



Practice guide for the application of the **European Small Claims Procedure**

under Regulation (EC) No 861/2007 of the European
Parliament and of the Council of 11 July 2007
establishing a European Small Claims Procedure

Table of Contents

1. Introduction	6
1.1. Aim and purpose of the European Small Claims Procedure	7
1.2. General background	7
1.3. Historical and political background to the proposal	9
1.3.1. The Down Hall Conference	9
1.3.2. Political context	10
1.4. Development of the Policy for the ESCP	10
1.4.1. First steps towards the proposal	10
1.4.2. The negotiations and the six principles	11
1.4.3. The Evolution of EU Civil Procedure	12
2. The Regulation — Scope	14
2.1. Scope of the Regulation — Material scope	15
2.1.1. The financial limit of a European Small Claim	15
2.1.2. Subject matter — Monetary and non-monetary	15
2.1.3. Subject matter — Excluded subjects	16
2.1.4. Subject matter — Included subjects	17
2.1.5. Civil and Commercial Matters — Interpretation by the CJEU	18
2.2. Scope of the Regulation — Geographical scope	22
2.2.1. General geographical scope	22
2.2.2. Cross-border cases — general	22
2.3. Applicability — Time	23
2.4. Relationship with other EU instruments	23
2.4.1. The Brussels I Regulation	23
2.4.2. The Service and Evidence Regulations	24
2.4.3. The EEO and EOP Regulations	24
2.4.4. Other EU Instruments	26

2.5. Relationship with National Law	26
2.5.1. National Procedural Law	26
2.5.2. National Substantive Law	27
3. Commencing the Procedure	28
3.1. The court/s competent to take the claim	29
3.1.1. The claimant has to state the ground of jurisdiction in the Claim Form	29
3.1.2. The EU rules on Jurisdiction	29
3.1.3. The local or 'national' rules on jurisdiction	32
3.2. Using the Claim Form	32
3.2.1. Assessing the claim	33
3.2.2. The treatment of interest	33
3.3. The cost of lodging the claim	33
3.4. Attachments with the Claim Form	34
3.5. Sending the Claim to the Court	34
3.6. Language	35
4. Procedure after the Court Receives the Claim	36
4.1. Rectification or completion of the Claim Form by the claimant	37
4.1.1. The court checks the Claim Form	37
4.1.2. The court informs the claimant if the claim is outside the scope of the ESCP	37
4.1.3. The claimant can seek assistance to complete the Claim Form	37
4.1.4. Request to the claimant to complete or rectify the Claim Form	37
4.2. Sending the Claim Form to the Defendant	38
4.2.1. Court sends copy Claim Form A and Form C	38
4.2.2. Time Limit	38
4.2.3. Methods of Service	38
4.3. What the defendant can do on receipt of the Claim Form	41
4.4. Claim or counter-claim exceeds the limit	42
4.5. The Counter-claim	42
4.6. Timescales	43
4.7. Language	43

5. Establishing the Facts	44
5.1. Duty of the Court as regards disputed matters	45
5.1.1. The Court takes the initiative in establishing the facts	45
5.1.2. The Court to specify means of taking and nature of evidence	45
5.2. Additional information from claimant and defendant	45
5.3. The Court decides to hold a hearing	46
5.3.1. Court to hold a hearing only if necessary	46
5.3.2. Court can refuse to hold a hearing	46
5.4. Evidence issues	46
5.5. Use of ICT	47
5.6. The Role of the Court	48
5.6.1. The court determines the procedure	48
5.6.2. The court informs the parties on procedural questions	48
5.7. Time Limits	48
6. The Judgment	50
6.1. Issuing a Judgment	51
6.1.1. Judgment in default — General	51
6.1.2. Judgment in default — Counter-claim	51
6.2. Judgment after receiving all information including after taking evidence	51
6.2.1. Where no hearing is held	51
6.2.2. After a hearing	51
6.3. The form, content and service of the Judgment	52
6.3.1. Judgment to be in writing for service on parties	52
6.3.2. Language of Judgment for service	52
6.3.3. Judgment served on the parties	52
6.4. Costs	53
7. Review and Appeal	54
7.1. Review under the European Small Claims Procedure	55
7.1.1. Grounds for a Review	55
7.1.2. Outcome of a Review	55

7.2. Appeal	55
7.3. Legal Representation at Review and Appeal	56
8. Recognition and Enforcement	58
8.1. Recognition and Enforcement — General principles	59
8.1.1. Abolition of <i>Exequatur</i>	59
8.1.2. Enforcement Procedure — Applicable Law	59
8.2. Requirements of the ESCP — Enforcement procedure	59
8.3. Use of the Certificate of Judgment	60
8.3.1. Form D	60
8.3.2. Language of the Certificate	60
8.4. Refusal and limitation of enforcement	61
8.4.1. Refusal of enforcement in exceptional circumstances	61
8.4.2. Procedure to challenge enforcement	61
8.4.3. Stay or limitation of enforcement	61
8.5. Proceeding to Execution of the ESCP Judgment	62
8.5.1. Steps to Execution	62
8.5.2. Enforcement Authorities and Agencies	62
8.5.3. Language issues — Practical implications for enforcement	63
9. Final Matters	64
9.1. Lawyers	65
9.1.1. No requirement to instruct a lawyer for the ESCP	65
9.1.2. Cost implications of instructing a lawyer	65
9.2. Information and assistance	66
9.2.1. Information — General	66
9.2.2. Information and assistance to the parties	66
9.3. Review of the ESCP including the financial limit	67
9.3.1. Review — General	67
9.3.2. Review — Value of the Claim	67
Reference Material and Links	68



CHAPTER ONE

Introduction

1.1. Aim and purpose of the European Small Claims Procedure

In the context of the objectives of assuring access to justice and of seeking the creation of the area of freedom, security and justice in the EU, the European Small Claims Procedure has the key aim of simplifying and speeding up litigation across borders within the EU in claims of low value and thus of reducing the costs of such litigation between the Member States (see Article 1 and recitals 1, 7, 8 and 36).

To achieve this the procedure places emphasis on the need for relative simplicity of the proceedings, notably that the procedure should largely be written. Furthermore the role of the court is strengthened significantly as regards managing the progress of the case and in determining the issues between the parties in relation to the claim and the potential for parties to make use of the procedure without the need for, and attendant expense of, legal advice.

The procedure is available to be used not only by individuals or groups of consumers, for whom it may be particularly appropriate, but also by small businesses confronted with cross-border disputes as part of their affairs. The aim for the procedure to be speedy is to be achieved by the observance of the specific time limits set in respect of various stages of the procedure. Restriction of costs is also an important aim and the duty is placed on the court to ensure that the costs awarded are not disproportionate to the value of the claim.

1.2. General background

One of the main continuing concerns voiced over the functioning of Civil Justice systems, notably in relation to the possibility for ordinary citizens to access the courts and seek redress for claims quickly and without having to spend large sums of money on legal advice, has been in the area of claims of low value especially those made by individuals against businesses or other individuals where the time, effort and cost involved can often be grossly disproportionate to the value of the claim.

To address this, many legal systems in the Member States of the EU have devised special procedures characterised by efforts to simplify and to reduce the expense and accelerate the resolution of such claims by individuals or small businesses⁽¹⁾. In many of these procedures a number of common features are found such as restriction of costs awarded, absence of lawyers, simplification of rules of evidence and generally the placing on the courts of more responsibility to manage cases and to achieve speedy resolution by decision or agreement of the parties.

⁽¹⁾ For a description of some of the features typified in national Small Claims Procedures reference can be made to the Green Paper — COM(2002) 746 final; see paragraph 1.4.1 and footnote 8 below.

The concerns which have led to such initiatives in domestic legal systems are all the more present when claims of low value are made across the borders of EU Member States given the additional problems attendant on such situations of unfamiliarity with the law applied by, and procedures of, foreign courts and the need to work in different languages.



1.3. Historical and political background to the proposal

1.3.1. The Down Hall Conference⁽²⁾

Given the problematic as noted in the foregoing paragraph it was quite logical that an early initiative should be taken to explore the possibility of establishing a special procedure at European level for dealing with consumer claims and claims of low value. Thus discussions about the possibility of creating a European procedure for dealing with consumer and other claims of low value took place at a conference held in England during the UK Presidency of the first half of 1998.

This conference was attended by a significant number of experts from various EC Member States as well as representatives of the European institutions and heard presentations about different types of procedure in both Europe and elsewhere⁽³⁾. The overall consensus which emerged from the conference was that the development of a special European procedure for consumer and other claims of low value could be of value for litigation within the EC especially having regard to the increased mobility of individuals and trade across borders and the manifest difficulties which present themselves to individuals and small businesses in seeking to obtain redress in respect of such claims.

⁽²⁾ The Conference took place at Down Hall, Hatfield Heath, Hertfordshire on 22nd and 23rd June 1998. A reference to this conference and the resulting report can be found on pp. 59–60 and footnote 185 of the Green Paper.

⁽³⁾ For example, delegates were interested to hear about Small Claims Procedures in Singapore carried out on-line and in Lisbon for dealing with small consumer claims and which also dealt with some cross-border claims between Portugal and Spain.

1.3.2. Political context

Once the Amsterdam Treaty was in place a number of political statements were made, the most significant of which is to be found in the conclusions of the Tampere summit which was the first occasion on which EC Heads of Government met to discuss matters of Justice⁽⁴⁾. This was followed by the programme of measures put in place to implement the Tampere conclusions⁽⁵⁾ subsequently reiterated in the Hague Programme⁽⁶⁾.

⁽⁴⁾ See recital 4; paragraphs 30 and 34 of the Conclusions, which can be found at http://www.europarl.europa.eu/summits/tam_en.htm, are in the following terms as regards Small Claims — paragraph 30 — ‘The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring... special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims...’ and paragraph 34 — ‘In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims...’.

⁽⁵⁾ See Section 1.B.4 of the programme as published in the Official Journal on 15th January 2001, C 12/1 on p. 4; see also recital 5.

⁽⁶⁾ See paragraph 3.4.2 of the programme as published in the Official Journal on 3rd March 2005, C 53/1 on p. 53.

1.4. Development of the Policy for the ESCP

1.4.1. First steps towards the proposal

In 2000 the European Commission took the initiative in issuing a questionnaire to establish the current availability of Small Claims Procedures in the EU Member States⁽⁷⁾. This was followed by a Green Paper which was issued in the light of the changes to the EC Treaty resulting from the Amsterdam Treaty and the Tampere conclusions, and which contained various suggestions for action to fulfill the political commitments already made notably the need for a simplified procedure for low value claims to assist access to justice for those wishing to pursue such claims. It also covered matters to do with a possible initiative for a European Order for Payment procedure⁽⁸⁾. Responses were requested by 31st May 2003 and on the basis of the material assembled the Commission came forward with a proposal for the Regulation in March 2005⁽⁹⁾ having earlier made the proposal for the European Order for Payment procedure⁽¹⁰⁾.

⁽⁷⁾ See Report by Evelyne Serverin under the title ‘Des procédures de traitement judiciaire des demandes de faible importance ou non contestées dans les droits des Etats-membres de l’Union européenne’ published by Cachan, 2001 as noted in footnote 2 on Page 8 of the Green Paper.

⁽⁸⁾ Green Paper COM(2002) 746 final, published on 20th December 2002; the Green Paper is referred to at recital 6.

⁽⁹⁾ COM(2005) 87 final published on 15th March 2005.

⁽¹⁰⁾ COM(2004) 173 final published on 25th May 2004.

1.4.2. The negotiations and the six principles

Given that there was general political agreement about the desirability of creating a European Small Claims Procedure to deal with cross-border cases as an alternative to national procedures the negotiations were free to concentrate on the substance of the procedure. One of the difficult sticking points was the value of the financial limit, that is the answer to the question — ‘What is a Small Claim?; there were some Member States which sought a relatively low limit whilst others wanted a limit which would enable most claims by consumers to be dealt with. A compromise on this issue was eventually achieved during the discussions in the European Parliament and the Council.

A key moment in the Council discussions was the adoption by Justice Ministers of a number of principles which were to be the basis of the negotiations as well as of the procedure itself. These are to be found in a Presidency document submitted to the Ministers in November 2005⁽¹¹⁾ and are as follows:

- the European Small Claims Procedure should primarily be a written procedure — see Article 5.1 and recital 14;

- an oral hearing should be held if the court considers this to be necessary;
- to ensure that the procedure is accelerated and efficient there should be time limits set for specific stages;
- the use of modern communications technology was to be encouraged to facilitate the conduct of hearings and the taking of evidence — see Articles 8 and 9.1;
- legal representation should not be mandatory — see Article 10;
- the court should ensure that any costs recoverable from the unsuccessful party were proportionate having regard to the value of the claim — see Article 16.

As can be seen from the text of the Regulation the principles referred to in the previous paragraph were indeed adopted and form an important foundation for the procedure.

⁽¹¹⁾ Note from the Presidency to the Council No 15054/05 of 29th November 2005; JUSTCIV 221/CODEC 1107.

1.4.3. The Evolution of EU Civil Procedure

1.4.3.1. The Abolition of *Exequatur*⁽¹²⁾

A further principle was accepted from the beginning of the negotiations on the Small Claims Regulation namely that the intermediate measures for recognition and enforcement of a judgment given in a Member State under the procedure should be disapplied where it is to be enforced in another Member State thereby securing the aim of enabling recovery of any claim to be made without the need for interim judicial proceedings. This step marks a substantial evolution in the development of EU civil procedures in the area of civil justice. The subject is treated more fully later in this Guide in paragraphs 2.4.1.2 and 8.1.1.

⁽¹²⁾ See Article 20.1 and recital 30.

1.4.3.2. Small Claims in relation to EEO and EOP⁽¹³⁾

The Small Claims Regulation followed two others in which the intermediate measures were abolished, namely the Regulation⁽¹⁴⁾ which created the first genuine European civil procedure — the European Order for Payment procedure (EOP) — which in turn had been preceded by the Regulation⁽¹⁵⁾ on the European Enforcement Order (EEO). The achievement of the abolition of exequatur was in the case of the EEO and EOP made subject to the observance of certain guarantees as to the conduct of the procedures in the court which issues the judgment under these instruments. These have to be confirmed by an appropriate authority in a prescribed certificate.

⁽¹³⁾ See also recital 3 and paragraph 2.4.3 of this Guide.

⁽¹⁴⁾ Regulation (EC) No 1896/2006.

⁽¹⁵⁾ Regulation (EC) No 805/2004.

1.4.3.3. The principle of *mutual recognition*

The three Regulations, each of which has a different scope, taken together represent a significant practical development of the principle of mutual recognition of judgments in civil matters whose main aim is to simplify and speed up the recognition and enforcement of creditors' rights across national borders in the European Union. In this respect they contribute to building a genuine area of justice in the European Union, and to the circulation of judgments in the EU and thus to implementing the Single Market.



CHAPTER TWO

The Regulation — Scope

2.1. Scope of the Regulation — Material scope

The Regulation provides for the two elements of the material scope of the ESCP, namely the financial limit of claims which can be made under the procedure and the subject matter of the claims themselves. In general, claims whose subject matter falls within the general description of 'civil and commercial' matters are within the scope but this is subject to a number of restrictions and exclusions. The expression 'civil and commercial' has itself been interpreted extensively by the European Court of Justice.

2.1.1. The financial limit of a European Small Claim

2.1.1.1. The upper limit

Unlike in the EEO and EOP there is an upper limit of value to a claim within the scope of the ESCP and this is at present fixed at €2000 so claims of a value above that sum are excluded from the scope of the procedure. The existence of an upper limit is not unusual in such procedures as can be found in many of the Member States but the range of values of the limits varies quite widely from country to country and even, as in the UK, within States.

2.1.1.2. The basis of the value

An important question is the basis on which the value of the claim falls to be determined for the purposes of the Regulation and that is set out in Article 2.1. In the first place the value is taken at the date on which the claim is received by the court or tribunal which has jurisdiction to determine the claim. Secondly the value is computed excluding all interest sought on the principal claim itself, any expenses and disbursements which might be added to the claim. This exclusion would not exclude a principal claim, for example, which related only to interest payments on a debt which had already been paid⁽¹⁶⁾.

2.1.2. Subject matter — Monetary and non-monetary

Unlike the procedure for the European Order for Payment which is limited to monetary claims, non-monetary claims can be the subject of a claim under the ESCP and provision for this is made in the Claim Form at Part 7; as to the completion of this see paragraph 3.2 below. In a non-monetary claim a claimant might for example seek an order to prevent a legal wrong, say trespass or damage to property, or seek to secure the performance of an obligation such as delivery of goods or other performance of a contract. If the claim is non-monetary it must be given a value which falls within the financial limit of the ESCP.

⁽¹⁶⁾ See paragraph 4.5 below for the implications of the value of the counter-claim in determining whether a claim is in the scope or not.

2.1.3. Subject matter — Excluded subjects

2.1.3.1. General exclusions

In the Regulation certain matters are excluded specifically from the material scope of the ESCP which might otherwise be considered to be comprehended within the compass of 'civil and commercial matters'. These are specified to be revenue, customs and administrative matters as well as the liability of a State for acts or omissions in the exercise of State authority, also known as *acta iure imperii*. If a claim deals with such excluded matters then the court receiving it will generally require rejecting it of its own motion as falling outside the scope of the European Small Claims Procedure.

2.1.3.2. Subjects excluded specifically by Article 2.2

In addition the Regulation specifies that it does not apply to certain other specific matters which would be considered to fall within the notion of civil and commercial matters. These exclusions, which are more extensive than and not entirely similar to those specified in the EEO and EOP Regulations, as detailed in Article 2.2 are set out in the attached box.

- (a) the status or legal capacity of natural persons;
- (b) rights in property arising out of a matrimonial relationship, maintenance obligations, wills and succession;
- (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (d) social security;
- (e) arbitration;
- (f) employment law;
- (g) tenancies of immovable property, with the exception of actions on monetary claims; or
- (h) violations of privacy and of rights relating to personality, including defamation.

2.1.4. Subject matter — Included subjects

2.1.4.1. Civil and Commercial — General

The subject matter which falls within the material scope of the ESCP relates principally to what are considered to be *civil and commercial matters*. As set out in Article 2.1 for the purposes of the Regulation the meaning of this expression does not depend on which court or tribunal is involved in considering the claim or on the national law of any Member State. It is also to be understood as being in line with the autonomous interpretation of the words as used in other EU instruments including the Brussels I, EEO and EOP Regulations.

2.1.4.2. The meaning of Civil and Commercial Matters

The expression is not defined in the Regulation but it is generally understood that there is a distinction between civil matters on the one hand and public law matters on the other and the European Court of Justice has issued a number of judgments determining the extent and effect of this distinction in the context of the various instruments. Despite the distinction, the ECJ has held that there are certain public law matters which would nevertheless be considered as falling within the meaning of civil and commercial matters. This depends to a degree on decisions taken by the ECJ in interpreting other instruments notably the Brussels I Regulation and its predecessor the Brussels Convention. Details of these decisions are given below in paragraph 2.1.5.



2.1.5. Civil and Commercial Matters — Interpretation by the CJEU

2.1.5.1. An autonomous meaning

In a number of cases the European Court of Justice has held that, in order to ensure that the rights and obligations flowing from the relevant instruments are applied in an equal and uniform manner the term ‘civil and commercial matters’ cannot be interpreted in relation to only one legal system but must be given an autonomous meaning derived from the objectives and scheme of the EU legislation concerned and the general principles which stem from the corpus of the national legal systems as a whole. The Court has held generally that two elements are relevant for deciding whether or not a dispute is of a civil and commercial nature:

- the subject matter of the dispute and so the basis and the nature of the action; and
- the parties involved and the nature of the relationship between them.

For a statement of the thinking of the CJEU on the matter see the case of *Apostolides v Orams*⁽¹⁷⁾ in which the court summed up the position in the following words:

‘... it is to be remembered that, in order to ensure, as far as possible, that the rights and obligations which derive from Regulation No 44/2001 for the Member States and the persons to whom it applies are equal and uniform, “civil and commercial matters” should not be interpreted as a mere reference to the internal law of one or other of the States concerned. That concept must be regarded as an independent concept to be interpreted by referring, first, to the objectives and scheme of the Regulation and, second, to the general principles which stem from the corpus of the national legal systems. The autonomous interpretation of the concept of “civil and commercial matters” results in the exclusion of certain judicial decisions from the scope of Regulation No 44/2001, by reason either of the legal relationships between the parties to the action or of the subject-matter of the action...’

⁽¹⁷⁾ (C-420/07[2009] ECR I-3571), in particular in paragraphs 41 and 42, in which reference was made *inter alia* to the cases of *LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol*, (C-29/76 [1976] ECR 1541), and the more recent case of *Lechoritou v Dimisiotis Ormospondikis Dimokratias tis Germanias*, (C-292/05 [2007] ECR I-1519).

2.1.5.2. Actions involving a public authority

With respect to actions involving a public authority, the Court of Justice has specified that a matter is not ‘civil or commercial’ when it concerns a dispute between a public authority and a private person when the former is acting in the exercise of a public power. The Court, therefore, has drawn a distinction between such actions, known as *acta iure imperii*, which in any event are not comprehended within the notion of ‘civil or commercial matters’ for the purposes of the ESCP, and *acta iure gestionis*, generally actions of a commercial nature carried out by a State which are included within that notion. The CJEU commented on this point also in the case of *Apostolides*⁽¹⁸⁾ as follows:

‘... the Court has held that, although certain actions between a public authority and a person governed by private law may come within the concept, it is otherwise where the public authority is acting in the exercise of its public powers ... The exercise of public powers by one of the parties to the case, because it exercises powers falling outside the scope of the ordinary legal rules applicable to relationships between private individuals, excludes such a case from civil and commercial matters ...’

⁽¹⁸⁾ Cit supra footnote 17.

2.1.5.3. CJEU cases illustrating the distinction

The distinction between cases which do not fall within the notion of ‘civil and commercial’ and those which do is not always easy to make in practice. The CJEU has examined this in a number of specific cases examples of which are given in the box on the following page.

Some CJEU cases illustrating the distinction

Claims which the CJEU decided were ‘civil and commercial’:

In *Sonntag v Waidmann* (Case C-172/91, ECR 1993, I-1963), a claim for compensation for injury to an individual resulting from a criminal offence is civil in nature. However, such an action falls outside the scope of the term ‘civil or commercial matters’ where the author of the damage must be regarded as a public authority which acted in the exercise of public powers (in that case a teacher supervising pupils was not considered to have been ‘acting in the exercise of public power’).

In *Verein für Konsumenteninformation v Karl Heinz Henkel*, (Case C-167/00, ECR 2002, I-8111), a claim brought as a preventative action by a consumer protection organisation to prevent a trader from using unfair contract terms in contracts with private individuals.

In *Gemeente Steenbergen v Baten* (Case C-271/00, ECR 2002, I-10489), a claim under a right of recourse whereby a public body seeks from a person governed by private law recovery of sums paid by it by way of social assistance to the divorced spouse and the child of that person, provided that the basis and the detailed rules relating to the bringing of that action are governed by the rules of the ordinary law in regard to maintenance obligations.

However where the action under a right of recourse is founded on provisions by which the legislature conferred on the public body a prerogative of its own, that claim cannot be regarded as being included within ‘civil matters’.

In *Préservatrice foncière TIARD v Netherlands* (Case C-266/01, ECR 2003, I-4867), a claim by which a State seeks to enforce against a person governed by private law a private-law guarantee contract which was concluded in order to enable a third person to supply a guarantee required and defined by that State, in so far as the legal relationship between the creditor and the guarantor, under the guarantee contract, does not entail the exercise by the State of powers going beyond those existing under the rules applicable to relations between private individuals.

In *Frahuil SA v Assitalia*, (Case C-265/02, ECR 2004, I-1543), a claim by way of legal subrogation against an importer who owed customs duties by the guarantor who paid those duties to the customs authorities in performance of a contract of guarantee under which it had undertaken to the customs authorities to guarantee payment of the duties in question by the forwarding agent, which had originally been instructed by the principal debtor to pay the debt, must be regarded as coming within the concept of ‘civil and commercial matters’.



In *Apostolides* (see above) a claim for recognition and enforcement of an order for payment damages for unlawfully taking possession of land, the delivery up of that land, its restoration to its original state and the cessation of any other unlawful intervention where, in the main proceedings, the action is between individuals and is brought not against conduct or procedures which involve an exercise of public powers by one of the parties to the case, but against acts carried out by individuals.

In *Realchemie Nederland BV v Bayer CropScience AG*, (Case 406/09 [2011]), a claim for recognition and enforcement of an order for payment of a fine in order to ensure compliance with a judgment given in a civil and commercial matter, namely infringement of a right to intellectual property held as a matter of private right by a limited company.

Claims which the CJEU decided were not ‘civil and commercial’:

In *LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol*, see above, a claim by a public authority created by an international treaty to recover from a private party charges for the use of its equipment and services where such use was obligatory and the charges were fixed unilaterally.

In *Netherlands v Rüffer* (C-814/79, ECR 1980, 3807), a claim by a public authority responsible for policing public waterways in the exercise of its public powers suing a ship-owner for the recovery of costs incurred during the removal of a collision wreck from such waterways.

In *Lechoritou v Dimosiotis Omospondikis Dimokratias tis Germanias*,⁽¹⁹⁾ see above, a claim by representatives of victims and survivors of a wartime massacre by military forces seeking compensation from the State concerned.

⁽¹⁹⁾ Cited at footnote 17 above.

2.2. Scope of the Regulation — Geographical scope

2.2.1. General geographical scope

The ESCP Regulation applies in all the Member States of the EU except Denmark.

2.2.2. Cross-border cases — general

The ESCP only applies to cases defined as ‘cross-border’ that is cases in which at least one of the parties is domiciled or habitually resident in a Member State other than that of the court or tribunal seised with the claim; for the definition see Article 3.1. According to Article 3.3 it is provided that the relevant moment for determining whether a claim is a cross-border case is the date on which the Claim Form is received by the competent court or tribunal. It should be borne in mind that the factual basis of this condition has to be stated in the claim in paragraph 5 of Claim Form A.

2.2.2.1. Non-EU claimants

Given the definition of ‘cross-border’, and having regard to the effect of the jurisdiction provisions in the Brussels I Regulation, in certain circumstances a claimant domiciled or habitually resident in a non-EU Member State may be able to make use of the ESCP against a defendant who is domiciled or habitually resident within the EU. This would be the case where the defendant is domiciled or habitually resident in a Member State other than that of the competent court since then that party is not in the same State as the court since this meets the conditions of Article 3.1.

2.2.2.2. Non-EU defendants

Also, a claimant domiciled or habitually resident in an EU Member State other than that of the competent court may be able to make a claim under the ESCP against a defendant domiciled or habitually resident outside the EU. The ground on which a court in the EU will be able to take jurisdiction for this purpose will be as set out in the relevant EU instrument, for example the Brussels I Regulation.

2.3. Applicability — Time

The ESCP Regulation has applied in all the EU Member States except Denmark since 1st January 2009. However a claim can be made under the procedure even though it pre-dates that date provided that the obligation on which the claim is based has not prescribed or that any period of limitation applicable in respect of the claim has not elapsed under the relevant applicable law.

2.4. Relationship with other EU instruments

2.4.1. The Brussels I Regulation⁽²⁰⁾

2.4.1.1. Jurisdiction rules

The ESCP Regulation contains no rules as regards jurisdiction so in order to establish the competence of courts and tribunals as between the various EU Member States and as regards non-EU States the rules provided under the Brussels I Regulation have to be applied. Further explanation of this

as regards the working of the ESCP is given below in paragraph 3.1.1 in the section dealing with the commencement of the procedure.

2.4.1.2. Recognition and Enforcement of judgments

One of the key features of the ESCP is the abolition of *exequatur*⁽²¹⁾ which means that a judgment given under the procedure is recognised and can be enforced in another EU Member State without the need for the holder of a judgment to obtain a declaration of enforceability as is required under the rules on recognition and enforcement in the Brussels I Regulation. A separate procedure for enforcement is provided in the Regulation and this is set out later in this Guide in paragraph 8.2 in the chapter which deals with that subject. It should be noted that the provisions on recognition and enforcement in the Brussels I Regulation are still available to be used to enforce a judgment granted under the ESCP, the choice as to which procedure to be used resting with the person in right of the judgment.

⁽²⁰⁾ See Council Regulation No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('Brussels I'), OJ L 12, 16.1.2001, p. 1. This Regulation is subject to revision on the basis of a proposal from the European Commission but the proposal has yet to be approved by the Council and the European Parliament.

⁽²¹⁾ For this purpose the expression 'abolition of *exequatur*' refers to the disapplication of the intermediate measures specified in the Brussels I Regulation notably the need to apply for a declaration of enforceability. Following adoption of the Regulation 1215/2012 ('new Brussels I Regulation'), as of 10 January 2015 *exequatur* procedure will be abolished for the judgements falling within its scope.

2.4.2. The Service⁽²²⁾ and Evidence Regulations

Each of these Regulations is applicable to the ESCP given that they apply generally to civil proceedings where documents have to be transmitted from one EU Member State to another and evidence has to be taken into one EU Member State from another. However the Regulation contains certain provisions dealing with both service of documents and the taking of evidence which prevail over the general provisions in the other instruments. It also contains certain provisions on service of documents which derive from the Regulation establishing the EEO and which also prevail over the rules in the Service Regulation in so far as they are different.

2.4.3. The EEO and EOP Regulations

2.4.3.1. Similarities to and differences from the ESCP

To a certain extent these two Regulations can be grouped together with the ESCP since they share some key features such as simplified rules for recognition and enforcement through the abolition of exequatur and provision for a review of decisions given and of certificates issued under the respective procedures where certain minimum standards are

not met. For this purpose, apart from the issues of service noted in the previous sub-paragraph, the ESCP Regulation ‘borrows’ from the EEO Regulation certain rules regarding the review of decisions which are applied to the ESCP itself.

Another common feature of these three Regulations is that they put into practice the principle of mutual recognition of judgments in civil matters. Their main aim is to simplify and speed up the cross-border recognition and enforcement of creditors’ rights in the European Union. In this respect they contribute both to building a genuine area of justice in the European Union, and to implementing the Single Market. Each of the Regulations has a different scope — not all of them can be used in every cross-border civil case.

In addition, although there are similarities between the three Regulations, there is one very important difference. The ESCP, unlike the EEO and EOP, deals with both defended as well as undefended cases. It is therefore necessary for a decision to be taken at the outset by a prospective claimant as to which procedure is best to use and such a decision will very much depend on the actual circumstances of each case, in particular whether it is likely that the claim will be defended or not, and of course on the value of the claim concerned.

⁽²²⁾ Council Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (OJ L 324, 10.12.2007, p. 79) and Council Regulation (EC) No 1206/2001 on the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).

2.4.3.2. Use of the EEO, EOP and ESCP compared

EEO — this is suitable only when there is need to enforce a judgment in an undefended case, as a result of a court settlement or where an obligation is set out as an authentic instrument which is enforceable in the Member State of origin. What an undefended case for this purpose is, is defined in the EEO Regulation; in principle it is a case in which a defence was never offered and the judgment is given in absentia or by default or where, the case having been defended originally, the defence was later withdrawn.

EOP — this procedure is particularly suitable for a claimant to make a claim where there is no defence to the claim; application is made by the claimant to the court which, if it accepts the application, issues the order and serves it on the defendant who can then lodge a notice of opposition but there is no further court procedure involved under the EOP because if the defendant simply opposes the granting of the order the case ceases to be dealt with under the EOP and instead is dealt with under the ordinary rules of civil procedure; if the defendant does not oppose the order when it is served the claimant can then take such enforcement measures as may be necessary to secure payment. It is particularly suitable to be used by claimants dealing with multiple claims as is the case with energy supply and similar businesses claiming against non-paying customers.

While the scope of the EEO and EOP is similar, the difference between them is that an EEO certifies the outcome of a domestic procedure as suitable for enforcement in another Member State while the EOP is a stand-alone EU procedure largely followed in the same way in all Member States. A creditor needs to decide which of these to use in order to pursue a claim which is, or is likely to be, uncontested. The EOP is of particular use to a creditor wishing to pursue claims in a number of Member States because he / she / it needs only to understand the one procedure rather than the different procedures in the domestic systems of each of the relevant Member States.

ESCP — is to be distinguished from the other two procedures since it is available for both defended as well as undefended cases where the value of the claim is not more than €2000; therefore the procedure is available for cases across borders where such a claim is disputed. Where a claimant considers that there is no defence the option of using the EOP may be preferable and will be the only specific stand-alone EU procedure available for cross-border claims above €2000.

2.4.4. Other EU Instruments

It is necessary to bear in mind that there are various EU instruments which will apply to claims under the ESCP in their own terms because of the material scope of the Regulation. Two examples are the Regulations Rome I and Rome II on applicable law in contract and non-contractual matters respectively. The rules set out in one of these Regulations will determine which law is to be applied as regards a claim under the ESCP just as for a claim under any other procedure.

Those dealing with claims under the ESCP will need to bear in mind also that, depending on the specific subject matter of the claim, there may well be other EU instruments which will apply to that subject. For example a claim may be within the scope of the EU consumer protection instruments and if so the provisions of these may have a bearing on the rights and obligations of the parties to the claim if disputed.

2.5. Relationship with National Law

2.5.1. National Procedural Law

National law plays a role in the ESCP in two ways. Firstly, as regards the procedure itself, the Regulation makes it clear that except as provided in the Regulation the ESCP is to be governed by the procedural law of the Member State in which the procedure is conducted. In the second place the Regulation makes specific provision for national law to apply at certain specific stages of the procedure; examples of these are whether or not there is an appeal from a judgment under the ESCP and the situation where a counter-claim exceeds the financial limit for a European Small Claim⁽²³⁾. Secondly the national procedural law will also have to be applied bearing in mind the objectives of the procedure as set out in recital 7 to the Regulation. It should be borne in mind that not only should the national procedural law not be applied in contradiction with the ESCP but it should also be applied so as to enhance the achievement of the purposes of the ESCP itself.

⁽²³⁾ See paragraph 9.2 below as to information to be supplied about national procedural law for the purposes of the ESCP.

2.5.2. National Substantive Law

Apart from this general procedural situation national substantive law will most likely have to be applied to the subject matter of any claim. However the applicable law may not be the law of the Member State of the court or tribunal seised for the claim, depending on which law is to be applied according to the relevant rules in the applicable law instruments.



CHAPTER THREE

Commencing the Procedure

3.1. The court/s competent to take the claim

Since through Article 11 of the Regulation the Member States are under the duty to ensure that the parties can receive practical assistance in filling in the forms, such assistance should be available in all the Member States as regards completion of the Claim Form as well as all the other forms.

3.1.1. The claimant has to state the ground of jurisdiction in the Claim Form

The rules which determine the court or tribunal to which a claim should be sent under the ESCP are to be found at EU and national level. The EU rules on jurisdiction allocate competence among the courts and tribunals of the Member States, and within each Member State local national rules determine to which court or courts a European Small Claim should be sent. This is an important issue for claimants because, under Article 4.1 of the Regulation, the Claim Form has to be sent to the court or tribunal which has jurisdictional and subject matter competence to deal with the claim. Thus the claimant has to complete Part 4 of the Claim Form to indicate the ground of jurisdiction chosen; practical assistance in completing the forms should be available in all the Member States since they are required by Article 11 to ensure that the parties can be helped to fill in the Claim Form and the other forms.

3.1.2. The EU rules on Jurisdiction

The rules which apply are those set out in the Regulation Brussels I. This means that in order to establish to which court a claim should be sent initial consideration will have to be given as to which rule or rules on jurisdiction apply to the dispute on which the claim is based. The rule or rules to be applied will depend on the precise facts of each situation, one of the basic distinctions being whether the claim arises from a contractual obligation or a non-contractual obligation such as an obligation arising through the fault or negligence of the defendant which has given rise to loss, injury or damage on the part of the claimant.

In order to be able to establish accurately which court or courts have jurisdiction to take a case under the ESCP it is necessary for a prospective claimant to be able to access information about the internal jurisdiction rules of the Member States. Many Member States have websites where such information may be found. Also under the Regulation Member States are under a duty to give to the European Commission details as to which courts or tribunals have jurisdiction to hear a case under the ESCP and, in turn, this information is to be made available to the general public.

Thus such information is available through the European e-Justice Portal which enables access to the European Judicial Atlas website which gives information about internal law in the Member States ⁽²⁴⁾.

3.1.2.1. Jurisdiction in cases involving consumers

There are special jurisdiction rules under the Regulation Brussels I which apply to cases involving consumers. A consumer is defined as a person who is not acting for business purposes. To know which rules under Brussels I apply is of particular importance to establish where jurisdiction lies as regards a claim by a consumer, for example, against a business. In certain circumstances the consumer may be entitled to bring the claim to a court within the Member State where she or he is domiciled or habitually resident and which has jurisdiction to take a European Small Claim under the local national rules. In many cases this will be a court in her or his home town or city. This is also important for other types of case involving consumers including a claim made by a business against a consumer, by an individual 'consumer' against another consumer as well as claims between businesses.

⁽²⁴⁾ The links to the e-Justice Portal and the website of the Atlas are given at the end of this Guide.

3.1.2.2. The 'consumer' jurisdiction rules in Brussels I

Articles 15 to 17 of the Brussels I Regulation contain special rules for jurisdiction over consumer contracts. These rules do not replace other rules in the Regulation but give to consumers an extra choice as to where to bring a claim.

If a contract:

- is for sale of goods on instalment credit;
- is a loan or other credit repayable in instalments; or
- was concluded by the consumer with a business which pursues business activities in or directs such activities by any means, such as advertising, to the Member State where the consumer is domiciled;

the consumer may bring a claim under the contract either:

- in the courts of the Member State where the business is domiciled; or
- in the courts of the place where the consumer is domiciled;

and the business may bring a claim under the contract to the consumer only in the courts of the place where the consumer is



domiciled. In either case a counter-claim may be brought before the court where an original claim is pending.

It is not possible to alter these jurisdiction arrangements by agreement between the consumer and the business unless:

- the agreement is entered into after the dispute which is the subject of the claim has arisen;
- such agreement allows the consumer to present a claim in courts other than as indicated by the rules; or
- the agreement is between a consumer and a business both domiciled in the same Member State and the agreement confers jurisdiction on the courts of that Member State and is not contrary to the laws of that State.

Notes:

1. Where the contract out of which the claim arises is between a consumer and a business which, though not domiciled in the same Member State as the consumer, has a branch agency or establishment in one of the Member States and the dispute arises out of the activities of the branch, agency or establishment, the business is deemed to be domiciled in the same Member State as the consumer.

2. The special consumer rules do not apply generally in the case of contracts for transport; however they do apply where the contract is for an inclusive price and provides for a combination of travel and accommodation as, for example, is the case with package holidays.

3.1.3. The local or 'national' rules on jurisdiction

Once a claimant has decided which rule or rules of Brussels I apply and, therefore, which courts in which Member State or States will be competent, in order to decide to which court a claim under the ESCP should go, the claimant will need also to look at the internal rules of the Member State whose courts or tribunals are competent under the EU rules to find out which court or courts may be competent under the local national law to hear a European Small Claim. The position varies from Member State to Member State since this is not regulated at EU level.

In those Member States where there is a national Small Claims, or similar, Procedure the same courts or tribunals which have jurisdiction to take cases under the national procedure often have jurisdiction to take a European Small Claim. In other Member States there are special rules for determining to which court or tribunal a European Small Claim should go and in some Member States there are several options depending on the subject matter of the claim.

All of this requires reference to sources of information about the internal rules of the Member States. Many Member States have websites where such information is given; furthermore under the ESCP Regulation Member States are obliged to give this information to the European Commission which in turn makes this information available.

This further information is available through the European e-Justice Portal which enables access to this information through the European Judicial Atlas website which gives up to date information about internal law in the Member States⁽²⁵⁾.

3.2. Using the Claim Form

As noted earlier in this Guide the intention of the European Small Claims Procedure is that it should essentially be a written procedure. Therefore the procedure is to be commenced using the Claim Form which is prescribed by the Regulation and is to be found as Form A in Annex I thereto. Member States are obliged under Article 4.5 of the Regulation to ensure that there are supplies of the Claim Form at all courts and tribunals at which the ESCP can be commenced. In addition, through Article 11, Member States must ensure that assistance is available to the parties in the filling in of the forms. A link to the electronic versions of the Claim Form in all the official languages of the EU is to be found at the end of this Guide. The Claim Form itself contains thorough guidance as to what is required to be inserted by the claimant and this guidance should be followed closely. There are two specific aspects however which merit special mention, namely the assessment of the claim itself and the question of how to treat interest for the purpose of the claim.

⁽²⁵⁾ The links to the e-Justice Portal and the website of the Atlas are given at the end of this Guide.

3.2.1. Assessing the claim

3.2.1.1. Stating the claim

Assessing the basis and amount of the claim is necessary for completion of Part 8 of Form A — *'Details of the Claim'* where the claim is stated — as well as to determine that the claim does in fact fall within the financial limit of the ESCP procedure. As regards the first issue it is very important that each separate element of the claim, and the basis thereof, are stated as clearly as possible bearing in mind that the defendant may seek to deny the claim. The factual basis of the claim to be given in box 8 of the Claim Form needs to be supported by as much written material as is necessary to enable the court which receives the claim to determine the value of the claim, the basis of the claim and the evidence which supports the claim. If this is not done there is a risk that the court may reject the claim as unfounded or, at the very least, require further information from the claimant which will cost time and delay the procedure.

3.2.1.2. The value of the claim

As regards the value of the claim it should be borne in mind that the financial limit applies subject to the exclusion of all expenses, disbursements and interest which is added to the principal claim.

If there are several elements in the principal claim these should be stated separately but if the value of all the elements taken together exceeds the financial limit then the claim will not be within the scope of the ESCP ⁽²⁶⁾.

3.2.2. The treatment of interest

Although the claim is assessed without taking interest claimed into account the interest figure or rate still has to be stated, as well as the basis on which interest has accrued or is accruing to the principal claim, and this has to be shown in box 7 of paragraph 7.4. However if the principal claim itself is based on a requirement to pay interest then that will have to be stated in paragraph 7.1 and the value of the claim will be assessed on the basis of that as a principal claim albeit that it is for interest. An example of such a situation might be if the principal claim is for interest on a loan the capital of which has been repaid by the defendant.

3.3. The cost of lodging the claim

In most of the Member States the courts charge a fee for accepting a claim under the ESCP and will not process a claim unless and until the fee is paid. That means that it is necessary to establish first of all if the court to which the claim is to be sent, that is the court with

⁽²⁶⁾ It should be borne in mind that the financial limit will be reviewed and may not remain at €2000.

jurisdiction under the EU and national rules, requires payment of a fee for the lodging of the claim. If so then the next step is to establish how much the fee is and how it should be paid. Again this information may be accessible through local websites and also through the site of the European Judicial Network / Atlas; see paragraph 3.1.2. In any event the method of payment of any fee has to be stated in box 6 of the Claim Form in which various options are set out.

3.4. Attachments with the Claim Form

Because the ESCP is intended to be essentially a written procedure it is necessary to send with the Claim Form all necessary supporting material in the shape of documentary evidence. This material is needed to vouch for the value of the claim, the basis of the claim and the evidence presented if the claim is defended bearing mind that the ESCP applies both to defended as well as to undefended cases. All this is set out in Article 4.1 of the Regulation and in part 8 of the Claim Form. Although the court may request further information from the claimant, for information on this see paragraph 5.2 below, if the information received with the Claim Form, when taken with that given in the Claim Form itself is insufficient to found the claim, then there is a risk that the claim may be rejected so it is preferable to send all

relevant information when the Claim Form is lodged, always bearing in mind that there may be a need for translation with attendant cost implications.

3.5. Sending the Claim to the Court

The Regulation, at Article 4.1, makes it clear that the claim can be sent by post and by any other means of communication such as fax or e-mail acceptable to the Member State in which the ESCP is commenced. It is therefore necessary for the claimant to know what means of communication are acceptable to the court to which the Claim Form has to be sent to commence the procedure. This is a matter established under, and information about this should be available on the same basis as other information about, the national procedures of the Member States.

Claimants will need to be careful to establish what, and in what form, the Court will require as regard supporting material especially documentary and other material which might be used as evidence. Not all courts will accept copies, whether scanned or otherwise, of documentary material and a court may require originals under its national evidence rules. Depending on the exact position in

this respect, therefore, even if a court could accept the Claim in electronic form it may not be possible to send the supporting material electronically and so it would make sense to send the Claim Form with the documentary material by some other means acceptable to the court⁽²⁷⁾.

3.6. Language

According to Article 6.1 the Claim Form must be submitted in a language of the court or tribunal and this also applies to the description of the supporting documents in Part 8.2 of the Claim Form. See also paragraph 4.7 below as regards the other forms and documents. Care has to be taken to select the appropriate language in those Member States where there are several 'official' languages. Some Member States are also prepared to accept claims in a language other than an 'official' language⁽²⁸⁾. It should also be borne in mind that the defendant may be entitled to refuse service of the Claim Form and documents if the relevant

language requirements for service are not met; this is explained further in paragraph 4.2 and footnote 32 below. It should be noted that if translation is necessary for the purposes of Article 6.3 the responsibility of providing translation and hence the cost falls on the party required by the court to do so. The same applies where a party has refused to accept service of a document because it is not in the correct language as set out in Article 6.3.

⁽²⁷⁾ Whilst some courts are prepared to accept the Claim Form in electronic form, and more may follow, whether such courts can accept the accompanying documentary material in electronic form is doubtful; there is nothing in the Regulation to prevent the courts from accepting all documents electronically and it is to be hoped that this position will improve in due course since that would support the overall aim that the ESCP should be simple, speedy and of relatively low cost to users.

⁽²⁸⁾ Information about which languages are required or permitted can also be found on national websites or on the site of the European Judicial Atlas / Network.



CHAPTER FOUR

Procedure after the Court Receives the Claim

4.1. Rectification or completion of the Claim Form by the claimant

4.1.1. The court checks the Claim Form

The first thing which the court has to do on receipt of the Claim Form and the supporting materials, and before it serves the documents on the defendant, is to check that the form has been completed properly in accordance with the requirements of the Regulation. If that is not the case and unless the court takes the view from the outset that the claim is unfounded or completely inadmissible, in which case it can dismiss the claim, the court can request the claimant to complete or rectify the Claim Form or to supply supplementary information or documents. This is set out in Article 4.4.

4.1.2. The court informs the claimant if the claim is outside the scope of the ESCP

If the court takes the view that the claim, though properly stated and well founded, is nevertheless outside the scope of the Regulation, say if it deals with subject matter which cannot be the basis of a claim under the ESCP or if the value of the claim is above the financial limit of the ESCP, according to Article 4.3 of the Regulation it must notify

the claimant of this⁽²⁹⁾. The claimant can then decide to withdraw the claim or, if she or he does not do so, the court is required, again under Article 4.3, to proceed with it under an appropriate national procedure.

4.1.3. The claimant can seek assistance to complete the Claim Form

Since the process of rectification takes additional time it is always in the interests of the claimant to seek to ensure that the form is properly completed and sent to the court with all necessary supporting documents when originally submitted. In this respect the claimant should be able to call on the help of assistance in filling in the form as, according to Article 11, this is to be ensured by the Member States. In many Member States this assistance is provided by members of the court staff but arrangements vary.

4.1.4. Request to the claimant to complete or rectify the Claim Form

Such a request is to be made using Form B prescribed by the Regulation. The Form can also be used where the Claim Form has

⁽²⁹⁾ If the court decides to accept the claim but to proceed with it under the appropriate national procedure it should also advise the claimant of this decision; some Member States have prescribed a form for this purpose also. More generally in some Member States forms have been prescribed to be used in connection with the ESCP additional to those prescribed in the Regulation.

not been submitted in the language of the court in order to request the claimant to provide a form in the correct language. In the form, the court sets out the time by which the Claimant must provide the information requested or return the rectified form. According to Article 14.2 of the Regulation it is provided that this time limit may be extended by the court in exceptional circumstances. If the claimant does not do so by that time or if the form is still not completed correctly or in the appropriate language the claim may be dismissed. The effect of dismissal on this ground is not to decide the substance of the claim which could be re-raised as an ESC or under the appropriate national procedure.

4.2. Sending the Claim Form to the Defendant

4.2.1. Court sends copy Claim Form A and Form C

Once the court has decided that the claim can proceed as a European Small Claim, whether in its original form as submitted by the claimant or after rectification of the Claim Form or the provision of supplementary information or documents by the claimant, the court sends to the defendant a copy of the Claim Form and the supporting documents

along with Answer Form C of which the court has to complete the first part⁽³⁰⁾.

4.2.2. Time Limit

The court is required to send these to the defendant within 14 days of having received the Claim Form properly completed for the purpose of the ESCP. That time limit will run either from the original date of receipt of the Claim Form when no rectification or supplementary information was required, or from such later date as is appropriate having regard to the time limit set for the request to the claimant to rectify or complete the form or to provide supplementary information.

4.2.3. Methods of Service

4.2.3.1. Service by post with acknowledgment of receipt — Article 13.1

Through Article 13.1 the Court has to send Form C with the copy Claim Form and supporting documents by post with an acknowledgment of receipt which gives the date of receipt⁽³¹⁾.

⁽³⁰⁾ Care has to be taken as to the language of the forms — see paragraph 4.2.3 as regards the requirements for service; some courts send forms in both the language of the court and the language of the recipient.

⁽³¹⁾ If the service needs to take place in another Member State, the documents must be transmitted to that other Member State in accordance with the Service Regulation.

4.2.3.2. Default rules for service — Article 13.2

If service by post in this way is not effected then the Regulation provides that service for the purposes of the ESCP may be effected by any of the methods provided for in the EEO Regulation. For these — default — rules themselves see Articles 13 and 14 of the EEO Regulation. It should be emphasised that these rules of service imported from the EEO Regulation are default rules to be used only if service is not effected using the method prescribed in Article 13.1 of the ESCP Regulation. More details about these default rules are given in the box on service on the opposite page.

Default rules for service of documents pursuant to Articles 13 and 14 of the EEO Regulation

4.2.3.2.1. Service with proof of receipt by the recipient or by a representative of the recipient

In summary, the methods of service with proof of receipt specified in Article 13 of the EEO Regulation allow:

- personal service with acknowledgement of receipt signed by the recipient;
- declaration by the competent person who effected the service that the recipient received the document or refused to receive it without any legal justification⁽³²⁾;

⁽³²⁾ In this connection it is necessary to bear in mind in particular the right to refuse service under Article 8 of the Service Regulation (Regulation (EC) 1393/2007) where the documents are not in or accompanied by a translation into a language which the recipient understands or the official language or one of the official languages of the place where service is effected; see also recital 12 to the Regulation; this does not mean however that a defendant is entitled to refuse service of a document which is not in a language of the Member State where she or he is capable of understanding the language of the document; in this connection see the ECJ case No C14/07 — *Ingenieurbüro Michael Weiss und Partner GbR and Industrie- und Handelskammer Berlin v Nicholas Grimshaw & Partners Ltd.*

- service by post attested by an acknowledgment of receipt signed by the recipient ⁽³³⁾;
- electronic service with an acknowledgment of receipt signed by the recipient.

4.2.3.2.2. Service without proof of receipt by the recipient or by a representative of the recipient

Likewise, the methods of service without proof of receipt specified in Article 14 of the EEO Regulation allow:

- service at the recipient's personal address on persons who are living in the same household as the recipient or are employed there;
- in the case of a recipient who is self-employed or which is a legal person, service may also be effected at the business premises of the recipient on persons who are employed by the recipient;
- deposit of the document in the recipient's mailbox;
- deposit of the document at a post office or with competent public authorities and the placing in the recipient's mailbox of a written notification of such deposit in which is stated clearly the character of the document as a court document or the legal

effect of the notification as effecting service and setting in motion the running of time for the purposes of time limits.

If any one of these four methods is used service must be attested:

- either by an acknowledgement of receipt signed by the person on whom the documents were served; or
- by a document signed by the person who effected the service, indicating the method of service used, the date of service, and the name of the person who received the documents as well as the latter's relation to the recipient.

Service may also be effected:

- by post without proof of receipt where the recipient has her or his address in the Member State where the court seised for the substance of the claim is situated;
- by electronic means attested by an automatic confirmation of delivery, provided that the recipient has expressly accepted this method of service in advance.

NB. Service by one of these methods is not admissible if the debtor's address is not known with certainty.

⁽³³⁾ This is similar to the method prescribed by Article 13.1 of the ESCP Regulation — see paragraph 4.2.3.1.



4.3. What the defendant can do on receipt of the Claim Form

On receipt of the Claim Form the defendant may:

- respond within 30 days of service of the Claim Form:
 - by completing Part II of Answer Form C and returning it to the court with any relevant supporting documents; or
 - without using the Answer Form, in any other appropriate way;
- not respond — in which case the court will give judgment on the claim after 30 days from the date of service.

The defendant, in any response, may, amongst other things:

- admit the claim or dispute it in whole or in part;
- challenge the ground of jurisdiction on which the claim is based;
- challenge the claim by arguing:
 - that it is outside the material scope of the ESCP as regards the subject matter — paragraph I of part II of Answer Form C contains space for this purpose; or
 - that it is not a cross-border case within the meaning of Article 3 of the Regulation;
- state that the value of a claim, if non-monetary, exceeds the limit set for the European Small Claims Procedure;
- dispute the claim based on the substance or on the amount claimed;

- indicate, using paragraph 2 of Part II of the Answer Form, what witnesses and other evidence are to be submitted and attach any relevant supporting documents;
- ask for an oral hearing using paragraph 3 of the Answer Form; and
- state a counter-claim using Claim Form A and submit it along with any relevant supporting documents as well as the Answer Form.

NB. The defendant is not required to send any documents to the claimant; that is for the court to do in accordance with the terms of Article 5.4 and 5.6 of the Regulation.

4.4. Claim or counter-claim exceeds the limit

If the defendant states that the value of a non-monetary claim exceeds the ESCP financial limit the court has to take a decision on the matter within 30 days of despatching the response to the claimant. Where the defendant states a counterclaim the claimant will have a similar right to state that the counter-claim exceeds the financial limit. It follows from the terms of Articles 2.1 and 5.5 as applied to the counter-claim by Article 5.7 that the claimant and defendant respectively will have an opportunity to contest each other's positions on this point within the procedure. The decision of the court on this matter is not a decision on the merits of the claim or counter-claim but a decision as to whether the claim is within the scope of the

procedure⁽³⁴⁾. The Regulation, in Article 5.5 and 5.7, provides that the court's decision on this point may not be contested as a separate matter.

4.5. The Counter-claim

If the defendant states a counter-claim, then, as provided by Article 5.7, all the provisions of the Regulation, specifically Articles 2, 4, 5.3, 5.4 and 5.5 will apply to the counter-claim as to the principal claim. This means that the counter-claim must be within the scope of the Regulation, and the provisions about the commencement of the procedure also apply to the counter-claim⁽³⁵⁾. The following additional points apply as regards the counter-claim:

- the court has to serve the counter-claim and supporting documents on the claimant within 14 days of receipt;
- the claimant must respond within 30 days of service;
- if the counter-claim is in value above the financial limit for the ESCP, the whole case, that is both claim and counter-claim, comes out of the ESCP and will be dealt with in accordance with the relevant procedures in the Member State of the court seised whether in that court or another court which is competent under national law.

⁽³⁴⁾ See also paragraph 4.1.2 above as to what happens when the claim or counter-claim falls outside the scope of the ESCP.

⁽³⁵⁾ See, in this regard, Chapter 3 of this Guide to which reference should be made.

NB. The claim and counter-claim are to be treated as separate claims for the purpose of their valuation. Again this follows from the fact that Article 2 is applied to the counter-claim by Article 5.7. It also follows that it is not the case that the cumulative value of the claim and counter-claim should be within the financial limit for the case to continue under the ESCP; so the court is not entitled to look beyond the respective values of the claim and counter-claim in taking that decision.

4.6. Timescales

It should be noted that there are fixed timescales applied to all of the stages of the ESCP and it is especially important that these are followed at the commencement and when the court starts to consider the issues. In particular the timescales set out in Article 5 are critical in achieving a speedy procedure notably those in relation to the service of the documents and for the responses from the defendant and the claimant depending on how the claim is developing. Under Article 14.2 the court has power to relax the time limits set for the defendant to submit an answer to the claim — under article 5.3 — and for the claimant to submit a response to the counter-claim — under Article 5.6 but only in exceptional circumstances.

4.7. Language

It is to be borne in mind that the rules as regards the language to be used for the ESCP proceedings are the same for the response from the defendant, the counter-claim, and any response thereto, as well as the description of any documents supporting the counter-claim, as they are for the principal claim; reference is made to paragraph 3.6 above in this respect.



CHAPTER FIVE

Establishing the Facts

5.1. Duty of the Court as regards disputed matters

5.1.1. The Court takes the initiative in establishing the facts

The Court has the primary duty to establish any facts in dispute in a claim or counter-claim under the ESCP. This is because under the relevant articles of the Regulation — Articles 4.4, 7.1 and 9.1 — the duty is placed on the Court to do so and to take the initiative in indicating to the parties what information the court requires from them in order to be able to reach a decision on matters in dispute. In this way the management and control of the procedure is with the court and the intention is that the court will thereby ensure that the objectives of the Regulation, that the procedure be speedy, simple and relatively less expensive, will be achieved.

5.1.2. The Court to specify means of taking and nature of evidence

For this reason also, Article 9 provides that the court is to specify the means of taking evidence and will hear oral evidence and evidence from expert witnesses only if it is necessary to do so in order to be able to give a judgment. In evaluating this issue the court has to bear in mind what the cost of such evidence might be, this against the background of the policy, set out inter alia in Articles 1 and 16 and

recital 29, that the ESCP should aim to reduce costs for the pursuit of low value cross-border claims. It is provided by Article 5.1 that it is for the court to decide whether it requires holding a hearing for the purpose of establishing the facts but the holding of a hearing is elective and the court has the power to take evidence without holding a hearing.

5.2. Additional information from claimant and defendant

As noted earlier in this Guide in paragraph 4.1, and as provided by Articles 4.4 and 5.7, on receipt of the Claim Form or a counter-claim, the court can request the parties to provide further information if it considers that to be necessary. Because the duty is imposed on the court to establish the facts and to determine issues as regards the claim, Article 7.1(a) also enables the court to request further details concerning the claim once a response has been received to the claim or counter-claim after service. The court sets a time limit within which the information has to be provided and, as provided by article 14.2, that time limit can also be extended in exceptional circumstances. According to Article 7.3, read in conjunction with Article 14.1, the court has to inform the party to whom the request is made about what the consequences will be if the time limit is not complied with and these could include finding against that party or dismissing the claim. All of these provisions are intended to strengthen the role of the court in managing the case so as to reach a speedy decision.

5.3. The Court decides to hold a hearing

5.3.1. Court to hold a hearing only if necessary

As noted earlier it is for the court to decide whether to have a hearing to determine the facts. This follows the principle set out in Article 5.1 that the ESCP is essentially a written procedure and the court should decide whether to hold an oral hearing only if it considers that it is necessary to do so to decide any disputed questions of fact which it cannot resolve by other means, say by requesting additional information from either or both of the parties, or if there is a request from a party. It follows from this that the decision of the court as to whether to hold a hearing is to be taken in relation to each individual case taking into account the specific facts in dispute as well as the information available to and obtainable by the court without holding a hearing. The court should, in carrying out its functions under Article 5.1 and applying the general principle that the ESCP is to be seen as a paper based procedure where the holding of a hearing is exceptional, decide whether or not to hold a hearing on a case by case basis taking into account all the circumstances in each individual case and should not apply a general policy to do so in all cases under the ESCP⁽³⁶⁾. Courts will wish to consider such issues as cost and convenience when deciding whether or not to hold a hearing.

5.3.2. Court can refuse to hold a hearing

However even if a request for a hearing is made by a party the court can refuse to hold a hearing if it takes the view, having regard to the circumstances of the case, that a hearing is not necessary to resolve the issues and for a fair conduct of the case. In deciding whether or not to hold a hearing, as well as in the conduct of the hearing, the court has to respect the right to a fair trial and the adversarial process, as is made clear in recital 9. If the court refuses a request for an oral hearing it must give its reasons in writing but Article 5.1 makes it clear that the decision on refusal cannot be the subject of a separate appeal or review.

5.4. Evidence issues

Article 9.1 leaves no doubt that it is for the court to decide by what means evidence will be taken and also the extent of the evidence necessary for it to reach a judgment. Decisions on these matters have to be taken under the rules applicable to the admissibility of evidence which are part of the law applicable to the procedures in the court concerned and so of its national procedural law. Article 9.2 provides that, if so permitted under that law and procedure, the court may admit written statements. The court must bear in mind the aims of the procedure to be as speedy and least expensive as possible and Article 9.3 provides, consequently, that the court must choose methods of taking evidence which respond to those norms and are the simplest and least burdensome. Where evidence has to be taken from another

⁽³⁶⁾ See, generally, as regards the duty of the court in deciding about the holding of a hearing, paragraph 5.6.2 below and recital 9.



EU Member State the court will need to consider using the procedures established under the relevant EU rules and in particular those set out in the Regulation on the Taking of Evidence in Civil and Commercial Matters⁽³⁷⁾. According to Article 9.2 the court must take into account the cost of taking evidence when deciding whether or not to hear evidence from experts or orally.

5.5. Use of ICT

According to Articles 8 and 9.1 it is provided that the court should encourage the use of IT communication such as video or teleconferencing for the holding of the hearing or as a means of taking evidence. This is to assist in keeping costs to the minimum and to speed matters up although it does depend on the availability of the technical means for the use of ICT. Given the availability of those ICT means the use thereof can save time and money especially in the situation where, exceptionally, the court decides to hear oral evidence from witnesses in another Member State. Again if this is necessary the Court can take advantage of the provisions of the Evidence Regulation in simplifying the process of taking evidence cross-border⁽³⁸⁾.

⁽³⁷⁾ Regulation (EC) No 1206/2001.

⁽³⁸⁾ See also recital 20 and footnote 24 above; for evidence purposes see also the Practical Guide on Using Video-Conferencing under the Evidence Regulation http://ec.europa.eu/civiljustice/publications/docs/guide_videoconferencing_en.pdf.

5.6. The Role of the Court

5.6.1. The court determines the procedure

The central aims of the ESCP as set out in Article 1 of the Regulation are to speed up, simplify and reduce the costs of litigation concerning small claims in cross-border cases within the EU and in so doing to facilitate access to justice⁽³⁹⁾. In fulfilling these aims the courts are given a key role to take the initiative to control and determine the procedure to be followed in the ESCP and to apply national procedure law accordingly. Apart from determining the extent of the evidence and the means by which it is to be taken, the court has generally to manage the procedure in accordance with the principles of adversarial process and the right to a fair trial of the case. Furthermore, according to Article 12.3 the court is placed under a duty wherever appropriate to seek a settlement between the parties and this duty is not confined to the oral hearing but extends throughout the proceedings on claim and counter-claim.

5.6.2. The court informs the parties on procedural questions

The duty of the court to control and determine the procedure in the ESCP is reinforced by Article 12.2 whereby the court also has the duty to support the parties as regards procedural matters by informing them

about procedural questions and it follows from recital 9 that the court in so doing must be even handed as between the parties in order to ensure the fairness of the procedure. The duty to inform the parties about procedural questions can be carried out in various ways depending on national procedures. For example it could be achieved orally in the course of the proceedings or by means of electronic communications such as e-mail or tele-conference or by such other means as may be permitted by national law⁽⁴⁰⁾. Article 12.1 provides that it is not required that the parties should make a legal assessment of the claim thereby leaving this task to the court. For the purposes of the ESCP a court or tribunal should include at least one person qualified to serve as a judge under the law of the Member State of the court where the claim is proceeding⁽⁴¹⁾.

5.7. Time Limits

Within 30 days of the receipt of the answer from the defendant to the claim, or from the claimant to the counter-claim, the court has to decide whether to take evidence, or to summon the parties to an oral hearing once it decides that one is to be held. Bearing in mind that speed is important the court has to hold the hearing within 30 days of summoning the parties. As noted earlier in paragraph 5.2, Article 14.2 provides that certain time limits can be extended but

⁽³⁹⁾ See also recitals 5, 7 and 8.

⁽⁴⁰⁾ See recital 22.

⁽⁴¹⁾ See recital 27.

only in exceptional circumstances and that also applies to the 30 day periods set out in Article 7. However as the intention is that all the steps of the ESCP should be taken as speedily as possible and because that time limit is stated as a maximum it could be possible for the court to fix a shorter time limit than 30 days⁽⁴²⁾.

⁽⁴²⁾ See generally, as regards the duty of the court to expedite the proceedings, recital 23.



CHAPTER SIX

The Judgment

6.1. Issuing a Judgment

A judgment in a claim under the ESCP is issued at one of the following points:

6.1.1. Judgment in default — General

If the defendant does not answer the claim within the period of 30 days from service of the Claim Form and the Answer Form, Form C, the court shall issue the judgment. Also if the court has requested a rectification of the claim, additional information or further details, and the party to whom the request has been made does not respond within the time limit set, then the court may grant judgment in favour of the other party. If the court has itself set a time limit for any of these purposes then it has to inform the party concerned of the consequences of not complying with it including the possibility that a judgment might be granted against that party in the circumstances.

6.1.2. Judgment in default — Counter-claim

As with the principal claim if the claimant does not respond within the period of 30 days from service of the counter-claim the court can give a judgment on the counter-claim. In such a situation it is to be presumed that the claimant will wish to pursue the principal claim so in that situation the court cannot dismiss the claim unless it has requested further information from the claimant following receipt of

the response to the claim. The court will then have to determine, as between the parties, what is the fairest method of proceeding including deciding to seek additional information or evidence under Article 7.1(a) or organise a hearing.

6.2. Judgment after receiving all information including after taking evidence

6.2.1. Where no hearing is held

If the court decides to reach a decision on the substance of the case without holding a hearing either after receiving the defendant's answer to the claim, if any, or having requested further information within a specific time limit and it has received that information, the court is to issue the judgment within 30 days of receipt of that information. In addition if the court has taken evidence as necessary for giving the judgment but without holding a hearing it must issue the judgment within the period of 30 days of having done so.

6.2.2. After a hearing

If the court holds an oral hearing it must issue the judgment within 30 days of the date of the hearing. It is implicit that the court will have received all the necessary information and evidence to reach a decision on the substance of the claim or, if there is one, counter-claim by the close of the hearing and there is no provision for the court to seek any

further information or evidence from the parties once the hearing is completed. According to Article 14.3 the time limit of 30 days can be extended but only if in exceptional circumstances the court is not able to issue the judgment within the period of 30 days specified in the Regulation and in such an exceptional situation the court is to take all steps required to issue the judgment as soon as possible. In order to expedite matters the court can of course issue the judgment earlier than 30 days if it is ready to do so.

6.3. The form, content and service of the Judgment

6.3.1. Judgment to be in writing for service on parties

Although the Regulation does not specify that the judgment should be in writing, and the legal systems of the Member States may vary as to whether or not a written judgment is required for small claims, it is implicit from the fact that the judgment in a European Small Claim has to be served on the parties that it should be in written form. Otherwise there is no particular form and content of the judgment specified in the Regulation and, following Article 19, these will therefore be determined by the law of the Member State in which the court hearing the claim is situated.

6.3.2. Language of Judgment for service

Although the Regulation does prescribe a form of certificate which is to be issued by the court on request of one of the parties for the purposes of recognition and enforcement⁽⁴³⁾ the judgment is separate. Although the Regulation does not specify that the judgment should be written in a language other than the language of the court which issues it given that the judgment is to be served on the parties it will be necessary for the appropriate language version to be available for service in order to meet the terms of the relevant EU law on the subject⁽⁴⁴⁾. Where the text of the judgment has to be translated in order for the requirements for service to be met, it is likely, subject to the provisions of the relevant procedural law, that the cost of doing so will fall in the first instance on the person in right of the judgment and in whose interests it is that the judgment should be implemented. This may be recoverable from the judgment debtor as part of the costs of the proceedings.

6.3.3. Judgment served on the parties

Once the judgment has been issued Article 7.2 provides that it must be served, by the court, on the parties using one of the methods of service specified in the Regulation; for information on this see Article 13 and paragraph 4.2.3.

⁽⁴³⁾ See paragraph 8.3 below as regards the certificate and Chapter 8 generally as regards recognition and enforcement.

⁽⁴⁴⁾ See above paragraph 4.2.3 and recital 19.

6.4. Costs

The judgment will contain an order for payment of costs. One of the key aims of the ESCP is to keep costs to the minimum, as is clear from the terms of Article 1 and recital 29, and therefore Article 16 provides that costs should not be awarded if they are unnecessarily incurred or are disproportionate to the claim. This is particularly important if the successful party is represented by a lawyer or other legal professional since the costs of such representation should be awarded in the judgment only if they are proportionate to the value of the claim and were necessarily incurred. Subject to that principle the rule to be applied following Article 16 of the Regulation is that the unsuccessful party should be ordered in the judgment to meet the costs of the proceedings and these are to be determined under the relevant national law.



CHAPTER SEVEN

Review and Appeal

7.1. Review under the European Small Claims Procedure

In Article 18 of the Regulation, provision is made for a review of a judgment issued under the ESCP. This is available either where the judgment is given against the defendant in favour of the claimant or where, the defendant having stated a counter-claim, the court has granted a judgment against the claimant.

7.1.1. Grounds for a Review

The defendant or, where a counter-claim has resulted in a judgment being made in favour of the defendant, the claimant shall be entitled to apply for a review of a judgment issued under the ESCP before the competent court in the Member State where the judgment was given:

- where the Claim Form or the summons to an oral hearing order was served without proof of receipt by the intended recipient personally and service was not effected in sufficient time to enable the defendant or, as the case may be, the claimant to arrange for a defence, without any fault on their part; or
- the defendant or the claimant was prevented from objecting to the claim by reason of *force majeure* or due to extraordinary circumstances without any fault on their part;

provided in either case that the defendant or, where applicable, the claimant acts promptly.

NB. A Review under Article 18 of the judgment given in the ESCP can only take place in the Member State in which the judgment was issued irrespective of where the judgment is to be enforced.

7.1.2. Outcome of a Review

If the Review is upheld on the basis of one of the grounds set out in the Regulation the judgment reviewed shall be null and void. Where the Review is rejected the judgment remains in force.

7.2. Appeal

Under Article 17 the question of whether or not an appeal against the judgment is available in the Member State where the judgment is issued is a matter regulated under the national law of the Member States. If there is an appeal available the same rules as to costs apply to the appeal as apply to the original proceedings in the claim.

7.3. Legal Representation at Review and Appeal

The provisions of Article 10 on legal representation apply to the proceedings for Review under Article 18 just as they do to the original proceedings on the principal claim and any counter-claim so that it will not be necessary for parties to have legal representation for these proceedings. It is for consideration whether this is also the position as regards an appeal against a judgment under the ESCP under national procedure law. This is particularly significant as regards the awarding of costs since, in the case of appeals, by virtue of Article 17.2, the costs regime under Article 16 is applied to any appeal just as it is applied to the original proceedings. Likewise Article 16 applies to proceedings for Review under Article 18. In this connection the terms of recital 29 should be borne in mind to the effect that any expenses awarded against an unsuccessful appellant need to be proportionate to the value of the claim or necessarily incurred including those arising from the fact that the other party was represented by a lawyer⁽⁴⁵⁾.

⁽⁴⁵⁾ See also paragraph 9.1.2.



CHAPTER EIGHT

Recognition and Enforcement

8.1. Recognition and Enforcement — General principles

8.1.1. Abolition of *Exequatur*

A judgment in a claim or counter-claim under the ESCP which is enforceable in the Member State in which it was given is equally enforceable in any other Member State. By virtue of Article 20 there is no need to obtain a declaration of enforceability in the Member State of enforcement and there is no possibility to oppose recognition of the ESCP judgment⁽⁴⁶⁾. In any event no review as to the substance is allowed in the Member State of enforcement. The judgment shall be enforceable notwithstanding the possibility of an appeal⁽⁴⁷⁾. It should be borne in mind, however, that a person who wishes to enforce a judgment given by a court under the ESCP has the option of using the procedures under the Brussels I Regulation.

8.1.2. Enforcement Procedure — Applicable Law

By virtue of Article 21 the procedure for enforcement is governed by the law of the Member State of enforcement, subject to the provisions of the Regulation on enforcement, and a judgment given under the ESCP

is to be enforced under the same conditions as a judgment issued in the Member State where enforcement is sought.

8.2. Requirements of the ESCP — Enforcement procedure

In order to begin the process which could lead to enforcement of the ESCP judgment under the Regulation the person seeking enforcement should obtain a certificate from the court of origin the issuing of which is governed by Article 20.2; see also the following paragraph. According to Article 21 such a Certificate has to be sent to the appropriate enforcement authority in the Member State of Enforcement with a copy of the judgment. The copy judgment has to be authenticated or satisfy the conditions necessary to establish its authenticity under the law of the Member State of enforcement. It is expressly provided by the same Article that the party seeking enforcement does not require having an authorised representative or a postal address in the Member State of enforcement apart from any agent instructed by that party for the actual process of enforcement. Also it is not necessary for that party to produce in the Member State of enforcement any security, bond or other deposit before enforcement can be carried out.

⁽⁴⁶⁾ See also recital 30.

⁽⁴⁷⁾ See Article 15.1 and recital 25.

8.3. Use of the Certificate of Judgment

8.3.1. Form D

The Form of certificate of Judgment, Form D, is prescribed in Annex IV of the Regulation. This certificate has to be issued by the court which gave the judgment under the ESCP at the request of one of the parties. Such a request can be made at the outset of the procedure, for which there is space provided in paragraph 9 of the Claim Form, Form A and, although this is not specified expressly in the Regulation, at any stage after the judgment has been issued. It is desirable for the person who seeks to enforce a judgment under the ESCP to anticipate the need for the certificate and so to request the court as early as possible to issue it. Furthermore care needs to be taken by the court in the completion of the certificate because that is the document on which execution will be based. In particular it is important that all relevant information is inserted to enable the enforcement officers charged with the actual execution and others who may be involved such as bank staff, say where a bank account is attached, to see and understand the terms of the order, the details of the person against whom it is made and the amounts awarded in the judgment for all of which space is provided in Form D.

8.3.2. Language of the Certificate

It may also be necessary for the certificate to be translated into the language which is the appropriate language in the Member State

of enforcement, which, by virtue of Article 21.2(b), will be one of the following:

- the official language of that Member State;
- if there is more than one official language, that or one of those which, in conformity with the law of the Member State of enforcement, is the language of proceedings in the court of the place where enforcement is to be sought; or
- another language which the Member State of enforcement has indicated that it is prepared to accept.

Translation of the Certificate is to be effected by a person qualified in one of the Member States to make translations.

Each Member State may indicate the official language or languages of the institutions of the European Union, other than its own, which it can accept for the European Small Claims Procedure. It is for the person seeking enforcement to pay for the translation of the certificate. In principle there is no reason why the court should not be able to issue a version of the certificate in a language appropriate to the Member State of enforcement when requested provided that it is known in which State enforcement is to take place. However this should not in practice present much difficulty given that most of the details of information included on the certificate are straightforward and that Form D is available online in the official languages of the EU.

8.4. Refusal and limitation of enforcement

8.4.1. Refusal of enforcement in exceptional circumstances

By virtue of Article 22 the court in the Member State of enforcement is to refuse enforcement of the judgment on the ground that it is irreconcilable with an earlier judgment given in any Member State or in a third country provided that:

- the earlier judgment involved the same cause of action and was between the same parties and fulfils the conditions necessary for its recognition in the Member State of enforcement; and
- the fact of the irreconcilability of the judgment with the earlier judgment was not and could not have been raised as an objection in the ESCP proceedings in the Member State where it was given.

8.4.2. Procedure to challenge enforcement

The Regulation does not provide a procedure for an application to the court to challenge the enforcement of the judgment on the grounds of irreconcilability and this is a matter to be regulated under the procedural law of the Member State concerned. Similarly it is normally also possible for the court in that Member State under the national law to refuse or stop enforcement if and to the extent that the sums awarded in the ESCP judgment have been paid or the judgment has otherwise been satisfied.

8.4.3. Stay or limitation of enforcement

By virtue of Article 23 where a party against whom enforcement of a judgment given under the ESCP has challenged the judgment or where such a challenge⁽⁴⁸⁾ is still possible or where a party has applied for review of the judgment under the Regulation, the court or other competent authority in the Member State of enforcement, on application by that party, may:

- limit the enforcement proceedings to protective measures, such as the 'freezing' of a bank account or of wages and salaries;
- make enforcement conditional on the provision of such security as it shall determine; or
- under exceptional circumstances, stay the enforcement proceedings, that is suspend further procedure for a specified or limited period.

⁽⁴⁸⁾ The word 'challenge' as used here is to be understood as including an appeal against the judgment, if such an appeal is possible under the law of the Member State where the court is situated which granted the judgment, and a challenge on the ground of irreconcilability as envisaged in Article 22 of the Regulation. Given that review under Article 18 of the Regulation is expressly mentioned in Article 23 that situation is not to be understood as being included within the meaning of 'challenge' under Article 23.

8.5. Proceeding to Execution of the ESCP Judgment

8.5.1. Steps to Execution

Obtaining a judgment and certificate under the ESCP is the first step towards actual enforcement of the obligation in respect of which the judgment was granted. In order to secure fulfilment of the obligation in question further steps need to be taken to secure payment or performance in the event that the person against whom the judgment is granted does not comply voluntarily with the judgment by making the payment or taking or desisting from action as ordered by the court whereby actual measures of execution of the judgment become necessary. At present this is all regulated under the national law and procedures of the Member States.

8.5.2. Enforcement Authorities and Agencies

In order to secure execution of the judgment it is necessary to instruct the authorities or agencies in the Member State of enforcement which are competent to take measures of execution. This may involve sending the documents and instructions to a court in those Member States, where execution is court based, or otherwise direct to enforcement agents where they accept instructions direct on behalf of clients seeking execution of judgments. Details of enforcement agents in the various Member States and information about execution of judgments can be found on internal national websites as well as on the European Judicial Atlas, EJNI and e-Justice Portal sites.

8.5.3. Language issues — Practical implications for enforcement

A party seeking to enforce a judgment should bear in mind that the question of language can arise as a practical as well as a judicial requirement. For instance if under the national law applicable to enforcement of judgments papers have to be served in another Member State on the defendant against whom execution is sought the relevant requirements for language as specified in the ESCP Regulation and in the Service Regulation will apply. In addition it has to be remembered that courts, enforcement agents and others involved in execution have to understand the terms of the judgment and of the certificate in order to be able to carry out execution effectively. This also applies to those who may be involved as third parties such as persons in banks and other holders of property of the person against whom enforcement is sought.



CHAPTER NINE

Final Matters

9.1. Lawyers

9.1.1. No requirement to instruct a lawyer for the ESCP

The ESCP Regulation does not go so far as to prevent parties from being represented by a lawyer or another legal professional; Article 10 and recital 15 state simply that representation by a lawyer is not mandatory so any rule to that effect under the national law of a Member State is not applicable to the ESCP. Similarly Article 21.3(a) makes it clear that, for enforcement of a judgment under the ESCP, it is not required that a party should have an authorised representative in the Member State of enforcement. This does not include agents who actually carry out the measures of execution in that State such as Huissiers de Justice, Deurwaarders and Messengers at Arms.

9.1.2. Cost implications of instructing a lawyer

A party considering whether to instruct a lawyer in a claim under the ESCP should bear in mind that even if the claim is successful and leads to a judgment then there is a risk that the court will not allow the costs of instructing the lawyer to be recoverable from the other party since, by virtue of Article 16, the court is not to award costs to the extent that they were incurred unnecessarily or are disproportionate to the claim. recital 29, invoking the aims and objectives of the ESCP, including

the need to achieve simplicity and cost-effectiveness, indicates that the court, in considering what costs are proportionate to the claim, should take into account the fact that the other party, namely the party in whose favour the judgment was granted, was represented by a lawyer.

9.2. Information and assistance

9.2.1. Information — General

There are various provisions in the ESCP Regulation for information to be made available by Member States about various aspects of the ESCP. By virtue of Article 24 the Member States are enjoined to cooperate — with each other and in particular by way of the European Civil Judicial Network to provide the public in general, and professional circles, with information about the ESCP. Specifically, under Article 25, Member States are taken bound to provide information to the European Commission about the following aspects of the ESCP:

- which courts have jurisdiction to give a judgment under the ESCP;
- the means of communication acceptable to the Member States for receiving a Claim Form under the ESCP;
- whether an appeal is available and if that is so the time limit within which an appeal should be lodged;
- the languages in which a certificate of a judgment under the ESCP will be acceptable for enforcement purposes;
- the authorities which are competent in the Member States for enforcement including the making of any order to stay or limit enforcement;

and are also required to notify of any subsequent changes to that information. The Commission is to make that information available publicly. This is done particularly through various websites including that of the European Civil Judicial Atlas and e-Justice Portal details of which are given at the end of this Guide.

9.2.2. Information and assistance to the parties

In addition to the general information to be made available about the functioning of the ESCP, individual parties are to be assisted and provided with information at various stages of the procedure. These stages include the following:

- under Article 11 parties are to be given practical assistance with the filling in of the forms;
- under Article 12 courts are, if necessary, to provide information to parties about procedural questions;
- under Article 14 Courts are to inform Parties of the consequences of not complying with any time limit set by the court.

Also it is to be borne in mind that Member States are to ensure that the Claim Form, Form A, is available at all courts and tribunals at which an ESCP can be commenced.

9.3. Review of the ESCP including the financial limit

9.3.1. Review — General

In common with other EU instruments the ESCP Regulation is to be the subject of a Review. According to Article 28 the European Commission is taken bound to present a detailed Report to the European Parliament, the Council and ECOSOC by 1st January 2014. This Report should review the operation of the ESCP, contain an assessment of the functioning of the procedure in each Member State and be accompanied by proposals for adaptation. In order to assist this process the Member States are to provide the Commission with information concerning the cross-border functioning of the ESCP including court fees, speed of the procedure, efficiency, ease of use and the internal Small Claims Procedures of the Member States.

9.3.2. Review — Value of the Claim

It was a difficult matter to decide just what the appropriate upper limit of the value of the claim should be for a cross-border EU Small Claims Procedure so the chosen figure is very much a compromise between Member States which argued for a rather higher figure and others which wanted a lower figure.

In this respect it is significant that one of the matters to be considered when the Regulation comes to be reviewed in due course is the limit of the value of the claim under the Regulation. The Report to be submitted by the European Commission under Article 28 is to contain a review and, if appropriate, proposals for adaptation of the limit of the value of the claim.

Reference Material and Links

The European e-Justice Portal is a single point of entry to all relevant information about the ESCP; responsibility for providing the information about the ESCP is shared between Member States and the European Commission.

A) Forms to be used in the European Small Claims Procedure.

https://e-justice.europa.eu/content_small_claims_forms-177-en.do

B) Courts competent in Member States for European Small Claims Procedures. Find out which court is competent for deciding on your ESCP case in a Member State that has jurisdiction over it.

http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_en.jsp#statePage0

**Practice Guide for the Application of the European Small Claims Procedure
under Regulation (EC) No 861/2007 of the European Parliament and of the Council
of 11 July 2007 establishing a European Small Claims Procedure**

*Europe Direct is a service to help you find answers
to your questions about the European Union.*

Freephone number (*):

00 800 6 7 8 9 10 11

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

© iStockphoto, Corbis, Imageglobe

© European Union, 2013

Reproduction is authorised provided the source is acknowledged.

Printed in Belgium

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)

Contact

European Commission
Directorate-General for Justice
European Judicial Network
in civil and commercial matters
just-ejn-civil@ec.europa.eu
<http://ec.europa.eu/justice/civil>



Publications Office

European Judicial Network
in civil and commercial matters



ISBN 978-92-79-29845-5



9 789279 298455

doi:10.2838/37883