

BEST USE OF ENFORCEMENT ORDER CERTIFICATES

In the second part of our series, we look at the regulation, scope and purposes of European Enforcement Orders, and how to get them certificated

By Giorgio Corno



Finally, on 21 April 2004, the European Parliament and the Council of the European Union adopted Regulation (EC) No 805/2004 creating a European Enforcement Order for uncontested claims (EEO), the 'regulation', binding in its entirety and directly applicable in the member states.

This regulation entered into force on 21 January 2005 and became applicable from 21 October 2005. It is based on the principle of mutual trust in administration of justice in the European Community. So the procedure for making enforceable in one member state a judgment given in another must be efficient and rapid; and there should be free circulation of judgments, court settlements and authentic instruments

throughout all member states without any intermediate proceedings needing to be brought prior to recognition and enforcement.

The regulation promotes the fundamental rights of persons recognised by the Charter of Fundamental Rights of the European Union and, specifically, the right to a fair trial.

The proceedings leading to the judgment, therefore, should ensure, as minimum standards, that the debtor is informed about the court action against him, the requirements for his active presentation in the proceedings to contest the claim and the possible consequences for his non-participation in sufficient time. This will enable him

to arrange for his defence.

The regulation applies to both civil and commercial matters, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the state for acts and omissions in the exercise of state authority.

Also the regulation shall not apply to the status or legal capacity of citizens' rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal entities, judicial arrangements, compositions and analogous proceedings; social security; or arbitration.

The regulation's ambit of application

The regulation applies to judgments, court settlements and authentic instruments on uncontested claims, as well as to decisions delivered following challenges to those certified as EEOs.

Under the regulation, "all situations in which a creditor, given the verified absence of any dispute by the debtor as to the nature or extent of a pecuniary claim, has obtained either a court decision against that debtor or an enforceable document that requires the debtor's express consent, be it a court settlement or an authentic instrument" shall be regarded as a claim.

Specifically the regulation applies to claims:

- ◆ For payment of a specific sum of money fallen due or for which the due date is indicated in a judgment; court settlement or authentic instrument.
- ◆ Regarded as uncontested. This occurs if the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court; or the debtor has never objected to the claim, nor the interest accrued and costs related to court proceedings; or the debtor has not appeared nor been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings; or if the debtor has expressly agreed to it in an authentic instrument.

The 'enforcement' envisaged in the EEO process is the acceptance of the foreign court's decision and the availability of the enforcing court's procedures to obtain satisfaction of the debts.

Abolition of *exequatur*

As soon as the judgments, court settlements and authentic instruments – or the decisions following their challenge – are certified as EEOs, through the issue of appropriate certificates in the member state of origin, they shall be recognised and enforced immediately – without any review in the other member states nor the need for a declaration of enforceability by the court of destination.

The party against whom enforcement is sought is not entitled to make any

submissions on the application at this stage of the proceedings or to file an appeal against the issuing of an EEO certificate once the certificate has been issued.

The creditor may, however, still opt for the system of recognition and enforcement under Regulation (EC) No 44/2001 or other community instruments.

Requirements for certification as an EEO

Upon application, at any time, the court responsible for the original proceedings can certify a judgment on an uncontested claim as an EEO if:

- ◆ The judgment is enforceable in the member state of origin, does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of

This regulation is based on the principle of mutual trust in administration of justice in the European Community

chapter II of Regulation (EC) No 44/2001¹⁴, was given in the member state of the debtor's domicile.

- ◆ The court proceedings in the member state of origin met the requirements as set out in chapter III of the regulation (minimum standards for uncontested claims).

The EEO certificate takes effect only within the limits of the enforceability of the judgment. Therefore, if only parts of the judgment meet the requirements of this regulation, a partial EEO certificate is issued for those parts.

No relevance to the issue of the EEO certification shall be given to public policy in the member state where recognition is sought, judgments given in a dispute between the same parties in the state in which recognition is sought, as well as earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties.

Special certificates

Where a judgment certified as an EEO has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability is

issued by the court of origin upon application.

Without prejudice to its enforceability according to the rules set forth in the regulation, a replacement certificate is, upon application at any time, issued, if that decision on the challenge is enforceable in the member state of origin, where a decision has been delivered following a challenge to a judgment certified as an EEO, reasonably either by the claimant or by the defendant.

The EEO certificate will, upon application to the court of origin, be

rectified where, due to a material error, there is a discrepancy between the judgment and the certificate or withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in this regulation. The law of the member state of origin will apply to the rectification or withdrawal of the certificate.

The regulation does not apply if an appeal against the decision which rejects the application for the EEO certification may be brought. Remedies may reasonably be brought against the aforementioned decision if provided by the law of the member state in which the application for the certificate was brought. **CCRW**

Giorgio Corno is qualified both as an avvocato (Italy) and a solicitor (England and Wales). He is based in Italy
E-mail: giorgio.corno@studiocorno.it
Next edition: *standards and enforcement*

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THE COLLECTOR'S PLEDGE

By committing to support a voluntary standard of behaviour, you can help promote the professionalism of the industry

By Martin Sher

IN 2007 in the USA, the Association of Credit and Collection Professionals' (ACA) International Education Foundation's Communications Committee proposed a new initiative designed to emphasise the importance of professionalism and ethical behaviour within the credit and collection industry: the Collector's Pledge.

The ACA International Education Foundation Board and ACA Executive Committee both unanimously approved and endorsed the Collector's Pledge, which reads as follows:

- ◆ I believe every person has worth as an individual.
- ◆ I believe every person should be treated with dignity and respect.
- ◆ I will make it my personal responsibility to help consumers find ways to pay their just debts.
- ◆ I will be professional and ethical.
- ◆ I commit to honouring this pledge.

The foundation would like to see 100,000 US collectors sign and support the pledge. Supporting this

voluntary standard of behaviour will help better illustrate the level of professionalism expected of collection professionals while improving the industry's image in the media.

Collectors make billions of calls and return billions of dollars to the US and world economy every year. We are productive. We are useful. We solve problems for millions. We educate consumers on financial literacy.

We keep the prices of goods and services down. We provide a tremendous service for our clients that they truly appreciate.

If we do so many good things, why are we so misunderstood? First of all, even though the people we call know they owe a debt, and in most cases would like to pay the debt, they do not know how. They need our help.

Second, they are not thrilled to get the call. It is not common to hear on the other side of the phone: "Thank goodness you've finally called to ask for the money I owe!"

Here are six reasons to implement the Collector's Pledge:

- ◆ It is free.
- ◆ It takes very little time or effort.
- ◆ It gives a clear message of your company's expectations.
- ◆ It raises the self-esteem and commitment levels of your staff.
- ◆ It can help improve the industry's public image.
- ◆ Your clients will appreciate it.

Here are some suggestions as to how to get started:

- ◆ Type out the Collector's Pledge on a sheet of paper.
- ◆ Have all of your collectors and employees sign the pledge.
- ◆ Give collectors a copy of the pledge (on a business card, for example).
- ◆ Explain the importance of the pledge to your collectors and that it is an industry-wide effort.
- ◆ Live the pledge in your company and periodically bring it up in meetings.

CCRW

Martin Sher is an executive committee member and treasurer of ACA International, the Association of Credit and Collection Professionals
E-mail: msher@amsher.com

OPPORTUNITIES FOR DEBT PURCHASE

WITH summer fast approaching, the first anniversary of the credit crisis is also looming. What started as a local problem in US sub-prime lending has impacted financial markets across the world, as a lack of liquidity in the inter-bank market created pressure on the money supply.

And the crisis shows no signs of abating. Although the world's largest central banks recently injected billions of dollars into money markets, we are still seeing rising money market rates in both Europe and the US.

As the crunch has spread from small lenders such as the UK's Northern Rock and Germany's IKB Deutsche Industriebank, to huge European banks like UBS and Deutsche Bank – which have announced multibillion-euro

write-downs – it has changed from being a problem of liquidity, to becoming a problem of confidence.

So what does this mean for the credit industry? In the US, a survey of loan offers by the Federal Reserve found that banks expect to tighten lending even more on loans to both households and businesses. A similar survey by the European Central Bank showed that credit conditions tightened at 41% of euro zone banks – about a third more than the previous quarter.

These surveys suggest individuals and businesses will continue to feel the squeeze as banks put off cutting interest rates on existing loans and tighten lending criteria on new loans. With the price of basics continuing to rise, the pressure on those who are already heavily indebted

can only worsen and the collections environment become even more difficult.

However, for debt purchasers who have the finances and relationships in place to weather the current climate, there are opportunities. Banks may increasingly turn to debt sale as a way to improve their balance sheets. In addition, the crisis may speed the development of new business streams, such as mortgage and utility debt and government-related arrears.



By Ken Maynard,
chief executive,
Cabot Financial Group (Europe)
E-mail: kmaynard@cabotfinancial.com

To survive the current economic climate, and to maintain a competitive advantage coming out the other side, you need the right tools to manage your accounts receivable

By Dickie Bielenberg

ANALYSE YOUR FIGURES

Companies need good tools to enable analysis of inbound cashflows and the collections activity that led to them. Those that have accounts receivable (A/R) performance management software have full visibility of the detail of the processes that manage their A/R and know what is successful and what is not.

Such companies will not only fair best in the current economic situation, but also have significant competitive advantage coming out of it.

As anyone in credit management will admit, we all depend heavily on software, so it needs to be as reliable as possible and it needs to give us the confidence that we are collecting in the right way from the right customers, as well as having full visibility of customer service issues that might be the real reason for late payment. But as we all know, the software is configured by humans and so can drive a human-designed suboptimal process.

Pump up the volume?

Here is a real example: a major European telecoms company has 245,000 business customers. The current collections software is configured to ensure that every customer is touched by the collections process once every two months, either by calls, statements, e-mails, letters for larger ones, or only by e-mail or mail for smaller ones.

This all sounds too good to be true, until we look a little further. The

customer service department is receiving 5,500 inbound calls a month from customers complaining about some aspect of their invoice or service.

Worse still, another 1,500 per month are complaining that they have already registered a service issue and have already said they will not pay until it is resolved. Meanwhile, A/R does the opposite of what is expected and grows steadily.

It seems that although we want to do all the things that the software is telling us to do – reminding, calling, collecting – we are not doing the right things in the right way.

Software 'self correction'

Software in the A/R best practice space is now providing creditors with modelling, forecasting and performance management functionality.

This goes far beyond traditional credit and collections task management in that it helps companies identify, for their specific customer portfolios, what the precise combination of collections activities should be to optimise the A/R position.

This is done by analysing the payment performance of every company in the portfolio and statistically determining what volume and type of collections activity led to – or did not lead to – payment. By looking at the success factors, the unsuccessful strategies are then self-corrected and adjusted to optimise the process.

By rolling up this analysis from the customer level to the segment level, companies are able to determine which customers in which segments should be treated in which way if a specific overdue target is to be achieved.

This includes a projection of how many staff are required in collections and how many inbound service forms will be generated, and therefore how many service staff will be needed.

Business outcomes not 'suck it and see'

Companies are starting to use statistics on historical A/R collections practices to determine and accurately predict future financial performance, through the analysis of which buttons to push with customers to achieve early payment.

In addition, in-depth analysis of outstanding disputes and their root causes helps support the eradication of process discrepancies upstream and helps to isolate functional responsibility for the late payment. This takes the 'wait and see if they'll pay' attitude and turns it on its head.

Far-sighted companies are realising that they have all the tools at their disposal to determine the business outcomes of their decisions by making inbound cash payment patterns predictable at each level. **CCRW**

Dickie Bielenberg is managing director of The Customer Value Group
E-mail: dickie.bielenberg@customer-valuegroup.com