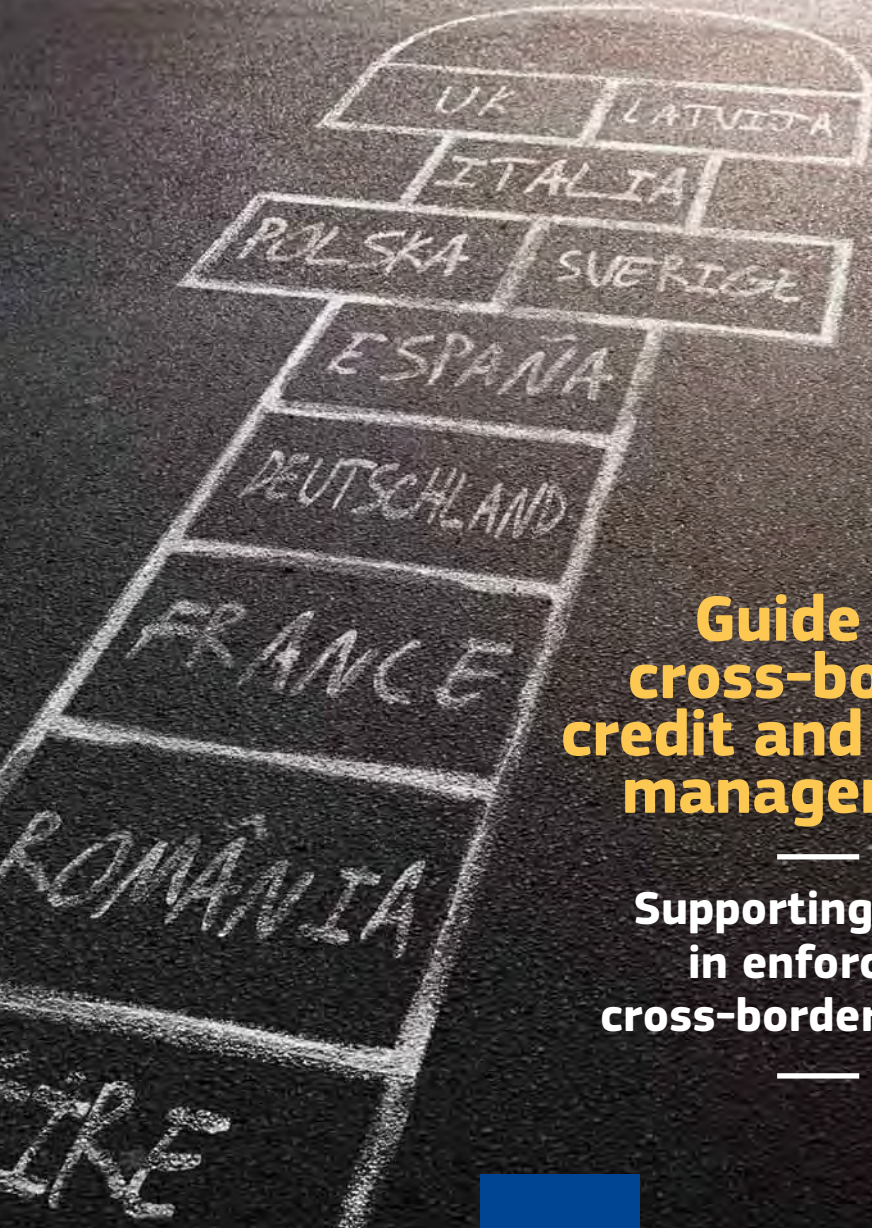




European
Commission



Guide to cross-border credit and claims management

Supporting SMEs
in enforcing
cross-border claims

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INTRODUCTION

A. CROSS-BORDER CLAIMS MANAGEMENT IN THE EU

With a population of over 500 million⁽¹⁾ the European Union is one of the largest markets worldwide. Particularly for small and medium-sized enterprises (SMEs), there are many opportunities to offer their goods and services not only in their own countries but also in the other 27 EU Member States.

However many businesses, particularly small ones, baulk at cross-border operations. Reasons for this vary greatly. One of the biggest obstacles for many entrepreneurs is not knowing whether a customer in another EU country will pay bills on time or how best to proceed in the event that this occurs and default of payment results.

This guideline is intended to support SMEs in enforcing cross-border claims in two different ways:

- by describing measures an entrepreneur can take from as early as the point of submitting a quotation up to the point of initiating European proceedings to prevent and avoid bad debt;
- by describing measures available to an entrepreneur should an actual case of bad debt come about.

1 Source Eurostat: <http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>

Practically all businesses in Europe are SMEs⁽²⁾, 90 % of which are micro-enterprises. Micro-enterprises are characterised by having fewer than 10 employees and where the owners or managers of the business – often including their family members – are intensively involved in every area of operations. However these micro-enterprises provide 53 % of all jobs in the European Union.

For this reason – and in the interests of clarity – all aspects of successful cross-border claims management are illustrated based on the example of a fictitious but typical micro-enterprise.

B. A TYPICAL MICRO-ENTERPRISE

The company is a micro-enterprise domiciled in EU Member State A. It is managed by young entrepreneurs Jane and Joe, who have only recently set up their jointly owned company and hired five more employees. They have a mail-order business and an online business specialising in boys' and girls' clothing and also pinewood furniture for children. Their head office, which is attached to a small fixed sales outlet, is situated close to the border with EU Member State B.

Most of Jane and Joe's clientele are private customers from country A, although an ever-increasing proportion comes from other EU Member States. However, they both receive major orders from retailers and private institutions, and increasingly in recent times, from EU Member States B, C and D. In future Jane and Joe also wish to submit tenders in response to bid invitations both in their own country and in other EU Member States.

The young entrepreneurs are continually increasing their cross-border business relationships and for this reason not least wish to systematically configure their General Terms and Conditions of Business, payment terms, invoicing and payment monitoring so as to pre-empt and successfully avoid bad debt.

2 Source SME Performance Review: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm

NOTE > EU-WIDE PROMULGATION OF PUBLIC CONTRACTS

Companies domiciled in one EU country may respond without restriction to public-sector invitations to tender in any other EU country. Official authorities throughout the EU apply harmonised, transparent procedures in selecting their contractors. In addition the 'Small Business Act' promotes measures for Europe that make it easier for small businesses to compete for public-sector contracts under the same conditions as for major competitors.

(See here in particular the European Code of Best Practices facilitating access by SMEs to public procurement:

http://ec.europa.eu/internal_market/publicprocurement/other_aspects/index_en.htm#smes)

For the award of public-sector building, supply and service contracts over a specified value EU Directives apply. The Directives apply in the case of contracts where the contract total value exceeds the following thresholds:

- public-sector building contracts valued over € 5 000 000;
- central government public-sector supply and service contracts valued over € 130 000 or over € 200 000 for contracts of authorities at decentralized level, or over € 400 000 in the case of supply contracts for water, energy and transport and postal services.

All invitations to tender exceeding certain threshold values are published in the EU Official Journal. You can view these free of charge on the TED (Tender Electronically Daily) database. TED is updated five times a week, with some 1 500 announcements of public contracts from the European Union, the European Economic Area and other countries.

Web link: <http://ted.europa.eu>

e-CERTIS is a cost-free online information system for businesses and public awarding authorities that helps identify the various certificates and attestations that are often required in award procedures.

Web link: <http://ec.europa.eu/markt/ecertis/login.do>

The current opportunity for Jane and Joe is an inquiry from a privately run primary school in EU Member State B close to the border with A. The school wishes to revamp its canteen and asks Jane and Joe for a quote to supply:

- 50 tables for children (pine) @ EUR 100 net;
- 200 chairs for children (pine) @ EUR 40 net;
- 50 tablecloths with a Harry Potter design (waxed) @ EUR 35 net.

For Jane and Joe this is a relatively big order that might have potential adverse effects on their company in the event of late payment: it would not necessarily threaten their survival but it might do some damage in terms of their relationship with their suppliers and other commitments that would be incurred by this micro-enterprise if it accepts the order. Therefore they draw up a proposal with all the necessary elements, especially with regard to avoiding default and ensuring sufficient protection against it. This absolutely must also include, in addition to the scope of services, price, performance timeframe and a period for payment, appropriately worded General Terms and Conditions of Business plus the terms of payment. In addition, Jane and Joe would like to discover something about the private primary school's ability to pay.



THE TENDER

Jane and Joe intend to submit a tender to a prospective customer in another EU Member State. As the scale of the order is comparatively large for their micro-enterprise, there is a range of aspects that Jane and Joe should bear in mind when preparing a tender for this customer. This primarily includes such precautionary measures as may help even at this early stage reduce the likelihood of any potential default.

In most cases where a micro-enterprise submits a tender, following acceptance and signature by Client and Contractor, this forms the contract. It is therefore of vital importance for Jane and Joe to know in detail in the tender, which terms of business and payment terms, which apply to all or most contracts, must also necessarily be integrated.

NOTE > GENERAL TERMS AND CONDITIONS OF BUSINESS AND TERMS OF PAYMENT

- General Terms and Conditions of Business and terms of payment are extremely important and should be a fixed component in every tender, contract, order and other business documents.
- General Terms and Conditions of Business and terms of payment should also be confirmed by the customer's signature.
- General Terms and of Business and terms of payment should be subjected to a specialist check for completeness, absence of contradictions and legal validity.

A. PRE-CONTRACTUAL ISSUES

I. Credit check on potential customers

Against the background of the size of the order Jane and Joe can run a credit check on the customer. In that way they can check the primary school's credit rating and thus its ability to pay. Creditworthiness indicates the ability of a potential customer to pay and may be checked in two ways:

- the entrepreneur checks personally using so-called 'credit scorecards' in 'credit scoring';
- the entrepreneur outsources creditworthiness checks (e.g. to an outside service provider).

Credit checks may be applied successfully in relation to both commercially active customers (businesses/B2B category) and also in relation to consumers (B2C category).

Hence credit agencies supply information regarding a company's trading name, legal status, legal constitution data, financial details and financial statement information. Credit checking agencies provide assistance in relation to the level of credit to be granted (for purchases on account, etc.).

Personal information as a rule includes the name, address, items such as for example date of birth, employer and in particular payment events such as negative features. Here too credit agencies award a score value in respect of the potential customer.

II. Determination of governing law and competent jurisdiction in the event of disputes

In addition, it is of elementary importance to know which law is applicable to the contract and which court would be competent in the event of a dispute between the parties involved.

1. Law governing contractual obligations

The law governing the respective contract between two parties flows from Regulation 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I Regulation). It is important to address the matter of which law is applicable to the contract as this is definitive for interpretation of the contract and for performance of the obligations based on the contract (Article 12).

In the Regulation there is the principle of free choice of law (*inter alia* in Article 3 i.e. the contracting parties are free to agree on the law by which the specific contractual obligation should be governed). If no law is chosen by the parties, the law applicable to sales contracts in respect of movables, services, franchise or sales contracts will be determined by the domicile of the party providing the characteristic performance (contribution in kind) (Article 4; example: in the case of a sales contract, this would be the vendor's domicile). The same applies as a rule to shipment contracts (Article 5) and insurance contracts (Article 7).

Contracts with consumers are generally subject to the law of the Member State in which the consumer (private customer) has his/her customary residence (Article 6); individual employment contracts are subject to the law of the country in which the employee customarily performs his/her work. The customary residence/place of work is generally the same place where the individual resides, even if other rules may naturally apply in exceptional cases. Individual (exceptional) regulations flow directly from the Regulation⁽³⁾.

To avoid having to familiarise oneself with (the many) other legal systems, it is recommended that the General Terms and Conditions of Business should contain a choice-of-law clause which permits choice of one's 'own' national law⁽⁴⁾.

2. Competent jurisdiction

The question of which court has jurisdiction in civil and commercial proceedings follows generally from Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation). Under this Regulation the courts of appropriate jurisdiction are generally the courts of that Member State in which the defendant is domiciled (Article 2-4). If a situation arises where the SME must enforce a cross-border claim through the courts, the competent court is basically the court in which the customer is domiciled.

Alternatively, under certain circumstances it is also possible to file an action against the opposing party before a court in another Member State. This is possible where a special (Article 5-7) or exclusive jurisdiction (Article 22) or jurisdiction in respect of insurance cases (Article 8-14), consumer contracts (Article 15-17) and/or individual contracts of

3 More information under: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/jl0006_en.htm

4 Also refer to Item B.III.1./g. below.

employment (Article 18-21) exists under the Brussels I Regulation. In addition there is under the Regulation the option of a legal venue agreement (Articles 23-24)⁽⁵⁾.

In order to ensure that recourse only has to be to 'home' national courts, which then (if agreed), in accordance with the choice of governing law recourse would only have to be to 'one's own' national law, it is recommended that a corresponding legal venue clause be included in the General Terms and Conditions of Business⁽⁶⁾.

For further information inspection is recommended of the European Judicial Atlas in Civil Matters⁽⁷⁾, which provides easy access to certain relevant information regarding legal cooperation in civil matters, where for example the competent court can be found and certain forms completed or even translated online.

B. PREPARING THE TENDER

Jane and Joe must draw up an individual financial and services tender in line with the inquiry received which in addition, must include their micro-enterprise's generally applicable Terms and Conditions of Business and terms of payment and which should be drafted for regular use in all contracts, quotations, orders and other commercial documentation.

I. Individual tender

Jane and Joe must ensure that all the following aspects are covered in every individual proposal that they draft.

1. Designation of the contracting parties

On the one side the parties are the vendors Jane and Joe and on the other the private primary school and the latter's legal representative.

5 More information under: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33054_en.htm

6 Also refer to Item B.II.1./h. below.

7 http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm#justice_home/judicialatlascivil/html/index_en.htm

Precise designation should include the following:

- full name;
- address;
- profession where applicable and individual trading name and the business proprietor's first and last names;
- in the case of companies the latter's full name, head office, Register of Companies number and legal representative's details.

2. Designation of goods and services

To avoid disputes regarding the nature of the goods sold, Jane and Joe should describe them as precisely as possible. To this end they may refer to a catalogue or sample if necessary.

The same is true of service tenders and contracts: they should give a precise description of the services to be provided and the timeframe during which the work is to be performed.

3. Price

In each individual tender – as at any point in time in the course of their business activities – Jane and Joe must specify a realistic price that ensures a realistic and adequate profit margin.

When setting the price to be paid, customarily the following options will exist for Jane and Joe:

- a designated fixed purchase price; or
- reference to a price list.

Naturally in this specific case Jane and Joe are free, irrespective of the prior price calculation, to include differing price regulations in their tender.

a. Rebate

Discounts can help make a proposal more attractive to potential customers in the case of major orders.

In the case in question the two young entrepreneurs decide to grant a 3% rebate on the net price based on the size of the primary school's order.

NOTE > EU-WIDE PRICING RULES

In the EU there is a large number of standardized consumer rights of which Jane and Joe must take account in respect of the following special factors with regard to pricing:

- When EU citizens (the prospective customers) purchase goods or services anywhere in the EU, they may not be charged a price higher than their own home citizens unless the price difference is justified. Jane and Joe must therefore in principle ensure that they offer services to foreign customers at the same price as they charge to citizens of their own country.
- Certain price differences are however justified – for example higher costs for shipment of goods abroad as in this present case.

b. Discount

To incentivise customers to pay promptly, Jane and Joe could also grant a discount. In this case the customer would receive a price reduction on the original invoiced amount if payment is received within a time limit freely determined by Jane and Joe.

c. Value-Added Tax

To prevent misunderstandings and disputes, Jane and Joe should also specify in their tender whether the price quoted is inclusive or exclusive of VAT. As to whether goods and services are subject to VAT and at what rate, is determined by the applicable laws. In cases of doubt, Jane and Joe should take tax advice⁽⁸⁾.

d. Currencies

Jane and Joe have decided to sell products in their national currency in all cases, including in online trading.

If businesses decide to sell goods and services in one or more other negotiable currencies in the EU it is necessary to determine the exchange rate between the domestic and foreign currency at a specified cut-off date.

8 You can find more information under the following link: http://europa.eu/youreurope/business/managing-business/paying-taxes/index_en.htm

For example:

100.00 € = DDK 745.92 on 4 February 2013

4. Period of performance

Jane and Joe should determine a specific period or specific point in time of performance.

The period of performance fundamentally differs between a service provided on the one hand and a service resulting from trading in/supplying with goods on the other.

A services contract is always the case if the client concludes with a company a contract in return for payment, the subject of which is a service, i.e. always as a rule if no supply or construction orders or award procedures are affected but the subject of which is the provision of services.

A supply contract is always the case if the client concludes with a company a contract in return for payment, the subject of which is a supply agreement, i.e. always as a rule if the client purchases, rents, or leases a service or also: supply contracts are contracts for the procurement of goods which relate in particular to purchase, purchase by instalment, rental or lease with or without the option to buy.

Mixed contracts (e.g., agreements involving both supplies and services) are considered to be supply contracts whenever the supply of goods accounts for the greater part of the total value.

The period/point in time of supply is the time sector/point in time during/at which the supply was or is to be delivered.

The scope and period of service commence with the start of the contractually agreed activity and generally end upon completion of the agreed service.

In this regard the extent and period in which the service is to be performed should therefore be precisely defined and agreed in the contracts or tender with the recipient of the service and comprehensively coordinated between potential contractors and the client.

Supply capacity is defined as the ability to supply products within a specified time, e.g. 48 hours and within an agreed framework. Delivery reliability: this is defined as the ability to meet an initially determined deadline.

5. Quotation validity periods

If a customer is sent a quotation in the form of a contract, it should specify the period during which the quotation remains binding on the business making the offer. That is important since many legal systems consider that a quotation remains valid until expressly rescinded.

6. Nature and scope

Performance should be defined so exhaustively and unambiguously as to prevent any misunderstandings and the prices should be capable of being identified or calculated without extensive preliminary work or discussions and agreement. To facilitate proper price calculation, all the influencing circumstances must be ascertained and stated in the quotation/contract documents. Finally the contracting parties should be able to derive from the detailed description what falls outside the agreed scope of performance.

7. Signatures

It is absolutely necessary to ensure that the final contract text is signed by the parties and in particular recording the date and place of signature. If the contract consists of several pages it is advisable for the contracting parties to initial each of these.

8. Form of the tender (and subsequent contract)

In the absence of any stipulation in law (or case law) to the contrary – and Jane and Joe should at all costs inform themselves in this regard – no requirement exists in principle for contracts to be drawn up in writing.

For purposes of preservation of evidence however Jane and Joe should always draw up their contracts in writing. Hence disputes in respect of the precise content of the contract can in many cases be avoided at the outset. Should a legal dispute arise however the written contract document in addition represents a very important means of evidence as regards precise document content and scope of the contract.

As an alternative to a written contract document conclusion of a contract may be attested by witnesses (e.g. participating employees) or be recorded on tape. Such forms of evidence always entail a certain degree of risk however. As a general rule particular evidentiary value is attributed to notarised documents, whereas faxes or e-mails in particular are often considered less authoritative.

In the case of telephone orders in particular written confirmation should be urgently insisted upon throughout.

II. General Terms and Conditions of Business – Special features of international contracts

Jane and Joe can generally resort to model contracts or refer to General Terms and Conditions of Business for clauses which always have to be agreed. But these too must first be drawn up and tailored to Jane and Joe's precise requirements. Detailed contractual provisions establish clear basic requirements which are decidedly helpful when it comes to managing problems in the course of performance of the contract or if legal disputes arise.

However, it must be ensured at all costs that – depending on the legal system – certain configurations or legal solutions are not possible. The following illustration should therefore only be taken to point up in abstract form which legal provision options basically can be considered. For more detailed structuring Jane and Joe should seek legal advice.

Even within one and the same legal system the range of permissible contract configurations may also vary. This applies in particular to General Terms and Conditions of Business as against individual contractual agreements. Primarily however certain provisions are in many cases impermissible vis-à-vis consumers (B2C) but may be effectively agreed vis-à-vis companies (B2B). Jane and Joe therefore need to be informed regarding the requirements of the relevant national legal systems in this regard.

1. General provisions

a. Preamble

By means of a preamble what meaning and purpose the parties intended in the contractual provisions can be documented. In the event of a dispute a preamble can often be a useful aid in interpretation of the actual meaning of a contractual provision. The more complex the subject matter of the provision the more important the preamble in order to be able to retrace what the parties each took as a basis for business.

b. Definitions

In Common Law in particular it is common practice to prefix the actual body of the contract with a list of definitions of terms used in the contract (which may in part be decidedly extensive). Such definitions can then be a definitive aid to interpretation. Depending on the governing legal system longer or shorter listings may be necessary here.

c. Conclusion, commencement and termination of the contract

In order to be able to precisely determine statute of limitations periods, warranty periods etc. it is necessary to establish the point in time of conclusion of the contract. It is also possible to set a certain date on which legal effect (and thus contractual obligations) will enter into force, or to make this conditional on the presence of certain circumstances.

Particularly for service provision it is important to include in the contract a provision for termination of the contract (on a specific date, after the contract has run for a specific term, by proper notice of termination observing a specific form and period of notice or by extraordinary notice of termination).

d. Written form clause

By means of a written form clause it is established that addenda or amendments to the contract may only be in writing. In this way the written form clause ensures that the contractual provisions are recorded in full in the written contract document and thus safeguards the evidentiary function of the written contract as supplemental verbal agreements may lead to in doubt regarding the actual content of the contract.

e. Severability clause

No matter how carefully a contract is drafted it cannot be excluded that certain of the provisions contained therein may prove to be invalid or unfeasible. For such an eventuality a severability clause should be provided via which a single invalid clause is prevented from rendering the entire contract null and void.

f. Choice of language

The EU now recognises 23 official and working languages. As Jane and Joe and most of their customers speak English they generally draft their tenders/contracts in English. Another possibility is to have the tender/contract concerned translated into the official languages of those countries from which most of their customers originate, although there is always a risk that translation mistakes may occur.

g. Choice of governing law

The law of which country will govern the contract?⁽⁹⁾

9 See also Item A./II./1. above.

This question is generally answered under the Rome I Regulation⁽¹⁰⁾.

In order to avoid uncertainty as to which laws are applicable in deciding a dispute it is advisable to append a 'governing law' clause to the agreement. Jane and Joe can also ensure in this way that the laws of 'their' home country are applicable.

h. Legal venue agreement

If in the event of a legal dispute in respect of contractual obligations or if legal assistance is necessary for collection of a debt, the following question inevitably arises in international cases: which court has jurisdiction to rule on the legal dispute?

Within the EU this is determined under the Brussels I Regulation⁽¹¹⁾.

The Brussels I jurisdiction provisions are only definitive, however, if no legal venue agreement has been made between the parties to the contract.

Such a clause offers a series of advantages:

- a court can be specified which is easily accessible for Jane and Joe;
- as a form of deterrent a court may be specified which is possible for their contractual partner to reach only with difficulty;
- a court may be specified which is familiar with the national laws governing the contract (which will generally be a court from the country whose legal system is selected as the governing law).

It must be remembered that for some contracts, such as for example contracts with consumers the option of agreement of a legal venue is restricted under the Brussels I Regulation.

i. Arbitration tribunal agreements

It is also conceivable that the jurisdiction of national courts be excluded by means of an arbitration tribunal clause and instead nominating one (or more) arbitrators for the eventuality of disputes.

10 See Item A/II/1. above.

11 See also Item A/II/2 above.

2. Provisions regarding assumption of risk, warranties, liability and damages compensation

The following clauses may be particularly important for claims management in cross-border trade:

a. Transfer of risk clauses

For delivery of goods the point of transfer of risk is very important. It is important to differentiate between performance risk (or supply risk) and price risk (or return consideration risk).

In the case of performance risk the important question is who has to bear the risk or disadvantage in the event of the loss, damage or destruction of the object of purchase: as vendors Jane and Joe are obligated to 'delivery' of the object of purchase. In such cases do they still have to continue to provide the promised performance or does the purchaser lose his claim to the said performance?

Price risk, on the other hand, relates to the question as to whether the purchaser, despite damage, loss or destruction of the object of purchase, still has to pay the purchase price.

It is naturally in the best interests of Jane and Joe to set transfer of the price and performance risk at as early a point in time as possible (e.g. at the very point of handover to the [first] carrier and not only until the goods are received by the purchaser) and to provide that the place of performance is the registered domicile of their own business so that (within a specified period following lapse of which transfer of risk similarly takes place) the purchaser is required to collect the goods.

b. Provisions regarding liability for defects and impairment of performance

aa. General

In general terms – within the varying periods of time and to a differing extent depending on the legal system – a vendor is liable for defects in the object of purchase. Corresponding liability risks also exist with regard to provision of services etc.

In this regard Jane and Joe should therefore endeavour to contractually exclude or limit their liability for material defects and warranty obligations to the necessary extent. The extent to which such exclusion is permissible depends in particular on the relevant legal system, the contractual party's legal status (business or consumer) and the nature of the contract design (General Terms and Conditions of Business or individual contract).

Similarly as with defect liability, Jane and Joe should protect themselves against (extensive) liability for impairment of performance, for example failure to meet delivery dates or delivery periods. Agreement of more flexible delivery lead times or deadlines, by which at the latest the goods must be received by the purchaser, is advantageous in this regard.

Jane and Joe may also take additional precautions by agreeing to provisions regarding delay, for example, they may state the requirement for an extension of the performance deadline or exclude liability for damages resulting from delay (e.g. in the event that official permits are denied, *force majeure*, etc.).

Similar limitations should also be established regarding the purchaser's right to withdraw from the contract in such cases.

bb. Consumer rights in the consumer's Member State and in the EU

i. Two-year warranty

Irrespective of where you buy goods in the EU, you are entitled to demand repair or replacement for up to two years following delivery if the goods turn out to be defective or fail to meet the product description. If repair or replacement is not possible within an appropriate period and without considerable inconvenience you have the right to claim a refund or reduction of the purchase price.

The two-year warranty period commences at the point in time of delivery of the goods. You must inform the vendor within two months from the point in time you discover the defect. The vendor is liable in any event and in some EU countries the purchaser also has right of redress against the manufacturer.

ii. Second-hand goods

In the case of purchases of second-hand goods purchaser and vendor may agree a guarantee, the duration of which is less than two but no less than one year. This must be expressly indicated at the time of purchase however.

iii. Repairs, replacements and refunds

If goods or services are purchased via mail order, telephone, fax or online ⁽¹²⁾ from a commercial dealer domiciled in the EU the same rights to repair, replacement or refunds may

12 <http://europa.eu/youreurope/citizens/shopping/online-shopping/when-things-go-wrong/index>

be enforced against the vendor as with purchase in a shop. If goods are purchased from an online vendor in the EU, the cost-free repair or replacement thereof may be demanded if the goods turn out to be defective or fail to meet the description.

If repair or replacement is not possible within an appropriate time period and without considerable inconvenience you then have the right to refund or reduction of the purchase price.

The so-called 'button solution' ensures cost transparency and legal certainty in online purchases of goods and services. A B2C (Business-to-Consumer) contract entered into over the Internet accordingly will only be effective in future if the consumer expressly confirms that the order entails an obligation to pay. If the order is placed by clicking on or activating a button, then the button must be clearly legible with the words 'order with payment' or be labelled with other unequivocal wording to that effect.

c. Other liability provisions

Jane and Joe should also provide other rules or limitations for other liability risks (e.g. for breach of secondary contractual obligations). In this regard damages compensation clauses (which limit liability to the extent permitted by the relevant legal system for example to liability solely for damage caused by intent or gross negligence) and lump-sum allowances for damages should be established in the contract.

d. Special relevance: late payment

Particular attention should be paid in this regard to establishing damages compensation provisions, lump-sum damages, etc., including the eventuality of late payment by the debtor (purchaser). Of prime importance in this regard (taking into account the maximum permissible threshold values or maximum sums permissible under the relevant legal system) the following should be regulated:

- reminder charges due in the event of delayed payment;
- default interest;
- late payment surcharges;
- lump-sum damages compensation;
- contractual penalties in the event of late payment or payment default, including non-acceptance or withdrawal from the contract.

3. Delivery terms

a. Individual delivery terms

Delivery terms should primarily take the following points into account:

Who bears the cost of delivery – purchaser or vendor? Particularly in cross-border trading significant items may be involved, not only for actual freight charges (carriers, freight and loading charges, etc.) but also for transport insurance in particular.

b. Standardised terms

Particularly in international trade, it is advisable to resort to (largely) standardised terms of delivery for the following reasons:

- customary business practices in individual countries are often unknown to contractual partners of differing origin;
- due to divergent interpretation or different understanding of clauses common in other legal systems otherwise lead to misunderstandings and legal disputes associated therewith, costs, loss of time and imponderables regarding enforceability of claims.

In this regard the 'International Regulations for Interpretation of Customary Contract Terms (International Commercial Terms, Incoterms)' are available for that purpose. The currently valid version is Incoterms 2010 implemented on 1 January 2011. The terms therein, each of which has a three-letter abbreviation, regulate the basic obligations of purchaser and vendor.

If regulation loopholes are to be avoided it is not sufficient however to simply include Incoterms in the contract without inserting your own provisions, as these regulate in particular transfer of costs and the transfer of price risk, including the question as to when the vendor's duty of care passes to the purchaser¹³.

4. Rights of cancellation and return

Under statutory provisions in the first instance all customers and those involved in distance selling must be accorded a right of cancellation in certain cases. Subject to observation of certain qualifying periods the customer may – subject to certain preconditions in that regard – withdraw from the contract. Provisions in the various EU Member States in this regard are largely harmonised on the basis of the EU Directives.

13 For more information, see: <http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/>

The length of the legally prescribed cancellation time limit also depends in the main on whether the customer has been properly informed of the right of cancellation.

In many sectors, it is also common practice to voluntarily concede to the customer the right to withdraw from the contract.

Jane and Joe should therefore take the following points into account in their General Terms and Conditions of Business which are appended to the corresponding contracts:

- instruction regarding cancellation (prescribed form, qualifying period, addressee);
- consequences of cancellation and withdrawal (reversal of contract, return of considerations received by both parties, i.e. goods and purchase price and proportional payments; surrender of benefits drawn on etc.);
- damages compensation in the event of deterioration of goods;
- costs of return shipment borne.

In the EU the right exists to cancel purchases made on the Internet within seven working days from receipt of the goods. This seven-day withdrawal period commences on the date on which the purchaser received the goods purchased. Within this period the order can be cancelled for any reason. The vendor must refund the purchase price and costs within 30 days thereafter. The refunded costs must include all shipping charges which were paid for at the time of purchase of the goods.

This applies in all cases where goods were purchased outside a shop, be it by phone, fax, mail order or on the Internet. Excluded from the seven-day cancellation period are: airline and railway tickets, concert tickets, hotel reservations and food delivered on a regular basis (e.g. deliveries from a dairy delivery service or supermarket) plus private purchases.

5. Security for claims

It is vital for the survival of Jane's and Joe's business that they receive the contractually agreed payment from their customers. But how can Jane and Joe protect their liquidity from default on the part of customers unwilling to pay?

Possible (dependent however on the relevant legal system or sector involved or in certain cases unusual or unworkable) is use of the following tools for providing security for a claim.

a. Reservation of title

Difficulties in claims collection may result when the purchaser fails to meet his/her payment obligations despite having already received and acquired title to the object of purchase – for in such event the vendor can basically only sue (through legal action) for payment of the purchase price but can no longer demand return of the object of purchase.

In many legal systems there exists against this background the option to agree a so-called reservation of title: title to the object of purchase in this way only transfers to the purchaser following payment in full of the purchase price.

In certain circumstances the purchase contract requires a certain form (by statute or by agreement between the parties) – this must then be observed with regard to the (in most cases form contract) agreement of retention of title.

To the extent that a unilateral or post-hoc declaration of reservation of title is possible or permissible by law will depend – as also the details regarding further contract design variants – on the relevant legal system⁽¹⁴⁾.

Besides merely agreeing reservation of title, the contract should also regulate under what conditions the vendor can demand surrender of the object of purchase by the purchaser, what further legal consequences this may possibly trigger, if any, what obligations the purchaser has in this respect and who must bear the costs incurred in return of the goods.

The more detailed these other procedures are regulated, the more effectively can reservation of title be used as a claims management tool.

b. Other security options

Rather rare but possible is agreement of assignment as security pledging, assignment of receivables, a surety, a guarantee or by real estate liens. These collateralisation tools are very complex so that in this regard Jane and Joe should seek professional legal advice if they see the need for such collateral cover.

6. Commercial credit rating agencies

For data protection law reasons communication of credit rating information is not always readily possible. In some cases it may be necessary to obtain the customer's consent in

14 Also refer in this regard to Chapter 2/A.II./1 above.

this regard. Jane and Joe should therefore include a clause to that effect – adapted to the actual requirements of the relevant data protection act in their contracts.

7. Legal remedies in the event of non-provision of goods

Under EU law goods ordered via the Internet must be delivered within 30 days from the date of order in the absence of agreement to the contrary with the vendor.

If it transpires that the goods paid for by the recipient are not available the vendor must inform the buyer to this effect within 30 days and refund the amount paid.

Additional costs for certain types of payment (e.g. credit card payment) may only be invoiced to the consumer if the entrepreneur has actually incurred costs thereby.

III. Payment terms

1. Respective interests situation

For claims management contractual agreement of payment terms naturally plays a central role as in this way payment transactions processing is established.

Whilst the purchaser however will wish to pay as late as possible in order to preserve their own liquidity the vendor will have an interest in receiving payment immediately in the best case scenario. In order to avoid deterring prospective customers careful balancing of these interest positions is needed. The deciding factors are:

- customer creditworthiness;
- customary sector business and payment practices;
- customer recruitment and loyalty aspects (via convenient payment options);
- costs of individual payment methods;
- typical national practices.

2. Methods of payment

Following an analysis of existing freedom of action in the light of the points listed the following configuration options primarily can be considered (listed by length of time interval until receipt of payment or maturity date):

- payment in advance or down-payment (prior to delivery);
- credit card payment (at time of order or on delivery);
- (cash) payment upon delivery;

- payment (on delivery);
- debit note (on delivery) – in many legal systems a distinction must be drawn here between a direct debit authority and a direct withdrawal order: the advantage of a direct withdrawal order from the creditor's standpoint is that the debtor has no right of cancellation, whereas payments made by means of a direct debit authority may be cancelled by the debtor, hence payments by direct debit are not completely guaranteed in law;
- payment by draft (on delivery) – in this regard it should be ensured that only banker's drafts are accepted which result in an immediate credit entry to the vendor's bank account (only a bank-certified cheque ensures actual collection of the claim as in addition to the issuer the latter's bank is also liable for payment of the amount of the cheque);
- payment on straightforward account (after delivery);
- payment on account with a specified payment date (after delivery).

It is conceivable that only one of these payment methods is permitted and that also the customer may be given the option of several alternative solutions.

3. Maturity

It is also especially important to agree to a clear provision as to when the purchase price is due, i.e. the date with effect from which Jane and Joe can demand payment of the purchase price by the purchaser.

4. Special case: payment by instalment

Another important payment option in commercial life is to agree to payment by instalment under which equal payments are made at fixed intervals. Loans are often granted in this connection and banks may become involved as lender in this regard. *Vis-à-vis* consumers, in the event of granting of credit, special consumer protection laws apply, the details of which flow from the particular legal system, harmonised in part however by

NOTE

The customer can also be given incentives prompting him/her to opt for a payment method by means of which Jane and Joe receive their money ahead of time, particularly by granting them discounts for early payment.

implementation of the Consumer credit agreements⁽¹⁵⁾. With regard to contract design – in addition to establishing the number, level and maturity dates of instalments (possibly including a deposit) – a provision in this regard determining the interest rate payable by the customer must be included.

5. Rights of offset and retention

A further aspect also to be taken into account in prudently configured payment terms is the question as to what extent the debtor is permitted offset and retention rights.

6. Late payment provisions including the Late Payment Directive (Directive 2011/7/EU)

In order in particular to strengthen competitiveness of SMEs, on 16 February 2011 the Late Payment Directive⁽¹⁶⁾ was promulgated which EU Member States are required to implement in national law by 16 March 2013. It replaces Directive 2000/35/EC which will apply until that date, and is intended to create a ‘culture of immediate payment’.

The aims of the Directive are *inter alia*:

- harmonization of the reciprocal terms of payment between companies and between companies and public authorities;
- freedom of contract in commercial transactions (companies must pay their invoices within 60 days in the absence of agreement to the contrary and provided these terms are not unfair); and
- lump-sum compensation for recovery costs in the sum of 40 € for companies (which are additionally entitled to demand interest for late payment).

Furthermore, under the Late Payment Directive the statutory interest rate for late payment is increased to a minimum of eight percentage points above the European Central Bank base interest rate. Member States may retain or adopt regulations which are more favourable for the creditor than the measures required to comply with the new Directive⁽¹⁷⁾.

15 Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.

16 Directive 2011/7/EU of the European Parliament and of the Council dated 16 February 2011 on combating late payment in commercial transactions.

17 Further information can be found under:
http://ec.europa.eu/enterprise/policies/single-market-goods/fighting-late-payments/index_en.htm

IV. Incorporation of General Terms and Conditions of Business or payment terms

1. Textual wording

General Terms and Conditions of Business may in many legal systems either be incorporated directly into the main contract or structured as a separate text.

In the latter case it is of decisive importance that the General Terms and Conditions of Business are incorporated into the contract in fact. As to what extent this is regarded as met depends on the relevant regulations in the individual EU Member States.

The safest solution in this regard therefore is to stipulate expressly in the main contract that your own terms and conditions of business will apply and to require the customer to confirm acknowledgement of that fact. In addition Jane and Joe should attach the text of their General Terms and Conditions of Business to the main contract and have the customer sign them separately if possible.

Furthermore, the General Terms and Conditions of Business should be included not only in the actual contract but also in the run-up to conclusion of the contract in all quotations, proposals, orders, commissions etc. This applies to any further (supplementary) contracts existing alongside the main contract and to any similar or related documents.

By separate configuration of the General Terms and Conditions of Business the problem may be encountered that in particular vis-à-vis consumers there is substantially less leeway in formulating such clauses (i.e. B2C) than vis-à-vis other businesses (i.e. B2B). In this regard by means of correspondingly differentiated references differently designed General Terms and Conditions of Business can be incorporated or alternatively incorporation of General Terms and Conditions can be excluded vis-à-vis consumers.

In any event thematically coherent and prudently structured business terms and conditions are recommended – the improved clarity of overview serving to avoid misunderstandings and therefore in the final analysis also legal disputes may prove helpful in claims management.

2. Clauses expressly rejecting the other party's terms and conditions

Problems arise when both the offer and the declaration of acceptance refer to application of the parties' own General Terms and Conditions of Business (B2C). This 'battle of forms' is solved in many legal systems by stipulating that the authoritative General Terms and Conditions of Business are those of the party that most recently sent them or asserted their applicability ('last shot rule') – usually with the proviso that the other party must have accepted those terms either expressly or implicitly by failing to protest and/or by providing its own services.

The most effective way to prevent the assumption of implied assent to the other party's General Terms and Conditions of Business is to incorporate a clause in your own General Terms and Conditions of Business or in the main contract a so-called 'defence clause' that expressly rules out the simultaneous applicability of competing General Terms and Conditions of Business and clearly expresses the intent of precedence of your own terms and conditions.

It is best to avoid simply formulating 'Applicability Clauses' that merely indicate the applicability of one's own General Terms and Conditions of Business, which are considerably weaker.

3. Obligation to supply information in online trading

Online vendors in the EU are required to display the following information on their homepage prior to the placement of an order:

- the merchant's postal address and e-mail address;
- the essential characteristics of the relevant goods or services;
- the total price of the goods or services inclusive of all taxes;
- shipping charges;
- payment procedures;
- indication of whether or not the order may be cancelled;
- expiry date of the offer or the price;
- minimum duration of the contract.

This is true of orders placed with online merchants but not in the case of purchases made on online auction websites.

V. Important: competent legal consultancy

Before drafting any special contracts or contract templates Jane and Joe should first make themselves aware of and agree on the most important modalities of the contract.

They should seek professional legal advice in order to ensure:

- that the provisions drafted actually are effective and meet the desired objectives;
- that the provisions are free from contradictions; and
- that all the essential aspects of the real-life situation that need to be regulated are covered.

It is also important to make sure that wording is clear and precise in order to prevent multiple interpretations of provisions that may lead to disputes, possibly ending up in court.

Contract design is a key factor when it comes to ensuring the enforceability of claims: in the worst-case scenario the entire contract may be null and void and Jane and Joe will have difficulty enforcing their claim (in court).



INVOICING

Jane and Joe should now consider forwarding the invoice for their goods to the client either at the time of delivery or immediately thereafter. This is quite common in commercial transactions and often desirable.

They must ensure that all relevant information is included on the invoice not least to avoid any possible delay in payment.

In this context it is also necessary to point out that prompt invoicing can help protect liquidity and also help avoid misunderstandings and subsequent queries.

A. A TYPICAL INVOICE

A specimen invoice containing all the necessary components might look as follows:

Jane and Joe's small company

Jane & Joe ←1
 X-Road 5
 4444 X-Town
 Country A
 Phone: 00.0000000
 Telefax: 00.000000
 Email: info@joe&jane.com

Client xxxx Ltd. ←3
 5 XY Street
 77777 City
 Country B

4→ X-Town, 1 January 2013

Invoice No. 01/2013 ←5

Dear Client xxxx,

Thank you for placing your custom. The invoice for our services is as follows:

6→ Date	Quantity	Description/ Product Code	Unit price (EUR)	Total price (EUR)
01/01/2013	50	Children's tables (pine) No. 82790	EUR 100.00	8→ EUR 5 000.00
01/01/2013	200	Children's chairs No. 82778	EUR 40.00	8→ EUR 8 000.00
01/01/2013	50	Table cloths with Harry Potter motif (waxed)	EUR 35.00	8→ EUR 1 750.00
Subtotal (excl. VAT)				8→ EUR 14 750.00
VAT (19%)				10→ EUR 2 802.50
Total				11→ EUR 17 552.50

2→ Your VAT Reg. No. B 00 0000 00

12→ Tax is payable by the customer.

13→ Terms of payment: cash in advance.

7→ Please remit the above amount within 20 days. Please quote your name and the invoice number on the remittance slip.

14→ Unless indicated otherwise the date of invoice corresponds to the date of delivery. The delivery is exclusively on the basis of our General Terms and Conditions of Business.

Managing Directors
 Jane and Joe

2→ VAT Reg. No. A 000 0000 00

15→ XX Bank
 IBAN No.: 00 000
 BIC: 000 000 00

B. INVOICE COMPONENTS

1. Sender

An invoice should show the full name and address of the supplying company (e.g. Jane and Joe's company) including the company's trading name and the first and last name of the proprietor. These details may be contained in corporate stationery header or footer depending on the layout design of the company's forms or be justified right on the invoice above the invoice text.

If a Register of Companies entry is available it is necessary to include in full the first name and last name of the Managing Director(s) and the Register of Companies numerical entry. This may be placed in the letterhead or as in the example, in the footer.

The full address of the service provider is an important part of the invoice. To facilitate follow-ups and contact, a phone number, fax number, or, if applicable, an e-mail address should be added to the address information.

2. Value Added Tax Identification Number (VAT ID)

It is recommended that the value-added-tax identification number of the supplier be indicated in the invoice, usually next to the company address, although this is not necessary when only minor invoiced amounts are involved.

If the invoice recipient, i.e. the customer or purchaser, is resident in another EU country and has a valid tax identification number there the invoice can be issued for the net amount (see No. 9), i.e. the services are exempt VAT. However, both VAT identification numbers must be indicated in the invoice.

3. Addressee

To avoid mistakes when forwarding both the invoice and the goods to the addressee (e.g. the primary school in country B) the full address of the recipient should be indicated in the block in the upper-left of the invoice. It is similarly helpful to include the name of a possible contact person in order to expedite processing of the invoice by the recipient.

4. Indication of the Town or City/Date

The invoice date is important for subsequent calculations regarding service and delivery periods.

5. Invoice Number

The invoice number must always be indicated except when only minor amounts are due. Strictly speaking the invoice number need not be sequential but must be assignable to a defined numerical range. An allocation range is the easiest to track and not least facilitates effective monitoring of invoices, i.e. successful payment monitoring, which is highly recommendable. Equally important is that each invoice number be unique and assigned only once. If necessary and depending on requirements and the size of the business operation, a customer number and/or order number may also be issued.

6. Invoice Content

The invoice content should be presented in tabular form in order to ensure better understanding of the individual services, especially if there are many.

7. Point in time of Performance

The point in time of delivery or other services or of collection of the payment must also be listed even if identical to the invoice issue date.

8. Specification of individual net amounts in the event of several items

The net amounts must be listed individually by quantity and type of items supplied or services provided and identified using standard commercial notation. This also applies even for minor invoiced sums.

It is mandatory when indicating the breakdown of net remuneration by tax rate and individual tax exemptions for invoiced sums exceeding 150 €.

9. Total Price (Net)

It is customary to state the total net prices for the individual items as a net total sum.

10. Turnover Tax (Value-Added Tax)

The prevailing tax rate must always be stated. In the event of differing tax rates these must each be indicated together with the basis of calculation, the tax rate and the sum calculated. Whilst the tax rate must always be shown the amount of tax may be omitted when minor amounts are involved. It is also important to take into account whether the customer is entitled to an input tax deduction⁽¹⁸⁾.

18 Further information can be found under the following link:

http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_refunds/index_en.htm

11. Total Price (Gross)

Finally the total gross price should be stated gross. The invoiced amount calculated gross equals the total net price plus the full amount of tax stated.

12. Indication of Legal Basis

If VAT-exempt invoices are issued to a customer or client in another EU Member State the corresponding legal basis must always be indicated.

13. Indication of method of payment

To avoid misunderstandings, the method of payment must always be indicated on the invoice. In the example, in addition to cash payment the virtually risk-free 'payment in advance' method is indicated. Here service is not provided (or delivery is not made) until settlement of the sum has been made by the recipient of the service. Mainly however, other non-cash methods of payment are indicated on invoices. These include:

- bank transfer following receipt of service;
- cheque;
- credit card;
- bill of exchange.

Depending on the method of payment, Jane and Joe may have to contact appropriate service providers and, in the case of distance trading for example, they may have to offer the customer several payment platforms. This is a rule linked to a sort of commission which is customarily deducted from the provider of the service. In this regard this should be taken into account when calculating the price.

Important in this connection, especially with non-cash methods of payment, is to set a firm deadline for payment. Under the EU Late Payment Directive there is a harmonised payment period which applies to payments between companies or between companies and public authorities.

If no fixed payment term has been agreed the debtor company is deemed to be in default 30 days from receipt of invoice. If receipt of the invoice cannot be established with certainty payment default commences 30 days after receipt of the goods or services. Varying rules exist for the business transactions with public authorities.

There is actually no 'minimum' time allowance for payment. If a payment date can be determined by the calendar ('payable by 10 Jan. 2013') then no further reminder is required

in order to place the debtor (beneficiary of the service, in our example the private primary school) in default on that date. If however the invoice states 'payable within seven (7) days from invoice date', then the due date cannot be determined by the calendar and therefore a reminder is also required in order to place the debtor in default. Return consideration collection should be arranged so that no additional cost is incurred by the debtor. A bank transfer takes up to three working days and therefore one can expect a payment period of at least seven days.

14. Delivery Date and Incorporation of General Terms and Conditions of Business

If the relevant tax office discovers an invoice missing a delivery date in the event of an audit it can for example require repayment of VAT already refunded. The briefest version is: 'payment date equals invoice date' or 'delivery date equals invoice date'.

If the service date performed or delivery date is in the same month it is also possible to state 'delivery in same monthly invoice period'. The term 'delivery date' usually refers to a delivery whereas 'performance date' refers to the performance of a service.

Indication of General Terms and Conditions of Business:

Under Directive 93/13 Member States undertake to enact certain statutory norms which protect the consumer from unfair contractual conditions⁽¹⁹⁾.


General Terms and Conditions of Business are addressed in another chapter (Chapter 2).

15. Bank Details

In the footer at the latest the service provider's bank details (i.e. Jane and Joe) for the payment of invoices should be stated clearly and unambiguously. Every bank account in the European Union is defined precisely by an International Bank Account Number (IBAN). No bank account number is duplicated. The IBAN consists of up to 34 alphanumeric characters. A fixed length is defined for each country.

The 'Society for Worldwide Interbank Financial Telecommunications' (SWIFT) regulates international data exchange between banks. The Society operates a worldwide line network and defines messaging standards. Each participating bank receives a unique code: the 'Bank Identifier Code' (BIC). The BIC has eight or eleven characters.

19 http://ec.europa.eu/consumers/cons_int/safe_shop/unf_cont_terms/index_en.htm



INTERNAL MANAGEMENT – EFFECTIVE PAYMENT MONITORING

The goods have arrived on time and enjoy great popularity. The invoice was correct in form and sent with all necessary details along with the ordered goods or promptly thereafter.

It is now crucial for Jane and Joe to establish and use an internal management system for their micro-enterprise which will monitor and follow up this and all other incoming payments, so that no possible overdue payments or other irregularities will remain unnoticed and – should any difficulties arise – these can be reacted to immediately.

In order to attain this goal, i.e. being able to check for prompt payment of invoices, a series of organisational and other measures is necessary.

A. TECHNICAL COMPETENCES OF JANE AND JOE

In relation to the daily work steps that must be taken into account for invoices issued in the home country, the following particularities must be taken into consideration:

- language requirements;
- legal requirements;
- work flow control;
- special demands placed on in-house monitoring software;
- accounting matters;
- new cost structure.

I. Language requirements

It is ideal if as entrepreneurs English is mastered in addition to one's own national language. Before drafting individual documents it is also possible to utilize some already standard forms in the official languages of the relevant target markets.

So that customers and business partners from other EU Member States can contact Jane and Joe quickly and easily it is recommended that they use an easy and simple e-mail address and set up and maintain a simple Internet website accessible in their national language or also in English.

It is also advantageous if their company can be found quickly through the usual search engines. This builds confidence among existing clients and makes it easier to acquire new clients⁽²⁰⁾.

II. Legal requirements

Before undertaking cross-border transactions one should be informed regarding the most important legal issues.

Jane and Joe should therefore integrate additional legal requirements into their work procedures and be aware that the payment deadlines and payment processing abroad are different than in their home country. It is also important that they inform themselves whether they have taken into account all the regulatory requirements of the respective national legislation (in the other EU Member State). Hence the necessary identification numbers (e.g. VAT ID number, IBAN, BIC/SWIFT) should exist and it should be known which organizations offer assistance regarding legal questions⁽²¹⁾.

20 Further information can be found under the following links:

https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-en.do
or http://europa.eu/eu-law/index_en.htm

21 Further information under: <https://e-justice.europa.eu/home.do?plang=en&action=home>

B. WORKFLOW MANAGEMENT

I. Customer database

For controlling and monitoring payment flows a simple internal controlling system can be developed. Such a system facilitates swift access to the customer database so it makes sense to set this up both for national and cross-border business in electronic form⁽²²⁾.

The moment a new customer submits an order his/her data is added to the electronic customer file in compliance with prevailing data protection guidelines. Joe and Jane should do so manually and promptly. Data can be exported and transferred from order processing.

The following data must always be known:

- customer's full address dataset (delivery address/billing address);
- customer's bank details (IBAN, BIC/SWIFT);
- contact numbers of the client (telephone/fax/e-mail address/Twitter if available).

II. Electronic invoice management

For easier invoice generation and processing invoices an electronic system can be an aid in order to be able to quickly ascertain which invoices are generated, sent or are due or overdue for payment.

The following information is relevant to a practical overview:

- Customer Name;
- Invoice Number/Customer Number/Shipping Number/Order Number;
- Invoice Date;
- Due Date;
- Payment amount;
- Reminder Date;
- Payment Date.

22 To verify company data please consult the following link: <http://www.ebr.org/section/2/index.html>

For micro-enterprises it is recommended that the invoices always be prepared and sent to the client together with the goods or on the following day. The invoice should be included in the package or sent to the customer by post.

III. Returns management

It is also prudent in the returns management area (both for packages and undeliverable letters) to adjust the work cycle. If an invoice is returned as undeliverable the client should be contacted by the means of communication still known. This should not be deferred until the invoice due payment date.

IV. Monitoring a special account for international payments

If a bank account for foreign payments is set up within the company it is advisable to monitor incoming payments daily, possibly using standard banking software which meets the SEPA requirements.

If an invoice has been paid the payment date and the payment amount should be entered into the electronic list. If the amount paid deviates from the invoiced amount the customer must be informed immediately.

V. Standard forms

For frequently occurring cases preparation of some form templates can be considered for target countries. These help to perform work flows economically and swiftly. Templates can usually be prepared inexpensively and quickly by a local translation agency.

VI. Items outstanding and reminder despatch

It is advisable to maintain a list of outstanding claims, which should be edited at regular intervals – at least once a week however.

Jane and Joe have incorporated an amicable payment reminder into their workflow, which is sent out before the specified payment deadline. In this way it is possible to enquire regarding information from the customer as to whether the product has any unreported defects. In this way the client is reminded when payment is due.

What should the payment reminder contain?

- type, scope and date of the delivery/service;
- reference to the invoice by invoice number and date, and to the outstanding amount. Here it would be helpful to enclose a copy of the corresponding invoice;
- request for payment of the invoice;
- bank details;
- adding an already completed transfer voucher may help expedite the transfer of the invoiced amount;
- note to the effect that the customer should ignore the reminder if he has paid in the interim.

A payment reminder should not contain:

- hostile or aggressive forms of wording, instructions, emotionally charged threats or insults to the customer.

Jane and Joe's payment reminder is worded as follows:

Invoice No. 01/2013 dated 1 January 2013

Dear Customer xxxx,

We delivered 50 children's tables, 200 children's chairs and 50 tablecloths to you on 1 January 2013. We have already invoiced this delivery in respect of a total of EUR 17552.50 (our letter dated 1 January 2013).

Our records show that we have not yet received payment for the above invoice.

In the event that the above invoice has escaped your attention please find enclosed a copy and a completed bank transfer voucher. We would be grateful if this outstanding invoice can be settled at the earliest.

In the event that you have already made the payment please disregard this letter.

Yours sincerely,

Jane and Joe

If the list of outstanding receivables indicates that despite the amicable payment reminder payment has not been made and the invoice is overdue formal notice of default with a set date for payment should be sent immediately to the customer from the electronic database. The period set for payment should allow the client a fair amount of time to react. The reminder should be sent by post. Simultaneously it can also be sent by e-mail or fax of course.

Even if it is generally sufficient to draft the reminder in English, it would naturally facilitate understanding if the notice of default is written in the customer's own language.

C. SOFTWARE REQUIREMENTS

In order to develop and maintain reliable claims management no expensive procurements are needed. The necessary work processes can be carried out using a standard office software package without any special adaptation.

The office software package should – irrespective of the operating system – include a word processing application and a spreadsheet application in order to maintain master data and list of outstanding receivables. For e-mail correspondence a Personal Information Manager (PIM) should be used.

The necessary banking application can be procured from the company's regular bank. The latter will assume responsibility for care of maintenance and guarantee that the SEPA facility is available.

D. DAY-TO-DAY ACCOUNTING

For day-to-day accounting it is advisable to pass these records at regular intervals to a tax adviser experienced in cross-border trade.

To control cross-border trade transactions new accounts can be set up for the accounting processes.

The chosen tax consultancy should know and be thoroughly familiar with VAT issues within the European Union. In an initial meeting prior to commencement of cross-border trading the tax advisor generally points out special tax issues and can check the invoice templates to be used once more and correct them if necessary.

Statutory and tax returns to the respective authorities are made out by the selected tax consultancy.

E. NEW COST STRUCTURE

In the event that the company structure is adapted which is the case when deliveries are made to customers abroad, under certain circumstances introduction of new cost structures might be considered. Especially in the case of banking transactions and with logistics companies other new cost items are incurred. These must be factored in and be reflected in the internal calculations.



CLAIMS COLLECTION OPTIONS

A. BECOME PERSONALLY INVOLVED

If Jane and Joe still have no record of settlement even after lapse of the period of grace set for payment a whole range of options is open to them to become personally involved in order to recover the amount outstanding if possible without any great delay and administrative time and effort.

So as not to endanger the good relationship with customers to date at many points it makes sense to take matters into their own hands and to consider a work procedure of their own for processing overdue invoices.

A pro-active method of approach can be chosen which favours a customer-friendly collection of the outstanding invoices. This solution should initially be in writing as this is a positive backup to automated processing of payment monitoring.

Jane and Joe decide on a two-stage system for the recovery of the outstanding invoices. It consists of the following two letters:

- customer satisfaction survey in respect of the company's performance;
- reminder in respect of the outstanding invoice.

I. Reminder letter with customer satisfaction survey in respect of company performance

If customers' invoice payments are monitored regularly and the average customer credit period is established which shows that the value established is constant and that there is little variation in the processing of outstanding invoices, customer survey letters can then be scheduled on the basis of that credit period. If the amount of the outstanding invoice is higher than the average despatch the letter will be automatically proposed by the customer database system.

The content of the letter should always be oriented towards enquiry as to the customer's satisfaction with the company's performance and polite reference to the imminent payment date. On the one hand the customer gains the impression that he is taken seriously and on the other he/she is politely reminded that the invoice is still outstanding. The customer can therefore actively report any defects in the goods not yet notified and voice his concerns.

This letter can be sent to the customer by mail, fax or by e-mail. The response can be quick and easy for the customer. Jane and Joe may, for example, have pre-formulated possible responses drawn from their daily experience. The answer is entered placing an X in a box.

Jane and Joe have drafted the following customer questionnaire (see page 45).

Such a reminder/form is often the easiest way to proceed and may be perceived by the customer as more pleasant than contact by telephone as the first 'escalation step' following the invoice.

Jane and Joe also decide on this sort of payment reminder because they have only limited knowledge of the language of the target country. The written approach has the advantage that here too translated documents and standardised reply letters can be used.

Dear Customer,

This is a friendly reminder that our invoice dated 1 January 2013 (invoice no. 01/2013) has not yet been paid.

In order to serve you better with future orders we ask you to rate our performance because your satisfaction is our top priority.

We would therefore appreciate it if you could spare a few minutes to complete this questionnaire. This will help us to perform our operations better and more efficiently for you. Please return this completed questionnaire (feel free to scan it and send it back to us as an e-mail attachment).

How would you rate...

1. friendliness of the employee concerned?

€ Good

€ Average

€ Poor

2. duration of the order process?

€ Fast

€ As expected/reasonable

€ Too slow

3. quality of the goods?

€ Good

€ Average

€ Poor (please add any personal comments on a separate sheet)

(...)

6. Space for in-house comments:

Thank you so much for taking the time to complete this questionnaire! We look forward to doing business with you in the future.

Yours sincerely,

Jane and Joe

II. Notice of default on the outstanding invoice

It must always be anticipated that this polite reminder may elicit no response. The customer does not react with any notice of defects or with payment of the outstanding invoice and does not return the questionnaire. In this event a reminder must be sent in respect of the outstanding invoice (after the due date).

The reminder should be issued only once so as to emphasise the seriousness of this action. Legal aspects must be considered as a matter of urgency. Subjects such as calculation of default interest for application of the credit period or calculation of costs of collection must be stated in the reminder letter.

The reminder letter should also list the further consequences in the event of failure on the part of the customer to pay the outstanding invoice. Setting a fair period of grace for payment should not be omitted.

It is advisable at this stage to prepare a tabular list of the important fields and information for the reminder letter for a better overview. The following information should be contained in the list:

- customer name and customer number;
- customer address (billing address and/or shipping address);
- invoice number and invoice date;
- date of reminder;
- final payment deadline;
- note regarding default interest on overdue payments;
- note regarding additional collection costs;
- note regarding further legal measures;
- list of outstanding invoiced sums;
- list of goods sent to customers;
- own bank account details;
- legal requirements of the legislature to which your own company is subject (VAT etc.).

Jane and Joe now know which data items are required for the reminder letter. They formulate an initial reminder letter and save it in their automated customer information payment monitoring system. Differing reminder texts can be saved as text modules (and in turn if necessary translated into the language of the target countries) and inserted in the respective reminder as required by the situation.

The following reminder is used by Jane and Joe:

Reminder
Delivery and invoice dated 01 Jan. 2013

Customer Number	Invoice Number	Order Number	Delivery Date
Xxx	01/2013	xxx	01 January 2013

Dear Client xxxx,

We hope that the goods delivered by us are to your taste and meet with your satisfaction. It cannot have escaped your notice that the goods ordered from us have not yet been paid for. The following goods were delivered to you and are listed again below for your examination:

Item	Quantity	Description	Unit Price	Total Price
1	50	children's table (pine) (No. 82790)	EUR 100.00	EUR 5 000.00
2	200	children's chair (pine) (No. 82778)	EUR 40.00	EUR 8 000.00
3	50	tablecloth (Harry Potter) (Nr. 82510)	EUR 35.00	EUR 1 750.00
Invoice amount (net)				EUR 14 750.00
19% VAT				EUR 2 802.50
Total				EUR 17 552.50

Please transfer the total amount including accumulated costs, by

Date

If we do not receive the amount reminded by the above date we shall have no option but to initiate further steps against you.

We would respectfully point out that further costs may arise due to collection being passed to third parties, which you will have to bear.

With kind regards,

Jane and Joe

III. Further procedures following reminder letter: telephone reminder

If the period of grace for payment set in the reminder expires to no effect the next 'escalation step' should be taken. One course of action which frequently presents itself is to telephone the client and confront him with the outstanding payment. At all costs here either mastery of the customer's language must be assured or that it is certain that the customer also speaks English.

'A telephone reminder' always involves a balancing act between understanding for the defaulting party at the other end of the line and interests of the creditor. And first and foremost the parties should always find a feasible solution making payment realistic for the other party. Indispensable here is a high degree of concentration and mental agility.

A friendly telephone call with the objective of payment by the recipient of services can be conducted in a structured manner by proceeding as follows:

- Fundamentally no other activities should be engaged in during the telephone call. It is advisable to familiarise yourself in detail claim based on the goods or services immediately prior to the conversation. A precise review of whether the goods or services was free from defect and has been received by the recipient should be conducted plus a search of the business accounts for any possible incoming payment.
- Choose an appropriate time for your call. Whilst for B2B normal office hours should be used, for B2C it is often best to call in the evening. Make sure, however, that you do not call at so-called 'unsociable hours', such as very early morning or late evening.
- If you are successful in reaching a contact person at the other end of the line for reasons of data protection law it is important to make absolutely sure that the correct person is on the line. For B2B the proper contact will as a rule be the accounts department or the company management, while for B2C, the conversation should be held only with the defaulting customer. At all events avoid passing on information to third parties such as neighbours, friends or uninvolved family members.
- During the telephone call, you should refer directly to the goods/services provided and initially enquire regarding the reasons for the delayed payment – especially as to whether there is any reason for the payment delay for which the obligated party may not be responsible. If this is the case the possible customer complaint can be addressed in a separate case procedure. If this is not the case the conversation should focus exclusively on settlement of the claim.

- Thereafter the specific amount of the claim should be stated plus the original due date and it should be asked by what point in time the obligated party will make payment. Insist on a concrete answer and be absolutely certain of the precise point in time and the level of the payment and vague statements should be a prevented by specific requests for clarification.
- If the customer is not in a position to pay the full amount an instalment plan acceptable to you can be offered. It should be remembered here that this will result in additional work and expense for you. Instalment payments have to be monitored.
- If you have achieved your objective, end the conversation on a positive note. Remove the tension from the situation and make it easier for you and the customer to continue the business relationship.

B. ENGAGING THIRD PARTIES – EXTRAJUDICIAL DEBT COLLECTION

I. Commissioning a debt collection agency

1. Debt collection

If customers pay their invoices late or not at all, small and medium-sized companies such as that of Jane and Joe can quickly find themselves in financial difficulties. The main risk is that they themselves may become unable to remain within the final payment deadline vis-à-vis their own suppliers. Jane and Joe therefore have the option of engaging a collection agency to recover outstanding claims. Collection agencies specialize in collecting claims and collect unpaid invoices on behalf of the creditor. For small companies especially such as the company owned by Jane and Joe, which does not have the resources for a comprehensive collection process, it is advisable to outsource this service.

The range of services offered by collection agencies is wide and may differ country to country. Debt collection agency operations are likely to be organised in the following 'procedural stages':

- order recording/claim clarification;
- pre-court collection;
- if necessary, legal enforcement of the claim via court enforcement procedures (national differences must be considered here, under certain circumstances this may not be possible);
- post-court collection (if the claim was legally enforced by the court);
- monitoring process/long-term collection.

When selecting a collection agency it is important to ensure that the agency is registered with a registration authority if this is a precondition under the respective national regulations, in order to legally offer collection services. To this end and also to discover more national customs relating to the commissioning of collection agencies it is recommended that national industry associations should be consulted. Their websites usually contain membership lists from which a suitable company can be selected. Many collection agencies also operate internationally, so their expertise in cross-border claims management is assured.

2. Sale of a claim (e.g. factoring)

As an alternative to having one's own claim recovered by a collection agency it is also possible to sell the claim to a third party (e.g. a collection agency or factoring company). It is possible to either sell individual claims or entire claims packages or portfolios – e.g. all export claims or certain other claims defined otherwise (such as by export region, product groups, etc.) and to make money by selling them.

The claims sale tool may be used both once (or in the event of acute need individually) and on a regular basis.

The latter is also referred to as 'factoring', but only if the claim is sold prior to its maturity date. The risk of bad debt (after maturity date) is generally borne by the buyer of the claim (the so-called factor). Responsibility for debtor management is also regularly assumed by the factor, so that in this regard some degree of work is saved.

If Jane and Joe decide to proceed as outlined above (Chapter 4 and 5/A.) they can only consider an 'ordinary' claim sale. The distressed claim (i.e. the customer's payment is in default of payment and payment is no longer expected) can then be sold to a third party such as a collection agency, so Jane and Joe no longer have to deal with it.

NOTE > LEVEL OF THE PURCHASE PRICE WHEN SELLING A CLAIM

If a distressed claim is sold, the proceeds are generally much lower than when the claim is sold to a third party within a factoring context before it falls due – understandably, because a claim that has already gone through the full reminder process involves a higher default risk than a claim that is yet not due for payment.

II. Engaging a lawyer

Engagement of a lawyer is recommended for cross-border legal disputes especially if it is conceivable that the customer will not pay and that there will be a case before the courts. If the customer raises objections to the claim, stating that it does not exist (or only in part), or if he/she alleges defects or files counterclaims, a lawyer is the correct choice.

How can the right lawyer be found? Lawyers are organised in the EU Member States into regional or transregional chambers. Membership of these chambers is obligatory, so you can find information about them via the respective local network or membership lists. It is also possible to find a lawyer via the Council of Bars and Law Societies of Europe (CCBE) database⁽²³⁾.

In the event that Jane and Joe decide to engage the services of a lawyer, they should carefully check the associated costs. It is not unusual that translation costs are added in addition to the lawyer's fees as lawyer's letters or correspondence in a cross-border case must be submitted in the official language of the target country. A thorough check should be made as to whether engaging a lawyer is worthwhile, or if the costs thus incurred even exceed the claim which the lawyer is to collect. Also to be considered and checked is whether the costs associated with engaging a lawyer can be demanded back from the defaulting customer if need be. Under which preconditions this can occur is determined by the respective legal system prevailing⁽²⁴⁾.

23 <http://www.ccbe.eu/index.php?id=140&L=0>

24 For further details see chapter 2/A./II./1

The possible support of a lawyer can be employed in enforcement of claims in the course of the court collection and enforcement proceedings in the following areas: pre-court reminder, statement of claims, application for order for payment of a debt, issue of an enforcement order application, conduct of a contested action, enforcement via coercive, e.g. affirmation in lieu of an oath (asset information), enforcement against movable and immovable property seizures.

The rule-of-thumb is: The more claims are outstanding, the more sensible to frequently involve a collection company. In the case of contested items for example if the goods are questioned or for counterclaims in individual cases, a lawsuit with the aid of a lawyer is more practical.

NOTE > CONSIDERATION REGARDING COSTS AND DURATION OF A LAWSUIT

If a lawsuit ensues it is important to check the associated court and lawyer fees. One should be aware that the lawsuit may drag on for a long time especially if the dispute has to “dawdle” through several levels of jurisdiction.

In cross-border disputes, however, an attorney familiar with cross-border cases should be sought and who in the best-case scenario is familiar with the law pertaining to the particular case; it is also recommended not to fight one’s own case (if at all possible).

C. COURT ENFORCEMENT OF THE CLAIM

As the final option Jane and Joe can resort enforcing their claim through the court. There are several options in this regard. Irrespective of which of the routes listed below is to be gone down it is necessary to be aware of the following: A court procedure means that at the end of the case there is a judgement involving acknowledgement of debt on the basis of which – in the event that the case is won – it is possible to proceed against the debtor. It is necessary always to be clear in one’s mind that such procedure can have consequences with regard to business relations with the customer.

I. Proceedings before the national court

If Jane and Joe have prudently agreed with the customer a legal venue by inclusion thereof in their General Terms and Conditions of Business in favour of their own courts (in country A)⁽²⁵⁾, they can apply to these and go through proceedings permissible there, i.e. file an action against the customer.

The same holds if no legal venue agreement has been made and under the Brussels I regulation their 'own' courts are competent⁽²⁶⁾. Even if the claim is cross-border it is nonetheless possible that their 'own' recognised court can rule on the case.

Should in the absence of a legal venue agreement or for reasons of any competence provision in the Brussels I Regulation courts in another EU Member State be competent then there is no other option than to have the chosen proceedings heard before a court in that country.

As to which court is competent, as already mentioned above the Judicial Atlas will assist in identifying the competent court⁽²⁷⁾.

If the court ruling delivered in national civil proceedings is to be enforced in another Member State, the Brussels I Regulation procedures must be followed in that EU country⁽²⁸⁾. In many cases it is possible to use a simplified procedure via the European Enforcement Order⁽²⁹⁾.

II. European procedures

Naturally it is also possible to choose a European procedure in order to obtain recognition of debt against the client in this manner. The advantage of all these procedures is that no declaration of the enforcement in the other states of the European Union is required.

25 For further details see chapter 2./B./II./1./h.

26 For further details see chapter 2/A./II./2.

27 Further information in chapter 2/A./II./2.

28 For further information see Brussels I Regulation recast which abolishes intermediary procedures of granting foreign judgement enforceability.

29 For further details see Item II./1. below.

Prior to resorting to expensive third party services in the event that the customer still does not pay there is a series of procedures for cross-border claims management provided by the European Union, if the client is still unwilling to pay.

The following options exist at European level in no particular order:

1. The European Enforcement Order for Uncontested Claims

The European Enforcement Order is based on EC Regulation No. 805/2004⁽³⁰⁾. This process facilitates the simple recognition and enforcement of the – national – ruling on an uncontested claim in another Member State (with the exception of Denmark)⁽³¹⁾.

A European Enforcement Order can be enforced by the enforcement authorities of the other Member State without any further formalities.

A claim is deemed to be an uncontested claim within the meaning of the regulation, if the debtor:

- has not contested it during the court proceedings;
- he/she (or representative) failed to appear at a hearing relating to the claim, having previously contested the claim during the court proceedings;
- he/she debtor expressly consented to it by recognition or via a settlement entered into before a court; or
- he/she expressly acknowledged the claim in a public document of record.

A comprehensive overview is provided by a practice guide⁽³²⁾.

a. Certification of the ruling on the claim

Certification of a ruling on an uncontested claim in the form of a European Enforcement Order can be obtained by the applicant before his/her own court before which the ruling was issued. The application for certification can in turn be made by using a standard European enforcement order form⁽³³⁾.

30 Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European enforcement order for uncontested claims.

31 More information can be found at: http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33190_en.htm

32 http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_en.pdf

33 The forms can be found in all languages at http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_filling_en.htm

b. Enforcement of judgement

The certification of the European Enforcement Order must be submitted to the enforcement authorities of the EU Member State in which the debtor resides, together with an official copy of the original decision in respect of the uncontested claim, if necessary in the form of a translation into a language accepted in the other Member State. The title may only be enforced in the other Member State under the modalities customary there⁽³⁴⁾.

2. The European Order for Payment Procedure

The European Order for Payment Procedure is based on the EC Regulation No. 1896/2006⁽³⁵⁾. In this alternative to the procedure which can be carried out nationally, no court order for payment in the classical sense is applied for, but a European payment order. The advantage of this procedure is its expedience: only one application is necessary. The resultant can also be enforced in other EU Member States with the exception of Denmark. The precondition for such an application is that a cross-border legal matter is at issue. This requirement is fulfilled when at least one of the parties has their usual residence or habitual domicile in an EU Member State other than the Member State of the court to which the case is referred.

By contrast to the European Small Claims Procedure applicable only for claims not exceeding 2 000 € (excl. interest) in this procedure there is no maximum claim amount⁽³⁶⁾. You will find an 'assistant' on the Internet (a so-called 'wizard'), which tells you whether in your case an application for issue of a European Order for Payment or an application for small claims proceedings should be submitted⁽³⁷⁾.

It is also important to consider that the European Order for Payment Procedure only applies if the monetary claim is undisputed and due (at the time the application is submitted). The exact amount must be stated on the application.

At the point at which the debtor lodges an objection to the claim in due time the matter is remanded to the competent courts in accordance with the regulations governing proper civil proceedings.

34 Additional information on the enforcement of court decision can be found at:
https://e-justice.europa.eu/content_enforcement_of_judgments-51-en.do?init=true

35 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1896:EN:NOT>

36 Please see Item 3. below.

37 https://e-justice.europa.eu/dynform_intro_taxonomy_action.do?1359976948831=&plang=en&init=true&refresh=1

a. Application for a European Order for Payment

To apply for a European Order for Payment initially the relevant Form A must be completed, which can be downloaded online in the various EU Member State languages⁽³⁸⁾. It must be noted that the form must be completed in the official language(s) of that EU country in which the application is submitted. It must therefore first be clarified which court in which country is competent.

aa. Determination of jurisdiction

As to where the application should be submitted, it is once again best to consult the Judicial Atlas⁽³⁹⁾. This has a special sub-section, in which the competent court for European procedures can be found⁽⁴⁰⁾.

The application must be submitted to the court that has jurisdiction under the terms of the Brussels I Regulation. This is generally the Member State in which the respondent is domiciled. If the issue at hand is a consumer contract (and if the respondent is a consumer), only the courts in the country where the consumer resides are competent.

bb. Completing the application

The details necessary in the application for issue of a European Order for Payment and which must be entered on Form A can be found in the associated guide⁽⁴¹⁾: Completing the application takes approximately 30 minutes.

b. Check of the application and issue of a European Order for Payment

Once submitted, the application is reviewed for completeness by the competent court; if necessary additional information will be requested. The court does not however subsequently check the information provided by the applicant.

Generally, courts issue the European Order for Payment after 30 days (not counting those days granted to the applicant to amend/supplement his/her application).

38 European Payment Order Forms: https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=156&plang=en&init=true&refresh=1

39 Additional information about the competence of courts (for disputed proceedings) can be found above in Chapter 2/A./II./2.

40 http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsjurisd_en.jsp#statePage0

41 Guidelines for filling in the application form: <https://e-justice.europa.eu/dynForms.do?1359977034631>

c. Service of the European Order for Payment

The court will serve the respondent with the European Order for Payment. The latter can then either pay the amount of the receivable or lodge an objection to the order within 30 days. The latter will cause the matter to be handled by the competent courts in accordance with the rules of civil procedure, unless the applicant states that he does not wish to pursue the matter any further in this case.

d. Enforcement of the judgement

If the debtor does not challenge the order the European Order for Payment automatically becomes legal and enforceable in all EU Member States. In order to effect an enforcement of the order to pay, the applicant will submit to the enforcement authorities of the EU Member State, where the enforcement is to take place, an official copy of the European Order for Payment⁽⁴²⁾.

3. The European Small Claims Procedure

The European Small Claims Procedure is based on EC Regulation No. 861/2007⁽⁴³⁾. The aim of this procedure is to simplify and expedite the enforcement of small cross-border claims of less than EUR 2 000.00 (excluding interest). A judgement rendered within the context of this process is also recognised as legal and enforced in the other Member States (with the exception of Denmark) without a declaration of enforceability.

a. Completing the application

As with the European Order for Payment Procedure, the European Small Claims Procedure is performed submitting in writing by a standard form to the competent court⁽⁴⁴⁾. The application – the so-called application form – must be accompanied by all supporting documentation such as receipts, invoices, etc. Jurisdiction is determined accordingly under the guidelines governing the European Order for Payment⁽⁴⁵⁾.

42 More detailed information on the enforcement of court decisions can be found at: http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm

43 Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure.

44 The form can be found at: https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&plang=en&init=true&refresh=1

45 Additional information can be found at: https://e-justice.europa.eu/content_small_claims-42-en.do?init=true

b. Procedure

Upon receiving the application, the respective court for its part will fill out the 'answer form' and will serve the debtor within 14 days upon receipt with copies of the claim and the answer form.

The debtor for his/her then has 30 days to complete his section of the answer form of which in turn the court must send a copy to the applicant within 14 days.

Within a further 30-day period after the debtor has sent his response the court:

- issues a judgement regarding the small claim;
- asks the parties to provide additional information in writing; or
- summons the parties to a hearing.

In many cases the applicant is under no obligation to be represented by an attorney or other legal counsel. Differences exist between EU Member States: it is possible for the claimant to sign all the documents personally while in some countries even for filing the application the lawyer's signature is needed.

c. Enforcement of the judgement

Once the respective court has issued a judgement in the applicant's favour, the latter may then ask the court to fill out Form D as an official confirmation⁽⁴⁶⁾.

With that form (possibly translated into the official language of the other Member State) as well as a copy of the decision, the court's decision becomes enforceable in all other EU Member States without any additional formalities.

46 You can once again find the form at: https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&plang=en&init=true&refresh=1

ANNEX – REFERENCES TO FURTHER INFORMATION

EUROPEAN LEGISLATION

- Rome I Regulation – Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/jl0006_en.htm
- Brussels I Regulation – Council Regulation (EC) No 44/2001 of the European Parliament and of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I)
http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33054_en.htm
- Brussels I Regulation – Council Regulation (EC) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:351:0001:0032:EN:PDF>
- Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC
http://europa.eu/legislation_summaries/consumers/protection_of_consumers/co0001_en.htm

- Directive 2011/7/EU of the European Parliament and Council of 16 February 2011 on combating late payment in commercial transactions
http://europa.eu/legislation_summaries/enterprise/business_environment/mi0074_en.htm
- Regulation (EC) No 805/2004 of the European Parliament and Council of 21 April 2004 creating a European enforcement order for uncontested claims
http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l33190_en.htm
- Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_civil_matters/l16023_en.htm
- Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
http://europa.eu/legislation_summaries/consumers/protection_of_consumers/l16028_en.htm

FURTHER GUIDELINES

- Footnote 32: Practice Guide for the Application of the Regulation on the European Enforcement Order
http://ec.europa.eu/civiljustice/publications/docs/guide_european_enforcement_order_en.pdf
- Footnote 41: Guide for filling in the application for issuing a European Order for Payment
<https://e-justice.europa.eu/dynForms.do?1359977034631>

FURTHER INFORMATION

- Footnote 1: Information on the population of the EU: Eurostat
<http://epp.eurostat.ec.europa.eu/portal/page/portal/eurostat/home>
- Footnote 2: Information on the SME Performance Review
http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/performance-review/index_en.htm
- Note – Page 5: European Code of Best Practices facilitating access by SMEs to public procurement
http://ec.europa.eu/internal_market/publicprocurement/other_aspects/index_en.htm#smes

- Note – Page 5: Information on public contracts from the EU, the EEA and other countries: TED (Tender Electronically Daily) database
<http://ted.europa.eu>
- Note – Page 5: Information system on procurement certificates and attestation for businesses and public awarding authorities: e-CERTIS
<http://ec.europa.eu/markt/ecertis/login.do>
- Footnote 7: European Judicial Atlas in Civil Matters
http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm
- Footnote 8: Information on taxation
http://europa.eu/youreurope/business/managing-business/paying-taxes/index_en.htm
- Footnote 12: Information on purchasing goods online
<http://europa.eu/youreurope/citizens/shopping/online-shopping/when-things-go-wrong/index>
- Footnote 13: Website of the International Chambers of Commerce which provides information on International Commercial Terms
<http://www.iccwbo.org/products-and-services/trade-facilitation/incoterms-2010/>
- Footnote 17: Information on mechanisms to fight late payment
http://ec.europa.eu/enterprise/policies/single-market-goods/fighting-late-payments/index_en.htm
- Footnote 18: Information on the deduction of input VAT and VAT refunds
http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_refunds/index_en.htm
- Footnote 19: Information on unfair contract terms
http://ec.europa.eu/consumers/cons_int/safe_shop/unf_cont_terms/index_en.htm
- Footnote 20: Information on how to find a legal translator or an interpreter
https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-en.do
or http://europa.eu/eu-law/index_en.htm
- Footnote 21: The European e-Justice Portal
<https://e-justice.europa.eu/home.do?plang=en&action=home>
- Footnote 22: The Website of the European Business Register
<http://www.ebr.org/section/2/index.html>

- Footnote 23: The Website of the Council of Bars and Law Societies of Europe provides a useful tool to search for a European lawyer
<http://www.ccbe.eu/index.php?id=140&L=0>
- Footnote 33: Forms on the European enforcement order in the different EU Member States
http://ec.europa.eu/justice_home/judicialatlascivil/html/rc_eeo_filling_en.htm
- Footnote 34: Information on the enforcement of court decisions
https://e-justice.europa.eu/content_enforcement_of_judgments-51-en.do?init=true
- Footnote 35: Information on the application for the issuance of a European Order for Payment
https://e-justice.europa.eu/dynform_intro_taxonomy_action.do?1359976948831=&plang=en&init=true&refresh=1
- Footnote 36: European Payment Order forms
https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=156&plang=en&init=true&refresh=1
- Footnote 40: Information on courts with jurisdiction within the European Payment Order (European Judicial Atlas)
http://ec.europa.eu/justice_home/judicialatlascivil/html/epo_courtsjurisd_en.jsp#statePage0
- Footnote 42: General information on the enforcement of judgements
http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_gen_en.htm
- Footnote 44: Information on how to submit a standard form to pursue the European Small Claims Procedure
https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&plang=en&init=true&refresh=1
- Footnote 45: Information on the European Small Claims Procedure
https://e-justice.europa.eu/content_small_claims-42-en.do?init=true
- Footnote 46: Information how to submit a small claims form within the European Small Claims Procedure
https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&plang=en&init=true&refresh=1

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