



# Prague

13 May 2013

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**FCIB**  
The Finance, Credit & International  
Business Association

**EuroCollectNet  
Lawyers**

International Debt Recovery

## ***Introduction***

...representing ...

**EuroCollectNet**

1. How to enhance one's security position for claims in Europe on a contractual basis?
2. How to pursue claims in other European countries by way of court proceedings?
3. How to employ Forum Shopping.
4. Comments from Bratislava.
5. Discussion



***How can the credit department  
secure claims in Europe on a  
contractual basis?***

**VOLLER**

RECHTSANWÄLTE

**EuroCollectNet  
Lawyers**

International Debt Recovery

		A	B	C	D	E	F	G	H	I	J
		Notarial state-ment of debt	Retention of title, also extended?	Bill of Exchange /Check	Personal guarantees/ suretyship	Letter of comfort, guarantee agreement	Bank guarantees, letter of credit	Pledges over movables, rights over movables	Rights over immovables (mortgage/ Hypothek)	Rights over airplanes and ships	Assignment of claims and rights
<b>1</b>	<b>Austria</b>	Yes, by Austrian notary, enforce-able as a judge-ment.	Yes, but no extended retention of title.	Both yes, special laws.	Yes, must be in writing.	Yes; weak and strong are possible. Should be in writing (proof).	According to inter-national standards.	Yes, but no non-possessory pledge, no register.	Yes, notarized document, has to be registered with land register.	Yes, have to be registered in ship- or airplane register.	Yes, No written form needed, but advisable.
<b>2</b>	<b>Belgium</b>	Yes, by Belgian notary, enforce-able as a judgment.	Yes, if in writing and ultimately at the moment of delivery of the goods. No extended retention.	Both available. Subject to special laws.	Yes, in principle not subject to formalities. Distinction between commercial and non-commercial character.	Yes, also possible, but no formal require-ments (preferably in writing but written form not required).	Yes, subject to general rules on contract law and inter-national rules.	Yes. Most common: pledges of businesses but only to financial institutions.	Yes, by notarial deed to be registered at the Register on Mortgages.	Yes, to be registered in special registers.	Yes, only in writing. En-forceable against debtor only after notification.

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28	Switzerland	Yes, by Swiss notary, enforceable as a judgement.	Yes, but only if registered in the public retention of title register. No extended retention of title.	Yes, both in special laws.	Yes, must be in written form (physical person) or public certification (legal person) if amount of liability exceeds CHF 2'000.00.	Yes; written form (proof).	Yes, subject to general rules on contract law.	Yes. Possession is a validity condition.	Yes, notarized document, has to be registered with land register.	Yes, have to be registered in ship- or airplane register.	Yes, written form needed.
29	Turkey	Yes, given by notary and declares enforceable by enforcement office.	Yes; Contract has to be in writing and notarized.	Yes, both, regulated by law.	Yes; both, has to be written, it is a validity condition.	Yes; both, has to be written, it is a proof condition	Yes, in international standarts.	Yes, no validity conditions but difficult to prove unless written.	Yes, has to be notarized and registered to registry of deeds	Yes, both have special registry procedures.	Yes, has to be written both for validity and proof

# *Securities in Europe*

- ◆ Notarial statement of debt
- ◆ Retention of title, also extended?
- ◆ Bill of Exchange/ Check
- ◆ Personal guarantees/ suretyship
- ◆ Letter of comfort/ guarantee agreement
- ◆ Bank guarantees, letter or credit

The background features a light blue map of Europe with several yellow stars scattered across it. A thick yellow vertical bar is on the left side, and a thick yellow horizontal bar is at the top. A dark blue horizontal line is positioned below the top yellow bar.

## *Securities in Europe*

- ◆ Pledges over movables, rights over movables
- ◆ Rights over immovables (mortgage/Hypothek)
- ◆ Rights over airplanes and ships
- ◆ Assignments of claims and rights

# *How can you pursue claims in other European countries by court?*

Recognition and Enforcement of Judgments in civil and commercial matters under EC regulations 44/ 2001 („Brussels I“)

1. Scope
2. Procedure for recognition in the Member State of enforcement
3. Procedure for enforcement in the Member State of enforcement
4. Recourse in the Member State of enforcement
5. Regulation no. 1215/12 of the European Parliament



# *How can you pursue claims in other European countries by court?*

## European Enforcement Order (E.E.O.)

1. Scope
2. Procedure for obtaining an E.E.O.
3. Enforcement in the Member States
4. Recourse against the E.E.O.



# *How can you pursue claims in other European countries by court?*

## Recognition and enforcement of non-EU judgment (France)

1. Adversarial proceeding before the civil court
2. Three tests for obtaining recognition and enforcement
  - Jurisdiction of the foreign court
  - Absence of fraud in obtaining the judgment and
  - Compliance of the judgment with international public policy rules and due process
3. Lengthy process (several years)



# *Forum Shopping*

- ◆ Italian entrepreneurs commit suicide and one third of Italian businesses is insolvent because:
  - ◆ their debtors fail to pay in a timely manner
  - ◆ Court proceedings take several years and last forever if there is appeal or cassation
- ◆ [Ok, noted]Ok, noted]

- ◆ Getting an EPO in the Netherlands takes 3-6 months
- ◆ The court in the Hague issues EPO's for all Dutch courts
- ◆ They are enforceable all over Europe.
- ◆ What could the Italian creditor do?

- ◆ The Italian creditor should stipulate in his general terms and conditions that in case of non payment within 30 days
  - the receivable will be assigned and transferred to a Dutch subsidiary; and
  - The Dutch subsidiary will be entitled to bring proceedings before the court in The Hague

- ◆ If the debtor does not protest against the choice of forum clause, it will be applicable
- ◆ Useful to use a Dutch subsidiary to benefit from Dutch tax structure, and
- ◆ To benefit from efficient Dutch judiciary
- ◆ Annual costs of Dutch subsidiary are not likely to exceed € 500

- ◆ In transport goods move between several countries. Then different sets of laws are applicable on the basis of the concept of:
- ◆ Splitting of contracts (dépeçage), which makes it possible to let different laws govern different issues of one relationship
- ◆ Accordingly:

- ◆ The issue whether the creditor performed properly and timely is to be
  - litigated before an Italian court using Italian law
- ◆ The issue whether the debtor paid timely can be:
  - Adjudicated by the court in the Hague using Dutch or European law

## ◆ CONCLUSION:

- ◆ Appropriate choice of forum clauses can open up the European legal services market
- ◆ So as to achieve a more efficient process of rendering of justice in civil **b2b** cases, since
- ◆ Choice of forum clause will not function in cases involving consumers as debtors

# Comments from Bratislava

Country	Restrictions on payments in cash		Introduction of the restrictions into the law (date)	Penalties for infringement	Exceptions to these restrictions
	Restriction on individuals	Restriction on legal persons			
Slovakia	EUR 15.000	EUR 5.000	01.01.2013	up to EUR 150.000	yes
Austria	none	none	discussion, no draft bill	none	none
Bulgaria	BGN 15.000	BGN 15.000	22.02.2011	25% of the payment for individuals and	yes
Switzerland	no restrictions	no restrictions			
UK	no restrictions	no restrictions			
Czech Republic	CZK 350.000 (14.000 EUR)	CZK 350.000 (14.000 EUR)	01.07.2004	individuals up to 20.000 EUR, legal persons 200.000 EUR	yes
France	EUR 3.000	EUR 3.000	16.06.2010	max 5% of the amount	Yes
Belgium		EUR 5.000	16.04.2012	225-225.000 EUR with a max. of 10% of the amount irregularly paid	
Danmark	10.000 DKR	10.000 DKR	01.07.2012	none	
Cyprus	no restrictions	no restrictions			
Greece	all payments	all payments			
Malta	no restrictions	no restrictions			
Germany	no restrictions	no restrictions			
Spain	EUR 2.500	EUR 2.500	19.11.2012	25% of the amount	Yes
Sweden	no restrictions	no restrictions			
Netherlands	no restrictions	no restrictions			
Turkey	(ca.) EUR 3.400	(ca.) EUR 3.400	01.05.2004	up to EUR 330.000	no
Finland	no restrictions	no restrictions			

plan is to reduce to EUR 1.000  
from 1 January 2014 : 3000 EUR.  
Exception an amount not exceeding 10% of the invoice and not exceeding 5000 Euro may be paid in cash ;