

The Simplification of Debt Collection in Italy

TRAIN2EN4CE Project and Future Challenges

La semplificazione del recupero crediti in Italia

Il Progetto TRAIN2EN4CE e le sfide future

a cura di Sara Tonolo



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SARA TONOLO, TJAŠA IVANC, COCOU MARIUS MENSAH

INTRODUCTION

The development of the internal market of the EU and its regulation in the event of debt collection is of paramount importance for consumers' confidence.

For companies to venture to invest in neighbouring countries of the EU, they need to be sure that their investments are guaranteed by strong regulations. The same is true for individuals who make inter-European purchases as it is understood that consumerism is the desired effect to boost the economy, however, in any civil and commercial activity, there are always contingencies, oversights, and sometimes debts. For example, many European companies "forget" to pay their workers or flatly refuse to reimburse consumers in case of defective products. To recover the money, consumers or workers who are not accustomed to legal tools are quickly discouraged without knowing that the European Union, intending to boost commercial exchanges, has adopted very competitive regulations to ensure cross-border debt collections. This is of course Regulation n. 1896/2006 of December 12, 2006, establishing a European order for payment procedure, as amended by Regulation n. 2017/1260, and Regulation n. 861/2007 of July 11, 2007, establishing a European small claims procedure, as amended by Regulation n. 2017/1259.

The overall problem that arises is that these tools are not only little known to most consumers, but also many workers in the

legal sector. To counter this situation, the European Union has bet on awareness-raising through the training of the workers of the judicial sector and on the dissemination of information concerning the regulations on the collection of debts in the EU.

It is in this perspective that we can say that this book is a summary of the different practices encountered in one of the member countries of the Train to Enforce project, coordinated by the Faculty of Law of the University of Maribor to improve the knowledge of EU instruments for cross-border collection of debt European, namely the small claims procedure (Regulation n. 861/2007) and the European order for payment procedure (Regulation n. 1896/2006). Debt collection mechanisms already exist at the national level in each member country of the European Union. These mechanisms are very effective for internal procedures and are regulated by the civil code, the code of civil procedure and other notarial or legal acts depending on the country. However, a common regional tool applicable to EU countries (except Denmark) is essential, and it presents a non-mandatory format, i.e. an alternative tool for EU member countries allowing disputes to be settled in civil and commercial matters at several levels. These regulations are designed for debts ranging (up to 5000 EUR for the European procedure for the settlement of small claims – ESCP) and more than 5,000 euros for the European order for payment procedure – EOPP). In all the member states and the candidate state, partners of this project, (Faculty of Law, University of Maribor, Slovenia, Leibniz University of Hannover, Germany, University of La Coruña, Spain, University of Graz, Austria, University of Rijeka, Croatia, University of Tirana, Albania, University of Trieste, Italy, Uppsala University, Sweden) one remark was unanimous: the general lack of knowledge of the efficient use of the aforementioned tools.

The 3-year project, financed by the EU Justice Programme – JUST-JTRA-EJTR-AG-2018 had the mission to promote the

standards of debt collection in the EU and to train the specialists in the judicial sector: lawyers, judges, specialists in legal affairs, etc. Through the surveys used by the different teams, it was found that the European alternative methods of collection of debts are often used by the companies and the sums clearly exceed the EUR 5,000, the threshold for the ESCP. However, individuals or small and medium-sized companies who use the ESCP are sometimes reluctant, because they prefer not to waste time claiming a debt of EUR 2,000 for example, especially since they do not master the procedure and hiring lawyers or legal aid could turn out to be more than the sum requested. The use of alternative methods besides national ones to claim money from European partners is poorly mastered by specialists in the field and not very popular with the population. However, in the era of Covid-19 and remote working, several commercial activities are carried out online and claims or reimbursements worth – EUR 5,000 or less are growing at a fast rate. The procedure, which does not require a lawyer, translator, or legal agency, is affordable and useful for any individual or company carrying out commercial activities with European partners.

According to the United Nations Conference on Trade and Development (UNCTAD), online shopping has increased by 6-10 percentage points in most product categories and the main gainers are ICT/electronics, gardening /do-it-yourself, pharmaceuticals, education, furniture /household products, and cosmetics/personal care categories.

The resurgence of online purchases, in companies belonging to different EU countries, will necessarily increase the number of claims, refunds, or products not received-synonymous with refunds.

Debt collection procedures then have an important role to play in regulating this flow, notwithstanding their optional nature.

The aim of gathering together within this publication extracts

from Italian judgments that have applied these Regulations, along with translations into English, is to make them accessible to legal practitioners and international trade specialists who intend to launch such proceedings in Italy. As such, it will set out a body of case law that should be useful in dealing with the main problems that have arisen in relation to the application of the regulations in Italy, thus increasing the scope for relying on them. The difficulties present in Italy still need to be overcome. As is the case in many other European countries, these limit access to these proceedings above all for foreign operators or consumers. They include for instance a lack of offices/services that can assist in identifying the competent court, difficulties in compiling and translating the forms required to launch proceedings, the low level of publicity given to such procedures on judicial websites, the fact that it is impossible to launch proceedings online, the optional nature of proceedings and the excessive reference to the *lex fori* in terms of aspects that are not governed by it, which entails difficulty in coordinating European and Member State laws.

Publishing this casebook to draw attention to these regulations and educate legal professionals and consumers alike is the purpose of the Train to Enforce project, which has been successfully conducted. This casebook is a valuable addition to the arsenal of legal literature on the subject of the regulation of debt collection and constitutes a big achievement that will be useful for consumers and legal specialists.

Trieste - Maribor, 30 May 2022