. To help you exercise your legal rights, the European Union has adopted the common rules and standardised procedures for cross-border litigation described in this Guide.



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DS-31-10-598-EN-C doi:10.2838/13991

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