

NJORD Latvia: How to recover a debt from a European debtor in a Latvian court

Many Latvian companies exporting goods and services to other EU Member States have repeatedly found themselves in the unfortunate situation when European customers had not paid them for their services. The only solution to such a situation is to go to court, and thereby to obtain a court order for the coercive recovery of the moneys owed from the debtor. According to the special jurisdiction rules provided by(in) Regulation (EU) No. 1215/2012, such a decision may also be obtained in a Latvian court, even if the parties have not previously agreed to it.

In the event of such a dispute, the claim is generally filed at the defendant's location. At the European level, for a Latvian supplier of goods and services, this means that, if there is a problem with the customer or the buyer (for example, no payment is made), the claim has to be submitted to a court in another country. The costs of such legal services (especially in litigation cases) are very difficult to predict. Lawyers usually charge an hourly fee for their work. In addition, if it is possible to find a lawyer in Latvia who would agree to represent the client's interests at the rate of (for) 100 Euros per hour, in other European countries this can reach 500 Euros per hour, or more.

With respect to the above-mentioned, special jurisdictional powers provided for under(in) Regulation (EU) No 1215/2012 (further - The Regulation) may acquire particular significance. The Regulation applies in civil and commercial matters, irrespective of the courts they have been adjudicated in.

General jurisdiction

The Regulation lays down the general rule that a defendant domiciled in a Member State (domicile or registration) must be sued in that same Member State.

Contractual jurisdiction

If the parties were cautious when entering into a contract with a partner from another member state of the European Union, the issues of jurisdiction and applicable law would usually already be settled within the terms of the contract, and thereby known to the relevant parties in advance. If the parties have established jurisdiction in the contract, and that jurisdiction is not fictitious (for example, when a Latvian supplier enters into a contract with a Swedish customer and establishes, let us say, jurisdiction in Italy, with no connection to this particular case), the case would be heard by the court specified in the contract. Except for cases of fictitious jurisdiction, contractual jurisdiction gives very little scope for the use of alternative jurisdiction possibilities.

It is not uncommon for a supplier from Latvia to sign a contract submitted by a customer without proper assessment of the potential risks involved. In such cases, there would be a strong likelihood that, in the event of a dispute, he would(will) be rather surprised by the existence of contractual jurisdiction. In order to prevent such surprises, jurisdiction clause must be one of the aspects that must be considered when concluding a contract of this type.

Special jurisdiction

In practice, situations often arise where a written contract between the parties has(is) not been concluded (or the agreed contract does not specify the place where the dispute is to be settled). In this case, the general jurisdiction (mentioned above) or the special jurisdiction applies.

In addition to the general jurisdiction, the Regulation provides for special jurisdiction in the case of a purchase (supply) contract or a service contract between the parties. Special jurisdiction gives rise to proceedings before the courts of the Member State, within the territory of which the performance of the obligation had taken place (i.e. at the place of performance).

Purchase (supply) contracts

When entering into a contract of purchase (supply), the place of performance of the obligation shall be the place in the Member State where the goods were, or ought to have been, delivered. Pursuant to the Regulation, this place shall be determined directly on the basis of a contract between the parties. It is for the national court to consider all relevant contract terms and clauses permitting the determination of the place of delivery, including terms and clauses generally accepted and applicable in international commercial use, such as Incoterms. If it is impossible to determine the place of delivery of the goods on this basis, without relying on the national law applicable to the contract, such a place shall be deemed to be the place where the physical transfer of the goods occurred which resulted in the buyer acquired or should acquire actual possibility to dispose of these goods.

Thus, if the seller from Latvia has agreed with the buyer from another European country that the delivery will be made on terms that the supplier's obligations are deemed to have been fulfilled by delivering the goods within the territory of Latvia, e.g. Ex Works (EXW), Free Carrier (FCA), Free Alongside Ship (FAS), Free on Board (FOB), and in the event of any breach by the buyer, such supplier may bring a claim before the court in the territory of Latvia.

Service contracts

When concluding a service contract, the place of performance is the place in the Member State where, under the terms of the contract, the services were provided or, should have been provided.

For example, if a Latvian contractor provided services to a company or individual based within the European Union, in many cases the place where the services were provided would be recognized as the 'place of performance'. The range of services is practically unlimited, including IT, marketing, banking, advertising, consulting, accounting, agents, brokers and other. Accordingly, if such a contractor from Latvia (for example) would be in a situation where the customer has not paid for services delivered, the claim for recovery of the payment can be filed in Latvia.

Illegal activities and quasi-offences

Special jurisdiction is also provided for unlawful acts or quasi-delicts. These cases are subject to the jurisdiction of the courts of the place where the 'harmful' event had occurred, or may have occurred.

NJORD Latvia has a strong litigation practice covering various industries, and in particular IP, shipping, transport and insurance. With the recent addition of a senior associate Eduards Vaisla, we now offer full litigation service covering civil, administrative and criminal law: in particular, cases relating to proceeds from crime, money laundering and white-collar crimes. We are frequently recommended and hired exclusively as litigation specialists.



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