

SIMPLIFICATION OF DEBT COLLECTION IN THE EU

CZECH NATIONAL REPORT

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INTRODUCTION - MAIN FEATURES OF THE NATIONAL SUMMARY PROCEDURES FOR RECOVERY OF MONETARY CLAIMS (GENERAL OVERVIEW)

TYPES OF LITIGATION

The main legal source of the Czech civil law is the Civil Procedure Code, Act No. 99/1963 Coll. (hereinafter referred to as CPC). This Act regulates three types of simplified and accelerated procedures for recovery of monetary claims. All these procedures can be described as summary procedure, because the courts decision is always in a form of a order for payment. The procedures are following:

- the order for payment summary procedure under § 172 to § 174 CPC;
- the electronic order for payment procedure under § 174a CPC;
- the bills of exchange (checks) order for payment procedure under § 175 CPC.

In summary procedure under § 172 CPC the claimant may assert any monetary claims arising from private law relationship, regardless of its amount; financial limit, which was originally applicable, was abolished in 1993. To issue an order for payment the court does not order a hearing nor discovery of evidence, the defendant is not given an opportunity to express his opinion on the matter. It is required, however, that the claim results from the facts alleged in the action. Another presumption is the fact that the defendant's domicile is known and that he should not be served abroad. If all these presumptions are met, the court – even without claimant's express motion – issues a order for payment, that imposes upon the defendant obligation either to pay the claimant up to 15 days from receipt of order for payment the amount claimed and costs; or to file a statement of opposition against the order for payment within the same period. Any further decision in order to make the order an enforceable title is not necessary. If the defendant files a statement of opposition against the order for payment, the order is revoked and the court hears the case in standard first instance adversarial proceedings.

Electronic order for payment procedure (§ 174a CPC) differs only in that the application should be submitted in electronic form, signed with a certified electronic signature, the required sum of money shall not exceed one million CZK, and, finally the court fee is lower. Otherwise, the cited provision refers to analogous application of § 172 to § 174 CPC; this means that for electronic order for payment the same principles as for the „ordinary“ order for payment procedure apply, including the requirement that the plaintiff's claim must arise from allegations stated in the application as well as the possibility to lodge a statement of opposition by the defendant. For this it is obvious that the self regulation of the „electronic“ summary procedure and „ordinary“ summary procedure is very curious. This is obvious especially in the case of the „ordinary“ order for payment procedure where nothing prevents the claimant to file an action electronically, and the court shall serve the order for payment on both parties also in electronic form (see below). The adoption of § 174a CPC can therefore be seen as a political effort to gain popularity using cheap slogans about electronization of justice, and not as an elaborate legal enterprise.²

The summary procedure for bills of exchange or cheques (§175 CPC) serves for application for recovery of monetary claims arising out of bills and cheques. If the claimant submits the original bill or check, and there is no reason to doubt its authenticity, or other documents necessary for this submission, the court issues on the

² For critical analysis of this regulation see P. Lavický, 'Elektronický platební rozkaz?' [Electronic Payment Order?], 2, Právní fórum (2009) p. 62 – 71. See <http://www.muni.cz/research/publications/822918>.

claimant's express application the order for payment for bill-of exchange or cheque. According to such order for payment, either the defendant is obligated to pay the claimed amount and costs within three days, or to submit objections against bill-of exchange order for payment within three days of their being served. If a defendant files an objection against a bill-of-exchange (cheque) order for payment in good time, the order is not revoked, but the court orders a hearing on the matter. Depending on the outcome of proceedings concerning objections, the court will either uphold the order for payment or annul it, partly or fully. The court hears in the proceedings concerning objections only those objections that were filed in the three-day period, the objections raised later should be disregarded. Bill-of-exchange (cheque) order for payment that has not been challenged, or objections were filed, but were unsubstantiated, has the effect of a final decision. There is no need to any further court decision for the bill-of-exchange (cheque) order for payment to be enforceable title.

There is no separate small claims procedure in the Czech Civil Procedure Code. The claimed amount of money is covered solely in the appeal procedure. The actual procedure in the first instance is, however, completely regulated by the same rules as any other dispute.

ELECTRONIC SUBMISSIONS

Generally, under § 42 CPC, the claimant may file any written submission not only in paper form, but also electronically. In this case it is necessary to distinguish whether these submissions are signed by a certified electronic signature or not. If not signed by certified electronic signature, the claimant must, for reasons of authenticity, within three days provide this submission in paper form as well, otherwise this submission is not taken into consideration by court. However, if the submission is signed by a certified electronic signature, no further supplementing would be necessary. Certified electronic signature has equal position as a handwritten signature.

These rules apply to any actions, including actions for recovery of monetary claims. The claimant has a choice to submit an action in paper form or electronically with certified electronic signature, or to submit this action electronically but without electronic signature; in the last case the plaintiff has obligation to submit within three days the original in paper form.

CPC contains a specific regulation in § 174a only for applications to issue electronic order for payment. The application must be submitted using electronic form which is available at <http://epodatelna.justice.cz/ePodatelna/epo1200new/form.do>. It must be signed with certified electronic signature. If the claimant seeks to be issued an electronic order for payment, he has no choice whether to make the submission in paper form or electronically; the electronic application signed with electronic signature is in this case obligatory.

ELECTRONIC SERVICE OF JUDICIAL DOCUMENTS

Also the court may deliver all documents to participants electronically. CPC regulates two methods of electronic delivery; either by e-mail address (§ 46 subsection 2, § 47 subsection 2 and 3 CPC), or to the data mailbox (§ 46 subsection 1, § 47 subsection 1 CPC and § 17 of the Act No. 300/2008 Coll., on electronic acts and authorized document conversion). The difference between these two methods of serving documents is that the delivery to e-mail address is ineffective unless the addressee acknowledges the receipt of the document within three days from sending of the document by means of data message accompanied by his certified electronic signature. Otherwise, the service of such a document is not valid. For document delivery to the data mailbox such confirmation is not required. The system of data mailboxes can recognize when a particular document

was delivered to the data mailbox, and whether the data mailbox was entered by person authorized to access this document, or when this happened.

Data mailboxes are obligatory for some persons. According to the Act No. 300/2008 Coll., on electronic acts and authorized document conversion, that includes advocates, tax advisors, insolvency administrator, legal entities established by law, legal entities registered in the commercial register and branches of a foreign corporate entities registered in commercial register. Otherwise it is at the discretion of each one whether they will request establishment of data mailbox at the Ministry of the Interior.

If the addressee has accessible data mailbox, court is under obligation to deliver all documents into this data mailbox. This applies regardless of whether the data mailbox was created upon request or upon legal obligation. Therefore, the court has no discretion which method of delivery to choose. Court has obligation to deliver documents into the data mailbox. If the court has to deliver a document that is originally in paper form, it must be converted into an electronic document.

The above described system of documents delivery serves as a general rule and is applicable to all types of procedure mentioned in this text. It is possible to deliver via data mailbox not only "electronic" order for payment in accordance with § 174 of the CPC, but also an "ordinary" order for payment. On the other hand, if the conditions for delivery to data mailbox are not met, e.g. the addressee does not have data mailbox, the court will have to deliver both "ordinary" and "electronic" order for payment using other means of delivery (typically delivery via mail). In this case, the "electronic" order for payment is not actually electronic, it is a deed. This also shows the "quality" of current Czech legislation in this matter.

NATIONAL ORDER FOR PAYMENT PROCEDURE

SCOPE OF THE PROCEDURE

In "ordinary" order for payment procedure (§ 172 - § 174 CPC) and in electronic order for payment procedure (§ 174a CPC) it is possible to assert any monetary claims. In civil proceedings the courts have jurisdiction to hear disputes arising out of private law relations. Therefore the claim must be a pecuniary claim of such a private law nature. Legal grounds for the claim are irrelevant. It can be both claims arising out of contractual and non-contractual obligation.

Only in the order for payment procedure for bills of exchange or cheques (§ 175 CPC) certain limitations shall apply to a certain type of claims; in this procedure it is possible to assert only claims arising under bills of exchange or checks.

There is currently only one superior limit - to proceedings on electronic payment procedure; under § 174a CPC it is possible to assert pecuniary claim not exceeding 1 million CZK. This restriction does not apply both in "ordinary" order for payment proceedings (§ 172 to § 174 CPC) and the order for payment procedure for bills of exchange or cheques (§ 175 CPC). In these proceedings it is therefore possible to assert claim in any amount. It should be noted that the introduction of superior limit for pecuniary claims in the electronic order for payment proceedings under current law lacks any rational reason. It is a residue of concept in which electronic order for payment should have been generated automatically „without touching a human hand“ and therefore without examining whether there is law in the alleged facts. This concept, however, was not accepted and only the financial limit remained.

It is not obligatory to use the order for payment procedure; it is always a decision of the creditor whether to assert his claim through standard procedure or simplified and accelerated procedure. In the case that all the conditions set out in § 172 of the CPC are met, the court may issue an order for payment even if the claimant has not explicitly applied for it. The court may issue also only „ordinary“ order for payment. For electronic order for payment and order for payment procedure for bills of exchange or cheques explicit application to issue is required.

Under § 172 subsection 2 point b) CPC the court shall not issue an order for payment in case the defendant has to be served abroad (regardless if into the EU Member State or third country). With regard to § 174a subsection 2 CPC, which refers to a similar application of this provision, the same applies also for the electronic order for payment. Nothing however prevents the issuing of order for payment, if it is served abroad to plaintiff. The impossibility to issue both “ordinary” and electronic order for payment depends not on the fact that the defendant has his seat or domicile abroad. It depends on the facts that it would be served on the defendant abroad. Both factors will be usually given simultaneously; it cannot be ruled out that although the defendant lives abroad, he has a data mailbox in the Czech Republic. The court shall then deliver order for payment electronically into this data mailbox; according to our opinion this type of delivery cannot be considered as delivery abroad.

There are no such limitations for order for payment procedure for bills of exchange or cheques. It is possible to issue bill-of-exchange or check order for payment even in cases when they should be served on the defendant abroad.

The court shall issue the order for payment, electronic order for payment or bill-of-exchange or check order for payment if all statutory conditions are met. If the order for payment is not challenged or any objections are filed, it has the effect of a final decision. There is no need to further decision for the order for payment to be an enforceable title for enforcement procedure.

There is no need for a claimant to be represented by a lawyer in any of above described types of summary procedure.

COMPETENT COURT

The system of civil courts in the Czech Republic consists of district, regional and high courts and the Supreme Court. There is no special court for summary procedure. General rules on territorial and subject-matter jurisdiction apply. From the general rules it follows for various types of order procedures:

With certain exceptions, decisions on „ordinary“ order for payment and electronic order for payment are normally in the first instance matter for the competent district courts, unless there is express provision asserting jurisdiction to regional courts (§ 9 CPC). These exceptions are quite numerous and are mainly applied in commercial disputes. Territorially competent is usually court in whose jurisdiction defendant has his residence, place of business or seat (§ 84 to § 85a CPC).

Regional courts have jurisdiction to hear bill-of-exchange or check order for payment procedures [§ 9 subsection 1 point p) CPC]. General territorial jurisdiction is based on the fact that the ordinary court of the defendant is competent. Apart from that territorially competent court may be also a court in whose area is the place of payment [§ 87 subparagraph 1 point e) CPC]; this is optional, and thus the claimant may choose

whether he will file an motion to issue bill-of-exchange or check order of payment at defendant's ordinary court or at court in whose area the bill or check are to be paid (place of payment).

This division of jurisdiction among district and regional courts is in legal practice not problematic. On the contrary, effort to introduce a single court with territorial and substantial jurisdiction to handle procedures for electronic orders of payment, was clearly rejected. The problem is rather in quite difficult rules on substantive jurisdiction. This causes delays. But this is a general problem of the Czech civil court proceedings, and not just order procedures.

APPLICATION FOR AN ORDER FOR PAYMENT - FORMAL REQUIREMENTS: STANDARDISED FORM FOR APPLICATION

There is no standard form for applying for a order of payment (§ 172 to § 174 CPC) and bill-of-exchange (checks) order of payment (§ 175 CPC). The form requiremets apply only to the application for an electronic order of payment (§ 174a CPC). The form can be obtained at <http://epodatelna.justice.cz/ePodatelna/epo1200new/form.do>.

In this form (part A) the petitioner (claimant) chooses a competent court, and substantiates its territorial jurisdiction. Both these items – as well as many other data - can be selected by clicking on drop-down menu. Claimant then selects e.g. the "District Court in Uherské Hradiště" and in the box for determining and substantiation the territorial jurisdiction selects "defendant's residence".

Next step is to fill in personal details of the claimant, defendant and if represented by lawyer, claimant's representative; this section cannot be considered as correct, becasuse at the teime before the motion is filed, and thus before commencement of the procedure, it is still impossible to predict whether and who would be the defendant's lawyer in the procedure.

In part C claimant fills in the details concerning his claim. Claimant indicates whether he requires only the principal or also accession of the claim and its nature (e.g. interest on late payment). Claimant also indicates the relevant facts and evidence to prove them. The practice tends to underestimate this part sometimes, but to issue an electronic order of payment it is necessary that the claim to be paid a certain sum of money (and possibly accession) arise from the facts stated by the claimant in his motion.

Part D deals with costs of proceedings. Claimant chooses whether to waive the right to costs of proceedings or not. If claimant chooses not to waive costs of proceedings, he then fills in amount of court fees and eventually remuneration of other costs.

In part E claimant fills in bank account details, to which the defendant is obligated to pay the amount claimed, costs of proceedings, or where court returns paid costs in case claimant is exempt from cost of proceedings.

In part F claimant may apply to be exempt from costs of proceedings.

Part G deals with demand for relief. It is based on previously entered data generated automatically by clicking on appropriate press key.

In part H claimant attaches all documents in form of electornic files.

In the end of the form claimant indicates whether he requires the court to send him an acknowledgment of receipt of his motion, and indicates valid contact address. Claimant – or his lawyer – finally attach certified electronic signature.

IS IT NECESSARY TO BE REPRESENTED BY A LAWYER?

It is not necessary to be represented by lawyer in any of described summary procedures. The claimant may take into consideration whether to be represented by attorney or not.

MUST THE REASONS FOR THE CLAIM BE DESCRIBED IN DETAIL?

For both „ordinary“ and electronic order of payment to be awarded, entitlement must arise from the facts set out in the action (or in electronic form) by the claimant. The circumstances must be set out in sufficient detail to establish which legal claim is being asserted (which legal provision applies), and the claimant must set out all the facts creating, altering or extinguishing rights and obligations under the act. The petition to initiate the procedure must, *inter alia*, set out the material facts, cite the evidence on which the claimant is relying and make clear what redress the claimant is seeking.

Although the CPC has no express provision, these conditions undoubtedly apply also for order for payment for bills of exchange or cheques. Conditions prescribed under § 79 subsection 1 CPC on general requirements for any action or motion apply also for petition to initiate order procedure; cited among them are all material facts on which the claimant is relying.

WRITTEN EVIDENCE

In order for payment procedure general conditions for any petition to commence proceedings apply (§ 79 CPC). Claimant is obliged to designate evidence and attach documents in writing he relies on. Depending on whether the claimant submits an action in traditional way or electronically, he must attach documents in written or electronic form. In the application for an electronic order for payment the claimant has no other choice than to attach evidence in form of electronic document (see Standardised form for application).

If claimant fails to attach evidence, it may not lead to situation that the court will not settle the motion on merits. In summary procedure the court in fact does not introduce evidence, but decides solely on allegations contained in the action. If entitlement arises from these allegations (and other conditions are met), court settles the motion and issues order of payment, even though claimant did not attach evidence in writing.

Special rules apply for bill-of-exchange and check order procedure (§ 175 CPC). As precondition for this procedure the claimant has to submit bill-of exchange or check whose authenticity is not questionable, and statements of opposition, documents proving legal succession etc.

CAN THE APPLICATION BE FILED ELECTRONICALLY?

See supra part Introduction – Electronic submissions and part Application for an order for payment – Standardised form for application.

ISSUE OF THE ORDER FOR PAYMENT

ORDER FOR PAYMENT AND ELECTRONIC ORDER FOR PAYMENT

For both "ordinary" order for payment and electronic order of payment the court first examines whether all procedural conditions are met, whether the action is without any defects, and the court fees is paid. If all these conditions are fulfilled, the court examines whether the entitlement arises from the facts invoked by the claimant. Ordinary orders for payment can be issued in cases of pecuniary claims arising out of private law relationship, action sets out the material facts, on which the claimant is relying, the residence of the defendant is known and finally, the defendant is not to be served abroad. In addition to these conditions for and electronic order for payment the claimed amount of money shall not exceed 1 million CZK and the application must be filed using electronic form with certified electronic signature.

The court issues order for payment, resp. electronic order of payment, if all subject-matter conditions are met. Given that their content, defendant's right to appeal and the courts procedure are completely the same, we speak further only about order for payment.

To issue order of payment the court nor orders a hearing, nor procures defendant's statements, nor brings evidence; the court decides on the facts invoked by the claimant. If the defendant considers that these facts are not true, he shall challenge the order for payment. If the defendant challenges order for payment, the order is revoked in its entirety and the court orders a hearing without further ado. Therefore the possibility to appeal against order si not excluded, but shifted to another stage of the procedure.

In the order for payment the court orders defendant to pay the claimant within 15 days from the date of service the claim and costs of proceedings, or to challenge the order within the same period. Holding part of the order for payment can be formulated as folloes:

"Court orders the defendant to pay the claimant within 15 days from the date of service

- a) claim in the amount of 50.000 CZK with 7,75% interest from 1.7.2011 to the date of payment;
- b) costs of proceedings in the amount of 21.680 CZK, to JUDr. XY, claimant's attorney

or

to challenge the order for payment within 15 days from the date of service at competent court."

There is no reasoning in order for payment. Nevertheless order for payment contains extensive notice on defendant's procedural rights and obligations. Defendant is primarily informed that if order for payment is challenged, the order is revoked in its entirety and the court orders a hearing without further ado; if a defendant's statement of opposition is not filed in time or is filed by non-authorized person, court will refuse this statemnet. Furthermore, defendant is informed that order for payment, that has not been challenged or the statement of opposition was refused, has the effect of a final decision. The defendant is also informed about the possibility to appeal against the verdict on costs of litigation. Finally, the order for payment informs on the possibility of court execution in case the defendant will not comply with its orders voluntarily.

The order for payment must be served personally both on the defendant and the claimant. The prevailing practice in is based on a presumption that it is not necessary to serve the order pursue personal delivery in plaintiff's own hands; this opinion is quite controversial, because even order for payment is a form of decision on merits. The Code on Civil Procedure contains express rules on service of documents to defendant (§ 173 CPC): order for payment must be delivered in defendant's own hands, alternative delivery is excluded. The law thus eliminates fiction of delivery that applies in case the addressee does not pick up written or electronic document in ten-day deposit period. If the delivery of order for payment fails, court issues resolution to cancel

the order. Under § 173 subsection 2 CPC the court is obliged to do so even if there are more defendants and the delivery into their own hands fails just to one of them. This regulation raises doubts, since it does not correspond to the nature of community of participants.

BILL-OF-EXCHANGE (CHECK) ORDER FOR PAYMENT

Also in the bill-of-exchange (check) order for payment procedure the court examines formal requirements concerning petition, procedural conditions and payment of court fees. If these requirements are met, court examines merits of the petition for order. These include in particular an express application for bill-of-exchange (check) order for payment, submission of the original of bill-of-exchange or check, whose authenticity shall not be doubted, and submission of other documents necessary to assert the claim (e.g. protests). Even in this proceeding the court neither orders hearing nor gives evidence regarding the veracity of claimant's claim; court just considers whether the submitted document can ever be a bill-of-exchange or check. If all conditions are met, court issues bill-of-exchange (check) order for payment. Defendant is entitled to raise objections against the order.

Court orders the defendant to pay within three days the amount claimed as well as costs of proceedings, or to lodge objections. In the objections, defendant must state all objections to the bill-of-exchange (cheque) order for payment. The period compared to "ordinary" and electronic order for payment is significantly shorter. The objections must be – unlike opposition against "ordinary" or electronic order for payment – reasoned.

Bill-of-exchange (check) order for payment does not contain reasoning. It includes however information on objections and following proceedings, of the effects of the order for payment, the possibility to appeal against the verdict on costs of proceedings. Finally, the order for payment informs on the possibility of court execution if the defendant does not comply with its orders voluntarily.

The court delivers bill-of-exchange (cheque) order for payment to the parties. Regarding the delivery to defendant, § 175 CPC merely provides that the order for payment shall be delivered into his own hands, but does not exclude alternative delivery as does § 173 CPC for an „ordinary“ and electronic order for payment. Some commentaries conclude from this regulation that nothing prevents the mail/consignment to be deposited and afterwards due to lapse of time to withdraw within the limited time assumption of fiction of delivery. We do not consider such interpretation as correct. It is necessary to ensure the defendant – order for payment is issued without court hearing – the same possibility of defense as the defendant in "ordinary" or electronic order for payment procedure.

REJECTION OF THE APPLICATION

Court will not issue order for payment unless all conditions for its granting are met, e.g. entitlement arises from the facts set out by the claimant or residence of the defendant is known in case of „ordinary“ and electronic order for payment, or there are reasonable doubts about the authenticity of bill-of-exchange or check. In this situation, court does not issue a decision refusing order for payment. If it does not want to grant a petition for such a decision, it orders a hearing (§ 172 subsection 3, § 175 subsection 1 last sentence CPC). This procedure merely manifests court's opinion that conditions for issuing order for payment were not fulfilled; this does not automatically anticipate plaintiff's loss. The case will be heard in standard adversarial procedure.

Since the court does not deliver decision-refusing order for payment, but orders a hearing on the merits, the plaintiff has no defence against it. In fact, there is no decision the plaintiff could appeal against.

OPPOSITION BY THE DEFENDANT

An „ordinary“ and electronic order for payment can be challenged by filing an opposition with the court. The defendant has 15 days from the date of service to challenge an order for payment. The opposition need not be substantiated. If just one of the defendants challenges an order for payment in good time, the order is revoked in its entirety (§ 174 subsection 2 CPC). Order for payment is revoked ex lege; court shall not issue a separate resolution. Court also orders a hearing on the matter in standard I. instance adversial procedure.

Defendant may challenge the courts decision only in the part concerning costs of proceedings. In this case the challenge is not in form of an opposition, but appeal (§ 174 subsection 2 CPC); procedural time limit is the same as for an opposition (§ 204 subsection 1 CPC). Court of appeal will decide on the reimbursement of costs, not court of I. instance. If defendant appeals only against the statement on costs of proceedings, statement of the order for payment on merit is unaffected; in this part order for payment has the effect of a final decision.

Defense against bill-of-exchange (check) order for payment is not in form of an opposition, but objections. Objections and an opposition cannot be confused because of the substantial difference between them.

Objections against bill-of-exchange (cheque) order for payment shall be lodged within three days from the date of service. This period is nowadays viewed as very short. This is even highlighted by the facts that in this type of procedure alternative delivery is possible, as well as and because of the concentration of proceedings. The concentration of proceedings means that the defendant must within this period state all his objections to the bill-of-exchange (cheque) order for payment; objections raised later court will not take into consideration. Concentration of proceedings does not apply to objections to lack of procedural conditions, because these objections court should take into account any time during the procedure.

Objections may have both procedural and substantive nature. As to the substantial objections we can point out e.g. recompense of a mature claim, statutes of limitation, invalidity of bill or check etc.

Court refuses objections without hearing in case they are lodged late, by unauthorized person or do not contain reasoning. The court orders a hearing on the matter. Depending on the outcome of proceedings concerning objections, the court will either uphold the bill-of-exchange (check) order for payment or revokes and in what extent. And for that it is clear that, unlike an opposition, objections do not revoke the bill-of-exchange (check) order for payment. Timely filed objections merely postpone formal legal force and enforceability of the bill-of-exchange (check) order for payment.

Defendant may appeal the courts decision in the part concerning costs of litigation (§ 175 subsection 6 CPC). To this appeal shall apply mutatis mutandis the same as stated above for the appeal against costs of litigation for the “ordinary” and electronic order for payment.

EFFECTS OF THE ABSENCE OF TIMELY OPPOSITION

All these types of order for payments shall become effective as final judgments, i.e. they have all characteristics arising out of their legal force. They are binding on the parties as well as on all public authorities, and they constitute res judicata. They cannot be contested nor by appeal nor by appellate review (i.e. remedial measure decided by the Supreme Court). They can be challenged only by filing action for renewal of proceedings or action for mistrial. Action for renewal of proceeding shall be filed only if reason for renewal (e.g. appear new facts or evidence that the party could not have used without own guilt in the original proceedings, and that can induce a favourable decision for him) could apply to conditions, under which listed types of orders for payment

were approved (§ 228 subsection 2 CPC). Reasons for action for mistrial can be (pursuant to § 229 subsection 2 CPC) violation of lis pendens, res iudicata or material unenforceability of the order for payment.

COSTS OF PROCEDURE

Costs incurred in connection with order procedure consist primarily in court fees and costs associated with representation before court (remuneration for representation, lump-sum reimbursement of cash expenses, and possibly remuneration for the value added tax).

According to the legislation effective from 1.9.2011, court fee for “ordinary” order for payment and bill-of-exchange order for payment is 1.000 CZK, when sued for an amount up to 20.000 CZK including; for amounts exceeding 20.000 CZK up to 40.000.000 CZK the court fee is 5 % of the claimed amount; for amounts higher than 40.000.000 CZK court fee is set at 2.000.000 CZK and 1 % of the amount exceeding 40.000.000 CZK (amount higher than 250 million CZK is not included). Lower rates are set for electronic order for payment; if sued for amount not exceeding 20.000 CZK included, the court fee is 800 CZK; if sued for amount exceeding 20.000 CZK, the court fee is 4 % from the claimed amount.

Attorney's fee is for the purposes of deciding on costs of litigation set as lump sum, regardless of the amount of legal services performed by attorney. This fixed lump sum is regulated by regulation No. 484/2000 Coll., and depends on the claimed amount of money. For example, if this amount is in the range 10.000 – 200.000 CZK, the fixed rate is 9.000 CZK and 17 % of the amount exceeding 10.000 CZK.

Attorney is also entitled to lump sum payment of cash expenses for every legal service act in the amount 300 CZK; pursuant to § 13 of the Regulation No. 177/1996 Coll., advocates tariff. In order proceeding claimant's attorney usually does two legal service acts, consisting of the preparation and legal representation, and filing action for order for payment; lump sum remuneration for these two acts is 600 CZK.

Remuneration for value added tax forms part of costs of litigation under § 137 subsection 3 CPC; only if – simply put – attorney is registered for VAT. The amount of VAT is currently 20 % according to Act. No 235/2004 Coll.

As well as in standard adversarial proceedings, the principle for decision on compensation of costs of litigation is success in the matter (§ 142 subsection 1 CPC). In order for payment court awards the claimant remuneration of all costs that were necessary for efficient implementation or interference with rights against the defendant.

ENFORCEMENT OF THE NATIONAL ORDER FOR PAYMENT DOMESTICALLY AND ABROAD

Order for payment, electronic order for payment and bill-of-exchange (check) order for payment are execution titles. In the national regime it is possible to propose either enforcement carried by court under Civil Procedure Code (§ 251 et seq. CPC) or execution ordered by court and carried by judicial executor in accordance with the Execution Code (Act No. 120/2001 Coll.).

In the Czech Republic it is possible to enforce also foreign execution titles. It depends whether it is execution title governed by international treaty, or by directly applicable European Union act [e.g. Council Regulation (EC) No. 44/2001 (hereinafter Brussels I Regulation) or Council Regulation (EC) No. 805/2004]. If nor international treaty or Community law is not applicable, then § 63 et seq. of the Act. No. 97/1963, Coll. on International

Private and Procedural Law. According to this Act foreign decision shall not be enforced and recognized under these conditions:

- a) the recognition or enforcement is impeded by exclusive jurisdiction of Czech courts or where the proceedings could not have been conducted before any authority of foreign state if provisions concerning the competence of Czech courts had been applied to the consideration of jurisdiction of the foreign authority;
- b) in the same case as the case in question, a final and conclusive decision has been issued by Czech authorities or a final and conclusive decision of an authority of a third state has been recognized in the Czech Republic;
- c) the authority of the foreign state deprived the participant against whom the decision is to be recognized and/or enforced of the possibility to duly participate in the proceedings, particularly if this participant was not served the lawsuit or the writ of summons personally or if the defendant was not served the lawsuit personally;
- d) recognition is contrary to Czech public order;
- e) reciprocity is not guaranteed; reciprocity shall not be required if the foreign decision is not directed against a Czech citizen or a Czech legal entity.

Recognition of foreign decision in property matters is not pronounced by separate judgment. Czech court recognizes foreign judgment by taking it into account, as if it was a decision of the Czech authority. Under these conditions it is possible to enforce foreign judgment on property rights if its enforcement is ordered by Czech court. Decision must contain reasoning.

Czech orders for payment may be subject to execution abroad, under conditions set by international treaties, above mentioned EU regulations or national legislation. In case of order for payment and electronic order for payment this situation will not be frequent, because "ordinary" and electronic order for payment cannot be issued if the defendant is to be served abroad [§ 172 subsection 2 point b) CPC]. However, we cannot exclude this situation as such, because e.g. the defendant may move abroad only after the order proceedings, or had residence or seat abroad, but during the proceedings he was served to data mailbox, and therefore it was not there was nothing precluding issuing of order for payment. There is no similar regulation for bill-of-exchange (check) order for payment as in § 172 subsection 2 point b) CPC. The Czech law does not prevent its recognition and execution abroad.

COMPARISON BETWEEN NATIONAL AND EU ORDER FOR PAYMENT PROCEDURE (DIFFERENCES AND SIMILARITIES) AND FINAL CRITICAL EVALUATION OF THE NATIONAL ORDER FOR PAYMENT PROCEDURE

Differences between national and EU order for payment procedure are following:

Regulation No. 1896/2006 excludes from its scope claims arising out of non-contractual obligations (Art. 2 subsection 2 point b). Leaving aside bill-of-exchange (check) order for payment procedure (which can naturally apply only to claims arising out of bills-of-exchange or checks), there is no such restriction for "ordinary" or electronic orders for payment. They can therefore be used for both contractual and non-contractual obligations.

An application for a European order for payment shall be express and made using standard form. In this respect, European legislation is the same as national electronic order for payment procedure; for bill-of-

exchange (check) order for payment then both have requirement that the application must be express. In contrast, regulation of „ordinary“ order for payment under § 172 CPC does not require application to be express. It is sufficient that the plaintiff asserts right to payment of pecuniary claim, this pecuniary claim arises from facts statement made by the claimant and other conditions are fulfilled. Then court shall issue order for payment even though the claimant did not apply for it.

Differences are also in the content of applications. Regulation No. 1896/2006 requires only that claimant individualized his claim so as not to be confused with another, and that the defendant knew what claim was raised against him, and therefore consider filing an opposition; for evidence it suffices its description. National law, however, requires for all types of actions for order for payment that the plaintiff did properly all recitations, under which it would be possible to assess whether the alleged claim arises out of these facts. Also, it is not sufficient to merely describe the evidence, written documents have to be attached. In the bill-of-exchange (check) procedure, it is necessary to attach original bills or checks, eventually oppositions or other documents.

Pursuant to Art. 8 of the Regulation 1896/2006 the court seised of an application for a European order for payment shall examine whether requirements set out in Art. 2, 3, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure. Something like that at national level is not possible. While national court does not examine whether alleged facts are true, court must examine whether at least the alleged amount arises out of these facts. This can be done only by human, not computer.

Art. 10 of the Regulation allows claimant – after being informed by the court – to modify his application. Based on this the court may issue a partial European order for payment. This is not possible in the national order for payment procedure; the national court either fully complies with the application and issues „ordinary“, electronic or bill-of-exchange (check) order for payment, or orders hearing and hears the case in standard adversarial civil procedure. This is indeed another difference, because if requirements to issue order for payment are not met, then national court does not issue negative decision but hears the case in ordinary civil adversarial procedure.

The defendant may lodge a statement of opposition within 30 days of service of the order on the defendant. Time limit for “ordinary” order for payment is 15 days; time limit for bill-of-exchange (check) order for payment is even only 3 days.

If a statement of opposition is lodged within the time limit, the proceedings shall continue before the competent courts of the Member States of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event (Art. 7 subsection 4 Regulation No. 1896/2006). National law does not allow the claimant a similar approach. The same result would be achieved by the claimant only if he took his action back.

The European order for payment shall be established for the collection of pecuniary claims that have fallen due at the time the application is submitted (Arts. 4 and 8 Regulation 4 and 8). In contrast, under Czech law it is sufficient if the claim is due only during court decision-making (§ 154 subsection 1 CPC).

Czech law doesn't allow other means of defence against the statement in the order for payment than statement of opposition; there is no equivalent to the „review in exceptional cases“ as regulated in Art. 20 of the cited regulation in national law. The action for renewal of proceedings or action for mistrial, that can be

filed in some cases, are so called extraordinary relief aimed at specific deficiencies. Therefore it is not possible to compare them with the review in exceptional cases.

We can say that the national regulation of order for payment procedure is quite satisfactory. The main problems are probably too short period to raise objections to the bill-of-exchange (check) order for payment, and not sufficient regulation of electronic order for payment; the Czech legislator, instead to increase use of electronic means for the existing order for payment regulation, didn't understand foreign regulation, and treats electronic order for payment as another type of procedure, in addition to existing "ordinary" order for payment procedure.

IMPLEMENTATION OF ORDER FOR PAYMENT PROCEDURE REGULATION (1896/2006) IN MEMBER STATES

COMPETENT COURT (SUBJECT MATTER, LOCAL JURISDICTION)

The jurisdiction of courts is decided using the appropriate EU legislation, especially [Regulation](#) Brussels I. If under rules in Brussels I Regulation the Czech courts are competent, their territorial and substantive jurisdiction is determined according to general rules contained in the Code of Civil Procedure; we can therefore refer to chapters above on National order for payment procedure, section competent court. Centralized system, as in Austria or Germany, does not apply in the Czech Republic. As a rule, substantially competent court will be district court in whose area is the defendant's residence.

APPLICATION FOR A EUROPEAN ORDER FOR PAYMENT

For the petition all forms of communication may be used, same as in the national procedure. Motion to issue order of payment may be submitted undoubtedly also electronically. See

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Application for a European order for payment may be submitted in Czech, English and Slovak.

Regarding number of copies of the application, general rule for domestic civil procedure applies: Written applications must be submitted to the court in as many copies as necessary for court and everyone who is served with these documents. As a rule, claimant usually submits the application in duplicate. For electronic form of application for a European order for payment it does not make sense to talk about any copies.

There are no penalties in the Civil Procedure Code covering situation when claimant intentionally submits false statements. Sanctions may therefore have only procedural nature and they consist in the fact that – if the defendant lodges statement of opposition and the case is heard in standard procedure – the court dismisses the application and orders the defendant to pay claimant costs of litigation.

ISSUE OF THE EUROPEAN ORDER FOR PAYMENT

According to Art. 8 and point 16 of the Recital, the court examines before issuing the European order for payment these conditions:

- application is within the scope of Regulation (Art. 2);
- dispute has cross-border nature (Art. 3);
- pecuniary claim has fallen due at the time when the application for a European Order for payment is submitted (Art. 4);
- application was submitted to a competent court (Art. 6);
- application contains all requirements necessary under Art. 7 of the Regulation;
- claim appears to be founded. Based on this court shall refuse all apparently not founded claims, if this fact arises out of the standard form.

Judicial acts in order for payment procedure can make not only a judge, but also senior court official [§ 10 subsection 1 point a) of the Act No. 121/2008 Coll., on senior court officials adn senior prosecution officials and on amendments on related acts]. Automated computer processing is not applied.

European order for payment shall be delivered to the defendant's own hands. Alternative delivery, consisting of consignment of a document and then fiction of delivery in case addressee does not collect the document, is expressly excluded.

OPPOSITION TO THE EUROPEAN ORDER FOR PAYMENT

The statement of opposition shall be submitted in any form, in which generally applications under the CPC are made. See Introduction - main features of the national summary procedures for recovery of monetary claims (general overview), section Electronic submissions.

The Civil Procedure Code does not explicitly regulate how the European order for payment is transferred into ordinary order for payment procedure. Explicit regulation is missing, although Art. 17 point 2 of the Regulation envisages such national regulation. In this situation will be by analogy applied first sentence of § 174 subsection 2 CPC. Under this regulation statement of opposition revokes ex lege order for payment and court orders

hearing (this will be of course preceded by preparation, in which court will cater substantiated plaintiff's motions). Therefore court will issue no decision on this matter.

ABSENCE OF TIMELY OPPOSITION

Civil procedure Code does not regulate how the court should proceed in case if the defendant fails to lodge timely statement of opposition. It is therefore necessary to turn to Art. 18 of the Regulation, and use analogy to the provisions on national order for payment procedure.

If the defendant fails to lodge statement of opposition within 30 days, court will for expiration of a period for delivery, and then using Form G claims the order for payment enforceable. Formal requirements for enforceability in accordance with Art. 18 subsection 2 are not explicitly prescribed. But using analogy we could presume, that the European order for payment that was not challenged has the effect of final decision. Thus it becomes final, and if the defendant fails to pay voluntarily within 30 days, it becomes enforceable too.

SAFEGUARDING THE DEBTOR'S RIGHTS

Regarding the review of the European order for payment based on grounds listed in Art. 20 of the Regulation, the CPC contains only rules determining which court is competent, to whom the decision in the matter should be delivered and if it is possible to file remedial measure.

Court competent to review is the court in the Member State of its origin (§ 174b subsection 2 CPC). If the court decides that the review is justified for one of the reasons laid down in the Regulation, the European order for payment shall be null and void. Resolution on dissolution of the order for payment is delivered both on defendant and claimant (§ 174b subsection 2 CPC). It is not possible to appeal against the decision that upheld the application on review [§ 202 subsection 1 point o) CPC]. Neither the Regulation nor CPC does not expressly regulate what are the legal implications of the resolution that upheld the application on review of the European order for payment. Thus whether the procedure ends or the procedure on European order for payment will continue, whether the proceedings will be transferred to adversarial civil procedure. Probably the second possibility is correct (the procedure on European order for payment will continue), because there still remains application for European payment order.

If the court rejects the defendant's application on review, court should in our opinion dismiss the application and serve on the parties. Using the a contrario argument it is possible to conclude under § 202 subsection 1 point o) CPC that the defendant may file an appeal against this decision.

COSTS OF PROCEDURE

Nor the CPC or the Act on court fees regulates costs of litigation of the European order for payment. Hence applies what was stated above for the "ordinary" Czech order for payment. See National order for payment procedure, oddíl Costs of procedure.

ENFORCEMENT IN THE MEMBER STATE OF ENFORCEMENT

Czech procedural rules do not contain any specific provision concerning the European order for payment as an enforceable title. The European order for payment declared enforceable in accordance with Art. 18 of the regulation, is thereof an execution title. On this basis, the pecuniary claim granted can be collected in the

judicial enforcement in accordance with Code of Civil Procedure, or in execution ordered by court and carried out by judicial executor under Execution code (Act No. 120/2001 Coll.)

NATIONAL SMALL CLAIMS PROCEDURE

In the Czech Republic there are no provisions regulating small claims procedure. Any proceedings in the court of I. instance is governed by the same rules, regardless of what is the value of the dispute. This is relevant only for appeal proceedings, because § 202 subseciton 2 CPC provides that an appeal is not allowed against judgment on pecuniary performance not exceeding 10.000 CZK (accessory claims are excluded). This restriction does not apply to an appeal against the decision on recognition and default judgment. In this case the appeal is possible even if the value of the dispute was less than 10.000 CZK.

Absence of any national legislation on small claims procedure can be considered as one of the reason for quite considerable length of proceedings in the Czech Republic.

IMPLEMENTATION OF SMALL CLAIMS REGULATION (861/2007) IN MEMBER STATES

INTRODUCTION

Implementation of small claims procedure in the Czech Republic is quite simple: there is no single one provision in CPC or other Acts. It is necessary to look for answers to question posed by the Regulation in the provisions of CPC, which generally regulate adversarial procedure in the court of I. instance; of course with modifications which result from the regulation.

COMPETENT COURT

District courts have subject-matter jurisdiction to hear small claims cases, unless § 9 CPC provided as an exception regional courts. These exemptions apply primarily in commercial matters.

Asserting territorial jurisdiction will usually follow a general court of the defendant, unless it was one of the cases of exclusive jurisdiction or territorial jurisdiction at choice (§ 84a et seq. CPC).

FORMAL PREREQUISITES FOR THE INTRODUCTION OF THE PROCEDURE

An application for small claims procedure shall be made using any means of communication, which are possible to file any motion at court (§ 42 CPC). Therefore the same as for "ordinary" order for payments applies, see Chapter

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According to a communication made by the Czech Republic, acceptable languages are in addition to Czech, Slovak and English.

CONCLUSION OF THE PROCEDURE

There is no regulation on small claims procedure and decision in Czech procedural law (see above). General rules therefore apply, modified by rules contained in the Regulation. We can thus conclude that the court gives a judgment within the time limits set by Art. 7 of the Regulation. Court decides on the merits and either grants the motion and orders the defendant to pay the claimed amount, accessories and costs of litigation, or the court rejects the motion fully or partly and according to this decides on costs of litigation. With regard to the fact that the defendant may fully or partly recognize the claim (form C) we can conclude that in this case the court may decide on judgment on recognition. It might not be even excluded default judgment, if the court orders a hearing [Art. 7 subsection 1 point c)], the defendant fails to appear in court with no apology, and other conditions under § 153b CPC are fulfilled.

Given the total absence of regulation regarding court proceeding in issuing certificate concerning a judgment in the European Small Claims Procedure (Art. 20 point 2 of the Regulation), it is discussed that this procedure is of informal nature. Any of the parties may ask the court to issue certificate concerning a judgment in the European Small Claims Procedure and the court grants this motion by filling in this certificate. There is no hearing and no formal decision on this matter. If the court refuses to issue certificate concerning a judgment in the European Small Claims Procedure, there will be no decision that could be appealed against. Participant could probably lodge constitutional complaint to the Constitutional Court. In this complaint he could point out that his constitutionally guaranteed rights have been violated by public authority [Art. 87 subsection 1 point c) of the Constitution].

APPEAL AGAINST JUDGMENT

Judgment of the I. instance court shall be appealed against only if it was decided on pecuniary claim not exceeding 10.000 CZK (approx. 412 EUR); this limit does not apply only in case of default judgments and judgments on recognitions. These judgments may be appealed regardless of the amount in the proceedings (§ 202 subsection 2 CPC). It follows that it is possible to appeal against decision in European Small Claims Procedure if the court decided by issuing judgment on recognition or default judgment, or the court held a contradictory judgment, but in the amount exceeding 10.000 CZK (approx. 412 EUR). The time limit on the appeal is 15 days. The appeal shall be filed in court which ruled in the I. instance. Parties to the proceedings are always informed about this.

Review on an appeal (extraordinary remedial measure decided by the Supreme Court) is not permitted. One reason for its inadmissibility is that the pecuniary claim does not exceed 50.000 CZK (approx. 2076 EUR) in civil cases and in commercial disputes even 100.000 CZK (approx. 4152 EUR); see § 237 subsection 2 point a) CPC. Given that small claims cannot exceed 2.000 EUR (Art. 2 of the Regulation) this type of remedy is not permitted.

In theory it is possible to use other types of extraordinary remedies, namely an action for renewal of proceedings or action for mistrial. Basically, these two actions may be filed within three months; the first period shall begin from the time the party learned reason for renewal, or from the time he could use them (this

time limit is fundamentally limited to a three-year objective period that is based on entering into legal force), the second period runs from the date the decision was served on the party.

It should be noted that in cases when appeal against decision is not permitted (§ 202 subsection 2 CPC), parties usually proceed by challenging the I. instance decision with constitutional complaint. This is possible, but constitutional complaint procedure is not a type of remedial measures. The Constitutional Court does not deal with ordinary cases, but it decides cases regarding violation of constitutionally guaranteed rights, e.g. right to a fair trial.

SAFEGUARDING THE DEBTOR'S RIGHTS

As noted above, national law does not regulate the procedure concerning issuing of certificates under Art. 2 subsection 2 of the Regulation; proceedings will be therefore informal and will not entail any decision. It is not possible to consider the certificate to be court decision, it is only a public instrument that certifies some legally relevant acts. It follows that the defendant cannot appeal against this certificate. His legal defense is moved to the stage of enforcement proceedings, he then may either appeal against decision on execution or propose its suspension.

There is no regulation for review of the judgment based on reasons set out in Art. 18 of the Regulation. From the general procedural rules it can be inferred that the proceedings will be commenced on the application filed to the court that issued this decision. Court will examine the merits of petitioner's claim, and according to its findings, either rejects the motion or revokes the contested decision; in this case, the court should proceed in the European small claims procedure and removes defect, that was the reason for granting the review.

COSTS OF PROCEDURE

Art. 26 of the regulation is based on the principle of success in the case. Under this principle the unsuccessful party shall bear the costs of litigation. This basic rule is consistent with the basic rule in the Czech civil procedural Code for adversarial civil proceedings (§ 142 paragraph 1 CPC).

Czech Civil Procedure Code, like other foreign procedural rules, however, contains other rules that modify the basic rule. For example, if success and failure on both sides are about the same, the court shall not award costs to neither one of these parties; for reasons worthy of special consideration, the court needs not to award costs to the winning party, etc. We believe that the purpose of Article 16 is not to exclude these rules because such a conclusion would lead to obvious injustices. It can therefore be considered to apply all the rules contained in the Code of Civil Procedure relating to the decision on costs.

ENFORCEMENT OF THE JUDGMENT IN THE MEMBER STATE OF ENFORCEMENT – PROCEDURE AND REQUIREMENTS

Given that there is no regulation implementing the European small claims procedure in the Czech civil procedure, there is also no special provision for compulsory enforcement of these claims. Hence the general rules that apply:

Claim can be enforced either in the enforcement proceedings conducted by the Court under Civil Procedure Code, or in execution ordered by the court and carried out by court executor according to Execution Code. Claim may be also enforced by any manner of execution on monetary performance, e.g. sale of movable assets,

deductions from wages or commandment claims. Given that the execution will order the right to pay not higher than 2000 Euro, it can be concluded that the sale of real estate or sale of the company, which also includes the execution means for monetary compensation, will not be possible because of the disparity between the amount of recovery and the value of the subject; this could come into consideration only in cases where the debtor didn't have other assets.

According to a statement made by the Czech Republic according to Article 21 section 2 point. b) of the Regulation the motion for enforcement or execution may be in Czech, Slovak and English.

Refusal of enforcement under Article 22 of the Regulation can take place only in the context of enforcement proceedings or in execution proceedings, and in both cases, within the jurisdiction of district courts. If authorized person files motion for execution or enforcement, then court rejects this motion if there exists any of the ground listed in Article 22 of Regulation. It can certainly happen that such considerations would not appear when deciding on execution or enforcement of the decision, then the debtor is obliged to appeal against the ruling on the order of execution or enforcement. The Court of Appeal on these grounds changes the resolution of the execution or enforcement by refusing this motion.

Also, to stop or limit enforcement under Article 23 the enforcement authorities are competent. In court enforcement, this is always only the district court. The execution of an enforcement order under the current Execution Code is divided between the district court and the court executor.

FINAL CRITICAL EVALUATION OF EU REGULATIONS ON SIMPLIFYING CROSS-BORDER DEBT COLLECTION

Question: Do Regulations 1896/2006 and 861/2007 in your opinion really simplify, speed up and reduce the costs of litigation in cross-border cases concerning pecuniary claims and ease cross-border enforcement of judgments?

Answer: National regulation of order procedure in the Czech Republic is quite simple. Therefore regulation No. 1896/2006 does not represent simpler, faster or less costly option for application of pecuniary claim than the Czech regulation. These effects could be theoretically afforded to the Small Claims Regulation, since there is no national small claims procedure. Therefore any regulation of such proceedings compared with the current state is a step forward. Remaining problem is the lack of national implementation of this Regulation. Since no single national provision concerning this regulation was adopted, it is necessary to interpret courts steps very creatively, which in terms of legal certainty is not a desirable situation.

Question: Are the national procedures truly frequently impracticable in cross-border cases (recital 7 Regulation 1896/2006), especially having in mind that some of the classical features of cross border litigation constitute direct or indirect discrimination on grounds of nationality and are thus prohibited, for instance the security for the costs of judicial proceedings (*cautio iudicatum solvi*) as an example of direct discrimination (see ECJ case of 26 September 1996, *Data Delecta v MSL Dynamics*, C-43/95, ECR 1996, p. I-04661). Do the advantages of Regulations 1896/2006 and 861/2007 truly outweigh potential obstacles in national procedures involving a party from other Member State (e.g. address for service within local jurisdiction (*Wahldomizil*) or representative *ad litem* (*Zustellungsbevollmächtigter* etc.)?

Answer: See supra chapter Enforcement of the national order for payment domestically and abroad.

Question: Which is, from the creditor's point of view, the most convenient alternative in your country in case of cross-border collection of debts in EU?

Answer: As follows from the analysis above, for the foreign creditor is still the best alternative application for „ordinary“ or electronic order for payment, or bill-of-exchange or check order for payment.