

Cross Border Litigation in the EU – Lawyer's perspective

IC2BE – Final Conference

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TOPICS

- Choices for the practitioner
- European procedures in the daily practice
- Cross-border procedures in the daily practice
- Potential solutions

CHOICES

- National procedures
 - Ordinary proceedings
 - Provisional measures (*kort geding*)
 - Special procedures (*Mahnverfahren*)
- Advantages
 - Depending on the choice
 - Knowledge of the procedural law
 - Service of document
 - Assets of the debtor
 - Execution of the title is simplified (Brussels Ia-Reg)
- Practical problems
 - Knowledge of the law
 - Language
 - Service of the document
 - Execution of the title
 - Costs

CHOICES

- EU-procedures
 - European Enforcement Order
 - European Order for Payment
 - European Small Claims Procedure
 - European Account Preservation Order
- Advantages
 - Uniform procedures
 - Execution of the title is EU wide
 - Partly better than national procedure
- Practical problems
 - Language
 - Awareness of the stakeholders
 - Application

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EU-ENFORCEMENT ORDER

- Advantages
 - Integrated in national procedure
 - Limited requirements
 - No real language problems
 - EU-wide enforcement of the title
- Disadvantages
 - Very limited scope
 - Application depends on the debtor
 - Relationship with Brussels 1a-Reg

EU-ORDER FOR PAYMENT

- Advantages
 - Simple
 - Costs
 - EU-wide enforcement of the title
- Practical Problems
 - Limited Scope
 - Jurisdiction (Not all Member States)
 - Language

EU-SMALL CLAIMS PROCEDURE

- Advantages?
- Problems
 - Conceptual problems
 - Applicability
 - Waiving of oral hearing
 - Choice of the claimant
 - Practical problems
 - Use of standard form
 - Limited unified rules
 - Costs
 - Quality of jurisdiction

EU-APO

- Advantages
 - EU-wide enforceable
 - Standardized application
- Practical problems
 - Knowledge of an account
 - Application in practice
 - Limited space to present the case

CROSS-BORDER LITIGATION

- Awareness of the cross-border effect
- EU-procedures limited some problems of cross-border litigation
- EU-procedures are not suitable for all situations
- Problems still existent for all parties
 - Differences in national procedural law
 - Languages
 - Enforcement of the title
 - Costs

CONCLUSIONS

- The European Enforcement Order as well as the Enforcement based on the Brussels Ia-Reg. are functioning well in the practice
- The European Order for Payment Procedure is an example of an improvement of the legal situation
- The European Small Claims Procedure should be withdrawn
- The European Account Preservation Order is too new to evaluate the potential advantages
- There should be a real academic discussion on the harmonization of procedural law introducing legal principles

THANK YOU!

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