

Faster and easier claim of foreign unpaid invoices

An increasing number of companies export their products and/or deliver their services beyond the Belgian borders, mainly to and within the European Union. An entrepreneur doing business with other Europeans, will certainly be confronted with bad payers. Thanks to various initiatives by the European Union it has now become clear whether or not the Belgian courts have any jurisdiction to settle such claims for payment of unpaid invoices, and efforts were made to have these claims settled faster, cheaper and easier.

The question whether or not a matter can be brought before the Belgian courts, must be settled based on regulation 44/2001 of 22 December 2000, hereinafter called the EEX Regulation. In accordance with the general stipulation of Art. 2 of the EEX Regulation, those having registered office or residence in the territory of another Member State, without regard to their nationality, shall be summoned to appear before the courts of that particular Member State. They can only be summoned to appear before the courts of another Member State, in this case Belgium, for one of the reasons mentioned in Art. 5 till and including Art. 24 of the EEX Regulation.

Above all, it is a fact that when parties have commonly appointed a court or courts of a Member State for acquaintance of the disputes, this court or these courts of the Member State is/are qualified.

Concretely, this implies that the parties are subjected to jurisdictional clauses, namely the clause to appointment of the authority of the Belgian courts, included in their general conditions, but only if their former transactions were also subjected hereto.

If the parties are regularly confronted with the same conditions, they are presumed to be informed of the jurisdictional clause included in these general conditions. If they never objected to this, they are supposed to have agreed upon the jurisdictional clause.

Moreover, in default of appointment of a particular judge by the parties, and in accordance with Article 5, 1°, a) of the EEX Regulation, a company with registered office or a person with residence in the territory of a Member State, can, with regard to the obligations implied in the agreement, be summoned to appear before the

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court of the location where the obligation at the base of the action, was executed or shall be executed.

For purchase and sale of moveable tangible property and for service provision the Belgian courts are qualified in case the property, or the services, were delivered/provided or had to be delivered/provided in Belgium in accordance with the agreement.

European Payment Order

In Regulation No. 1896/2006 of the European Parliament and of the Council of 12 December 2006, applicable from 2008, the European Payment Order Procedure was established. The objective of this particular regulation is to settle claims in cross-border cases concerning claims in civil and commercial matters in a fast, cheap and simple manner. The court to which an application for a European Payment Order has been made, considers whether the applicability conditions have been met and examines the well-foundedness of the claim.

If the conditions for applying for a European Payment Order are met, the court issues the order as soon as possible and normally within 30 days of the lodging of the application. A European Payment Order informs a debtor that he or she may either pay the claimant the amount of the claim, or contest it. In default of a statement of opposition within 30 days of the service of a European Payment Order, the decision shall be final and enforceable.

Small Claims

Moreover, there is a European Small Claims Procedure since 1 January 2009. Regulation No. 861/2007 of 11 July 2007 is intended to improve and simplify civil and commercial procedures whereby the claim value is maximally EUR 2,000.

Compared to the European Payment Order the European Small Claims Procedure can be used for a much wider field of claims, however this procedure is limited to principal amounts up to EUR 2,000 at the introduction of the claim.

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