

Dispute Resolution Department

Disputes with European Customers

Disputes with European Customers

If you have a European customer and a dispute arises, where do you issue proceedings? Similarly, if a judgment is obtained in one European Union (“EU”) member state, can that judgment be enforced in another EU member state?

The introduction of *Regulation (EU) 1215/2012* of 12 December, 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“the Recast Regulation”), addresses these questions.

The Recast Directive came into effect in Ireland on the 10 January 2015 and replaces the earlier *Regulation (EU) 44/2001* (“the Old Regime”). The Recast Directive applies to legal proceedings instituted on or after 10 January 2015. The Recast Regulation is intended to simplify, codify and reduce the costs to international dispute resolution.

Jurisdiction

The Recast Directive strengthens the concept that the contract between parties may determine the country which has exclusive jurisdiction to deal with a dispute. The Old Regime allowed a party to delay and even frustrate the prosecution of proceedings in the designated jurisdiction. Under the Recast Regulation, EU courts have discretion (but not an obligation) to stay a case if proceedings have issued in another EU state between the same parties and involving the same dispute.

If however, there is no jurisdictional clause in the contract, the possibility for abusive actions remains and, commonly, the proceedings will be determined in the country in which proceedings are first issued.

Consumer Transactions

Consumer transactions are captured within the scope of the Recast Regulation and a consumer can now bring proceedings against a company in the court of his or her own domicile. This means that if an Irish company has an agreement with a consumer, for example in Spain, under the Recast Regulation the Spaniard can issue proceedings against the Irish company in Spain (the Irish Company is not required to maintain a presence in Spain) and if the Irish company wishes to defend the proceedings, they must do so in Spain. This provision is designed to strengthen consumer rights within the EU.

Enforcement of Judgments

Under the Old Regime, if a judgment was obtained in one EU country, and the other party was resident in another EU country, it would be necessary to apply to the court in the second EU country to enable the plaintiff enforce their judgment. However, under the Recast Regulation, the process is simplified and now a plaintiff is required to produce a copy of the judgment, a standard certificate annexed to the Recast Regulation and where necessary, a translation of the judgment and certificate. It is no longer necessary to make an application to the court in the second EU country for recognition of the original judgment.

Conclusion

The Recast Regulation simplifies a previously complex and costly area of international litigation. One criticism is that the Recast Directive has caused some uncertainty with regard to arbitration proceedings but for the most part, such proceedings are excluded from the Recast Regulation and it is therefore of minor concern. The improvements in the Recast Regulation, compared to the Old Regime include:

- clarity on jurisdictional issues,
- increased consumer protection rights, and
- the simplified recognition of judgment procedure.

For further information on this topic please contact James Meighan, Solicitor, Dispute Resolution E: jmeighan@efc.ie