

Simplification of debt Collection in the EU

Maribor, Faculty of Law

16th of June 2012

Comparative Overview of the Simplified Debt Recovery Procedures

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Introduction

- Simplification of Debt Collection in the EU project - EU supported under the Specific Program Civil Justice of the European Commission
- Universities of Maribor (Slovenia), Graz (Austria) and Zagreb (Croatia) in collaboration with Austrian Federal Ministry of Justice and CEPRIS

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Objectives

- Scrutinise the implementation of Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, and Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure in 13 EU Member States, and in how far the Member states have taken advantage of the opportunity to use e-justice tools

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Assumptions 1

- Different options for debt collection in the EU
 - Supranational simplified and accelerated procedure for recovery of claims
 - European order for payment procedure according to Regulation 1896/2006
 - European small claims procedure according to Regulation 861/2007
 - National civil procedure rules
 - National order for payment procedure
 - National small claims procedure
 - National ordinary court procedure

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Assumptions 2

- Cross border enforcement
 - European regulations track
 - National enforceable judgment
 - Brussels I Regulation
 - European Enforcement Order (Article 6 Regulation 805/2004)

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Assumptions 3

- European regulation 1896/2006 and 861/2007 do not cover all procedural aspects
- Principle of the institutional and procedural autonomy of the Member-states determines that national procedural rules shall apply
 - supranational procedures show a different face in each Member State

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Specific aims

- Practical application of the orders for payment and small claims procedure in the Member States
- Search for proposals for their improvement.

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Studied jurisdictions

- Bulgaria
- Czech Republic
- Finland
- France
- Germany
- Poland
- Portugal
- Slovenia
- Sweden

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Project outline

- Comparative procedural law in action – Functional approach
- Questionnaire technique
- National reporters
- Comparative analysis

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Questionnaire

- General overview of the main features of the national summary procedures for recovery of monetary claims
- National order for payment procedure
- Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States
- National small claims procedure
- Implementation of Small Claims Regulation (861/2007) in Member States
- Final critical evaluation of EU Regulations on Simplifying Cross-Border Debt Collection

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General overview of the main features of the national summary procedures for recovery of monetary claims

- Types of litigation: overview over the different possibilities to obtain a judgment in judicial proceedings
- The current state of IT operational options in judicial procedures for recovery of monetary debts

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National order for payment procedure

- Scope of the procedure
- Competent court
- Application for an order for payment - formal requirements
- Issue of the order for payment
- Rejection of the application
- Opposition by the defendant
- Effects of the absence of timely opposition
- Cost of procedure
- Enforcement of the national order for payment domestically and abroad

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Competent court
- Application for a European order for payment
- Issue of the European order for payment
- Opposition to the European order for payment
- Absence of timely opposition
- Safeguarding the debtor's rights
- Cost of the procedure
- Enforcement in the Member State of enforcement

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National small claims procedure

- Scope of the procedure
- Competent court
- Lodging of the procedure
- Peculiarities of the small claims procedure compared to regular procedure
- Exclusion or restriction of the possibility to appeal against the judgment
- Reimbursement of cost
- Enforcement of the judgment domestically and abroad

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Implementation of Small Claims Regulation (861/2007) in Member States

- Competent court
- Formal prerequisites for the lodging of the procedure
- Conclusion of the procedure
- Appeal against the judgment
- Safeguarding the debtor's rights
- Cost of the procedure
- Enforcement of the judgment in the Member State of enforcement

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General overview of the main features of the national summary procedures for recovery of monetary claims

- Types of litigation: overview over the different possibilities to obtain a judgment in judicial proceedings
 - There are, in general, several possibilities to obtain a judgment in judicial proceedings for the recovery of monetary claims. All legal orders under review include, to some extent, the various possibilities envisage by the project team, although in some cases national procedures are not available when one of the parties resides in a different Member-state.

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General overview of the main features of the national summary procedures for recovery of monetary claims

- The current state of IT operational options in judicial procedures for recovery of monetary debts
 - The IT level ranges from almost fully functional to non-existent. This is probably the most uneven aspect the team found.

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National order for payment procedure

- Scope of the procedure
 - In general, this procedure is optional and limited to “contractual” – in a very wide sense – claims. Some value limits may apply.

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National order for payment procedure

- Competent court
 - Some Member-states have rules of jurisdiction that take into account the value of the claim to determine what is the competent court for the first lodging of a case – something like a “small claims court”, different from an ordinary first instance court.
 - There are three different solutions: one centralized court, one centralized secretary and decentralized courts and services.

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National order for payment procedure

- Application for an order for payment - formal requirements
 - In general, no necessary representation by lawyer is required.
 - There is no uniform understanding about the need of written evidence: some Member-states require none, other require documentary or even official evidence.
 - Some Member-states perform a formal, summary, secretarial verification, other perform a summary merit control by a judge.

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National order for payment procedure

- Issue of the order for payment
 - In general, the order is issued if not opposed

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National order for payment procedure

- Rejection of the application
 - In general, Member-states only allow the rejection of the application on the grounds of formal requirements. France requires a “simplified merit” control

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National order for payment procedure

- Opposition by the defendant
 - In general, the opposition by the defendant converts the procedure into ordinary procedure.
- Effects of the absence of timely opposition
 - Issuing of the order
- Cost of procedure
 - The cost of procedure varies significantly, between 0 and 1000 euros.

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National order for payment procedure

- Enforcement of the national order for payment domestically and abroad
 - National reporters in general consider that the European track is more adequate to cross-border litigation. National order for payment enforcement abroad will follow Brussels rules

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National order for payment procedure

- Comparison between National and European order for payment procedure
 - With the exception of France, where the judge has a more active role (merit control), the two procedures present notable similarities

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Competent court
 - With the exception of France, the information delivered in accordance with article 29 of the Regulation seems accurate. Some Member-states have a centralized system (one specialized jurisdiction) and some have decentralized systems.

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Application for a European order for payment
 - Lodging, with few exceptions, can be made electronically. Foreign language forms are exceptionally accepted in some jurisdictions, as long as they filled in the local language.

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Issue of the European order for payment
 - The extent and subject of the control varies significantly. The French system again, is the more demanding in consequence of the general principles on judiciary.

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Opposition to the European order for payment
 - In general, the opposition has the same effects as an opposition in national proceedings

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Absence of timely opposition
 - In general determines the issuing of the order

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Implementation of Order for Payment Procedure Regulation (1896/2006) in Member States

- Cost of the procedure
 - The cost of procedure varies significantly, as in the national order for payment

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National small claims procedure

- Scope of the procedure
 - Not all Member-states have this track.
 - Mostly for claims under a reference value (4000 euro seems to be a preference)
 - Forms are generally available

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National small claims procedure

- Exclusion or restriction of the possibility to appeal against the judgment
 - It is generally quite limited

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Implementation of Small Claims Regulation (861/2007) in Member States

- Competent court
 - Same as for the European order for payment

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Implementation of Small Claims Regulation (861/2007) in Member States

- Formal prerequisites for the lodging of the procedure
 - Same as for European order for payment
 - Forms and languages is the same

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Overall conclusions

- In general, little experience with the European tracks
- Standard forms help surpass language barrier
- Multiplication of tracks is source of complexity
- National tracks can be used in cross-border litigation but are heavier than European tracks
- Can, however, be more efficient if there is an opposition, especially if it exist a small claims track available

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Thank you

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