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– PIERRE HAINCOURT

JOUR – J FOR JUDGMENTS



In the concluding part of his article, Pierre Haincourt considers Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012, and why it may be good news for enforcing judgments against European debtors.

SOMETIMES the links provided will lead you to a local enforcement officer who may or may not speak English. If he is happy to take your case on, you may sometimes think: I can smell a rat or 'il y a anguille sous roche' (there's an eel under the rock), as we say in French. I have once been asked to pay a hefty upfront fee by a firm of process-servers that bore no relation to the local official scale of fees.

This is all designed so that you can do it all yourself, but if you ask me, I still find it quite a maze and I do not think it is a very good use of my time to try and do it myself. Much local knowledge and access to information is needed. There are professionals out there who know their local court system much better than I do

and will do a better job than I can. They save me time and money all year round and make me more productive.

If this is something you do regularly, I would suggest that you focus on building a strong network of local debt collection specialists to act as your well-informed local 'one stop shop' in each jurisdiction. This will save you money and generate more recoveries as they are motivated by the commission you pay them when they collect.

My view had always been that it was better to sue debtors in their jurisdiction as enforcement could naturally follow without the need of an additional procedure having to take place. But now that the Brussel I (recast) Regulation is out and that there is no need for an additional registration

process of any kind for European cross-border actions, creditors have options, and if they do everything right, I think enforcement of their local judgments in another EU Member State will be more straight forward.

But be under no illusion: your most difficult debtors will continue to make a mess of things. As a credit manager I know well told me once: "Pierre, when you go to court, the only thing you can be sure of is that you can't be sure of anything!"

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1 I want to know my debtor's correct name and write it in the correct way so that, when I get to enforcing my judgment, I am not told: 'Sorry sir, the name on your judgment is not correct and we cannot enforce it'.

2 I want to be sure the address I have for my debtor is the right address for service of proceedings. Whether that is the registered office address of a company or the current residential address of an individual. This information is best gathered directly from the country where the debtor is based.

3 The same goes for the solvency of the debtor. The freshest information will be available locally, and we all know that even the freshest information may already be old. Instead of throwing good money after bad it is a good idea to have local people on the ground, validating that the debtor is there, solvent, or at least trading if he is a business.

4 I need to assess translation costs. If I issue proceedings in England and Wales, the claim form and response pack will have to be translated before they are served, and the same applies for the judgment. If they are not, the debtor will be able to claim that he has not had a fair opportunity to defend the action as he did not understand the paperwork. In some countries, the local enforcement organisation will refuse to enforce a judgment when the court papers have not been served in the local language. This is the case of the Bailiff Court in Denmark for example. If I issue in the debtor's jurisdiction, I may have to translate none, some or all of the case papers. Whichever jurisdiction you choose, there will usually be translation costs to take into account.

5 Service of the court papers is always a sticking point. Some people tell you that it needs to be carried out according to the rules of the jurisdiction where you issue proceedings; others tell you that it needs to be carried out according to the rules of service in the jurisdiction where your debtor is. But in the context of European-wide enforcement you may want to simply focus on organising service in a way that you can prove your debtor has received the court papers, so opt for personal service whenever you can.

6 How do I access local information when I issue proceedings in England and Wales? The europa.eu website is where it all starts. It will point you in the right direction for service of documents, enforcement of judgments, and everything else. Here's the magic link: https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-en.do?init=true

Try it now: you just need to click on the left hand-side tab first eg Going to Court/ Procedures for enforcing a judgment, then on the flag of the country you want to enforce it in. Choose Ireland for now as there are still many translations missing at the moment but this is being updated all the time.

