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## Deliverable 2.1

# ‘Comparative and Analytical Study of Best Practices’ for the National Enforcement Rules of the ESCP Judgments in Member States

Project Name: **Small Claims Analysis Net II – SCAN II**

Grant Agreement No.: **101046587**

Call: **JUST-2021-JCOO**

Start date of the project: **1 March 2022**

Duration of the project: **24 months**



University of Ljubljana





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## Document Information

Project short name and number	SCAN II (101046587)
Work package	2
Number	D2.1
Title	'Comparative and Analytical Study of Best Practices' for the National Enforcement Rules of the ESCP Judgments in Member States
Type <sup>1</sup>	R
Dissemination level <sup>2</sup>	PU

<sup>1</sup>**Types.R:** Document, report (excluding the periodic and final reports); **DEM:** Demonstrator, pilot, prototype, plan designs; **DEC:** Websites, patents filing, press & media actions, videos, etc.; **OTHER:** Software, technical diagram, etc.

<sup>2</sup>**Dissemination levels:** Public — fully open (e.g. web); Sensitive — limited under the conditions of the Grant Agreement; EU classified — RESTREINT-UE/EU-RESTRICTED, CONFIDENTIEL-UE/EU-CONFIDENTIAL, SECRET-



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Contractual date of delivery	31.12.2022
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## Document History

Version	Date	Status	Authors, Reviewers	Description
v 0.01	25.03.2022	Template	A: Sajedeh Salehi [VUB] R: Marco Giacalone [VUB]	Project deliverable template
v 0.02	30.09.2022	Draft	A: SCAN II Consortium R: Rimantas Simaitis, Vigita Vebraite, Milda Markeviciute [VU]	Submission of country reports
v 0.03	30.11.2022	Draft	A: Milda Markeviciute [VU] R: Rimantas Simaitis, Vigita Vebraite [VU]	Review of country reports
v 0.04	15.12.2022	Draft	A: Rimantas Simaitis, Vigita Vebraite, Milda Markeviciute [VU] R: Marco Giacalone, Sajedeh Salehi, Paola Giacalone [VUB]	Initial draft of deliverable
v 0.05	28.12.2022	Final	A: Milda Markeviciute [VU] R: Rimantas Simaitis, Vigita Vebraite [VU]	Review and minor updates
v 1.00	30.12.2022	Final	R: Marco Giacalone, Sajedeh Salehi [VUB]	Coordinator final check for submission



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## I. Background to the SCAN II Project

The SCAN II Project is developed upon the results of the SCAN project and aims at better enforcement of the European Small Claims Procedure (ESCP) judgments through creating a Roadmap of the 26 EU Member States' (MSs) ESCP enforcement rules on the one hand and simplifying and digitalising these enforcement procedures on the other. As regards the first objective, the existing lack of harmonization of MSs' enforcement rules signifies a major weakness in cross-border enforcement of ESCP judgments, making it difficult for consumers (as end-users) and lawyers and bailiffs (as operators) to be aware of the existence and practical functioning of different EU enforcement rules. With respect to simplifying and digitalizing the ESCP enforcement procedures – based on a needs assessment approach and the importance of establishing a fully tech-driven mechanism for promoting citizens' access to justice – the SCAN II Project will develop an IT platform and a Blockchain System to fill the existing gap in the ESCP enforcement across the Union. Embracing a combination of theoretical and practical approach, the SCAN II Project Consortium of experts in international civil procedural law, private international law, and information technology will work in a joint collaboration to: a) pursue clarity in analysing the existing enforcement rules by creating a Roadmap, b) establish an IT platform providing effective guidance on the EU enforcement rules concerning the ESCP judgments; and c) develop a Blockchain System for promoting the enforcement procedures. The project will involve over 100 lawyers, 100 bailiffs, 26 consumer associations, 5 policymakers, and 1500 EU consumers across the Union.

### 1. Objective and Scope of Deliverable

The main objective of this report is to gain profound insights as to national enforcement rules of the ESCP judgments in the 26 EU Member States. The collected data by the SCAN II Consortium is used to conduct the Comparative and Analytical Study to identify the best practices in ESCP judgments enforcement procedures [D2.1] on the one end and create the Roadmap for EU Enforcement Rules on ESCP Judgments [D2.2] on the other. Within the scope of the Comparative and Analytical Study, the Consortium verifies the use of the ESCP procedure; its enforcement and identifies the types of issues encountered at enforcement level; compares national experiences and checks whether the application of the ESCP enforcement rules is uniform throughout the EU. Besides, the comprehensive, systematic, and beneficial Roadmap of the ESCP enforcement rules of the 26 Member States is created for end-users (i.e., consumers and SMEs) and categories of stakeholders involved in the ESCP enforcement procedures at national levels.



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## II. Analysis and Comparison Report

Author(s): assoc. prof. dr. Rimantas Simaitis, assoc. prof. dr. Vigitā Vebraitė, dr. Milda Markevičiūtė

### 1. General overview of the national enforcement rules on ESCP judgments

Research shows that in the regulation of Member States there is no differentiation between enforcement rules of the ESCP judgments (including other enforceable instruments under ESCP) and enforcement of the other court judgments. Therefore, in order to understand the national enforcement procedure, general rules on enforcement in each Member State are to be analysed. It programs that rules on enforcement of ESCP judgments are not uniform – and were never intended to be: the ESCP Regulation does not concern enforcement of ESCP judgments (or other enforceable instruments under the ESCP Regulation). Consequently, 26 different proceedings on enforcing ESCP judgments (including other enforceable instruments under the ESCP Regulation) exist in the EU, different in each Member State. This hinders the enforcement proceedings and makes it difficult for a non-resident of the certain Member State to defend the infringed rights and seek enforcement without retaining a lawyer, especially if one does not speak the national language of that particular Member State.

In order to overview the national rules on enforcement of ESCP judgments in different Member States, the following aspects were chosen: 1) institution responsible for enforcement; 2) means of submitting the documents for enforcement; 3) languages to submit document for enforcement (including obligation to provide translations and who bears the cost of translation); 4) fees/costs of enforcement and who bears it; 5) availability of legal aid; 6) possibilities to improve the enforcement of the ESCP judgments in the Member States. These elements take the person seeking enforcement through various stages of enforcement: submitting the enforceable document for enforcement (the responsible institution and the language in which the documents should be provided, including who bears the related costs), costs of the enforcement as well as who bears it, availability of legal aid during this process. After evaluating these issues, a person seeking enforcement of the ESCP judgment can calculate whether he is going further with the enforcement on his/her/its own, whether there is a need to retain a lawyer in the certain Member State and, most importantly, the cost of it all.

Understanding these elements related to enforcements of the ESCP judgments shall provide more clarity for the persons seeking enforcement which is the first step into making ESCP more attractive for users. However, in order to eliminate hindrances of using instruments in ESCP Regulation, the reform of the ESCP Regulation including national rules related to it are needed.



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In order to provide precise information, the national reports are enclosed as Section III of this report. The information of these reports is also systemised in the table, enclosed to this report as well as Section IV.

## **2. Institution responsible for enforcement**

Member States can be divided into two categories in respect of the institution responsible for enforcement: the ones where bailiffs (or equivalent of judicial officers which can be called differently, e.g. Country Registrars in Ireland or sheriffs specifically in Cork and Dublin, Enforcement Service Kronofogden in Sweden etc.) are in charge of enforcement (Bulgaria, Estonia, Finland, Greece, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Romania, Slovakia, Sweden) and the ones where courts (usually district or equivalent) are in charge of enforcement (France, Hungary, Italy, Malta, Poland, Portugal, Slovenia, Spain).

There is also a third model where enforcement functions are divided between the two previously mentioned groups (judicial officers and courts) (Austria, Belgium, Czech Republic, Germany). Similarly, in Croatia the enforcement functions are divided between courts and public notaries. Public notaries are also empowered to auctions seized assets in some Member States (Greece). In Cyprus, additionally to district courts and bailiffs, land registry and police also perform the prescribed enforcement functions.

The different agency responsible for enforcement and different approach whether the functions are performed by one agency or divided by several makes it difficult for a resident of another Member State to enforce an ESCP judgement without a legal advisor of the certain Member State in which enforcement is being sought. If unification of the enforcement rules of ESCP judgments as one of the solutions to this problem is not possible to implement, then precise information and a guide on enforcements steps in various Member States provided on E-Justice portal might help. However, this information is to be constantly updated and easy to understand. Otherwise, enforcement of the ESCP judgments without legal advisor may be very difficult which is contrary to the whole aim of the ESCP proceedings (to make it simpler for the citizens of the EU to defend their infringed rights in cross-border intra-EU disputes without retaining a lawyer).

## **3. Means of submitting the documents for enforcement**

Means of submitting documents for enforcement can be divided in two big groups: by electronic means or by other traditional means, implemented by different institutions (such as post office, service agents, registered letter or, for instance, by bailiff himself or herself). In most countries, e-service is mostly one of possibilities, but other means usually prevail.

Different situation is, for example, in Lithuania, where electronic service of procedural documents has priority. Lawyers, assistant lawyers, judicial officers, assistant judicial officers, notaries, state and municipal enterprises, institutions and organisations, financial institutions, insurance and audit companies, forensic experts, insolvency administrator





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have an obligation to receive procedural documents by electronic means. For other persons during the stage of enforcement, the documents to be served by post.

In Estonia, procedural documents must generally be served electronically, service of documents using other methods is permitted if there is a good cause. In case that the E-File system cannot be used, the court may serve procedural documents on the recipient electronically by email or fax. In such cases a procedural document is deemed to be served on the recipient when the recipient confirms the receipt of the procedural document in writing, by fax or electronically.

Interestingly, in Sweden the digital solution does demand a foreign eID from one of these countries: Belgium, Denmark, Estonia, Italy, Croatia, Latvia, Luxembourg, Portugal, Slovakia, Spain, The Czech Republic or Germany. For parties outside of these countries, the application for enforcement must be sent by regular mail.

But, for instance, in Greece, documents are usually served by a bailiff appointed by the court whose seat is in the region in which the addressee has his/her domicile or is resident at the time of service.

In Slovenia, the court may, on application by the other party, order the documents to be served by a detective or bailiff nominated by the party.

#### **4. Languages to submit document for enforcement (including obligation to provide translations and who bears the cost of translation)**

In many Member States documents for enforcement have to be submitted in official language of a respective country. Documents (including Form D for enforcement) in languages other than official language, must be translated. Such countries are, for instance, Germany, Italy or Lithuania. Mostly, exceptions to this rule can be found in Member States which have several official languages and rights of some minorities are much respected.

For example, the Rules in Cyprus state that any document served in Cyprus shall, if served on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English. Judgment and orders shall be in English. If a Greek or Turkish translation of a judgment or order is required for service in Cyprus, it shall be made by the Registrar of the Court.

In Slovenia official languages in court and enforcement proceedings are Slovenian as well as the two national minority languages in official use in the areas where these national minorities live. The national minority languages are Italian and Hungarian. In Belgium the documents for enforcement must be in one of the official languages of the country, namely French, Dutch, or German. In Luxembourg French and German languages are accepted. In Austria, some districts accept procedural documents in Hungarian or Slovenian.



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Also, some exceptions regarding languages can be found in some Member States, which decided that in cases regarding ESCP procedure and enforcement of the judgment in accordance with the Regulation, Form D drawn up not only in official language is excepted.

For instance, in France in such cases English, German, Spanish and Italian languages are accepted. Translation is not required in such instances. In Estonia the accepted languages are Estonian and English. A decision made in court proceedings conducted under the Regulation is accepted for enforcement in Estonia only if it is drawn up in Estonian or English or if Estonian or English translation is annexed to the certificate.

Portugal has indicated that it accepts, in addition to Portuguese language, English, French and Spanish as languages for the certificate of judgment to be accepted and enforceable. In Spain, the languages accepted by the courts for the entire European Small Claims Procedure are Spanish and English.

Costs of translation are usually firstly paid by the submitting party. Later these costs can be reimbursed.

## **5. Fees/costs of enforcement and who bears it**

Usually, there are no special rules regarding enforcement fees for judgments out of the ESCP procedure. General national rules for enforcement fees are applied and it could be seen that costs of enforcement can differ quite a lot in different Member States. Usually, the costs also depend on the measure taken and are later recovered from the debtor. Fees can be fixed or proportionate. Report from France states that there is no fee for enforcement in this country.

Quite many countries have special table for enforcement different fees and some Member States have special tables for maximum possible expenses. For instance, in Finland for the ESCP judgment enforcement, the maximum possible fee is 134 Euros. If the auction is needed, the auction fees will be applicable. In Hungary, the order of judicial enforcement falls within the jurisdiction of the court, therefore a court fee must be paid.

## **6. Availability of legal aid**

As enforcement of ESCP judgments is complex, the availability of legal aid is an important issue. The majority of Member States have legal aid system in place. However, the type of legal aid and the criteria in order to apply differ.

Majority of the Member States have a legal aid system in place. The possibility of legal aid is usually dependent on the financial circumstances of the person asking for the legal aid. There usually are an institution responsible for the provision of legal aid. It is also important that legal aid regarding ESCP proceedings should be provided by the European Consumer Centers Network (ECC-Net) in all Member States. However, the scope of such legal aid remains unclear.



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In some of the Member States the information regarding completion of the ESCP forms can be provided free of charge at courts (e.g. Austria, Croatia, Czech Republic, Hungary, Portugal, Slovenia). In some of the member states other institutions bear this function, for example, in Czech Republic, Czech Bar Association is to provide free legal aid; in Lithuania, municipal staff or university law clinics may have contracts for the provision of primary legal aid; in Malta, Malta Enterprise is also to provide legal support.

It is noteworthy that in some of the Member States the provision of free legal aid is limited not only by the financial circumstances of the applicant, but also by the issue at hand. One such example – Finland, where legal aid is not to be provided if the matter is of minor importance to the applicant, the process would be manifestly pointless in comparison with the potential benefits that could be reached, or the case would amount to an abuse of process. Having in mind that ESCP proceedings concern claims of small amount, it is debatable whether such rule can exclude applicants in the ESCP proceedings from receiving state legal aid overall: the claims under ESCP are relatively minor (which is indicated in the very name of the ESCP Regulation), the hours spent on the issue by the lawyer multiplied by the hourly fee of a lawyer might outweigh the financial benefits of the proceedings. One could argue that under such rule in the majority of ESCP cases a person can be eliminated from the legal aid as the value of the claim will always be relatively low. It is therefore important that information regarding ESCP proceedings would be available for a person using other means. In the case of Finland, practical information regarding the ESCP is also provided by the European Consumer Center Finland; however, it is unclear how extensive this information is, e.g. whether it only provides the material prepared in advance (such as guides, Q&A etc.) or whether it also can provide advice on *ad hoc* basis. Another similar example is France in which the criterion of seriousness is to be met in order to be granted legal aid. The rule is that the action must be serious. If the seriousness is evaluated on the basis of the claim amount, then ESCP claims might face the similar problems as in previously mentioned example.

A few countries noted that there either are no legal aid regarding enforcement of ESCP judgments, or no legal aid system at all in place (e.g. Ireland, Italy, Romania, Sweden). In some of these Member States, although there is no legal aid regarding enforcement of ESCP judgments, the institution responsible for enforcement may be contacted if questions arise (e.g. Sweden).

Another issue that it is not always clear whether the legal aid systems in place extend into the enforcement proceedings. It is therefore advisable to regulate this issue in the ESCP Regulation in order to make sure that persons have the ability to ask for assistance not only for completing forms, but also seeking to enforce the ESCP judgment.

## **7. Possibilities to improve the enforcement of the ESCP judgments in the Member States**

After the analysis of the enforcement rules of the ESCP judgments in various Member States, the following possibilities to improve the enforcement proceedings can be drawn:



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- 1) **Providing more precise and up-to-date information.** Almost all Member States lists lack of awareness or lack of information as one of the largest problems related to the enforcement of the ESCP judgments. It is not surprising as lack of harmonization of the ESCP Regulation and the corresponding national rules in each Member States is programmed in the ESCP Regulation itself. Consequently, difficulties understanding different rules related to the ESCP Regulation and the corresponding national rules in each Member States have been noted in SCAN I project. Thus, the lack of clear and easy-to-understand information regarding enforcement stage of the ESCP judgment is not accidental but rather systemic. The E-Justice portal was intended to eliminate this flaw, however, the information there is often outdated, provides links to non-existing webpages or webpages written in the national language only, and are not helpful (e.g. written in a non-user-friendly manner, lacking step-by-step approach etc.). It was also noted that in the sections of some specific Member States, the information on national small claims proceedings instead of European are provided. Therefore, constant updates in the E-Justice portal and structural approach to the information provided might be helpful, using the instrument that already exist – the E-Justice portal.
- 2) **Elimination of the language barrier.** Many Member States list issues related to language as one of the problems related to the enforcement of the ESCP judgments. Often the enforceable documents (and the application regarding enforcing, if necessary) are to be provided in the national language of the certain Member State. The exceptions to this rule can be found in Member States which have several official languages (e.g. in order to protect rights of some minorities). Although some Member States allow Form D to be drawn up not only in official languages but also in, for example, English, German, Spanish or Italian, this issue is still of high importance. Although forms in some Member States can be submitted in other languages besides the official language, but information online regarding enforcement and the national regulation are often provided in national language only. Therefore, providing all related information in more languages, translating relevant national regulation would increase awareness and using the ESCP Regulation.
- 3) **Digitalization of the proceedings.** As the ESCP judgments concern cross-border disputes, the possibility to submit documents for enforcement and receive related documents online (or via email) would help persons seeking enforcement. Although a few Member States report about having digitalized systems (digitalization has reached various levels), this is not the case in the majority Member States. Looking further, the links between different digitalized system in different Member States would also add to increasing the user-friendliness of the proceedings.



### III. Country Reports on National Enforcement Rules for ESCP Judgments

#### Austria

Author(s): Magdalena Jankowska-Gilberg

#### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

The national provision implementing the ESCP Regulation can be found in section 548 of the Law on judicial proceedings in civil disputes (Code of Civil Procedure) - das Gesetz über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung – hereinafter ZPO)<sup>3</sup>.

#### The competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence)

Unlike the European order for payment procedure, there is no central court specialised in this type of procedure. Thus, in most cases district courts (Bezirksgericht) has subject-matter jurisdiction. In Vienna, the District Court for Commercial Matters (das Bezirksgericht für Handelssachen) has jurisdiction in disputes arising from commercial transactions if the claim is directed against an entrepreneur registered in the commercial register and there is a business-related transaction on the part of the defendant.

#### The number and mode of hearings

As a rule, the proceedings shall be conducted in writing. The court holds an oral hearing if it deems it necessary or if one of the parties makes a request to that effect. Even if one of the parties so requests, the court may refuse to hold the hearing if it considers that a fair trial can be ensured without an oral hearing. If the court decides to hold an oral hearing, it may do so by video-conference or by other means of communication technology (if available).

#### Mode of the gathering of the evidence

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<sup>3</sup>RGBl. (Das Reichsgesetzblatt) Nr. 113/1895; available online: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001699>



This Project has received funding from the European Commission JUST 2027 Programme under grant agreement no. 101046587.

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The court determines the means of evidence and the extent of the taking of evidence required to render its judgement. Following means of evidence are relevant: documents, written statements by witnesses, parties and experts. Judges shall give preference to less burdensome evidence if possible. The evidence can be taken with the use of communication technology. For example the examination of a witness may therefore be conducted in writing, by telephone or by videoconference (section 277 ZPO)

### **Court fees and methods of payments**

The costs range between 23€-314€ depending on the amount in dispute.

A detailed list can be found in the Court Fees Act (Gerichtsgebührengesetz<sup>4</sup>, GGG).

The fees can be paid with bank cards or credit cards, by deposit or transfer to the account of the competent court or by cash deposit at this court (section 4 GGG). All fees may also be paid by direct debit, if the court has been authorised to collect the court fees from an account to be notified by the party owing the fees.

### **Costs for the losing party**

The party that loses the case in its entirety must reimburse its opponent for all costs incurred in the litigation. However, this only applies to the costs that were necessary to enforce the law. The court determines at its discretion, which costs are to be considered necessary. The costs for the opposing lawyer are always determined in the tariff schedule for legal acts. This also applies if the winning party has agreed on a higher fee with its lawyer. If none of the parties won the case, the costs are set off against each other (each party pays its own costs) or distributed proportionately. The costs of wanton (*“mutwillige”*) actions shall be borne by the plaintiff party.

If the party who has been granted legal aid is unsuccessful, he or she has to pay the lawyer's fees of the opposing party. However, these are determined by the court according to the law.

### **Accepted official languages by the courts/tribunals**

All Austrian district courts accept complaints in German; some courts also accept complaint forms in Slovenian, Croatian and Hungarian. Further documents, such as evidence may be submitted in another language, whereby the court may only request a translation of the relevant documents if this is necessary for the judgment.

### **Costs and financial support for translation**

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<sup>4</sup> BGBl. (Bundese Gesetzblatt) Nr. 501/1984



The costs of necessary translations are covered by legal aid (if the party has been granted legal aid).

#### **Availability of legal assistance;**

Legal aid must be applied for at the competent trial court of first instance and is granted if

- a party is not able to afford the costs, and
- the intended litigation does not appear wanton and is without prospects of success .

If the financial situation changes in favour of the applicant within a period of three years after termination of the litigation, the legal aid may have to be repaid.

The extent of legal aid depends on the income or assets of the applicant and is always determined individually. Only the party's own costs are covered by the legal aid. If the party that has been granted procedural assistance is unsuccessful, it still has to pay the lawyer's fees of the opponent.

#### **Possibility of appeal**

The domestic appeal provisions (cf. sections 461 (1), 501, 517 ZPO) apply to the ESCP procedure. Thus, the judgment rendered in the small claims procedure may be appealed under certain conditions. According to section 501 (1) ZPO, if the subject matter of the dispute does not exceed 2,700 euros, the judgment may only be challenged on the grounds of nullity and on the grounds of an incorrect legal assessment of the case on which it is based. The appeal must be filed in writing within four weeks of the service of the judgement at the district court that issued the judgement in the first instance. The appeal must be signed by a lawyer (section 463 (2) ZPO). Representation by a lawyer is also mandatory in the subsequent appeal proceedings.

If the judgement itself remains unchallenged, the decision on the legal costs can be contested by means of an appeal on costs ("Rekurs"). This must be filed with the court that issued the judgement within 14 days of service of the judgement.

According to section 548 (4), if the court has issued a default judgment, an objection (Widerspruch) may also be filed against it pursuant to section 397a ZPO. The objection must be lodged with the court that issued the judgment within 14 days of service of the judgment.

#### **Availability of review mechanism where the national court has issued the judgment; etc.**

According to Art. 18 of the ESCP Regulation the defendant is entitled to apply to the competent court for a review of the ESCP judgment in certain circumstances. In Austria according to section 548 (5) ZPO the competent court of first instance is also competent to review the judgment under Art 18.





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The review proceedings can only take place upon the request of the defendant, who must substantiate the circumstances on which he bases his request for review (section 149 (1) ZPO). An oral hearing shall only be held if the court deems it necessary (section 149 (2) ZPO).

If the court comes to the conclusion that the requirements of Art 18 para. 1 are not met, the application shall be dismissed by order and the judgment shall remain in force according to para 2. This order rejecting the reinstatement can be challenged by separate appeal pursuant to section 548 (5) ZPO in conjunction with section 153 ZPO pursuant to section 514 ZPO. If, on the other hand, the court comes to the conclusion that the review is justified for one of the reasons mentioned in para 1, it shall declare the European small claims judgment null and void pursuant to Art 18 para 2 sentence 2 and set it aside. Pursuant to section 548 (5) ZPO in conjunction with section 153 ZPO, no appeal is admissible against this decision.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

The enforcement is governed by the provisions of the Act of 27 May 1896, on Execution and Security Proceedings (Execution Code – Exekutionsordnung, hereinafter EO)<sup>5</sup>.

If the debtor does not comply with the ESCP judgment, the creditor can initiate compulsory enforcement.

First part of the procedure is authorisation (*Bewilligungsverfahren*) which start with the application for execution.

For this purpose, an application for execution must be submitted to the court ("*Exekutionsantrag*"). The application can be submitted online. The form (E Antr 1) is available on the following webpage:

<https://www.help.gv.at/at.gv.brz.linkaufloesung/help/applikation-flow?execution=e2s1>

The application should be accompanied by a copy of the judgment and certificate (Form D) (section 54 (3) EO).

If the requirements for the simplified authorisation procedure (section 54b (1) EO) are met, in particular if the pecuniary claim to be recovered does not exceed EUR 50,000 and execution is sought only on the movable property, neither the execution title nor the corresponding confirmation must be submitted with the application for execution (section 54b(2)(2) EO). In this case the applicant must however submit the relevant documents upon corresponding request by the court if, on the basis of the information provided in the

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<sup>5</sup> RGBl. Nr. 79/1896, available online:

<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001700>





application for execution or facts known to the court, there are doubts as to whether an execution title covering the execution exists (section 54b (2) (3) EO).

In the application, the creditor can select means of execution. He/she can apply for individual means of execution against certain assets, and since 01.07.2021<sup>6</sup> additionally have the possibility to apply for either a so-called "small package" or an "extended package" of enforcement measures. If the creditor applies for execution without selecting means of execution, this now automatically includes execution of movable property, salary execution and the taking of a list of assets ("small package" section 19 EO).

The district court always has subject-matter jurisdiction, irrespective of the amount in dispute or the basis of assessment. The court with local jurisdiction is the court at the debtor's domicile or company's seat. The land registry court (*Grundbuchgericht*) is responsible for the execution on real estate (registered in the land register). If the debtor has no domicile in Austria, the court where the movable property is located will have jurisdiction.

The enforcement process is conducted either by the judge (forced sale of real estate) or by the court official (enforcement on movable goods or enforcement on receivables).

Parties does not have to be represented by a lawyer.

The second part of the execution procedure are the enforcement acts. After the authorisation of the execution, the proceedings are conducted ex officio by the enforcement organs of the competent execution court (section 16 (1) EO).

Enforcement should continue until it has been successfully concluded or discontinued.

### **3. Rules on service**

In principle, service is effected by a service agent, i.e. the post office or another service provider or by court employees (section 88 ZPO).

There is a special system for electronic service by the courts, the Electronic Legal Communication (ERV). An obligation to participate in this system exists only for some professions like lawyers. Private persons may participate in this system, but there is no obligation for them to do so.

### **4. The status of digitalisation in enforcement of the ESCP judgments**

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<sup>6</sup> A reform of execution law (called GREx) , which strives for higher efficiency in the enforcement of titled monetary claims, entered into force on 01.07.2021. See for example: <https://www.deutscheranwaltspiegel.de/disputeresolution/verfahrensrecht/neue-regeln-fuer-die-eintreibung-26202/>



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The online service platform of the Austrian justice system (<https://www.justiz.gv.at/home/service/digitale-justiz/justizonline.9b8.de.html>) enables electronic contact with the judiciary. Citizens of other EU Member states can also register with the electronic identity (eID) of their EU country of origin. The online platform offers several services including online submission of the application for execution and online access to the file.

Movable property seized during executions can be offered in online auctions on the judicial auction platform: justiz-auktion.at.

Pursuant to sections 427ff EO ("Electronic Query of Data") execution data is offered as an online query for a fee (10,70 EUR) and allows a restricted group of users to retrieve it. This function is intended to assist in deciding whether the initiation of litigation or execution proceedings makes economic sense. Lawyers and notaries as creditors' representatives are entitled to make queries. The execution data query shows all execution proceedings pending for more than one month. Specifically, the following information is displayed:

- Execution court, file number, amount of the claims pursued, incl. reference to a suspension and the type of means of execution.
- In the case of execution against a vehicle: seizures and unsuccessful attempts at execution.
- Whether a list of assets has been submitted within the last year.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

Certificate should submitted in German. The application for execution is also offered in other language versions: Slovenian and Hungarian.

## **6. Fees for the enforcement procedures**

In execution proceedings, execution fees are due in addition to the court fees for the authorisation proceedings. Court fees are regulated in GGG (TP 4) and depends on the value of the subject matter of the dispute. TP 4 (1) lit. a GGG provides for a uniform court fee for all execution proceedings. The execution fees depend on the type of execution and are regulated in section 455 EO.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

According to section 2 EO acts like judgments, court settlements issued abroad, are to be enforced without a separate declaration of enforceability on the basis of an agreement under international law or a legal act of the European Union (this it is the ESCP regulation for ESCP judgments)

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**



*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

As there are no specific provisions implementing Art. 22 and 23 of the ESCP Regulation, thus general provisions on discontinuation, limitation or stay (sections 39 ff EO “Einstellung, Einschränkung und Aufschiebung der Exekution ) apply in addition to the regulation provisions. The application should be brought to the execution court that has jurisdiction in the authorisation procedure.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

If there are any questions regarding the completion of the form, one can obtain legal information free of charge at the district court responsible for granting the execution or at the district court in whose district the person is staying (Judicial Service Centres).

Parties who are not represented by a lawyer may submit their applications for execution orally on the record.

Party seeking enforcement can also apply for legal aid. The court decides on the granting of legal aid by means of an order. An appeal may be lodged against this order even without representation by a lawyer.

The extent of legal aid depends on the income or assets of the applicant and is always determined individually.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

The enforcement authorisation may be appealed against. The appeal (Rekurs) is to be addressed to the appellate court (higher regional court Landesgericht), but is to be filed with the court of first instance (district court which granted enforcement). The appeal must be filed within 14 days. Representation by a lawyer is generally required. The appeal procedure is a purely file-based procedure in which the prohibition of new arguments applies. The appeal may be accompanied by an application for suspension of execution.

If an obligated party is manifestly insolvent, all pending execution proceedings are stayed. However, they may be continued at the request of an enforcing creditor if it is certified that insolvency no longer exists.

The law provides for several enforcement restrictions in favour of specific persons or associations of persons. Excluded from enforcement are for example items for personal or household use, provided they correspond to a modest lifestyle of the debtor and the family members living with him/her in the same household (section 250 (1) pkt.1 EO) or sufficient food and heating materials to cover the needs of the debtor and the family members living



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with him in the common household for four weeks (section 250 (1) pkt.3 EO). Income, pension benefits and statutory remuneration, which serve to compensate for temporary unemployment or a reduction in earning capacity, can be seized on a limited basis. The unseizable part ('minimum subsistence level') depends on the amount of income and the number of the debtor's maintenance obligations (section 291a EO). The unseizable amounts can be found in the tables on the website of the Federal Ministry of Justice: <https://www.bmj.gv.at/service/publikationen/Drittschuldnererkl%C3%A4rung.html> .

Under certain circumstances, on request, the amount can be adjusted (increased (section 292 a EO) or reduced (section 292 b EO) to special needs of the debtor or his creditor in individual cases.

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

Foreign consumers contact ECC Net and ask for information which court is the enforcement court and how high are the fees of the execution procedure. Another common hurdle is the language and the fact that documents may have to be translated. The access to information in different languages remain main problem for consumers seeking enforcement of the ESCP.

ECC Austria gets feedback from consumer in the cases when the enforcement could not be carried out because the debtor was not tangible.

For further remarks please see the report for Germany.



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## Belgium

Author(s): Paola Giacalone

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Belgium, there is no specialised or centralised system designed to deal with the European Small Claims cases, since the EC Regulation 861/2007 has not resulted in the adoption of new legislation into national law.

The ESCP cases are subject to the jurisdiction of the Justice of the peace (*Vrederechter/Juge de paix/Friedensrichter*)<sup>7</sup>.

According to Art. 590 of the BJC, the justices of the peace have general jurisdiction over all civil and commercial matters, where their value do not exceed 5,000 €<sup>8</sup>.

As of August 2022, there are 162 justices of the peace across the country<sup>9</sup>.

Each of these justices of the peace has competence to deal with cases referred under the ESCP because of their territorial jurisdiction, by virtue of Art. 624 of the BJC.

In order to begin with the ESCP proceeding, the claimant shall lodge the Claim Form A and any other supporting documents – e.g. evidence – to the competent justice of the peace

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<sup>7</sup> Art. 590 – 601 BJC.

<sup>8</sup>For a deep analysis, see Stefaan Voet, 'Relief in Small and Simple Matters in Belgium' (2015) in Erasmus Law Review: <<http://www.erasmuslawreview.nl/tijdschrift/ELR/2015/4/ELR-D-15-00017>> accessed 8<sup>th</sup> August 2022.

<sup>9</sup>For more information see <<https://www.tribunaux-rechtbanken.be/fr/tribunaux-et-cours/justice-de-paix>> accessed 8 August 2022.



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in accordance with the rules indicated within Art. 622 to 638*bis* of the BJC. The documents must be in one of the official languages of the country, namely French, Dutch, or German<sup>10</sup> and be submitted physically, via registered mail. For documents that are not in any of the accepted languages, the claimant must provide their translation prior to lodge them before the court. It is noteworthy that if the claimant wins the case, the incurred necessary procedural costs can be reimbursed through the bailiff from the losing party at the enforcement stage. On the contrary, if the claimant loses in the small claims' proceedings, these costs all remain the sole responsibility of the claimant, without any further right to reimbursement.

Regarding the appeal against an ESCP judgement under the Belgian national civil procedural rules, Art. 617 of the BJC provides that where the value of the claim exceeds 2,000 €, the appeal is generally allowed. The appeal request must be submitted to the Court of First Instance within one month from the service of the judgement (Art. 1051 of the BJC) or of its notification (Art. 792 of the BJC). The filing of an appeal application needs a payment of 165 € fees. For judgements with value below the threshold of 2,000 € – where the appeal is not heard – an opposition<sup>11</sup> to the ruling can be lodged before the same court that issued the ESCP judgement<sup>12</sup>.

## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Concerning the courts or tribunal that have jurisdiction to give a judgement in the European Small Claims Procedure, the Belgium Government has announced that the following Courts will have jurisdiction in this respect:

- The Justice of the Peace (*Vrederechter/Juge de paix/Friedensrichter*)<sup>13</sup>
- The Court of First Instance (*Rechtbank van Eerste Aanleg/Tribunal de première*)

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<sup>10</sup>Art. 6 of the ESCP Regulation stipulates that all the documents must be rendered in the official language of the court seized.

<sup>11</sup>As indicated in Art. 1047 of the BJC: “Any default judgment rendered at last instance may be opposed, except as provided by law. The opposition is served by a writ of summons by a bailiff to appear before the judge who rendered the default judgment. With the agreement of the parties, their voluntary appearance may replace the completion of these formalities. The notice of opposition shall contain, under penalty of nullity, the grounds of the opponent. (The opposition may be entered by the party, his counsel or the judicial officer who acts on the party's behalf, in a register kept for this purpose at the registry of the court which handed down the decision. The entry shall state the names of the parties, their counsel and the dates of the decision and the opposition).”

<sup>12</sup> In practice, this request has been very rarely accepted by the courts as it requires spending a considerable amount of time – specifically, compared to the very low-threshold of the claim – to review the judgement.

<sup>13</sup> Art. 590 – 601 BJC.



- *istance/Gericht Erster Instanz*)<sup>14</sup>
- The Commercial Court with material and territorial jurisdiction (Ondernemingsrechtbank/Tribunal de l'entreprise/Unternehmensgericht )<sup>15</sup>.

If the defendant lives in Belgium, the registry of the Court will serve the documents (Form A application with Form C) to the defendant by “court letter” (equivalent to a registered letter with acknowledgment of receipt), within 14 days of receipt of the application form duly completed.

If the defendant lives in another Member State, the registry shall transmit the documents to be served by one of the modes of transmission authorized (the registered letter with acknowledgment of receipt directly sent to the defendant) in accordance with the EC Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Belgian court registries (including those of Justice of peace, Commercial Court and Court of First instance) competent in the service of documents are transmitting agencies.

The European Regulation states that the Court “transmits” to the plaintiff a copy of the response of the defendant together with any relevant supporting documents, within fourteen days of the reception of the answer of the defendant. The court is likely to use the court letter (equivalent to a registered letter with acknowledgment of receipt) if the applicant lives in Belgium, Belgian territory) or a means of transmission prescribed by the Regulation 1393/2007: a registered letter with acknowledgment of receipt which is transmitted directly to the defendant, as Belgian court registries competent in the service of documents are transmitting agencies.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The Belgium Government has indicated that the means of communication that are accepted under Article 4(1) of ESCP Regulation for the purposes of the Procedure and are available to the courts are restricted in Belgium to the direct submission of the standard claim form A, as set out in Annex I, and the relevant supporting documents to the registry of the Court of First Instance with territorial jurisdiction and the posting by registered mail of claim form A and the relevant supporting documents to the Court of First Instance with territorial jurisdiction.

The registered letter with acknowledgement of receipt may be appropriate, that the applicant resides in Belgium or in another Member State.

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<sup>14</sup> Art. 568 – 583 BJC.

<sup>15</sup> Art. 573 – 576 BJC.





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If the defendant lives in Belgium, the registry of the Court will serve the documents (Form A application with Form C) to the defendant by “court letter” (equivalent to a registered letter with acknowledgment of receipt), within 14 days of receipt of the application form duly completed.

If the defendant lives in another Member State, the registry shall transmit the documents to be served by one of the modes of transmission authorized (the registered letter with acknowledgment of receipt directly sent to the defendant) in accordance with the EC Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents). The Belgian court registries (including those of Justice of peace, Commercial Court and Court of First instance) competent in the service of documents are transmitting agencies.

#### 4. The status of digitalisation in enforcement of the ESCP judgments

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

One of the objectives of the ESCP Regulation is to encourage the use of technology by courts to provide more efficient access to justice for claimants also to overcome the long delays and travel costs that existed in dealing with small cross-border claims<sup>16</sup>. In the face of the ESCP Regulation provisions, there is no transparent official record about the use of digital facilities for cross-border small claims proceedings amongst Belgian justices of the peace. With the COVID-19 outbreak, the judiciary of Belgium has encouraged – in an issued Guideline<sup>17</sup> – the use of videoconference by courts in the conduct of hearings. The referred Guideline has also emphasized that the Ministry of Justice should provide additional technical resources – e.g. microphones, webcams, and screens – for the courtrooms enabling them to hold virtual oral hearings. As regards the service of documents in civil proceedings, Belgium has established a new alternative for submitting a claim and other supporting documents to the justices of the peace through the ‘e-Deposit’ system<sup>18</sup>.

The use of e-filing in Belgium for general procedural purposes has been – limitedly – in force since July 2016 via the ‘e-Deposit’. The main objective of this system is to promote digital justice by enabling individuals to submit their documents to courts electronically. Since 2020, this service can be also used to submit documents to justices of the peace.

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<sup>16</sup> See Rafael Maňko, “Europeanisation of Civil Procedure: Towards Common Minimum Standards?, European Parliamentary Research Service in-depth analysis”, (2015) European Parliamentary Research Service in-depth analysis.

<sup>17</sup> See Guideline of the College of Courts and Tribunals under Communication Coronavirus XXI, November 1, 2020, available at <<https://www.rechtbanken-tribunaux.be/fr/nouvelles/corona-update-1-novembre-2020>> accessed 8 August 2022.

<sup>18</sup> For more information on this electronic system visit: [https://access.eservices.just.fgov.be/edeposit/fr/?jsessionid=Y-uROFASXOMJFPuGAikPVFsOMVWxXYKVUBXWGmWnP\\_N\\_gruwB1S0!464500959](https://access.eservices.just.fgov.be/edeposit/fr/?jsessionid=Y-uROFASXOMJFPuGAikPVFsOMVWxXYKVUBXWGmWnP_N_gruwB1S0!464500959), accessed 8 August 2022.





As provided by Art. 9 (1) of the ESCP Regulation, the courts shall facilitate the taking of evidence through technological means of communications. It is important to note however, that the admission of digital evidence is subject to availability of technological facilities in courts as indicated within Art. 9 of the ESCPR. In terms of admissibility of an e-evidence in civil proceedings in Belgium since 1st November 2020 new rules have been entered in force. Accordingly, where the law does not require the production of a signed writing between the parties, evidence may be given by digital means (e.g. e-mails or/and text messages). In this sense, the Belgian legislator by the Act of 13 April 2019<sup>19</sup> that establishes new rules on evidence within the Belgian Civil Code, Book 8 (Chapter 2, Sections 1 and 2, Art. 8.8, 8.9 (§ 1), and 8.11 (§ 1)) allows the admission of digital evidence if it is submitted in a claim<sup>20</sup>:

- - in relation to a party who is not a trader, and the cause of action does not have to be proved by a written document signed by the parties, provided that the value of the claims does not exceed 3,500 €<sup>45</sup>, or;
- - between companies, or against a company, regardless of the value of the claim<sup>21</sup>.

Therefore, digital evidence is admitted at courts, for the claims whose value is under the threshold of 3,500 €<sup>22</sup>. As a result, in the capacity of the ESCP proceedings, parties are allowed to present their means of proof in written or electronic (e.g. e-mail, text messages, etc.) format<sup>23</sup>.

## 5. Language of the Certificate (standard Form D) and other documents to be appended

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<sup>19</sup> Act of 13 April 2019 introducing Civil Code, Book 8 'Evidence' (Art. 1 –75), Belgian Official Gazette, 14 May 2019. For more information visit [https://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=nl&la=N&table\\_name=wet&cn=1994041151](https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&table_name=wet&cn=1994041151) accessed 8 August 2022.

<sup>20</sup> Article 8.8 provides that *“Free Evidence Except in cases where the law provides otherwise, evidence may be provided by any means.”* According to Article 8.9 (§ 1); *“Regulated Evidence’ § 1. A legal act involving a sum or value equal to or greater than 3,500.00 euros must be proven by the parties in a signed writing.*

*This amount can be adapted by Royal Decree deliberated in the Council of Ministers, according to the evolution of the cost of living or social necessities.*

*It can only be proven in addition to or against a signed writing, even if the sum or value does not exceed this amount, by another signed writing.”*

<sup>21</sup> Article 8.11 (§ 1) stipulated that *“Evidence by and against companies § 1. Against companies or between companies, as defined in article I.1, paragraph 1, of the Code of Economic Law, evidence can be given by any means, except in special cases.*

*The rule stated in paragraph 1 does not apply to companies when they intend to prove against a party that is not a company. Non-enterprise parties who wish to prove against an enterprise may use any mode of evidence.*

*The rule set out in paragraph 1 shall also not apply, in respect of natural persons carrying on a business, to the proof of legal acts that are clearly unrelated to the business.”*

<sup>22</sup> Currently, any claim with a value of more than 3,500 € must be in writing (according to Art. 1341 of the Belgian Civil Code), and the digital evidence is not admissible.

<sup>23</sup> As far as the amount of the claim does not exceed 3,500 €.



*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The documents must be in one of the official languages of the country, namely French, Dutch, or German<sup>24</sup> and be submitted physically, via registered mail. For documents that are not in any of the accepted languages, the claimant must provide their translation prior to lodge them before the court. It is noteworthy that if the claimant wins the case, the incurred necessary procedural costs can be reimbursed through the bailiff from the losing party at the enforcement stage. On the contrary, if the claimant loses in the small claims' proceedings, these costs all remain the sole responsibility of the claimant, without any further right to reimbursement.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

In terms of the procedural costs of the ESCP, the Belgian legislator has acted transparently. The costs for the first instance procedure before a justice of the peace are at a fixed rate of 50 € per claim. Since the beginning of February 2019, as indicated in Art. 1017 BJC, this amount must be paid at the end of legal proceedings by the losing party. In addition to this fixed litigation fee, Art. 1018 BJC refers to some other necessary costs associated to the procedure, such as expenses related to the judicial investigation measures taken by the court, the travel costs of the parties or a judiciary staff where their presence was ordered necessary for the trial by the court, etc. These costs are all calculated based on the day that the final judgement is rendered by the court. The reimbursement of such costs is also carried out based on the general rule of 'to be borne by the part who loses the case'. There are, however, two exceptions to this general rule: 1) if there are any specific laws that provide otherwise, and 2) where there is an agreement between the parties about the distribution of costs. In these circumstances, the court will assess the distribution of costs based on the specific law or the existing agreement. It must be stressed that if the claimant loses the case, then in addition to the fees for the proceedings that s/he must pay, the necessary expenses incurred by the defendant during the ESCP proceeding are also the responsibility of the claimant. Regarding the distribution of litigation costs, where each party is partially successful – in accordance with Art. 2017 BJC – the judge assesses the contribution of each party towards the incurred necessary expenses, in the final judgement. With respect to the enforcement procedure expenses, Art. 1024 BJC provides that the costs of enforcement shall be borne by the party against whom the enforcement is sought.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

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<sup>24</sup>Art. 6 of the ESCP Regulation stipulates that all the documents must be rendered in the official language of the court seized.



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*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

A judgment given in a Member State in the European Small Claims Procedure shall be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

Regarding the certificate, nothing has been formally stated in Belgium. It is advisable to request the issuing of the certificate to the registry office of the competent court because it is an administrative task.

The enforcement procedures shall be governed by the law of the Member State of enforcement. Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.

The judicial officers are the authorities in Belgium which have competence to enforce a judgment given by the court in the context of the European Small Claims Procedure.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

The authority with competence to refuse, stay or limit enforcement is first and foremost the attachment judge ("*juge des saisies (exécution)/ beslagrechter (tenhuitvoerlegging)/ Pfändungsrichter.*") of the place where the attachment is carried out.

Pursuant to Article 1395 of the Belgian Judicial Code, the judge of attachments has competence in respect of all actions for precautionary attachment and the means of enforcement.

The territorial jurisdiction is defined in Article 633 of the Belgian Judicial Code. The Court of First Instance, which has territorial jurisdiction under the Belgian Judicial Code, also has competence in this respect. Point 5 of Article 569 of the Belgian Judicial Code stipulates that the Court of First Instance is competent to hear disputes regarding the enforcement of judgments and rulings. And it also has full jurisdiction pursuant to Article 566 of the Belgian Judicial Code.

In circumstances where the court – upon the request of the debtor – declares that at least one of the conditions of Art. 22 (§ 1) of the ESCPR has been met, the enforcement of the



judgement may be refused by the Belgian enforcement authority. It should be, nonetheless, pointed out that under no circumstance the Belgian court will review the judgement on its merit. This view was also reflected in a decision delivered by the Court of Cassation<sup>25</sup> in 2010. It was held that the substance of a foreign judgement cannot be reviewed by a Belgian judge, even when the judgement is in violation with the EU law.

Concerning the limitation and/or suspension of an ESCP judgement enforcement procedure in Belgium, any objection shall be lodged before the Court of First Instance<sup>26</sup>. Without prejudice to Art. 18 and 23 ESCPR, under Belgian civil procedural rules, the court can exceptionally suspend the enforcement procedure upon the request of the party against whom the enforcement is sought, provided that: 1) There is an abuse of the right of enforcement-related rules and the suspension is required against such an abuse<sup>27</sup>; 2) There is a serious conflict about the enforceability of the judgement; 3) The enforcement of the judgement leads to infringing a fundamental civil procedural rule e.g. the right to defence<sup>28</sup>; or, 4) The Court of First Instance has a considerable doubt about the factual and efficient enforceability of the judgement. In practice and in the context of enforcement of the ESCP judgements, the courts rarely suspend the enforcement procedure.

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

In Belgium, the justice system has provided legal aid available to people (both claimants and defendants) with insufficient financial resources to cover the costs of civil proceedings.

The rules concerning legal aid are governed by Articles 664 to 668 of the Belgian Judicial Code.

**“Article 664.** Legal aid consists in exempting, in whole or in part, those who do not have the means of existence necessary to meet the costs of a procedure, even an extrajudicial one, from paying the registration, court registry and dispatch fees and the other costs which it involves. It also ensures to the interested parties the free ministry of public and ministerial officers, under the conditions hereafter determined. (It also allows the interested parties to benefit from the free assistance of a technical advisor during judicial expertises).

**Article 665.** Legal aid is applicable:

1° to all acts relating to claims to be brought or pending before a judge of the judicial or administrative order or before arbitrators;

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<sup>25</sup> *Cour de Cassation*, N° 297 – 1re CH. – 29 Avril 2010, RG C.09.0176.N-C.09.0479.N, Pasicrisie 2010, Vol. 4, 1327.

<sup>26</sup> In French *juge des saisies*, in Dutch *beslagrechter*, and in German *Pfändungsrichter*. See Art. 1489 BJC.

<sup>27</sup> See the decision of the attachments judge of Liège (ch. sais.), 20 mars 1991, *J.L.M.B.*, 1991, 694.

<sup>28</sup> See the decision rendered by the Court of Cassation on 1 April 2004, *RW* 2004-05, 1222.



2° to acts relating to the execution of judgments and decisions;

3° proceedings on request;

4° to procedural acts that fall within the competence of a member of the judiciary or require the intervention of a public or ministerial officer.

(5) (to mediation, [1 extrajudicial]1 or judicial proceedings conducted by a mediator approved by the commission referred to in section 1727.)

(6° to all extrajudicial procedures imposed by law or the judge;

(7° for the enforcement of authentic instruments in another Member State of the European Union within the framework of Article 11 of Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, under the conditions laid down in that Directive).

(8° to the assistance of a technical advisor in judicial expertises.)

**Article 666.** When the assets of a bankruptcy are presumed to be insufficient to cover the initial costs of liquidation, the judge seized shall order, ex officio or at the request of the curator, that the proceedings be free of charge.

The proceedings are also free of charge for conservatory acts and procedures until the expiry of the period of forty days from the judgment declaring the bankruptcy.

**Article 667.** Legal aid is granted to persons of Belgian nationality who can prove that their means of support are insufficient. For the purpose of determining that persons have insufficient means of support, Articles 508/13/1 and 508/13/2 shall apply by analogy, it being understood that the words "the legal aid office" shall be read as "the legal aid office" or "the judge", as the case may be. Applications relating to cases that appear to be manifestly inadmissible or manifestly ill-founded shall be dismissed.

The decision of the legal aid office granting second-line legal aid, partially or entirely free of charge, constitutes proof of insufficient means of subsistence.

One year after the decision of the legal aid office, the legal aid office or the judge granting legal aid can check whether the conditions of insufficient means of subsistence are still met.

If the legal aid office terminates the second-line legal aid because the beneficiary no longer meets the conditions provided for in Article 508/13, the lawyer shall immediately forward this decision to the legal aid office or the competent judge.



**Article 668.** The benefit of legal aid may be granted under the same conditions:

- a) to foreigners, in accordance with international treaties;
- b) to any national of a member state of the Council of Europe;
- c) to any foreigner who has, in a regular manner, his habitual residence in Belgium (or who is in a regular situation of residence in one of the Member States of the European Union);
- d) to any foreigner in the procedures provided for by the law on access to the territory, stay, settlement and removal of foreigners;

[1 e) to all foreigners who have irregular residence in Belgium, provided that they have tried to regularize their stay in Belgium, that their request is urgent and that the procedure concerns matters related to the exercise of a fundamental right].”

The request for legal aid is lodged with the court competent to decide on the merits of the case. There is a bureau<sup>29</sup> within each court that decides upon the requests for granting legal aid. Nevertheless, in the Justices of the Peace courts, where this bureau does not exist, this request is dealt with the judge to decide whether to grant such aid or reject it. This decision must be made within eight days (from the filing of the request) and the applicant will be notified within three days. The negative decision on granting the legal aid can be appealed within 30 days from the notification.<sup>30</sup>

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

None

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The implementation of the ESCP in Belgium, despite its huge potential specifically for low-threshold disputes – that are mostly consumer claims – has been remarkably under-used to the present day. The main reason behind this limited application mainly refers to the lack of awareness among citizens and some practitioners (e.g. lawyers and judiciary staff) about the existence and function of this procedure. Furthermore, there are some other obstacles that hamper the efficient implementation of this instrument at national courts in Belgium. For instance, there is no centralized system within the Belgian judiciary to deal

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<sup>29</sup> In French (*bureau d'assistance judiciaire*) and in Dutch (*bureau voor rechtsbijstand*).

<sup>30</sup> Piet Taelman and Claudia van Severen, *Civil Procedure in Belgium* (2nd edition, Wolters Kluwer 2021) 97.



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with the ESCP cases. Centralization not only provides an opportunity to appoint English-speaking justices of the peace, so they can accept the ESCP Forms and other evidentiary materials in English, but also these it will be more cost-effective to equip these courts with more advanced technological means of communications for conducting the entire court proceedings digitally and remotely. Another obstacle that impedes effective implementation of the ESCP in Belgium is the lack of free legal assistance for the citizens to aid and encourage them using this instrument for their small claims. Finally, as the courts are swamped with the caseload, they do not pay sufficient attention to the added-value of encouraging the parties to use the alternative (Online) dispute resolution – e.g. mediation – methods available to them as a more expedited, amicable, and user-friendly process.

In general, the application of the ESCP in Belgium, like many other EU Member States, has not achieved considerable success. In this sense, increasing the effective application of this Procedure requires sufficient and serious efforts from the state to encourage and support the necessary initiatives in raising citizens' awareness, and to eliminate the existing obstacles in the path of efficient application of the ESCP Regulation by the national courts.





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## Bulgaria

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The Bulgarian Civil Procedure Code (*Grazhdanski protsesualen kodeks*, hereinafter, “the CPC”) does not provide for a special small claims procedure. However, Bulgaria has amended its CPC to add Chapter 57 (Articles 624 - 624b), which governs the ESCP. For issues not specifically dealt with in the ESCP Regulation (Regulation (EC) 861/2007, amended by Regulation (EU) 2015/2421, hereinafter, “the ESCP Regulation”) or the specific rules of Chapter 57 of the CPC, the general rules of the CPC apply.

Pursuant to Article 25 of the ESCP Regulation, Bulgaria also forwarded the relevant information to the European Commission.<sup>31</sup>

#### (1) Competent courts

The court competent to deal with proceedings under the ESCP Regulation is the district court (*rayonen sad*). The district court with territorial competence is the court located at the place of the respondent’s permanent address or registered office (Article 624(1) of the CPC).

#### (2) Means of communication

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<sup>31</sup> Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)





Standard claim Form A must be filed directly with the competent district court or sent by post, but not by fax or e-mail.<sup>32</sup>

(3) The number and mode of hearings, mode of gathering the evidence

As there is no special small claims procedure under Bulgarian law, the general rules of civil procedure apply as set down in the CPC.

Evidence is taken at the hearing before the judge. There is usually a first hearing and a final hearing, while additional hearings take place only if needed for evidence taking. Article 148 of the CPC provides that the court shall gather all admissible evidence with the participation of the parties. If necessary, the court shall schedule a new meeting to gather evidence that has not been gathered for reasons beyond the control of the parties.

Means of evidence are listed in Chapter 14 of the CPC: witness evidence, party explanations, written evidence, electronic document, expert opinion, inspection, certification, material evidences.

(4) Court fees and methods of payments

Chapter III of the CPC governs court fees.

Pursuant to the Bulgarian Schedule of state fees charged by courts under the Civil Procedure Code (hereinafter, “the Schedule”) charged by courts under the CPC, court fees in Bulgaria are 4% of the value of the claim, with a minimum of BGN 50. Court fees are paid by bank transfer.

The fees are paid before the proceedings begin or the required actions are performed (Article 76 of the CPC).

The parties can pay the fees electronically. Where the application for protection and assistance has been performed electronically under Article 102(f) of the CPC via the single e-Justice portal, there is a 15% reduction in the State fee due. If consent to service in this way is withdrawn, the person liable for payment pays the difference within 7 days to cover the full amount of the State fee due (Article 73(4) of the CPC).

(5) Costs for the losing party

Article 78 of the CPC governs the award of costs. The fees paid by the claimant (including expenses for proceedings and remuneration for one attorney if the party had one) must be paid by the defendant in proportion to the awarded amount of the claim. The defendant

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32 Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)



also has the right to claim paid expenses in proportion to the denied part of the claim. The defendant is also entitled to expenses if the lawsuit is terminated.

If the claim paid by the party for remuneration of an attorney is excessively high, with respect to the actual legal and factual difficulty of the case, the court may, upon request of the opposite party, award a smaller amount, but not less than the minimum amount (as per Article 36 of the Bulgarian Attorney law).

#### (6) Accepted official languages by the courts/tribunals

Applications must be made in Bulgarian and submitted to the court in writing (Article 4 of the CPC). The CPC stipulates that all documents the parties submit in foreign languages must be accompanied by translations in Bulgarian, which have been certified by the parties. If the court is unable to verify the accuracy of the translation itself or if the accuracy of the translation is challenged, the court shall appoint an expert to verify it (Article 185 of the CPC).

#### (7) Costs and financial support for translation

The general rules for experts' fees also apply to translators and interpreters. Thus, pursuant to Article 75 of the CPC the remuneration of the experts shall be determined by the court, taking into account the work done and the expenses made.

Article 29 of Ordinance 1/ 2008 for the Registration, qualification and remuneration of experts stipulates that experts' fees must be determined in accordance with the:

- Complicity of the task
- Competence and qualification of the expert
- Duration of the fulfilment of the task
- Quantity of the work done
- Necessary expenses, such as materials used, consumables, tools, equipment, etc.
- Other conditions influencing the work done – such as meeting deadlines, extra work in out-of-working time and national holidays, etc.

However, as applications and all documents (including the forms in the ESCP) need to be submitted to the court in Bulgarian, the parties will need to pay for the translation of the documents by themselves in advance.

#### (8) Availability of legal assistance

Practical assistance and information in accordance with Article 11 of the ESCP Regulation is provided by the European Consumer Centre in Bulgaria, which is part of the European



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Consumer Centres Network (ECC-Net). Information on the application of the ESCP Regulation is provided by the Ministry of Justice upon request.<sup>33</sup>

According to Articles 22 and 23 of the Bulgarian Legal Aid Act, parties can also apply for legal aid in civil cases if they fulfil certain (financial) conditions.

#### (9) Possibility of appeal

Appeals against an ESCP decision must be lodged with the relevant provincial court (*okrazhen sad*) (Article 624(2) of the CPC). The appeal must be submitted within two weeks of the decision of the district court being served on the party in question. The appeal procedure is laid down in Chapter 20 of the CPC.

Pursuant to Article 624(3) of the CPC, the judgment of the provincial court is subject to appeal in cassation before the Supreme Court of Cassation under the conditions laid down in Article 280 of the CPC.

The grounds and conditions for the enforcement of a decision on an appeal in cassation are explicitly laid down in Chapter 22 of the CPC.

#### (10) Availability of review mechanism

The respondent may submit an application for review of the judgment delivered in the ESCP to the relevant court of appeal under the conditions laid down in Article 18 of the ESCP Regulation (Article 624(4) of the CPC). The court sends a copy of the application for review to the other party, who has the opportunity to reply within one week of receiving it (Article 624(5) of the CPC). The application for review is examined in closed session. If the court deems it necessary, it may examine the application in open session (Article 624(6) of the CPC). The decision on the application for review cannot be appealed (Article 624(7) of the CPC).<sup>34</sup>

## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

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33 Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)

34 Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)



Article 624a of the CPC governs the enforcement of ESCP decisions. For questions that are not covered by Article 624a of the CPC, the general rules of enforcement apply (i.e. Article 404 of the CPC and the following).

The authorities competent for enforcement in Bulgaria are court bailiffs (public and private<sup>35</sup>). In Bulgaria, there is a dual system of judicial enforcement. While state enforcement agents act within the structure of the district courts, private enforcement agents are independent legal professionals, licensed by the Minister of Justice and organised within the Bulgarian Chamber of Private enforcement agents.

An application for a writ of execution on the basis of an ESCP must be lodged with the district court with jurisdiction at the place of the permanent address or registered office of the debtor, or at the place of enforcement (Article 624a(1) of the CPC).<sup>36</sup> Thus, this is where and how the party submits the Form D. The application must also specify the preferred method of enforcement, which may be altered during the course of proceedings (Article 426 of the CPC).

The writ of execution shall be issued after the court checks whether the application is in order and whether it proves the enforceable claim against the debtor (Article 406 (1) of the CPC).

The order which allows or rejects in whole or in part the application for issuance of a writ of execution, may be appealed within two weeks before the Sofia Court of Appeal (Article 624a(2) of the CPC). The decision of the Sofia Court of Appeal is subject to appeal in cassation before the Supreme Court of Cassation. Appealing an order allowing enforcement does not suspend enforcement (Article 624a(3) of the CPC).

The right to enforcement arises from the existence of an enforceable judicial instrument or another instrument and the issuing, on its basis, of an instrument authorising enforcement (writ of execution).

An enforceable title under Bulgarian legislation is either a writ of execution issued by a judicial authority, or any other (documentary) instrument explicitly listed by a statute as formal grounds to initiate enforcement proceedings. Pursuant to Article 404 of the CPC, enforcement proceedings may be brought on the following grounds:

- res judicata judgments and orders; judgments by appeal courts; enforcement orders; judicial settlements; enforceable judgments and orders or judgments and orders declared enforceable in advance or immediately; and judgments of arbitration tribunals and settlements sanctioned by such tribunals;

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<sup>35</sup> The status of private bailiffs is governed by the Private Judicial Enforcement Act (Zakon za chastnoto sadebno izpalnenie (ZChSI)). The act defines a private bailiff as an officer delegated by the state to enforce private claims.  
<sup>36</sup> Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)



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- judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria, if enforceable in Bulgaria without further proceedings;
- judgments, acts and judicial settlements delivered by courts in countries other than Bulgaria and the judgments and settlements delivered and sanctioned by arbitration tribunals in countries other than Bulgaria, when declared enforceable in Bulgaria.

Pursuant to Article 405 of the CPC, writs of execution are issued on the basis of a written application, with no need to serve a copy on the debtor.

Judicial enforcement is initiated by filing a petition accompanied by a writ of execution (or another enforceable document).

The bailiff must summon the debtor in writing to satisfy the claim voluntarily, which the debtor must do within two weeks of receiving the summons (Article 428 (1) of the CPC). The summons warns the debtor that failure to satisfy the claim will result in enforcement action. The summons must specify the attachments and seizures imposed and enclose a copy of the enforceable instrument (Article 428 (2) of the CPC).

Enforcement action may be taken against the following property of the debtor:

- movable goods;
- wages;
- income from immovable property, including rental income, etc.;
- bank accounts;
- immovable property;
- shares and bonds issued by commercial undertakings;
- movable and immovable property held in co-ownership or movable and immovable matrimonial property.<sup>37</sup>

Under Article 442 of the CPC, a creditor may pursue enforcement against any thing or receivable of the debtor. Article 444 of the CPC lists unseizable property (i.e. property against which enforcement action may not be taken), for example, the food needed to feed the debtor and their family for one month.

There is also a helpful document on enforcement in Bulgaria prepared under the EU Justice program.<sup>38</sup>

### 3. Rules on service

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<sup>37</sup> Available at: [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?BULGARIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?BULGARIA&member=1)

<sup>38</sup> Available at: <https://www.enforcementatlas.eu/wp-content/uploads/2021/03/eu-enforcement-atlas-bulgaria-read-more.pdf>



*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Paragraph 1 of Article 38 of the CPC submits that a communication is served at the address indicated in the case. Paragraph 2 and 3 further state that service may be effected at an e-mail address chosen by the party for service. Pursuant to paragraph 1 of Article 38 of the CPC, the consent to service under paragraphs 2 and 3 may be withdrawn at any time, without prejudice to the regularity of the actions already carried out. Paragraph 5 further states that where service cannot be effected under paragraphs 1 to 3, the communication is served at the current address of the party or, failing that, at their permanent address.

Article 38a of the CPC provides that a person who has carried out a procedural act in electronic form must provide an e-mail address for notification of receipt of the electronic statement and for the result of the technical verification of the act. A person who carries out a procedural act in electronic form may agree to accept electronic statements and electronic documents from the court hearing the case in proceedings before the relevant level of jurisdiction or before all levels. A person who carries out a procedural act via the single e-Justice portal agrees to accept electronic statements and electronic documents, communications, summons and papers in proceedings before the relevant level of jurisdiction and before all levels. Consent may be withdrawn at any time, without prejudice to the regularity of the actions already carried out.

According to Article 41a of the CPC, where service is effected pursuant to Article 38(2) (via e-mail) the communication containing information on the collection of the summons, notice or papers shall be deemed to have been served on the day of its receipt/collection by the addressee. If the communication is not collected within seven days of its dispatch, it shall be deemed to have been served on the first day following the expiry of the period for collection.

Service on credit and financial institutions, including those carrying out debt recovery against consumers, on insurance and reinsurance companies, on traders supplying energy or gas or providing postal or electronic communications or water and sewerage services or on notaries and private bailiffs is effected only in accordance with the procedure laid down in Article 38(2) of the CPC at an e-mail address specified by them (Article 50(5) of the CPC).

Service on a lawyer is effected via the single e-Justice portal or in any place where he or she has an office (Article 51(1) of the CPC). Service on government institutions and municipalities is effected only in accordance with the procedure laid down in Article 38(2) of the CPC at an e-mail address specified by them (Article 52(2) of the CPC).

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*



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Under Bulgarian law, it is not possible to initiate court proceedings digitally. Applications are submitted in writing to a court registry and should be written in Bulgarian. Applications may be sent through the post but not by fax or email.<sup>39</sup>

The only provision made by the CPC for online procedural action is the attachment of a debtor's claims on a bank account in enforcement proceedings (Article 450a of the CPC). This action is carried out by a bailiff.<sup>40</sup>

However, Bulgaria recently amended its Judiciary Act (Закон за съдебната власт), providing for an Information System for Judicial Enforcement (Article 360y of the Judiciary Act).

This information system is a single electronic database through which bailiffs across Bulgaria upload in a unified order and format data from their registers and diaries on the actions taken in enforcement cases. This data is uploaded daily. This makes judicial enforcement more transparent, fast and efficient. Registered users (in Bulgaria and abroad) are able to access the system. Access to the information system by State bodies, local self-government and local administration bodies and persons entrusted with the exercise of a public function shall be free of charge (Paragraph 4 of Article 360y of the Judiciary Act).

On the basis of the data contained in the information system the Ministry of Justice shall provide electronic administrative services for making inquiries on the movement of enforcement cases electronically to the persons who have legal grounds for access to the information. The services shall be requested through the electronic portal of the Ministry of Justice. For the provision of the services, the Ministry of Justice shall levy fees in amounts determined by a tariff of the Council of Ministers (Paragraph 5 of Article 360y of the Judiciary Act).

## 5. Language of the Certificate (standard Form D) and other documents to be appended

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

In court proceedings, applications must be made in Bulgarian and submitted to the court in writing (Article 4 of the CPC). The CPC stipulates that all documents the parties submit in foreign languages must be accompanied by translations in Bulgarian, which have been certified by the parties. If the court is unable to verify the accuracy of the translation itself

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<sup>39</sup> Available at: [https://e-justice.europa.eu/280/EN/online\\_processing\\_of\\_cases\\_and\\_ecommunication\\_with\\_courts?BULGARIA&member=1](https://e-justice.europa.eu/280/EN/online_processing_of_cases_and_ecommunication_with_courts?BULGARIA&member=1)

<sup>40</sup> Available at: [https://e-justice.europa.eu/280/EN/online\\_processing\\_of\\_cases\\_and\\_ecommunication\\_with\\_courts?BULGARIA&member=1](https://e-justice.europa.eu/280/EN/online_processing_of_cases_and_ecommunication_with_courts?BULGARIA&member=1)





or if the accuracy of the translation is challenged, it shall appoint an expert to verify it (Article 185 of the CPC).

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

Due to the dual system of Bulgarian enforcement (with private and public bailiffs), there are two sources of regulation for the bailiffs' fees, both based on the same provisions of the CPC. However, the amount of the fees are practically the same.

Pursuant to the Schedule, there are two basic types of fees: fixed fees, which are collected for a certain procedural action (opening a case, etc.) and “proportional” fees, which are based on performance (i.e. based on the estimated amount collected in the enforcement procedure). There are also “additional” fees that have to be paid for enforcement operations performed during holidays and outside regular business hours.

For example, the fee for an enforcement order is 2 percent of the material interest, but not less than €12.5 (section I of the Schedule).

The costs of issuing a writ of execution are borne by the person in whose favour the writ of execution is issued.<sup>41</sup>

The fee for an application for the recognition and enforcement of a judgment issued by a foreign court, arbitration court or other body is BGN 50 (Article 15 of the Schedule).<sup>42</sup>

## 7. Enforcement of court settlements approved or concluded by a court in the ESCP context

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Pursuant to Article 404 of the CPC, enforcement proceedings may also be brought on the ground of a judicial settlements. For more details on enforcement see Question 2.

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Article 624b of the CPC specifically regulates the stay or limitation of enforcement procedures within the meaning of Article 23 of the ESCP Regulation. Pursuant to paragraph 1 of Article 624b of the CPC the stay or limitation of the enforcement of a decision of a Bulgarian court rendered pursuant to the ESCP Regulation shall be ordered by the court

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<sup>41</sup> Available at: [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?BULGARIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?BULGARIA&member=1)

<sup>42</sup> Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)





before which the case is pending and, where the judgment has become final, by the court of first instance. Paragraph 2 further submits that an application for a stay of enforcement of a foreign judgment shall be made to the district court which issued the order permitting execution and the writ of execution.

The general national procedural rules for the stay of enforcement procedures are laid down in Article 420 of the CPC. Generally, an objection to an enforcement order does not stay enforcement except when the debtor provides a proper security for the creditor (paragraph 1 of Article 420 of the CPC).

Pursuant to paragraph 2 of Article 420 of the CPC, the court which ordered immediate enforcement (see Articles 418 and 419 of the CPC), may stay it without the need for the security referred to in par. 1 where a request for stay is made, supported by documentary evidence that:

1. the claim is not due;
2. the claim is based on an unfair term in a contract concluded with a consumer;
3. the amount of the claim under a contract with a consumer has been incorrectly calculated.

The order to stay the enforcement procedure can be appealed, however it is immediately enforceable, irrespective of any appeal (paragraphs 3 and 4 of Article 420 of the CPC). Where the appeal relates only to a part of the claim, the court shall stay enforcement only for the relevant part of the claim (paragraph 2 of Article 421 of the CPC).

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

Practical assistance and information in accordance with Article 11 of the ESCP Regulation is provided by the European Consumer Centre in Bulgaria, which is part of the European Consumer Centres Network (ECC-Net). Information on the application of the ESCP Regulation is provided by the Ministry of Justice upon request.<sup>43</sup>

According to Articles 22 and 23 of the Bulgarian Legal Aid Act, parties can also apply for legal aid in civil cases if they fulfil certain (financial) conditions.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

There are no other specific rules on enforcement of ESCP judgements.

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<sup>43</sup> Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?BULGARIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?BULGARIA&member=1)



## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The first problem with the enforcement of ESCP judgements in Bulgaria is the language barrier. The legislation that deals with enforcement (namely, the CPC) is only available in Bulgarian which complicates the enforcement procedure for foreigners. While some information on enforcement can be found on the EU's E-Justice portal, there is not enough information on enforcement procedures to guide a foreign party through the enforcement process. Furthermore, the entire enforcement procedure is conducted in Bulgarian. Thus, the applicant cannot submit the Form D in any other language. Thus, a party wishing to enforce an ESCP judgement in Bulgaria might have to engage a lawyer. Consequently, the costs of enforcement will increase for the party, making it less likely that they will decide to pursue enforcement at all.

The second problem with the enforcement of ESCP judgements in Bulgaria is the lack of digitalisation. While there is an information system set up according to Article 360y of the Judiciary act, only registered users are able to access the system. Furthermore, private individuals have to pay to access the system which hinders access to justice.

Thus, enforcement of ESCP judgements is difficult, especially for foreigners who do not speak Bulgarian and do not reside in Bulgaria. It would be beneficial to set up a way of enforcing ESCP judgements digitally with the option of the procedure being conducted in other languages (at least in English). This would significantly simplify the enforcement procedure of ESCP judgements and lower its costs. However, even just producing a comprehensive guide on ESCP judgement enforcement that would include an official translation of the relevant parts of legislation would go a long way of simplifying the procedure for foreigners.



## Cyprus

Author(s): prof. dr. Katarina Zajc, as. Ana Oblak, Lana Gotvan, Maksimilijan Gale

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

There is no specific small claims procedure under the legal system of Cyprus other than that provided for in Regulation 861/2007 (hereinafter, "the ESCP Regulation"), for the application of which a procedural regulation has been adopted (Procedural Regulation of 2008 on the European Small Claims Procedure, Ο περί Ευρωπαϊκής Διαδικασίας Επίλυσης Μικροδιαφορών Διαδικαστικός Κανονισμός (6/2008)). However, the amended Order 30 of the Cypriot Rules has now introduced a multi-tier track system - the 'Fast Adjudication' track for disputes not exceeding €3,000 or for disputes with no financial claim, and the 'Hearing Adjudication' track for the remaining disputes. This will be further discussed *infra*.

According to Article 25 of the ESCP Regulation, Cyprus has also forwarded the relevant information to the European Commission. Furthermore, the Civil Procedure Rules of Cyprus (hereinafter, "the Rules") apply in ESCP cases. Cyprus has maintained the old English civil procedure rules that were first enacted in Cyprus in 1954 and were not revoked even after its independence in 1960. Scholars have pointed out that the Rules are ambiguous, internally inconsistent, and linguistically problematic. It should be noted that the new Rules of Civil Procedure in Cyprus were adopted by the Supreme Court of Cyprus in May 2021 and will enter into force in September 2023.

#### (1) Competent courts

In ESCP the competent courts are the District courts. There are five district courts, one for each administrative district (that is, Nicosia, Limassol, Larnaca, Paphos and Famagusta).

#### (2) The number and mode of hearings, gathering evidence

The new Order 30 of the Rules must be taken into account. Rule 6 of Order 30 posits that all cases in which the monetary dispute does not exceed €3,000 shall be marked accordingly on the summons and shall be placed by the Registrar on an "Expedited List." Oral testimonies by the parties or any witnesses are an exception in such cases (see Rule 7 of Order 30 of the Rules) and written evidence should be exchanged. Where the parties agree, the Court may give directions as to the exchange of written testimony even if the subject matter of the action exceeds €3,000 (Rule 5 of Order 30 of the Rules).



Rule 9 of Order 30 of the Rules gives the Court additional discretion to issue any additional directions as it may deem proper and just in the circumstances in light of the following criteria:

- (a) the disposal of the case as soon as possible
- (b) to ensure equal treatment of the parties
- (c) to save or mitigate costs
- (d) to manage the case in proportion to:
  - (i) the amount in dispute
  - (ii) the importance of the case
  - (iii) the complexity of the issues raised, whether factual or legal.

Scholars have pointed out a lack of consideration of the impact that Order 30 has on other orders, for example on Order 33 which regulates the hearing process and Order 38 which regulates trial evidence. Despite Order 30 providing that other orders are to be 'read in light of the present Order,' it would be clearer for other orders to be rewritten in light of Order 30. Furthermore, Order 30 seems to be applied inconsistently, creating more problems than it solves.

(3) Means of communication

An application can be lodged in the register personally, or sent by post or by any other means of communication, such as fax or e-mail.

(4) Authorities or organisations providing practical assistance

The registries of the District courts.

Furthermore, any natural person (nationals and non- nationals) who cannot bear the costs of the proceedings without affecting the basic needs and obligations of himself and his family is entitled to receive legal aid. It is specifically stated that legal aid will also be granted in transboundary civil and commercial cases. An application form can be obtained from the Registry of the Court which has, depending on the case, jurisdiction to examine the application to grant legal aid. The application is submitted to the competent Court. In the case of cross- border disputes, the application should first be received by the Ministry of Justice and Public Order, which ensures that this application is submitted to the competent court.

(5) Means of electronic service and communication and methods for expressing consent for thereof

Documents are serviced by post or registered mail with acknowledgement of receipt including the date of receipt. If this form of service is not possible, service may be made by any of the methods set out in Articles 13 or 14 of Regulation (EC) No 805/2004.

The detailed rules on Service are explained below, under question 3.

(6) Persons or professions, obliged to accept service of documents or other written communications by electronic means



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Not implemented.

(7) Court fees and the methods of payment

No court fees for completing the form are charged.

Generally, the losing party bears the costs of the proceedings. However, the court can at its discretion order otherwise if it considers that this is just and appropriate under the given circumstances. Furthermore, courts have wide discretion to determine the amount of costs to be awarded to the winning party (Order 59 of the Rules).

Paying court fees can also be done digitally - through the newly set up E-justice system.

(8) Accepted languages

According to the information that Cyprus has given the European Commission, the application, reply, any counterclaim and replies to counterclaims and any description of associated supporting documents must be in Greek. However, Order 58 of the Rules states that any document served in Cyprus shall, if served on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English. Judgment and orders shall be entered in English. If a Greek or Turkish translation of a judgment or order is required for service in Cyprus, it shall be made by the Registrar of the Court. Documents for the use of the Court presented by advocates who are barristers shall be in English. And documents intended for any such advocates may, even where the client for whom he is acting is Greek- or Turkish-speaking, be in English.

(9) Appeal procedure and courts competent for an appeal

Pursuant to Rule 2 of Order 35 of the Rules, an appeal to the Supreme Court can be lodged regarding decisions of the court of first instance in small claims cases. The appeal must be lodged within 14 days of issue of the decision at first instance. Generally, court judgments can be appealed on points of law or fact.

Rule 3 of Order 35 submits that all appeals shall be by way of rehearing and shall be brought by written notice of appeal filed, within the appropriate period prescribed by Rule 2 of this Order, with the Registrar of the Court appealed from, together with an office copy of the judgment or order complained of (Form 28). Appeals are usually heard by a panel of three judges, except in cases of great importance where they may be heard by an enlarged panel.

The Court can at its discretion uphold, vary, set aside or order a retrial of the case. The Supreme Court may in exceptional cases also receive further evidence. Further evidence can be received either by oral examination or by affidavit or deposition taken before an examiner or commissioner (Order 35, Rule 8 of the Rules).

Rule 6 of Order 35 submits that simultaneously with the registration of the notice of appeal, a sum of thirty-two euros (€32) shall be deposited by the appellant with the Clerk



of the Court to which the appeal is delivered as an advance payment to cover the costs of preparing copies of the case file (pleadings, documents, minutes of the trial).

(10) Review of the judgment procedure and courts competent to conduct such a review  
Not implemented.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

The competent authorities for enforcement are the District courts. The competent court can be any court of Cyprus where the judgment debtor resides, has or is expected to have assets. The competent authorities are also the Courts Service (bailiffs) and the Land Registry. The authority competent for enforcement of an order to collect overdue maintenance payments is the police.

According to The Courts of Justice Law 1960, Art. 6(1) (L. 14/60), court judgments are binding on all the parties as soon as they are issued (unless the judgment includes orders to the contrary). Generally, the operative part of a judgment does not contain a threat of enforcement as such. Thus, the deadline for lodging an appeal does not by itself suspend enforcement; the appellant needs to lodge a reasoned request to achieve this purpose. The obligation in the operative part of the judgement is to be fulfilled by the defendant immediately, unless specified otherwise.

ESCP judgements are enforced according to the provisions of the Rules (Cap. 6). The following enforcement measures are available:

- Seizure and sale of movable property
- Seizure and sale of immovable property or registration of a charging order over the property (“MEMO”)
- Sequestration of immovable property
- Filing of an application seeking the freezing of the debtor's bank accounts (a garnishee order) and an application for the payment of the amount awarded under the judgment, the judgment debtor (the garnishee) can file an opposition to such a garnishee order.
- - Examination of the judgment debtor in respect of his financial situation and issuing an order to pay the judgment debt in monthly instalments
- Ordering immovable property to be delivered to the creditor (writ of possession)
- Ordering movable property to be delivered to the creditor (writ of delivery)
- Injunctions and other orders encumbering the interest of the judgment debtor on shares and other stock owned (*Encumbering Orders Law 1992 (Law 31(I)/1992)*).

Furthermore, the court can compel a party to comply with its orders by means of a fine, imprisonment or sequestration.



Very personal items which are essential for survival or for the defendant's occupation are excluded.

Enforcement is carried out mainly through bailiffs (*dikastikoí epidótes*). Bailiffs are civil servants employed at the courts on a permanent basis.

Generally, enforcement can only be effected against the interests and assets of the judgment debtor. However, a "Chabra injunction" can also be issued to freeze assets that are legally held by, or registered in the name of, third parties where there is "good reason to suppose" that they are beneficially owned or substantially controlled by the judgment debtor.

There are no specific rules on the enforcement of ESCP judgements, so the general rules apply. Any judgment given in the ESCP shall be enforced under the same conditions as a judgment given in the Member State of enforcement (Article 21(1) of the ESCP Regulation). Form D should be submitted to the competent court in written form. There are no specific provisions governing any appendices to Form D. Thus, as the ESCP Regulation submits, the party must provide a copy of the judgment to prove its authenticity, a copy of the judgment certificate in standard Form D and (as is further explained later) an official translation of the Form D (Article 21(2) of the ESCP Regulation). For the necessity of translations, see *infra*.

The judgment creditor is time barred based on actions to enforce a foreign judgment, which, pursuant to the Limitation of Actionable Rights Law of 2012, No. 66(I)/2012, become statute barred 15 years from the date on which the judgment became final.

For general rules, see the Rules.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Rules on service are set down in Order 5 of the Rules, as well as Orders 5a, 5b and 51.

Order 5 regulates the service of the writ of summons. Rule 2 of Order 5 posits that *"The service shall, whenever it is practicable, be effected by leaving the copy with the person to be served; but if he is not found at his house or at his usual place of employment, the service shall be deemed to be effected if the copy is left-*

*(i) with any member of his family of apparently 16 years and upwards then in his town or village or within the lands thereof; or*

*(ii) with any person apparently of such age and in charge of the place of his employment; or (iii) with his master in the case of a servant living with his master.*

*Where service is effected by leaving the copy with a person other than the person to be served, the affidavit of service shall state (if such be the case) that the person to be served was not found at his house or at his usual place of employment. (Form 5.)"*





Rule 3 of Order 5 further submits that service on the person to be served may be effected at any time of the day or night and in any place and on any day of the week.

Rule 9 of Order 5 (which was implemented in 2015) posits that in any case where it shall appear to the Court that for any reason it is not practicable to effect service in time in the manner provided in Rule 2 of this Order, the Court may make any order for substituted or other service or for the substitution of notice of service in any manner that may appear to it to be just and proper in the circumstances, including publication in any medium in **electronic form**, or other manner reasonably offered by the technology of the time.

Pursuant to Order 5b of the Rules the service of any document which the Court may order shall be effected by a private person authorised by the High Court ("the service agent"). Rule 6 or Order 5b further states that upon the assignment of service, the party shall pay to the service agent the established fees set out in Annex C, Part III.

Order 6 of the Rules governs service out of jurisdiction. Rule 2 of Order 6 obligates the party bespeaking such service to deposit in the Court the sums of €32 in respect of each person to be served.

Rule 1 of Order 51 of the Rules states that *"Any summons or notice to be served or given to any person may be served or given at his address for service if he has furnished one, and if he has not then at his last known or usual place of residence or, if this is impossible, with the leave of the Court or Judge obtained ex parte, in any one of the ways in which service or notice of a writ of summons may be effected or given (see supra). And everything done on any proceeding whereof notice has been served or given according to these Rules shall be binding on a person so served or notified, whether he attends on the proceeding or not."* Furthermore, if the address for service includes a facsimile address, service or delivery of a judicial document by facsimile communication is acceptable (Rule 1B, Order 51 of the Rules). The party by whom or on whose behalf application is made for such service must pay the fees in the first instance (Rule 2, Order 51 of the Rules).

In the case of foreign proceedings, the method of service in Cyprus depends on any existing treaty or agreement between Cyprus and the country where the proceedings take place. Regulation (EC) 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters (Service of Documents Regulation) applies in the cases where proceedings are taking place in another Member State. According to the Service of Documents Regulation, the Ministry of Justice and Public Order has been designated as the receiving agency in Cyprus.

To speed up the enforcement procedure and to allow the bailiffs to focus on enforcement, the service of documents in all civil court cases has been entrusted to private companies since 1996.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**



*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

There is no digital enforcement process. However, in July 2021, the official launch of the e-Justice platform took place in Cyprus. The main goal of the new digital platform is to streamline legal processes, specifically submitting claims remotely, getting access to electronic files of cases and paying commissions and fees. While enforcement does not yet seem to be digitalised, Cyprus is moving towards digitalising its justice system.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

For the purpose of enforcement under Article 21(2)(b) Cyprus also accepts English. Order 58 of the Rules states that any document served in Cyprus shall, if served on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English. Judgment and orders shall be entered in English. If a Greek or Turkish translation of a judgment or order is required for service in Cyprus, it shall be made by the Registrar of the Court. Documents for the use of the Court presented by advocates who are barristers shall be in English. And documents intended for any such advocates may, even where the client for whom he is acting is Greek- or Turkish-speaking, be in English. Advocates other than barristers may bring themselves under this Rule by giving notice to that effect to the Registrar of the Court before which they appear, who shall post it up in the registry for public information.

Thus, other languages are not accepted by the Courts. There is no legal aid to cover translation services.

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

According to information that was sent from Cyprus to the European Commission on enforcement, the costs of the procedure cannot be determined in advance. The costs are rather calculated by the registrar of the court based on the regulations on fees and depend on the sum awarded under the judgment or the value of the subject matter of the judgment, as well as other possible additional possible expenses (transportation, storage, etc.) These figures are assessed as per the table of fees set out in the Rules. The person against whom the judgment was delivered is obligated to pay the fees.

Paying court fees can also be done digitally - through the newly set up E-justice system.

#### **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*



In Cyprus there is no formal mechanism for the settlement of claims. This means that the settlement of a civil case is a matter subject to the discretion and agreement of the parties, and no court's approval is required. If a settlement is presented before the court and recorded as a final judgment, it obtains the status of a court judgment. Thus, it can be executed in the same way as any other domestic judgment (see *supra*).

#### **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Cyprus considers a judgement to be enforceable even if a possibility of appeal still exists (Article 6(1) of the Courts of Justice Law 1960). Cyprus also gave some general information to the European Commission on appeals in the enforcement procedure. Thus, depending on the case, it is possible to bring legal challenges, e.g. in order to suspend enforcement or to cancel an entry in the register.

#### **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

Any natural person (nationals and non-nationals) who cannot bear the costs of the proceedings without affecting the basic needs and obligations of himself and his family is entitled to receive legal aid. While there is no explicit mention of enforcement proceedings, it is specifically stated that legal aid will also be granted in transboundary civil and commercial cases.

An application form can be obtained from the Registry of the Court which has, depending on the case, jurisdiction to examine the application to grant legal aid. The application is submitted to the competent Court. In the case of cross-border disputes, the application should first be received by the Ministry of Justice and Public Order, which ensures that this application is submitted to the competent court.

#### **10. Other specific procedural rules on enforcement of ESCP judgments**

(if applicable)

#### **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

As is put forth by certain scholars, the Rules (which also govern enforcement procedures) are not very "user friendly" and thus pose a problem for the access to justice. Thus, the enforcement procedure is sometimes hard to understand, especially for the lay public. The Rules were written in English in 1954 and while they have been amended since, there is no official translations of the amendments. Thus, the rules are written partially in Greek and partly in English. This is also why compiling the report was difficult at some points.

As Kyriakides puts it "*This is problematic for various reasons. First, it requires any individual wishing to make use of the Rules to have competent levels of English and Greek, despite English not being an official language of the Republic. Second, there are inherent semantic issues with provisions being part written in two different languages, leading to*



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*fundamental interpretative obstacles. Moreover, Order 1 of the Rules contains a glossary of English terms such as ‘originating summons’ and ‘personal representative’, however no such glossary is found for Greek terms. In other words, complex Greek legalese is not officially defined. All of the above undermine the principle that the law should be clear... Given that not all citizens have a working knowledge of legal English and Greek, it is plausible that the inaccessible nature of the Rules is a cause of the low number of litigants in person.”*

Another big problem is the lack of digitalisation. In Cyprus, there is a general lack of internal IT infrastructure and facilities, and a general absence of online public services. Mouttotos observes that the absence of the necessary infrastructure for electronic justice to act as a tool in the circumstances of the global COVID-19 pandemic has been detrimental.

Unclear rules and the lack of digitalisation, which brings with it many bureaucratic issues, also lead to a very slow process of justice. The delays in the administration of justice in Cyprus have also been pointed out in reports such as the European Union’s Justice Scoreboard, the World Bank’s Doing Business Reports as well as European Commission papers on Cyprus. Moreover, Mouttotos observes that *“The situation in Cyprus, with its excessive delays, drives market forces to strategical behaviour of not complying with the law.”*



## Croatia

Author(s): Ivana Kanceljak, Tatjana Josipović

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

ESCP regulation is implemented in Civil Procedure Act (*Zakon o parničnom postupku*/Civil Procedure Act, hereinafter: CPA)<sup>44</sup> in articles 507.o – 507.ž. After implementation of ESCP in Croatian law there are two sets of rules for small claims procedure: 1) European Small Claim Procedure regulated in ESCP Regulation for cross-border cases and 2) general rules on small claim procedure for monetary and nonmonetary claims under 10.000 HRK (cca: 1.333 Euro) in all civil and commercial matters (domestic and cross-border) regulated in articles 457-467.a of the CPA. General rules on small claim procedure have subsidiary application in European Small Claim Procedure. If there is no specific rule on small claims procedure, general rules on civil procedure apply (Art. 457. CPA). In a case of cross border small claims disputes the party has option to choose the procedure between European Small Claim Procedure and general small claim procedure regulated in CPA.

In CPA there is no specific rule about the subject-matter and territorial jurisdiction (competent courts) for European small claims procedure. The jurisdiction is determined by general rules on jurisdiction. The competent court is municipal or commercial court, depending on the subject matter (civil or commercial case<sup>45</sup>), on whose territory defendant has his or her permanent residence or registered seat. If the defendant has no permanent residence in Croatia, the competent court is the court on whose territory the defendant has temporary residence.<sup>46</sup> For the small claim origins form the disputes between traders

<sup>44</sup> Official gazette SFRJ num. 4/1977, 36/1977, 36/1980, 6/1980, 69/1982, 43/1982, 58/1984, 74/1987, 57/1989, 20/1990, 27/1990, 35/1991, Official gazette (Narodne novine) num. 53/1991, 91/1992, 112/1999, 129/2000, 88/2001, 117/2003, 88/2005, 2/2007, 96/2008, 84/2008, 123/2008, 57/2011, 25/2013, 89/2014, 70/2019, 80/2022.

<sup>45</sup> See articles: 34 and 34b of the CPA.

<sup>46</sup> See Articles 46-49 CPA.



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(commercial cases) commercial courts are competent. For the small claims in other civil cases, municipal courts are competent.

The main characteristic of the procedure is that it is mostly a written one. In principle the competent court decides on the base of evidences which have to be presented in written form. The procedure should be in the simplest manner. The only exception is art. 507.u CPA that obliges the court to hold an oral hearing to heard another party before issuing a certificate concerning a judgment given in the European Small Claims Procedure. On the other hand, the general rules on small claim procedure subsidiary apply. It means that it is possible for court to organise oral hearings of the parties in the European Small Claim Procedure if it is necessary.<sup>47</sup>

The parties are obliged to present all the facts on which they base their claims and to propose the evidences necessary to support the presented facts latest in the claim or the response to the claim. In Croatian judicial practices some courts have created a specific practice. Along with the form C, to the respondent is sent an additional document/notice with the warning that later in the procedure he will not be able to submit new evidence or new facts.<sup>48</sup> New facts and evidence can be submitted later at the hearing only if the party couldn't do it before without his/her fault (art. 299 p. 2 and 461.a p.6 of the CPA).

In Croatia, court fees are regulated in the Court Fees Act (*Zakon o sudskim pristojbama/ Act on Court Fees*, hereinafter: CFA).<sup>49</sup> In these Act the specific rules regulate fees for submission of petitions electronically. The main rule is that the fees are 50 % lower in compare with the fees for the submission the petitions in written form. According to article 7. paragraph 1. "for petitions submitted electronically, pursuant to special regulations via the information system which is used in court, a fee is paid on submission. The amount paid is half the fee established by the tariff (for submission petition in written form op.a.)".<sup>50</sup> In addition, art. 7. paragraph 3 regulates that "for decisions served by a court electronically, pursuant to the special regulations via the information system which is used in court, half the fee established by the tariff is paid, if it is paid within three days from the day of electronic service". Pursuant to Article 5 of the Court Fees Act, the fees prescribed by the Tariff shall be paid by cashless payment, in cash, in revenue stamps issued by the Republic of Croatia, or electronically.<sup>51</sup> A party who lost a case completely is obliged to pay the costs of the opposing party.<sup>52</sup> The exact costs depends on the value of monetary

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<sup>47</sup> Buljan, Iva, *Europski sporovi male vrijednosti, Tradicionalno XXXIV. Savjetovanje – Aktualnosti hrvatskog zakonodavstva i pravne prakse, godišnjak 26, Organizator, Zagreb, 2019.*, p. 351.

<sup>48</sup> It is not needed since the form has already this content. On that problem see more: Marić Ivanović, Renata; Štuc-Čavec Tihana: *Europski postupak za sporove male vrijednosti, Informator, br. 6671.-22.03.2021.*, p. 10

<sup>49</sup> Official gazette (Narodne novine, 118/18).

<sup>50</sup> Here also relevant the Tariff of Court Fees (Uredba o tarifi sudskih pristojbi, hereinafter: OTCF), Official gazette, num. 53/2019, 92/2021.

<sup>51</sup> See more: [https://e-](https://e-justice.europa.eu/306/EN/court_fees_concerning_small_claims_procedure?CROATIA&init=true&member=1)

[justice.europa.eu/306/EN/court\\_fees\\_concerning\\_small\\_claims\\_procedure?CROATIA&init=true&member=1](https://e-justice.europa.eu/306/EN/court_fees_concerning_small_claims_procedure?CROATIA&init=true&member=1)

<sup>52</sup> See art. 154 of the CPA.



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claim.<sup>53</sup> Tariff of Court Fees (*Uredba o tarifi sudskih pristojbi*, hereinafter: OTCF)<sup>54</sup> regulated costs for petition which are (under Tr. br. 1):

Min. value of the claim	Fees
0,00 -3.000 HRK/	100,00 HRK/
0,00- 400 Euro	13,33 Euro
3.001 – 6.000 HR/	200,00 HRK/
401 – 800 Euro	26,66 Euro
6.001 – 9.000 HRK/	300,00 HRK/
801 – 1.200 Euro	40 Euro
9.001-12.000 HRK/	400,00 HRK/
1.201 – 1.600 Euro	53,33 Euro
12.001-15.000 HRK	500,00 HRK/
1.601 – 2.000 Euro	66,66 Euro

Regarding the language, CPA has a special provision in Article 507.z. that regulates: “if the creditor according to Article 21 paragraph 2 point b) of Regulation no. 861/2007 is obliged to attach a translation, that translation must be in the Croatian language, certified by a person authorized to do so in one of the member states of the European Union”. There isn’t a specific rule on the cost of the translation of the documents for ESCP. This would mean that each party would have to bear such cost but the reimbursement would depend on the success in the procedure.

One of the novelties of the Regulation 2015/2421 concerns legal help for the parties in the procedure. CPA doesn’t provide any special legal solutions for such cases. It is possible that Free Legal Aid Act (*Zakon o besplatnoj pravnoj pomoći*, here in after: FLAA)<sup>55</sup> would apply. Free Legal Aid Act is harmonised with the Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. Legal aid in cross border cases is regulated in Arts. 29-33 FLAA.

<sup>53</sup> In details see: [https://e-justice.europa.eu/306/HR/court\\_fees\\_concerning\\_small\\_claims\\_procedure?CROATIA&member=1#03](https://e-justice.europa.eu/306/HR/court_fees_concerning_small_claims_procedure?CROATIA&member=1#03)

<sup>54</sup> Official gazette, num. 53/2019, 92/2021.

<sup>55</sup> Official gazette, num. 143/13, 98/19.





After issuing the judgement, parties have a right to appeal. General rules of the CPA which regulate small claims apply.<sup>56</sup> The parties may lodge an appeal against the first instance judgment or decision within 15 days of the date on which the transcript of the judgment or decision was served.<sup>57</sup> An appeal against judgment in the Republic of Croatia in a European Small Claim Procedure does not delay enforcement (507.t of the CPA). A special rules for small claims in general regulate that the appeal can be submitted for a specific reasons – wrong application of the substantive law and significant violations of the rules on the procedure regulated in art. 354 p. 2 of the CPA except for the violation referred to in art 354, p. 2, point 3. of the CPA. This means that the reason of the appeal can not be following reason “if, due to the objections of the parties, the court has wrongly decided that it has subject-matter or territorial jurisdiction” (art 354, p. 2, point 3. of the CPA).

Another legal remedy is also available for the respondent - review of the judgment in exceptional cases (art. 18. of the Regulation 2015/2421). Croatian CPA only regulates that “if the defendant/respondent makes probable the existence of the perquisitions for the review of the judgment issued in a European Small Claim Procedure according to the art. 18. p. 1 of Regulation 861/2007, the court will determine the nullity of that judgment and return the procedure to the state it was in before the judgment was passed” (art. 507.š of the CPA).

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

In Croatia, enforcement procedure is regulated by the Enforcement Act (*Ovršni zakon*, hereinafter: EA).<sup>58</sup> Enforcement procedure in Croatia is in jurisdiction of the courts and public notaries.

Civil Procedure Act regulates that the enforcement based on the enforceable document originating from ESCP carried out in another member state of the European Union can be executed even though this document does not have a certificate of enforceability (art. 507.v).<sup>59</sup> Enforcement procedure starts with the motion for execution which results with a writ of execution.<sup>60</sup> Having in mind that the objects of ESCP are monetary claims, a special

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<sup>56</sup> An appeal against the judgement is allowed according to the provisions of the CPA on appeals in small disputes (article 467 of the CPA).

<sup>57</sup> See: 1.9. Possibility to appeal, [https://e-justice.europa.eu/42/EN/small\\_claims?CROATIA&init=true&member=1](https://e-justice.europa.eu/42/EN/small_claims?CROATIA&init=true&member=1).

<sup>58</sup> Official gazette, num. 112/2012, 25/2013, 93/2014, 55/2016, 73/2017, 131/2020.

<sup>59</sup> From the aspect of Croatian law on that see art. 36 of the EA.

<sup>60</sup> See art. 39-41 of the OA.



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part of the EA regulating the enforcement procedure for monetary claims will be applicable which regulates execution for the payment of monetary claims (art. 74-78 of the EA, 204-213 of the EA).

The creditor needs to have the judgement and the certificate (form D) (original versions) and if necessary translated versions (art. 20. p. 2 of Regulation 2915/2421). Judgement is enforcement title document which can be used to initiate the enforcement procedure (art. 23 of the EA). Also, if the creditor is obliged under the Regulation to append the translation of the documents, that translation must be in Croatian language, confirmed by the person authorised to translate to Croatian in any of the member states.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Standard forms necessary for the procedure can be downloaded on a webpage [https://e-justice.europa.eu/177/HR/small\\_claims\\_forms](https://e-justice.europa.eu/177/HR/small_claims_forms).

Forms, according to Regulation no. 861/2007, and other requests or declarations can be submitted as classical documents, by fax or electronically (507.o of the CPA). CPA regulates submissions in electronic form (art. 106.a of the CPA). Submissions can be sent electronically by using a special information system (art. 106a p. 1 of the CPA). Every submission must be signed by qualified electronic signature.<sup>61</sup> This type of signature has the same legal effect as the written signature (art. 106a p. 2 of the CPA). For some legal persons that could be involved in the procedure (lawyers, public notaries, public bodies etc.) electronic communication is obligatory (art. 106a p. 5 of the CPA). From January the 1<sup>st</sup> 2022 a new Regulation on electronic communication (*Pravilnik o elektroničkoj komunikaciji*, hereinafter: REC)<sup>62</sup> is in force. These Regulations gives more details and technical rules on electronic communication with the courts. REC regulates prerequisites for sending documents electronically, delivery in electronic form, forms of records of submissions in electronic form (formats), the organization and operation of the judicial information system for electronic communication (art. 1 of the REC). Electronic communication is realized through the information system using the credentials of the National Identification and Authentication System with a significant or high level of security and with direct connection to the information system of the State Attorney's Office (art. 7 of the REC).<sup>63</sup> A persons (both natural and legal) need to have a special authorisation to use the system. Natural persons independently exercise the right/authorisation to access the system by using the credentials of the National Identification and Authentication System with a significant or high level of security. Legal

<sup>61</sup> This is regulated by the Act implementing Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, Official gazette, num. 62/2017.

<sup>62</sup> Official gazette, num. 139/2021.

<sup>63</sup> See: <https://nias.gov.hr/>.



persons exercise the right/authorisation to access the system by submitting mandatory data to the system administrator (art. 8, p. 1 and 2 of the REC).<sup>64</sup> The same rules apply to foreign parties in civil procedure. Foreign citizens (natural persons) have the possibility to register at the portal e-Citizen (E-Građani) which can be used for sending the documents electronically.<sup>65</sup> EU citizens from other Member States can become an e-Citizen by using their national digital credentials accepted in the EU cross-border identification system.<sup>66</sup> This portal can be used by person which is authorized to act in the name and on behalf of the business entity, which is the owner of nationally recognized electronic credentials and which accesses the System through NIAS.<sup>67</sup> A cross-border user is a citizen or a person in a business entity of an EU/EEA/EEA member state who is the holder of a credential issued in an EU/EEA member state, except for the Republic of Croatia, by which the cross-border the user, through “Čvor” and NIAS, accesses the e-service.<sup>68</sup> This means that cross-border users can use their own credential to prove their e-identity.

Documents submitted electronically to the court by party have to be submitted in electronic form and signed by qualified electronic signature (art. 10 p. 1 of the REC). When the document is successfully electronically submitted, the court notifies electronically on the receiving of the document use of electronic qualified time stamp (art. 11 p. 1 of the REC). REC does not regulate any specific and additional costs for the electronic communication. The party has to pay the costs and fees regulated in Act on Court Fees depending on the value of monetary claim. To support parties to submit the documents electronically, for documents submitted electronically only 50% of fees has to be paid if it is paid within 3 days since the moment of electronically delivered judgement (art. 7 p. 3 CFA).

#### 4. The status of digitalisation in enforcement of the ESCP judgments

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

According to the EA, electronic communication is possible when the creditor has obtained enforceable document (such as a judgement in ESCP, art. 23 of the EA) which must be on a prescribed layout (art. 39a p. 1 and 2 of the EA) and obviously sent physically to the court. This means that enforcement based on judgement in ESCP procedure is not digitalized.

But, when creditor has an execution writ on debtor's funds (art. 204 of the EA) it is possible to preform such execution according to Implementation of Enforcement with respect to

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<sup>64</sup> See more on how to obtain digital certificates: <https://www.fina.hr/en/digital-certificates>.

<sup>65</sup> See more: <https://gov.hr/en/how-can-eu-nationals-living-in-their-respective-countries-use-e-citizens/2148>.

<sup>66</sup> For more see: <https://gov.hr/en/how-can-eu-nationals-living-in-their-respective-countries-use-e-citizens/2148>

<sup>67</sup> See: Terms and conditions for the use of portal e-citizen (part 2, definitions), <https://nias.gov.hr/Home/GetTermsOfUsePdf?future=false>.

<sup>68</sup> See: Terms and conditions for the use of portal e-citizen (part 3, use of portal e-citizen and e-services), <https://nias.gov.hr/Home/GetTermsOfUsePdf?future=false>.



Funds Act (*Zakon o provedbi ovrhe na novčanim sredstvima*, hereinafter: IEFA)<sup>69</sup>. A base for the performance of this procedure is an enforceable document which can be a judgment in ESCP (art. 3 p. 1. of the IEFA). The judgement in ESCP can also be submitted as an electronic document in accordance with the regulations governing the use of electronic documents, and in the manner prescribed by the ordinance governing technical conditions (art. 5 p. 3. of the IEFA). It is submitted to a Croatian financial agency (FINA).<sup>70</sup> It can also be submitted as an electronic document in accordance with the regulations governing the use of electronic documents, and in the manner prescribed by the ordinance governing technical conditions (art. 5. p. 1. of the IEFA). In that sense, technical details are regulated in a Regulation on technical conditions for the implementation of the Enforcement with respect to Funds Act (*Pravilnik o tehničkim uvjetima za provedbu Zakona o provedbi ovrhe na novčanim sredstvima*).<sup>71</sup>

Croatian financial agency (FINA) maintains the Official Register (*Očevidnik*) in electronic form (art. 6 p. 3 of the IEFA). It is a database of all the grounds for payment received by an individual creditors, the status of their execution and the actions taken during enforcement based on those grounds for payment (art. 6 p. 1 of the IEFA).

For the enforcement procedure, the most important part is the communication between Croatian financial agency (FINA) and the banks. This communication also function by electronical means.<sup>72</sup>

## 5. Language of the Certificate (standard Form D) and other documents to be appended

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

Art. 6 of the CPA explicitly regulates that the official language of the procedure is Croatian. In general, parties and other persons who participate in civil procedure must use Croatian language. The party is allowed to use their own language along with the person authorised to translate<sup>73</sup> whose costs bears the party (art. 102 of the CPA).<sup>74</sup> Regarding ESCP, CPA regulates that “if the creditor according to Article 21 paragraph 2 point b) of Regulation no. 861/2007 is obliged to attach a translation, that translation must be in the Croatian language, certified by a person authorized to do so in one of the member states of the European Union” (art. 507.z).

<sup>69</sup> Official gazette, num. 68/2018, 2/2020, 47/2020, 46/2020, 83/2020, 133/2020.

<sup>70</sup> <https://www.fina.hr/en/homepage>

<sup>71</sup> Official gazette, num. 89/2018, 46/2022.

<sup>72</sup> For example see: art. 11 p. 3, 6, 9

<sup>73</sup> See on authorized translator in art. 123 – 124c of Act on Courts (*Zakon o sudovima*, Official gazette num. 28/13, 33/15, 82/15, 82/16, 67/18, 126/19, 130/20, 21/22, 60/22).

<sup>74</sup> On language of civil procedure see more in art. 103-105 of the CPA.



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Regulation 861/2007 regulates conditions for refusal of acceptance of documents/submissions based on the language. In that sense the CPA in article 507.p regulates that the deadline for statement of denial of acceptance is eight days. It begins to run from the day the submission is delivered (art. 507p of the CPA). These deadline cannot be extended. The recipient has to be informed and instructed on the consequences of missing that deadline.

It has to be noted that the Form D can be downloaded in Croatian but also in other official languages of the member states.<sup>75</sup>

In general, since it isn't regulated otherwise, previously described solution from CPA on language is also applicable to the enforcement procedure (art. 21 p. 1 EA). In the enforcement procedure, only when it comes to the procedure with Financial agency (FINA) it is regulated that documents must be translated if they are in a foreign language (art. 209 p. 2 of the EA).

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

Enforcement Act regulates cost in general. Art. 14 of the EA regulates that the creditor must bear all costs of the procedure in advance. Beside the Court Fees Act relevant is also Ordinance on the Tariff of Court Fees (*Uredba o tarifi sudskih pristojbi*, hereinafter: OTCF).<sup>76</sup> According to OTFC the court fee for the proposal for the enforcement is half of the court fee for the submission of the claim (tar. br. 1. p. 2 of the OTCF).<sup>77</sup> This also applies for the cost of the writ of execution.

CFA is both applicable to civil procedure and enforcement procedure.<sup>78</sup> The costs that are usually paid in enforcement procedure will be paid in enforcement procedure based on the judgement brought in ESCP.

## 7. Enforcement of court settlements approved or concluded by a court in the ESCP context

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Civil procedure act regulates court settlements in articles 321 – 324. There are also specific rules on the costs in civil procedure. Each party shall bear its own costs if the litigation has been settled by a court settlement, and the settlement has not agreed otherwise (art. 159

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<sup>75</sup> See: [https://e-justice.europa.eu/177/HR/small\\_claims\\_forms](https://e-justice.europa.eu/177/HR/small_claims_forms).

<sup>76</sup> Official gazette, num. 53/2019, 92/2021.

<sup>77</sup> See more in chapter: 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State.

<sup>78</sup> This means that everything explained before on costs in civil procedure is applicable for enforcement procedure.



p. 1 of the CPA). When it comes to the enforceability of the settlement they have the same legal force as judgements. Just like judgements, court settlements are enforcement title document.<sup>79</sup> The enforcement procedure based on court settlement as enforcement title document is the same as enforcement procedure based on court judgment.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

On refusal of ESCP enforcement procedure decides municipal court (Art. 507ž p.1. CPA). The court must decide based on the reasons for the refusal regulated in art. 22. p. 1 of the Regulation no. 861/2007. Legal effect of refusal is that the enforcement shall be cancelled. The court decides on the cancellation of enforcement with the appropriate application of the provisions of the enforcement procedure (507.ž p. 2 of the CPA). The court must in decision explain the reasons for refusal (art. 41 p. 7 of the EA). Against decision on refusal appeal is possible.

Upon debtor's application for stay or limitation of enforcement (Article 23 of Regulation no. 861/2007) decides the court that ordered the enforcement<sup>80</sup> and after the start of enforcement, the court that carries out the execution (507 ž p.3. of the CPA). On the stay or restriction of execution according to the provisions of Article 23 of Regulation no. 861/2007 the court decides with a decision against which a special appeal is not allowed. The decision remains in force until the end of the proceedings initiated by the party in terms of the provisions of Article 23 of Regulation no. 861/2007, that is, until a different decision of the court passed on the occasion of the proposal of any of the parties.

Provisions regulating stay or restrictions of enforcement arising from Art. 23 of Regulation no. 861/2007 have the primacy in application considering reasons for action they regulate. This means that the court may regarding the stay and limitation of enforcement apply only provisions regulated in Regulation. Court may decide to limit the enforcement proceedings to protective measures or to make enforcement conditional on the provision of security. Court may also only under exceptional circumstances, stay the enforcement proceedings. But the court may not apply general provisions about reasons for stay and limitation of enforcement proceedings regulated in EA.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

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<sup>79</sup> See: art. 23, 24 and 27 of the EA.

<sup>80</sup> The territorial jurisdiction of the court is determined according to the rules on the territorial jurisdiction of the court in enforcement proceedings (art. 507.ž of the CPA). Territorial jurisdiction for enforcement depends on the object of execution.





Portal e-justice gives basic information on the procedure relevant for the Croatian law.<sup>81</sup> Also, of importance is before mentioned Free Legal Aid Act.<sup>82</sup> Basic information for parties on e-justice portal<sup>83</sup> implies that legal aid should be given by court administration.<sup>84</sup> Some practitioners as authors have already noticed that even for them it is not clear who is at the court obliged to provide legal aid and to what extend.<sup>85</sup>

Croatian legislator has transposed Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (hereinafter: Directive 2003/8/EC)<sup>86</sup> in FLAA. Directive 2003/8/EC is transposed in art. 26 – 33 FLAA which regulate approval of legal aid in cross-border disputes. A cross-border dispute is a dispute in which the applicant for the approval of legal aid has a residence or permanent residence in a member state of the European Union, which is not a member state in which the court is, i.e. in which the court decision is to be executed (art. 26 p. 1. FLAA). Legal aid can be approved both in civil and commercial legal matters (art. 26 p. 2 FLAA). Application for legal aid will be approved if prerequisites set in FLAA are met (art. 27 p. 1 FLAA). Concerning persons who have a right to legal aid one exemption exists. Legal aid may be granted to an applicant who does not meet the conditions for legal aid, if applicant proves that he or she is unable to pay the costs of the procedure due to the difference in living costs between the member state in which he resides or permanently resides and living costs in the Republic of Croatia (art. 27 p. 2 FLAA).

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

In Croatian law there are no specific rules on ESCP enforcement procedure. The general rules on enforcement procedure apply. There are also no specific rules on digital enforcement of ESCP judgements. The most important issue with enforcement procedure based on judgement in ESCP is a lack of digitalization. To make ESCP enforcement procedure more efficient the more specific and more precise rules are desirable on national but also on EU level.

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<sup>81</sup> [https://e-justice.europa.eu/content\\_small\\_claims-42-hr.do](https://e-justice.europa.eu/content_small_claims-42-hr.do).

<sup>82</sup> On free legal aid see more in chapter: 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State.

<sup>83</sup> [https://e-justice.europa.eu/content\\_small\\_claims-42-hr.do](https://e-justice.europa.eu/content_small_claims-42-hr.do).

<sup>84</sup> In general, according to art. 6 FLAA legal aid providers are administrative bodies, authorized associations, legal clinics and lawyers.

<sup>85</sup> Marić Ivanović, Renata; Štuc-Čavec Tihana, op. cit. p. 9.

<sup>86</sup> Official Journal L 026 , 31/01/2003 P. 0041 – 0047.





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Better transparency for providing information for creditors is also needed. First, better information about possible communication by electronical means (in connection to foreigners and using of portal e-citizens) is needed. It is important to avoid delivery of written documents to the court. Also, more transparency about legal aid is necessary. Maybe it is possible to organise a single contact point on national level connected with e-justice portal for communication with competent national courts in cross border procedure including ESCP procedure.



## Czech Republic

Author(s): Ivana Kanceljak

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

Civil procedure in Czech Republic is regulated in Civil Procedure Act (*Zákon č. 99/1963 Sb., Občanský soudní řád*; hereinafter: CPA). CPA does not contain special rules on ESCP. This means that the general rules of the CPA would apply for ESCP. When it comes to competent courts, general rules of the CPA shall apply. Material court competence is regulated in § 9 to 12 of the CPA and territorial court competence in § 84 to 89a. Special courts for ESCP do not exist.

Under Czech CPA, it is not necessary to hold a hearing if the decision can be brought based on the submitted documents, and if the contracting parties agree with it or they have revoked in advance of their right to be heard (§ 115a CPA). From the aspect of the ESCP it has to be emphasized that CPA has special provision for the videoconference (§ 102a CPA).

Rules on the evidence procedure are in § 120 – 136 CPA. Each party in the procedure must submit evidence but also the court may propose on the evidence too (§ 120 CPA).

Costs of the procedure are regulated in § 138 – 151 CPA. Also, Act on the Court Fees apply (*Zákon č. 549/1991 Sb.; Zákon České národní rady o soudních poplatcích*, hereinafter: ACF). Fee for the initiation of the civil court proceedings, the subject of which is monetary compensation is in relation with the value of the claim. Having in mind that we deal with the small claim procedure it has to be noted that the cost is CZK 1,000 (cca. 40 EUR) if the claim is up to CZK 20,000 (cc. 815 EUR) and it is 5% of the value of the monetary claim if the claim is in its value greater than CZK 20,000 (cca. 815 EUR) but below CZK 4,000,000 (162851 EUR) (see Annex of the ACF). Fees are paid by a bank transfer to the account of the competent court. Bank details can be found on the website of each court, available at



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the Internet portal <https://www.justice.cz/>. Fees of up to CZK 5 000 can also be paid by fee stamps.

Each party is obliged to pay his own fees ( 140 CPA). The court shall award the party who was fully successful in the case with compensation for the costs necessary for the purposeful application against the party who was not successful in the case (§ 142/1 CPA). If the party was only partially successful in the case, the court will divide the reimbursement of costs proportionately, or declare that none of the parties is entitled to reimbursement of costs (§ 142/2 CPA).

Courts are required to advise the parties of their procedural rights and obligations (§ 5 CPA). In this respect, the law lays down what advice the court is to give the parties in the specific procedural situation.

Although the e-justice portal states that “the only language accepted by the Czech Republic is Czech”, CPA has a solution for persons without the knowledge of the official language.

First of all it regulates that all participants have equal status in civil court proceedings. In addition, they have the right to appear in court in their mother tongue. The court is obliged to provide them with the same opportunities to exercise their rights (§ 18/1CPA).

In general, the participant can challenge the decision of the district court or the decision of the regional court issued in the first instance by appeal, unless the law excludes it (§ 201 CPA).

Appeals are inadmissible against judgments ruling on monetary compensation not exceeding CZK 10 000 (cca. 406 EUR), excluding any interest and charges pertaining to the claim; this does not apply to default judgments (§ 202/2 CPA). Appeals should be lodged with the court whose decision is being contested no more than 15 days after the written decision is served. The court then refers the appeal to a superior court which will conduct the appeal procedure.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Enforcement procedure in Czech Republic is divided between regular civil courts and bailiffs. When it comes to the jurisdiction of the competent courts, the same rules apply as for the civil procedure. Under those rules plaintiff may lodge an application for judicial



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enforcement of a decision with the district court that has territorial jurisdiction. Enforcement procedure is regulated in § 251 – 351a of the CPA.

On the other hand plaintiff can lodge an application for an enforcement order with any court bailiff. In that case, Act. num. 120/2001 on court bailiffs and enforcement activities (*Zákon č. 120/2001 Sb., Zákon o soudních exekutorech a exekuční činnosti (exekuční řád) a o změně dalších zákonů; hereinafter:EA*) will apply.

The Czech Republic has appointed the district courts (okresní soudy) as the authorities with competence for the purposes of applying Article 23. Their territorial jurisdiction is governed by § 84 to 86 of the CPA and by § 45 of the EA in the case of enforcement of a decision by a court bailiff.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Special service for electronic communication in Czech Republic is called “data box”. It is an online service which can be used free of charge and is used by authorised persons.<sup>87</sup> According to e-justice portal, such data boxes are used primarily by legal persons registered in the commercial register, legal persons established by law, spin-off companies of foreign legal persons registered in the commercial register, lawyers, tax advisors and bankruptcy administrators. There is an obligation to set up a data box for those entities. For other types of legal and natural persons, data boxes are set up upon request. Special regulation is applicable on electronic communication - Act No 300/2008 on electronic transactions, personal identification numbers and authorised document conversion (*Zákon č. 300/2008 Sb., Zákon o elektronických úkonech a autorizované konverzi dokumentů*). Forms in the ESCP procedures can be sent through “data box”.<sup>88</sup>

### 4. The status of digitalisation in enforcement of the ESCP judgments

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

If enforcement procedure is under jurisdiction of the court, as previously explained, CPA will apply. In that case electronic communication is provided through data box. CPA regulates in § 47 submission of documents through data box. Additionally, EA explicitly regulates that communication can be electronic (§ 43a/2).

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<sup>87</sup> See more on how to use dana box: <https://pexpats.com/czech-datova-schranka>.

<sup>88</sup> On electronic communication in ESCP see: Xandra E. Kramer: Small claim, simple recovery? The European small claims procedure and its implementation in the member states, ERA Forum, 12,2011, p. 129.



It is regulated that, together with the request, the executor sends to the court an enforcement proposal, or a proposal for a declaration of enforceability or recognition and all the documents that he has attached to the proposal. The application, including all documents that are sent to the court together with it, must be submitted on an electronic form through a public data network (data box); if this is not technically possible, the application and documents can be in the paper form (§ 43a/2).

Special platform for enforcement procedure doesn't seem to exist.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

In enforcement procedure the official language is Czech. If the applicant's mother language is other than Czech, the executor can hire an interpreter. A person close to the applicant or someone who is involved in the matter cannot be hired as an interpreter (§ 76c EA).

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

Part 21 of the annex of the ACF regulates that the fee for a proposal to order the execution of a decision is:

- CZK 1,000 (cca. 40 EUR) if monetary payment is up to the amount of CZK 20,000 (cca. 814 EUR);
- 5% of the amount if monetary payment is demanded in an amount greater than CZK 20,000 (cca. 814 EUR) and lower than CZK 4,000,000 (cca. 162 880 EUR).

Fees are paid by a bank transfer to the account of the competent court. Bank details can be found on the website of each court, available at the Internet portal <https://www.justice.cz/>. Fees of up to CZK 5 000 can also be paid by fee stamps.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

§ 271/1 (h) CPA regulates that court settlement can be a legal base (enforceable title) for the enforcement procedure<sup>89</sup>. Approved judicial settlement has the same effect as a final

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<sup>89</sup> [https://e-justice.europa.eu/content\\_procedures\\_for\\_enforcing\\_a\\_judgment-52-cz-en.do?member=1](https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-cz-en.do?member=1)



judgement. It is also a title for the execution of a judicial decision (execution).<sup>90</sup> In that case, general rules of the CPA on the enforcement procedure apply (especially § 251-271 CPA).

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Competent authority are district courts (okresní soudy).<sup>91</sup> Enforcement of the decision can be ordered only at the request of the authorized person. In the application for the enforcement of the decision, the authorized person shall state the social security number of the debtor, if known. In the proposal for the enforcement of the decision imposing the payment of a monetary amount, the entitled person shall indicate the manner in which the enforcement of the decision is to be carried out (261/1 CPA).

There are certain exceptions for assets which cannot be seized in enforcement, such as those which the debtor needs to satisfy their or their family's basic material needs, or objects required for the performance of work. The law also provides a monthly minimum financial amount which cannot be seized through enforcement proceedings. In 2021 this amount is CZK7,872.80 (approximately EUR308) plus one third of the above amount for any person in the debtor's care.<sup>92</sup> Art 268 of the CPA regulates suspension of the execution.

The execution of the decision will be stopped if

- a) it has been ordered, although the decision has not yet become enforceable;
- b) the decision, which is the basis of enforcement, was canceled or became ineffective after ordering enforcement;
- c) the suspension of the execution of the decision was proposed by the person who proposed its order;
- d) the execution of the decision affects things that are excluded from it according to § 321 and 322 or property from which the recovered claim cannot be satisfied;
- e) the progress of the execution of the decision shows that the income it will achieve will not even be sufficient to cover its costs;

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<sup>90</sup> See: [https://e-justice.europa.eu/34/EN/how\\_to\\_bring\\_a\\_case\\_to\\_court?CZECH\\_REPUBLIC&member=1](https://e-justice.europa.eu/34/EN/how_to_bring_a_case_to_court?CZECH_REPUBLIC&member=1);

<sup>91</sup> See more under 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments.

<sup>92</sup> See: <https://www.lexology.com/library/detail.aspx?g=c64d2f5d-e032-4580-b502-dec53dbd9231>



f) it has been legally decided that the enforcement of the decision affects property to which someone has a right that does not allow for the enforcement of the decision (§ 267);

g) after the issuance of the decision, the right granted by it has lapsed, unless the enforcement of the decision has already been carried out; if the right was granted by a default judgment, the execution of the decision will be stopped even if the right expired before this judgment was issued;

h) execution of the decision is inadmissible because there is another reason why the decision cannot be executed.

The execution of the decision will also be stopped if the debtor has made a justified deduction from the recovered monetary claim as determined by special regulations and paid this deduction to the competent authority, to the extent that he was obliged to make this deduction. Enforcement of the decision by selling the pledge will also be stopped if the right of pledge has expired.

If one of the reasons for the suspension only partially relates to the ordered execution of the decision, or if the execution of the decision was ordered to a wider extent than is sufficient to satisfy the beneficiary, the execution of the decision will be partially stopped.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

§ 5 of the CPA regulates that courts have a general duty to inform and thus provide participants with information on their procedural rights and obligations. The court is obliged to inform the participant about the right to file a petition for exemption from court fees or for the appointment of a representative.<sup>93</sup> Free legal aid is provided by the Czech Bar Association.<sup>94</sup> There aren't any special legal provisions on legal aid in the enforcement procedure.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The whole process of the enforcement should be adapted to foreign creditors with at least some information on English language.

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<sup>93</sup> [https://e-justice.europa.eu/37129/EN/legal\\_aid?CZECH\\_REPUBLIC&member=1#tocHeader1](https://e-justice.europa.eu/37129/EN/legal_aid?CZECH_REPUBLIC&member=1#tocHeader1)

<sup>94</sup> See: <https://tgeu.org/wp-content/uploads/2018/06/LegalAid-CzechRepublic.pdf>





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## Estonia

Author(s): Karine Veersalu

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The application of the ESCP Regulation in the Estonian legal framework is set out in [Tsiiviikohtumenetluse seadustik](#) or Code of Civil Procedure (TsMS) section 405<sup>1</sup>, which refers to other respective sections in the Code that set out the requirements and details on competent courts, procedures, filing, and enforcement.<sup>95</sup> Pursuant to that section, provisions listed in section 405 TsMS concerning simplified procedure also apply to ESCP claims, to the extent that this is not regulated by the ESCP Regulation.

Following a simplified procedure in accordance with 405 TsMS means that the court may derogate from the provisions of law concerning the formal requirements for provision and taking of evidence (e.g. a court may take evidence at its own initiative). However, the court guarantees that the fundamental rights and freedoms and essential procedural rights of the parties are observed.<sup>96</sup>

A small claims case may be dealt with by one of the four competent Estonian district courts (*Maakohus*) according to jurisdiction (sec. 405<sup>1</sup>(1) TsMS). International jurisdiction is determined pursuant to international agreements or European Union regulations listed in section 70 TsMS. In some cases, specified under section 72 TsMS, Harju District Court will have special jurisdiction. This includes situations when a case does not fall under the jurisdiction of an Estonian court or where such jurisdiction cannot be determined and an

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<sup>95</sup> *Tsiiviikohtumenetluse seadustik* (Estonian Code of Civil Procedure) RT I 2005, 26, 197  
In Estonian <https://www.riigiteataja.ee/akt/109042021017?leiaKehtiv>; In English:  
<https://www.riigiteataja.ee/en/eli/ee/513122013001/consolide/current>

<sup>96</sup> *Tsiiviikohtumenetluse seadustik* (Estonian Code of Civil Procedure) section 405



international treaty or law does not provide otherwise, or if the case falls under the jurisdiction of a court in Estonia but it is not possible to determine the specific court.

The filing fees and requirements, methods of payment, and enforcement costs are broken down under questions three and six of this report. Electronic communication is preferred, and the fees vary depending on the method of communication. Enforcement of ESCP decisions is subject to the provisions concerning enforcement procedure in Estonia, and the remuneration of an enforcement agent's operations depends on the size of the claim and is calculated based on a table provided by the Enforcement Agents Act (see question 6).

Detailed information on legal aid is provided under question nine. As pursuant to section 217(8) TsMS, if the court finds that a natural person who is a participant in proceedings is unable to protect their rights on their own or that their essential interests may be insufficiently protected without the assistance of an advocate, the court will explain to that person the possibility to receive state legal aid.

As for possibility to review or appeal decisions, this is explained under question eight. Application for a review of decisions is lodged with the court that made the judgment in the matter of the application for a European Small Claims Procedure. Where necessary, a petition to set aside a default judgment is dealt with in a court hearing. If the petition is satisfied, the proceedings will be reopened, and the European Small Claims Procedure will continue in the situation it was before the failure to perform the procedural act which resulted in the judgment in default. Appeals against rulings are filed with the circuit courts (*Ringkonnakohus*) or with the Supreme Court (*Riigikohus*) in the case that the circuit court rejects the appeal.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation, i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

All the relevant information regarding the ESCP procedure in Estonia can be found in the TsMS, more specifically section 405<sup>1</sup>. In Estonia ESCP cases are handled the same way as domestic small claims/ simplified procedure cases would be, and this also applies to enforcement. Guidelines in Estonian for consumers, practitioners and entrepreneurs, and information in English on small claims procedures in Estonia are also easily accessible on



the European e-justice portal, which were also heavily relied upon in composing this report.<sup>97</sup>

Enforcement of judgements is regulated by the Code of Enforcement Procedure (*Täitemenetluse seadustik - TMS*).<sup>98</sup> A decision made in court proceedings conducted under the ESCP regulation is accepted for enforcement in Estonia only if it is drawn up in Estonian or English or if Estonian or English translation is annexed to the certificate. Documents are preferably submitted electronically to the E-File system or via e-mail to the respective authority.

ESCP rulings in Estonia are enforced by independent bailiffs (enforcement agent). An application for enforcement proceedings to be commenced is to be submitted to the bailiff of the debtor's place of residence or domicile or at the location of the assets.<sup>99</sup>

Please see more details on enforcement of ESCP judgements below under questions seven and eight.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Procedural documents must generally be served electronically, service of documents using other methods is permitted if there is a good cause. The acceptance of documents is communicated electronically via the E-File system or by e-mail or fax. If a court serves a procedural document through the public e-File procedural information system, the court will send the recipient a notice via e-mail or phone number that the document has been made available in the system. A procedural document is deemed to be served when the recipient opens it in the information system or confirms its receipt in the information system without opening the document and also if the same is done by another person to whom the recipient has granted access to see documents in the information system. The information system registers the service of the document automatically.

In case that the E-File system cannot be used, the court may serve procedural documents on the recipient electronically by email or fax. In such cases a procedural document is deemed to be served on the recipient when the recipient confirms the receipt of the

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<sup>97</sup> See European e-justice portal on ESCP in Estonia at [https://e-justice.europa.eu/42/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?ESTONIA&member=1) ; [https://e-justice.europa.eu/42/ET/small\\_claims?clang=et](https://e-justice.europa.eu/42/ET/small_claims?clang=et) and [https://e-justice.europa.eu/354/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?ESTONIA&member=1)

<sup>98</sup> *Täitemenetluse seadustik* (Code of Enforcement Procedure) <https://www.riigiteataja.ee/akt/113062012002?leiaKehtiv>

<sup>99</sup> Information on enforcement of ESCP rulings in Estonia [https://e-justice.europa.eu/354/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?ESTONIA&member=1) and [https://e-justice.europa.eu/42/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?ESTONIA&member=1)



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procedural document in writing, by fax or electronically. The confirmation must set out the date of receipt of the document and bear the signature of the recipient or their representative.

There are no standard forms used nationally for simplified procedures specifically. Some other standard forms for filing to the court are accessible on the Estonian courts' website.<sup>100</sup> The ESCP Forms can be found on the European e-justice portal.<sup>101</sup> The accepted languages of documents are English and Estonian as per section 405<sup>1</sup>(3) TsMS.

As pursuant to sec. 405<sup>1</sup>(2) TsMS, the petition for initiation of proceedings may be filed in the form provided for by sections 334-336 TsMS. Written documents must be filed with the court in legible typewritten form in the A4 format by post, however, where possible, electronic copies of the written procedural documents should be provided as pursuant to section 334 TsMS.

Requirements for submitting documents electronically are provided for in section 336, which states that electronic documents must include a digital signature of the sender or similar to be able to identify the sender and whether the forms need to be submitted via e-mail to the respective court or an online information system called e-File (*e-toimik*), which is a portal where parties and their representatives can electronically submit the procedural documents to courts and observe the progress of the proceedings related to them. Only the Estonian ID card or Mobile ID can be used to log into the e-File system, and only the procedural parties have access to cases which are directly related to them.<sup>102</sup>

A state fee will be charged for filing a petition with a court, as pursuant to the State Fees Act ([Riigilõivuseadus- RLS](#)) section 59(1).<sup>103</sup> The amount of the fee is determined based on the value of the case and in accordance with the table presented in Annex 1 to the RLS.<sup>104</sup> The same state fee must be paid for lodging an appeal as was paid for the initial filing of the ESCP application with the district court, taking into account the extent of the appeal. Additionally, if in the European Small Claims Procedure a penalty for late payment is claimed but the penalty has not fallen due as of the moment of submission of the application, the amount of the penalty corresponding to the amount due for one year must be added to the amount of the same calculated as of the date of submission of the application.<sup>105</sup>

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<sup>100</sup> Downloadable forms for filing to the court <https://www.kohus.ee/kohtusse-poordujale/dokumendid-ja-vormid>

<sup>101</sup> ESCP standard forms [https://e-justice.europa.eu/177/ET/small\\_claims\\_forms](https://e-justice.europa.eu/177/ET/small_claims_forms)

<sup>102</sup> See the E-File portal <https://www.rik.ee/et/e-toimik>

<sup>103</sup> *Riigilõivuseadus* (State Fees Act) <https://www.riigiteataja.ee/akt/130062020015?leiaKehtiv>

<sup>104</sup> Annex 1 to the RLS – a table for the corresponding state fee rates <https://www.riigiteataja.ee/tolkelisa/5060/7202/0002/1.pdf>

<sup>105</sup> Information on Small Claims Procedure in Estonia [https://e-justice.europa.eu/42/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?ESTONIA&member=1)



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A security must be paid for submitting a petition for reviewing a court judgment, which is an amount corresponding to the state fee for half of the amount involved in the action, but which is not less than 100 EUR but not more than 1 500 EUR. A security must also be paid in order to lodge an appeal in cassation and an application for review. One percent of the cost of the civil case is to be paid as security, taking into account the extent of the appeal, but not less than 100 EUR and not exceeding 3 000 EUR. A state fee of 50 EUR must be paid for lodging an appeal with a circuit court or the Supreme Court.

The state fee can be paid directly via bank links in the E-File system or by bank transfer to any of the Ministry of Finance's bank accounts. In all cases the state fee must be paid before the petition is lodged. Together with the petition, a document proving payment of the state fee or information enabling the court to verify payment of the state fee (i.e. details of the payer, bank details, the date on which the payment was made, the recipient of the payment, etc.) must be submitted to the court. More information on paying the fee, requirements and bank details can be found on the Estonian courts' website [kohus.ee](https://kohus.ee).<sup>106</sup>

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

As explained above, electronic communication is preferred and parties are encouraged to file their documents via e-mail to the respective court or submit them into the online information system called E-File, where the parties and their representatives can electronically submit documents to the courts, keep track of the progress of the proceedings related to them, and dispute the claims and decisions. An electronic document is deemed to have been submitted to a court once it has been recorded in the database for the receipt of court documents.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

As pursuant to section 405<sup>1</sup>(3) TsMS, the accepted languages are Estonian and English. A decision made in court proceedings conducted under the regulation is accepted for enforcement in Estonia only if it is drawn up in Estonian or English or if Estonian or English translation is annexed to the certificate.

#### **6. Fees for the enforcement procedures**

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<sup>106</sup> Payment of state fee details <https://www.kohus.ee/en/how-initiate-legal-proceedings/procedural-expenses-and-procedural-assistance/payment-state-fee>



*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The calculation of respective state fees for filing, review, appeal and methods of payment have already been explained above under question number three.

As pursuant to section 405<sup>1</sup> (4) TsMS, the provisions concerning enforcement procedure in Estonia apply to the enforcement of ESCP decisions, unless prescribed otherwise by the ESCP Regulation. In Estonia the enforcement procedure is regulated in the Code of Enforcement Procedure ([Täitemenetluse seadustik](#)) and the enforcement costs are laid out in section 37.<sup>107</sup>

Enforcement costs include the enforcement agent's fee, the cost of service, on the debtor, of the enforcement notice and of any documents enclosed with the notice as well as expenditures which are necessary for enforcement proceedings and which have been incurred by the enforcement agent and the party seeking enforcement, or a third party, after the commencement of enforcement proceedings.

The remuneration of enforcement agent's official operations is regulated in the Enforcement Agents Act (*Kohtutäituriseadus*) Division 5.<sup>108</sup> The enforcement agent's fee may consist of a fee for the commencement of proceedings, of a principal fee for proceedings and of additional fees for enforcement operations. Where an enforcement notice is served on a debtor by e-mail or electronically through a designated information system, the fee for commencement of enforcement proceedings is 15 euros; by another method provided for by the Code of Civil Procedure, the fee for commencement of enforcement proceedings is 30 euros.

The agent's principal fees are based on the amount of the claim and set out in a table provided by section 35 of Enforcement Agents Act. For example, the maximum possible fee for a 5000 euro claim would be 570 euros + VAT.

Other enforcement agent's fees for termination of proceedings, compiling an enforcement profile of the debtor, and fees for issuing copies or documents or certificates are described in sections 41 and 42 of the Enforcement Agents Act.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

As pursuant to section 405<sup>1</sup> (4) TsMS, the provisions concerning enforcement procedure in Estonia apply to the enforcement, by means of enforcement proceedings, in Estonia of

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<sup>107</sup> *Täitemenetluse seadustik* (Code of Enforcement Procedure) RT I 2005, 27, 198. Available at: <https://www.riigiteataja.ee/akt/112032022008?leiaKehtiv>

<sup>108</sup> *Kohtutäituriseadus* (Enforcement Agents Act) RT I 2009, 68, 463. Available at <https://www.riigiteataja.ee/akt/120062022008?leiaKehtiv>



decisions of a foreign state made under the ESCP Regulation, and to the legal remedies available to the debtor, in so far as not prescribed otherwise by the Regulation. The enforcement agent is the competent authority to for enforcement. Additionally, as mentioned above already, a judgment given in litigations conducted under the ESCP Regulation will only be enforceable in Estonia if it is made in Estonian or English or if a translation into Estonian or English is appended to the certificate.

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

ESCP rulings in Estonia are enforced by independent bailiffs (enforcement agent). An application for enforcement proceedings to be commenced is to be submitted to the bailiff of the debtor's place of residence or domicile or at the location of the assets.<sup>109</sup>

An application for a review of decisions is lodged with the court that made the judgment in the matter of the application for a European Small Claims Procedure. Where necessary, a petition to set aside a default judgment is dealt with in a court hearing. If the petition is satisfied, the proceedings will be reopened, and the European Small Claims Procedure will continue in the situation it was before the failure to perform the procedural act which resulted in the judgment in default. Appeals against rulings are filed with the circuit courts (*Ringkonnakohtus*) or with the Supreme Court (*Riigikohtus*) in the case that the circuit court rejects the appeal. As pursuant to section 335 TsMS, in the case of filing an appeal against a judicial disposition, the original appeal must be submitted within ten days.

In case that a judgment given in the European Small Claims Procedure is appealed, the measures specified in Article 23 of the ESCP Regulation will be taken by the circuit court with which the appeal is filed. If a judgment is made by default and a petition is filed to set aside the default judgment, the application for the measures must be submitted with the court hearing the petition.

If no appeal has yet been filed, the measures specified in Article 23 of the Regulation are taken by the court which made the decision. The measure specified in Article 23(c) of the Regulation (staying the enforcement proceedings) can be taken by the county court within the jurisdiction of which the enforcement proceedings are or should be conducted.

In some cases, specified in section 46 of the TMS<sup>110</sup>, enforcement proceedings may, in

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<sup>109</sup> Information on enforcement of ESCP rulings in Estonia [https://e-justice.europa.eu/354/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?ESTONIA&member=1) and [https://e-justice.europa.eu/42/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?ESTONIA&member=1)

<sup>110</sup> *Täitemenetluse seadustik* (Code of Enforcement Procedure) <https://www.riigiteataja.ee/akt/113062012002?leiaKehtiv>





addition to a court, also be stayed by the bailiff conducting the proceedings.<sup>111</sup>

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

As pursuant to section 217(8) TsMS, if the court finds that a natural person who is a participant in proceedings is unable to protect their rights on their own or that their essential interests may be insufficiently protected without the assistance of an advocate, the court will explain to that person the possibility to receive state legal aid.

Legal aid is provided pursuant to the rules regarding procedural assistance set out in the TsMS and to the procedure specified in the State-funded Legal Aid Act ([Riigi õigusabi seadus - RÕS](#))<sup>112</sup>. State legal aid is granted on the basis of the person's application. An application for state legal aid in judicial proceedings as a party to a civil case is to be submitted to the court conducting proceedings in the case or the court that would be competent to hear the case (sec. 10 RÕS).

According to section 6 RÕS, a natural person is entitled to state legal aid if the person is unable to pay for competent legal services due to the person's financial situation at the time the person requires legal aid or if the person is able to pay for legal services only partially or in instalments or if the person's financial situation does not allow them to meet basic subsistence needs after paying for legal services.

Section 6 RÕS continues that state legal aid is granted to a natural person who, at the time of submission of the application for state aid, is resident in the Republic of Estonia or another EU Member State or is a citizen of the Republic of Estonia or another EU Member State. Residence is determined on the basis of Article 62 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Legal aid is granted to other natural persons only where this arises from an international obligation binding upon Estonia.

Reasons for not granting state-funded legal aid are laid out in section 7 RÕS.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

Not applicable.

## 11. Critical assessment of the ESCP judgments enforcement procedures

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<sup>111</sup> Information on enforcement of ESCP rulings in Estonia [https://e-justice.europa.eu/354/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?ESTONIA&member=1) and [https://e-justice.europa.eu/42/EN/small\\_claims?ESTONIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?ESTONIA&member=1)

<sup>112</sup> *Riigi õigusabi seadus* (State-funded Legal Aid Act) <https://www.riigiteataja.ee/akt/13111346?leiaKehtiv>



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*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

There is little to no discussion surrounding ESCP judgements enforcement procedures in Estonia, nor is there a lot of information regarding the process. This is because there is merely one short section in the TsMS (405<sup>1</sup>) on the application of the ESCP Regulation in the Estonian legal framework, which establishes that in Estonia the ESCP cases are handled the same way as domestic small claims/ simplified procedure cases would be.

This means that the information regarding the European Small Claims Procedures specifically is not reflected on the Estonian courts' websites, nor is it described in detail anywhere but the European E-justice portal, which has gathered and combined the information from several different Estonian legal acts, which otherwise a person filing an ESCP claim in Estonia would have to find themselves.



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## Finland

Author(s): Alekski Kajander

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The ESCP Regulation in Finland is primarily implemented by the Act on a European Small Claims Procedure<sup>113</sup> or Laki Eurooppalaisesta Vähäisiin Vaatimuksiin Sovellettavasta Menettelystä 753/2008<sup>114</sup> (EVV). Since its introduction, the Act has been amended once, by the introduction of a new Article 4(a) to the EVV, to incorporate the changes to the review of judgements in exceptional cases enclosed in Article 18 of the ESCP Regulation. Under the new Article 4a in the EVV the procedure in reviewing of the judgements is to apply the Finnish Code of Judicial Procedure<sup>115</sup> or Oikeudenkäymiskaari 1734/4<sup>116</sup> Chapter 31 Articles 3, 5, and 14. This highlights the fact that while primarily implemented through the EVV, it is by no means the only relevant legislative Act when mapping the implementation of the ESCP Regulation in Finland.

Besides the aforementioned Code of Judicial Procedure, the other relevant domestic Acts include the Act on Court Fees or Tuomioistuinmaksulaki 1455/2015<sup>117</sup>, the Enforcement Code<sup>118</sup> or Ulosttokaari 705/2007<sup>119</sup>, the Act on Electronic Services and Communication in the Public Sector<sup>120</sup> or Laki Sähköisestä Asioinnista Viranomaistoiminassa 13/2003<sup>121</sup>, and

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<sup>113</sup> Unofficial translation may be found at: <https://www.finlex.fi/en/laki/kaannokset/2008/en20080753.pdf>

It should be noted that translation of Finnish legal acts are unofficial and often considerably out of date, such as this one which dates from 2010 and as such should not be relied upon.

<sup>114</sup> Original Act: <https://finlex.fi/fi/laki/ajantasa/2008/20080753>

<sup>115</sup> Unofficial Translation: <https://www.finlex.fi/en/laki/kaannokset/1734/en17340004.pdf>

<sup>116</sup> Original Act: <https://finlex.fi/fi/laki/ajantasa/1734/17340004000#L31P3>

<sup>117</sup> Original Act: <https://www.finlex.fi/fi/laki/ajantasa/2015/20151455>

<sup>118</sup> Unofficial Translation: [https://www.finlex.fi/en/laki/kaannokset/2007/en20070705\\_20070987.pdf](https://www.finlex.fi/en/laki/kaannokset/2007/en20070705_20070987.pdf)

<sup>119</sup> Original Act: <https://www.finlex.fi/fi/laki/ajantasa/2007/20070705>

<sup>120</sup> Unofficial Translation: <https://www.finlex.fi/en/laki/kaannokset/2003/en20030013.pdf>

<sup>121</sup> Original Act: <https://www.finlex.fi/fi/laki/ajantasa/2003/20030013>



the Legal Aid Act<sup>122</sup> or Oikeusapulaki 257/2002<sup>123</sup>. While the Code of Judicial Procedure is arguably the most important out of these other acts as it dictates the procedural aspects of the ESCP proceeding, the other domestic legal acts provide the answers to several specific questions such as court fees, legal assistance, and acceptable means of communication that will be discussed in specific sections below.

Therefore, to summarize, while the ESCP Regulation is primarily implemented via the EVV in Finland, the entirety of the implementation is not enclosed therein. Consequently, it is necessary to consider the relevant articles in the supporting domestic legislation scattered across several other legal acts in order to develop a complete picture of the implementation.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation, i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

The competent court referred to in Article 25 1 (a) of the ESCP Regulation for judgements is the Helsinki District Court (Helsingin Käräjäoikeus) as per Article 2 of the EVV. The enforcement of the ESCP judgements is handled through the bailiff (ulosottomies) which has been designated as the competent authority under Article 6 and 7 of the EVV.

The procedure for the enforcement is found in Chapter 3 of the Enforcement Act 705/2007<sup>124</sup>. Under Section 1 of Chapter 3 the acceptable means for making an application are detailed, which include electronic messages to the local enforcement authority (Section 1 (2)). Similarly, Section 2 dictates the required contents of the application. The application may be filed via the electronic enforcement service provided by the bailiff<sup>125</sup>, which has the capability to import the judgement by the District Court into the enforcement application directly<sup>126</sup>.

It should additionally be noted that the district bailiff (kihlakunnanvouti) is the competent authority in regard to Article 23 of the ESCP Regulation, in regard to the stay or limitation of enforcement encompassed in that article. Under Article 6 of the EVV the district bailiff is empowered “decide personally” on the measures listed in Article 23 of the ESCP.

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<sup>122</sup> Unofficial Translation: [https://www.finlex.fi/en/laki/kaannokset/2002/en20020257\\_20110720.pdf](https://www.finlex.fi/en/laki/kaannokset/2002/en20020257_20110720.pdf)

<sup>123</sup> Original Act: <https://www.finlex.fi/fi/laki/ajantasa/2002/20020257>

<sup>125</sup> Enforcement Electronic Services: <https://asiointi.oikeus.fi/ulosotto/#/>

<sup>126</sup> Enforcement Electronic Services. “Additional information on services for applicants”: <https://asiointi.oikeus.fi/ulosotto/#/info/hakija>



### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

In accordance with the Code of Judicial Procedure (1734/4) the procedure is initiated when the Registry of the District Court of Helsinki receives the written application.<sup>127</sup> Under the Act on Provision of Digital Services or Laki digitaalisten palvelujen tarjoamisesta (306/2019) Chapter 2 Article 5, Finnish authorities including the Courts must provide the possibility of delivering messages and documents electronically. As per Amendment 2018/349 to the Code of Judicial Procedure Article 3a, a legal person, sole-proprietors, attorney, or a natural person who is a professional in the field of debt collection must submit their application electronically for uncontested civil cases or it will not be processed.

The application may or sometimes must therefore be delivered through electronic means, in which case if it is sent after office hours it will be deemed to have been received the following working day as per Chapter 5 Article 1 of the Code of Judicial Procedure. Consequently, documents may be delivered in-person, post or with an e-mail<sup>128</sup>.

The costs are determined in accordance with the Act on Court Fees (1455/2015). Currently, under Article 2 of the Act the court fee is 86 euros for a ESCP proceeding. For a review under Article 18 of the ESCP the fee is waived if for successful reviews, as per Articles 2 and 4 of the Act on Court Fees. In regard to the parties, under Chapter 21 Article 1 of the Code of Judicial Procedure the losing party is liable for all reasonable legal costs that arise from the necessary measures taken by the opposing party, which is arguably thereby consistent with requirements of Article 16 of the ESCP.

### 4. The status of digitalisation in enforcement of the ESCP judgments

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

Applications for enforcement may be filed using the electronic enforcement service provided by the National Enforcement Authority of Finland.<sup>129</sup>

### 5. Language of the Certificate (standard Form D) and other documents to be appended

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<sup>127</sup> Chapter 5 Article 1

<sup>128</sup> Tuomioistuineläitos. "Delivering documents to courts": <https://oikeus.fi/tuomioistuimet/en/index/asiointijulkisuus/asiointituomioistuimissa/deliveringdocumentscourts.html>

<sup>129</sup> Enforcement Electronic Services: <https://asiointi.oikeus.fi/ulosotto/#/>



*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

Under the EVV Article 7, when enforcement is sought for a judgement that was given in another EU Member State, the forms listed in the ESCP Regulation Article 21 2 (b) must be provided in either Finnish, Swedish, or English. Therefore, documents in English are accepted despite not being an official language in Finland.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

For the enforcement, the National Enforcement Agency of Finland provides a table of expenses that may be applicable, as determined by the sum of money in question.<sup>130</sup> These include the scheduled fee collected from the debtor, which is levied on each incoming payment and is dependent on the size of the payment. For the ESCP, the maximum possible fee (i.e. for 5000 euros) would be 134 euros.<sup>131</sup>

If the debt cannot be collected, either due to a lack of means or if the creditor withdraws their application, a processing fee of 10 euros is charged for the return of the documents for ordinary enforcement matters.<sup>132</sup> A disbursement fee of 1.45 % is applicable for each sum that is disbursed to the creditor, which the creditor is liable to pay.<sup>133</sup> If there is an auction, the auction fees will become applicable, which are 1100 euros for real estate and 450 for shares in housing companies of the auction prices.<sup>134</sup>

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

As noted earlier, under the EVV Article 6 and 7, the bailiff is the competent authority for the enforcement. The district bailiff (kihlakunninvouti) is to decide personally on the measures encompassed within Article 23 of the ESCP Regulation. Under the Code of Judicial Procedure Chapter 1 Article 9, the sole competence of the district bailiff includes the same matters contained in Article 23 of the ESCP Regulation, such as the stay of enforcement (9) and protective measures (8) in domestic matters. Therefore, the procedure for the enforcement of ESCP settlements is the same in this respect.

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<sup>130</sup> National Enforcement Agency of Finland. "Enforcement Fees":  
<https://www.ulosottolaitos.fi/en/index/informationonenforcement/enforcementfees.html>

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.



The ordinary process for enforcement is encompassed in Chapter 3 of the Enforcement Act, whereby the process begins with a written application to the bailiff<sup>135</sup>, which may be delivered through the electronic enforcement service referred<sup>136</sup> to in question 4 above<sup>137</sup>. The enforcement agency is obliged to advise the applicant on how to file the enforcement application as well as provide time to remedy an incomplete or incorrect application under Chapter 3 Article 4.

Chapter 3 Article 21 contains a requirement for expediency whereby enforcement proceedings and measures are required to be carried out without undue delay. However, a delay in the enforcement may be held if it is within the best interest of the respondent and provides only insignificant inconvenience to the applicant.<sup>138</sup>

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

All measures under Article 23 of the ESCP Regulation are within the sole competence of the district bailiff as per Article 6 of the EVV. However, it should be noted that while the bailiff is the competent authority for the enforcement under Article 21 and stays or limitations of enforcement under 23 of the ESCP Regulation, a refusal for enforcement under Article 22 (1) is handled by the Helsinki District Court as per EVV Article 5.

Furthermore, under Chapter 11 Article 1 of the Enforcement Act, a right of appeal is provided against an enforcement measure or decision by a bailiff. An appeal, with a time limit of 3 weeks<sup>139</sup>, may be made by delivering a letter of appeal to the enforcement agency whose bailiff's decision is to be contested<sup>140</sup>. If the appeal is delivered after the time limit is expired, the right to an appeal is lost.<sup>141</sup> The letter of appeal may be delivered electronically.<sup>142</sup> When the letter of appeal arrives at the enforcement agency, it becomes pending before the competent District Court.<sup>143</sup> Besides delivering the appeal and the enforcement document copies, the bailiff must at the same time inform the District Court of whether the appeal was timely and therefore, valid.<sup>144</sup>

Appeals are to be considered urgent by the District Court, and a request for the stay of enforcement is to be decided immediately under Chapter 11 Article 15. If the appeal concerns a stay of enforcement the district bailiff is required to provide a statement within

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<sup>135</sup> Chapter 3, Article 1 (1).

<sup>136</sup> Enforcement Electronic Services: <https://asiointi.oikeus.fi/ulosotto/#/>

<sup>137</sup> Chapter 3, Article 1 (2)

<sup>138</sup> Chapter 3, Article 21.

<sup>139</sup> Chapter 11, Article 5.

<sup>140</sup> Chapter 11, Article 3.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Chapter 11, Article 4.

<sup>144</sup> Ibid.





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two weeks to the District Court handling the complaint under Chapter 11 Article 10. The contents of this statement are dictated by Article 11 whereby the district bailiff is required to provide an account of the enforcement measures as well as a reasoned position on the claims contained in the appeal.

The judgement of the District Court may be appealed to the Court of Appeals under Chapter 11 Article 19 of the Enforcement Act. As per the Code of Judicial Procedure Chapter 25 Article 12 the time limit for such an appeal is 30 days from when the judgement of the District Court was given.

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

The provision of legal aid from state resources is governed by the Legal Aid Act or Oikeusapulaki 2002/257. The Legal Aid Act is compliant with Council Directive 2003/8/EC which provides *inter alia* non-discrimination towards Union citizens and third country nationals residing lawfully in a MS for legal aid<sup>145</sup>. Legal aid from state resources in Finland is provided to those who due to the financial situation are unable to pay such expenses themselves.<sup>146</sup> As such the financial position of an applicant including their spouse if applicable, is assessed in order to determine if they qualify for the legal aid.<sup>147</sup> In the case of minor legal aid such as through the telephone or through other electronic means of communication, there is no evaluation of the financial position of the applicant.<sup>148</sup>

Besides the financial position of the applicant, other limiting factors that may be relevant from an ESCP perspective are included in Chapter 1 Article 7 of the Legal Aid Act. Legal aid will not be provided if the matter is of minor importance to the applicant<sup>149</sup>, the process would be manifestly pointless in proportion to the potential benefits that could ensue<sup>150</sup>, or the case would amount to an abuse of process<sup>151</sup>. These grounds may amount to an obstacle in cases where the sums in question are very small and thereby the provision of legal aid from state resources would be considered inappropriate due to proportionality concerns.

In addition to legal aid, the European Consumer Center Finland or Euroopan kuluttajakeskus Suomessa provides practical information on the ESCP through their website as well as through direct contact via phone.<sup>152</sup> The website provides answers to basic questions such as where and how to file a claim and the forms required to do so.

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<sup>145</sup>Council Directive 2002/8/EC: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0008>  
Article 4

<sup>146</sup> Legal Aid Act, Chapter 1, Article 1

<sup>147</sup> Legal Aid Act, Chapter 1, Article 3

<sup>148</sup> Legal Aid Act, Chapter 1, Article 3a

<sup>149</sup> Legal Aid Act, Chapter 1, Article 7 (1)

<sup>150</sup> Ibid, Chapter 1, Article 7 (2)

<sup>151</sup> Ibid, Chapter 1, Article 7 (3)

<sup>152</sup> European Consumer Centre Finland. "Court proceedings in cross-border trade consumer disputes": <https://www.ecc.fi/en/our-services/court-proceedings-in-cross-border-trade-consumer-disputes/>



Moreover, practical information that may not be readily evident is provided, such as the futility of pursuing claims against a seller that is without means which would be likely to result in only costs against the applicant and thus be of no benefit.<sup>153</sup> Consequently, the information provided on the European Consumer Center Finland website and the possibility for phone consultations is arguably a valuable and useful resource to potential applicants as it is freely available.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

Not applicable.

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The ESCP judgement enforcement procedures have not attracted significant attention in Finland, as even references to it are few and far in-between. This is reflected in the 2016 thesis of Heidi Tamsi-Laine, who researched international enforcements in Finland, whereby ESCP enforcements were mentioned only in passing as no enforcements stemming from the ESCP procedure were received by the Enforcement Authority in Vantaa during the spring of 2016.<sup>154</sup>

Furthermore, Article 18 of the ESCP Regulation regarding the review of judgements appears to have attracted more attention rather than the enforcement proceedings themselves. For example, in 2012 Heidi Linfors explored the differences in the interpretation and implementation of Article 18 in different MS and its potential implications.<sup>155</sup> Consequently, it appears that there is not much discussion surrounding the enforcement procedures themselves in Finland.

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<sup>153</sup> Ibid.

<sup>154</sup> Tamsi-Laine, H. (2016). Kansainvälisten Ulosottoasioiden Kirjaamisoheje. University of Applied Sciences, p. 40.

<sup>155</sup> Linfors, H. (2012). Eurooppalainen Maksamismääräysmenettely ja Eurooppalainen Vähäisten Vaatimusten Menettely – Jämsenvaltiollain Eroavat Yhtenäistetyt Menettelyt? *Defensor Legis* 4/2012, pp. 503-504.



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## France

Author(s): Luc Ferrand and Clémence Dossier

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The competent court to hear the European Small Claims Procedure is the local chamber of the judicial court (la chambre de proximité du tribunal judiciaire) (article L.211-4-2 of the Code of Judicial Organization, hereafter CJO) or within the limits of its jurisdiction, before the commercial court (article L.721-3-1 of the Commercial Code). The court with territorial jurisdiction is that of the place where the defendant resides (article 1382 of the Code of Civil Procedure, hereafter CCP).

There are currently no national statistics concerning the frequency of hearings in this matter.

The procedure followed is the written procedure. However, it follows the rules of oral procedure in French law. Article 817 of the CCP provides that the procedure is oral when the parties do not have a lawyer. This implies that the judge takes into account the arguments presented orally by the parties during the hearing. The parties have the possibility to be accompanied by a lawyer, even if representation is not mandatory.

There are no special rules of evidence.

There are no procedural costs, even for the losing party.

Different languages are accepted: English, German, Spanish and Italian. The costs of translation are to be borne by the parties, in the expertise proceedings, the tariff is free.



The plaintiff can nevertheless ask to benefit from legal aid (Law of July 10, 1991, decree of December 19, 1991, ...). To do so, one must satisfy four conditions:

- Subsidiarity: the party has no other means of financing its action.
- Nationality and residence: the party must be of French nationality or must reside on French territory (with exceptions: cross-border disputes, asylum seekers, victims of domestic violence, etc.)
- Resources: the party requesting the legal aid must have a reference tax income and a value of movable and immovable assets below certain ceilings, depending on the composition of the individual's tax household. For a single person, the full legal aid is granted if the reference tax income does not exceed 11 580 euros. Resources conditions do not apply to victims of crime, for example.
- Seriousness of the action: the action must be serious.

Regarding appeals, the parties may exercise the ordinary legal remedies against decisions rendered in the last resort: appeal in cassation, third party opposition and appeal for review.

A decision is rendered as a last resort when the amount in dispute does not exceed 5 000 euros (article R.211-3-24 of the CJO).

Concerning the appeal in cassation (articles 604 and following of the CCP): it is possible to lodge an appeal in cassation against a decision for which the appeal is impossible (litigation under 5 000 euros for example). The Court will not focus on the facts but only on the legal and procedural issues.

Concerning the third party opposition (articles 582 and following of the CCP): a third party who was neither party nor represented can exercise such an appeal if one of his interests would have been harmed by the decision rendered.

Concerning the appeal for revision (articles 593 and following of the CCP): it is a question of asking to re-examine a decision because of new elements.

The European texts also provide for the possibility of requesting the re-examination of the decision. The review, in French law, is carried out according to the opposition procedure (article 1391 of the CCP). The opposition is open when the judgment was rendered by default (article 571 of the CCP), i.e. when the defendant did not appear, the decision was rendered at last resort and the summons was not delivered in person (article 473 of the CCP).

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**



*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

In French law, for a decision to be enforced, it must meet certain criteria:

- It must have the force of *res judicata*, i.e. it is no longer subject to appeal (article 500 of the CCP).
- It must be signed with the executory formula (article 502 of the CCP).
- It must have been notified to the party against whom enforcement is sought (article 503 of the CCP).

The party requesting the enforcement in another Member State of a decision resulting from the small claims procedure must produce a copy of the certificate delivered by the clerk of the court which gave the decision (article 1390 of the CCP). This dispenses with any *exequatur*.

The party must also produce a copy of the decision declared enforceable in the State of enforcement. This copy must meet the conditions necessary to establish its authenticity, i.e. the seal and the initials of the clerk of the court. Jurisdiction lies with the court of general jurisdiction.

### **3. Rules on service**

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The competent authority to notify the decision is the Clerk of the competent court, this notification is done by registered letter with acknowledgement of receipt (article 1389 of the CCP). There are no costs.

### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

No French text authorizes the use of the electronic way in this matter.

### **5. Language of the Certificate (standard Form D) and other documents to be appended**



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*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

As mentioned above, the languages accepted are: English, German, Spanish and Italian. Translation is not required.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

There is no fee.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Please refer to question 2.

There is no specific rule for this procedure.

Enforcement can be carried out through the seizure and sale of movable property, the seizure of bank accounts and the seizure of wages. It is also possible to proceed with the following seizures: seizure of a vehicle, seizure of real estate, seizure of intangible rights other than money.

Concerning the seizure-attribution: it consists in seizing from another person the sums belonging to the debtor, for example the seizure on a bank account. The judicial commissioner can carry out a seizure on the debtor's account to reimburse the creditor (articles L.211-1 et seq. and R.211-1 et seq. of the Code of Civil Enforcement Procedure, hereafter CCEP).

Concerning the seizure for sale: it leads to the sale of the debtor's furniture (articles L.221-1 and following and R.221-1 and following of the CCEP).

Concerning the seizure of remunerations: this allows the creditor to whom the employee (debtor) owes money to obtain the payment of the amount due to him. The employer must allocate part of the employee's remuneration to reimburse the creditor (articles L.212-1 and following and R.212-1 and following of the CCEP and articles L.3252-1 and following of the Labor Code).

Concerning the seizure of the vehicle: the judicial commissioner can seize the debtor's vehicle (articles R.223-6 and following and L.223-2 of the CCEP).



Concerning the seizure of real estate: the judicial commissioner can seize real estate belonging to the debtor. If the debtor does not repay the debt within a given period of time, the property may be sold to pay the creditor (articles L.311-1 and following and R.311-1 and following of the CCEP).

Concerning the seizure of goods: it temporarily prevents the debtor from selling or moving the seized goods (articles L.521-1 and following and R.521-1 and following of the CCEP).

Concerning the seizure of intangible rights: it is possible for the judicial commissioner to seize securities or operating licenses (articles L.231-1 and following and R.231-1 and following of the CCEP).

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

There is no provision in French law for such procedures.

Only the European Regulation provides that enforcement may be limited or suspended where the decision settling a small claim is subject to appeal or review. Enforcement may therefore be limited to precautionary measures, made subject to the provision of security or suspended.

Enforcement may be refused in the presence of an earlier incompatible decision given by any Member State or third party if:

- The earlier decision was given between the same parties, in a dispute involving the same cause of action,
- It was given in the State of enforcement or is capable of being recognized there,
- It could not be invoked in the course of the proceedings.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

As noted above, the parties may be accompanied by a lawyer.

The party wishing to initiate such a procedure may also apply for a legal aid allowance. In this way, the legal costs incurred will be covered by the State. It is granted to individuals who have a modest income and few assets.

The legal aid can be granted in full or in part (25% or 50%), depending on income.





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In order to benefit from it, it is necessary to fill out the application form, provide supporting documents and submit the application to the competent legal aid office.

The application must meet four conditions:

- Subsidiarity: the party has no other means of financing its action.
- Nationality and residence: the party must be of French nationality or must reside on French territory (with exceptions: cross-border disputes, asylum seekers, victims of domestic violence, etc.)
- Ressources: the party requesting the legal aid must have a reference tax income and a value of movable and immovable assets below certain ceilings, depending on the composition of the individual's tax household. For a single person, the full legal aid is granted if the reference tax income does not exceed 11 580 euros. Ressources conditions do not apply to victims of crime in particular.
- Seriousness of the action: the action must be serious.

#### **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

X

#### **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The European small claims procedure is not well known in France. It is marginal, which is why there are no statistics on the subject. To improve it, the first step would be to reinforce the training of the actors, especially lawyers and magistrates.



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## Germany

Author(s): Magdalena Jankowska-Gilberg

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The provisions implementing the ESCP Regulation are set out in the Code of Civil Procedure<sup>156</sup> (Zivilprozessordnung, hereinafter ZPO) sections 1097-1109)

#### **Competent courts dealing with ESCP claims**

Competent national courts for the small claim procedure are municipal courts (*Amtsgericht*).

Five federal states (*Bundesländer*) centralised jurisdiction in one or several municipal courts:

In the following federal states there is one competent court:

- in Hesse – municipal court Frankfurt am Main,
- in Saxon-Anhalt - municipal court Halle and
- in North Rhine-Westphalia - municipal court Essen

In Baden-Wuerttemberg the jurisdiction is divided between two courts: municipal court Heidelberg and municipal court Heilbronn.

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<sup>156</sup> English translation available online: [https://www.gesetze-im-internet.de/englisch\\_zpo/englisch\\_zpo.html](https://www.gesetze-im-internet.de/englisch_zpo/englisch_zpo.html)



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In Schleswig Holstein there are four municipal courts having jurisdiction: Flensburg, Itzehoe, Kiel and Lübeck.

In other federal states, general rules on jurisdiction apply

The locally competent court can be found with the help of search tool: <https://www.justizadressen.nrw.de/de/justiz/suche>

### **The number and mode of hearings**

The procedure is held written unless an oral hearing is considered necessary.

As stipulated in Art. 8 of ESCP Regulation, a hearing may be held by means of a video conference or other means of communication technology:

According to section 1100 ZPO the parties or their representatives can be present during the oral proceedings at a place other than that of the court hearing the case and perform procedural acts there, in particular to file legally effective petitions.

Section 1100 (1) sentence 2 ZPO in conjunction with section 128a (3) ZPO excludes the possibility of recording the transmission and at the same time orders the non-appealability of the decision on the hearing by video conference.

The conduct of an oral hearing by video and audio transmission pursuant to section 1100 ZPO requires neither an application nor the consent of the parties.

If the court schedules a hearing, a maximum notice period of 30 days applies.

### **Mode of the gathering of the evidence**

According to Art. 9 (1) of Regulation 861/2007, the court shall determine the means of evidence and the extent of the taking of evidence required within the framework of the provisions applicable to the admissibility of evidence.

The judge may determine the taking of evidence at their discretion, as long as they complies with the restriction laid down in Art. 9 (2) and (3) of the ESCP Regulation (§1101 (1)). Accordingly, the least expensive means of evidence has priority. The court may admit the taking of evidence by means of written statements of witnesses or experts or by means of written hearings of parties.

Section 1101 (2) ZPO allows evidence to be taken by video conference without the consent of the parties.

### **Court fees and methods of payments**



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The court fees correspond to those of ordinary civil proceedings and depend on the amount in dispute. The costs are regulated in a Court Fees Act (Gerichtskostengesetz). Accordingly, the fees can vary from 114 euros (for an amount in dispute of 500 euros) to a maximum of 483 euros (for an amount in dispute of 5,000 euros).

The court fees can be paid for example by bank transfer or adhesive stamps. Law firms can pay with a so-called "court cost stamp" (a special stamp device that could be loaded with credit).

In some federal states, the traditional adhesive stamps were replaced by digital stamps as a new means of payment for court costs (at the time being this possibility to pay with digital exists in the following federal states: Baden-Württemberg, Bremen, Hamburg, Hesse, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Schleswig-Holstein. The electronic stamps can be bought and paid with credit card or bank transfer on the following webpage:

<https://justiz.de/kostenmarke/index.php>

### **Costs for the losing party**

The costs are generally imposed on the losing party. They consist of the court costs as well as the compensation for the winning party, which includes the reimbursement of necessary expenses (such as travel expenses, costs for experts or witnesses if necessary) and the lawyer's fees. In addition, the losing party also bears its own lawyer's fees.

In court proceedings, the lawyers' fees are determined according to the Lawyers' Fees Act (Rechtsanwaltsvergütungsgesetz RVG). For example, the lawyer receives a procedural fee for bringing the action. The amount of the fee depends on the fee rate and the amount in dispute.

If neither party has completely won, the legal costs are usually distributed proportionally according to the outcome of the proceedings.

### **Accepted official languages by the courts/tribunals**

The claim form must be submitted in German as an official language.

According to Art. 6 (3) of Regulation 861/2007 a party can in certain circumstances refuse to accept a document by reason of its language. The service is then ineffective. Pursuant to section 1098 ZPO, the time limit for refusing acceptance is one week, beginning with the service of the document. The addressee must be informed of the consequences of missing the deadline.

### **Costs and financial support for translation**



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If applicants have no access to free assistance, they have to bear the cost themselves at stage of submitting the claim. As the translation has to be done by qualified person, the translation remain a significant cost factor.

### **Availability of legal assistance**

Parties who on account of their personal and economic circumstances are unable to pay the costs of litigation, or who can only pay these costs in part or in instalments shall, upon their application, be granted legal aid if the intended litigation of the case offers sufficient prospects of success and does not appear wanton (section 114 ZPO)

When deciding whether to grant legal aid, the cost of living in the respective EU Member State in which the applicant lives must be taken into account.

Legal aid covers only the payment of one's own lawyer's fees and court costs. If a case is lost in whole or in part, the persons entitled to legal aid must pay the opponent's costs themselves.

Applicants having little or no income that would like to seek advice from a lawyer first before initiating ESCP, can also apply for a so-called "financial aid certificate for counselling" ("Beratungshilfeschein") from the local court responsible for the issue in question. The requirements of eligibility for "Beratungshilfeschein" are similar to those of the legal aid. With this document, consumers can seek advice from a lawyer of their choice. The district court then pays the lawyer. You only have to pay a maximum of 15 euros of the total costs personally.

The forms for the application for legal aid or Beratungshilfeschein are available online together with explanations and instructions for filling them out (in German): [https://justiz.de/service/formular/f\\_kosten\\_verguetungen/index.php;jsessionid=818401E4ACB806DD354DF89F642D9A17](https://justiz.de/service/formular/f_kosten_verguetungen/index.php;jsessionid=818401E4ACB806DD354DF89F642D9A17)

Moreover, the district courts are responsible for providing practical assistance under Article 11 of the ESCP Regulation.

### **Possibility of appeal**

An appeal may be lodged against the judgment if the amount of the appeal exceeds 600 euros (section 511 ZPO). The time limit for appeal is 1 month (section 516 ZPO). A ruling following an appeal can be challenged on points of law (section 542 ZPO). According to section 543 ZPO the revision is permissible if the case is of fundamental importance or the further development of the law or the safeguarding of uniform case law requires a decision by the appellate court.

### **Default of the party**



As regulated in Art. 7 (3) of Regulation 861/2007 if a party does not reply to the application or the counterclaim within the 30-day time limit provided for this purpose, the court has to issue a judgment according to the state of the file.

Additionally, if a party does not appear at an exceptionally scheduled oral hearing and does not file a statement within set time limit, a judgment is to be given on the basis of the case file (section 1103 ZPO).

### **Availability of review mechanism where the national court has issued the judgment**

According to section 1104 ZPO, if the requirements of Article 18(1) and (2) of the ESCP Regulation are met, the proceedings shall continue; they shall be restored to the position they were in before the judgment was given. On application, the court shall declare the judgment null and void by order.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

The legal basis for domestic enforcement of titles issued in Germany is Art. 15 of Regulation 861/2007. The rules on domestic enforcement (Code of Civil Procedure - ZPO) apply in addition.

A judgment issued in the European Small Claims Procedure has the same effects as another title issued in Germany and is enforced like the latter (section 1107 ZPO). Section 1107 ZPO clarifies that a confirmation (Form D) replaces the domestic enforcement clause. Section 1106 of the Code of Civil Procedure contains an implementing provision for this confirmation. The confirmation is issued by the court of the Member State of origin at the request of the creditor. Section 1106 requires hearing of the debtor before issuing of the confirmation. In the literature, there are numerous voices criticising this condition as is not compatible with the Regulation 861/2007 and therefore not applicable (as a provision contrary to European law).

The ZPO distinguishes different enforcement procedures for movables (sections 803-863) and immovables (sections 864-871). The enforcement differs also in terms of the relevant law enforcement authorities.

There are four different enforcement authorities:

- the bailiff,
- the enforcement court,



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- the trial court of first instance and
- the land registry.

Most relevant in consumer disputes are the bailiff and the enforcement court.

The bailiff as an autonomous enforcement authority carries out enforcement insofar as the law does not assign jurisdiction to the courts. The bailiff is responsible in particular for seizure of movables, surrender claims (section 883 ZPO) and to obtain information on the debtor's assets (section 802a). The creditor can obtain information on the debtor's financial circumstances through the bailiff before other enforcement measures are carried out. Each bailiff has his own district. The districts are divided according to localities or streets. The creditor can send the application form (together with judgment and Form D) or other documents to the distribution office (*Gerichtsvollzieherverteilungsstelle*) located at the district court. At the distribution office, all incoming documents are first sorted according to bailiff's district and then forwarded to the competent bailiff.

Enforcement courts are competent for the enforcement of monetary claims by garnishment order ("Pfändungs- und Überweisungsbeschluss"). The enforcement court is the local district court in whose district the enforcement should take place.

To initiate proceedings for the enforcement of monetary claim creditors have to use an application form (Antrag auf Erlass eines Pfändungs- und Überweisungsbeschlusses or Vollstreckungsauftrag an die Gerichtsvollzieherin/den Gerichtsvollzieher). The forms exist only in German and are 9 pages long.

Due to the requirement of strict formality in enforcement proceedings, the title can only be enforced against the person with the name against whom the title is directed. In the event of a change of company's name, a creditor must apply to court for a correction of the title (*Titelberichtigung*).

### **3. Rules on service**

An enforcement measure may only begin after the enforcement order has been served on the debtor. If enforcement is to be effected by a bailiff, it is sufficient if service is effected personally at the same time with the first enforcement measure.<sup>157</sup>

Section 193a (2) ZPO provides that the documents can be served electronically.

### **4. The status of digitalisation in enforcement of the ESCP judgments**

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<sup>157</sup> Gesetz zum Ausbau des elektronischen Rechtsverkehrs mit den Gerichten und zur Änderung weiterer prozessrechtlicher Vorschriften





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*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

Despite some discussions and calls for reform<sup>158</sup>, the digitalisation of enforcement procedure is not advanced enough.<sup>159</sup>

On 1 January 2022, the statutory regulations for the special electronic citizens' and organisations' mailbox (eBO) entered into force. With the eBO, citizens and organisations can exchange electronic documents securely with the justice system. The system should enable online communication with courts. The eBO mailbox enables both the sending of electronic documents to the court and the sending of electronic documents by the courts and the bailiffs to the mailbox holders. However, currently only specific software, which is still not free of charge, is required to create an account.

Professional parties to proceedings must set up an eBO for the service of electronic documents as of 1 January 2024.

In three federal states electronic application form can be already sent directly to the bailiffs<sup>160</sup>. In other federal states the form can be sent through courts (section 130 a ZPO).

The system is new and not known among consumers.

#### Obtaining of information on creditors' assets:

Where the debtor does not comply with his obligation to provide information on his/her financial circumstances and the assets he/she owns, or if it is foreseeable that the enforcement against the assets listed therein will not achieve the full satisfaction of the creditor, the bailiff may obtain information on creditor's assets from third parties (section 802l). Accordingly, "third-party disclosure" is still subsidiary to "self-disclosure".

The online enquiries are important source of information on debtor's assets. Here however, the information is incomplete as there is still a lack of a nationwide central electronic land register.

The list of debtor's assets is recorded by the bailiff in electronic form (section 802f Para. 5 ZPO). It is then forwarded to the central enforcement court of the respective federal state (section 802f (6) ZPO). The 16 central enforcement courts administer the submitted lists of assets nationwide (§ 802k ZPO). The bailiffs have access to the information stored there at all times (section 802k (2) ZPO).

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<sup>158</sup> Jürgen Stamm, Die Digitalisierung der Zwangsvollstreckung. Der Schlüssel zu einer Reform an Haupt und Gliedern, NJW 2021, 2563.

<sup>159</sup> Karlheinz Brunner, Digitalisierung, ein Meilenstein für die Arbeit der Gerichtsvollzieher?, Deutsche Gerichtsvollzieher Zeitung, 2022, 1 ff.

<sup>160</sup> Berlin, Schleswig-Holstein and Saxony



Debtors who have not fully satisfied the creditor within one month of submitting a statement of assets or who have not submitted a statement of assets at all or who, according to the statement of assets, have too few assets to fully satisfy the creditor are included in the central debtors' register which is kept (electronically) by the 16 central enforcement courts of the federal states (sections 882b (1) no. 1, 882c (1) ZPO).

Any person with a legitimate interest is entitled to inspect the debtors' register (section 882f (1) ZPO). Information can be accessed at [www.vollstreckungsportal.de](http://www.vollstreckungsportal.de).

In addition, auctions of seized items can be carried out online (section 814 II ZPO)<sup>161</sup>.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

Translation of the certificate is generally not necessary. The need for a translation will exist if the form contains supplementary information. If the translation is necessary, it should be done in German (section 1108 ZPO). A person qualified to make translations in one of the Member States should do the translation. Certified translation is not necessary.

## **6. Fees for the enforcement procedures**

According to section 788 (1) the costs of compulsory enforcement, insofar as they were necessary, shall be borne by the debtor; they shall be recovered at the same time as the claim subject to compulsory enforcement. Pursuant to section 788 (1) sentence 2 ZPO, the costs of enforcement also include the costs of obtaining an enforceable copy and of serving the judgment. The costs depend on the measure taken. Each enforcement measure constitutes a separate act in terms of fees. For example, the issuing of an garnishment order, a fee of € 15.00 is charged by the court. These fees are also added to the claim to be enforced and thus imposed on the debtor.

The creditor receive an invoice with detailed calculations of costs to be paid to a certain bank account.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

According to section 1107 ZPO all titles (judgments and court settlements) issued in another Member State on the basis of the ESCP Regulation shall be enforced without a declaration of enforceability. The certificate (Form D) replaces the domestic enforcement clause.

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<sup>161</sup> Online auction platform: <https://www.zvg-portal.de/>



## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

According to section 1105 ZPO the court before which the main action is being pursued is competent for applications for limitation of enforcement pursuant to Article 15 (2) in conjunction with Article 23 of the ESCP Regulation. The decision is given as a preliminary order. It is incontestable. The factual prerequisites of Article 23 of the ESCP Regulation are to be demonstrated to the satisfaction of the court.

Section 1109 concerns possible legal remedies in Germany against a small claims judgment originating from another Member State. In section 1109 (2) ZPO an enforcement defence action (*Vollstreckungsabwehrklage*) is foreseen, with which in particular the objection of performance can be asserted. The debtor can raise objections only insofar as the grounds on which they are based arose after the close of the hearing that was the last opportunity for these objections to be asserted, and thus can no longer be asserted by entering a protest.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

A party can apply for legal aid under the same conditions as during court proceedings.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

Foreign consumers willing to enforce their ESCP judgements in another country face in general many practical problems. Since the enforcement of judgements given by any court constitutes an integral part of the right of access to a court<sup>162</sup>, there is an urgent need to take legislative measures to enhance the efficiency and quality of the enforcement process in Germany and to harmonise the enforcement of ESCP judgement across all EU countries.

Having received a favourable judgment the consumer has to find out information how to proceed to enforce the decision in another Member State. This means especially:

- identification of competent enforcement authorities in other country and
- identification of formalities to be fulfilled.

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<sup>162</sup> Inter alia ECtHR, *Hornsby v. Greece*, judgement of 19 March 1997 (application no. 18357/91)



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In Germany, four different enforcement authorities can be competent depending on the measure to be implemented. The separation of competences in enforcement is no longer up to date. The decentralisation of the enforcement function makes it difficult for creditors to decide which enforcement authority would be suitable in any particular case. In centralised systems, the enforcement agent can better advise creditors on what measures to apply.<sup>163</sup>

With the certificate issued by the court, its translation, if necessary, and a copy of the judgment, the judgment should be enforceable in all the other Member States of the European Union. However, additional national formalities like in Germany obligation to fill in a complicated application forms in German in order to initiate enforcement proceedings in Germany constitutes a serious obstacle. The official application form to initiate proceedings is nine pages long, exists only in German and is complicated to fill in. For example, the German form requires that the creditors decide which enforcement measure should be taken and in which order. Consumers without specialised knowledge cannot know which enforcement measure is most suitable and has most prospects of success. Thus, it is nearly impossible for non-native speakers to enforce the judgment without support of legal counsel.

The same problems consumers face in other countries. It is difficult for the consumers to obtain the necessary information and then to submit a correctly filled application to initiate the procedure. Example: ECC-Germany was contacted by a German consumer asking about enforcement procedure in Italy. She tried to enforce in Italy an ESCP judgement issued by a German court. German lawyer of her choice could not give her any information on the enforcement procedure in Italy. Three Italian (German speaking) lawyers did not recommend her the procedure “as very complicated” or informed her that they do not deal with consumer issues (because of the low value of dispute).

The ECC Germany still receives feedback from consumers experiencing that either lawyer did not know ESCP procedure or bailiffs did not know how to proceed with the ESCP judgement issued in another EU member states. Therefore, dissemination of information on the ESCP procedure is still necessary.

Another practical problem is that the creditor should have the possibility to assess the prospects of success of the enforcement proceedings before initiating ESCP procedure. In order to do this he/she need some information like full name, date of birth, place of residence, economic circumstances in the form of bank details, employment, past and current insolvency proceedings. This in itself often proves difficult for foreign consumers. In one of the cases the ECC Germany dealt with, a German consumer obtained ESCP judgement in Germany against a Polish company. When filling in the form A, the consumer copied the company's data from the order confirmation and the website. Consequently,

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<sup>163</sup> European Commission for the Efficiency of Justice, Good practice guide on enforcement of judicial decisions, CEPEJ(2015)10, para. 12, available online: <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-good-practice-/16807477bf>



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the judgement was given against the company on the name as stated on the German website and on the documents, the consumer received from the company. However, the Polish company was registered in Poland under Polish name. The bailiff in Poland rejected the enforcement proceedings, as the real name of the company did not match with the name in the ESCP judgment. The same situation could happen in Germany.

The efficiency of enforcement depends on obtaining relevant information regarding the debtor's assets. However, during the proceedings it turns often out, that the debtors are no legally tangible due to concealment of property. In Germany usually, the bailiff obtains information from the debtor through a declaration of the debtor's assets. This declaration can be, despite criminal penalties, incomplete or false. In order to reduce the risk of debtors attempting to conceal their assets enforcement agent should have always access to information on assets like official registers or databases (e.g. kept by the tax authorities or social security offices).

One of the objectives of ESCP Regulation the European legislator pursued was to introduce simple and swift proceedings at low cost for small claims cases. This objective however cannot be fulfilled without unified procedural rules to initiate enforcement procedure. Even if the enforcement itself takes place in accordance with the national rules and procedures of the Member State where the judgment is being enforced, the application form should be common for all Member States. Solution could be another form (Form E-comparable to other forms necessary to initiate the ESCP.) to be filled in (or at least to be downloaded) on the platform common for all countries. The user should have the possibility to select the relevant value from the drop-down list. Necessary explanatory information should also pop up in. Additionally, the system could automatically complete further fields on the basis of the information already given by the user. For example if user fills in the place of residence of the debtor, the competent authority could automatically appear.

Additionally, ECC-Net as a network dealing with cross-border disputes and having easy recourse to information from different MS could be a contact point for consumers that provides first information and assistance if needed.



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## Greece

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

As the ESCP Regulation (Regulation (EC) 861/2007, amended by Regulation (EU) 2015/2421, hereinafter, “the ESCP Regulation”) has a direct effect (is directly applicable and fully binding) in all Member States, Greece has not adopted any specific legislation to implement it. Nevertheless, pursuant to Article 19 of the ESCP Regulation, the ESCP is governed by the procedural law of the Member State in which the procedure is conducted (*lex fori*), subject to the provisions of the ESCP Regulation. Thus, Greek procedural law is applicable when dealing with claims under the ESCP Regulation, unless stated otherwise in the ESCP Regulation.

In Greece there is a specific small claims procedure which is regulated by the Greek Code of Civil Procedure (Chapter XIII, Articles 466-472) (Κώδικας Πολιτικής Δικονομίας, hereinafter “the CCP”). The special provisions relating to small claims apply: (1) where the subject-matter of the dispute is subject to the jurisdiction of the district civil court (eirinodikeío) and relates to claims or rights to movable property or the possession of movable property not exceeding EUR 5 000.00 in value; or (2) where the value in dispute exceeds EUR 5 000.00, if the applicant declares that he or she will accept a sum not exceeding EUR 5 000.00 in settlement of the claim or right sought in the action (Article 466 of the CCP). If these conditions are fulfilled, neither the court nor the parties have the option of following the ordinary procedure instead of the special small claims procedure.

Thus, claims that fall under the ESCP Regulation are governed by the provisions of the CCP that deal with small claims (Chapter XIII, Articles 466-472).

Pursuant to Article 25 of the ESCP Regulation, Greece also forwarded the relevant information to the European Commission.



## Competent courts

The competent courts that deal with claims in European Small Claims Procedures (hereinafter, “ESCP”) are the territorially competent district courts (paragraph 1 of Article 466 of the CCP)

## Means of communication

The ESCP is commenced by lodging a written application (Form) to the registry of the district civil court in person. The application may also be lodged orally before the district civil court judge, in which case a record is drawn up. The application may also be made by email or via a digital platform for the submission of documentation where such means are available (paragraph 4 of Article 468 of the CCP).

The application must include: (a) an accurate description of the facts that substantiate the claim in accordance with the law and justify the bringing of the action by the claimant against the defendant; (b) an accurate description of the subject-matter of the dispute; (c) the specific form of order sought; and (d) all forms of evidence available.

## The number and mode of hearings, mode of the gathering of the evidence

There are no specific forms available for the national small claims procedure. However, the ESCP is based on forms described in the ESCP Regulation.

When conducting a hearing in small claims procedures, judges may depart from the usual procedural rules: they may take into account evidence which does not meet the statutory requirements, and may at their discretion apply the procedure which in the circumstances they deem to be the safest, speediest and least costly method of arriving at the facts (Article 469 of the CCP).

## Court fees and methods of payments

Court fees and costs are regulated by Articles 173-193 of the CCP.

When filing a claim in the ESCP, the claimant must pay a court fee - a percentage of the amount sought by the claimant. The fees must be paid upon filing the claim (Article 173 of the CCP). When the law does not specify the costs and fees to be paid in advance, the relevant amount is determined by the court (Article 174 of the CCP). For example, if the claim amounts to €5,000, the court fees will be approximately €65.

If the court fees are not paid in time, the court may (at its own discretion) (a) set a deadline for the claimant to submit the relevant proof of payment of the fees; or (b) reject the claim.





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Court fees are usually paid in cash at a designated payment place. The parties may ask the registrars for help with the payment process. It is currently not possible to pay the court fees by credit card or through a bank account.

#### Costs for the losing party

The costs are calculated on the basis of costs incurred by the winning party in the particular court case. Generally, the costs are assigned depending on the extent of each party's victory or loss (Articles 176 and 178 of the CCP).

Court fees to be paid by the claimant include *inter alia*: a) the lawyer's fees, and (b) the court stamp duty paid for the consideration of each court case, amounting to approximately 1.14 % of the total amount requested (principal and interest) (Article 198 of the CCP). For claims that do not exceed 200 EUR, no court stamp duty is to be paid. Court stamp duty must be paid to the State budget, while lawyers' fees must be paid to the Bar Associations, which collects and subsequently pays the lawyer's invoice by filing a corresponding document.

#### Accepted official languages by the courts/tribunals

The accepted language is Greek.

#### Costs and financial support for translation

There is no specific provision governing financial support for translation. Parties can receive for legal aid subject to certain conditions (see *infra*). Legal aid includes the costs of proceedings, notaries' and bailiffs' fees and lawyers' fees (Article 199 of the CCP). Translators and interpreters set their own fees. Their fees are, if requested, included in the legal costs awarded by the court.

#### Availability of legal assistance

Litigants may appear in court on their own behalf or be represented by their spouse, a relative or a salaried employee. There is no provision for a court clerk or the judge to assist the litigant or representatives who are not lawyers.

The parties can apply for legal aid. Legal aid is granted to persons who prove their inability to pay the costs of legal proceedings without jeopardising their or their families' subsistence (Article 194 of the CCP). Legal aid is also granted to foreign nationals, subject to reciprocity, and to stateless persons. Legal aid includes the costs of proceedings, notaries' and bailiffs' fees and lawyers' fees (Article 199 of the CCP).

The competent receiving and transmitting authority for legal aid requests is the Greek Ministry of Justice, Transparency and Human Rights, specifically the Department for International Judicial Cooperation in Civil and Criminal Matters. Legal aid requests are



received by post. In urgent cases, they may be received by fax or email, pending receipt of the original request by post. Requests may be completed in Greek or English.

#### Possibility of appeal

Judgments in small claims procedures are not open to appeal (Article 512 of the CCP). However, one can contest the decision through an application to the court that issued the decision, and an appeal for annulment to the Supreme Court.

#### Availability of review mechanism

A review request may only be submitted by filing an application at the registry of the court that issued the decision (see *supra*).

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Greek law does not provide for an “enforcement-court”. The court will not intervene in the procedure, unless it is called by the parties through an opposition to enforcement (Article 933 of the CCP).

Enforcement is exercised by an individual entitled to do so, who, on the official copy of the enforcement order (*Apógrafo*), gives the corresponding order to a specific bailiff and specifies how and, if possible, the means of enforcement. Thus, the bailiffs competent at the place of enforcement are responsible for the seizure of movable and immovable property. In the case of seizure, the notaries are responsible for auctioning (Articles 927-931 of the CCP). The lawyers are responsible for the drawing up the garnishing order, while the bailiffs are responsible for the service of that document.

The enforcement order must be dated and signed by the beneficiary or their representative. The order gives the authority to perform all enforcement acts, unless otherwise specified therein (Articles 927-931 of the CCP).

To commence enforcement proceedings, an enforcement title must carry the executory formula. This includes an official command addressed to the organs of enforcement in the name of the Greek people to execute the title (Article 918 of the CCP). The CCP does not include specific rules for submitting Form D or any appendices.

Enforceable titles under Greek law are (Article 904 of the CCP):



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- final judgments by Greek courts,
- rulings by Greek courts declared to be provisionally enforceable,
- arbitration awards,
- records of Greek courts containing a settlement or determining court costs,
- notarised deeds,
- payment orders made by Greek judges,
- tenant eviction orders,
- foreign titles declared to be enforceable,
- orders and acts declared by law to be enforceable titles.

The substantive conditions for enforcement are:

- the existence of a legitimate interest, i.e. the need for the act of enforcement and the legal protection it provides,
- the validity of the claim.

The following means are used for enforcement (see Articles 941 of the CCP and following):

- removal of moveable goods by force,
- eviction from immovable property by force,
- attachment,
- imprisonment,
- fines,
- compulsory administration,
- statements required to be made on oath.

Enforcement action may not be taken against some of the debtor's personal property.

The only remedy against enforcement measures is an application to set aside judgment by default, which may be filed by the person against whom enforcement is directed or by any creditor with a legitimate interest. The debtor has two remedies against enforcement proceedings: (1) application for opposition to Article 933 of the CCP, and (2) request for suspension under Article 1000 or the CPP.

### **3. Rules on service**

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

In small claim procedures, judgments are given orally in open court, usually immediately after the hearing. A judgment is not served on the parties if it is certified in the court transcripts that the judgment has been given in the presence of both parties, or their representatives (Article 471 of the CCP).



Service is the responsibility of the party following a written order given either by that party or their representative or, at the request of said party, by the competent judge (Article 123 of the CCP). Documents are served by a bailiff appointed by the court whose seat is in the region in which the addressee has his/her domicile or is resident at the time of service (paragraph 1 of Article 122 CCP). Where service of documents takes place under the responsibility of the court, service may also be carried out by a criminal bailiff established in the region concerned or an officer of the Hellenic Police, a forestry ranger or the municipal secretary (paragraphs 2 and 3 of Article 122 of the CCP).

Documents are regularly served into the hands of the addressee (paragraph 1 of Article 127 of the CCP), irrespective of where the addressee is (Article 124 of the CCP). However, if the addressee has a domicile, shop or office or workshop in the place where the service is to be effected or if he/she works there, the document cannot be served at a different place without his/her consent (paragraph 2 of Article 124 of the CCP).

Alternately, decrees issued upon the proposal of the Minister for Justice, Transparency and Human Rights can specify for documents to be served by post or telegraph or telephone, also specifying how the service is to be carried out and certified (paragraph 4 of Article 122 of the CCP). No such decrees have been issued to date.

Judicial documents can also be served electronically, provided that they have been electronically signed. The document is considered to be served if the sender has received electronic proof of receipt from the addressee, which must bear an advanced electronic signature and will constitute a service report (paragraph 5 of Article 122 of the CCP).

If the addressee is not at his/her address of residence, the document will be delivered to one of the other persons living in the same residence, provided that they are aware of their actions and are not the opposing parties in the case (paragraph 1 of Article 128 of the CCP). Articles 128-134 of the CCP lay down further rules on substituted service of documents.

The service expenses shall be paid in advance by the person who orders the service (paragraphs 1 and 3 of Article 173 of the CCP). The party that loses the case shall be ordered to pay for these expenses (Articles 176 and 189 of the CCP).

Enforcement proceedings commence with the service of a formal notice inviting the debtor to voluntarily fulfil their obligation (Article 924 of the CCP). This notice is included at the end of the certified copy of the enforceable title issued to the creditor. If the debtor does not comply within the following three working days (Article 926 of the CCP), the creditor may proceed to the provided acts of enforcement.

Those who engage in electronic commerce in Greece have a legal obligation to accept communications using electronic means, pursuant to Article 8(1) of Presidential Decree No 131/2003 (harmonisation of Greek law with Directive 2000/31/EC), in cases involving disputes arising from contracts concluded between the parties by use of a simple electronic signature, i.e. through simple electronic mail and messages exchanged.



#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

There is a system for the electronic submission of legal documents to the Hellenic Council of State and the Athens Court of First Instance. Legal documents can be submitted electronically for cases relating to all civil procedures, which are progressively being included in the online function. The progress of the documents for all procedures can be monitored electronically. However, no procedure can be initiated solely via the internet. There is no specific platform for digital enforcement of claims.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The accepted language in all proceedings is Greek and the documents must be translated to Greek.

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The costs of enforcement are borne by the person against whom the enforcement is directed and are paid in advance by the person who commences the enforcement proceedings (Article 932 of the CCP).

The basic costs of enforcement::

- the bailiff's fee for seizure for claims of up to EUR 590: EUR 53, for claims of between EUR 591 and EUR 6 500: EUR 53 plus a 2.5 % surcharge on the amount, and for claims EUR 6 500 or more: EUR 53 plus a 1 % surcharge on the amount, capped at EUR 422 for every property, ship or aircraft seized,
- the bailiff's fee for preparing each auction or repeat auction programme or summary of seizure report for claims of up to EUR 590 = EUR 53, for claims of between EUR 591 and EUR 6 500 = 2 %, and for claims of EUR 6 501 or more = 1 %, capped at EUR 210,
- auctioneer's fee = EUR 30,
- bailiff's fee for any other act of enforcement = between EUR 240 and EUR 400, as agreed between the bailiff and his client,
- bailiff's witness fee = EUR 30 each, and EUR 60 if the witness is a bailiff,
- if enforcement is cancelled, the bailiff's fees are reduced by 50 %,
- EUR 0.50 for every kilometre which the bailiff and witnesses need to travel from the place where they are based in order to carry out any act,



- special bailiff's fee depending on the degree of complexity of enforcement: as agreed between the bailiff and his client (this is never paid by the person against whom the enforcement is addressed).

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Pursuant to Article 904 of the CCP, records of Greek courts containing a settlement are considered enforceable titles. For general enforcement rules, see *supra*.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Pursuant to Article 519 of the CCP, the decision of the court of first instance may not be enforced for the duration of the appeal period. Any action taken during the appeal period is void, but precautionary measures may be taken. In final decisions provisionally enforceable (see *infra*), enforcement shall not be suspended, unless it is to be carried out against a third party.

Thus, generally a lawful appeal lodged within the appeal period suspends the enforcement of the decision (Article 521 of the CCP).

Moreover, enforcement proceedings are not allowed when the claim that is to be enforced depends on a suspensive condition or a deadline (Article 915 of the CCP). Enforcement acts may otherwise be nullified, unless fulfilment of the condition or expiration of the term has in advance been proven by a public or a private document (Articles 915b and 924a of the CCP).

However, pursuant to Article 908 of the CCP, the court may declare a judgment *provisionally enforceable* in whole or in part if exceptional reasons arise or the delay in enforcement may cause significant damage to the creditor. Furthermore, Article 911 of the CCP submits that the court may, at the request of the debtor, condition the provisional enforcement of the judgment on the provision of a corresponding guarantee by the creditor. A guarantee is needed when reasons exist (in particular the financial situation of the creditor) that might impede the reversal of the enforcement in case the enforcement title is reformed or annulled.

Article 912 of the CCP submits that if an appeal against a judgment declared provisionally enforceable in accordance with Articles 908 or 910 (see *infra*) is lodged within the deadline, the court may issue an order (at the party's request) to stay the enforcement proceedings (in part or in whole) if it is likely that the appeal will succeed. The proceedings are stayed



until the final judgment. The stay of the enforcement procedure can be conditioned on the provision of a security.

Furthermore, the CCP clarifies explicitly that the stay of the enforcement proceedings, ordered by the Court, does not entail the stay of the provisional measure's enforcement. Such a stay requires a special request of the debtor.

The district civil court which issued the decision is competent under Article 23 of the ESCP Regulation (paragraph 2 of Article 912 of the CCP).

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

Legal aid is granted to persons who prove their inability to pay the costs of legal proceedings without jeopardising their or their families' subsistence (Article 194 of the CCP). Legal aid includes the costs of proceedings, notaries' and bailiffs' fees and lawyers' fees (Article 199 of the CCP). Thus, a party could obtain legal aid to cover the fees of a lawyer that would advise them in the enforcement proceedings.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

Since the ESCP Regulation governs cross-border disputes, the biggest issue of the ESCP judgments enforcement procedure in Greece is that foreigners might find it hard to navigate the Greek enforcement procedure. There is currently no official translation of the CCP. Thus, parties who do not speak Greek will have a hard time enforcing ESCP judgements in Greece as gathering information on the enforcement procedure will be difficult. Furthermore, the entire enforcement procedure is conducted in Greek. The lack of translation has also posed an issue during the compilation of this report and the problem will only be exacerbated for parties without any knowledge on the main principles of substantive and procedural law.

Hence, foreign parties with no legal knowledge will probably need to hire a Greek lawyer to help them navigate the enforcement of an ESCP judgement in Greece. This will significantly raise the costs of enforcement - even if they can recoup the costs from the debtor later. These additional hurdles and costs hinder access to justice and oppose the main objective of the ESCP Regulation.

Another issue with the Greek enforcement procedure is the lack of digitalisation. It would be extremely helpful for foreigners to be able to enforce ESCP judgements digitally as this





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would bring down costs and simplify the procedure. However, in Greece no procedure can currently be initiated solely via the internet.



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## Hungary

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The national rules related to Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure are set out in Act CXXX of 2016 on the Code of Civil Procedure (hereinafter: Code of Civil Procedure or CCP; online link: [https://njt.hu/translation/J2016T0130P\\_20200401\\_FIN.pdf](https://njt.hu/translation/J2016T0130P_20200401_FIN.pdf)) in Hungary. The CCP entered into force on January 1, 2018, introducing uniform rules of civil procedure, which means that *there are no special procedural rules for small claims in Hungary.*

It is important to emphasize that in Hungary, pursuant to Section 3(2) of Act L of 2009 on the order for payment procedure (online link: <https://njt.hu/jogszabaly/2009-50-00-00> can only be read in Hungarian), it is - as a general rule - mandatory to enforce by way of an order for payment, an overdue claim for the payment of money the amount of which does not exceed 3.000.000 HUF (approximately EUR 7557), provided that the parties have a known place of residence in Hungary or, failing that, their place of residence, or its registered office of business or representation. (In Hungary, the order for payment procedure is an electronic civil non-litigious procedure falling within the competence of a notary.) Section 3(7) of the Act on the order for payment procedure allows for a derogation from this general rule: in the case of claims falling within the material scope of Regulation (EC) No 861/2007, of course, the use of the Hungarian order for payment procedure is not mandatory.

In connection with Regulation (EC) No 861/2007, Paragraphs 598 to 602 of the CCP contain some specific procedural rules.



### *1.1. The competent courts dealing with ESCP claims*

Under Section 599 of Code of Civil Procedure, the European Small Claims Procedure falls within the competence and exclusive territorial jurisdiction of the *district court* operating at the seat of the General Court, and of the Buda Central District Court (Budai Központi Kerületi Bíróság) in Budapest.

### *1.2. The number and mode of hearings*

If the court - pursuant to Article 5 (1a) of the Regulation - holds a hearing of its own motion or at the request of either party, at least one hearing shall be held, but several hearings may take place in view of the complexity of the case.

Pursuant to Article 8 of the Regulation, the hearing is to be held primarily using the distance communication technology available to the court. According to the provisions of the CCP, the party and other litigants, witnesses, experts, etc. may be heard through an electronic communications network. The rules for *hearing by means of an electronic communications network* are laid down in the CCP and in Decree No 19/2017 of 21 December 2017 of Minister for Justice on the holding of hearings by means of electronic communications networks in civil proceedings.

During the state of emergency ordered due to the coronavirus epidemic, it became possible to hold a classic E-trial under other technical conditions, the detailed rules of which are laid down in the 2/2020 (IV. 30.) opinion of the Civil College of the Curia. The courts uniformly use Skype for Business software to hold the E-hearing.

### *1.3. Mode of the gathering of the evidence*

The rules of first instance in the Hungarian Code of Civil Procedure were fundamentally reformed, as division of the trial was introduced in 2018. For this it was necessary that the rules of first instance shall prescribe strict deadlines, and expect increased obligations from the parties. In a divided trial the procedure has two parts: preliminary hearing and trial on merits (or main hearing). Preparatory hearing is stressful because of the appropriate preparation for the main hearing: this period is concentrate on setting up the content and frame of the dispute, for which the Law shall provide an exact 'scenario' in a mood to ensure the balance between oral and written acts too. Written preparation is followed by an oral hearing where the parties' statements of facts and laws, referrals, motions of proof are recorded, by means of the judge's case management (when required). Preliminary hearing ends with an authorisation to proceed, which has a very important consequence, the preclusion: the court shall exclude the statements and motions of the parties stated after that stage. In its final order the court opens the main hearing, set the hearing on merits, on which only the taking of evidences is obtained.

The Hungarian CCP does not contain any special rules on taking evidence in the European Small Claims Procedure. It follows that evidentiary motions and documents can only be



filed at the stage of preliminary hearing. The taking of evidence, such as the hearing of a witness, takes place at the stage of main hearing.

It is important to point out that in Hungary it is the responsibility of the parties to collect evidence and bring it to the court. The court may order evidence of its own motion only on the basis of a statutory mandate. Pursuant Section 4(2) of Code of Civil Procedure: *Unless otherwise provided by an Act, the parties shall bear the burden of presenting the relevant facts of the case and submitting the respective supporting evidence.*

The Hungarian CCP does not allow the presentation of testimony in writing, which is otherwise provided for in Article 9 of the Regulation. Therefore, in practice, when a witness is heard, a hearing is usually held by the court.

#### *1.4. Court fees and methods of payments*

- In Hungary, the fee for court proceedings is, as a general rule, paid in the form of revenue stamp or electronically at the same time as the statement of claim is lodged. [Section 74(1) of *Act XCIII of 1990 on duties*] The revenue stamp can be purchased at the Hungarian post office.
- Section 74(1) of *Act XCIII of 1990 on duties* gives the party initiating the procedure the choice – provided the technical conditions exist for this – of paying all court fees electronically through the *electronic payment and settlement system*, rather than by revenue stamps, in respect of all court proceedings (whether initiated on paper or by electronic means). The electronic payment and settlement system is a central electronic payment service (with the associated settlement system) that allows clients to meet their payment obligations to the bodies providing electronic administration, including electronically, using by bank card, virtual bank card or internet banking, in the course of electronic administration.
- According to Section 42(1) of *Act XCIII of 1990 on duties*, the general rate of court fees is 6% of the value of the subject-matter of the dispute in contentious proceedings, minimum HUF 15 000 (about 37,5 euros). Under Section 46(1) of *Act XCIII of 1990*, appeals against judgments incur a fee of 8% of the value of the subject-matter of the dispute, minimum HUF 15 000 (about 37,5 euros).

#### *1.5. Costs for the losing party*

Pursuant Section 83(1) of CCP: *Unless otherwise provided by an Act, the litigation costs of the successful party shall be reimbursed by the losing party.*

Pursuant Section 82 of CCP:

*(1) Unless otherwise provided by an Act, the court shall decide ex officio on the bearing of charged litigation costs in the decision closing the proceedings. If the court rules on the bearing of litigation costs in a decision other than the decision closing the proceedings, a separate appeal may be filed against the part of the decision related to the litigation costs.*



*(2) The court shall determine the amount of the litigation costs and shall order the person obliged to reimburse the costs to pay them. If the parties are obliged to reimburse litigation costs to each other, the court shall order the payment of the difference only.*

*(3) The amount of litigation costs shall be determined by the court on the basis of the charges and the documents attached thereto. A cost item not charged or exceeding the charged amount may not be taken into account for the benefit of the party.*

Pursuant Section 80 of CCP: *The definition of litigation costs: Litigation costs shall include all costs necessarily incurred by a party in the course of or prior to the action, in causal relation to the enforcement of the right subject to the action, including any loss of earnings necessarily incurred due to appearing before the court.*

Although the CCP does not contain a specific list of individual cost elements, there are, of course, still some typical elements that can be charged as litigation costs:

- the court fees;
- costs incurred in the field of representation, in particular where the party acts with a legal representative in the proceedings [Decree No 32/2003 of 22 August 2003 of the Minister for Justice];
- the costs of evidence (e.g. witness fees or experts' fees, etc.).

#### *1.6. Accepted official languages by the courts*

The Code of Civil Procedure provides that proceedings are conducted in the *Hungarian language* [Section 113(1) of CCP].

The Code of Civil Procedure also provides that unless otherwise provided for by law, a binding legal act of the European Union or an international convention, submissions addressed to the court must be filed in Hungarian and submissions and decisions of the court are served in Hungarian. The law also provides that everyone is entitled to use their mother tongue orally in court proceedings, and, within the scope of an international convention, they may use their mother tongue, regional or national minority language. The court appoints an interpreter or translator if it is necessary for the enforcement of these rights or is otherwise necessary under the provisions of this Act relating to the use of languages.

Under the special rules on the European Small Claims Procedure, the CCP provides that the court may order the party to submit a certified translation for any document he has presented only if there is no other way to ascertain the relevant facts of the case [Section 600(5) of the Code of Civil Procedure].

#### *1.7. Costs and financial support for translation*



Pursuant Section 79(1)-(3) of CCP:

*(1) Unless otherwise provided by an Act, the costs of taking of evidence shall be advanced by the party presenting the evidence...*

*(2) Unless otherwise provided by law, a binding legal act of the European Union or an international convention, the costs of engaging an appointed interpreter for any purpose other than taking of evidence shall be advanced by the party for whom it was necessary to engage the interpreter.*

*(3) The costs of engaging an appointed translator for any purpose other than the taking of evidence shall be advanced by the plaintiff.*

- The costs associated with the use of languages are not always advanced by the Hungarian state. Such costs are advanced by the State if the party is not obliged to do so by virtue of legislation, a binding act of the European Union or a provision of an international treaty, as well as by reason of legal aid (see the following point for legal aid). Act XL of 1999 promulgating the European Charter for Regional or Minority Languages deals with these cases.

There is therefore a difference between advance costs and whether the interpreter and translation fees are related to the evidence or can be clearly separated from it. If the court hears a witness who does not know Hungarian, the fee of the interpreter is advanced by the proving party as a cost. If the appointment of an interpreter is necessary in order to hear the party entitled to use a language other than Hungarian during a trial, or even if a translator has to be employed because the summons for the hearing must be translated into the language of the addressee, Section 79(2) of the CCP shall apply. In the case of the costs of the evidentiary procedure, the CCP assigns the obligation to advance to the party for whom the interpreter is to be used, and the obligation to advance the costs of translation goes to the plaintiff interested in the proceedings.

#### *1.8. Availability of legal assistance*

- Section 6 of *Decree No 14/2002 of 1 August 2002 of the Minister for Justice on the rules of court administration* provides that the *court office* receives clients during the period specified by the president of the court or, in the case of district courts, the president of the regional court. An information board is displayed in a publicly accessible place at the court, indicating where and when clients may present their requests or complaints; when and where they may seek information; who is entitled to receive submissions, when and in which room; and pointing out that submissions may also be placed in the mailbox at the court. The court may also provide information by electronic means and may publish it on the internet. This option is available to clients who can appear in person at the court office.



- Pursuant to Decree No 14/2002 on the rules of court administration, the courts provide practical assistance to clients during office hours, and further information is available on <http://www.birosag.hu/>.
- Under Act LXXX of 2003 on legal aid, legal assistants provide, inter alia, legal advice to clients or prepare submissions or other documents, the fees and costs of which are paid or advanced to legal assistants by the State instead of the client. Aid is subject to clients seeking legal advice on their procedural rights and obligations, or preparing a submission with a view to making subsequent legal statements in the case. Clients must belong to the groups of persons specified in Sections 4 to 9 of Act LXXX of 2003, their income may not exceed the amounts specified in those sections, and they may not be subject to the conditions set out in Section 10 of Act LXXX of 2003 excluding eligibility for aid.
- If a procedure is already pending, Section 11(1) of Act LXXX of 2003 provides that, within the framework of legal aid, the State provides legal representation to the claimant, the defendant, the intervenor (third party), the interested party, the petitioner and the respondent, and, in keeping with the above-mentioned provisions, advances or bears the costs thereof on behalf of the client. In addition to the conditions laid down in Act LXXX of 2003, clients are considered eligible even if they are exempted from payment. Clients are eligible for aid if, due to their lack of legal expertise or the intricacy of the case, they would not be able to represent their interests or assert their procedural rights effectively if they proceeded personally.

### *1.9. Possibility of appeal*

The ordinary remedy relevant for the purposes of the Regulation is the appeal. According to Section 601 of CCP: *An appeal may be filed against the judgment, and it shall be decided on according to the general rules.*

- The second-instance procedure is brought by the appellant by means of an appeal lodged in writing at the court of first instance. Parties and persons in relation to whom the decision contains a provision may appeal against the part of the provision relating to them. The deadline to submit an appeal is *fifteen days* following the date the decision was notified.
- The appeal must indicate the number of the judgment contested in the appeal and the provision or part of the judgment contested in the appeal, a firm request that the contested provision or part of the judgment of first instance be amended or annulled by the court of second instance, the substantive or procedural infringement on which the appellant bases its appeal, unless the exercise of the power of review is not conditional on the violation of the law. The appeal must, as a general rule, be decided by the court of second instance *without a hearing*, unless either of the parties requests that a hearing be held, the court considers it justified, or evidence must be taken to be used at a hearing.

### *1.10. Availability of review mechanism*





- According to Article 18(1) of the Regulation, the court that issued the judgment in the European Small Claims Procedure has jurisdiction to rule on the request for review.
- On the basis of Article 19 of the Regulation, the relevant rules of the Code of Civil Procedure also govern the procedure for the request for review, in matters relating to which Article 18 of the Regulation does not provide otherwise.
- Among the provisions governing the European Small Claims Procedure, the Code of Civil Procedure contains specific rules concerning the review pursuant to Article 18 of the Regulation [Section 602(1)–(3) of CCP]. The Code of Civil Procedure expressly states that the rules on the verification of failure to act apply to the review, and excludes the submission of a request for *restitutio in integrum* in the event of failure to comply with the time limit for lodging an appeal on a point of law, and does not allow the right to appeal against the order rejecting the request for review of its own motion.
- On this basis, the reason for the review and the circumstances on which it is based are set out in the request for review under Article 18 of the Regulation. The request does not have suspensory effect on the enforcement of the judgment. However, if the success of the request appears likely, the court may order the suspension of the enforcement of the decision ex officio without hearing the opposing party. The court may, upon request, amend the decision on the suspension. If review is excluded by law, or if the request is submitted late, the request is rejected without examination of its merits. Before deciding on the request, the court may hear the parties. Whether the preconditions for a request are met is assessed equitably. If the court grants the request, the proceeding is repeated in the necessary framework. An appeal may be submitted against decisions rejecting a request.

## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Act LIII of 1994 on Judicial Enforcement shall apply to the enforcement of ESCP judgments. This law contains some additional rules related to the Regulation, however, it can be said that there are no special rules, ESCP judgments must be enforced in the same procedure as the judgment of the Hungarian court.

Enforcement orders in Hungary may be issued, in cases falling within the scope of the Regulation, by the district court operating at the seat of the regional court in the territory of which the debtor is domiciled; in the absence of this, the district court operating at the location of the assets that may be subject to enforcement, at the location of a Hungarian branch office of a company registered abroad, or, in the case of direct commercial



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representation, at the location of the branch or agency; and in Budapest, the Buda Central District Court.

General information on the Hungarian enforcement procedure is available on the official website of the courts: <https://birosag.hu/en/enforcement-proceedings>

The enforcement procedure has two stages: the ordering of enforcement and the implementation of enforcement.

#### Ordering of enforcement:

Enforcement proceedings are instituted at the request of the party requesting enforcement. The application shall be made by means of a standard form. The documents listed in Article 21(2) of the Regulation shall be accompanied by a standard form under Hungarian law. Unfortunately, the forms are only available in Hungarian on the official website of the courts: <https://birosag.hu/eljarasok-nyomtatvanyai/nyomtatvanyok/vegrehajtasi-papir-alapu-nyomtatvanyok>

The court with competence to order enforcement will issue the enforcement order (enforcement sheet, attachment order, transfer order), where the general conditions of enforcement are fulfilled, and therefore the enforcement resolution sets forth an obligation (condemnation), furthermore if it is final and non-appealable, or where the resolution is preliminarily enforceable, and the deadline for fulfilment has elapsed.

#### Implementation of enforcement:

As a general rule, enforcement is implemented by an *independent court bailiff* in judicial enforcement proceedings.

In cases where the person or entity requesting enforcement knows the bank account number or the employer of the debtor, this person or entity may seek to have a transfer order or an attachment order issued. In this case, no bailiff is involved in the procedure, and the court will send the enforcement document directly to the account holding financial institute, employer or disburser to effect attachment.

In other cases, the court ordering enforcement will send the enforcement document to the independent bailiff as per the residence, registered seat of the debtor or in certain cases as per the location of the assets that may be subjected to enforcement, to effect enforcement.

As a general rule, costs incurring in judicial enforcement are to be advanced by the person requesting enforcement, to be borne by the debtor.

In enforcing money claims, the asset rights of the debtor are restricted to allow collection of the claim. The bailiff may subject the bank account held with the financial service



provider, the wage, tangible property (motor vehicle) or real estate of the debtor to enforcement. The bailiff will hold an auction to sell the seized tangible property and the real estate, if the statutory conditions are met.

The person or entity requesting enforcement or any other interested party whose right or legitimate interest is violated by an action or omission by the bailiff may submit an enforcement demurrer, to be submitted to the bailiff. The bailiff must forward the same to the court implementing enforcement. The court with competence to implement enforcement is generally not identical with the court having ordered enforcement, because the implementing court is the district court as per the registered seat of the bailiff.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Pursuant to Article 13(1) of the Regulation, during the proceedings, documents are served by post. There is only one postal service provider in Hungary, official link: <https://www.posta.hu> The fee for the service of an official document is approx. 8-10 euros.

In Hungary, electronic service within the meaning of Article 13(1)(b) of the Regulation is excluded in civil proceedings.

Electronic communication within the meaning of Article 13(2) of the Regulation exists in Hungarian law. In order to ensure that communication with the court in court proceedings is carried out as comprehensively as possible and preferably electronically, the Code of Civil Procedure makes electronic communication with the court possible and partly mandatory. Under the Code of Civil Procedure, clients or their representatives may choose to communicate electronically, or, if they are required to do so, they must communicate with the court by electronic means.

According to the referential rule set out in Section 608 of the CCP, the groups of persons communicating electronically are listed in *Act CCXII of 2015 laying down general rules on electronic administration and trust services*.

Section 9 (1) of Act CCXII of 2015, unless otherwise provided for in an Act or an international treaty by virtue of commitment under international treaty, electronic communication is mandatory for

- (a) the following when acting as clients:
  - (aa) economic operators,
  - (ab) the State,
  - (ac) local governments,
  - (ad) budgetary bodies,
  - (ae) the public prosecutor,



- (af) notaries,
- (ag) public sector bodies,
- (ah) other administrative authorities not covered in points (ac)–(ag); and
- (b) the legal counsels of clients.
- Under Sections 608(2) and 75(1) of the Code of Civil Procedure, the following are considered to be legal representatives:
  - (a) attorneys and law firms;
  - (b) bar association legal counsels in cases defined by the Act on Legal Practice;
  - (c) a judge and court secretary authorised to represent the court vested with legal personality;
  - (d) a public prosecutor empowered to represent the Prosecutor General’s Office;
  - (e) trainee lawyers and legal rapporteurs (if they are permitted to act in the lawsuits under the Code of Civil Procedure), and
  - (f) other persons defined by legislation.
- Clients communicating electronically send the request form, as well as all other submissions and documentary evidence, to the court using the form submission support service (by filling in electronic forms that meet technical specifications and by successfully identifying themselves electronically).
- Electronic communication with the courts takes place through three channels of communication:
  - - Mailbox requiring registration in the Central Customer Registration System (a storage space considered as a secure service address available for personal administration; formerly the Customer Gateway),
  - - Official Mailbox (reserved for the official electronic communication for administrative bodies),
  - - Company Portal (a storage space considered as a secure service address available for business organisations and individual lawyers, European Community lawyers and individual patent attorneys).
- Any natural person may apply for registration in the *Central Customer Registration System* with the registration body (in Government customer service offices, Government information offices (Kormányablak), tax authority customer service offices, embassies and some post offices), or electronically, with a valid identity card issued after 1 January 2016. Personal registration requires an official document confirming identity (ID, passport, driving licence in card format) and an email address. Foreign nationals not covered by the personal data and address register are identified by means of their passport or, where applicable, residence permit. Nationals of EEA Member States not covered by the personal data and address register are identified by means of their passport or other official document confirming their identity. At the time of registration, clients must prove their identity and sign a statement consenting to the processing of their data. Subsequently, the Central Office verifies the data provided in the personal data and address register (or, in the case of aliens not covered by it, in the aliens’ register). In addition to these data, a unique user name and an email address are also required, as the natural person is sent to that address the one-time code necessary for the first login.



- The common feature of the Company Portal and the Official Mailbox is that users must have specific rights to use them. *The Official Mailbox* may be used by organisations joining the Central System. The *Company Portal* service may be used by business organisations and legal representatives.
- Clients communicating electronically must send their submission by means of a *form* where the President of the National Office for the Judiciary has provided one. If no form is provided, clients communicating electronically must upload their submission and its attachment(s) in one of the file formats accepted by the President of the National Office for the Judiciary and published on the central website of the courts (<http://www.birosag.hu/>). To download the forms, clients need to have installed special form-filler software (Általános Nyomtatványkitöltő Keretprogram ([ÁNYK](#))) for filling in the forms and uploading electronic documents as attachments. The submission and its attachments must be sent to the court electronically signed or authenticated by means of an identification-based document authentication service. The central website of the courts provides practical information for filling in the form. If submissions do not meet IT requirements, clients communicating electronically are notified directly as part of the submission process. If submissions uploaded by clients communicating electronically meet IT requirements, they are sent an *acknowledgement of receipt* by means of the service system. The submission is deemed to have been served on the court at the time indicated therein.
- The court sends clients communicating electronically a *certificate of receipt* of all submissions, via the service system (automatically). (Section 75/C of Decree No 14/2002 on the rules of court administration).
- Clients communicating electronically are notified by email of the receipt of documents, and access the documents by clicking on link to the document. Clicking on the link creates an *electronic acknowledgment of receipt* indicating the name of the sender and the addressee, the number of the case and the date of receipt of the document, and is sent both to the court and to the clients communicating electronically. The electronic acknowledgment of receipt and the postal acknowledgment of receipt referred to in Code of Civil Procedure meet the requirements of acknowledgments of receipt in Article 13(1) of the Regulation. If the service system indicates that the document has not been received despite being notified twice, it will be deemed to have been served on the fifth working day following the date indicated in the second notification certificate.
- There is no extra charge for the use of electronic communications.

#### 4. The status of digitalisation in enforcement of the ESCP judgments

(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)

There is *no* specific rule in Hungarian national law regarding the digitalisation of the enforcement of the ESCP judgments.



During the enforcement proceedings, contacts with the court are essentially governed by the provisions of point 3 of this report.

Contact with a bailiff is possible by post or electronically. However, unlike those described in point 3 of this report, bailiffs operate their own electronically system: the Electronic System for *the* Service of Enforcement Documents (VIEKR). To use the system, you need to register separately, the link to this: <https://mbvk.hu/szolgaltatasok/viekr-regisztracio/viekr-regisztracio-urlap/> (only available in Hungarian)

## 5. Language of the Certificate (standard Form D) and other documents to be appended

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

Hungary shall not, within the scope of the possibility of declaration provided for in Article 21a (1) of the Regulation, designate as an accepted language an official language other than its own official language in respect of the language of the certificate. Pursuant to Section 113(2) of the CCP, all documents must, as a general rule, be submitted in Hungarian during the enforcement proceedings, and according to Paragraph 62 of the CCP, as a general rule, it is sufficient to use a simple translation.

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The order of judicial enforcement falls within the jurisdiction of the court, therefore a *court fee* must be paid. The amount of the court fee is 1% of the value of the subject matter pursuant to Section 42(1)(d) of Act XCIII of 1990 on fees, with a minimum of HUF 5,000 (about 12,5 euros).

On the method of payment of court fees, see point 1.4. of this report.

After the order of enforcement, the bailiff is entitled to an *advance payment* at the beginning of the proceedings, the detailed rules are set out in Decree No 8/2021 of 29 October 2021 of SZTFH on executive fees. The amount of the advance is, as a general rule, 50% of the bailiff's fees and flat rates, a minimum of HUF 9,000 (about 22,5 euros) and a maximum of HUF 85,000 (about 212,5 euros). For example, the amount of the advance payment is approximately EUR 125 for a cash claim of EUR 5 000. The advance payment shall be paid at the request of the bailiff, as a general rule by bank transfer. In the event of effective enforcement, of course, this amount will be paid definitively by the debtor.

## 7. Enforcement of court settlements approved or concluded by a court in the ESCP context





*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

There is no specific national rule for the enforcement of a court settlement covered by the Regulation.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

In connection with Article 22 of the Regulation (Refusal of enforcement), the procedure laid down in Sections 211 to 212 of Act LIII of 1994 on Judicial Enforcement applies: *withdrawal of the enforcement sheet*. There is no standard form for submitting this application, no court fees are payable. The application must be made to the *court ordering enforcement*, see point 2 of this report. The court's order is subject to appeal. If the enforcement sheet is withdrawn by the court, the enforcement procedure is terminated and a situation must be created as if the enforcement procedure had not even been initiated (*in integrum restitutio*).

The court carrying out enforcement is entitled to the measures specified in Article 23 of the Regulation in Hungary. In Hungarian law, the court carrying out the enforcement is the court to which the proceeding independent court bailiff has been appointed.

In the cases referred to in Article 23 of the Regulation, the court is not obliged to stay the enforcement proceeding, therefore the application must be justified in detail, the decision depends on the discretion of the court. The court may hear the parties orally or in writing on the subject of the application.

The court decides on the stay of enforcement within 15 days, the suspension is communicated immediately to the bailiff. The stay of enforcement shall take effect at the time when the order is made. The court's order can be challenged on appeal.

The justification for maintaining the stay of enforcement shall be reviewed by the court ordering the stay at the reasoned request of either party. Suspended enforcement may continue on the action of the court which ordered the stay.

Where the court suspends enforcement at the request of the debtor pursuant to Article 23 (a) of the Regulation, the stay shall, in the case of enforcement of a monetary claim, cover the attachment of the debtor's wages, the drawing up of a notice of sale of movable property and immovable property, the sale of assets and the payment of sums received during enforcement; the other enforcement acts shall also be taken during the period of suspension.





This Project has received funding from the European Commission JUST 2027 Programme under grant agreement no. 101046587.

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The national rules relating to the stay or limitation of enforcement proceedings are set out in Paragraphs 48 to 51 of Act LIII of 1994 on Judicial Enforcement.

#### **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

Subsection 1.8 of this report may also be used in the ESCP enforcement procedures.

#### **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

There is no other specific national procedural rule.

#### **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The Hungarian national procedural law contains, to the extent necessary, subsidiary provisions relating to the Regulation. The enforcement of ESCP judgments is properly regulated in legal terms, but the author of this report is of the opinion that, under the current rules, it would be very difficult for a person seeking enforcement from another Member State to initiate the Hungarian enforcement procedure without a Hungarian legal representative.

The solution could be to create an online platform capable of ordering the enforcement procedure in all Member States by filling in an online application and submitting it electronically.



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## Ireland

Author(s): Seyedeh Sajedeh Salehi, Dr. Marco Giacalone, Prof. Gina Gioia, Prof. Kim Van Der Borgh

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Ireland, the European Small Claims Procedure Regulation was implemented in the country's legal system by the Law of S.I. No. 533/2008<sup>164</sup>. As provided for by this statutory instrument, the District Court has jurisdiction for the purposes of the ESCP claims. The jurisdiction of District Courts under Irish legal system is exercised in accordance with the rules of Brussels Ibis Regulation<sup>165</sup>. In Ireland, there is no centralised or specialised structure in dealing with ESCP cases.

The ESCP procedural rules are governed by the District Court Rules of 2018<sup>166</sup>. To commence an ESCP legal proceeding, the applicant must file the completed Claim Form A, together with any relevant supporting documentations (if applicable). The Claim Form – like other ESCP Forms – can be obtained either from the Small Claims Registrar or can be downloaded from the European e-Justice Portal.<sup>167</sup>

Upon completion of the application, it must be lodged with the Small Claims Registrar in the competent local District Court. The fixed fee of 25 euros must be paid at the time of lodging the Claim (or counterclaim) Form regardless of the amount of the claim.<sup>168</sup> This fee

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<sup>164</sup>European Communities (European Small Claims Procedure) Regulations 2008, S.I. No. 533 of 2008 <<https://www.irishstatutebook.ie/eli/2008/si/533/made/en/pdf>> accessed 24 June 2022.

<sup>165</sup>Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

<sup>166</sup>District Court (European Small Claims Procedure) Rules 2018 (S.I. No. 315 of 2018) <<https://rb.gy/mvjepv>> accessed 24 June 2022.

<sup>167</sup>The ESCP online dynamic forms can be found here: <[https://e-justice.europa.eu/content\\_small\\_claims\\_forms-177-en.do](https://e-justice.europa.eu/content_small_claims_forms-177-en.do)> accessed 24 July 2022.

<sup>168</sup>Pablo Cortes, 'Small Claims in Ireland and the EU: The Need for Synergy between National Courts and Extrajudicial Redress' in Nanette Neuwahl and Saïd Hammamoun (eds) *The Philosophy of Small Change*:



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can be paid to the Chief Clerk of the relevant District Court by cash, or (sending) a cheque, postal order, or bank draft. If the court fee is not paid at the time of lodging the application, the Registrar will return the form to the applicant and the payment will be requested.<sup>169</sup>

The Claim Form and other supporting documents must be in English or Irish, the official languages of Ireland.

Rule 4 of Order 53B stipulates that the claim form, accompanying documents, and the fee must be filed with the Registrar through the registered post or in an electronic format. This should be, however, noted that currently the ESCP claims cannot be lodged online. By contrast, in national small claim procedures, plaintiffs can lodge their claims online.<sup>170</sup>

The practical assistance in filling the Claim Form and/or any general information about the European Small Claims Procedure can be obtained by contacting the local District Court office.

Upon submission of the claim, the Registrar considers whether it is appropriate to be proceeded within the ESCP.

An ESCP claim can be rejected based on the following grounds: a) if the claim falls out of the scope of the ESCP Regulation (e.g., ineligible subject matter, exceeding threshold, etc), and b) where the application is incomplete, and the claimant has failed to complete or correct the missing information within a specified timeframe (after being notified by the Registrar). In such circumstances, the Registrar – on behalf of the court – notifies the claimant of the rejection in the form of a court order. There is no possibility of appeal against this order and the applicant will be reimbursed, where appropriate (Order 53B, Rule 6 (5)).

Where the Registrar considers the Form A is complete and the claim falls within the scope of the ESCP Regulation, s/he completes Part I of the standard Answer Form C.

The Answer Form together with a copy of the Claim Form and the supporting documents (if applicable) will be served upon the defendant by post within 14 days (Order 53B, Rule 6 (6) (a) & (b)).

If the respondent accepts the claim in full, s/he must complete the Answer Form – or answer in any written form – and forward it to the Registrar, together with a proof of payment (i.e., bank transfer, cheque, or using any other permitted means of payment) for

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*Transnational Litigation in the EU and Beyond* (Éditions Thémis 2014) 7 <<https://ssrn.com/abstract=2477882>> accessed 20 June 2022.

<sup>169</sup>See District Court (Fees) Order 2014 (S.I. No. 22/2014).

<sup>170</sup>For more information see the website of Courts Service in Ireland here: <<https://www.courts.ie/european-small-claims-procedure>> accessed 20 June 2022.



the full amount of the claim. The Registrar will then transmit all these documents to the claimant through a registered post (or any other means permitted by Rule 3 of Order 53B).

Where the defendant conditionally accepts the claim, the Registrar must notify the claimant to see whether s/he agrees to comply with the specified condition by the respondent (Order 53B, Rule 7).

However, if the defendant does not respond to the claim within 30 days, the claim will be treated under the procedure for undisputed claims. In that circumstance, the Registrar will ask the claimant to take an oath. After swearing an affidavit, the local District Court will issue an order in favour of the claimant ordering the defendant to pay the amount claimed.

If the respondent contests the claim, the Registrar – in compliance with Article 12 (3) of the ESCP Regulation – will encourage the parties to negotiate and reach an agreement.

Where the Registrar is convinced that an agreement cannot be reached, s/he must refer the case to the District Court, and notify the parties of the place, date, and the time at which the proceedings are registered before the court (Order 53B, Rule 11 (1)).<sup>171</sup>

With respect to hearings, since the ESCP is in principle a written procedure, the conduct of oral hearings by the court remains exceptional. However, as stipulated within Article 5 (1a) of the ESCP Regulation (recast), the court shall hold an oral hearing only if: a) it is not possible to issue a judgement on the grounds of the written evidence; or b) a party requests an oral hearing, and the court agrees to such a request.

If the court admits holding an oral hearing, it is possible to conduct the hearing by videoconference, telephone, or other contemporaneous means of communication. Pursuant to Article 19 (1) of Order 53B, all the provisions applicable to ESCP physical hearings also apply to remote hearings provided that:

*“(i) each of the persons taking part in such a hearing is able to hear, and speak to, each of the other persons taking part; and, (ii) at the commencement of such a hearing each such person acknowledges his presence and that he or she accepts that the proceedings will be deemed to be a hearing before the Court.”*

Section 2 of Article 19 of Order 53B emphasizes the obligation of both parties to attend the remote hearing and remain present during the entire session. Nevertheless, in some circumstances if a party has already obtained the express consent of the Judge or Registrar s/he can be absent or leave the hearing.

During the court proceedings, the judge can request for further information or evidence from either or both defendant and claimant. Rule 11 (3)(b) of Order 53B indicates that the court shall give appropriate directions for the taking of the evidence by virtue of Article 9

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<sup>171</sup>Cortes (n 5).



of the ESCP Regulation (recast). Each party has 30 days to respond and provide the court with the requested information or evidence.

As regards the language of the submitted documents, Rule 12 of Order 53B specifies that the Registrar may require a party to provide the translation of the submitted document if:

- i. it is in a language other than English or Irish, and that document seems to be necessary for issuing a judgement by the Court; or
- ii. the party refuses to accept the document since: a) it is not in English or Irish, or b) a language that the addressee understands.

In that case, the Registrar has the duty to inform the party to provide the Court with the translation of the document in question within the specified time limit which does not exceed 21 days. If a party fails to comply with this obligation, that document will not be considered by the Court during the proceedings (Order 53B, Rule 12).

The translation costs shall be borne by the party who has been asked to provide the Court with the translated document. Nevertheless, any costs incurred by the translation of the necessary – in the context of the ESCP proceedings – documents can be claimed if a party wins the case.

Where the court does not require any further information or evidence, the judge can proceed to give judgement on the ESCP claim. This decision must be concluded within 30 days of receiving the last response from the parties (or the oral hearing).

Next, the court must issue the appropriate form of judgement and notify the parties. The court will also issue Form D (as the certificate of the judgement) if either party has requested so. These documents must be issued by e-mail where possible, or otherwise by the registered or recorded delivery post (Order 53B, Rule 14 (3))

Under Irish law, it is possible to appeal against an ESCP judgement. However, the requesting party needs to obtain the permission of the judge to appeal. The appeal application must be lodged with the competent Circuit Court<sup>172</sup> within 14 days of rendering of the decision. The costs for lodging a Notice of Appeal to the Circuit Court is 25 euros.

This is to be noted that appeal does not ordinarily prevent the enforcement of an ESCP court decision (Article 15, ESCP Regulation).

As regards to the costs in the proceedings, the losing party bears the costs of the ESCP proceedings. In general, the award of the procedural costs remains at the discretion of the

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<sup>172</sup>The Circuit Court hears appeals from the District Court in both civil and criminal matters. The civil jurisdiction of the Circuit Court is limited to a compensation claim not exceeding €75,000 (€60,000 if a claim for damages for personal injuries), also for actions involving real property with a market value of less than €3 million. However, the parties in a legal action can agree to lifting these limits by agreeing to unlimited jurisdiction. For more information see here: <<https://www.courts.ie/what-happens-circuit-court-civil>> accessed 24 June 2022.



District Court in accordance with the rules and principles constructed on case law of the courts in Ireland.<sup>173</sup> Despite, in the specific case of ESCP proceeding, Rule 13 of Order 53B states that the District Court only awards the costs that were appropriate and in consistency with the requirements of Article 16 of ESCP Regulation.<sup>174</sup>

With respect to the review mechanism, pursuant to Rule 15 of Order 53B, the respondent against whom an ESCP judgement by default has been issued can request for the review within 30 days.<sup>175</sup>

The party who has challenged the judgement must apply by the Notice of Motion (General Form N: 44.01, Schedule C)<sup>176</sup> to the District Court where the decision was issued in accordance with the provisions of Order 53B. There is a €15 fee for filing a Notice of Motion in the European Small Claims proceedings.

This form must clearly and explicitly set out the grounds for review as specified within Article 18 (1) of the ESCP Regulation. If the court decides that none of the specified grounds are met, it will reject the application for review and the judgement remains in force.

In contrast, where the court entertains the application for the review, the Notice of Motion must be issued within 30 days and must be served on the other party after seven days from the date on which the application for review was lodged with the court (Order 53B, Rule 15 (2)). It should be, however, noted that service of the Notice of Motion does not stay the enforcement proceedings (Order 53B, Rule 15 (3)). If the District Court decides that the review is justified – based on the grounds referred to in Article 18 (1) of the ESCP Regulation – the judge will announce the judgement null and void.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

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<sup>173</sup>For more information on the civil procedural costs in Ireland see here <<https://e-justice.europa.eu/37/EN/costs?IRELAND&member=1>> accessed 22 July 2022.

<sup>174</sup>According to Article 16 of ESCP Regulation: “Costs - The unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.”

<sup>175</sup>Article 18 (2) of the ESCP Regulation specifies that the time limit of 30 days runs from: ‘the day the defendant was effectively acquainted with the contents of the judgment and was able to react, at the latest from the date of the first enforcement measure having the effect of making the property of the defendant non-disposable in whole or in part. No extension of the time limit may be granted.’

<sup>176</sup>This Form can be obtained from the Courts Service Website. For more information see here: <<https://www.courts.ie/content/forms-civil-proceedings>> accessed 22 July 2022.



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In Ireland, the County Registrars deal with enforcement of the ESCP judgements. In Cork and Dublin – the two largest cities in Ireland – the Sheriff performs the same role for the execution of judgements.<sup>177</sup>

Pursuant to Article 16 of Order 53B, the enforcement of the ESCP judgements (also court settlements) is governed by the provisions of Order 51<sup>178</sup> and Order 51A<sup>179</sup> which are also applicable to the judgements of District Courts.

Rule 20 (3) of Order 51A explicitly states that:

*“The provisions of this Order which relate to the enforcement of any judgment of a court apply, where and to the extent so provided by these Rules, to a judgment or other instrument issued by a court in a Member State of the European Union other than the State.”*

To proceed with the execution of an ESCP judgement, the creditor must submit his/her application to the appropriate Sheriff (or the County Registrar as the case may be) through the relevant Circuit Court. The Circuit Court with jurisdiction to deal with the enforcement of a judgement is the court area in which the debtor has his/her ordinary residence (Rule 2 of Order 51A).

Concerning the eligible duration of a judgement for enforcement, Rule 3 of Order 51 stipulates that a judgement remains in force for twelve years from the date it was given by the court (i.e., in a Member State other than Ireland). Nevertheless, to enforce a judgement after six years, the creditor must obtain the court permission prior to execution of the judgement (Rule 3 (1), Order 51). This permission will be issued in the form of a Notice of Motion to be served on the debtor (Rule 3 (2), Order 51).

The application for enforcement of an ESCP judgement must be accompanied by a copy of the judgement and the standard Form D (certificate concerning a judgement/court settlement in the European Small Claims Procedure) as issued by the court.<sup>180</sup> If these

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<sup>177</sup>Under Irish legal system, County Registrars function as civil servants and their main role is to organise the work in the Circuit Courts. As part of their responsibilities, they handle enforcement procedures for ESCP judgements. On the other hand, Sheriffs are self-employed individuals who are paid on a commission basis to carry out the execution of judgements in Cork and Dublin. The commission fees are governed by the law under the Sheriff's Fees and Expenses Order (SI 644/2005) made under the Enforcement of Court Orders Act 1926. For more information see here: <[https://www.citizensinformation.ie/en/money\\_and\\_tax/personal\\_finance/debt/enforcement\\_of\\_judgments.html](https://www.citizensinformation.ie/en/money_and_tax/personal_finance/debt/enforcement_of_judgments.html)> accessed 24 July 2022. Also see Cortes (n 5) 10.

<sup>178</sup>The Law of S.I. No. 17 of 2014 on Execution and Enforcement of Judgements <<https://www.courts.ie/rules/execution-and-enforcement-judgments-si-no-17-2014>> accessed 20 July 2022.

<sup>179</sup>ibid.

<sup>180</sup>According to Article 20 (2) of the ESCP Regulation: “At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.” This Form can be downloaded from the EU e-Justice Portal: <[https://e-justice.europa.eu/content\\_small\\_claims\\_forms-177-en.do](https://e-justice.europa.eu/content_small_claims_forms-177-en.do)> accessed 22 July 2022.





documents are not in English or Irish, the certified translation must be also provided by the creditor to the Court Clerk (Rule 16 (2), Order 53A) at the time of lodging the application for enforcement.

In case the debtor does not voluntarily comply with the judgement in time, the creditor can notify the Sheriff/County Registrar by sending a Decree (Court Order) to execute the judgement.

The Sheriff/County Registrar will send a letter to the debtor requesting the payment as specified in the judgement. In addition to the principal amount of the claim, this payment may also entail any eligible (upon the discretion of the court) costs incurred by the creditor in the proceedings as reflected in the judgement. The Sheriff/County Registrar costs for enforcement procedure will be also added to this payment. If the debtor still refrains from paying the debt, the Sheriff/County Registrar will seize anything of the property of the debtor to pay the creditor.<sup>181</sup>

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

As regards the service of documents in enforcement of the ESCP judgements, Rule 3 of Order 51A refers to the summons for attendance of the debtor and the statutory declaration:

*“(1) When a debt is due on foot of a judgment of a competent court and the creditor requires the attendance of the debtor before the Court for examination as to the debtor’s means under section 15 (as substituted by section 1(1) of the 1986 Act) of the 1926 Act, the creditor may proceed in accordance with this rule.*

*(2) The creditor or the creditor’s solicitor may lodge with the Clerk in duplicate for issue a summons in the [Form 51A.01](#) Schedule C and the statutory declaration (in the [Form 51A.03](#) Schedule C, modified as appropriate) required by section 15(2) of the 1926 Act.*

*(3) The Clerk must enter a return date on the summons and list the matter for hearing.*

*(4) The creditor must serve the summons on the debtor.*

*(5) The summons must be served on the debtor in a manner prescribed in Order 41 at least 14 days or, if service is by registered post, at least 21 days, before the return date.*

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<sup>181</sup>Cortes (n 5).



*(6) The original of the summons, and a statutory declaration of service of the summons, must be filed with the Clerk at least four days before the return date.”*

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

At present in Ireland, enforcement of the ESCP judgements cannot be initiated *electronically*. Nevertheless, Rule 3 of Order 53B refers to the possibility of electronic filing of documents in the general framework of the ESCP proceedings. In that sense, Rule 3 (1) indicates that:

*“Notwithstanding any other provision of these Rules, where suitable facilities for that purpose have been established by the Courts Service, and the Court or Registrar has so directed, the service of any document required to be sent, delivered, dispatched or served under the European Small Claims Procedure is valid if transmitted in electronic form as an electronic message to the claimant’s or respondent’s electronic mail address (as identified on any letterhead or stationery of the claimant or respondent, or as used by either to send any communication to the Registrar) or to the Registrar’s electronic mail address (as identified on any website operated by the Courts Service) provided that where the sender is not satisfied that the electronic communication was delivered to the intended recipient (by reason of any delivery status message received) or where no response has been received within a period of seven days following such transmission, then the electronic communication must be treated as if it had never been sent and the relevant document must be served as otherwise provided for in this Order within eight days following such period.”*

Therefore, electronic filing of any document – in the context of the ESCP – is valid provided that the sender is satisfied that the electronic communication has been delivered to the intended *recipient*. Otherwise, the electronic filing will not be considered by the enforcement authorities and the document must be resend within the specified timeframe.

Further, Sub-rule 2 of Rule 3 highlights that the lack of a manuscript signature on the *documents* that have been filed electronically cannot be question the validity of that document.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*



To pursue with the enforcement of an ESCP judgement, the standard Form D and a copy of the judgement are only accepted in English or Irish, the official languages of Ireland.

Pursuant to Article 21 (2) of the ESCP Regulation, the court may use the multilingual dynamic standard forms – that are available on the EU e-Justice Portal – to produce Form D in the requested language of any ESCP party. This should be, however, noted that any existing free-text content in Form D or/and the ESCP judgement must be translated into Irish or English by a qualified translator.

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

In Ireland, the fees for the execution of judgements to recover debts depend on the complexity of the case, the adopted enforcement measures, also the nature and value of the assets to seize. The fees are to be initially paid by the creditor to Sheriff/County Registrar via bank transfer, cheque, or using any other permitted means of payment. However, upon successful enforcement of the judgement this amount will be refunded to the creditor.

In the case of enforcing an ESCP judgement, there are two major factors that determine the enforcement costs:

- a) Stamp duty on court documents; and
- b) Sheriff's fees.

As regards the latter, the fees are governed by Sheriffs' Fees and Expenses Order 2005.<sup>182</sup> Section 3 (1) of this Order stipulates that 'Sheriff' in this legislation also includes the 'Country Registrar'. Thus, the enforcement fees for ESCP judgments are also applicable to the cases where the execution is conducted by a County Registrar in Ireland.

It should be noted that under this Order, any additional costs incurred by the Sheriff during the execution phase is added to the total costs of enforcement. Below is the Schedule to Sheriffs' Fees and Expenses Order 2005:

Reference Number	Item	Fees and Expenses
(1)	(2)	(3)
1.	Fee to be paid at the time of lodgment with the sheriff of an execution order directing or	€19.00

<sup>182</sup>For more information see Sheriff's Fees and Expenses Order (SI 644/2005) made under the Enforcement of Court Orders Act 1926 <<https://www.irishstatutebook.ie/eli/2005/si/644/made/en/print>> accessed 30 July 2022.



	authorising the execution of an order of a court by the seizure and sale of a person's property.	
2.	<p>Poundage fee for executing an execution order directing or authorising the execution of an order of a court by the seizure and sale of a person's property-</p> <p>(a) if the entire amount stated in the order to be due for debt, costs and interest is levied,</p> <p>(b) if the entire amount aforesaid is not levied.</p>	<p>5 per cent of the first €5,500.00, and 2.5 per cent of the balance, of that amount.</p> <p>5 per cent of the first €5,500.00, and 2.5 per cent of the balance, of the amount actually levied.</p>
3.	Fee to be paid at the time of lodgment with the sheriff of an execution order directing or authorising the execution of an order of a court by putting a person into possession of land or premises.	€175.00
4.	For expenses incurred in gaining access to land or premises.	The actual and necessary expenses of gaining such access.
5.	Fee to be paid at the time of lodgment with the sheriff of an execution order directing or authorising the execution of an order of a court by delivering specific property to a person.	€56.00
6.	For executing an execution order by court messenger	€40.00 and, if assisted by one or more bailiffs,



		€40.00 in respect of each such bailiff.
7.	Travelling expenses in respect of the distance travelled for the purpose of the execution of –  (a) an execution order, or  (b) a certificate issued under <a href="#">section 962</a> of the <a href="#">Taxes Consolidation Act 1997</a> (No. 39 of 1997).	At the appropriate civil service mileage rate for the time being.  €32.00
8.	For the removal-  (a) of goods seized to a place of safe keeping, or  (b) for the removal of goods or animals from land or premises to facilitate an ejection from the premises.	The actual and necessary expenses of such removal.
9.	For the sustenance and safe keeping of cattle or other animals while under seizure under an execution order and the storage and safe keeping of all other goods pending the sale thereof.	The expenses reasonably and necessarily incurred.
10.	For the sale of property seized under an execution order or the preparations for such a sale, whether or not the sale takes place.	The expenses reasonably and necessarily incurred.
11.	For search for orders and certificate of search.	€21.00

Figure 1. Schedule to Sheriffs' Fees and Expenses Order 2005

**7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Rule 16 (1) of Order 53B stipulates that:



*“Subject to the EU Regulation, the provisions of Orders 51 and 51A, insofar as they may be applied to a judgment of the District Court, may be applied to a judgment or court settlement given in the European Small Claims Procedure in a Member State, and any reference in Orders 51 and 51A to a “judgment” includes, where the context so admits, a reference to such a judgment or court settlement. ...”*

Therefore, from the wording of this Rule, enforcement of a court settlement produced in the ESCP context is the same procedure used in execution of an ESCP judgement.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

According to Article 22 (1) of the ESCP Regulation: *“Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that: (a) the earlier judgment involved the same cause of action and was between the same parties; (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.”*

Moreover, Article 23 of the ESCP Regulation provides that where a party has challenged an ESCP judgement or has requested a review, the competent court in the Member State of enforcement may limit the enforcement proceeding to protective measures, or exceptionally stay the execution procedure.<sup>183</sup>

In Ireland, District Courts retain jurisdiction in dealing with applications for refusal, stay or limitation of enforcement of ESCP judgements.<sup>184</sup>

Pursuant to Rule 17 (1) of Order 53B:

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<sup>183</sup>Article 23 of the ESCP Regulation specifies that: *“Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought: (a) limit the enforcement proceedings to protective measures; (b) make enforcement conditional on the provision of such security as it shall determine; or (c) under exceptional circumstances, stay the enforcement proceedings.”*

<sup>184</sup>Pablo Cortes, ‘Does the Proposed European Procedure Enhance the Resolution of Small Claims?’ 2008 (27) Civil Justice Quarterly 83.



*“(1) Where enforcement of a judgment or court settlement given in the European Small Claims Procedure in a Member State other than the State under these Rules is sought in accordance with rule 16, the party against whom enforcement is sought may apply to the Court for an order refusing enforcement on the basis of the provisions of Article 22(1) of the EU Regulation, or for an order staying or limiting enforcement on the basis of the provisions of Article 23 of the EU Regulation.”*

The party against whom the enforcement is sought must submit the Notice of Motion (Form 53B.02 Schedule C)<sup>185</sup> to the Court specifying the alleged grounds in Article 22 (1) of the ESCP Regulation for refusal of the enforcement procedure (Rule 17 (2), Order 53B).

The Court will dismiss the request unless satisfied as to the urgency of the application. According to Rule 17 (3) of Order 53B, where the Court grants permission for refusal, stay or limitation of enforcement procedure: *“...a copy of the notice of motion must be served by the respondent: (a) not later than seven days before the return date of the motion, on the claimant and (b) on such other persons as the Court directs.”*

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

There is not any official legal assistance provided to the creditors who seek to execute an ESCP judgement in Ireland. Despite, the creditors can contact the appropriate Court Registrar at the Circuit Court with jurisdiction to obtain basic information on the ESCP enforcement procedure. In addition, the creditor may refer to the Ireland Courts Service Website to gain information regarding the rules related to the enforcement of the District Courts judgements (that are also applicable to the execution of the ESCP judgements/court settlements).<sup>186</sup>

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

N/A

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

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<sup>185</sup>This Form can be downloaded from the Courts Service Website: <<https://www.courts.ie/content/forms-civil-proceedings>> accessed 22 July 2022.

<sup>186</sup>For more information visit the Courts Service Website: <<https://www.courts.ie/district-court-rules>> accessed 22 July 2022.





This Project has received funding from the European Commission JUST 2027 Programme under grant agreement no. 101046587.

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The findings of this study indicates that the existence of the specific rules in Order 53B provides a useful framework for a more effective implementation of the ESCP Regulation in Ireland. Moreover, the Courts Service Website in Ireland provides the citizens with an opportunity to use an informative online search directory to get access to the relevant forms (in the context of national procedural rules) to be used in the ESCP related proceedings.

On the other end, with respect to the enforcement of ESCP judgements, the current measures in Ireland still need to be further improved. First, the existing information on the published EU e-Justice Portal are not sufficient to provide (especially foreign) creditors with consistent and clear information regarding the rules on ESCP enforcement under the national procedural rules. Second, although one of the main objectives of the ESCP is to be used as a DIY debt recovery procedure, it is still difficult for lay citizens to find the appropriate local enforcement authority to initiate with the enforcement procedure. Third, the enforcement rules are still too complicated for the (self-represented) creditors which forces them to hire local lawyers to proceed with the enforcement procedure.

Above all, this study suggests the full digitalization of the ESCP enforcement procedures and creation of an interactive, simplified, and user-friendly roadmap (integrated into the Irish Court Service Website) can tackle most of the recurring issues faced by the creditors and encourage more use of this Regulation by consumers.



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## Italy

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Italy, the ESCP is not ascribed to specialised courts with *ad hoc* jurisdiction, nor is there any provision for centralisation at the national level. Attribution to a competent court or tribunal follows the criteria defined in the regulation for the national small claims system. Small claims are mostly brought before a justice of the peace (*Giudice di Pace*). Article 7 of the Italian Code of Civil Procedure (CPC) endows justices of the peace with jurisdiction over all disputes concerning moveable assets (credit rights, rights in rem) with a value of less than €5,000, according to Article 10 et seq. CPC. Justices of the peace have no jurisdiction in cases expressly attributed by law to the jurisdiction of an ordinary court (Tribunale). The office of justice of the peace, established by law 374/1991, is held across the country by honorary judges on a temporary basis. They perform the function of the so-called “*juge de proximité*<sup>187</sup>” or ‘local magistrate’ for citizens.

National procedural law also applies to the system of appeals and the enforcement of decisions, in accordance with Articles 17 and 21 of the ESCP Regulation, and all aspects not explicitly covered by the Regulation fall under the general reference found in Art. 19.

Through the communications made pursuant to Article 25 of the ESCP Regulation, as amended by Regulation (EU) 2015/2421, the Italian legislator has, therefore, communicated the references to the internal rules necessary to make the ESCP available in Italy, and has provided the additional information required by the Regulation (court fees and payment methods, accepted languages and means of communication, authorities or organizations authorized to provide practical assistance, persons or professional

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<sup>187</sup> Judge of proximity, in English.



categories with a legal obligation to accept notifications, and/or written communications by electronic means).

The costs of access to the ESCP in Italy are made up of two items: a) €27 as a lump sum advance on costs, to be purchased from retailers selling revenue stamps in Italy or, only in cases heard by the ordinary court, electronically; and b) a court fee in an amount that depends on the value of the case and the stage of the proceedings. For proceedings of first instance with a value of up to €1,100, the amount of court fee is €43. Regarding appeals against decisions made at the conclusion of the ESCP, the rules set out in Title III, Book II of the Code of Civil Procedure apply and differ according to the judicial authority issuing the judgement: decisions handed down by a justice of the peace have to be appealed to the ordinary court (*Tribunale*), while those given by the court have to be referred to the court of appeal (*Corte di Appello*). The time limit for challenging a judgement is 30 days from notification of the judgement or, if the judgement has not been notified, six months from the date of its publication.

Jurisdiction for enforcement, on the other hand, lies exclusively with the ordinary courts, and territorial jurisdiction is established in relation to the property for which enforcement is ordered, pursuant to Articles 26 and 26-*bis* of the Code of Civil Procedure. The following basic information is offered to provide a brief reference framework for Italian enforcement proceedings, which are complex. First of all, in order to start the procedure, the creditor must serve the ESCP judgement, together with a certificate D, a writ of summons as defined by Article 480 of the Code of Civil Procedure, and a notice to comply within a certain time limit. Once this term has expired without any result, the creditor may, within a further time limit of 90 days, proceed to foreclosure of the debtor's assets.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

In Italy, the ESCP Procedure is entrusted to the jurisdiction of the Justice of the Peace (*Giudice di Pace*<sup>188</sup>) and the Ordinary Court (*Tribunale ordinario*).

There are no specialised courts with specific competence for the ESCP, nor centralisation at the national level. Courts are located in the national territory and organised in the surrounding areas. The identification of the competent court follows the principles of territorial jurisdiction, jurisdiction by subject matter and jurisdiction by value. The Court

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<sup>188</sup> The Justice of Peace Office, established by Law 374/1991, is held by an honorary magistrate on a temporary basis, who acts as the so-called "judge of proximity" for the citizens.



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has exclusive jurisdiction for certain mandatory matters. In all other cases, the Justice of the Peace has residual jurisdiction by value in accordance with art. 7 of the Code of Civil Procedure (hereinafter: c.p.c.).

No implementation rule has been provided.

The procedure of the ESCP before the Ordinary Court or before the Justice of the Peace entails significant practical differences, including the accepted means of communication.

The competence to decide on claims, whose value does not exceed 5,000 euros, lies upon the Justice of Peace. According to the government's communication, the Judge of peace receives the claims under the scope of the ESCP Reg. unless they are attributed *ratione materiae* to the jurisdiction of the *Tribunale* or the Court of appeal (*Corte d'appello*).

For proceedings within the jurisdiction of the Ordinary Court, according to Ministerial Decree no. 44 of 21 February 2011, the electronic filing of documents is provided for, but only for lawyers, whose assistance is given as mandatory.

For the purposes of the ESCP Reg., competence lies with the *Tribunale* for claims relating to: 1) sums due for lease or rent payments; 2) agricultural related contracts; 3) company law, banking, finance and brokerage, payments under public construction projects; 4) intellectual property rights; 5) maritime law.

For the purposes of the ESCP Reg., competence lies on the Court of Appeal for claims relating to antitrust and competition law.

However, the Justice of the Peace Offices are not yet equipped to receive electronic filing of documents.

The usual procedure applicable for claims before the *Giudice di pace* must be consolidated with the provisions of the ESCP Reg. In particular, the commencement of the proceedings follows a written structure (Art. 4 ESCP Reg.), and not an oral one (as possible under the ordinary civil procedural rules for proceedings before the *Giudice di pace*) (Art. 316 co.2 c.p.c.).

After informing the claimant that the claim falls out of the scope of the ESCP Reg. and refusal to withdraw according to Art. 4 (3), the judge shall schedule the hearing pursuant to Art. 320 c.p.c. and order the claimant to serve such notice together with a writ of summons to the defendant. From that point on, the same procedure set forth in Arts. 320 ff. c.p.c. applies. The same applies if the judge considers necessary, or the parties request, to hold a hearing (Art. 5 ESCP Reg.) or in any case it is necessary to modify the procedure from the one set forth in the ESCP Reg. to the usual one for proceedings before the *Giudice di pace*.



Rules on taking of evidence before the *Giudice di pace* refer to the general rules on taking of evidence before the *Tribunale* (Art. 311 c.p.c.). These rules must be adapted according to the principles set forth in Art. 9 ESCP Reg., thus the proceedings should indicatively follow a written structure. Accordingly, the judge should use, for example, the written witness procedure regulated by Art. 257 *bis* c.p.c. and Art. 103 *bis* disp. Att. c.p.c. instead of the oral one, generally applicable (Arts. 244 ff. c.p.c.).

As for the competent court to receive the small claim certification request (Art. 20 (2) ESCP Reg.), no implementation rule has been provided. In general, it should be competent the same court to which belongs the judge that issued the judgement to be certified as such. There is no provision relating to fees or other costs for such certificates.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Pursuant to Art. 13 ESCP Reg., service of documents should be made by postal service or through electronic means<sup>189</sup>. For the purposes of said rule, the Italian civil procedural law regulates service of documents as follows.

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<sup>189</sup> Here it follows a brief general overview on the rules on service in Italy (Arts. 137 ff. c.p.c.). In general, service may be made (i) by hand delivery (Arts. 138 ff. c.p.c.), (ii) by postal service (Art. 149 c.p.c.) and (iii) by certified email address (Art. 149 *bis* c.p.c.). Service, unless where otherwise provided by the relevant provisions, is accomplished by the court bailiff, upon request by the party (usually the claimant), by the public prosecutor or the court clerk (Art. 137 co. 1 c.p.c.).

(i) Service in the hands of the addressee is regulated by Arts. 138 ff. c.p.c.. Typically, the addressee is searched at her/his domicile or anywhere else within the district of competence of the court bailiff or, subordinate to failure of such procedure, at her/his legal residence or at the office where s/he is employed or carries out her/his business. Practically, the party requesting the service is required to provide the bailiff with an address where the addressee is supposed to be found. If the addressee is not found in one of said places, the copy of the document is delivered to a member of the addressee's family or to other persons related to the abovementioned venues. If it is not possible to find the addressee (or other persons as specified by the law) or s/he refuses to receive service, the bailiff (1) deposits a copy of the document at the competent municipal office, (2) posts a notice of this procedure in a closed and sealed envelope on the door of the house or of the other mentioned venues and (3) informs the addressee of said formalities via registered mail.

(ii) Postal service is maybe the most used in practice and may be implemented upon request of the party or, in case service must be made outside the regional competence of the court bailiff, by the court bailiff her/himself. Postal service is always admissible with the intervention of the court bailiff. This procedure is regulated by law no. 890/1982. In brief, the bailiff uses the postal means to serve the document at the legal residence or domicile or place of abode of the defendant. If the addressee is "untraceable" at the selected venue (or similar, such as s/he refuses to accept service), the mail carrier (1) deposits a notice of attempted service in the mailbox, (2) deposits the document at the competent postal office to be collected by the party and (3) gives notice of the service attempt via registered mail. Service is considered effective after ten days later than the registered mail is received or earlier if the document is collected directly by the defendant at the postal office.

(iii) Service with electronic means is admissible if the defendant has a certified email address collected in the dedicated public registers (Art. 149 *bis* c.p.c.).



1) Postal service is always admissible with the intervention of the court bailiff. This procedure is regulated by Law No. 890/1982. In brief, the bailiff uses the postal means to serve the document at the legal residence or domicile or place of abode of the defendant. If the addressee is “untraceable” at the selected venue (or similar, such as s/he refuses to accept service), the mail carrier deposits a notice of attempted service in the mailbox, deposits the document at the competent postal office to be collected by the party and gives notice of the service attempt via registered mail. Service is considered effective after ten days later than the registered mail is received or earlier if the document is collected directly by the defendant at the postal office.

2) Although electronic means of service are effective under the Italian code of civil procedure, they are not acceptable for proceedings before the *Giudice di pace*. Therefore, according to the Italian’s government’s communication on the ESCP Reg. the only means of communication and service accepted are those by postal services.

3) Even if Art. 136 c.p.c. provides the general possibility to use both fax/telefax and electronic means of communication between the court clerk and the parties’ lawyers, since the Italian Government’s Project on the Extension of e-civil Process is still under implementation, now communications between the court clerk of the *Giudice di pace* and lawyers may occur only via fax/telefax. While, if the competent court is the *Tribunale* or the *Corte d’appello* communications may occur also via certified e-mail address.

#### 4. The status of digitalisation in enforcement of the ESCP judgments

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

The possibility to use electronic means to file a claim before the *Giudice di pace* in the Italian civil procedure system is not implemented for all the offices<sup>190</sup>.

However, it is possible to use electronic means to interact with the *Giudice di pace* in some districts. It can be mentioned: Bari, Bologna, Milano, Venezia and others<sup>191</sup>.

There are no online platforms, nor any specific digitalised process for enforcement procedures in Italy.

The main problem is the absence of adequate tools for digital case handling in the courts. Indeed, that the electronic forms of communication may only be used in the rare cases in which the dispute comes under the jurisdiction of an ordinary court as the court of first

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<sup>190</sup> See the government’s Project on the extension of the e-civil Process to the offices of the *Giudice di pace*: <http://www.pongovernance1420.gov.it/it/progetto/estensione-del-processo-civile-telematico-ai-giudici-di-pace/>

<sup>191</sup> For more information see:

<http://www.pongovernance1420.gov.it/it/progetto/estensione-del-processo-civile-telematico-ai-giudici-di-pace/> and <https://gdp.giustizia.it/sigp/index.php?menu=guida&pagina=guida>.



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instance is a strong deterrent to the use of the procedure. At present, the offices of justices of the peace are unfortunately not equipped for the computerized management of their work, and they do not have the instruments and organization necessary to receive notifications and communications electronically.

Regarding proceedings before an ordinary court and court of appeal, Ministerial Decree 44/2011 envisages that the lawyers involved, whose assistance in legal proceedings is mandatory, deposit their pleadings in electronic format.

This is a major limitation for the implementation of the ESCP, considering that most of the proceedings fall under the jurisdiction of a justice of the peace.

The first is the absence of a service to provide real and effective practical assistance to the parties pursuant to Article 11 of the Regulation. In communications regulated by Article 25, Italian law merely indicates that the European Consumer Centre (ECC) offers practical assistance to consumers within the limits of its competence and that, in all other cases, parties requiring assistance may contact the Ministry of Justice. There are currently no help desk offices at the courts or the chambers of the justices of the peace, or at consumer associations, and nor are there any valid IT tools to help. This implies that the parties choose to rely on a lawyer even if they are not obliged to do so.

Secondly, lawyers, who, not being familiar with the ESCP, are unable to advise their clients on ways to resolve minor disputes. For this reason, it is hoped that meetings, focusing on the ESCP, will be organised by the CSM (Consiglio Superiore della Magistratura/ Superior Council of Judges) as part of its lifelong learning programmes, and that the possibility of including a study of Regulation (EC) No 861/2007 at university level will also be considered. Furthermore, specific courses should be provided for auxiliaries, court officers, court assistants, and bailiffs serving in the courts. It could also be beneficial to set up a system of interaction and cooperation in ESCP matters between courts, which would allow judges to enter into dialogue, share measures, and keep up to date.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

In Italy, in accordance with Article 25(1)(i) of the Regulation, communicated as the only permitted language Italian.

The claim form and the supporting documents should be in the language of the court (so, Italian). This information should also be available on the relevant websites. It may not be necessary to translate the supporting documents. Sometimes it can be helpful to ask the court directly about this.





The party seeking enforcement will need to let the court know in which Member State enforcement is contemplated and where there is more than one official language in that State, the specific place in that State. The certificate has to be in, or accompanied by a translation into, the appropriate official language of the State where enforcement is being sought or in another language which that State has indicated is acceptable to it.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

There is not a provision for costs dedicated specifically to small claims procedures under the ESCP Reg.

The costs of access to the ESCP in Italy are made up of two items: a) €27 as a lump sum advance on costs, to be purchased from retailers selling revenue stamps in Italy or, only in cases heard by the ordinary court, electronically; and b) a court fee in an amount that depends on the value of the case and the stage of the proceedings. For proceedings of first instance with a value of up to €1,100, the amount of court fee is €43; if the value is between €1,100 and €5,200, the amount is €98. The court fee can be paid at Italian post offices, at Italian banks by filling out a form known as 'F23', at retailers selling revenue stamps in Italy, or by bank transfer, although this final method is only available to persons not resident in Italy but holding current accounts with banks affiliated with the Italian Revenue Agency (*Agenzia delle Entrate*).

The costs of the proceedings under the scope of the ESCP Reg. follow the general principles that they are paid in advance by each party respectively and later charged to the losing party (principle of the *victus victori*) with the final judgement.

Fees for the claim and fixed registry fees may be qualified as "taxes" under the Italian law. Taxes must be paid following strict procedures set forth by the Government Income Revenue Authority (*Agenzia delle Entrate*).

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

There are no specific provisions on the issue of limitation of the enforcement of small claims judgements, the applicable rules are the general rule on challenge to enforcement proceedings (Arts. 615 ff. c.p.c.) and the general rule on suspension of enforcement proceedings (Arts. 623 ff. c.p.c.).

Art. 23a Reg. does not apply to enforcement under Italian law. In fact, in case the creditor needs precautionary and/or urgent protective measures (such as a conservative seizure of



the debtor's property goods or other adequate urgency measures), s/he may file a complaint under Arts. 669 bis ff. c.p.c. and request the measure adequate to the case.

The decision to be enforced, in accordance with the ESCP Reg. must not be placed with the execution formula, according to Art. 475 c.p.c..

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

There are no specific provisions on the issue of refusal, stay or limitation of the ESCP enforcement procedures. The stay or limitation according to Art. 23 ESCP Reg. shall not be pursued with the procedure for stay under Arts. 623 ff. c.p.c., which do not contain provisions similar to those of Art. 23 ESCP Reg., but rather with the general procedure set forth in Arts. 486-487 c.p.c. (motion – “*istanza*” – to the court, decision by *ordonnance* and challenge via Art. 617 c.p.c.). Stay and limitation pursuant to Arts. 623 ff. c.p.c. would also be applicable, with different the grounds for the request than the ones applicable under Art. 23 ESCP Reg.

Even if Art. 21 ESCP Reg. allows the creditor not to have an authorized representative or a postal address in Italy to proceed for levy execution, the lack of a declaration of residence or election of legal domicile in the writ (or in subsequent acts of the procedure) determines a shift in the competence of the court. According to said principle, (i) Art. 480 co. 3 c.p.c. provides that challenges to enforcement proceedings (Arts. 615 ff. c.p.c.) will be filed before the court in whose district the writ has been served. Also, (ii) Art. 489 c.p.c. provides that communications and services to the creditor will be made with deposit in the registry at the court competent for execution proceedings. Therefore, to avoid such changes in procedure, the creditor shall indicate residence or elect domicile in Italy for the purposes of enforcement proceedings.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

None.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

None.

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*



The implementation strategy for the EC/2007/861 Regulation adopted by the Italian parliament reflects the general implementation strategy. Thus, there are not specific implementation rules dedicated to enforcement of judgments issued in other Member States under the ESCP Reg.

Following the general implementation strategy, it has been possible to describe rules on the procedure to obtain an ESC judgment and how the enforcement of a foreign judgment under the ESCP Reg. works, according to the rules for enforcement of national judgments.

It follows a brief summary of the most critical ones.

- No implementation rule has been provided as for the competent court, judge or office and the applicable procedure to obtain an ESC certificate under Art. 20(2) ESCP Reg., especially for the case in which the motion to obtain a certificate is not filed together with the claim but later, after the judgment has been issued.
- Even though the ESCP Reg. outlines a generally written procedure, rules regarding proceedings before the *Giudice di pace* under Italian civil procedural law follow the opposite principle, being essentially oral. Accordingly, for example, considering the rules set forth in Art. 9 ESCP Reg., the court should use the written testimony procedure regulated by Art. 257 *bis* c.p.c. and Art. 103 *bis* disp. att. c.p.c., but no implementation rule or indication has been provided on that regard.
- The possibility to use electronic means to file a claim before the *Giudice di pace* in the Italian civil procedure system is not implemented for all the offices. Thus, the applicable procedure under Italian civil procedural law is not entirely complying with the rules for communication laid down in the ESCP Reg.
- There are some critical issues for the enforcement of incoming judgments under the ESCP Reg. In particular, it is not clear whether Art. 23(a) ESCP Reg. has any applicability under Italian civil procedural law or rather if a party may seek to obtain a provisional measure that fits to her/his needs according to those available under Arts. 669 *bis* ff. c.p.c.



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## Latvia

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Latvia there are special procedures available for small claims where the claim is for recovery of money or for recovery of maintenance and the total amount of the claim does not exceed EUR 2 100. Claims for small amounts are governed by Chapter 30.3: Sections 250.18 – 250.27 and Chapter 54.1: Sections 449.1–449.12 of the Law on Civil Procedure. This procedure does not apply to the procedure for small claims under Regulation (EC) No 861/2007, except with respect to the procedure for appealing decisions of a court of first instance. Claims for recovery of maintenance in cross-border matters within the European Union are subject to Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.<sup>192</sup>

The forms of the ESCP proceedings are available on the e-justice portal.

The claim form that is to be submitted to a court in Latvia shall be filled in in Latvian. The European Small Claims Procedure is a written procedure. Only in exceptional cases the court may decide to have an oral hearing in a court session, considering it necessary for a fair adjudication of a matter. Representation by a sworn advocate or lawyer shall not be mandatory.

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<sup>192</sup> [https://e-justice.europa.eu/42/EN/small\\_claims?LATVIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?LATVIA&member=1)



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In Latvia the amount of a State fee with respect to the European Small Claims Procedure is determined in accordance with the Civil Procedure Law. Depending on the amount claimed in the European Small Claims Procedure the state fee in the following amount shall be paid:

- 1) up to 2 134 EUR – 15 percent from the amount claimed but not less than 70 EUR;
- 2) between 2 135 EUR and 7 114 EUR – 320 EUR plus 4 percent from the amount claimed, that exceeds 2134 EUR.

The unsuccessful party shall bear the costs of the proceedings.<sup>193</sup>

District courts (rajona tiesa) and city courts (pilsētas tiesa) act as courts of first instance in civil cases. The courts operate on territorial jurisdiction in respect of the place of residence of the defendant. The rules of selecting competent court are presented in the European Judicial Atlas.<sup>194</sup>

When submitting appeal or cassation claim for judgment given in the European Small Claim Procedure, all provisions specified in CPL division eight ("Appeal proceedings") or division ten ("Cassation proceedings") shall be observed. When submitting a claim according to appeal or cassation procedure, requirements of the small claim procedures specified in the Regulation shall be observed, however for those issues, which are not resolved in the Regulation, provisions of CPL of the Republic of Latvia shall be applied (See Article 19 of Regulation and Section 5, Paragraph three of CPL). At the same time, Article 16 of Regulation 861/2007 shall be binding to courts of appeal: the unsuccessful party shall bear the costs of the proceedings. However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.<sup>195</sup>

When submitting to the Latvian court an appeal claim, a state duty shall be paid in the amount as set out for submitting of claim application, but for claims which are financial in nature – according to the rate calculated from the amount of claim at the court of first instance (Section 34, Paragraph four of CPL). When submitting a cassation claim to the Senate of the Supreme Court Civil Matters Department, a security deposit shall be paid in the amount of EUR 70 (Section 458, Paragraph one of CPL). Information on bank accounts where the state duty or security deposit shall be transferred to available at: [www.tiesas.lv](http://www.tiesas.lv)

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<sup>193</sup> <https://ecclatvia.lv/en/european-small-claims-procedure>

<sup>194</sup> [https://e-justice.europa.eu/85/EN/which\\_country\\_s\\_court\\_is\\_responsible?LATVIA&member=1](https://e-justice.europa.eu/85/EN/which_country_s_court_is_responsible?LATVIA&member=1)

<sup>195</sup>

[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)

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[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)



## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

In Latvia, it is court bailiffs that deal with enforcement of court judgements, including ESCP judgments. Certified bailiffs perform their duties within the territorial jurisdiction of the regional court to which they are affiliated.<sup>197</sup> A bailiff must accept for enforcement the enforcement document if the place of residence of the debtor (for legal persons - legal address), location of his or her property or workplace is located within the specified borders (district) of the official appointment location of the bailiff. A bailiff may also accept other enforcement documents, which are to be enforced within the operational territory of the regional court to which the bailiff is attached.<sup>198</sup>

A certificate issued by a court including a foreign court under Article 20(2) of Regulation (EC) No 861/2007 of the European Parliament and of the Council is considered to be an enforcement document.<sup>199</sup>

The Law on Bailiffs and Regulation No 202 “Regulation regarding the record-keeping of sworn bailiffs” adopted by the Cabinet of Ministers on 14 March 2006 govern the general issues related to the activity and record-keeping of sworn bailiffs.<sup>200</sup>

To initiate enforcement of a ruling, the enforcement document must be submitted to a court bailiff together with a letter of application.<sup>201</sup> It is considered that the list of documents that are to be provided for enforcement are exhaustive (a copy of the judgment that conforms to requirements by which authenticity may be established (Article 20 (1) (a)); and a copy of certificate referred to in Article 20 (2) of the Regulation and, in case of necessity, the translation thereof in the official language of the Member State of enforcement) in the Regulation and thus the bailiffs should not demand excessive documents. Translation of a certificate in the state language of the Member State shall be submitted in case of necessity: since Latvia has specified only Latvian as an acceptable language, the translation into Latvian shall be submitted.<sup>202</sup>

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<sup>197</sup> [https://e-justice.europa.eu/29/EN/types\\_of\\_legal\\_professions?LATVIA&clang=en](https://e-justice.europa.eu/29/EN/types_of_legal_professions?LATVIA&clang=en)

<sup>198</sup> <https://likumi.lv/ta/en/en/id/50500>

<sup>199</sup> [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?LATVIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?LATVIA&member=1)

<sup>200</sup> [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?LATVIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?LATVIA&member=1)

<sup>201</sup> [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?LATVIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?LATVIA&member=1)

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### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

As regards the service of documents in enforcement of the ESCP judgements, no special rules apply.<sup>203</sup> General rules are set in Civil Procedure Code. A bailiff, when about to commence enforcement, shall notify the debtor by sending or issuing a notification regarding an obligation to enforce the ruling within 10 days. If the ruling is to be enforced without a delay, the time period for voluntary enforcement of not less than three days shall be set. If the debtor is a natural person, the bailiff shall send the notification to the debtor by registered mail to his or her last known place of residence or issue it to the debtor in person for which the debtor shall sign. If the bailiff does not meet the debtor at their place of residence, the bailiff shall give the notification to an adult family member residing with the debtor. If the place of residence of the debtor - a natural person - is not known, the notification of an obligation to enforce the ruling shall be published in the official gazette *Latvijas Vēstnesis*. If the debtor is a legal person, the bailiff shall send the notification by registered mail to the legal address or issue it in person to a representative of the executive body of the debtor for which he or she shall sign. If the debtor or a representative of the executive body of the debtor refuses to accept or sign the notification, the bailiff or the server of the proposal shall draw up a statement in respect of that in the presence of two invited persons. Refusal to accept or sign the notification shall not constitute a bar for the enforcement of the ruling.<sup>204</sup>

Enforcement of judgment expenses shall include the State fee and expenses related to the enforcement of court judgments: remuneration for the bailiff according to the tariff and expenses required for the performance of enforcement activities, including, but not limited to expenses associated with the delivery and issue of summonses and other documents.<sup>205</sup>

A creditor, when submitting an enforcement document for enforcement, shall pay the State fee and cover other enforcement of judgment expenses to the extent required for commencement of the enforcement in the manner indicated by the creditor. During enforcement of the judgment the creditor according to bailiff's instructions shall pay the additionally required enforcement of judgment expenses. In the cases specified in law during enforcement of the judgment the enforcement of judgment expenses for separate procedural actions shall be paid by the debtor. Instances where creditors shall be exempt from payment of enforcement of judgment expenses to the bailiff are listed in the Civil Procedure Code. In cases where a creditor is exempted from payment of enforcement of judgment expenses, a compensation shall be disbursed to a sworn bailiff from the funds of

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<sup>203</sup> <https://likumi.lv/ta/en/en/id/50500>

<sup>204</sup> <https://likumi.lv/ta/en/en/id/50500>

<sup>205</sup> <https://likumi.lv/ta/en/en/id/50500>





the State budget for covering of the expenses related to the performance of enforcement activities.<sup>206</sup>

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

At present in Latvia, enforcement of the ESCP judgements cannot be initiated electronically. However, Latvian Civil Procedure Code provides possibility of organising electronic auctions.<sup>207</sup>

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

To initiate enforcement of a ruling, the enforcement document must be submitted to a court bailiff together with a letter of application.<sup>208</sup> It is considered that the list of documents that are to be provided for enforcement are exhaustive (A copy of the judgment that conforms to requirements by which authenticity may be established (Article 20 (1) (a)); and A copy of certificate referred to in Article 20 (2) of the Regulation and, in case of necessity, the translation thereof in the official language of the Member State of enforcement) in the Regulation and thus the bailiffs should not demand excessive documents. Translation of a certificate in the state language of the Member State shall be submitted in case of necessity: since Latvia has specified only Latvian as an acceptable language, the translation into Latvian shall be submitted.<sup>209</sup>

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

For the submission of an enforceable document for enforcement, its submitter shall pay a state fee to the state budget. For each official activity (listed in Sections 73 and 74 of the Law on Bailiffs) performed by a sworn bailiff, as well as for the legal assistance provided (Section 75 of the Law on Bailiffs), he has the right to receive compensation regardless of the state fee. The amount of compensation for the activities of a sworn bailiff is determined according to the fee. Agreement on the amount of compensation for the

<sup>206</sup> <https://likumi.lv/ta/en/en/id/50500>

<sup>207</sup> <https://likumi.lv/ta/en/en/id/50500>

<sup>208</sup> [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?LATVIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?LATVIA&member=1)

<sup>209</sup>

[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)



activities of the office, which is different from the fee, is prohibited. The compensation for the position of sworn bailiffs is subject to value added tax in the amount specified in the Law on Value Added Tax.<sup>210</sup>

Fees for the office of sworn bailiffs shall be determined by the Cabinet of Ministers according to the proposal of the Ministry of Justice, which has been coordinated with the Council of Latvian Bailiffs. The amount of the remuneration tax for the position of sworn bailiffs is determined according to the amount of work invested and proportionate to the amount of the debt to be recovered, as well as taking into account the responsibility, independence requirements and restrictions arising from the position specified in the regulatory acts for the position of sworn bailiff.<sup>211</sup>

The state fee, the remuneration of the sworn bailiff and the expenses related to the activity of the sworn bailiff shall be paid by the submitter of the enforcement document or another interested person.<sup>212</sup>

The remuneration of fees is determined in the Regulations on Fees for the Office of Sworn Bailiffs and is composed of several parts, including a fix amount depending of the recoverable sum, compensation for necessary expenses and a fixed percentage of the amount that was recovered.<sup>213</sup>

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Civil Procedure Code lists court decisions on approval of settlements as enforcement documents. There are no specific rules provided for this enforcement document. Therefore, enforcement of a court settlement reached in the ESCP context is the same as the procedure used in execution of an ESCP judgement.

Therefore, from the wording of this Rule, enforcement of a court settlement produced in the ESCP context is the same procedure used in execution of an ESCP judgement.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

A district (city) court in the territory of which the ruling of the foreign court is to be enforced, in respect of which the certificate referred to in Article 41(2) of the Regulation

<sup>210</sup> <https://likumi.lv/doc.php?id=68295>

<sup>211</sup> <https://likumi.lv/doc.php?id=68295>

<sup>212</sup> <https://likumi.lv/doc.php?id=68295>

<sup>213</sup> <https://likumi.lv/doc.php?id=250209>



No 861/2007 of the European Parliament and of the Council has been issued, upon receipt of an application from a participant in the case on the basis of Article 22 of the abovementioned Regulation, may refuse the enforcement of the ruling.<sup>214</sup> An application regarding refusal is to be lodged, no state duty shall be paid for submission of the application.<sup>215</sup>

The application is to be supported by the following documents:

- 1) a properly certified true copy of the ruling of the foreign court;
- 2) in the relevant cases - a properly certified true copy of the European Enforcement Order, European order for payment issued by a foreign court, the certificate referred to in Article 41(1) of Council Regulation No 2201/2003, a certificate referred to in Article 20(2) of Regulation No 861/2007 of the European Parliament and of the Council or the extract referred to in Article 20(1)(b) of Council Regulation No 4/2009;
- 3) other documents upon which the applicant's application is based;
- 4) translation into the official language of the application and the documents certified according to special procedures referred to in Clauses 1, 2 and 3 of Art 664-4 of the Civil Procedure Code.<sup>216</sup>

The application is examined in a court hearing, notifying the participants in the matter.

A district (city) court, in the territory of which the relevant decision of the foreign court is to be enforced on the basis of Article 23 of Regulation No 805/2004 of the European Parliament and of the Council, Article 23 of Regulation No 861/2007 of the European Parliament and of the Council, Article 23 of Regulation No 1896/2006 of the European Parliament and of the Council, Article 21(3) of Council Regulation No 4/2009 or Article 44 of Regulation No 1215/2012 of the European Parliament and of the Council upon the receipt of an application from the debtor, is entitled to:

- 1) replace the enforcement of the ruling with the measures for ensuring the enforcement of such ruling provided for in Section 138 of this Law;
- 2) amend the way or procedures for the enforcement of the ruling;
- 3) stay the enforcement of the ruling.

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<sup>214</sup> <https://likumi.lv/ta/en/en/id/50500>

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[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)

<sup>216</sup> <https://likumi.lv/ta/en/en/id/50500>



Reasons for stay or limitation are listed in Article 23 of the ESCP Regulation. Such application is be examined at a court hearing upon prior notice to the participants in the case.<sup>217</sup> The application is not subject to state duty.<sup>218</sup>

For the court to be able to decide on the stay or limitation, the following requirements shall be met:

- 1) an application was submitted by the participant of the case;
- 2) an appeal regarding the judgment in the MS of origin was submitted or the term of such appeal has not ended;
- 3) a request in accordance with Article 18 of the ESCP to review the judgment adopted in the ESCP proceedings was submitted by defendant.<sup>219</sup>

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

Latvian Legal Aid Administration provides information that in order to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes, the persons shall be entitled to request state legal aid in cross-border disputes in civil matters.<sup>220</sup> However, it is unclear whether this type of legal aid extends to the enforcement proceedings.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

N/A

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The information regarding ESCP proceedings in Latvia in English language is scarce as E-Justice portals deals only with national small claims procedure. There is also a lack of information regarding enforcement in Latvia in English. This might discourage nationals of

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<sup>217</sup> <https://likumi.lv/ta/en/en/id/50500>

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[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)

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[https://www.just.ee/sites/www.just.ee/files/euroopa\\_liidu\\_tasandil\\_tsiviilkohtumenetlust\\_reguleerivate\\_maa\\_ruste\\_rakenduspraktika\\_balti\\_riikide\\_kogemus\\_kogu\\_uuring\\_inglise\\_keeles.pdf](https://www.just.ee/sites/www.just.ee/files/euroopa_liidu_tasandil_tsiviilkohtumenetlust_reguleerivate_maa_ruste_rakenduspraktika_balti_riikide_kogemus_kogu_uuring_inglise_keeles.pdf)

<sup>220</sup> <https://www.jpa.gov.lv/en/legal-aid-cross-border-disputes>



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other member states from using the ESCP proceedings. It also means that nationals of other member states may feel more comfortable having retained a lawyer, although ESCP proceedings were intended to be user-friendly proceedings which increases access to justice without increasing costs of such access (including, to a lawyer). The lack of information available in different languages should be corrected.

The enforcement proceedings could be more automated and could use the benefits IT tools provide nowadays.



## Lithuania

Author(s): Assoc. prof. dr. Rimantas Simaitis, assoc. prof. dr. Vigita Vebraite, dr. Milda Markeviciute

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Lithuania, there is no specialised or centralised system designed to deal with the European Small Claims cases. The procedure implementing the EC Regulation 861/2007 has been implemented in the Law on the Implementation of European Union and International Legal Acts Regulating the Civil Procedure of the Republic of Lithuania. However, not all aspects of the cases falling under the EC Regulation 861/2007 has been covered either by the Civil Procedure Code, or by the Law on the Implementation of European Union and International Legal Acts Regulating the Civil Procedure of the Republic of Lithuania.

The ESCP cases are subject to the jurisdiction of the district courts (*“apylinkės teismas”*) of the common competence (*“Bendrosios kompetencijos teismai”*). According to Art. 26 of the Law on the Implementation of European Union and International Legal Acts Regulating the Civil Procedure of the Republic of Lithuania, the district courts of common competence analyse cases regarding small claims under the general rules of territorial jurisdiction set in the Civil Procedure Code. There are 12 district courts of common competence in Lithuania, composed of 48 chambers.<sup>221</sup>

In order to begin with the ESCP proceeding, the claimant shall lodge the Claim Form A and any other supporting documents – e.g. evidence – to the competent district court in accordance with the general rules indicated within Arts. 113, 135 and 177 of the Civil Procedure Code; the documents are to be translated to the state language, that is Lithuanian. The documents can be submitted either physically at the court, or via registered mail or via electronic court system. If some of the documents are provided not in Lithuanian, the court can set a term to eliminate the deficits and supply the necessary translations. It is noteworthy that if the claimant wins the case, the incurred necessary

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<sup>221</sup> <https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismai-ir-teisejai/teismu-kontaktai/1700>



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procedural costs can be awarding the costs as translations are regarded as one of the litigation costs of civil procedure.

Judgments rendered under the European small claims procedure may be subject to appeal under the appeal procedure to an appeal instance court – regional courts (*“apygardos teismas”*) according to the territorial rules in this case. An appeal shall be submitted within 30 days after the day of rendering of the judgment under appeal. The stamp duty applies for an appeal, following the general rules (the amount equal to the one paid by launching the claim).

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

A judgment given under the European small claims procedure and certified by a standard Form D, as set out in Annex IV of Regulation (EC) No 861/2007, shall be considered to be an enforceable instrument. In national civil proceedings, an enforcement order is issued at the request of the party to the proceedings by the first instance court that heard the case. The issuance of an enforcement order is free of charge.

The enforcement actions which take place in the Republic of Lithuania shall be carried out in accordance with the laws of the Republic of Lithuania. Thus, the Lithuanian courts and the officials appointed by the Republic of Lithuania – judicial officers – have jurisdiction to carry out enforcement actions in the Republic of Lithuania. The territorial jurisdiction within the State is determined according to the activity territories of specific courts. Activity territories of bailiffs (judicial officers in charge of enforcement) is defined in the following link <https://www.antstoliurumai.lt/en/bailiff-search> and activity territories of courts is defines in the following link: <https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismai-ir-teisejai/teismu-veiklos-teritoriju-sarasas/1866>; <https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismai-ir-teisejai/teismu-kontaktai/1700> .

If the debtor is a natural person, a judicial officer shall enforce an enforcement instrument according to the place of residence of this person, the location of his/her property or the place of his/her employment. Non-pecuniary enforcement instruments relating to the application of interim measures may, at the request of the creditor, be enforced by a judicial officer according to the place of residence or any other location of the debtor or the creditor. If the debtor is a legal entity, a judicial officer shall enforce an enforcement instrument at the place of the domicile of the debtor or at the location of its property.





Enforcement instruments for the recovery of pecuniary amounts are distributed to judicial officers by the Information System of Judicial Officers (the criteria are detailed in the Instruction on the Enforcement of Judgments). An enforcement instrument shall be assigned to the territory of the activity where the place of enforcement of the enforcement instruments is located. The place of enforcement shall be determined on the basis of the data stated in the enforcement instrument and in the creditor's application to accept the enforcement instrument for enforcement. If the data provided in the enforcement instrument and in the creditor's application do not match, the place of enforcement shall be determined on the basis of the data stated in the creditor's application.

The procedural activities of judicial officers shall be controlled by a judge of the district court or, where the court is composed of chambers, by a judge of the chamber of the court in the territory whereof the judicial officer's office is situated.

### **3. Rules on service**

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Procedural documents shall be sent by post or via the e-system of courts. The court shall serve procedural documents to lawyers, assistant lawyers, judicial officers, assistant judicial officers, notaries, state and municipal enterprises, institutions and organisations, financial institutions, insurance and audit companies, forensic experts, insolvency administrators by means of electronic communications (via the e-system). If a person does not have access to the electronic system of courts and is not obliged to receive documents through the system, the court shall send the documents by post. When service is effected on a person abroad, the service shall be carried out either through the e-service system or in accordance with the provisions of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

During the stage of enforcement, the documents are to be served by post. The enforcement case can also be managed via bailiffs' e-system.

### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

There are no special rules applicable to the ESCP procedure, general rules are to be applied.

#### *Court hearing stage*

The court hearing the case shall be entitled to decide on its own in what form and procedure to hear the case, if the amount of a dispute does not exceed EUR 2000 (Article 441 of the CCP of Lithuania). Such cases shall be heard under the oral procedure, if this is



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requested by at least one party. Otherwise, cases shall be heard under the normal oral procedure.

A hearing at first instance court shall be held under the oral procedure in the alternative or with the physical presence of the parties, or remotely via the zoom platform, or in a hybrid format with some parties present in person and others remotely. The court has the discretion to decide how to organise oral hearings. Remote hearings can be held using information and electronic communication technologies (via video conferences, teleconferences, etc.). Using these technologies in accordance with the procedure established by the Minister of Justice, reliable identification of process participants and objective recording and presentation of data (evidence) must be ensured (Article 175-2 of the CCP). However, currently majority of remote hearings are being held via the ZOOM platform, or in hybrid hearings where some of the participants are present in person and others via ZOOM. Documents may be submitted to courts via the electronic system of courts. Courts mainly communicate with the parties to the proceedings through the electronic judicial system.

Procedural documents shall be sent by post or via the e-system of courts as described hereinabove.

### *Enforcement stage*

Electronic enforcement instruments in the ADOC format recognised by the Information System of Judicial Officers of Lithuania for the recovery of pecuniary amounts shall be submitted through the Information System of Judicial Officers. In other cases when enforcement instruments do not comply with the format recognised by the Information System of Judicial Officers and are in writing or in another digital format not recognised by the system, such instruments for the recovery of pecuniary amounts shall be submitted to the Chamber of Judicial Officers of Lithuania. Such enforcement instruments shall be digitised at the Chamber of Judicial Officers of Lithuania, signed with an electronic signature by an employee of the Chamber of Judicial Officers of Lithuania, uploaded to the Information System of Judicial Officers and further enforced as electronic enforcement instruments. Enforcement instruments for the recovery of pecuniary amounts are distributed to judicial officers by the Information System of Judicial Officers.

Upon receipt of an enforcement instrument and a free-form application from the creditor, if no obstacles for the acceptance of the enforcement instrument and commencement of the enforcement proceedings have been identified, the judicial officer shall draw up a warrant to accept the enforcement instrument and open an enforcement file. Before the start of enforcement actions, the creditor shall pay to the judicial officer the administrative fee for the enforcement of the judgment as provided for in the Instruction for the Enforcement of Judgments. Upon successful enforcement of the enforcement instrument, such costs shall be recovered from the debtor. The warrant to accept the enforcement instrument for enforcement and the calculation of the enforcement costs, and, in cases provided for by law, also a warning letter to comply with the decision, shall be sent to the



debtor. In case the debtor's whereabouts are unknown, the debtor is absconding or the service of the warning letter to comply the judgment is impossible for other objective reasons, the warning letter to comply with the judgment shall be published on the website [www.antstoliai.lt](http://www.antstoliai.lt). The information that the warning letter has been sent or served shall be indicated by the judicial officer in the Information System of Judicial Officers.

A judicial officer shall start enforcement actions: in urgent enforcement cases, no later than on the next working day after the enforcement instrument has been accepted for enforcement; in other cases, no later than within three working days after the enforcement instrument has been accepted for enforcement.

After accepting the enforcement instrument for enforcement, the judicial officer shall issue a warrant to enforce the enforcement instrument and, in the cases provided for by law, also a warning letter to comply with the judgment. Such warrant of the judicial officer shall explain to the debtor that the debt and the enforcement costs will be recovered coercively, and shall also inform about the service of subsequent procedural documents by means of electronic communications. This warrant shall be sent to the debtor by registered mail.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The court shall issue judgments in the official language. Documents shall be submitted in the official language – Lithuanian. Documents in languages other than Lithuanian shall be translated and certified by a translator. Translations shall be carried out at the initiative and expense of the person requesting them. The court may translate the final judgment at its own expense if the person does not understand the language. Translations shall be made and certified by a qualified translator. If documents or annexes are submitted in the language other than Lithuanian, the court usually sets a time limit for remedying the deficiencies, i.e. for submitting properly translated documents. Translation costs are considered a part of litigation costs and can be reimbursed if an appropriate application is submitted.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

There are no special rules applicable to the ESCP procedure, general rules are to be applied.

Enforcement costs include the following:

- administrative fees of enforcement proceedings (hereinafter – administrative fees);



- costs incurred by third parties for the services rendered by such parties in particular enforcement proceedings (hereinafter – third party costs);
- remuneration to the judicial officer for the enforcement of enforceable documents set out by laws, statement of factual circumstances under a court order, transfer and service of documents under a court order (hereinafter – remuneration for the judicial officer).

The amounts of enforcement costs set out in the Instruction on the Enforcement of Judgments shall be inclusive of all mandatory taxes.

All the enforcement costs shall be indicated by the judicial officer in the calculation of enforcement costs. Where a judicial officer carries out the recovery of pecuniary amounts under several enforcement instruments, a single calculation of enforcement costs shall be prepared for all enforcement proceedings of a pecuniary nature in relation to the same debtor, except in the cases when the calculation of enforcement costs is sent to the debtor together with the warning to comply with the judgment.

The amounts of administrative fees and the remuneration of a judicial officer for the enforcement of enforcement instruments for the recovery of pecuniary amounts are set out in the Instruction on the Enforcement of Judgments.

The amount of the judicial officer's remuneration is calculated on the basis of the amounts to be recovered. If, after recovery of part of the debt, the enforcement instrument is submitted for enforcement to a judicial officer repeatedly, the amount of the judicial officer's remuneration is calculated in relation to the amount remaining to be recovered.

The judicial officer's remuneration as a percentage is calculated by multiplying the amount to be recovered by the percentage specified in the Instruction. If the amount of the judicial officer's remuneration so calculated is lower than the minimum remuneration set out in the Instruction, the minimum remuneration for the judicial officer shall be recovered.

All enforcement costs, apart from the exceptions set out in the Instruction, shall be recovered from the debtor in the amounts set out in the Instruction, irrespective of whether the creditor has been exempt from enforcement costs or whether they have been reduced or deferred.

The creditor or his/her authorised representative shall be obliged to make an upfront payment of the administrative fees for a judicial officer when submitting an enforcement instrument for enforcement, except for the exceptions set out in the Instruction. If a judicial officer refuses to accept an enforcement instrument, the enforcement costs paid by the creditor shall be returned to the creditor. Where the creditor does not pay the administrative fees when submitting an enforcement instrument for enforcement, the judicial officer shall refuse to accept the enforcement instrument, except in the cases specified.



## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

There are no special rules applicable, general rules are to be applied.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

The applications referred to in Article 23 of Regulation (EC) No 861/2007 to stay or limit the enforcement of judgments given under the European small claims procedure shall be heard by the district court of the place of enforcement.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

Representation by a lawyer is not necessary in proceedings under the ESCP. Courts should provide practical assistance in filling in the forms, however, not concerning the content of the application. A person may apply for legal aid ([https://e-justice.europa.eu/42/EN/small\\_claims?LITHUANIA&member=1](https://e-justice.europa.eu/42/EN/small_claims?LITHUANIA&member=1)).

The practical assistance and information referred to in Article 11(1) of Regulation (EC) No 861/2007 shall be provided to the parties by entities providing primary State-guaranteed legal aid – municipal staff or university law clinics that have contracts for the provision of primary legal aid.

State-guaranteed legal aid is provided to persons who are citizens of the Republic of Lithuania or the EU, or who legally reside in the Republic of Lithuania or in another EU Member State, if the person's (his/her family's) assets and annual income do not exceed the levels of assets and income established by the Government of the Republic of Lithuania.

The Legal Aid Service, however, may refuse satisfying an application for legal aid, if:

- the claims are manifestly unfounded;
- representation in the case has no reasonable prospects of success;
- the application concerns a claim arising directly out of the trade or self-employed professional activities;
- it is possible to obtain required legal services without resorting to State-guaranteed legal aid;



- legal aid has been requested with respect to the violation of the rights other than one's own, except in the cases of representation under the law;
- the claim for which secondary legal aid is sought has been transferred for the purpose of receiving State-guaranteed legal aid;
- there is abuse of State-guaranteed legal aid, one's substantive or procedural rights;
- it is disagreed to pay a fixed proportion of the costs of secondary legal aid;
- after a substantive examination of the claim, the service finds that the potential costs of secondary legal aid would exceed the amount of pecuniary claims (pecuniary interests);
- secondary legal aid has been provided in another case, however, all or part of the costs of the secondary legal aid have not been paid until the time limit set;
- the service establishes that the person concerned is capable of exercising or defending his/her rights or protecting his/her interests without the assistance of a lawyer;
- the documents required for secondary legal aid have not been submitted within the time limit set by the service;
- the dispute in respect of which secondary legal aid is sought has been settled by conciliation in accordance with the procedure laid down in this Law and the parties have concluded a settlement agreement, however, the parties have not agreed to submit it to the court for approval.

Secondary legal aid is also granted without taking into account a person's (family's) assets and income in the following cases:

- victims in proceedings for compensation of damage incurred through criminal offences, including the cases when the issue of compensation for damage is heard as part of a criminal case;
- persons receiving a social allowance under the Republic of Lithuania Law on Cash Social Assistance for Poor Residents;
- persons maintained in stationary care institutions;
- persons recognised as incapable for work or severely disabled or of pensionable age with the established level of high special needs, also guardians/caretakers of these persons when State-guaranteed legal aid is required to represent and defend the rights and interests of the person under guardianship/caretaking;



- persons who have presented proof that they may dispose freely only of part of their assets and income due to objective reasons and this part does not exceed the levels of assets and income set by the Government of the Republic of Lithuania entitling to legal aid;
- debtors in enforcement proceedings, when a recovery is levied against the last housing where they reside;
- minor children, when the issue of their eviction is being considered, parents or other legal representatives;
- minor children, when they independently apply to a court for the defence of their rights or interests protected under law in the cases specified by laws, with the exception of those minors who are married or declared by the court as fully capable (emancipated);
- other persons in the cases provided for in international treaties of the Republic of Lithuania.

More detailed information is available at <https://vgtpt.lrv.lt/lt/asmenims-norintiems-gauti-valstybes-garantuojava-teisine-pagalba/kam-teikiama-valstybes-garantuojava-teisine-pagalba>.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

None

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

ESCP Regulation are rarely used in Lithuanian courts because there are alternative national instruments that are easy to use and efficient, e.g. court order proceedings which are semi-automated and user-friendly. Due to this reason, there are not many enforcement cases enforcing ESCP judgments. However, ESCP judgement is to be enforced using the same procedure as any other domestic enforceable document.

Lithuania has made steps introducing IT measures into enforcement proceedings: the enforceable documents are to be submitted electronically; if needed, assistance is to be provided by the Chamber of Auditors regarding digitalising judgments and submitting. The enforcement case can be managed by the external users in the electronic system of bailiffs. However, there is still room for development in digitalising the enforcement proceedings, e.g. some of the bailiffs are voluntarily using e-bailiffs tools, allowing automatization of some actions resulting in reducing of costs.





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Enforcement of ESCP judgments are not usually discussed neither in the practical, nor academic levels. The information regarding enforcement could be provided more widely. Websites that provide consultations regarding ESCP proceedings (e.g. e-justice portal) could also provide information regarding enforcement. Needless to say, such information provided online for foreign subjects is to be renewed constantly, the links provided for further reading are to be constantly checked in order to reflect the newest developments, the links should direct to websites in foreign languages, e.g. English.



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## Luxembourg

Author(s): Luc Ferrand

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The **competent court** to hear the European Small Claims Procedure is the **Justice of the Peace** (article 143-1 of the New Code of Civil Procedure, NCPC hereafter). The court with territorial jurisdiction is that of the place where the defendant lives.

There are currently no national statistics on the frequency of hearings in this area.

The procedure followed is the written procedure. However, it follows the rules of the oral procedure in Luxembourg law. This implies that the judge takes into account the arguments presented orally by the parties during the hearing. The parties have the possibility to be accompanied by a lawyer, even if representation is not mandatory.

There are no specific rules of **evidence**. The rules of evidence of the common law apply.

There are no **legal fees** to be paid to the competent court in Luxembourg in the framework of the European Small Claims Procedure.

However, after a judgment, legal costs are incurred in the execution of the decision.

Luxembourg accepts **French** and **German**. The translation costs are to be borne by the parties, the rate is free. The plaintiff whose resources are insufficient may nevertheless request **legal aid** (hereinafter "legal aid") (amended law of August 10, 1991 on the legal profession and Grand-Ducal Regulation of September 18, 1995 on legal aid).

The concept of insufficient resources of persons applying for legal aid is assessed in relation to the total gross income and assets of the applicant and of the persons living with him/her



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in the domestic community (only adult members are taken into consideration). Applicants are considered to have insufficient resources when they receive the social inclusion income (REVIS) within the legal limits.

In the case of **appeals**, if the amount of the **claim does not exceed € 2,000**, the decisions of the Justice of the Peace are final. Only an appeal in cassation is possible.

If the amount of the **claim exceeds € 2,000**, an appeal to the president of the District Court is possible against the decisions of the Justice of the Peace in the first instance. The time limit for filing an appeal is 40 days from the notification of the decision. The parties are summoned by the clerk's office at least eight days before the hearing. If they live in another member state of the European Union, this time limit is increased by a distance period of 15 days, in accordance with article 167 of the NCPC. The procedure before the president of the District Court is oral.

An appeal in cassation is possible against decisions rendered by the Justice of the Peace in the last instance, as well as against decisions rendered in appeal by the President of the District Court.

The European texts also provide for the possibility of requesting a **review of the decision**. The application for review must be filed with the registry of the court that issued the decision by means of a written statement.

## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Under Luxembourg law, for a decision to be enforceable, it must meet certain criteria:

- It must be res judicata, i.e. it is no longer subject to appeal.
- It must be signed with the executory formula (articles 254 and 677 of the NCPC).
- It must have been notified to the party against whom enforcement is sought.

The party requesting the enforcement in another Member State of a decision resulting from the small claims procedure must produce a copy of the certificate. This dispenses with any exequatur.

The party must also produce a copy of the decision declared enforceable in the enforcing state.

## 3. Rules on service



*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The competent authority to **notify** the decision is the **clerk's office** of the competent court, this notification is done by registered letter with acknowledgement of receipt (article 143-1 of the NCPC). There are no costs.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.).*

Luxembourg accepts **postal service** as a means of communication. Electronic means of service and communication are not yet admissible under their rules of procedure.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc)*

As mentioned above, Luxembourg accepts both French and German.

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

There are no **legal fees** to be paid to the competent court in Luxembourg in the framework of the European Small Claims Procedure.

However, after a judgment, court costs are incurred in the execution of the decision and at the request of the successful party. There are no court costs, even for the unsuccessful party.

#### **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Please refer to question 2.

There are no specific rules for this procedure.

Enforcement can be carried out through seizure of movable property, garnishment, seizure of wages and seizure of real estate.



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- **Seizure-Execution**

It leads to the sale of the debtor's movable property (articles 719 and following of the NCPC).

- **Garnishment**

It consists in seizing from another person the sums belonging to the debtor, for example the seizure on a bank account. The bailiff can seize the debtor's account to reimburse the creditor (articles 693 and following of the NCPS).

- **Seizure of earnings**

It allows the creditor to whom the employee (debtor) owes money to obtain the payment of the amount due to him. The employer must allocate part of the employee's remuneration to reimburse the creditor (Law of November 11, 1970 on the assignment and seizure of work remuneration and pensions and annuities, Grand-Ducal Regulation of January 9, 1979 on the procedure for the seizure and assignment of work remuneration and pensions and annuities and Grand-Ducal Regulation of September 27, 2016

fixing the rates of transferability and seizability of work remuneration, pensions and annuities

- **Real estate foreclosure**

The bailiff can seize a property belonging to the debtor. If the debtor does not repay the debt within a certain period of time, the property may be sold to pay the creditor (articles 809 and following of the NCPC).

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc. )*

There is no provision in domestic law for such procedures.

Only the European Regulation provides that enforcement may be limited or suspended when the decision settling a small claim is subject to appeal or review. Enforcement may therefore be limited to precautionary measures, made subject to the provision of security or suspended.

Enforcement may be refused in the presence of an earlier incompatible decision by any Member State or third party if:



- The previous decision was rendered between the same parties, in a dispute with the same cause,
- It has been rendered in the State of enforcement or is likely to be recognized there,
- It could not be invoked during the proceedings.

**9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

As mentioned above, the parties may be accompanied by a lawyer.

The party wishing to initiate such proceedings may also apply for a legal aid allowance. Thus, the legal costs incurred will be covered by the State. It is granted to individuals with modest incomes and few assets.

In order to benefit from it, it is necessary to fill in the application form, provide supporting documents and send it to the President of the Bar Association in your area.

**10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

X

**11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The European small claims procedure is not well known in Luxembourg.

The number of decisions rendered

*(published figures: Courts of Justice, Activity Report 2021)*

Year	Decisions rendered
2017	535
2018	408
2019	820
2020	934
2021	1001

The training of legal professionals (magistrates, lawyers, bailiffs) and the information provided to the public must be reinforced.



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## Malta

Authors: Francesco Depasquale, Hon. Justice, the Law Courts, Malta; dr. Milda Markevičiūtė, assoc. prof. Vīgita Vėbraītė, assoc. prof. Rimantas Simaitis (Vilnius University)

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The specific small claims procedure is regulated by Chapter 380 of the Laws of Malta (Small Claims Tribunal Act) as well as by Subsidiary Legislation 380.01, 380.02, 380.03 and 380.04.<sup>222</sup> The Small Claims Tribunal hears ESCP cases.<sup>223</sup>

The case is to be heard in public hearing, the number of such hearings is not defined (Para. 10 of the Subsidiary Legislation 380.01). Both oral and written evidence can be used (Para. 11 of the Subsidiary Legislation 380.01).<sup>224</sup> The Small Claims Tribunal is presided by an Adjudicator who decides cases on principles of equity according to law. Adjudicators are appointed from amongst advocates having at least seven years experience, for a term of five years which cannot be renewed. Adjudicators decide cases brought before them without delay.<sup>225</sup> Legal representation is not mandatory, however, the Adjudicator may exempt any party who is not represented by a lawyer from the consequences of the failure to comply with any of the rules if such incompliance happened due to mistake, oversight or any other reason which the Adjudicator considers to be valid. The Adjudicator may make any order which he considers to be just.<sup>226</sup> The judgments delivered by the Adjudicator can be appealed in accordance with the domestic law (Para 8 of the Chapter 380 of the Laws of Malta).

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<sup>222</sup> [https://e-justice.europa.eu/42/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/42/EN/small_claims?MALTA&member=1)

<sup>223</sup> [https://justice.gov.mt/en/COJ/Pages/European\\_Small\\_Claims\\_Procedure.aspx](https://justice.gov.mt/en/COJ/Pages/European_Small_Claims_Procedure.aspx)

<sup>224</sup> <https://legislation.mt/eli/si/380.1/eng/pdf>

<sup>225</sup> [https://justice.gov.mt/en/COJ/Pages/Small\\_Claims\\_Tribunals.aspx](https://justice.gov.mt/en/COJ/Pages/Small_Claims_Tribunals.aspx)

<sup>226</sup> <https://legislation.mt/eli/cap/380/eng/pdf>



If the claim is brought by a consumer against a person pursuing commercial activities, the authority providing practical assistance is ECC-Net Malta - European Consumer Centre Malta.<sup>227</sup>

The following fees, as drawn up in the Second Schedule of Subsidiary Legislation 380.01<sup>228</sup> apply to lodging the forms under the ESCP procedure:

The notice of claim's fee is € 40.00.

The reply's fee is € 25.00.

The counterclaim's fee is € 40.00.

The fee for replying a counterclaim is € 25.00.

The appeal's fee is € 80.00.

The fee for replying the appeal is € 50.00.

In addition to the abovementioned fees, there is a fee of € 7.20 for each service of notification/s issued on the parties.<sup>229</sup>

The Maltese tribunal accepts the application form in English and Maltese, by registered post, fax or electronically.<sup>230</sup>

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

The authorities competent for enforcement of decisions are the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) depending on the place of residence of the person against whom a decision is being enforced.<sup>231</sup>

## **3. Rules on service**

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<sup>227</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)

<sup>228</sup> <https://legislation.mt/eli/si/380.1/20100722/eng>

<sup>229</sup> <https://www.gov.mt/en/Life%20Events/Pages/Small%20Claims/Small-Claims.aspx>

<sup>230</sup> <https://www.gov.mt/en/Life%20Events/Pages/Small%20Claims/Small-Claims.aspx>

<sup>231</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)



*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The accepted means of communication are the following: in person at the Tribunal Registry, by post, by an electronic mechanism provided by the Tribunal, fax and by email.<sup>232</sup> Nevertheless, official service of documents may only be done either in person or by post.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

In accordance with the Small Claims Tribunal (Filing of Acts By Electronic Means) Rules, Subsidiary Legislation 380.04, there exists an electronic mechanism provided by the Tribunal where all the acts relating to a case may be filed online by means of the requisite forms provided.<sup>233</sup>

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The language accepted is Maltese.<sup>234</sup> Provided that, in accordance with the Judicial Proceedings (Use of English Language) Act, Chapter 189, there may be instances where such documents may be in the English language.<sup>235</sup>

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The Rules applying to enforcement of Precautionary and Executive Acts as set out in Tarrif D of the Code of Organization of Civil Procedure apply.<sup>236</sup>

As a result, to file any warrant, the Registry fee is of €50, a fee of €7 is due to every executive officer required. There are also the Lawyer and Legal Procurator fees which amount to €11.65 and €3,88 respectively, and these are catered for in Article 43 (e) of Tarrif E of the Code of Organization and Civil Procedure.

<sup>232</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)

<sup>233</sup> <https://legislation.mt/eli/si/380.4/20130628/eng>

<sup>234</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)

<sup>235</sup> <https://legislation.mt/eli/cap/189/19730406/eng>

<sup>236</sup> <https://legislation.mt/eli/cap/12/20220218/eng>



## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

The Adjudicator completes and notifies the relevant parties with the Form D (i.e. Certificate concerning a judgment in the European small claims procedure or a court settlement). The certificate is issued in Maltese.<sup>237</sup>

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Requests for review in accordance with Article 18 of the Regulation are submitted to the Small Claims Tribunal of Malta or Gozo<sup>238</sup>.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

A consumer that is filing an ESCP claim against business unit may be advised and receive practical support by ECC-Net Malta - European Consumer Centre Malta ([ecc.malta@gov.mt](mailto:ecc.malta@gov.mt)).

A business unit that is filing an ESCP claim regarding another business unit can be advised and receive practical support by Malta Enterprise ([info@maltaenterprise.com](mailto:info@maltaenterprise.com)).<sup>239</sup>

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

N/A

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

There are no significant problems which relate solely to ESCP judgments enforcement. The problems are those which also relate to problems with enforcement of all other judgments.

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<sup>237</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)

<sup>238</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)

<sup>239</sup> [https://e-justice.europa.eu/354/EN/small\\_claims?MALTA&member=1](https://e-justice.europa.eu/354/EN/small_claims?MALTA&member=1)



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The process is still not digitalised and necessitates physical presence in the Court Registry. Steps are underway to fully digitalise the whole process. This would affect positively the ECSP procedures too. Works are progressing in the direction of digitalization, but they have not been completed yet.



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## The Netherlands

Author(s): Seyedeh Sajedeh Salehi, Dr. Marco Giacalone, Prof. Gina Gioia, Prof. Kim Van Der Borght

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In the Netherlands, the Act of 29 May 2009 (hereinafter, the Implementation Act) has implemented the European Small Claims Procedure Regulation into the national legal system.<sup>240</sup>

Article 2 (1) of the Implementation Act specifies the ESCP cases are heard and decided upon by a judge in the subdistrict sector of the competent District Court (hereinafter, Subdistrict Court).<sup>241</sup>

Pursuant to Article 262 of the Dutch Code of Civil Procedure (DCCP), the competence is determined according to the territorial jurisdiction assigned to:

*“a. the court of the place of residence of either the applicant or one of the applicants, or one of the interested parties mentioned in the application or, if such a place of residence is not known in the Netherlands, the court of the actual residence of one of them; b. where the request relates to a dispute initiated or to be initiated by summons, the court having*

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<sup>240</sup>In Dutch: *Wet van 29 mei 2009 tot uitvoering van verordening (EG) nr. 861/2007 van het Europees Parlement en de Raad van de Europese Unie van 11 juli 2007 tot vaststelling van een Europese procedure voor geringe vorderingen (Pb EU L 199) (Uitvoeringswet verordening Europese procedure voor geringe vorderingen*. For more information on the Implementation Act visit <https://wetten.overheid.nl/BWBR0025914/2017-07-14> accessed 24 July 2022.

<sup>241</sup>In Dutch: *kantonrechter*. The subdistrict court has the competence over claims with the value of up to €25,000. For more information visit <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtspraak-in-Nederland/Rechters/Paginas/Kantonrechter.aspx> accessed 24 July 2022.



*jurisdiction to hear and determine that dispute, unless the application does not fall within its absolute jurisdiction.”*

In the Subdistrict Courts, there is no mandate for the parties to be represented by a lawyer. Therefore, the parties to an ESCP case can appear as self-represented litigants in the proceedings.

To initiate with a European Small Claim, the claimant shall prepare his/her claim using the standard Claim Form A.<sup>242</sup> The completed Claim Form, together with the appropriate supporting documentation (if appropriate), must be lodged with the competent local District Court.

With respect to providing practical assistance in filling the Claim Form and/or any general information about the ESCP, consumers can contact the European Consumer Centre (ECC-Net) in the Netherlands.<sup>243</sup> In addition, the citizens can contact the Legal Service Counter<sup>244</sup> to obtain basic free legal advice on pursuing with court proceedings.

The court fees shall be paid in advance of the proceedings and no later than four weeks from receiving the statement of fees (including the court banking details) sent by the court clerk. The payment must be made by transferring the money to the bank account of the court.

According to Article 282a of the DCCP, if the applicant does not pay the court fees within the specified time limit, the court shall first notify the applicant. If the notification of the due payment of the court fees is received and yet the applicant has not paid the fees, the court will declare the claim inadmissible.

Under the national rules, the court fees – also applicable to the ESCP cases – vary based on the threshold of the claim (also the nature and/or the circumstances of each claimant) as illustrated in Figure 1.

Nature or amount of the claim or request	Court fees for non-natural persons	Court fees for natural persons	Court fees for the incapacitated
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<sup>242</sup>The claim form can be downloaded from the European e-Justice Portal at: <[https://e-justice.europa.eu/content\\_small\\_claims\\_forms-177-en.do](https://e-justice.europa.eu/content_small_claims_forms-177-en.do)> accessed 22 July 2022.

<sup>243</sup>For more information visit the website of the European Consumer Centre here: <<https://www.eccnederland.nl/en>> accessed 30 July 2022.

<sup>244</sup>For more information visit the website of the Legal Service Counter here: <<https://www.juridischloket.nl/>> accessed 30 July 2022.





Cases relating to a claim, or a request:  – of undetermined value, or  – with a course of not more than € 500	€128	€86	€86
Cases relating to a claim, or a request with a course of more than € 500 and not more than € 1,500	€322	€214	€86
Cases relating to a claim, or a request with a course of more than € 1,500 and no more than € 2,500	€365	€244	€86
Cases relating to a claim, or a request with a course of more than € 2,500 and not more than € 5,000	€487	€244	€86

Figure 1. The court fees for cantonal cases before the court as of 01/01/2022<sup>245</sup>

With respect to the language, the Claim Form and other supporting documents must be submitted in Dutch, the official language of the country.

<sup>245</sup>For more information on the procedural costs in civil cases see Civil Court Fees Act (Wet griffierechten burgerlijke zaken) <<https://wetten.overheid.nl/BWBR0028899/2022-01-01>> accessed 22 July 2022.



Article 33 (1) of the DCCP stipulates the applications and communications may also be made electronically provided that this is allowed under the procedural rules of the intended court.

As regards the ESCP proceedings, currently the District Courts in the Netherlands have not provided for electronic submission of the ESCP Forms. Therefore, the applications should be submitted to the court registry either physically or by post.

Upon submission of the claim, the court evaluates the claim to decide whether it is appropriate to be proceeded within the ESCP. If the claim falls out of the scope of the ESCP Regulation, the court will notify the applicant accordingly. In this respect, Article 4 (1) & (2) of the Implementation Act provides that :

*“1. If the subdistrict court has informed the plaintiff that his claim falls outside the scope referred to in Article 2 of the Regulation, the claimant may withdraw his claim. The plaintiff shall notify the subdistrict court of this in writing within 30 days of receipt of the notification from the subdistrict court. The court fee shall not be refunded in the event of withdrawal.*

*2. If a counterclaim as referred to in Article 5, sixth paragraph of the Regulation falls outside the scope referred to in Article 2 of the Regulation, the first paragraph shall apply mutatis mutandis.”*

Finally, if the claimant or defendant does not act accordingly either to withdraw or adapt the claim/counterclaim to comply with the applicable procedural rules, such application will be declared inadmissible. The court decision on this matter is not subject to appeal (Article 69, DCCP).

If the subdistrict court considers that the claim form is complete and it falls within the scope of the ESCP Regulation, the default procedure begins using a writ of summons.

The writ of summons, which contains the statement of the claim, shall be served on the defendant by a process server or delivered by the plaintiff within two weeks from the date the writ was filed (Article 112 (1), DCCP).

If the defendant does not appear in the proceeding nor responds to the claim, the court will issue the judgement only based on the facts provided by the claimant (Article 139, DCCP).

The defendant may respond to the claim by the statement of defence which may include a counterclaim. The exchange of pleadings between the parties occurs in a written format.



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However, the communications between the parties and the courts can be conducted electronically when possible.<sup>246</sup>

The ESCP is in principle an entirely written procedure, unless the court decides that without holding an oral hearing it is not possible to issue a judgement on the grounds of the written evidence, or a party requests an oral hearing (Article 5 (1a), ESCP Regulation). If the judge admits conducting an oral hearing, a date will be set by the court for that purpose. The statistics reveals that the request for oral hearings – especially by the claimant – is rarely accepted by the Subdistrict Courts in the Netherlands.<sup>247</sup> There are not any reported cases of using remote hearings – via using electronic means of communications – in the context of the ESCP proceedings in this Member State.

With respect to evidence, the ordinary national rules on the taking of evidence are applicable (Article 247, DCCP).<sup>248</sup>

Upon completion of the court proceedings and/or the hearing, the court will give the judgement.

As regards to the costs of the ESCP proceedings, Article 16 of the ESCP Regulation articulates that the costs of the proceedings are to be borne by the losing party unless they were superfluous or disproportionate to the claim. On that account, Article 5 of the Implementation Act states that where the unsuccessful party is ordered to pay the costs of the proceedings the rules of the Code of Civil Procedure (i.e., Articles 238, 241, 242, and 244) shall apply to determine the incurred costs.<sup>249</sup> Accordingly, the travel expenses of the successful self-represented party, the expert and witness costs, also the relevant translation fees can be included in the costs order.

In the Netherlands, appeals against court decisions can be lodged provided that the threshold of the claims is €1,750 or more. According to Article 2 (2) of the Implementation Act, the appeal against an ESCP judgement can be lodged within 30 days from the date

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<sup>246</sup>Fokke Fernhout, 'The EU small claims procedures in the Netherlands - some good and some bad news' (2022) 1 *Revista Ítalo-española De Derecho Procesal* 51, 53 <<https://doi.org/10.37417/rivitsproc/680>> accessed 25 July 2022.

<sup>247</sup>For more information on the statistics see *ibid*.

<sup>248</sup>Article 284 of the DCCP states that: "1. *The ninth section of Title II shall apply mutatis mutandis, unless the nature of the case prevents it; 2. If the court orders the examination of witnesses, it may also order persons designated by it to be summoned as witnesses. In this case the summons may be issued by the Registrar; 3. The right to refuse to give evidence shall not accrue to the persons referred to in Article 165(2)(a) in proceedings concerning the application of the provisions of Book 1 of the Civil Code contained in Titles 5, 5a and 9 to 20 inclusive, or of those contained in Title 6 insofar as proceedings between spouses or registered partners are concerned. However, parents and children of spouses or registered partners may be excused in proceedings for divorce and legal separation or for dissolution of the registered partnership; 4. The application, mutatis mutandis, of the provisions of articles 195 and 199 shall be made in such a way that the assessment, enforcement or provisional collection referred to therein shall be borne by the interested party who made the application or shall be borne, jointly or solely, by one or more other interested parties designated by the court.*"

<sup>249</sup> Fernhout (n 246) 59-60.



that the decision was given by the Subdistrict Court. The competent court to deal with the appeal against a court decision – in the context of ESCP – is the Court of Appeal.<sup>250</sup> The rules on appeal are governed by the Sections 1 to 3 of the Seventh Title of the First Book of Civil Procedure. As of 1 January 2022, the costs for lodging the application with the Court of Appeal is €343 for the natural persons and €783 for the legal persons.<sup>251</sup>

Article 6 of the Implementation Act refers to the possibility for requesting a review of an ESCP judgement. The request for the review shall be lodged with the Subdistrict Court that has issued the judgement. The time limit to submit this request shall be 30 days from the date the defendant became aware of the decision, or from the date the force majeure or extraordinary circumstances have ceased (Article 18 (1), ESCP Regulation). This request must explicitly set out the grounds for a review referred to in Article 18 (1) of the ESCP Regulation. Where the Subdistrict Court decides that the review is justified – based on the grounds referred to in Article 18 (1) of the ESCP Regulation – the ESCP judgement will be announced null and void.

## 2. Competent court or authority and procedure involved in the enforcement of ESCP judgments

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

In the Netherlands, the ESCP court decisions are enforceable by all means allowed under the national procedural rules. The competent authorities to handle the enforcement of the ESCP judgements are the court bailiffs<sup>252</sup> (in brief, bailiffs).

The bailiff plays a central role in executing an ESCP judgement – similar to any other court decision – under the instructions provided by the creditor. The requesting party should give detailed instructions to the bailiff by surrendering an authentic copy of the ESCP judgement (bailiff's copy) to the bailiff.

Article 7 (1) of the Implementation Act states that:

*“The copy of the judgment given by a court of another Member State on a European small claim and the certificate referred to in Article 20(2) of the Regulation may be enforced together in the same way as an issued domestic judgement.”*

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<sup>250</sup> In Dutch: *gerechtshof*. For more information on the Courts of Appeal in the Netherlands visit <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechtshoven>> accessed 24 July 2022.

<sup>251</sup> See (n 245).

<sup>252</sup> In Dutch: *gerechtsdeurwaarders*. For more information visit <<https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Amsterdam/Regels-en-procedures/Paginas/Kamer-voor-gerechtsdeurwaarders.aspx>> accessed 22 July 2022.



To request for enforcing an ESCP judgement, the creditor must submit a copy of the judgement and the standard Form D (certificate concerning a judgement/court settlement in the European Small Claims Procedure) as issued by the court.<sup>253</sup> If these documents are not in Dutch, the certified translation must be also provided by the creditor (Article 7 (2) of the Implementation Act).

In the context of enforcing an ESCP judgement, the bailiff performs the following official acts:

- serves the enforceable document on the party against whom the enforcement is sought (the debtor);
- demands the debtor to comply with his/her convictions according to the judgement (e.g., making the monetary payments);
- receives payments from the debtor in fulfilling with his/her obligations;
- seizes the available assets of the debtor and if necessary, requests for assistance from the police in difficult circumstances (e.g., in seizing assets).<sup>254</sup>

The creditor chooses his/her preferred method of enforcement. The enforcement measures under the national procedural rules include attachment, seizure, garnishment, and where necessary civil arrest. It must be noted that although the creditor chooses the preferred method of execution; the bailiff finally decides that the preferred measures are in conformity with the law also reasonable in that particular circumstance.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

As regards the rules on service in the execution of an ESCP judgement, the enforcement can be only effective if the bailiff's copy has been issued. This document is an authentic copy of the judgment which is issued in an enforceable form.<sup>255</sup>

To officially initiate with the execution process, the bailiff serves the debtor with the bailiff's copy. This step is necessary to ensure that the party against whom the

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<sup>253</sup>According to Article 20 (2) of the ESCP Regulation: "At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost."

<sup>254</sup>See the EU e-Justice Portal (rules on enforcement of judgement in the Netherlands) <[https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?NETHERLANDS&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?NETHERLANDS&member=1)> accessed 22 July 2022.

<sup>255</sup>The general rules on service of documents in civil and commercial matters in cross-border cases among the EU Member States are governed by Regulation (EU) 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast).



enforcement is sought is aware of the judgement and the demands of the creditor to comply with.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

At present, there is not any possibility for initiating/pursuing the ESCP enforcement procedures electronically or via the Internet in this Member State.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

In the Netherlands, to pursue the execution of an ESCP judgement, the standard Form D and a copy of the judgement are only accepted in Dutch as the official language of the country.

According to Article 21 (2) of the ESCP Regulation, the court may use the multilingual dynamic standard forms – that are available on the EU e-Justice Portal – to produce Form D in the requested language of any ESCP party. This should be, however, noted that any existing free-text content in Form D or/and the ESCP judgement must be translated into Dutch by a qualified translator.

#### **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

There are fixed fees that the debtor must pay to the bailiff for the official acts s/he performed in the context of enforcing a judgement. In addition, there are some non-fixed (negotiable) fees that the creditor must pay to the bailiff.

In general, the bailiff fees are governed by the Decree on the rates of the official acts of bailiffs.<sup>256</sup> These fees are adjusted annually. The current applicable fees to the bailiffs' official acts from 1 January 2022 are specified on the website of The Royal Professional Organization of Judicial Officers in the Netherlands.<sup>257</sup>

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<sup>256</sup>In Dutch: *Besluit tarieven ambtshandelingen gerechtsdeurwaarders*. The current Decree which is valid from 1 January 2022 can be retrieved from <<https://wetten.overheid.nl/BWBR0012638/2022-01-01>> accessed 30 July 2022.

<sup>257</sup>In Dutch: Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders (KBvG). For more information visit: <<https://www.kbvg.nl/gerechtsdeurwaarders/kosten>> accessed 30 July 2022.



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<b>Article</b>	<b>Description</b>	<b>with effect from 1 July 2021 excl.</b>	<b>with effect from 1 July 2021 incl. 21% VAT</b>	<b>per 01-01-2022 excl.</b>	<b>per 01-01-2022 incl. 21% VAT</b>
<b>2 a</b>	summons in a claim procedure, writ of summons or notice initiating proceedings,  Introductions to settlement of enforcement disputes	€ 98,52	€ 119,21	€ 103,33	€ 125,03
<b>2 b</b>	service of a title, with and without command	€ 108,71	€ 131,54	€ 114,01	€ 137,95
<b>2 c</b>	service of a notice convening a court appearance or of a notice other than those referred to in this Article  order and renewed order	€ 79,02	€ 95,61	€ 82,87	€ 100,27
<b>2 d</b>	service other than that referred to in this Article  service of a writ of summons and writ of transfer/authorisation for enforcement (art. 431a Rv), fee for the enforcement of a European arrest warrant as referred to in article 11 of the Implementation Act Regulation European arrest warrant	€71,19	€ 86,14	€ 74,66	€ 90,34





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	prejudgment attachment of bank accounts.				
<b>2 e</b>	attachment of movable property, other than registered property, other than as referred to in one of the following subsections, or of a more specific description of the movable property seized reports garnishment, garnishment of aliens, seizure of marital assets, cumulative seizure of already seized assets movable property	€ 131,37	€ 158,96	€ 137,78	€ 166,71
<b>2 f</b>	attachment of movable property, not being registered property, which is located in such a place that the cooperation of a third party is required to gain access to it is needed (safelock fittings):	€ 176,41	€ 213,46	€ 185,02	€ 223,87
<b>2 g</b>	Attachment of bearer rights or orders, registered shares, registered securities that are not shares and other rights as referred to in art. 474bb Rv and other rights in case of partial attachment, Alien seizure, marital seizure, etc.	€ 259,99	€ 314,59	€ 272,67	€ 329,93
<b>2 h</b>	Attachment of registered shares in	€ 285,34	€ 345,26	€ 299,26	€ 362,10



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	Dutch public limited liability companies and private limited liability companies, as well as partial attachment, garnishment of foreigners  and marital attachment of registered shares				
<b>2 i</b>	attachment of bearer shares or of attachments of third parties (including life insurers) other than the attachment of periodic payments, fee for the execution of a European order for the preservation of assets, as referred to in article 11 of the Implementation Act Regulation European order for the preservation of assets on bank accounts.	€ 209,33	€ 253,29	€ 219,54	€ 265,64
<b>2 j</b>	attachment of periodical payments from third parties, other than attachment as referred to in  under k:	€ 146,97	€ 177,83	€ 154,14	€ 186,51
<b>2 k</b>	attachment as referred to in art. 479b of the Code of Civil Procedure (alimony)	€ 127,22	€ 153,94	€ 133,43	€ 161,45
<b>2 l</b>	attachment of the creditor himself, irrespective of the	€ 174,29	€ 210,89	€ 182,79	€ 221,18



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	object of the attachment				
<b>2 m</b>	execution for the surrender of movable property, not being registered property, surrender ship/aircraft/protected models	€ 303,22	€ 366,90	€ 318,01	€ 384,79
<b>2 n</b>	attachment to obtain the surrender or delivery of movable property, not being registered property, and p-v attachment of pledged movable property by pledgee	€ 130,40	€ 157,78	€ 136,76	€ 165,48
<b>2 o</b>	attachment of immovable property or of aircraft registered in the Netherlands	€ 180,47	€ 218,37	€ 189,27	€ 229,02
<b>2 p</b>	lifting of attachment of immovable property or the declaration referred to in art. 575 paragraph 2 of the Code of Civil Procedure / Art. 513a Rv	€ 64,38	€ 77,90	€ 67,52	€ 81,70
<b>2 q</b>	attachment of ships or aircraft not registered in the Netherlands:	€ 397,83	€ 481,37	€ 417,24	€ 504,86
<b>2 r</b>	judicial detention:	€ 270,71	€ 327,56	€ 283,91	€ 343,53
<b>2 s</b>	Stamping of banknotes involving announcement of public sale	€ 98,86	€ 119,62	€ 103,68	€ 125,45
<b>2 t</b>	compulsory public sale of movable property	€ 345,82	€ 418,44	€ 362,69	€ 438,85
<b>2 u</b>	Notification of mortgagee of taking over the execution of immovable property	€ 92,84	€ 112,34	€ 97,37	€ 117,82



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	goods to the executor (art. 509 Rv)				
<b>2 v</b>	Forced eviction of property	€ 258,36	€ 312,62	€ 270,96	€ 327,86
<b>2 w</b>	enforcement of restraint (detention order with detention order)	€ 300,29	€ 363,35	€ 314,94	€ 381,08
<b>2 x</b>	a request for information as referred to in Article 475aa of the Code of Civil Procedure or as referred to in Article 5, second paragraph, of the Implementation Act on the European Order for precautionary attachment of bank accounts	€ 84,64	€ 102,41	€ 88,77	€ 107,41
<b>2 y</b>	a visit as referred to in Article 550 of the Civil Code Legal proceedings	€ 153,21	€ 185,38	€ 160,68	€ 194,42
<b>3 a</b>	in the case of a simple garnishment	€ 12,72	€ 15,39	€ 13,34	€ 16,14
<b>3 b</b>	in the case of two concurrent garnishments	€ 20,24	€ 24,49	€ 21,23	€ 25,69
<b>3 c</b>	for each subsequent successive garnishment per attachment	€ 7,54	€ 9,12	€ 7,91	€ 9,57
<b>5</b>	mitigation of concurrent enforcement actions	€ 24,38	€ 29,50	€ 25,57	€ 30,94
<b>6 a</b>	witness to article 2 e/f/g/n	€ 24,83	€ 30,04	€ 26,04	€ 31,51
<b>6 b</b>	Article 2 witness m/o/q/v/w	€ 86,92	€ 105,17	€ 91,16	€ 110,30
<b>7</b>	if the writ shows that the performance of the				



	<p>official act is to take place on the spot:</p> <p>a. referred to in Article 2(e), (f), (g), (h) and (n) has lasted more than one and a half hours, or</p> <p>b. referred to in article 2, under m, q, r, t, v and w, has lasted longer than three hours, the costs will be increased by .....</p> <p>for every 15 minutes that the performance of the official act on site lasted longer than one and a half hours or three hours respectively,</p> <p>and the costs fixed in Article 6 shall be increased by an amount equal to 15 minutes for each hour and a half and three hours, respectively, that the witness is present/has lasted.</p>	<p>€ 24,38</p> <p>€ 14,44</p>	<p>Cum.</p> <p>Cum.</p>	<p>€ 25,57</p> <p>€ 15,14</p>	<p>Cum.</p> <p>Cum.</p>
<b>8</b>	<p>1 successive service</p> <p>2 attachment announced and nobody home</p> <p>3 forced to live in vain</p>	<p>€ 30,75</p> <p>€ 61,88</p> <p>€ 121,00</p>	<p>€ 37,21</p> <p>€ 74,87</p> <p>€ 146,41</p>	<p>€ 32,25</p> <p>€ 64,90</p> <p>€ 126,90</p>	<p>€ 39,02</p> <p>€ 78,53</p> <p>€ 153,55</p>
<b>Article</b>	<b>Description</b>	<b>Starting 01-01-2021 excl.</b>	<b>incl. 21 % VAT</b>	<b>Starting 01-01-2022 excl.</b>	<b>with effect from 01-01-</b>



			<i>from 01-01- 2021</i>		<i>2022 incl. 21% VAT</i>
<b>1 para1</b>	The costs referred to in section 18(2) of the Bailiffs Act shall be:	€ 7,68	€ 7,84	€ 8,05	€ 9,74

Figure 2. Rates for official acts of bailiffs including 1 January 2022.

## 7. Enforcement of court settlements approved or concluded by a court in the ESCP context

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

The enforcement of court settlements issued in the framework of the European Small Claims Procedure is similar to the process used to execute any other ESCP judgement.<sup>258</sup>

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Article 8 of the Implementation Act provides that the applications (as referred to in Articles 22 and 23 of the ESCP Regulation<sup>259</sup>) for enforcement of any court decision in the ESCP are governed by Article 438 of the Dutch Code of Civil Procedure.

According to Article 438 of the DCCP:

*“ 1. Disputes which arise in connection with enforcement shall be brought before the district court (rechtbank) that would have jurisdiction under the normal rules, or in whose*

<sup>258</sup>Fernhout (n 246) 57.

<sup>259</sup>According to Article 22 (1) of the ESCP Regulation: “Enforcement shall, upon application by the person against whom enforcement is sought, be refused by the court or tribunal with jurisdiction in the Member State of enforcement if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that: (a) the earlier judgment involved the same cause of action and was between the same parties; (b) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and (c) the irreconcilability was not and could not have been raised as an objection in the court or tribunal proceedings in the Member State where the judgment in the European Small Claims Procedure was given.” In addition, Article 23 of the ESCP Regulation articulates that: “Where a party has challenged a judgment given in the European Small Claims Procedure or where such a challenge is still possible, or where a party has made an application for review within the meaning of Article 18, the court or tribunal with jurisdiction or the competent authority in the Member State of enforcement may, upon application by the party against whom enforcement is sought: (a) limit the enforcement proceedings to protective measures; (b) make enforcement conditional on the provision of such security as it shall determine; or (c) under exceptional circumstances, stay the enforcement proceedings.”



*geographical jurisdiction seizure is to take place, one or more of the items of property affected are located, or enforcement is to be carried out;*

*2. In order to obtain an interim measure, interim proceedings (kort geding) can also be brought before the judge hearing applications for interim relief (voorzieningsrechter) at the court with jurisdiction under paragraph (1). Without prejudice to his other powers, the judge hearing applications for interim relief can, if required, suspend the enforcement for a certain time or until judgment has been given in the dispute, or decide that the enforcement can go ahead or be continued only if a security is lodged. The judge can lift an attachment, with or without the provision of security. During enforcement the judge can order incomplete formalities to be rectified, stipulating which of the incomplete formalities must be carried out again and who is to bear the costs involved. The judge can order that any third party joined in the case must consent to the continuation of enforcement or cooperate with the procedure, with or without the provision of security by the party seeking enforcement;*

*3. If the case does not lend itself to interim proceedings, the judge hearing the application can, instead of dismissing the application and if the claimant so requests, refer the matter to the district court, specifying the date on which it must be heard. A defendant who fails to appear on that date and is not represented in court by his lawyer shall be declared to be in default if he was summoned to attend the proceedings on that date with due regard for the time limit prescribed for a summons or the time limit set by the interim relief judge at the claimant's request;*

*4. If an objection is made to the bailiff responsible for enforcement which calls for the adoption of an immediate interim measure, the bailiff may present himself to the interim relief judge with the report he has drawn up on the subject asking the judge to adopt an interim measure deciding between the parties involved. The interim relief judge shall stay the proceedings until the parties have been summoned unless, because of the nature of the objection, he considers that an immediate decision is required. A bailiff who exercises this power without the agreement of the party seeking enforcement may himself be ordered to pay costs if it transpires that his action was unfounded;*

*5. A third party can object to enforcement by serving a summons on both the party seeking enforcement and the party against whom enforcement is sought;*

*6. Opposition to execution by a third party shall be made by summons of both the executor and the executed."<sup>260</sup>*

In the Netherlands, the enforcement will be suspended if the debtor requests an ordinary remedy against an ESCP court decision through filing an opposition, appeal, or a cassation. The District Court is the competent authority to hear all the disputes concerning

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<sup>260</sup>It should be considered that paragraphs 3 and 5 are subject to the amendments towards more simplification and digitalisation of the civil procedural rules in the Netherlands.





enforcement procedures. These cases are handled in the interlocutory proceedings which may lead to suspension of the enforcement for a specific period or entirely lifting the attachment. This must be, however, noted that if the court decides that the judgement is null and void, the creditor will be held liable (under tort law) for all the damages caused by the execution process.<sup>261</sup>

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

There is not any official entity which assists the creditors to obtain specific legal information concerning the enforcement of the ESCP decisions in the Netherlands. However, the citizens can contact the Legal Service Counter<sup>262</sup> to seek some general information on the national rules on execution of judgements in this Member State.

Moreover, where ESCP claims concern consumers, the European Consumer Centre (ECC-Net) of the Netherlands can be also contacted to seek some general information on the national enforcement procedures.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

N/A

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

In the Netherlands, the existence of the Implementation Act of 2009 provides a useful framework for a more effective application of the ESCP under the national legal system. However, with respect to the execution of ESCP judgements, the existing regulatory measures need to be improved to ensure a more effective and simplified enforcement of court decisions for (foreign) creditors.

This study suggests the existing information on the published EU e-Justice Portal to be updated with more precise and detailed information on the national procedural rules and the steps to be taken by the creditors to execute an ESCP judgement in the Netherlands. It is also recommended that the Dutch judiciary website provides more detailed information (e.g., in the form of a simplified interactive roadmap) on national execution rules in the context of the ESCP proceedings.

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<sup>261</sup>Fernhout (n 246).

<sup>262</sup>See (n 244).



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Finally, this study particularly recommends that the creditors of the ESCP rulings can most benefit from a fully digitalised enforcement procedures to overcome the existing difficulties faced by the creditors in cross-border debt recovery.



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## Poland

Author(s): Maria Dymitruk

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In accordance with Article 505<sup>22</sup> § 1 Code of Civil Procedure<sup>263</sup>, the competent courts dealing with ESCP claims are common courts: district courts [*sądy rejonowe*] (that consider civil cases as courts of the first instance) and regional courts [*sądy okręgowe*] (that consider civil cases of greater complexity as courts of the first instance<sup>264</sup>, and second instance appeals against judgments of district courts as courts of the second instance). There is no specialisation nor centralisation in determining the court's competence. Every district and regional court in Poland deals with ESCP claims. The only acceptable language is Polish. If an interpreter or a translation are necessary, the party needs to cover their cost or – alternatively - request exemption from the cost of proceedings, which includes also the costs of translation. A party who has been exempt by the court from paying all or part of court costs may also move the court for an attorney-at-law to be appointed (Article 117 Code of Civil Procedure).

Pursuant to Article 505<sup>23</sup> Code of Civil Procedure, the European small claims cases shall be heard in camera. However, oral hearings may be scheduled in instances provided for in Regulation No. 861/2007 (Article 5.1). A number of possible oral hearings is not limited. In the ESCP cases judged by the Polish courts, there are no differences in the mode of the gathering of the evidence compared to the general rules of evidence established in the Code of Civil Procedure.

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<sup>263</sup> Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (tj. Dz.U. z 2021 r. poz. 1805 ze zm.); English: Act of 17 November 1964 – Code of Civil Procedure (unified text: Journal of Laws of 2021 item 1805, as amended).

<sup>264</sup> See Article 17 Code of Civil Procedure.



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As a rule, a fee is payable for any statement of claim lodged, including claims lodged in the ESCP. A fixed fee applies to the ESCP. According to Article 27b of the Act on Court Fees in Civil Cases<sup>265</sup>, the court fee on a claim in ESCP is 100 PLN (1 EUR = 4.71 PLN; 6 August 2022). The same fee is charged for appeals (Article 18 in conjunction with Article 27b of the Act).

The payment of a court fee can be made only in cash (at the court cashier's office) or in non-cash form into the current account of the court (by direct bank transfer). Polish courts will not act on a procedural document unless the fee due has been paid. In other words, the fee must be paid when a procedural document (statement of claim) is filed with the court of appropriate jurisdiction or an application for exemption from court costs must be filed.

In case of loss, the unsuccessful party typically is obliged to reimburse the opposing party, at its request, for any costs necessary to present its case (costs of proceedings include court fees and possible attorney-at-law representation costs). The amount of court fees is determined by the provisions of the Act on Court Fees in Civil Cases, and with regard to attorney-at-law representation costs by the provisions of the regulations issued by the Minister of Justice governing fees for activities of, respectively, two kinds of Polish attorneys-at-law: *adwokaci* and *radcowie prawni*. The amounts for both of these costs depend on the amount in dispute. However, in accordance with Article 16 Regulation No. 861/2007, the court shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.

Judgments issued in the ESCP can be appealed, but the appeal may be based only on the following allegations:

- 1) breach of substantive law involving misinterpretation or misapplication;
- 2) violation of the rules of procedure if it could have affected the outcome of the case.

No further allegations may be brought after the expiry of the time limit to file an appeal. Appeals are heard by a single judge.

If the court of the second instance decides that substantive law has been breached and the available evidence is insufficient to vary the judgment, the court shall set aside the appealed judgment and remand the case for reconsideration. The court of the second instance shall also dismiss an appeal if the appealed judgment, despite being in breach of substantive law or the rules of procedure or incorrectly reasoned, complies with the law. If the court of the second instance did not take evidence, a statement of reasons for the judgment should only contain a legal basis of the judgment and a reference to relevant provisions of law. When setting aside the appealed judgment, the court of the second

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<sup>265</sup> Ustawa z dnia 28 lipca 2005 r. o kosztach sądowych w sprawach cywilnych (tj. Dz.U. z 2022 r. poz. 1125); English: Act of 28 July 2005 – Act on Court Fees in Civil Cases (unified text: Journal of Laws of 2022 item 1125).



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instance shall refer the case for reconsideration without reference to the provisions governing specific types of procedure.<sup>266</sup>

The statement of claim initiating the ESCP is submitted on Form A. In Poland, the form may be submitted only in writing, i.e. printed, signed and sent by registered letter to the address of the Polish court or submitted directly to the court's registry office.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

The party seeking enforcement has to produce a copy of the judgment and a certificate issued by the court. Either party can request that the court issue a certificate concerning the judgment and the court issues it using Form D. The court that issued a judgment in the ESCP is entitled to issue, on the creditor's application, a certificate referred to in Regulation No. 861/2007 if the conditions laid down therein are met. The application is free of court fees. According to Article 795<sup>8</sup> § 2 Code of Civil Procedure, a relevant order may also be issued not only by a judge but also by a judicial clerk. An order to issue a certificate may be appealed.

The ESCP is based on the abolition of *exequatur*. In accordance with Article 1153<sup>14</sup> point 4 Code of Civil Procedure, judgments given by courts of European Union Member States in ESCP, accompanied by a certificate in accordance with Regulation No. 861/2007 in these states are one of the execution titles in the Republic of Poland. It means that it can be enforced without any further declaration of enforceability. In Poland, enforcement proceedings may be initiated and carried out solely based on an execution title (*tytuł wykonawczy*). Typically, an execution title is an enforcement title (*tytuł egzekucyjny*) appended with a writ of execution (*klauszula wykonalności*) by the court, unless the act stipulates otherwise (art. 776 Code of Civil Procedure). In case of ESCP – as an exception – there is no need for the writ of execution. It means that the creditor files an application directly with an enforcement agency to commence enforcement action. The relevant instruction on how to find the competent authorities for enforcement or how to submit Form D can be found here: [https://e-justice.europa.eu/354/EN/small\\_claims?POLAND&init=true&member=1](https://e-justice.europa.eu/354/EN/small_claims?POLAND&init=true&member=1)

## **3. Rules on service**

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<sup>266</sup> See Article 505<sup>27</sup> Code of Civil Procedure.



*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Judicial documents (documents sent by a court to the parties and other persons involved in court proceedings) need to be served formally by courts (on an *ex officio* basis). The serving authorities are the postal operator, bailiffs and the court serving agency. As a rule, documents are served by the postal operator. Typically, documents are sent by registered letter with acknowledgement of receipt. If addressees are natural persons, documents are served on them in person, i.e. handed to them, or, if they do not have legal capacity, to their legal representative. Documents intended for legal persons and organisations without legal personality are served on the body authorised to represent them in court or handed to employees authorised to receive documents by the head of the unit concerned. If a legal representative has been appointed or a person has been authorised to receive judicial documents, documents are served on these persons.

As a general rule, documents cannot be served on public holidays and at night time (the time between 9 p.m. and 7 a.m.). In accordance with Article 135 Code of Civil Procedure, documents shall be served at residence, workplace or at any other place where the addressee is to be found. Resultantly, the parties and their representatives are obliged to notify the court of any change of their respective places of residence. Failure to comply with the above requirement causes a document to be left in the case files and considered duly served unless a new address is known to the court. The court should advise the party of this requirement and the consequences of non-compliance upon the first service. Pursuant to Article 137 Code of Civil Procedure, documents addressed to soldiers, police officers and prison guards shall be served via their respective direct authorities; documents addressed to detainees shall be served via prison authorities.

Substituted service is also possible. According to Article 138 Code of Civil Procedure, if a person effecting the service cannot find the addressee at his home, he may leave the document with an adult member of the addressee's household or, if none is at home, with the building administrator or caretaker or head of the village, if they are not the addressee's opponents in the case and agree to hand the document over to the addressee. If a person effecting service cannot find the addressee at work, he may leave the document with a person authorised to receive the service.

If it is impossible to serve documents in the manner presented above, a document delivered via a postal operator should be left at the operator's post office or, if otherwise delivered, at the office of relevant local authorities, whereupon a notice of delivery should be left in the door of the addressee's home or in the addressee's mailbox stating where and when the document was left and advising that the document should be collected within seven days of the notification. The procedure shall be repeated if the document is not collected within the prescribed period. A document deposited at the post office of a postal operator may also be collected by a person authorised under a postal authorisation to collect mail within the meaning of the said Law.



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If the addressee refuses to receive the service, a document shall otherwise be considered duly served. In such case, the person who effected the service shall return the document to the court with a notice to the effect that the addressee refused to receive it. At the same time, documents addressed to legal persons, organisations, natural persons subject to registration under separate regulations, which cannot be served in accordance with the preceding articles due to the fact that a change of address or, with respect to natural persons, change of place of residence and address, has not been made known in the relevant register, shall be attached to the case files and considered duly served unless a new place of residence and address are known to the court.

Under Article 132 Code of Civil Procedure, attorneys-at-law are exempt from the principle of formal service of documents and may serve documents on one another directly with dated acknowledgement of receipt. A statement confirming the delivery or dispatch by registered letter of a copy of the pleading to the other party should be made in the pleading filed with the court. Pleadings that do not contain such statements shall be returned without prior request to rectify the defect.

It is important to underline that anti-COVID-19 regulation<sup>267</sup> has broadened the scope of electronic service between civil courts and attorneys-at-law. For the period of the state of epidemic threat or the state of epidemic announced because of COVID-19 and within one year from lifting the latter, the service of court documents in civil proceedings for attorneys-at-law is to be made by placing its content in the ICT system called "Information Portal" (electronic service). The service of the documents is limited to placing the content of the letter on the Information Portal, which is to enable the attorney to read it in an electronic form. The obligation to collect the document posted on the Information Portal applies **only** to professional attorneys. If a document is served electronically through the Information Portal, it is deemed to have been served on the date indicated in the electronic acknowledgement of receipt. In the absence of such an acknowledgement, service is deemed to have been effected 14 days after the document was entered in the system.

Article 143 Code of Civil Procedure allows establishing a guardian *ad litem* for service. Pursuant to this provision, if a statement of claim or another pleading which triggers the need to defend that person's interests is to be served on a party whose place of stay is unknown, service may only be effected on the guardian *ad litem* appointed at the request of the interested person by the adjudicating court until the party or his representative or attorney appears.

As a general rule, there are no direct fees for service of judicial documents, unless Article 132 Code of Civil Procedure is applicable or the document is served by the bailiff.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

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<sup>267</sup> In Poland, a large amount of legislation has been introduced in relation to the prevention and eradication of the 2019 novel coronavirus disease (COVID-19).





*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

Although there is a formal legal basis for electronic communication both by courts and by bailiffs (Polish: *komornik*) in civil proceedings (including enforcement proceedings)<sup>268</sup>, the relevant provision is not applicable in practice, as the creation of the ICT system that would allow for such electronic communication has not yet been completed. Simultaneously, the COVID-19 provisions introduced the electronic service of court documents via “Information Portal” in civil proceedings, but it does not apply to the enforcement proceedings. As a result, the general mean of communication in the enforcement proceedings is traditionally paper. The only specific digitalised process in the enforcement proceedings concerns the communication between bailiffs and administrative enforcement authorities and tax authorities. In that case, Article 759<sup>2</sup> Code of Civil Procedure provides that a bailiff shall only effect service on administrative enforcement authorities and tax authorities via the ICT system or using electronic means of communication, as specified in Article 63a § 2 of the Act of 17 June 1966 on Administrative Enforcement Proceedings<sup>269</sup>.

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The official language is Polish. Other languages are not accepted.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

Rules governing the collection and amount of fees in the enforcement procedure are laid down in the Act of 28 February 2018 on Debt Enforcement Proceedings Costs<sup>270</sup>. A bailiff charges enforcement fees for enforcing the judgment and performing other actions specified in the Act. Enforcement action is initiated by an application lodged by the creditor with an enforceable title attached to it. The application should name the debtor and define the manner in which enforcement is carried out.

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<sup>268</sup> See Article 131<sup>1</sup> Code of Civil Procedure (§ 1. The court shall serve documents via the ICT system (electronic service) if the addressee has filed a pleading via the ICT system or has elected to file pleadings via the ICT system).

<sup>269</sup> Ustawa z dnia 17 czerwca 1966 r. o postępowaniu egzekucyjnym w administracji (tj. Dz.U. z 2022 r. poz. 479 ze zm.); English: Act of 17 June 1966 on Administrative Enforcement Proceedings (unified text: Journal of Laws of 2022 item 479, as amended).

<sup>270</sup> Ustawa z dnia 28 lutego 2018 r. o kosztach komorniczych (tj. Dz.U. z 2021 r. poz. 210 ze zm.); English: Act of 28 February 2018 on Debt Enforcement Proceedings Costs (unified text: Journal of Laws of 2021 item 210, as amended).



As a general rule, in matters involving enforcement of pecuniary claims, the bailiff charges the debtor a proportional fee equivalent to 10% of the enforced claim<sup>271</sup>. In matters involving enforcement of pecuniary claims resulting from the discontinuance of enforcement proceedings at the request of the creditor and on the basis of Article 824(1)(4) Code of Civil Procedure, the bailiff charges the debtor a proportional fee equivalent to 5% of the value of the outstanding claim<sup>272</sup>.

The payment of a fee in the enforcement procedure can be made only in cash (in the bailiff's office) or in non-cash form into the current account of the bailiff (by direct bank transfer).

The burden of making the advance payment rests with the applicant, usually the creditor. Before taking actions that involve certain expenses, the bailiff calls on the creditor to pay them. If the advance payment is not enough to cover the entire costs of the activities, which may turn out during their performance, the bailiff will cover the difference and then download the missing part to the debtor or creditor. The bailiff is obliged to return the unused amount of the advance. Failure to pay the requested advance payment within the prescribed period results in the refusal to act by the bailiff.

In the end, the costs of bailiff enforcement are generally borne by the debtor. Pursuant to the provision of Art. 770 Code of Civil Procedure, the debtor reimburses the creditor for the costs necessary for the deliberate enforcement. These costs are collected along with the enforced benefit. Their amount is determined by the bailiff upon completion of the enforcement proceedings. The costs, at the request of the creditor, may also include the costs of representing a lawyer or attorney-at-law.

Previously, however, as described above, the creditor must cover some of the costs in the form of advance payments. However, in the event that the debtor is insolvent, the creditor must take into account that the advances made will not be recovered.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

As already explained in point 2, in accordance with Article 1153<sup>14</sup> point 4 Code of Civil Procedure, judgments given by courts of European Union Member States in ESCP, accompanied by a certificate in accordance with Regulation No. 861/2007 in these states are one of the execution titles in the Republic of Poland. It means that these judgments can be enforced without any further declaration of enforceability. The provision says only about judgments, but not about court settlements. At the same time, Article 23a of the Regulation indicates that a court settlement shall be recognised and enforced under the

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<sup>271</sup> See Article 27(1) of the Act on Debt Enforcement Proceedings Costs.

<sup>272</sup> See Article 29(1) of the Act on Debt Enforcement Proceedings Costs.



same conditions as a judgment given in the European Small Claims Procedure. It means that in the case of court settlements there is no need for the writ of execution, too. It means that the creditor files an application based on the court settlement approved by or concluded before a court or tribunal in the course of ESCP directly with a Polish bailiff to commence an enforcement action, as long as the court settlement is enforceable in the Member State in which the procedure was conducted.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Pursuant to Article 505<sup>27a</sup> Code of Civil Procedure, if it is discovered that Regulation 861/2007 provides the grounds for a judgment to be set aside, the court that issued the judgment shall set aside the same at the defendant's request. The request shall meet the requirements for pleadings and shall state the facts in support of the setting aside of the judgment. In this case, competent courts are district courts and regional courts (Article 505<sup>22</sup> § 1 Code of Civil Procedure).

The court may hear the request in camera. Before setting aside the judgment, the court shall hear the claimant or order the same to submit a written statement.

A court decision setting aside the judgment may be appealed.

In addition, the objective set out in Article 18 of the Regulation is filled by a reinstatement (Article 168 Code of Civil Procedure)<sup>273</sup>. In accordance with this provision, if a party fails to perform a procedural action within the prescribed time limit through no fault on his part, the court shall, on that party's motion, decide to reinstate the time limit concerned. The time limit may not be reinstated if failure to observe the same does not cause the party to incur any adverse procedural consequences. Pursuant to Article 169 Code of Civil Procedure, a motion for reinstatement of the time limit shall be filed with the court in which the action concerned was to be performed within one week after the cause for failure to observe the time limit ceases to exist. The party moving for the time limit to be reinstated should state the circumstances in support of the motion. The procedural action should be performed concurrently with the filing of the motion. After one year from its expiry, the time limit may only be reinstated in exceptional cases. An order to reinstate the time limit may be issued in camera.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

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<sup>273</sup> See the explanatory memorandum to the amendment of the Code of Civil Procedure (<https://orka.sejm.gov.pl/Druki6ka.nsf/wgdruku/949>, visited 14 August 2022), p. 60.



There are no specific rules on legal aid concerning ESCP enforcement procedures. However, – according to doctrine<sup>274</sup> – it is possible to request for an attorney-in-law *ex officio* in enforcement proceedings (Article 117 § 2 in conjunction with Article 13 § 2 Code of Civil Procedure). She or he provides legal aid under ESCP enforcement proceedings.

Pursuant to Article 117 § 1 Code of Civil Procedure, a party who has been exempt by the court from paying all or part of court costs may move the court for an advocate or an attorney-at-law to be appointed. In accordance with Article 13 § 2 Code of Civil Procedure, except as otherwise provided by specific regulations, provisions concerning contentious proceedings apply *mutatis mutandis* to other types of proceedings governed by this Code. At the same time, exemption from court costs awarded to a party by the court in proceedings to examine the case or to which a party is entitled in accordance with applicable law also extends to enforcement proceedings<sup>275</sup>.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

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## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

- Further harmonisation of the procedural provisions in ESCP
- More detailed information on national rules on the European e-Justice Portal
- Ensuring the up-to-date status of information on national rules on the European e-Justice Portal

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<sup>274</sup> Kunicki, *Commentary to Article 771 Code of Civil Procedure*, point 5 [in:] *Kodeks postępowania cywilnego. Tom IV. Komentarz. Art. 730–1095<sup>4</sup>*, ed. Andrzej Marciniak, Publishing House: C. H. Beck, Warsaw 2020.

<sup>275</sup> Article 771 Code of Civil Procedure.



I.

## Portugal

Author(s): Fernanda Magalhães

**1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State**

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The ESCP is based on the Regulation (EC) No 861/2007 of the European Parliament and of the Council, of 11 July 2007, as amended by Regulation (EU) No 2015/2421, established a European Small Claims Procedure in cross-border litigation (hereinafter ESCP Regulation). However, according to Article 19 of the ESCP Regulation, in all matters not specifically provided for the Regulation, national procedural law shall be applied. Therefore, in Portugal, in cases not provided in the Regulation, the Civil Procedure Code (*Código de Processo Civil – CPC*)<sup>276</sup>, Law No 41/2013, of 26 June is applicable.

In Portugal, the courts with jurisdiction to hear small claims are the first instance courts (district courts). The territorial jurisdiction is determined by the provisions of Regulation (EU) No. 1215/2012, of 12 December, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which establishes that the consumer may purpose a lawsuit against the other party of the contract either in the courts of the Member State where he is domiciled or in the Member State where the other party is domiciled. Thus, if the lawsuit is filed by a claimant in Portugal, it may be started in the district court of his residence; on the other hand, if the claimant is litigating in another Member State, the courts designated by that Member State will have jurisdiction, considering the domicile of the other party. In addition, the other party may bring the action only in the court in which the consumer is domiciled.

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<sup>276</sup> Código de Processo Civil <https://dre.pt/dre/legislacao-consolidada/lei/2013-34580575>



Regarding the gathering of the evidence to assist the court's decision, it may be admitted: i. by written testimony of witnesses, experts, or parties; ii. the production of evidence by videoconference or by other digital means may also be admitted. Nevertheless, the court may only admit the gathering of expert evidence or oral testimony if it is indispensable to the decision and, if it decides to do so, the court shall consider the respective expenses. The court should choose the simplest and most practical means.

The courts fee and payment methods will be described in point 6 of this report. In summary, this issue is regulated by the Procedural Costs Regulation (*Regulamento das Custas Processuais – RCP*)<sup>277</sup>, approved by Decree-Law No 34/2008, of 26 February, in its current wording, following the general rules of Article 6 of the RCP. The method of payment declared by Portugal is the bank transfer, according to the Circular letter (*Ofício-Circular*) No 1/2018 IGFEJ/DGAJ<sup>278</sup>, referring to payments that cannot be deposited through the Single Collection Document (*Documento Único de Cobrança – DUC*)<sup>279</sup>.

The costs of the prevailing party shall be paid by the losing party. In this way, the winning party can obtain full or partial reimbursement of the following expenses: court fees paid; costs incurred by the party for the production of evidence when it was not the party that requested such evidence or it is of no use to it; fees paid to and expenses incurred by the enforcement agent (for example when summons on the defendant is made by the enforcement agent); fees and expenses incurred by the attorney. The amounts to be refunded must be indicated in a justification note. This note shall be sent by the party entitled to reimbursement, to the Court, to the unsuccessful party and to the enforcement agent, when the latter has intervened, within five days after the decision has become final.

As provided in the Article 10 of the ESCP Regulation, it is not necessary the representation by a lawyer or another legal professional, but the parties may choose to be represented by one if they so wish.

The decision given by a Portuguese court cannot be appealed, except if it is "against" a case law of the Supreme Court of Justice or if it is subject to an extraordinary review appeal. This means that, except for the situations provided in the Articles 629 (2) and 696 of CPC, appeals are not admissible. Regarding the revision of the decision, provided for in Article 18 of the Regulation ESCP, the request must be filed in the court that issued the decision to be revised, properly grounded.

In terms of accepted languages for the proceedings (Article 21a, RSCP Regulation), Portugal has stated that it accepts, besides Portuguese, English, French and Spanish.

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<sup>277</sup> *Regulamento das Custas Processuais* <https://dre.pt/dre/legislacao-consolidada/decreto-lei/2008-34454975>

<sup>278</sup> *Ofício-Circular No 1/2018 IGFEJ/DGAJ* [https://dgaj.justica.gov.pt/Portals/26/10-OF%C3%8DCIOS-CIRCULA ES/Of%C3%ADcio%20CircularConjunto\\_01-2018.pdf?ver=2018-12-05-150941-380](https://dgaj.justica.gov.pt/Portals/26/10-OF%C3%8DCIOS-CIRCULA%20ES/Of%C3%ADcio%20CircularConjunto_01-2018.pdf?ver=2018-12-05-150941-380)

<sup>279</sup> *Documento Único de Cobrança* <https://justica.gov.pt/Servicos/Custas-processuais/DUC-Documento-Unico-de-Cobranca>



## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Regarding enforcement, the enforcement courts must have jurisdiction. If there is no enforcement court, the local civil courts and the courts of general jurisdiction are competent.

The party applying for enforcement does not need to submit a declaration of enforceability as there is an automatic recognition and enforceability automatically granted to the decision. Therefore, a copy of the decision and a certificate issued by the court must be presented (Form D).

In the enforcement of a decision is given by Portuguese courts, the enforcement application is filed in the proceedings where the decision was given (Article 85 (1) of the CPC). Then the enforcement request, the supporting documents and the copy of the decision are urgently sent to the competent enforcement court, if there is one (Article 85 (2) of the CPC).

According to Article 90 of the *Código de Processo Civil*, jurisdiction for enforcement based on judgments given in other Member States is determined in accordance with Article 86 of the CPC. In consequence, jurisdiction for enforcement lies in the court of the defendant's domicile.

Although it is not a step provided in the ESCP Regulation, the prevailing party, before initiating court enforcement proceedings, and if it so wishes, may request the defendant, by registered letter with acknowledgement of receipt, to comply with the judgment given by the court, attaching a copy of the judgment and Form D, to try to obtain voluntary payment.

If the defendant does not comply voluntarily with the judgment, the creditor may take steps to have the judgment enforced. The enforcement procedures are based on the rules of the Member State of enforcement, therefore, in Portugal, the authorities competent for enforcement are the courts and enforcement agents. The actual enforcement takes place through a judicial enforcement procedure, in which the Courts are the competent authorities and are assisted by enforcement agents.

In this case, the applicant for enforcement must produce a copy of form D, translated by a qualified translator into one of the languages accepted in the Member State of enforcement and a copy of the court decision which satisfies the conditions necessary to establish its authenticity.





The forms of the enforcement petition are defined by Ordinance No 282/2013<sup>280</sup>, of 29 August 2013, which regulates various aspects of civil enforcement actions. The executive application filed by a representative must be submitted electronically, through submission of the Electronic Form for Executive Application contained on the platform CITIUS<sup>281</sup>, as provided in Article 2 of Ordinance 282/2013. In cases where the party is not represented by a legal professional, or if there is a fair impediment to the practice of the act under Article 2, the request can be made through physical support, as provided in Article 3 of the Ordinance. The execution forms, intended for the use of these enforcers, that is, without the support of a lawyer, trainee lawyer or solicitor, are available on the CITIUS website<sup>282</sup>.

In Portugal, the enforcement agent must be designated by the creditor. If the latter does not do so, the court registry will designate an enforcement agent automatically and randomly from an official list. In exceptional cases, as provided by law, the tasks of an enforcement agent may be performed by a bailiff.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The European Small Claims Procedure is conducted using 4 standard forms (A, B, C and D) which are available in all the languages of the Member States in which the regulation applies, through the European E-Justice<sup>283</sup> or, in the case of Portugal, also available on the CITIUS<sup>284</sup> system. The proceedings are mainly written, and the court may hold a hearing if it considers it necessary or if one of the parties so requests.

In Portugal, the proceedings are started by filing form A and presenting it to the competent court together with proof of payment. If payment has not been made, the party will be notified to submit proof of payment. Once the proof of payment has been received, or if there is no response to the notifications, within the time limit set, the registry will analyze whether the form has all the compulsory data filled in and will open a conclusion with information, if necessary.

When an attorney is established, notifications are preferably made electronically, through the CITIUS platform. In this case, the representative must be correctly registered with the entity responsible for managing access to the computer system. According to article 248 (1) of the CPC, notification is presumed to have been made on the third day after it is sent, or on the first working day thereafter, when it is not. If the system cannot be used due to

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<sup>280</sup> Ordinance No 282/2013 <https://dre.pt/dre/detalhe/portaria/282-2013-499505>

<sup>281</sup> <https://citius.tribunaisnet.mj.pt/habilus/myhabilus/Login.aspx>

<sup>282</sup> <https://www.citius.mj.pt/portal/article.aspx?ArticleId=115>

<sup>283</sup> European E-justice [https://e-justice.europa.eu/dynform\\_intro\\_form\\_action.do?plang=en&idTaxonomy=177](https://e-justice.europa.eu/dynform_intro_form_action.do?plang=en&idTaxonomy=177)

<sup>284</sup> <https://www.citius.mj.pt/portal/article.aspx?ArticleId=174>



a fair impediment, in accordance with Article 140 of the CPC, notification is only deemed to have been served when the fair impediment is overcome.

If an attorney has not been determined, notifications will be made by registered letter addressed to the residence or registered office of the party, or to the domicile chosen to receive the notifications. In this case, service is considered to have been made on the day on which the acknowledgement of receipt is signed, in accordance with Article 230 of the CPC.

Regarding the costs of the proceedings, in Portugal, the court fees in force in the courts of first instance are charged for the filing of the action based on the CPC, based on Table I attached to the referred Regulation, the costs being paid by the losing party. The amounts and further details will be explained in point 6.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

In Portugal, notifications may be made by registered post, fax and electronic data transmission.

As already mentioned, when the parties have designated a judicial representative, electronic communication is made through the software system to support the activity of the courts, at the CITIUS website. For this purpose, the party's legal representative must previously request registration with the entity responsible for managing accesses to the computer system (article 132, Nos. 1 and 3, articles 247 and 248, all from the Portuguese Civil Procedure Code, and articles 3, 5, 25 and 26, all of Ordinance no. 280/2013, of 26 August).

In case the party has not constituted a legal representative, as provided in Article 249 (1) of the *Código do Processo Civil*, the communication is made by registered letter addressed to the residence or head office of the party, or to the address chosen to receive the notifications.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

In terms of the language regime, Regulation (EC) 861/2007, according to Articles 21 (2) (b), 21a and 25 (1) (i), provides that each Member State is free to indicate the official language and (or) other languages it is willing to accept.



In this context, Portugal has indicated that it accepts, in addition to Portuguese, English, French and Spanish as languages for the certificate of judgment to be accepted and enforceable.

In Portugal, the competent court may request a translation only in cases where a translation is needed to the judgment. However, it is provided that the parties may refuse to receive a document if it is not in the language of the Member State to which it was sent, or in a language which the addressee understands. In this case, the Portuguese court will demand the counterparty to translate the document in question.

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The Portuguese Regulation on court fees (*Regulamento das Custas Processuais*) does not include specific provisions on applications within the meaning of the ESCP Regulation, which establishes a European Small Claims Procedure. Therefore, the court fees applied are the same as in ordinary national proceedings, following the general rules of Article 6 of the RCP.

In the event of a counterclaim, as in ordinary proceedings, the value of the two claims will be added together for the calculation of the fee, as per Article 19 of the Regulation, Article 11 of the RCP, and Article 145 (5), Article 530 (2), Article 299 (1) and (2) and Article 297 (2) of the CPC.

Thus, the RCP Table I-A is applied. Finally, in cases which reveal special complexity, the judge may decide to apply the values defined in Table I-C of the RCP, illustrated below:

**TABLE** <sup>285</sup>  
(related to Articles 6, 7, 11, 12 and 13 of the *Regulamento das Custas Processuais*)

Value of the legal claim (EUR)		Court fee (UC <sup>286</sup> ) (1)		
		A	B	C
1	Up to 2.000	Artigo 6 (1), RCP	Artigo 6 (2), 7 (2), 12 (1), e 13 (6), all from RCP	Artigo 6 (4), e 13 (3), both from RCP
		1	0,5	1,5

<sup>285</sup> RCP Table I (adapted) [https://www.igf.gov.pt/leggeraldocs/DL\\_034\\_2008\\_RCP.htm](https://www.igf.gov.pt/leggeraldocs/DL_034_2008_RCP.htm)

<sup>286</sup> At the date of this document, the value of 1 Unit of Account (UC) to consider is EUR 102.



2	From 2 000,01 a 8 000	2	1	3
3	From 8 000,01 a 16 000	3	1,5	4,5

If, pursuant to Article 17 (1) (a) of Regulation (EC) No 1896/2006, in the European order for payment procedure the defendant enters a statement of opposition and the proceedings continue, the amount paid in that procedure is, for the claimant, deducted from the amount of the court fees payable in the European Small Claims Procedure. In that case, the discount may be either EUR 102 (1 unit of account) or EUR 153 (1.5 units of account), according to Article 7 (6) of the RCP.

The claimant should also consider translation costs (if necessary) as well as the fees necessary to enforce the judgment if the defendant does not comply with it voluntarily.

In Portugal, the only payment option is bank transfer, as informed by Portugal to the European Commission (Article 15a (2) and Article 25 (1) (f) of the ESCP Regulation).

**7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

In the context of a small claims procedure, the judge may try to get an agreement between the parties and pronounce his decision, which is enforceable despite any appeals and must be respected by both parties. In such a case, it is not necessary to provide a guarantee.

Either party may request a certificate concerning the judgment given, which is issued by the court using form D, with no additional cost, and may be issued in another official language of the European Union. The form available on the European E-Justice portal must be used by the secretariat.

Form D must be submitted in one of the languages of the Member State bound by the Regulation ESCP, considering Portuguese as the official language of Portugal, although English, French and Spanish are also admitted.

The enforcer is not required to have an authorized representative or a postal address in the Member State of enforcement, except for the address of an agent competent for the enforcement proceedings. This independence is confirmed by the idea that the Member State of enforcement may not require any security, guarantee, or deposit because the creditor is a foreign national or is not domiciled in its territory, which should not be confused with the regime derived from Article 23(b) of the Regulation. In this way, the enforcement procedure will follow the procedures defined for that purpose in the national territory.



In domestic law, the enforcement procedure is provided for in Articles 550 and 551 (Forms of Procedure – Enforcement Procedure), 703 to 877 (Enforcement Procedure), all from the CPC.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

As previously mentioned, enforcement takes place through a judicial process, in which the Courts are the competent authorities and are supported by enforcement agents, with a distribution of competences. An application for enforcement proceedings to be filed must be made with the delivery of the enforcement application to the Court.

In Portugal, the authorities with jurisdiction in enforcement and the power to suspend or limit enforcement are the courts of the place where the case was heard or, in the case of a judgment given in other Member States, the district court of the residence of the defendant (the debtor), according to the information provided, in compliance with Article 25(1) (e) of the Regulation.

The review is established to guarantee the defendant the right to react when adversarial proceedings have not been held. The application for revision (Article 18, Regulation ESCP) of the decision is filed in the court that issued the decision to be revised (Article 697, No. 1, CPC) and the applicant must allege the facts constituting the basis of the application for revision (Article 696, CPC). The application for revision can be made: if the application form was not served on him or, in the case of a hearing, was not served on him in sufficient time and in such a way as to prepare his defense; if he was unable to contest the application for reasons of force majeure or due to extraordinary circumstances, without such fact being attributable to him, except if, although he had the opportunity to contest the decision, he did not do so. To file the application for revision, the applicant shall submit a certificate of the decision or the document on which the application is based (Article 698, CPC). If the revision of the decision is admitted, the deadline for requesting it is 30 days after the knowledge or the first effective attachment measure.

In terms of the appeal to the decision, the Portuguese procedural law must be applied and followed, in case of being admitted (article 17 of the ESCP Regulation, article 629 of the CPC and article 44 of the CPC). In general, if the value of the action does not exceed EUR 5,000.00, no appeal is admissible, except in the situations established in Article 629 (2) or 696 of the CPC. In Portugal, the competent courts to decide on the appeal are the Courts of Appeal in the situations provided for in Article 629 (2) of the Portuguese Code of Civil Procedure, and the courts which issued the decision to be reviewed indicated in paragraph a) in the situations provided for in Article 696 of the Portuguese Code of Civil Procedure. In cases where an appeal is admissible, the national procedural law applies (Articles 17 and 19 of the ESCP Regulation), and it is compulsory to designate a lawyer only at the appeal



stage, as provided in Article 40 (1) (c) of the CPC, even if it is not compulsory at the previous stage.

Regarding the principle of effectiveness, if such rules apply to domestic actions for a value of less than EUR 5,000, the same may be done for small claims, not representing a violation of the effective judicial protection of rights conferred by the European legal order and without the test of effectiveness showing that national procedural rules impede the exercise of rights arising from the European Union.

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

In Portugal, the competent body to provide practical assistance is the DGAJ – *Direção-Geral da Administração da Justiça*<sup>287</sup>. Any clarification regarding the filling in of the forms or jurisdiction can be obtained by the applicant from the court of his domicile.

The Regulation is quite clear stating that a lawyer is not mandatory, with the intention of reducing the costs of cross-border litigation. In this sense, a legally substantiated claim cannot be required from the parties. As it is a simple form, which only wants the plaintiff to describe what happened, the time and place, it is up to the judicial authorities to assist in the questions of filling out the form, warning of deadlines and consequences of the process. Furthermore, it is up to the officials of the competent courts to clarify certain procedural aspects arising from the national application.

Accordingly, the absence of an obligation to designate a representative to bring a small claims action, an online guide is also available on the European E-Justice portal<sup>288</sup>. If the party considers it necessary to establish a legal representative, the Portuguese justice portal has a guide<sup>289</sup> indicating who can request a professional and how the procedure works.

## 10. Other specific procedural rules on enforcement of ESCP judgments

*(if applicable)*

Not applicable.

## 11. Critical assessment of the ESCP judgments enforcement procedures

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

Firstly, in fact, the intention of reducing costs by not requiring the constitution of a lawyer and being a theoretically quick and simplified process, since it is based on the use of forms

<sup>287</sup> DGAJ - *Direção-Geral da Administração da Justiça* <http://www.dgai.mj.pt/DGAJ/sections/home>

<sup>288</sup> [https://e-justice.europa.eu/content\\_small\\_claims-42-pt.do](https://e-justice.europa.eu/content_small_claims-42-pt.do)

<sup>289</sup> Guide “How can I ask for legal assistance?” <https://justica.gov.pt/Guias/como-pedir-apoio-judiciario>



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and has short deadlines for the resolution of the dispute, can be seen as advantageous. However, we must not forget that not being mandatory to constitute a lawyer is not the same as not needing one, since filling in the forms may not be a simple task for everyone, and any mistake may lead to the rejection of the claim.

Another important question related to small claims is the level of dissemination and interest in using the procedure or whether, if applied, interpretative doubts are not brought to the Court of Justice. Some information on the topic is found on the CITIUS portal and on the website of the Directorate-General of the Administration of Justice, but all the Guides, with the most detailed information, are obtained through the European E-justice portal, in a not so easy and not always intuitive manner. We know that interest is an aspect that depends on the citizens themselves, somewhat beyond the control of the State, but they should be motivated to use the procedure. Therefore, necessary steps should be taken in this sense, in order to attract the use of this procedure.

Equally relevant to mention is the problem of the lack of expertise and knowledge about the internal instruments of each Member State, in addition to the difficulty in understanding the language and technical specificities of the legal terminology in these languages. Therefore, due to the presence of some undetermined concepts in the ESCP Regulation, which require interpretation by the Court of Justice, instead of reinforcing protection in situations in which the Regulation may be applied, there may be, on the contrary, a feeling of unprotection on the part of citizens who wish to bring this action.

Considering Portuguese Law, we can add that there are few situations in which recourse is possible, i.e., the situations of Articles 629 (2) and 696, both of the CPC. In the national database (Court of Justice) no record was found with small claims as the main subject of the decision. Since appeals are exceptional situations, this may be the reason why the databases available in Portugal do not have small claims as the main subject of the decision in higher courts. That is, it is not that the ESCP Regulation is not being used, but it is just that these matters do not reach appeal and therefore are not known.

All these reasons contribute to a lower-than-expected use of the procedure, but technology could be used to circumvent these situations, for example, with the creation of an online platform to better manage these small amount procedures and to disseminate information in a more simplified way.





## Romania

Author: Sorin Mierlea

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

In Romania, the legal provisions on the conduct of a judicial process are contained exclusively in Codul de procedură civilă (the Code of Civil Procedure 2010), as amended and supplemented. The Code of Civil Procedure regulates the general framework for the course of a legal claim (rules for filing a claim, determining the competent court, taking evidence, appeals, representation).

The competent court to settle a dispute is determined according to three criteria:

- a. according to the subject matter;
- b. according to the value of the subject matter of the dispute, in which case:
  - (i) if the value of the subject matter of the dispute is less than 200.000 lei inclusive, the competence to judge the dispute lies with the Court, according to Article 94 (1) (k).
  - (ii) if the value of the subject-matter of the dispute is more than 200.000 lei, the Tribunal shall have jurisdiction.
- c. according to the domicile or seat of the defendant.

As regards evidence, the plaintiff has the burden of proving his claims.

If documents in the possession of the defendant are necessary for the resolution of the dispute, the court may require him to produce them. If the defendant does not comply with the court's request, then the defendant may be ordered to pay a fine and/or the



plaintiff's claims may be deemed to be proved by the defendant's refusal to produce the requested documents.

The following evidence may be taken to resolve the dispute: documents, witnesses (only under certain conditions), cross-examination, expert evidence and material evidence.

The following costs may be incurred in bringing an action:

- a. Court stamp duty;
- b. Lawyers' fees;
- c. Fees of experts, interpreters and other specialists;
- d. Other costs which may be incurred in the proceedings.

All the above costs shall be borne by the unsuccessful party, but only at the express request of the successful party.

However, the court may reduce the lawyer's fees for reasons where they are manifestly disproportionate to the value or complexity of the case or to the work carried out by the lawyer, in accordance with Article 451 (2) of the Code of civil procedure 2010.

The trial shall be conducted in Romanian. For persons who do not speak Romanian, Article 18 of the Code of Civil Procedure 2010 provides that an authorised translator must be employed. All applications and pleadings must be drawn up in Romanian.

The parties may be represented throughout the proceedings by lawyers.

The Code of Civil Procedure recognises the principle of double jurisdiction. For this reason, the party dissatisfied with the decision of the Court of First Instance or the Tribunal may appeal against that decision. If the conditions expressly and restrictively laid down in the Code of Civil Procedure are met, the parties may also lodge an appeal, a revision or an appeal for annulment, which are extraordinary remedies.

The following special rules apply to the ESCP:

- The competent court is always the Court, since the ESCP can only be lodged for claims up to a maximum of EUR 2 000 (RON 9866.36 at the BNR rate on 25 July). The stamp duty is 50 lei if the value in euro does not exceed the equivalent of 2,000 lei, or 200 lei if the value in euro of the claim exceeds the equivalent of 2,000 lei;
- The judgment delivered by the Court of First Instance is enforceable and may be appealed within 30 days;
- The other rules concerning the taking of evidence, legal representation, court costs, language of the proceedings also apply to the ESCP procedure.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**



*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

According to Romanian law, the Civil Procedure Code 2010, the enforcement of an ESCP judgment can only be carried out by the bailiff and the enforcement procedure has the following main rules and stages:

- The person who wishes to enforce the ESCP judgment shall refer the matter to the competent bailiff;
- The bailiff is obliged to register the request for enforcement;
- Once the request for enforcement has been registered, the bailiff shall refer the matter to the enforcement court for a decision granting enforcement;
- After the communication of the decision granting enforcement, the bailiff shall proceed to enforce the judgment of the ESCP by seizing money from the debtor's accounts, by tracing the movable and immovable property of the debtor or of third parties liable, under the law, for the debtors, as well as by other means permitted by law.

Form D obtained by the creditor is submitted to the bailiff together with the request for enforcement. Form D, if written in a language other than Romanian, must be translated into Romanian by an authorised translator.

In addition to form D, the request for enforcement must also include: a copy of the ESCP judgment, also translated by an authorised translator, and proof of payment of the stamp duty of 20 lei for each judgment to be enforced.

The enforcement procedure is governed by the Code of Civil Procedure 2010, from art. 622 to art. 914.

### **3. Rules on service**

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

In the judicial process, documents addressed to the court or sent by the court can be communicated in the following ways:

- Through the Romanian Post;
- Via courier services;
- By electronic mail, if requested by the parties;
- By fax;
- The parties may also file the documents in person at the court registry.



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For the communication of documents by the parties through the Romanian post and courier services, specific delivery charges are payable.

In Romania, the most used means of communication is still the mail, but the use of electronic mail and digital systems provided by the courts is widespread.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

The judicial process in Romania as a whole has undergone numerous reforms in the area of digitalisation, increasing the use of electronic mail and digital systems provided by the courts or other public authorities. Implicitly, the ESCP procedure is also subject to these reforms.

Thus, the parties may communicate all documents to the court in electronic format, provided that the parties have a qualified electronic signature.

The parties may also receive any documents, including the judgment, from the court by e-mail, provided that the parties provide the court with an e-mail address and agree that the documents and the judgment may be communicated by e-mail.

Digital systems have been implemented at the level of the Courts of Appeal and the High Court of Cassation and Justice, allowing electronic access to court files, and for some courts there is the possibility to submit applications via the electronic file.

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

According to Article 18 of the Code of Civil Procedure, the language of the civil proceedings is Romanian and all applications and procedural documents are drawn up in Romanian. Foreign citizens and stateless persons who do not understand or do not speak Romanian have the right to take cognizance of all the documents and papers of the case, to speak in court and to submit conclusions, through an authorized translator.

The above rules apply including ESCP and Form D.

Therefore, in order to enforce in Romania an ESCP judgment delivered in another EU Member State, both the judgment and the Form D must be translated into Romanian by an authorised translator.



## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

The enforcement of the ESCP judgment in Romania involves the following costs:

- Stamp duty of 20 lei for the declaration of enforceability;
- Bailiff's fee;
- Lawyer's fee, if applicable;
- Other expenditure relating to the communication of documents.

The enforcement costs will be paid by the party seeking enforcement and will be recovered in the enforcement proceedings.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Similar to Article 12(3) of Regulation 861/2007, the Code of Civil Procedure 2010 at Article 428 (1) and Codul civil (the Civil Code 2009) at Article 2267 (1) allow the parties to conclude a settlement during the trial, including during an ESCP.

The settlement concluded before the court will be enforced under the same conditions as the judgment. Therefore, the rules on enforcement of the judgment of the ESCP as discussed in the paragraphs above apply for the enforcement of the settlement concluded before the court.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Suspension or limitation of enforcement of the judgment given in the ESCP may be ordered on the grounds set out in Regulation (EC) No 861/2007.

The suspension or restriction of enforcement is ordered by the enforcement court.

On the suspension of enforcement, in accordance with Article 701 and Article 719 of the Code of Civil Procedure 2010:

- It can be requested by the debtor through a challenge to enforcement or through a separate application;
- It can also be ordered at the creditor's request by the bailiff;



- In addition to the cases provided for in Regulation 861/2007, a stay of enforcement may also be ordered for the following reasons: a court judgment has declared the document (ESCP judgment) to be enforced to be false and the debtor proves by authentic instrument that he has obtained from the creditor a deferment or, as the case may be, a time limit for payment. For these grounds of stay of enforcement, no security is payable.

Restriction of enforcement is provided for in Article 702 of the Code of Civil Procedure 2010 and is ordered if the creditor is pursuing, at the same time, several movable or immovable assets whose value is clearly excessive in relation to the claim to be satisfied. In this case, the enforcement court may, only at the request of the debtor and with the creditor's summons, restrict enforcement to specific assets.

If the debtor's application for a restraint of execution is granted only in respect of certain assets, the court will suspend the execution of the other assets.

#### **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

This guidance is not free, it is a service provided by attorneys with some fees.

#### **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

#### **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

Our recommendation would be to increase the amount of the claim up to the equivalent in euro of 50,000 lei.

Another recommendation is to establish a formal translation system to be used by the parties and the court in these proceedings. The use of the ESCP, which has to be conducted in the official language of the country of the competent court when the claimant does not know the official language of that country, is a hindrance to the parties' motivation to choose this procedure and to the smooth running of the proceedings.



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## Slovak Republic

Author(s): Mgr. Marek Ivančo, PhD.

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

ESCP regulation has never really been specifically implemented in the civil procedure laws in the Slovak Republic. The previously effective Code of Civil Procedure (Občiansky súdny poriadok/Code of Civil Procedure)<sup>290</sup>, which was in force and effect until July 1, 2016, regulated only in one section (§ 200ea) the so-called “small claims procedure”.<sup>291</sup>

However, the new Code of Civil Contentious Litigation (Civilný sporový poriadok/Code of Civil Contentious Litigation, hereinafter: CCCL)<sup>292</sup>, effective from July 1, 2016, replaced the previous Code of Civil Procedure. The CCCL, unlike the Code of Civil Procedure, does not *expressis verbis* regulate the small claims procedure (or the European small claims

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<sup>290</sup> Official gazette the Act No. 99/1963 Coll. Code of Civil Procedure as amended.

<sup>291</sup> Pursuant to that section:

(1) If, during the course of the proceedings, the subject of the proceedings reaches the amount of 1.000 euros, from that moment it is considered a small dispute.

(2) The following matters shall not be considered small disputes:

- a) matters related to personal status or legal capacity,
- b) matters related to social security,
- c) proceedings for review of decisions issued in arbitration proceedings,
- d) matters related to the settlement of joint ownership of spouses,
- e) matters related to the inheritance proceedings,
- f) proceedings to determine, change or cancel maintenance obligations,
- g) bankruptcy proceedings and restructuring proceedings,
- h) disputes from labour relations and similar labour law relations,
- i) matters involving the protection of personality.

(3) If the proceedings involve only the ancillaries to a claim, the value of whose does not exceed the amount under paragraph 1, the proceedings shall be considered a small dispute.

<sup>292</sup> Official gazette the Act No. 160/2015 Coll. Code of Civil Contentious Litigation as amended.





procedure). That means the procedure is governed by the general provisions on civil proceedings, since there is no specific procedure for small claims.

The CCCL only contains the procedural criterion of the value of the dispute stipulated in Section 177 par. 2 letter a) of CCCL. Pursuant to that section, the court is not obliged to order a hearing, when the following conditions have been met:

- a) the matter requires only a simple legal assessment,
- b) the factual statements of the parties are not disputed,
- c) the value of the dispute without ancillaries to a claim does not exceed 2.000 euros.

First of all, as regards the court's jurisdiction, it is necessary to determine which EU member states or courts of the member states are competent according to the applicable EU regulation (Brussels I regulation as revised). This means that the rules of 19 European Small Claims Procedure on jurisdiction and their application to the case will be examined and then the court that can take over the case in the country concerned will be determined. Since there are no specific rules governing the European small claims procedure in the CCCL, the jurisdiction is determined by general rules on jurisdiction (§ 13 - § 16 of CCCL). The competent court is a district court, on whose territory defendant has his or her permanent residence or registered seat. If the general court cannot be determined according to the previous rule, the court in whose district the natural person or legal entity in the Slovak Republic had their last address of permanent residence or registered seat shall act as a general court in the matter; if there is no such court, the court in whose district defendant owns the property shall act as a general court in the matter.

The main characteristic of the procedure is that it is mostly a written one since the court is mostly not obliged to order a hearing as stated earlier (§ 177 par. 2 of CCCL). Thus, the competent court generally decides on the base of evidence which have to be presented in a written form.

The parties are obliged to present all the facts on which they base their claims and to propose the evidence necessary to support the presented facts in the claim or in the response to the claim (Art. 8 of CCCL). The parties shall propose the evidence "in time", otherwise the so-called "judicial" and/or "legal" concentration applies (§ 153 and § 154 of CCCL).<sup>293</sup> The evidence is not applied in time, if the party could have presented it earlier, if it had acted carefully with regard to the speed and economy of the proceedings. The court does not have to take into account the evidence that the party did not submit in time, especially if this would require another hearing. However, if the court does not take into account the late evidence, it shall justify it properly in its decision. Evidence and other means of procedural attack or means of procedural defense shall be applied no later than the announcement of the court's resolution, which ends the evidence taking.

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<sup>293</sup> See more: Števíček Marek; Ivančo Marek: *The principle of concentration of the civil proceedings in the Slovak Republic*. In: Proceedings of the 7th EACO international scientific conference. Ostrava: EACO, p. 47 *et seq.*



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In the Slovak Republic, court fees are regulated in the Court Fees Act (Zákon o súdnych poplatkoch/ Act on Court Fees, hereinafter: CFA).<sup>294</sup> In these Act the specific rules regulate fees for submission of petitions electronically. The main rule is that the fees are 50 % lower in compare with the fees for the submission the petitions in written form, reduction due to an electronical submission is possible up to a maximum of 70 euros. To be more precise, pursuant to § 6 par. 3 of CFA, “If acts and procedures are carried out on the basis of an electronic submission submitted to the electronic mailbox of the authority stated in § 3, or via a single contact point, or via an integrated service point and if this Act does not stipulate otherwise, the fee rate is 50% of the fee rate established in the tariff, reduced by no more than 70 euros. If annexes are part of the submission and they are required under a special regulation, the first sentence of the section shall only apply if these annexes are also in an electronic form.” Pursuant to § 9 par. 1 of CFA, “Fees collected by courts, state court administration bodies and prosecution bodies are paid in cash, payment card, postal order or bank transfer from an account in a bank or a branch of a foreign bank.” The court will award a party the legal costs depending on its success in the case. A party who lost a case completely is in principle obliged to reimburse the costs of the opposing party. If the party was only partly successful, the court will award legal costs on a *pro rata* basis or will hold that neither party is entitled to reimbursement for the legal costs. If one party is procedurally responsible for the discontinuation of the proceedings, the court will award the legal costs to the other party. If one party is responsible for the costs of the proceedings that otherwise would not have been incurred, the court will award these costs to the other party. In exceptional circumstances, on grounds deserving special attention, the court will decide not to award the legal costs. Procedure fee rates are set as a fixed amount, or as a percentage for fees whose base is expressed as a monetary amount. The percentage fee is calculated as the product of the fee base and the fee rate. Individual rates are set out in the schedule of fees annexed to CFA. The exact costs depend on the value of a monetary claim. The basic rule based on the payment criterion is relevant in terms of the European Small Claims Procedure. The fee for an application to initiate a civil judicial procedure concerning a payment is 6% from the value of the subject of the dispute, at least 16.50 euros.

Regarding the language, CCCL has a special provision in its § 155 that regulates: “Everyone has the right to act before a court in their mother tongue or in a language they understand. The court is obliged to provide the parties with equal opportunities to exercise their rights. Taking into account the nature and circumstances of the case, the court will hire an interpreter.” In § 155 par. 2 of CCCL, the specific rule on the cost of the translation of the documents entails: “The costs associated with the fact that the party acts in their mother tongue or in a language they understand are borne by the state.”

As regards legal help for the parties in the procedure, CCCL doesn't provide any special legal solutions for such cases. However, the parties receive assistance in accordance with the general obligation for courts to advise the parties of their procedural rights and

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<sup>294</sup> Official gazette the Act No. 71/1992 Coll. on court fees and a fee for an extract from the criminal record as amended.



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obligations at all times (§ 160 of CCCL), and of the option of choosing a lawyer or contacting the Centre for Legal Aid (Centrum právnej pomoci).

It is possible that Act on the Provision of Legal Aid to Persons in a Material Need (Zákon o poskytovaní právnej pomoci osobám v materiálnej núdzi, hereinafter: APLA)<sup>295</sup> would apply. APLA is harmonised with the Directive 2002/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes. Legal aid in cross border cases is regulated in § 17 - § 24 of APLA.

After issuing the judgement, parties have a right to appeal. Since there are no specific rules for a European Small Claim Procedure, a party has the option of appealing against a judgment in the usual way for civil proceedings set out in CCCL (§ 355 *et seq.*). An appeal may be filed with the court whose decision is being contested within 15 days following service of the decision (§ 362 of CCCL). An appeal is filed on time even if it was filed within the deadline at the relevant appeals court. The appeal is filed on time also if it was filed after the 15-day deadline because the appellant had been misinformed by the court about the deadline for filing an appeal. If the decision does not contain instructions on the deadline for filing an appeal or if it contains an incorrect instruction under which an appeal is not admissible, an appeal can be filed within three months from the delivery of the decision. In the appeal, in addition to the general details of the submission, it shall be stated against which decision the appeal has been filed, to what extent the decision of the court is challenged, for what reasons the decision is considered incorrect (grounds of appeal) and what the appellant is demanding (appeal proposal). Regional courts decide on appeals.

There are also exceptional legal remedies available for the aggrieved party – action to re-open the proceedings (§ 397 of CCCL *et seq.*). Pursuant to CCCL, it is possible to file an action to re-open the proceedings, if the possibility of review of the judgment results from a special regulation, which is, amongst others, also Regulation of the European Parliament and of the Council (EC) No. 861/2007 establishing the European Small Claims Procedure. In an action to re-open the proceedings, in addition to the general filing requirements, it is necessary to indicate the decision against which it is directed, to what extent it is challenged, the reasons for action, facts that testify to the fact that the action is filed in time, evidence to prove the validity of the action as well as what is sought by the person proposing the re-opening of the proceedings (§ 406 of CCCL). Besides the action to re-open the proceedings, an extraordinary appeal (§ 419 of CCCL *et seq.*) and an *extraordinary* appeal of the general prosecutor (§ 458 of CCCL *et seq.*) also might be admissible. Each of those have, however, very specific conditions for admissibility given they represent the so-called exceptional legal remedies.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

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<sup>295</sup> Official gazette the Act No. 327/2005 Coll. on the Provision of Legal Aid to Persons in a Material Need



*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Enforcement procedure in Slovakia is regulated in the Enforcement Order (*Exekučný poriadok*, hereinafter: EO).<sup>296</sup> Enforcement procedure is in jurisdiction of the District Court of Banská Bystrica. More specifically, under § 49 of EO “The District Court of Banská Bystrica is causally competent for execution proceedings.”

A motion for enforcement (execution) can be submitted exclusively by electronic means to the court's electronic mailbox (§ 48 par. 7 of EO). If the authorized person or his representative does not have an activated electronic box, he can submit a proposal through any executor (distrainor) in the Slovak Republic (§ 48 par. 8 of EO).

The enforcement is carried out by the executor (distrainor), who is authorized by the enforcement court to carry out the enforcement. The court allocates things by issuing a mandate to carry out execution executors by random selection using technical means and program tools approved by the Ministry in such a way that the possibility of influencing the allocation of things is excluded. The rule of random selection of the executor is based on the territorial principle. Things are allocated by selection from those executors who were appointed for the territorial district of the regional court in which the obligor (debtor) has a permanent residence or a registered seat. If it is not possible to determine the address of the obligor's (debtor's) permanent residence or a registered seat in the territory of the Slovak Republic according to the previously mentioned sentences, in that case executors are selected from the district in which the obligor (debtor) had his last permanent residence or a registered seat. Otherwise the matter is assigned by random selection to the executor appointed for the territorial district of the Regional Court in Banská Bystrica.

Enforcement procedure starts, as has already been said, with the motion for execution which shall entail also an execution title (§ 48 EO). Since the ESCP states that a judgment issued in a Member State in the European Small Claims Procedure is recognized and enforced in another Member State without the need for an enforceability clause and without any possibility of objecting to its recognition, the enforcement procedure under the Slovak EO does not require a court decision on the enforceability of an execution title. The authorized/entitles person also attaches a certificate concerning a judgment in the European Small Claims Procedure.

Having in mind that the objects of ESCP are monetary claims, a special part of the EO regulating the enforcement procedure for monetary claims will be applicable which regulates execution for the payment of monetary claims (§ 66 - § 179 of EO).

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<sup>296</sup> Official gazette the Act No. 233/1995 Coll. Enforcement Order



The authorized/entitled person filing a motion for execution needs to have the judgement and the certificate (form D) (original versions) and if necessary translated versions (art. 20. par. 2 of Regulation 2915/2421). If the creditor is obliged under the Regulation to append the translation of the documents, that translation must be in Slovak language, confirmed by the person authorised to translate to Slovak language in any of the member states.

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Standard forms necessary for the procedure can be downloaded on a webpage [https://e-justice.europa.eu/177/SK/small\\_claims\\_forms?init=true](https://e-justice.europa.eu/177/SK/small_claims_forms?init=true).

As regards the filing of the form, the general rules for filing a motion will apply (§ 125 of CCCL). The submission shall be made in writing and specifically in either a paper form or an electronic form. As regards electronic form, the submission (regarding the merits of the case) must be authorized pursuant to § 23 par. 1 of the Act No. 305/2013 Coll. on the electronic form of exercising the powers of public authorities (Zákon o elektronickej podobe výkonu pôsobnosti orgánov verejnej moci a o zmene a doplnení niektorých zákonov (zákon o e-Governmente), hereinafter: e-Government Act).<sup>297</sup> If the submission (regarding the merits of the case) is made in electronic form, but without authorization, it must be additionally delivered in a paper form or in an electronic form with authorization within a period of ten days. If the unauthorized electronic submission (regarding the merits of the case) is not additionally sent within the deadline in a paper form or in an electronic form with authorization, it will not be taken into account, i.e. it is looked upon as if it had not been served. As regards the authorization, the submission shall be regarded as authorized once it has been signed by a qualified electronic signature. A guaranteed electronic signature can be obtained by purchasing a qualified certificate from an accredited certification authority. Information on accredited certification authorities can be found on the pages of the National Security Authority of the Slovak Republic.<sup>298</sup>

As has been stated in the answer to the first question, the party has to pay the costs and fees regulated in CFA depending on the value of monetary claim. To support parties to submit the documents electronically, for documents submitted electronically only 50% of fees has to be paid. Though, reduction due to an electronic submission is possible up to a maximum of 70 euros.

### 4. The status of digitalisation in enforcement of the ESCP judgments

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<sup>297</sup> Official gazette the Act No. 305/2013 Coll. on the electronic form of exercising the powers of public authorities (e-Government Act)

<sup>298</sup> See more <https://www.nbu.gov.sk/>.



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*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

The amendment of 2017 effective from April 1, 2017 (the so-called “Great amendment” to EO) to the Enforcement Order has introduced the obligation to communicate exclusively electronically in the enforcement proceedings. That means, an entitled person (creditor) can submit a motion for execution/enforcement on his/her own or via his/her legal representative or via his executor, but only by electronic means (via an electronic form to the electronic mailbox) of the exclusively competent District Court of Banská Bystrica (§ 48 and § 49 of EO). The newly created electronic form entitled “Motion for execution” was published by the Ministry of Justice of the Slovak Republic on its website in the so-called “e-actions” section, under the agenda “execution proceedings”.

An authorized person can submit a motion in two ways, either via the portal of the Ministry of Justice of the Slovak Republic – “e-actions” (in Slovak “eŽaloby”)<sup>299</sup>, which provides a fully automated process, or via [www.slovensko.sk](http://www.slovensko.sk) portal under the section “Find a service”, where the motion for execution has been included.

A person filing a motion shall authorize the motion with a qualified electronic signature, otherwise it will not be taken into account (§ 48 par. 7 of EO). A person shall also attach the execution title and other documents either as an original electronic document that is authorized, or as an electronic document that was created by a guaranteed conversion of the document originally in a paper form (§ 48 par. 5 and par. 6 of EO). The withdrawal of the motion as well as the correction of errors in writing, calculations and other obvious inaccuracies in the motion must also be done electronically (§ 52 par. 2 of EO).

If a person or his/her representative do not have an ID card with an electronic chip and an electronic mailbox activated for delivery, or if such a person needs to attach a document to the motion, which must be converted from a paper form to an electronic form, a person is able to submit the motion via any executor in the Slovak Republic. The obligation to use an electronic mailbox for the purposes of electronic communication and delivery follows the rules of the e-Government Act. However, in a given case, the executor is authorized to deliver documents (via electronic way) until the relevant executor is authorized to carry out the execution. For filing a motion electronically, an executor shall be entitled to remuneration and reimbursement of expenses. For writing the motion into the minutes, for sending the motion by electronic means, including the conversion of documents, for receiving and sending documents on behalf of the authorized person and for other activities related to the motion, the executor is entitled to a fee of 16.50 euros in accordance with the decree.<sup>300</sup>

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<sup>299</sup> <https://obcan.justice.sk/ezaloby>

<sup>300</sup> § 17 of Decree of the Ministry of Justice of the Slovak Republic of March 27, 2017, which implements some provisions of Act of the National Council of the Slovak Republic No. 233/1995 Coll. on executors and enforcement activities (Enforcement Order)





The execution court sends the authorizations to the relevant executor within 15 days from the date of submission of the motion also only electronically (§ 53 par. 1 and § 55 par. 1 of EO).

## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

Under § 155 of CCCL, everyone has the right to act before a court in their mother tongue or in a language they understand. The court is obliged to provide the parties with equal opportunities to exercise their rights. Taking into account the nature and circumstances of the case, the court will hire an interpreter. The costs associated with the fact that the party acts in their mother tongue or in a language they understand are borne by the state.

Ensuring the party's right to act in court in a language that the party understands does not affect the fact that the proceedings before the court must be conducted in the Slovak language as it follows from § 7 of the Act No. 270/1995 Coll. on the state language of the Slovak Republic (Zákon o štátnom jazyku Slovenskej republiky)<sup>301</sup>.

The fact that the proceedings before the Slovak court take place in the Slovak language as the state language is also confirmed by the legal regulation in § 155 par. 2 of the CCCL, pursuant to which, if the submission or evidence is not in the state language, the court will invite the person who submitted such submission or evidence to provide a translation within the specified period, with the provision that if the person does not do so within the specified period, the court will ensure that the translation is performed.

Submission of evidence and submissions in the state language thus ensures the right of other parties to the dispute to have submissions and evidence produced in a language they understand. The obligation to ensure the translation of all evidence and submissions thus ultimately remains with the acting court, which must act even if the parties do not provide translations.

Regarding the provision related to an interpreter (§ 155 par. 1 of CCCL), i. e. for the purpose of realizing the right of a person to act before the court in a language he understands, in the case of oral presentations, the costs of those interpretations shall be borne by the state and shall be the costs of the state in the proceedings.

However, the situation is different in the case of translation costs (as opposed to the interpretations costs), under § 155 par. 2 of CCCL. The provisions governing the costs of proceedings (§ 251 - § 253 of CCCL) are applied to translation costs, and translations of documents and evidence are generally carried out at the expense of the parties to the

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<sup>301</sup> Official gazette the Act No. 270/1995 Coll. on the state language of the Slovak Republic





dispute. As regards the reimbursement of costs, the court will decide on the possible obligation to pay the costs of the proceedings depending on the success of the proceedings based on the provisions of § 255 to 257 of CCCL.

The previous text is also applicable to the enforcement procedure (§ 200 of EO).

Form D can be downloaded in Slovak.<sup>302</sup>

## 6. Fees for the enforcement procedures

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

In enforcement proceedings, a person shall also pay a court fee of 16.50 euros in connection with the filing of the motion for execution (item 13 of the Annex to CFA), provided the person is not exempt from the fee obligation. The court fee is due upon filing the motion (§ 8 in connection with § 11d par. 1 of CFA). Due to the fact that all motions for enforcement can only be submitted/delivered to the enforcement court electronically, the use of the preferential 50 percent fee rate will not apply.

The court fee is payable by filing a motion for enforcement and can only be paid by postal order, payment card or transfer from an account in a bank or in a branch of a foreign bank (§ 11d par. 1 of CFA).

For the purpose of paying the court fee payable by submitting a motion for enforcement, the billing data is reported in an automated manner. The court does not call for the payment of a court fee in the proceedings (§ 11d par. 2 of CFA).

If the fee obligation linked to the motion for enforcement is not fully met within 15 days from the submission of the motion, the motion for execution shall not be taken into account; this does not apply if it involved an eligible person exempt from paying court fees. The court will notify the beneficiary of this fact (§ 11d par. 3 of CFA).

For writing the motion into the minutes, for sending the motion by electronic means, including the conversion of documents, for receiving and sending documents on behalf of the authorized person and for other activities related to the motion, the executor is also entitled to a fee of 16.50 euros in accordance with the decree.<sup>303</sup>

## 7. Enforcement of court settlements approved or concluded by a court in the ESCP context

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<sup>302</sup> See: [https://e-justice.europa.eu/177/SK/small\\_claims\\_forms?init=true](https://e-justice.europa.eu/177/SK/small_claims_forms?init=true)

<sup>303</sup> § 17 of Decree of the Ministry of Justice of the Slovak Republic of March 27, 2017, which implements some provisions of Act of the National Council of the Slovak Republic No. 233/1995 Coll. on executors and enforcement activities (Enforcement Order)



*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

CCCL regulates the court settlement in § 148, under which “*The plaintiff and the defendant can enter into a settlement. The court shall always try to reach a settlement. The court shall decide whether if it approves the settlement; the court shall not approve it if it conflicts with generally binding legal regulations.*” There are, however, no specific rules on the costs in civil procedure as regards the court settlement. But there exists a court practice, under which each party shall bear its own costs if the litigation has been settled by a court settlement, and the settlement has not agreed otherwise. When it comes to the enforceability of the settlement, they have the same legal force as judgements. Just like judgements, court settlements are enforcement titles in enforcement procedure (§ 45 par. 2 of EO). The enforcement procedure based on court settlement as enforcement title is the same as enforcement procedure based on court judgment.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Since there are no specific rules for the ESCP enforcement procedure, the only reason for "refusal of enforcement" at the request of the (debtor) obligor, under the ESCP Regulation (Article 22), is provided if the judgment given in the European Small Claims Procedure is irreconcilable with an earlier judgment given in any Member State or in a third country, provided that:

- a) the earlier judgment was given in the Member State of enforcement or fulfils the conditions necessary for its recognition in the Member State of enforcement; and,
- b) it represents an *exemptio rei iudicatae* and
- c) the irreconcilability was not and it could not have been challenged in the proceedings in the country of origin.<sup>304</sup>

As regards the stay of ESCP enforcement, as provided in § 61k par. 1 letter c) of EO, “the court will stay the enforcement fully or in part if there is a reason according to a special regulation (such as the ESCP regulation), due to which the recognition or enforcement of a foreign enforcement title is inadmissible, unless it was possible to apply it earlier in the proceedings under § 54 par. 2 of EO.” For the reasons set out in § 61k par. 1, the obligor may submit a motion to stay the enforcement proceedings within 15 days of the delivery of the notification of the commencement of the enforcement proceedings. The motion to stay the enforcement proceedings shall be justified and must contain all the facts that the

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<sup>304</sup> Molnár, Peter. § 54 [Cudzí exekučný titul]. In: Števček, Marek, Kotrecová, Alexandra, Tomašovič, Marek, Molnár, Peter et al. Exekučný poriadok. Komentár. (Enforcement Order. Commentary). 3. edition. Prague: C. H. Beck, 2018, pp. 255–256.



obligor can claim on the date of filing the motion. Such a motion has a suspensory effect (§ 61k par. 2).

In the case of enforcement based on a Slovak enforcement title, the obligor has a right to object that the enforcement title is not enforceable only after the enforcement proceedings have begun. The obligor is able to object that the enforcement title is not enforceable in the motion to stay the enforcement proceedings. Therefore, even in cases according to the law of the European Union, a foreign enforcement title is to be treated in the same way as a domestic enforcement title. That means the enforcement court decides on the motion to stay the proceedings without first needing to deliver the foreign enforcement title to the obligor. The obligor is being delivered a foreign enforcement title at the same time with the notification of the commencement of the enforcement. In cases where the enforceability of a foreign enforcement title on the territory of the Slovak Republic results from the law of the European Union, the law of the European Union also regulates the specific reasons for which enforcement is inadmissible.<sup>305</sup>

As regards the limitation of the ESCP enforcement, as provided in § 61h par. 1 letter g) of EO, *“the executor shall issue a notification on the postponement of the enforcement proceedings, which he will deliver to the participants in the proceedings, the payer of the debtor's salary, the bank, the debtor of the obligor or other persons affected by the enforcement proceedings, if it follows from the special regulation (such as the ESCP regulation) that the execution shall be postponed (or rather limited).”* There is, however, an opinion, under which it shall be only the court's competence (as opposed to the aforementioned executor's competence) to interpret the reasons for the limitation of the ESCP enforcement under the ESCP regulation.<sup>306</sup> This, unfortunately, has not been proven by the practice of the courts yet.

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

There are no specific rules, which would *expressis verbis* link the legal aid to the ESCP enforcement procedure. However, there are rules regarding the legal aid, which is being provided by the Centre for Legal Aid. The Centre for Legal Aid is a state budgetary organization established by the Ministry of Justice of the Slovak Republic pursuant to Act no. 327/2005 Coll. on Granting of Legal Aid to Persons in Material Hardship. The Centre for Legal Aid was established on 1 January 2006. The purpose of the Centre's work is to provide comprehensive legal assistance in defined areas to people who cannot use legal services

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<sup>305</sup> Tomašovič, Marek. § 61k [Zastavenie exekúcie súdom]. In: Števček, Marek, Kotrecová, Alexandra, Tomašovič, Marek, Molnár, Peter et al. Exekučný poriadok. Komentár. (Enforcement Order. Commentary). 3. edition. Prague: C. H. Beck, 2018, pp. 354–355.

<sup>306</sup> Molnár, Peter. § 61h [Dôvody odkladu exekúcie]. In: Števček, Marek, Kotrecová, Alexandra, Tomašovič, Marek, Molnár, Peter et al. Exekučný poriadok. Komentár. (Enforcement Order. Commentary). 3. edition. Prague: C. H. Beck, 2018, p. 333.



due to lack of money and property. The Centre thus seeks to provide people in hardship with effective legal protection and access to exercise their rights.<sup>307</sup>

The Centre for Legal Aid is competent not only (*inter alia*) in civil matters, but also in cross-border disputes. This help is, however, limited only to natural persons residing or having their habitual residence in the territory of a Member State of the European Union. There are also further restrictions in § 17 par. 1 of the Act no. 327/2005 Coll. on Granting of Legal Aid to Persons in Material Hardship, under which “*If the competent court is the court of the Slovak Republic, a natural person has the right to get a legal assistance in the cross-border disputes, if:*

*a) the person has a place of residence or habitual residence in the territory of a member state other than the Slovak Republic,*

*b) the person submitted a request for the provision of a legal assistance in a cross-border dispute to the center by himself/herself or via the Center for the International Legal Protection of Children and Youth or other competent authority of a member state,*

*c) the person proves that his/her income and assets would justify granting the right to legal aid in the Slovak Republic, if this person had a permanent or temporary residence here, or that she meets the conditions for legal aid in the member state in whose territory this person is a resident or habitually stays,*

*d) request for the provision of legal aid is not obviously unfounded, especially if it is not an obvious failure of the dispute according to § 8,*

*e) the value of the dispute exceeds the value of the minimum wage except for disputes in which it is not possible to quantify the value of the dispute in money.”*

Under § 17 of the Act no. 327/2005 Coll. on Granting of Legal Aid to Persons in Material Hardship, “*a legal aid according to this Act is also provided if a natural person requests the recognition or enforcement of a decision that was issued in a proceeding in a member state other than the Slovak Republic, within the framework of which this person was provided with legal aid established by the law of that member state.”*

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

## **11. Critical assessment of the ESCP judgments enforcement procedures**

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<sup>307</sup> See more at <https://www.centrumpravnejpomoci.sk/en/page/4-about-us-1>



This Project has received funding from the European Commission JUST 2027 Programme under grant agreement no. 101046587.

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*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

In the Slovak law there are no specific rules on ESCP enforcement procedure. The general rules on enforcement procedure apply and, in some cases, the rules of CCCL apply subsidiarily. There are also no specific rules on digital enforcement of ESCP judgements. The most important issue with enforcement procedure based on judgement in ESCP is a lack of digitalization. To make ESCP enforcement procedure more efficient the more specific and more precise rules are desirable on national but also on EU level.

Better transparency for providing information for creditors is also needed. First, better information about possible communication by electronical means (in connection to foreigners) is needed. It is important to avoid delivery of written documents to the court. Also, more transparency about legal aid is necessary. Maybe it is possible to organise a single contact point on national level connected with e-justice portal for communication with competent national courts in cross border procedure including ESCP procedure.

The lack of specific rules on ESCP enforcement procedure imposes also some of the other maybe less significant issues we have stated earlier. As an illustration we can say, it is quite disputable, if the limitation of the ESCP enforcement (and the competence to interpret the reasons for the limitation) shall be in the competence of the court or if it should be in the competence of the executor. These questions would have been easily solved if we had specific rules on ESCP enforcement procedure.



## I.

### Slovenia

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#### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

As the ESCP Regulation (Regulation (EC) 861/2007, amended by Regulation (EU) 2015/2421, hereinafter, “the ESCP Regulation”) has a direct effect<sup>308</sup> (is directly applicable and fully binding) in all Member States, Slovenia has not adopted any specific legislation to implement it. Nevertheless, pursuant to Article 19 of the ESCP Regulation, the ESCP is governed by the procedural law of the Member State in which the procedure is conducted (*lex fori*), subject to the provisions of the ESCP Regulation. Thus, Slovenian procedural law is applicable when dealing with claims under the ESCP Regulation, unless stated otherwise in the ESCP Regulation.

Specifically, Slovenian procedural law has its own rules on small claims procedures (Articles 442-458 of the Slovenian Civil Procedure Act - Zakon o pravnem postopku, hereinafter: “ZPP”<sup>309</sup>), which should be used together with the general rules of the Slovenian civil procedure to govern the ESCP, unless stated otherwise in the ESCP Regulation. A small claims procedure according to Slovenian law is a procedure in which the value of the claim does not exceed 2.000 EUR in civil or 4.000 EUR in commercial cases. This means that some of the claims in ESCP will be governed by the specific rules of the Slovenian national small

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<sup>308</sup> The principle of direct effect was first established by the European Court of Justice in case 26/62 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.

<sup>309</sup> Zakon o pravnem postopku (Uradni list RS (Official Gazette of the Republic of Slovenia), nos. 73/07 - official consolidated text, 45/08 - ZArbit, 45/08, 111/08 - dec. US, 121/08 - skl. US, 57/09 - dec. US, 12/10 - dec. US, 50/10 - dec. US, 107/10 - dec. US, 75/12 - dec. US, 76/12., 40/13 - dec. US, 92/13 - dec. US, 6/14, 10/14 - dec. US, 48/14, 48/15 - dec. US, 6/17 - dec. US, 10/17, 32/18, 16/19 - ZNP-1, 70/19 - dec. US, 1/22 - dec. US, 3/22 - ZDeb).



claims procedure (if they do not exceed 2.000 EUR in civil or 4.000 EUR in commercial cases), while others will be subjected only to the general rules of the Slovenian civil procedure (if the value of the claim is above 2.000/4.000 EUR but below 5.000 EUR). Small claims also cover disputes in which the claim is not pecuniary if the claimant is willing to accept a sum of money not exceeding 2.000 EUR (4.000 EUR in commercial disputes) instead of satisfaction of the claim, and disputes in which the subject of the claim is the delivery of movable property, where the amount stated by the claimant in the action does not exceed 2.000 EUR (4.000 EUR in commercial disputes).

In accordance with Article 25 of the ESCP Regulation, Slovenia has communicated the information requested in Article 25 to the European Commission.<sup>310</sup>

#### (1) Competent courts

The Slovenian judicial system differentiates between subject-matter jurisdiction and territorial jurisdiction. The subject-matter jurisdiction depends on the value of the claim in question, specifically on whether the claim exceeds 20.000,00 EUR. For claims that are valued below 20.000,00 the competent courts are the Local courts (Article 30 of ZPP). Meanwhile, the District courts deal with claims that exceed 20.000,00 EUR (Article 32 of ZPP). Since Article 2 of the ESCP Regulation states that the ESCP Regulation applies in cross-border cases, to civil and commercial matters, where the value of a claim does not exceed 5.000,00 EUR (excluding all interest, expenses and disbursements), the Local courts are competent to deal with ESCP claims. There are 44 Local courts in Slovenia, spread across the country.

However, since the ESCP Regulation also applies to commercial matters (Article 2 of the ESCP Regulation), paragraph 2 of Article 32 of ZPP must be considered. Paragraph 2 of Article 32 of ZPP states that it is the District courts that have jurisdiction over commercial matters, regardless of the value of the claim (i.e., whether or not the claim exceeds 20.000,00 EUR). ZPP also defines when a matter is considered to be commercial.<sup>311</sup> In total, there are 11 District courts in Slovenia.

Thus, both Local and District courts are competent to deal with ESCP claims. Civil matters will fall under the jurisdiction of Local courts, while commercial matters will fall under the jurisdiction of District courts.

In Slovenia, the territorial jurisdiction is generally dependent on the residence of the defendant. Pursuant to Article 46 of ZPP the court that has general territorial jurisdiction over the defendant has jurisdiction to try the defendant, unless the exclusive territorial jurisdiction of another court is not established by law. Article 47 of ZPP further stipulates that the court of the place where the defendant is domiciled has general territorial jurisdiction. An applicant who wishes to initiate ESCP must therefore find out the

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<sup>310</sup> Available at: [https://e-justice.europa.eu/354/EN/small\\_claims?SLOVENIA&member=1](https://e-justice.europa.eu/354/EN/small_claims?SLOVENIA&member=1)

<sup>311</sup> Articles 481-484 of ZPP.





defendant's residence. According to Article 69 of ZPP, the parties can also agree to be tried by a court that would not otherwise have the territorial jurisdiction, as long as the claim falls under the subject-matter jurisdiction of the chosen court and as long as the law does not provide for the exclusive territorial jurisdiction of a different court.

## (2) Number and mode of hearings, mode of the gathering of the evidence

In Slovenian national small claims procedures (where the value of the claim does not exceed 2.000 EUR in civil or 4.000 EUR in commercial cases), the claimant is obliged to state all facts and adduce all evidence in the lawsuit, while the defendant is obliged to do so in their defence plea. Each party may then file one preparatory plea. Facts and evidence presented in written pleas at a later date are ignored (Article 453 ZPP). The deadline for the submission of a defence plea and preparatory pleas is eight days (Article 452 ZPP).

Pursuant to Article 450 of ZPP, Slovenian national small claims procedures are based on written pleadings (Article 450 of ZPP). The Court may limit the time and extent of the gathering of evidence and conduct that procedure at its own discretion to strike a balance between providing for adequate protection of the rights of the parties and the objective of accelerating proceedings and keeping their costs down. If the court decides to hold a hearing, it must announce the judgement immediately at the end of the hearing (Article 457(1) of ZPP) and notify the parties under which conditions they can lodge an appeal against the decision.

A judgement in a small claims procedure is pronounced immediately after the end of the main hearing. A written judgement must include an introductory part, an operative part, a statement of grounds and legal instruction. The judge may produce a written judgement with a long or a shortened statement of grounds.

If the value of the claim exceeds 2.000 EUR (or 4.000 EUR in commercial cases), then the rules of the general (ordinary) procedure apply. This means that the importance of speed and low costs are not as pronounced as in the national small claims procedures.

## (3) Court fees for the ESCP and the methods of payment

The court fees are set in the Slovenian Court Fees Act (Zakon o sodnih taksah, hereinafter 'ZST-1'<sup>312</sup>). The court fees of the ESCP are the same as those charged for national proceedings.

A one-off court fee is paid at the beginning of the ESCP, the amount of which depends on the value of the subject-matter of the proceedings (Article 16 ZST-1 and Annex 1 to ZST-1):



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Where the value of the subject-matter of proceedings is EUR ..... or less	the court fee is EUR .....
300	54
600	78
900	102
1 200	126
1 500	150
2 000	165
2 500	180
3 000	195
3 500	210
4 000	225
4 500	240
5 000	255

The fee may be paid in advance, i.e., when the application for a court action is filed; or the application may be submitted beforehand to the court, whereupon the applicant must wait for the court to send a payment order. The payment order also includes other information to facilitate the payment (such as the deadline for payment).

Court fees may be paid in cash, electronically or using any other valid payment method (Article 6 ZST-1). Court fees may be paid remotely, by bank transfer, credit or debit card payment or direct debit from the claimant's bank account. Thus, parties can pay the court fees from any Member State. Court fees must be paid to the courts' accounts specifically set up for the payment of court fees, as published on the websites of the various courts.

Pursuant to Article 33a(1) ZST-1, if a party files an application in electronic form (where that is possible), the court fee is reduced by 20 per cent, except as otherwise provided by ZST-1.

(4) Costs for the losing party

Article 154 of ZPP lays down the general rules on who bears the cost. The unsuccessful party must reimburse the other party. If a party is partially successful in the proceedings, the court may, depending on the success achieved, order each party to bear its own costs or, having regard to all the circumstances of the case, order one party to reimburse the other party for an appropriate proportion of the costs. The court may order that one party shall pay all the costs incurred by the other party if the other party has failed only in a relatively small part of its claim and that part has not resulted in any special costs.



Pursuant to Article 155(1) of ZPP, the court will only take into account those costs that were necessary for the litigation, when deciding which costs to award to a party. In this way, the Slovenian legislation is similar to the ESCP Regulation (Article 16). However, the ESCP Regulation does not provide any specific information on how the court should decide whether the incurred costs were necessary. Thus, one must consider the national legislation. Specifically, Article 155 of ZPP stipulates that the court, after a careful assessment of all the circumstances, decides which costs were necessary and how much they amount to. This means that the court has the power to judge which costs were truly necessary.

#### (5) Accepted official languages by the courts/tribunals

The official languages in court proceedings are Slovenian as well as the two national minority languages in official use at the courts in the areas where these national minorities live (Articles 6 and 104 ZPP). The national minority languages are Italian and Hungarian.

Pursuant to Article 5 of the the Establishment of Municipalities and Municipal Boundaries Act (Zakon o ustanovitvi občin ter o določitvi njihovih območij, hereinafter 'ZUODNO'<sup>313</sup>), mixed-nationality municipalities are those identified as such by the current statutes of Lendava, Hodoš-Šalovci, Moravske Toplice, Koper, Izola and Piran municipalities.

#### (6) Costs and financial support for translation

According to Article 6 of the ESCP Regulation the claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or in one of the languages of the court or tribunal. This means that in Slovenia, they must be submitted in Slovenian or in the languages of the national minorities (Italian, Hungarian), but only in the bilingual areas (see *supra*). If a form is submitted in any other language, the court considers such a form incomplete and requests the applicant to complete it (translate it). If the applicant does not do so, the court rejects their application (it must however warn the applicant of this beforehand) (Article 108 of ZPP).

There is no aid for translation services, thus the parties must cover the costs of any potential translations themselves. This can increase the cost of the ESCP. However, translators' and interpreters' fees form part of the cost of proceedings. These costs must be paid in advance by the claimant but at the end of the proceedings, the costs are reimbursed on the basis of the principle of success and the principle of fault.

#### (7) Availability of legal assistance

In Slovenia, there are a few options to obtain practical assistance (in accordance with Article 11 of the ESCP Regulation) regarding claims under the ESCP Regulation. Firstly, the

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<sup>313</sup> UL RS Nos 108/06 — official consolidated text and 9/11.



judicial staff of the competent court provide free practical assistance in form-filling and general information on the procedure. Secondly, practical assistance for consumers is also provided by the European Consumer Centre.<sup>314</sup> Thirdly, natural persons (as well as NGOs and non-profit organisations) may also apply for free legal aid provided they meet the conditions laid down in the Free Legal Aid Act (Zakon o brezplačni pravni pomoči,<sup>315</sup> hereinafter “ZBPP”). It is possible to obtain free legal aid for legal advice, legal representation and other legal services provided for by the ZBPP as well as in the form of an exemption from payment of court costs.

#### (8) Means of communication

Applications can be lodged in physical or electronic form (105b(1) ZPP). The standard claim Form A is lodged with the competent court physically in writing by post, using communication technology (e.g. fax), delivered directly to the body or by a person engaged professionally in submitting applications (Article 105b ZPP). An application in electronic form is made by uploading it into the information system of the judiciary.

#### (9) Possibility of Appeal

The Slovenian constitution provides the right to an appeal (Article 25).<sup>316</sup>

For proceedings that fall under the rules of the national small claims procedure (where the value of the claim does not exceed 2.000 EUR, or in commercial cases, does not exceed 4.000 EUR<sup>317</sup>), appeals must be lodged within eight days of the judgment being served (Article 458 ZPP). This is true regardless of whether the dispute is classified as a civil or commercial dispute. Appeals must be lodged with the court giving the judgment at first instance (for civil cases, this is the Local Court while for commercial cases, it is the District court) (Article 342 ZPP). For proceedings that fall under the rules of the national small claims procedure, the reasons for appeal are limited (Article 458 ZPP). Specifically, the parties may only challenge the decision on the ground of a fundamental breach of the provisions of civil procedure set down in Article 339(2) of ZPP or on the ground of a violation of substantive law. In small claims disputes there is also no revision, while the reasons for retrial are very limited.

For proceedings in which the claim exceeds 2.000 EUR (or 4.000 EUR in commercial cases) (but is naturally still below the 5.000 EUR limit for the ESCP), appeals must generally be lodged within thirty days of the judgment being served (Article 333 of ZPP). There is also no limit on the grounds for appeal like there is for claims that do not exceed 2.000 EUR. A judgement can thus be contested on the grounds of a fundamental breach of the

<sup>314</sup> Located at Kotnikova 5, 1000 Ljubljana, website: <https://www.epc.si/pages/en/home.php>

<sup>315</sup> UL RS Nos 96/04 – official consolidated text, 23/05, 15/14 – Constitutional Court Decision and 19/15

<sup>316</sup> Official Gazette of RS, nos. [33/91-I](#), [42/97](#) – UZS68, [66/00](#) – UZ80, [24/03](#) – UZ3a, 47, 68, [69/04](#) – UZ14, [69/04](#) – UZ43, [69/04](#) – UZ50, [68/06](#) – UZ121,140,143, [47/13](#) – UZ148, [47/13](#) – UZ90,97,99, [75/16](#) – UZ70a and [92/21](#) – UZ62a.

<sup>317</sup>Article 495(1) ZPP.



provisions of civil procedure, incomplete findings of facts or violations of substantive law (Article 338 ZPP).

Higher courts (višja sodišča) decide on appeals (Articles 35 and 333 ZPP).

(10) Review of the judgment procedure and courts competent to conduct such a review (Article 18 of the ESCP Regulation)

For cases governed by Article 18 of the ESCP Regulation, ZPP gives parties the option to file a motion to restore prior status (*restitutio in integrum*) (Article 116 ZPP). Where the motion is admitted by the court, the proceeding reverts to its status before the event in question had occurred (for example, before the event of force majeure) and all judgments handed down by the court as a result of the event are revoked.

Civil proceedings, that were ended with a final judicial decision, may be reopened (a party may submit a motion for a retrial) at the request of a party if the personal service of the first application was carried out in accordance with Article 142 of ZPP due to the absence of the party for a continuous period of more than six months (Article 394(3) of the ZPP).

The jurisdiction in the case of both judicial remedies rests with the court issuing the judgment.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Article 20 of the ESCP Regulation provides that judgements given in ESCP will be recognised and enforced in all other Member States without the need for a declaration of enforceability and without the possibility of opposing its recognition. Thus, a Member State is not liable for such judgements given in other Member States, except in the case of a severe breach of human rights.<sup>318</sup>

Jurisdiction over enforcement rests with the Local courts (Article 5 of the Enforcement and Securing of Civil Claims Act - Zakon o izvršbi in zavarovanju, hereinafter: "ZIZ").<sup>319</sup> A specific division of the Local courts is dedicated to enforcements. Pursuant to Article 6 of ZIZ, the enforcement procedure is conducted by a single judge.

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<sup>318</sup> Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland, Application no. 45036/98

<sup>319</sup> UL RS Nos 3/07 – official consolidated text, 93/07, 37/08 – ZST-1, 45/08 – ZArbit, 28/09, 51/10, 26/11, 17/13 – Constitutional Court Decision, 45/14 – Constitutional Court Decision, 53/14, 58/14 – Constitutional Court Decision, 54/15, 76/15 – Constitutional Court Decision, 11/18 and 53/19 – Constitutional Court Decision.



The party seeking enforcement must provide the competent court with a copy of the judgment to prove its authenticity; and a copy of the judgment certificate in standard form D (Article 20(2) of the ESCP Regulation) and, at the request of the court, an official translation of the Form D (Article 21(2) of the ESCP Regulation). Any judgment given in the ESCP shall be enforced under the same conditions as a judgment given in the Member State of enforcement (Article 21(1) of the ESCP Regulation).

The enforcement authorities must govern the proceedings expeditiously (Article 11 of ZIZ), however, there are no specific timeframes or deadlines given. The enforcement procedure generally starts at the creditor's request. Pursuant to Article 17 ZIZ, a court allows enforcement on the basis of an enforceable title. Enforceable titles are:

1. an enforceable court decision and a court settlement;
2. an enforceable notarial deed;
3. any other enforceable decision or instrument which constitutes an enforceable title according to the law, a ratified and published international treaty or a legal act of the European Union directly applicable in the Republic of Slovenia.

A judgement given in ESCP is an enforceable title as it is an enforceable court decision (point 1 *supra*).

Generally, a court decision is enforceable if it has become final and the time-limit for the voluntary fulfilment of the debtor's obligation has expired (Article 19 of ZIZ). An enforceable title can be enforced if it specifies the creditor, the debtor and the subject, nature, extent and time of the performance of the obligation. If the enforceable title does not specify a time-limit for the voluntary fulfilment of the obligation, the time-limit shall be fixed by the court in its enforcement order (Article 21 of ZIZ).

Form D can either be submitted electronically (through the portal eSodstvo) or sent to the competent court in written form. There are no specific provisions governing any appendices to the Form D. Thus, as the ESCP Regulation submits, the party must provide a copy of the judgment to prove its authenticity, a copy of the judgment certificate in standard Form D and (as is further explained later) an official translation of the Form D (Article 21(2) of the ESCP Regulation).

The party must also provide an enforcement request (in the official language). If the enforcement request is submitted in written form, ZIZ does not predict any special form of the request. Article 40 of ZIZ submits that the enforcement request based on an enforceable title must include information on:

- the creditor and the debtor with the identification data referred to in Article 16a of ZIZ,
- the enforceable title,



- the debtor's obligation,
- the means or object of enforcement,
- any other particulars as are necessary, in relation to the means of enforcement, to enable the enforcement to take place.

There are some other specifics predicted in Article 40 of ZIZ on the necessary information, depending on the means of enforcement. For example, if the creditor proposes the fulfilment of a pecuniary obligation, he must specify the transaction account to which payment is to be made.

Some of the information required by Article 40 of ZIZ will already be given in Form D.

When the court receives an enforcement request, it checks whether the request includes all the required elements and then either allows the enforcement, denies the request for being unjustified in substance or rejects the request if the procedural conditions are not met.

Pursuant to Article 44 of ZIZ, the enforcement order by which the court authorises enforcement shall specify: the creditor and the debtor with the identification data referred to in Article 16a of ZIZ, the enforceable title or authentic instrument, the debtor's obligation, the means and the object of the enforcement and other data necessary for the enforcement to be affected. Article 44(5) of ZIZ submits that if the court reject the enforcement request in whole or in part, the court shall state the reasons for the rejection.

In an enforcement order where direct enforcement measures are to be carried out, the court shall also designate an enforcement agent (Article 44.a of ZIZ).

Article 30 of ZIZ submits that the court may only allow the sale of movable property, the sale of immovable property, the transfer of a pecuniary claim, the realisation of other property or material rights and book-entry securities, the sale of a partner's share and the transfer of funds held with organisations authorised for payments as means of enforcement for the payment of a pecuniary claim. Article 32 of ZIZ further defines what cannot be used as a means of enforcement.

An enforcement order, allowing enforcement, may be challenged by the debtor by way of an objection, unless the debtor challenges only the decision on costs (Article 53 of ZIZ). In the objection, the debtor must state the facts on which he relies and adduce evidence, otherwise the objection shall be deemed to be unfounded. The court that issued the enforcement order decides on the objection, unless otherwise provided by law (Article 54 of ZIZ).





The rules on enforcement can be found in ZIZ and ZPP. There is also a helpful FAQ on electronic submissions published by the court<sup>320</sup> and information submitted to the European Commission on enforcement in Slovenia.<sup>321</sup>

### 3. Rules on service

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

Articles 132 – 150 of ZPP govern the serving of documents referred to in Article 5(2) and (6) and judgments handed down under Article 7.

Pursuant to Article 132 ZPP documents can be served according to various methods – post, secure email, bailiff, in the court or in another manner provided by law (service by a legal or natural person who serves documents professionally). Documents are serviced during the day between 6.00 and 22.00, or 24 hours a day by email (Article 139(1) ZPP).

The court may, on application by the other party, order the documents to be served by a detective or bailiff nominated by the party. The costs of such service shall be borne by the applicant for such service (132(2) ZPP).

According to Article 132(3) of ZPP, a party may notify the court that he or she wishes to have documents served by secure electronic means to a secure electronic mailbox or to a secure electronic service address registered in the information system of the judiciary, the address of which he or she shall specify in the application. That address shall be equivalent to the address of the residence or registered office of the party. If the party lodges the document by electronic means, he shall be deemed, until he indicates otherwise, to have requested service by secure electronic means.

Article 132(4) further states, that notwithstanding the provision of Article 132(3) ZPP, the court may also serve documents to a party by secure electronic means in other proceedings if, on the basis of the information available to it about the party, it can establish with certainty that that party already has a secure electronic mailbox or a secure electronic service address registered in the information system of the judiciary, and if the court has previously served the party by personal service (i.e. not electronically) a written notice to the effect that further documents in those proceedings will be served to him/her by secure electronic means until he/she notifies the court otherwise.

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<sup>320</sup> Available at: <https://evlozisce.sodisce.si/evt/cms/printAlfresco.cms?id=cd7a0a14-a11e-446a-96a1-3311d30e1522>.

<sup>321</sup> Available at: [https://e-justice.europa.eu/52/EN/how\\_to\\_enforce\\_a\\_court\\_decision?SLOVENIA&member=1](https://e-justice.europa.eu/52/EN/how_to_enforce_a_court_decision?SLOVENIA&member=1)



Notwithstanding Article 132(3) of ZPP, certain professions and institutions (national authorities, lawyers, notaries, etc.) shall always be served by secure electronic means (Article 132(7) of ZPP).

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

As ZPP is used mutatis mutandis in enforcement procedures, unless otherwise provided (Article 15 of ZIZ), an electronic form is deemed to be equivalent to a written form if the information in electronic form is suitable for processing by the court, accessible and suitable for subsequent use (Article 16.a ZPP). Furthermore, electronic data shall not be denied probative value merely because it is in electronic form.

Several judicial procedures in Slovenia are already digitalised and automatised, among them is the claim enforcement procedure. The enforcement request can either be submitted electronically (through the portal eSodstvo) or sent to the competent court in written form.

Only users who are logged in to the eSodstvo<sup>322</sup> (eJustice) portal as externally qualified users may file an enforcement request on the basis of an enforceable title by selecting the electronic application 012 (Enforcement request on the basis of an enforceable title), duly completing, signing and submitting it. To register as an external qualified user, one must have a Slovenian national identification number, a Slovenian tax number and a secure electronic mailbox.

An act governing electronic communications is also Pravidnik o obrazcih, vrstah izvršb in poteku avtomatiziranega izvršilnega postopka (Rules on forms, types of enforcement and the automated enforcement procedure).<sup>323</sup>

#### **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

As already stated, the official languages in court proceedings are Slovenian as well as the two national minority languages in official use at the courts in the areas where these national minorities live (Articles 6 and 104 ZPP). The national minority languages are Italian and Hungarian. Thus, the applicant cannot submit the Form D in any other language. A

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<sup>322</sup> Available at: <https://evlozisce.sodisce.si/esodstvo/prijava.html?type=kvalificiran>

<sup>323</sup> Official gazette of RS, nos. 104/11, 88/14, 44/16, 13/21.



document in a foreign language must be accompanied by a certified translation (Article 226(1) of ZPP).

If a form is submitted in any other language, the court considers such a form incomplete and requests the applicant to complete it (translate it). If the applicant does not do so, the court rejects their application (it must however warn the applicant of this beforehand) (Article 108 of ZPP).

There is no aid for translation services, thus the parties must cover the costs of any potential translations themselves. This can substantially increase the cost of the ESCP.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

A court fee must be paid when filing an enforcement request, as well as when filing an objection to or an appeal against enforcement (Article 29.b of ZIZ). It must be paid within 8 days after the payment order for the court fee is served (Article 34 ZST-1). The court fee is 55 EUR (ZST-1). If the court fee is not paid within the time limit and in accordance with the payment order and the conditions for exemption, deferment or payment in instalments of the court fee do not apply, the enforcement request shall be deemed to have been withdrawn (Article 29.b of ZIZ).

Court fees may be paid in cash, electronically or using any other valid payment method (Article 6 ZST-1). Court fees may be paid remotely, by bank transfer, credit or debit card payment or direct debit from the claimant's bank account. Thus, parties can pay the court fees from any Member State. Court fees must be paid to the courts' accounts specifically set up for the payment of court fees, as published on the websites of the various courts.

Pursuant to Article 33.a(1) ZST-1, if a party files an application in electronic form (where that is possible), the court fee is reduced by 20 per cent, except as otherwise provided by ZST-1.

Pursuant to Article 38 of ZIZ, the creditor pays the enforcement costs in the first place. The creditor shall advance the costs of the enforcement proceedings in the manner, amount and within the time limit fixed by the court. If the creditor fails to pay the advance within the time limit set, the court shall stay the enforcement proceedings. However, the debtor shall reimburse the creditor, at the latter's request, for the costs incurred in the enforcement proceedings, including the costs of making enquiries concerning the debtor's property, or for the costs of the ex officio proceedings. The creditor must reimburse the debtor or, at the request of the debtor, a third party, for enforcement costs unreasonably incurred by the creditor.

Article 38 of ZIZ also states that unless otherwise provided by law, reimbursement of enforcement costs must be claimed as soon as they are incurred and their amount is



known, but at the latest within thirty days after the end or the stay of the enforcement proceedings or the conclusion of the last enforcement action after which enforcement was not resumed, failing which the costs shall not be recognised. The court must decide on the costs within eight days of receipt of the request.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

As already stated, pursuant to Article 17 ZIZ, a court allows enforcement on the basis of an enforceable title. Enforceable titles include court settlements.

Pursuant to Article 20 of ZIZ, a court settlement is enforceable if the claim under the settlement is due. The fact that the claim is due, is proved by a record of the settlement, a public deed or a document authenticated by law. If it is not possible to prove that the claim is due in any of these manners, it shall be proved by a final decision rendered in legal proceedings declaring that the claim is due.

The general rules for enforcement on the basis of an enforceable title apply (see *supra*).

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Section 7 of ZIZ regulates the postponement and the termination of enforcement procedures. This is relevant to Article 23 of the ESCP regulation.

Thus, Article 71 of ZIZ describes the cases, in which a court may, on the debtor's request, postpone enforcement in whole or in part if the debtor shows that it is likely that he would suffer irreparable damage by immediate enforcement and that this damage is greater than that which the creditor is likely to suffer as a result of the postponement. The relevant cases for Article 23 of the ESCP Regulation include:

- if the debtor has brought an extraordinary legal remedy against the decision authorising enforcement (see also “Review of the judgment procedure and courts competent to conduct such a review - Article 18 of the ESCP Regulation” *supra*),
- a restitutio in integrum motion is made in the proceedings in which the decision giving rise to the enforcement was given (see also “Review of the judgment procedure and courts competent to conduct such a review - Article 18 of the ESCP Regulation” *supra*),
- an action is brought to set aside a settlement agreement on the basis of which the enforcement was granted.



Article 74 of ZIZ submits that if the enforcement procedure is postponed because the debtor has filed a legal remedy the postponement shall last until the end of the proceedings on the legal remedy. Article 75 of ZIZ submits that a postponed enforcement shall resume when the period for which it was suspended has expired. At the creditor's request, the court may resume enforcement even before the expiry of the period for which it was postponed if the creditor establishes that it is probable that the grounds for the postponement have ceased to exist or if he deposits a security.

Pursuant to Article 76 of ZIZ, the court shall also ex officio terminate the enforcement procedure if the enforceable title has been revoked, modified, annulled or declared invalid. Where the court terminates the enforcement procedure, it shall, unless otherwise provided by law, also annul any enforcement acts carried out, in so far as the acquired rights of other persons are not thereby affected.

Generally, a judgement is not enforceable under Slovenian law if there is still a possibility of a regular appeal (Article 19 oz ZIZ). Thus, it is not possible to enforce an ESCP judgement if lodging an appeal is still possible.

Generally, ZIZ predicts other possibilities for staying or limiting the enforcement procedure. For example, if the creditor fails to pay the advance of the court fees within the time limit set, the court shall stay the enforcement proceedings (Article 38(2) of ZIZ). However, these cases are not relevant for Article 23 of the ESCP Regulation, thus they are not discussed further.

## **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

As with legal aid in ESCP, there are a few options to obtain practical assistance in the ESCP enforcement procedure. Firstly, the judicial staff of the competent court provide free practical assistance in form-filling and general information on the procedure. Secondly, practical assistance for consumers is also provided by the European Consumer Centre.<sup>324</sup> Thirdly, natural persons (as well as NGOs and non-profit organisations) may also apply for free legal aid provided they meet the conditions laid down in ZBPP.

However, ZBPP sets some limits to granting legal aid in enforcement procedures. Pursuant to Article 8 of ZBPP, legal aid will not be granted where the applicant for legal aid is the debtor in enforcement proceedings initiated on the basis of an enforceable title under the law governing enforcement, unless he or she is likely to establish the existence of grounds for objection to the enforcement order which, under the provisions of the law governing enforcement, preclude enforcement.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

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<sup>324</sup> Located at Kotnikova 5, 1000 Ljubljana, website: <https://www.epc.si/pages/en/home.php>



*(if applicable)*

There are no specific rules on enforcement of ESCP judgements. The general rules for enforcement procedures in Slovenia apply.

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

One of the identified problems is the necessity that all documents be provided in the official language, i.e., Slovenian or Italian and Hungarian in the areas where these national minorities live (Articles 6 and 104 ZPP). Thus, the applicant cannot submit the Form D in any other language. A document in a foreign language must be accompanied by a certified translation (Article 226(1) of ZPP). Despite the possibility to have these costs reimbursed at the end of the proceedings, a certified translation raises the costs of the enforcement procedure significantly, especially considering the low value of the claim in ESCP.

Another identified problem is the difficulty of enforcing the ESCP judgements digitally. While a digital process of enforcement is available through the eSodstvo<sup>325</sup> (eJustice) portal, one must register as an externally qualified user, which means one must have a Slovenian national identification number, a Slovenian tax number and a secure electronic mailbox. This means that for foreigners, enforcing an ESCP judgement can usually only be done in written form which complicates the procedure. Moreover, the entire eSodstvo portal is in Slovenian, thus complicating the process for parties who do not speak the language even further.

Since ESCP is used in cross-border disputes, it would be desirable to make the enforcement procedure easier for parties who do not speak Slovenian (or Italian/Hungarian). Otherwise, some of the practicality of ESCP is lost. The party can of course engage a professional (qualified lawyer) to help with the language and administrative barriers, but this once again raises the costs of the enforcement and thus goes against the idea of the ESCP.

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<sup>325</sup> Available at: <https://evlozisce.sodisce.si/esodstvo/prijava.html?type=kvalificiran>



This Project has received funding from the European Commission JUST 2027 Programme under grant agreement no. 101046587.

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## Spain

Author: Cayetana Santaolalla

### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

The European Small Claims Procedure is governed by the provisions of Regulation 861/2007 of the European Parliament and of the Council, of 11 July 2007, establishing a European Small Claims Procedure and, by way of supplementary legislation, as far as it is not regulated by this Regulation - since the European Regulation is not exhaustive -, by the procedural legislation of the State in which it is developed. In the case of Spain, it is necessary to resort to Law 1/2000, of 7 January, on Civil Procedure (LECiv).

The LECiv has been amended on two occasions in matters affecting the European Small Claims Procedure. By virtue of Law 4/2011, of 24 March, which incorporated its twenty-fourth final provision, entitled "Measures to facilitate the application in Spain of Regulation No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure". And by means of Law 37/2011, of 10 October, on procedural streamlining measures, which reformed Article 455.1 LECiv.

In Spain, the competent courts to hear claims in small claims proceedings are the courts of first instance or the commercial courts, as stated in Article 45 of the LECiv. and its Final Provision twenty-four when it states, in its first paragraph, "which corresponds to the court of first instance or the commercial court...". With regard to territorial jurisdiction, it refers to Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; to Regulation 1215/2012 and, where not provided for in the Regulations, in accordance with Spanish procedural law, i.e. in accordance with the rules laid down in Articles 50 et seq. of the LECiv and Organic Law 6/1985 of 1 July 1985 on the Judiciary (Article 86 ter 2, especially in cases where the claim is associated with a claim arising from a contract of carriage).





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Paragraph 7 of the 24th Final Provision of the LECiv states that "the jurisdiction for the enforcement in Spain of a judgment issued in another Member State of the European Union that ends a European Small Claims Procedure shall correspond to the Court of First Instance of the defendant's domicile". To determine the domicile of a natural and/or legal person, the provisions of Articles 62 and 63 of Regulation 1215/2012 on jurisdiction and extraterritorial validity of judgments shall apply. It should not be forgotten that these proceedings must have at least a cross-border element in which at least one of the parties is domiciled or habitually resident in a Member State other than the one to which the court hearing the dispute belongs.

Paragraph 9 of the 24th Final Provision of the LECiv states that "when a judgment given in another Member State of the European Union which terminates a European Small Claims Procedure is to be enforced in Spain, the claimant must submit to the competent court an official translation into Spanish or into the official language of the Autonomous Community in whose territory the legal proceedings take place of the certificate of that judgment, certified in the manner provided for in Article 21(2) of Regulation 861/2007".

This process is preferably in writing, and is designed to allow the parties to act on their own, without the need to be represented by a lawyer or other legal professional. It will be conducted in four forms. However, the court may agree to an oral hearing, and it may even be possible for the oral hearing to take place via videoconference. Legal aid in Spain is free of charge and it is not necessary to bring a lawyer and solicitor.

With regard to the means of communication, in addition to direct filing with the competent court and filing by post, the Spanish courts also admit the filing of claims through the electronic judicial offices of the Administrations responsible for the Administration of Justice.

With regard to the authorities and organisations competent to provide practical assistance, the parties may receive practical assistance in filling in the forms, in finding out about the application of the European Small Claims Procedure and the bodies competent to give judgment at the citizens' advice bureaux indicated by the judiciary.

A technical advisory service is available for the submission of applications to the electronic judicial headquarters. The means of electronic notification and communication and means of expressing consent to their use will be through the electronic court offices.

- At least the following persons shall be obliged to interact with the Administration of Justice by electronic means: a) legal persons; b) entities without legal personality; c) those who exercise a professional activity for which compulsory membership is required for the formalities and actions they carry out with the Administration of Justice in the exercise of said professional activity; d) notaries and registrars; e) those who represent an interested party who is obliged to interact electronically with the Administration of Justice and f) civil servants of public administrations for the formalities and actions they carry out by reason of their position.



In Spain, the European Small Claims Procedure is not included among the procedures subject to court fees and is therefore free of charge, without prejudice to other expenses that may be incurred for specific expert opinions, required translations or other expenses. If necessary, the means of payment may be by bank transfer or credit card.

- Unlike other EU countries, in Spain there is no ordinary appeal in small claims proceedings for claims under 3,000 euros. For claims between 3,000 and 5,000 euros it is possible to lodge an appeal before the court that issued the decision, which will decide on its admission and subsequent referral to the Provincial Court for resolution.
- The deadline for lodging the appeal is 20 working days from the day following notification of the judgment. The review procedure will be conducted in accordance with the procedures foreseen for the ordinary procedure provided for in Spanish law; specifically in the Civil Procedure Act.
- The languages accepted by the courts for all proceedings are Spanish and English.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation, i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.)*

Spain adopted Law 4/2011 of 24 March 2011 amending Law 1/2000 of 7 January to facilitate the application in Spain of the European order for payment and small claims procedures, adding a final provision to the LECiv, the twenty-fourth, entitled "Measures to facilitate the application in Spain of Regulation 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure", which states that objective jurisdiction corresponds to the courts of first instance or commercial courts, depending on the subject matter of the claim, and that territorial jurisdiction will be determined in accordance with the provisions of Council Regulation 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters<sup>326</sup>, and, where not provided for, in accordance with Spanish procedural law, i.e. in accordance with the rules laid down in Articles 50 et seq. of the LECiv and the Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (Article 86 ter 2, especially in cases where the claim is associated with a claim arising from a contract of carriage).

Once the action has been brought, it must be examined whether the court seised has jurisdiction and competence to hear it; whether its subject-matter falls within the scope of the Regulation; whether it is well founded and admissible; and, finally, whether the

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<sup>326</sup> Subsequently, Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted and entered into force on 10 January 2015.



information provided by the plaintiff is sufficient and the form, if any, is properly completed.

In Spain, the first examination to determine whether or not a claim is admissible is carried out by the lawyers of the Administration of Justice. For this reason, it is they who are initially responsible for verifying whether the aforementioned conditions have been met. If the competent Justice Administration lawyer considers that these conditions have been duly met, he will admit the claim by decree (final provision twenty-four of the LECiv, paragraph 3). If, on the other hand, he considers that this is not the case, he will adopt different decisions, depending on the defect that he considers to have occurred.

1. If it considers that the action has been brought before a court that does not have jurisdiction and/or competence, it shall report that fact to the court so that, after examination, it may rule on the matter.
2. If it considers that the subject matter of the claim does not fall within the scope of application of the Regulation, it will inform the plaintiff of its opinion so that, if it sees fit, it may withdraw the claim within the period granted for this purpose, otherwise it will agree that it will be processed through the corresponding declaratory proceedings. It would seem more logical that, once the case has begun, it is the court that must decide on this question (Article 416.1 of the LECiv), despite the fact that the lawyers of the Administration of Justice are the ones who are in charge of the judicial office (Article 440 of the LOPJ).
3. If it considers that the claim is manifestly unfounded or inadmissible, it shall refer the claim to the court so that the latter may adopt the decision it considers most in accordance with the law. If the court confirms its criterion, in accordance with Article 4.4, II of the Regulation, it will reject it, a decision which, if appropriate, it will adopt by means of an order, which, as it is final, may be appealed (Article 455.1 of the LECiv). The Regulation raises a question that is difficult to fit into our legal system. On the one hand, because it is difficult to imagine cases in which it is possible to see from the outset that the claim is clearly unfounded, a conclusion that entails a judgement on the merits of the case which, in our system of justice, cannot normally be made *in limite litis*. On the other hand, because, if it were accepted that such a judgement could be made after reading the application, the most logical, sensible and considered conclusion, from any point of view, including the legal one, would be to reject it as inadmissible, so that the infringer could, if necessary, rectify the fault committed, not to dismiss it, which implies a decision on the merits that disqualifies the matter from being brought before the courts again. For its part, Recital 13 of the Regulation provides that the concepts "manifestly unfounded" and "inadmissible" must be determined in accordance with the national legislation of the State in question, which implies taking into account Spanish substantive and procedural law, and our civil procedural regulations only deny the existence of actionability, that is, the possibility of successfully claiming the judicial protection sought, in very exceptional cases such as that provided for in Article 42 of the Civil Code, so that the general rule is exactly the opposite.



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4. If it considers that the information provided by the plaintiff is not relevant, not sufficiently clear or, where appropriate, that the application has not been properly completed, using standard form B in Annex II of the Regulation, it shall ask the plaintiff to complete or rectify it, to provide it with the information it considers necessary or, where appropriate, to withdraw it. If the applicant rectifies the deficiencies found, the application shall be admissible. If it fails to do so, it shall refer the matter to the court for it to decide whether the claim should be dismissed.

The possibility of being able to request additional information to that initially provided is explained by the European legislator's desire to facilitate access to justice for Union citizens without the need for them to engage the services of lawyers or other legal professionals. If the intervention of the latter is not mandatory, the only way to make up for errors that may be made by lay persons is for a state authority to supervise their claim and point out, if necessary, where it needs to be completed.

Once the Defendant's Statement of Defence has been lodged and within fourteen days of its receipt, the Legal Secretary shall send a copy to the plaintiff together with the relevant supporting documents (Article 5(4) of the ESCP Regulation). If the defendant has argued in his response that the value of the claim exceeds the limit of the European Small Claims Procedure, the court shall decide by order within thirty days of the sending of the response to the plaintiff whether the claim falls within the scope of application of the Regulation or is to be dealt with through the channels of one of the ordinary declaratory proceedings provided for in the LECiv, without any appeal being possible against its decision at that time, without prejudice to the possibility of reproducing the argument when appealing against the judgment that may be handed down (Article 5.5 of the ESCP Regulation and final provision twenty-four, paragraph 4, of the LECiv).

If the defendant has filed a counterclaim, it shall be served on the plaintiff within fourteen days of its receipt, who shall have thirty days from the date of service to reply to it. Since the counterclaim is only admissible in relation to the same contract or fact on which the original claim is based (Recital 16 of the ESCP Regulation), a certain connection between the original claim and the counterclaim seems to be required, even though it is certainly not expressly required. Possibly because, in view of the above, the European legislator did not consider it necessary to specify it in greater detail. In any case, what does seem clear is that the counterclaim must be express and, consequently, that there is no room for implicit or tacit counterclaims, since it must be formulated by filling in "a separate Form A", which avoids infringing such essential rights as those of defence, hearing and contradiction. Likewise, by provision of the European legislator, it cannot exceed the quantitative limit referred to in Article 2.1 of the Regulation. If it does so, "the claim and the counterclaim shall not be dealt with under the European Small Claims Procedure, but in accordance with the provisions of the procedural law applicable in the Member State in which the procedure is conducted" (Article 5.7 of the ESCP Regulation).

It is clear that the forced change of rules may create problems in Spain. Firstly, it will slow down the resolution of the case. And, secondly, it may make it necessary to hire the



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services of a lawyer and a solicitor when initially it was not necessary to do so (remember that in the European Small Claims Procedure the intervention of these professionals is not necessary and that, in our country, except in certain cases, it is mandatory), with the consequent economic cost that this entails.

The European Regulation raises a question that it does not resolve: what to do in those cases in which the economic value of the counterclaim exceeds €6,000, i.e. the economic threshold provided by the Spanish legislator for oral proceedings (Article 250.2 of the LECiv). In such a case it seems obvious that, since the counterclaim cannot be processed through the channels of the oral procedure, the court should declare the counterclaim inadmissible and the case should be continued through the procedures of the European Small Claims Procedure. To conclude, the allegation of a compensable claim by the defendant, which in our law constitutes a counterclaim and, as such, has its own procedural regime provided for in Article 408 of the LECiv), does not necessarily constitute a counterclaim in the European Small Claims Procedure, which is why "the defendant is not obliged to use the standard form A in Annex I to invoke this right" (Recital 17 of the ESCP Regulation), which means that it can be invoked both as a defence and by means of a counterclaim.

In Spain, parties in the European Small Claims Procedure must not be represented by a lawyer or a solicitor, although this is not prohibited either. And if you are finally represented by a lawyer, even if you win, it does not mean that the court will order the other party to pay the lawyer's costs. You can win and still have to pay the costs of the lawyer you have brought the case against. This circumstance is proclaimed in the Regulation in an objective manner, and therefore without any connection with the provisions of the national legal systems of the countries in which it is applicable, for those cases in which the economic value of the litigation does not exceed €5,000 (excluding fees, costs, interest). All this gives rise to a certainly singular situation in Spain, in which the litigants can appear on their own when the proceedings are processed by reason of the amount and this does not exceed €2,000, but not in the remaining cases, in which they must do so defended by a lawyer and represented by a procurator (Articles 23 and 31 of the LECiv), provided that they exceed the amount of €2,000 because this is established by Spanish national legislation.

This means that in proceedings conducted in Spain under Spanish law, it is necessary to hire the services of lawyers and solicitors when the economic value exceeds €2,000, while in proceedings conducted in Spain under the European Small Claims Procedure, it will only be necessary to hire them if the economic value exceeds €5,000. Therefore, a different regime of procedural postulation is established depending on whether the matter is cross-border or not and whether the process is governed by our national law or the one provided for in the ESCP Regulation.

This raises the question of whether Spanish legislators should review the criteria established in the Civil Procedure Act, increasing the economic limits above which it is necessary to hire the services of a lawyer and solicitor, taking into account the interests at



stake and the fact that the greater or lesser difficulty of litigation is not determined by the economic amount involved, but by the issue being debated before the jurisdiction<sup>327</sup>.

With regard to free legal aid in Spain, it has to be assessed whether those facing the European Small Claims procedure can apply to be granted the right to litigate free of charge and, if so, whether they are entitled to be appointed free defence and representation by a lawyer and a solicitor.

Law 1/1996, of 10 January, on free legal aid<sup>328</sup>, states that those who meet the objective and subjective requirements indicated therein (Articles 2 to 5), are entitled to be granted the benefits inherent to the right to free legal aid and, therefore, to be appointed lawyer and solicitor, even if their intervention is not mandatory, when this "is expressly required by the court or tribunal by means of a reasoned order to guarantee the equality of the parties in the proceedings" (Article 6.3). As a general rule, the recognition of the right to free legal aid does not include free defence and representation when the intervention of lawyer and solicitor is not mandatory, as an exception, when the court expressly requires it in order to guarantee the equality of the parties, it will do so. The possibility therefore exists.

Secondly, if it is necessary to engage the services of a lawyer and a solicitor in order to appeal the first instance judgment, in those cases where it is possible to challenge it, the European Regulation does not contain any provision in this respect. Therefore, the provisions of each national legislation must be followed. In the specific case of Spain, as the intervention of these professionals is always and in any case required in the second instance (Articles 23, 31 and 455.1 of the LECiv), it will be necessary to do so in order to appeal against the first degree judgement.

And, finally, whether a lawyer and procurator are required in the enforcement process, a question on which nothing is said in the Regulation either, and in which it is necessary to comply with the provisions of each national legislation, the Spanish legislation stating that both the enforcing party and the enforced party must act under the direction of a lawyer and represented by a procurator, "except in the case of the enforcement of judgments handed down in proceedings in which the intervention of these professionals is not mandatory" (Article 539.1 of the LECiv), in which case it is not necessary to engage their services. It follows that, as their intervention is not necessary in the European Small Claims Procedure when the economic value of the lawsuit does not exceed €5,000, neither is it necessary for the enforcement of the judgement that in these cases has put an end to it.

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<sup>327</sup> It is already provided for in other laws. For example, in the Law on Voluntary Jurisdiction, Article 62.4 of which, with regard to judicial authorisation or approval for the execution of acts of disposition, encumbrance or others that refer to the assets and rights of minors and persons with judicially modified capacity, states: "*The intervention of a Lawyer or Solicitor shall not be mandatory provided that the value of the act for which the proceedings are requested does not exceed 6,000 euros, and their involvement is otherwise necessary*".

<sup>328</sup> Published in the Boletín Oficial del Estado no. 11, 12/01/1996.





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### **3. Rules on service**

*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

It is organised on the basis of four standardised forms, without the need for the involvement of legal professionals, and is mainly in writing, although the possibility is provided for evidence to be taken at a hearing via videoconference or other communication systems.

The forms may or may not be used by the parties, it is not mandatory. What is important is not whether or not the allegations are contained in a form with blank spaces that is offered to the parties, but that the parties include in their pleadings certain information that is considered necessary and essential. Once this requirement has been met, whether or not they do so on these forms is irrelevant.

In Spain, in addition to filings in person before the competent court and filings by post, the Spanish courts also allow the filing of claims through the electronic court offices of the authorities responsible for the administration of justice.

With regard to communications from the courts, they may be by ordinary mail with acknowledgement of receipt, or by electronic means provided that the recipient of the message has this mode enabled. As provided for in Article 13 of the Regulation, the parties can give their consent to these means of communication on the claim form A and the defence form C.

In Spain, these four documents can be downloaded, or completed online, from the electronic headquarters of the General Council of the Judiciary. See: <https://www.poderjudicial.es/cgpi>

### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.)*

In Spain, these four documents can be downloaded, or completed online, from the electronic headquarters of the General Council of the Judiciary. See: <https://www.poderjudicial.es/cgpi>

In Spain, there is a lack of an online platform for resolving disputes in European small claims procedures, similar to the platform <http://www.odreurope.com/> ODR, which resolves disputes between consumers online, and which offers the possibility of resolving the dispute through alternative dispute resolution methods such as arbitration or mediation.

### **5. Language of the Certificate (standard Form D) and other documents to be appended**





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*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

- In Spain, the languages accepted by the courts for the entire European Small Claims Procedure are Spanish and English.

With respect to other co-official languages that exist in the country, in Spain, the process must be carried out entirely in Castilian, that is, in the official language of the State - which all Spaniards have the duty to know and the right to use (Article 3.1 of the Spanish Constitution of 1978) -, even if there are four other co-official languages in different territories of the country. This is corroborated by the fact that the four forms provided for by this process are only available in Spanish<sup>329</sup>.

This does not imply, however, that documents drafted in Basque, Catalan, Galician or Valencian cannot be submitted. In fact, they may be submitted but it should be borne in mind that, if any document is submitted in any of these languages, the court may require its translation and the opposing party may refuse to admit them, in which case the court will request a transcription from the party who submitted them.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

In most Member States of the European Union, it will be necessary to pay a fee to the court or tribunal in order to submit the statement of claim initiating the European Small Claims Procedure. The claimant must indicate the arrangements for payment of this fee in box 6 of the claim form (Form A).

The amount involved varies from country to country. Information on costs or how to calculate them is available in the *Court fees applicable to the Small Claims procedure* section of the European e-Justice Portal. In addition to this, there may be costs arising from the use of representation by a lawyer or the use of certain witnesses, such as experts. However, in particular, to initiate the procedure in Spain, no fees are required to be paid.

In Spain, the European Small Claims Procedure is not included among the procedures subject to court fees. See: [https://e-justice.europa.eu/306/ES/court\\_fees\\_concerning\\_small\\_claims\\_procedure?SPAIN&member=1](https://e-justice.europa.eu/306/ES/court_fees_concerning_small_claims_procedure?SPAIN&member=1)

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<sup>329</sup> [https://e-justice.europa.eu/content\\_small\\_claims\\_forms-177-es.do](https://e-justice.europa.eu/content_small_claims_forms-177-es.do)



- If a means of payment is required, bank transfer, payment by credit or debit card, or debit to the claimant's bank account will be accepted, as provided for in the Regulation.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

Once the judgment has been delivered in Spain, it is enforceable and can therefore be enforced, even if appealed, and its provisional enforcement cannot in principle be made conditional upon the provision of any security.

Moreover, it can be enforced in another State bound by the ESCP Regulation without the need for a declaration of enforceability and without the possibility of opposing its recognition: it is sufficient for the court which has given the judgment to issue a certificate "using standard form D as set out in Annex IV" (Article 20(2) of the ESCP Regulation) for it to be enforceable. The enforcement of the Small Claims procedure is characterised by the following:

a) Firstly, because it is governed, like the declaration process, by the provisions of the ESCP Regulation and, in the alternative, by the law of the State where it is to take place.

b) Secondly, because it is conditioned by the same rules that apply to the enforcement of judgments handed down in the State bound by the ESCP Regulation in which it is to be carried out.

c) At third instance, because it can only take place at the request of a party, never *ex officio*.

d) Fourthly, because the application for enforcement of the judgment must be accompanied by two documents: a copy of the judgment which satisfies the necessary conditions of authenticity; and a copy of the certificate that the judgment has been given in a European Small Claims Procedure, translated, where appropriate, into the official language of the State in which it is to be enforced or, if that State has several official languages, or has accepted the use of one of the official languages of the institutions of the European Union for the European Small Claims Procedure, into any one of them. In this respect, Spain has expressly accepted that such a certificate may be drawn up in English. It can therefore be written in either Spanish or English.

e) Fifthly, because the jurisdiction to carry out the enforcement in Spain when the judgment has been issued in another European Union country corresponds to the Court of First Instance of the defendant's domicile, which will also be the court to which it corresponds to decide on the refusal of enforcement, at the request of the defendant, where appropriate, as well as to rule on "the limitation of enforcement, the provision of



security or the stay of enforcement proceedings referred to in Articles 22 and 23 of Regulation 861/2007" (final provision twenty-four, paragraph 7, of the LECiv).

This rule is applicable when the judgment to be enforced in Spain has been handed down by a court of another European Union country. When it has been delivered by a Spanish court, jurisdiction is vested in the courts of first instance, except in the cases provided for in Article 86 ter 2 of the Organic Law on the Judiciary, in which it is vested in the commercial courts.

f) Also, because it does not require the parties to be represented by a lawyer or other legal professional during the course of the proceedings. For, although the ESCP Regulation does not specify whether the rule that the parties may not be required to act through a legal expert - Recital 15 and Article 15 of the Regulation - refers only to the pleading stage or also covers the enforcement stage, a careful analysis of its content leads to the conclusion that it concerns both.

All the more so when the ESCP Regulation refers at all times to the party seeking enforcement of the judgment (see Articles 21, 22 and 23), meaning that, "except for the agents having jurisdiction in the enforcement proceedings" (Article 21(3) of that Regulation), it is not obliged to have an authorised representative or a postal address in the State in which enforcement is carried out. This does not mean, however, that it is not desirable, even highly recommended, to engage the services of such professionals. For their work can be highly desirable. On the one hand, because enforcement requires important technical knowledge, which is naturally lacking in the case of laymen. On the other hand, because the ESCP Regulation does not contain any form that could serve as a guide or aid to litigants on the procedures to be followed to obtain the enforcement of the judgement in their favour or, where appropriate, to oppose it, which greatly hinders their work.

Article 539.1 of the LECiv clearly states that the rule that the executor and the executed party must be led by a lawyer and represented by a solicitor does not apply when "it is a question of the enforcement of judgments handed down in proceedings in which the intervention of these professionals is not mandatory". Therefore, their involvement is not mandatory in the enforcement of judgments in European small claims proceedings in Spain.

g) Seventh, by the prohibition that the court having jurisdiction to enforce a judgment in a European Small Claims Procedure cannot review the merits of the judgment.

This does not prevent the person against whom enforcement is sought from applying for a declaration of non-recognition in accordance with the general rules of the law of the State of enforcement (provided that the judgment is not reviewed as to its substance); in particular, where the judgment is irreconcilable with an earlier judgment, provided that the following three conditions are fulfilled: the earlier judgment has the same subject-matter and concerns the same parties; the earlier judgment was given in the Member State



of enforcement or fulfils the conditions necessary for its recognition there; and the incompatibility was not pleaded or could not have been pleaded in the course of the proceedings in the State where the judgment was given.

h) And, finally, by the fact that, notwithstanding the rule that, once the judgment has been given, it is enforceable, in those cases in which one of the parties has challenged it, such challenge is still possible or its review has been requested, the court or competent authority of the State where enforcement is to be carried out may limit it to the possible adoption of protective measures; make its commencement subject to the provision of such security as it may determine; or suspend it, in exceptional circumstances, if one of the parties so requests and it considers it appropriate (Article 25 of the Regulation).

### *COURT SETTLEMENTS*

- With regard to court settlements, Article 1816 of the Civil Code<sup>330</sup> establishes that the settlement has the authority of *res judicata* for the parties, but only in the case of compliance with the court settlement will the enforcement of the settlement be possible.
- However, this cannot prevent, unlike what would occur with a court judgment, the legal possibility of challenging the transaction in which error, fraud, violence or falsification of a document is involved. However, case law recognises that they have in common that the same subjective and objective elements that delimit the material *res judicata* also delimit the plea of settlement, with the identical consequence of binding the court in the subsequent proceedings, either in its negative aspect of preventing a new decision on the merits, or in its positive aspect of conditioning it.
- On the other hand, in accordance with the provisions of Article 517 of the LECiv, these are titles that carry with them enforcement and, therefore, the enforcement action may be based on them, as they include among them, *"the judicial decisions that approve or homologate judicial transactions and agreements reached in the process, accompanied, if necessary for proof of their content, by the corresponding testimonies of the proceedings"*.
- The LECiv has a number of special rules concerning the form and effects of the settlement in the context of a procedure. The most relevant are the following:
- Firstly, Article 25 LECiv establishes that a special power of attorney is required for the transaction.
- Secondly, Article 61 LECiv fixes the functional jurisdiction for the settlement in the court that has jurisdiction to hear a lawsuit.
- Thirdly, Article 19 LECiv states that the parties may settle on the subject matter of the same, except when the law prohibits it or establishes limitations for reasons of general interest or for the benefit of a third party. In particular, the Law states that

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<sup>330</sup> Royal Decree of 24 July 1889 publishing the Civil Code.



settlement is not possible in proceedings concerning the provision of judicial support measures for persons with disabilities, filiation, marriage and minors. In the event that the settlement does not contravene the limitations, it will be approved by the court that is hearing the dispute it is intended to end. These homologations have the character of an enforceable title (Article 517 LECiv).

- On the other hand, the most common (but not the only) moments to attempt a court settlement are the preliminary hearing in the ordinary trial (article 414 LECiv) and at the beginning of the hearing in the verbal trial (article 443 LECiv).
- A transaction recorded in an authentic instrument may be a ground for opposition to enforcement (Articles 528, 556 and 557 LECiv).

## 8. Refusal, stay, or limitation of the ESCP enforcement procedures

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

The jurisdiction to carry out the enforcement of the judgment in Spain when the decision has been issued in another country of the European Union corresponds to the Court of First Instance of the defendant's domicile, which will also be the court that will be responsible for deciding on the refusal of enforcement, at the request of the defendant, when appropriate, as well as deciding on "the limitation of enforcement, the provision of security or the suspension of the enforcement procedure referred to in Articles 22 and 23 of Regulation 861/2007" (final provision twenty-four, paragraph 7, of the LECiv).

To determine the defendant's domicile, we turn to Articles 62 and 63 of Regulation 1215/2012.

The possibility of appealing against the judgment given in these proceedings depends on the rules of the domestic law of the country in which the case is pending (Article 17 of the Regulation).

Spain informed the European Commission that it accepted that an appeal could be lodged, which should be prepared before the court that had issued the contested decision, "announcing the intention to appeal the judgment and specifying the pronouncements that are contested within 5 days. Once the appeal has been prepared, the deadline to formalise and lodge the appeal will be 20 days before the corresponding provincial court". Shortly afterwards, however, the Spanish legislator adopted various measures that had an impact on this matter, causing some confusion.

On the one hand, it approved Law 4/2011, of 24 March, amending Law 1/2000, of 7 January, on Civil Procedure, to facilitate the application in Spain of European order for payment and small claims procedures, by virtue of which a new final provision was introduced in this legislative text, the twenty-fourth, paragraph 2 of which states that, in matters not regulated by the ESCP Regulation, "Procedural matters not provided for in Regulation 861/2007 shall be governed by the provisions of this Law for oral proceedings".



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On the other hand, it passed Law 37/2011, of 10 October, on procedural streamlining measures, by virtue of which it abolished the procedure for the preparation of devolutive appeals and reformed the possibility of appealing judgments handed down at first instance, providing that all of them could be challenged before a higher court, except those handed down "in oral trials by reason of the amount when this does not exceed 3,000 euros" (article 455 of the LECiv).

Years later, on 16 December 2015, the European Parliament and the Council of the European Union adopted Regulation 2015/2421, which raised the amount that can be claimed through this procedure to €5,000, which raised a new dilemma: whether, in view of the above, only judgments rendered in a European Small Claims Procedure could be appealed when the economic value of the litigation, being higher than €3,000, does not exceed €5,000.

Some argue the literalness of Article 455.1 of the LECiv, a precept which, after stating a general rule: that judgments handed down in all kinds of trials - as well as final orders and those expressly indicated by law - are subject to appeal, points out a single exception referring to judgments handed down in oral trials due to the amount - not due to the subject matter of the lawsuit - when this does not exceed 3,000 euros. The terms of the same are clear and leave no room for doubt: only judgments handed down in oral proceedings which, having been followed according to the value of the litigation, do not exceed the sum of 3,000 euros are not subject to appeal. And if any exception is, by definition, a rule that departs from a general condition, it is clear that it must be interpreted restrictively and, consequently, that it cannot be applied to more cases than those expressly provided for.

This solution seems the most reasonable because it establishes the same system of appeals, regardless of the economic value of the litigation, with the consequent legal certainty that this entails. And, secondly, because strictly speaking, Article 455.1 of the LECiv does not say that in oral proceedings there is no right to appeal any judgement when the amount of the dispute does not exceed €3,000, but rather that there is no right to do so when such declaratory proceedings have been followed on the grounds of the amount and this does not exceed this threshold, which is something different. This makes it possible to appeal judgments handed down in oral proceedings that have been followed by reason of the subject matter, as in the case in question, in which, by legislative decision, in all matters not regulated by the ESCP Regulation, the provisions of the LECiv for oral proceedings must be followed, without any restriction being referred to the general rule that it itself provides in order to challenge the judgments handed down in the proceedings that are followed by its procedures.

However, this is not the conclusion reached by our government, which, according to the official website of the European Union, indicated to the Commission of the European Union at the time that:





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*"There is no ordinary appeal in small claims proceedings for claims of less than 3,000 euros. For claims between 3,000 and 5,000 euros it is possible to lodge an appeal before the court that issued the decision, which will decide on its admission and subsequent referral to the Provincial Court for resolution. The deadline for lodging the appeal is 20 working days from the day following notification of the ruling".*

In any case, when it is possible to appeal against the judgment handed down at first instance, when the decision is notified, the parties must be informed that it may be challenged on appeal, the court before which, where appropriate, the appeal must be lodged, the time limit within which it must be lodged (Article 248.4 of the LOPJ) and the monetary deposit that must be deposited for this purpose (50 euros, in accordance with the provisions of the fifteenth additional provision of the LOPJ).

In our Spanish procedural system it is not possible to lodge an appeal against a first instance judgement without being assisted by a lawyer and represented by a procurator. The question arises as to whether this prohibition also applies to the European Small Claims Procedure or whether, as an exception, it is permitted in this procedure to do so on one's own. The Regulation does not specify anything in this respect, but the fact that it does not contain any form for lodging a possible appeal or for opposing it and that, where not provided for in the Regulation, the provisions of our legal system must be complied with, supports the thesis that the intervention of these legal professionals is mandatory for lodging an appeal against the judgment, in the cases in which it is permitted.

By virtue of this appeal, it may be sought, in accordance with the factual and legal grounds of the claims made before the court of first instance, that an order or judgment be overturned and that, in its place, another decision be handed down in favour of the appellant, after a new examination of the proceedings before that court and in accordance with the evidence that, in the cases provided for in the LECiv, is produced before the court of appeal (Article 456.1 of the LECiv).

Currently, following the amendment made by Law 37/2011, of 10 October, on procedural streamlining measures, there is no preparation procedure for this appeal, so that it must be lodged directly with the court that has issued the decision that is being challenged within twenty days from the day following the date on which the decision was notified, Therefore, when lodging the appeal, the appellant must set out the arguments on which he bases his challenge, in addition to citing the decision appealed against and the rulings with which he disagrees (Article 458 of the LECiv).

If the appeal is lodged within the aforementioned time-limit, it shall be deemed to have been lodged by the advocate for the administration of justice attached to the court which heard the case at first instance. If, in his opinion, this has not been done, he shall bring it to the attention of the court so that the latter may rule on its admissibility, with the possibility of appealing against any decision to reject it as inadmissible.





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Once the appeal has been admitted, the counsel for the Administration of Justice shall send the other parties a copy of the appeal, giving them ten days' notice to file, before the court that handed down the decision appealed against, a statement of opposition to the appeal or, where appropriate, of challenge to the judgment in so far as it is unfavourable to them, to which they may attach the documents that are admissible at that time and in which they may ask for any evidence that may be requested in accordance with the provisions of Article 450 of the LECiv (Law on the Civil Procedure Act).

The main appellant shall then be served with those pleadings so that, within ten days, he may state his views on the admissibility of the challenge and, where appropriate, on the documents produced and the evidence adduced by the appellee. Subsequently, once the aforementioned period has elapsed, and whether or not the opposition or objection referred to above has been filed, the legal adviser for the Administration of Justice shall order the case files to be sent to the court with jurisdiction to rule on the appeal, summoning the parties to appear before it within ten days, and the appeal shall be declared void and the contested decision final if the appellant does not appear within that period. Once the case file has been received by the said court, if documents have been submitted or evidence has been proposed for the second instance, the court shall decide on their admission and, where appropriate, such evidence as is considered relevant shall be taken at an oral hearing, and a hearing may also be held, even if no evidence has been proposed or all of the proposed evidence is inadmissible, if so requested by one of the parties or if the court deems it necessary. In any event, whether or not such oral hearing takes place, the court with jurisdiction to decide the appeal shall rule by way of a judgment.

In any event, whether or not an appeal is allowed against the judgment of the Spanish court hearing the European Small Claims Procedure in the first degree, Article 18 of the ESCP Regulation provides that the defendant has the right to apply for a review of the judgment in three cases, provided, however, that in all of them he has acted promptly. Specifically, in the following cases: a) where the claim form or the summons to an oral hearing has not been served in such a way as to be received by the defendant; b) where service has not been effected in sufficient time to enable him to prepare his defence, without any fault on his part; c) or where he has not had an opportunity to object to the claim because of force majeure or extraordinary circumstances beyond his responsibility.

This means that, depending on when the defendant becomes aware of these circumstances, he or she must allege them before the judgement is handed down; if necessary, by means of the relevant appeal (Article 227.1 of the LECiv); and, finally, if no appeal is possible, by means of the most appropriate means of challenge (hearing the defaulting defendant; application for nullity of the proceedings; process for review of the final judgement, depending on the case).

If, after due process, the court or tribunal rejects the application for review on the ground that none of the above grounds applies, the judgment will be deemed to be final. If, on the other hand, the court or tribunal considers the review to be admissible, the judgment given



in the European Small Claims Procedure will be declared null and void (Article 18(2) of the Regulation).

## 9. Availability of any legal aid for guidance on the ESCP enforcement procedures

In Spain, in order to promote awareness of the European Small Claims Procedure for those who lack the necessary legal knowledge and do not wish to engage the services of a lawyer or legal expert, information on the European Small Claims Procedure and the courts before which the claim can be brought is provided in:

[https://e-justice.europa.eu/content\\_small\\_claims-354-es-es.do?member=1#a\\_111](https://e-justice.europa.eu/content_small_claims-354-es-es.do?member=1#a_111).

In addition, the four documents initiating the procedure or reply documents can be downloaded, or completed online free of charge, from the electronic headquarters of the General Council of the Judiciary at: <https://www.poderjudicial.es/cgpi>.

With regard to free legal aid in Spain, it has to be assessed whether those who are involved in the European Small Claims Procedure can apply to be granted the right to litigate free of charge and, if so, whether they are entitled to be appointed free defence and representation by a lawyer and a solicitor.

Law 1/1996, of 10 January, on free legal aid<sup>331</sup>, states that those who meet the objective and subjective requirements indicated therein (Articles 2 to 5), are entitled to be granted the benefits inherent to the right to free legal aid and, therefore, to be appointed lawyer and solicitor, even if their intervention is not mandatory, when this "is expressly required by the court or tribunal by means of a reasoned order to guarantee the equality of the parties in the proceedings" (Article 6.3). As a general rule, the recognition of the right to free legal aid does not include free defence and representation when the intervention of lawyer and solicitor is not mandatory, as an exception, when the court expressly requires it in order to guarantee the equality of the parties, it will do so.

If it is necessary to engage the services of a lawyer and a solicitor to appeal against the first instance judgment, in those cases where it is possible to challenge it, the European Regulation does not contain any provision in this respect. Therefore, the provisions of each national legislation must be followed. In the specific case of Spain, as the intervention of these professionals is always and in any case required in the second instance (Articles 23, 31 and 455.1 of the LECiv), it will be necessary to do so in order to appeal against the first degree judgement.

And, finally, whether a lawyer and procurator are required in the enforcement process, an issue on which nothing is said in the Regulation either, and in which it is necessary to comply with the provisions of each national legislation, it being stated in Spanish legislation that both the enforcing party and the enforced party must act under the direction of a

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<sup>331</sup> Published in the Boletín Oficial del Estado no. 11, 12/01/1996.



lawyer and represented by a procurator, "except in the case of the enforcement of judgments handed down in proceedings in which the intervention of these professionals is not mandatory" (Article 539.1 of the LECiv), hypotheses in which it is not necessary to engage their services. It follows that, as their intervention is not necessary in the European Small Claims Procedure when the economic value of the lawsuit does not exceed €5,000, neither is it necessary for the enforcement of the judgement that in these cases has put an end to it.

## **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

In any event, whether or not an appeal is allowed against the judgment of the Spanish court hearing the European Small Claims Procedure in the first degree, Article 18 of the ESCP Regulation provides that the defendant has the right to apply for a review of the judgment in three cases, provided, however, that in all of them he has acted promptly. Specifically, in the following cases: a) where the claim form or the summons to an oral hearing has not been served in such a way as to be received by the defendant; b) where service has not been effected in sufficient time to enable him to prepare his defence, without any fault on his part; c) or where he has not had an opportunity to object to the claim because of force majeure or extraordinary circumstances beyond his responsibility.

This means that, depending on when the defendant becomes aware of these circumstances, he or she must allege them before the judgement is handed down; if necessary, by means of the relevant appeal (Article 227.1 of the LECiv); and, finally, if no appeal is possible, by means of the most appropriate means of challenge (hearing the defaulting defendant; application for nullity of the proceedings; process for review of the final judgement, depending on the case).

In any case, when it is possible to appeal against the judgment handed down at first instance, when the decision is notified, the parties must be informed that it may be challenged on appeal, the court before which, where appropriate, the appeal must be lodged, the time limit within which it must be lodged (Article 248.4 of the LOPJ) and the monetary deposit that must be deposited for this purpose (50 euros, in accordance with the provisions of the fifteenth additional provision of the LOPJ).

## **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

In Spain, the European Small Claims Procedure is a little known and little used procedure. If the Centro de Documentación Judicial en España (CENDOJ) is consulted, 170 results are obtained, since 2008, reaching two peaks of proceedings in 2021, with 63 proceedings and in 2022, with 37 proceedings. Of the total, 149 cases are brought before the commercial



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courts, 20 cases before the provincial courts and 1 case is resolved by the Supreme Court, but this is strictly a question of judicial competence. The vast majority of cases relate to transport claims, especially air transport, as a result of delays in the contracted flight, missed connections with other journeys, lost luggage, etc.

A publicity campaign should be carried out to raise awareness of it, including among legal professionals, because it is a suitable and effective instrument for making certain claims. For example, claims for reimbursement of the price paid for the purchase of a defective product in a State affected by the ESCP Regulation other than one's own, or claims for reimbursement of services contracted and not paid for by a European citizen during his stay in another EU country to which the ESCP Regulation applies.

One way to encourage its use would be to abolish the need to pay a court fee in those countries where it is still required. It is true that in Spain it is not required and that, despite this, it is hardly used. But this is due to a lack of incentives for its use and a lack of awareness among legal professionals. Therefore, removing this obstacle could make it more attractive in those EU countries that still have it.

It seems appropriate to think about increasing the economic value of the claim in these processes. It is true that in 2015 it was raised to €5,000 and that this threshold is more appropriate than the initial €2,000. But it would be appropriate to raise it a little higher, for example to €7,000-8,000, at least in those cases where the dispute is between companies or legal persons, in order to encourage their managers to use it. This procedure is not only intended for monetary claims. It can also be used for non-pecuniary claims (relating to an act, a failure to act or the delivery of something other than money), or even purely declaratory or constitutive claims. There is nothing in the Regulation on how the amount is to be determined in these cases. Therefore, in the Spanish case, it is necessary to turn to the domestic legal system, which regulates it in Articles 251 et seq. of the LECiv.

It would be appropriate for its processing to be regulated more comprehensively than it is at present, thus limiting the many references in the ESCP Regulation to the legislation of the national States in which it applies, as this is a complicating factor, especially for the layman, and discourages recourse to it.

It should be clarified that the dismissal of the claimant's claim is only possible in the judgment. Therefore, when the Regulation stipulates that in some cases the claim can be rejected, the European legislator is referring to the rejection of the claim as inadmissible or to the competent authority's refusal to continue processing the claim. Ultimately, it would be a good thing if the Regulation were to stipulate that in such cases the judicial decision should be the same as that which would be taken in a similar case in a national lawsuit.

It would be useful to state clearly how the States concerned by the ESCP Regulation are to provide the practical assistance they have undertaken to provide to those wishing to make use of this process so that they can fill in the forms referred to therein (Article 11). This will



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undoubtedly lead to greater confidence in this process, to greater use of it and to a better development of the procedure.

It would be a good thing if the rule were to indicate, in as much detail as possible, how the courts are to fulfil their duty to inform the parties of the procedural issues that have arisen and are to be resolved, in those cases where this is necessary (Article 12(2) of the ESCP Regulation), since otherwise this duty may be reduced to a mere declaration of intent.

It would be appropriate to define as precisely as possible the cases in which the court may, of its own motion, decide to hold an oral hearing after the parties have submitted their pleadings. Otherwise, if this is not done, its necessary impartiality may in some cases be called into question, and it should be stipulated that, in those cases where such a hearing must take place, the requirements of contradiction, immediacy, concentration and publicity must be complied with in the best possible way. For the same reason, the decision not to hold an oral hearing, when it has been requested by at least one of the disputants, must be duly founded and reasoned, so that it is possible to know, in due detail, the reasons that lead the court not to agree to it.

It would be worth considering the possibility for the parties to formulate written conclusions after the taking of evidence, in those cases where it is agreed, as this could help them to establish their respective positions more precisely.

The European Small Claims Procedure generates costs for the parties (translation of documents, travel expenses to attend hearings if they cannot be carried out by telematic means, remuneration of witnesses, etc.) which it would be good if they could be reduced: perhaps with state aid or aid from the EU Commission itself, at least during the first years, in order to make this instrument more attractive.

It would be advisable to provide that the judgement handed down at first instance in these proceedings can always be challenged before a court other than and hierarchically superior to the one that signed the judgement, since this would increase the possibilities of correctness, while limiting the cases of possible judicial error or miscarriage of justice.

It seems appropriate to consider the proposal to create an online platform for the European Small Claims Procedure in European terms, which should also incorporate alternative dispute resolution mechanisms such as mediation and arbitration. The use of technology in the justice sector can have additional advantages. The implementation of an online platform for all Member States in relation to Small Claims will also make it possible to collect information on cases and to produce automatic statistics. In this way, the system can aggregate data on the type of problems brought by the parties or on the parties and this information can be used in the future to promote legislative changes to prevent and reduce disputes or change cultural behaviour.

Indeed, statistical data may justify changes in substantive law and consequently reduce disputes or improve information to citizens. The application of consensual dispute



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resolution mechanisms will promote the resolution of future disputes by agreement between the parties. Courts will remain fully operational for claims where resolution by agreement is not possible, and will be able to respond more quickly and thus ensure the effectiveness of justice.

The implementation of a European electronic platform to manage Small Claims procedures implies first determining the entity responsible for its management. As is already the case with the European ODR Platform for Consumer Disputes, the European Commission will be the entity best placed to take over the administration of the EU Small Claims Platform. This Platform should be set up as a one-stop shop for the parties and national Small Claims Dispute Resolution entities to conduct the respective procedure. Each Member State has to choose or create a national service responsible for internally managing the Small Claims procedure through the online platform. Each national authority has to incorporate three essential services: 1) Information and procedure management service 2) Mediation 3) Arbitration or Small Claims Court. Internally, each Member State will be able to assign these functions to existing entities that become part of this Online Platform.

All stages of the process would be managed through the Online Platform. The proposed model is similar to the ODR Platform for consumer disputes. However, this Small Claims Platform would incorporate domestic dispute resolution mechanisms in each State, either extra-judicial (such as mediation or arbitration) or judicial (with Member States being able to choose the competent court for these disputes and incorporate it into the Platform to manage the process).



## Sweden

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### 1. Please provide a summary of the implementation of ESCP Regulation in the intended Member State

*(i.e., the competent courts/tribunals dealing with ESCP claims (any specialisation or centralisation in determining competence); the number and mode of hearings; mode of the gathering of the evidence; court fees and methods of payments; costs for the losing party; accepted official languages by the courts/tribunals; costs and financial support for translation; availability of legal assistance; possibility of appeal; availability of review mechanism where the national court has issued the judgment; etc.)*

#### *Rules specific for small claims cases*

The ESCP is implemented in Swedish law through legislation: Lag (2008:1038) om europeiskt småmålsförfarande (Law concerning The European Small Claims Procedure “LESCP” – no official translation). There are few special rules related to the ESCP, and the procedural rules are mainly based on the Swedish small claims rules, see LESC section 3.

There is, however, a few special regulations in Rättegångsbalken (1942:740)<sup>332</sup> for claims concerning claims lower than approx. 2200 EUR. These rules also regulate the cases under the ESCP, see LESC section 3. The rules mainly concern the composition of the court and limitations on the possibility of reimbursement of costs, see SCJP chapter 1 section 3d nr. 1. There is only one judge that presides over small claims cases, and there are therefore no lay judges involved in the procedures.

In addition, the possibility of getting costs reimbursed is restricted. The winning party can for example only get reimbursement for one hour of legal counselling, see SJCP chapter 18 section 8 a.

#### *General remarks about the procedural rules for small claims/ESCP*

Sweden does not have a separate national procedure for small claims. The general procedural rules are meant to be flexible, to the extent that there is no need for special

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<sup>332</sup> The Swedish Code of Judicial Procedure “SCJP” – official translation by the Swedish government:

<https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/1998/01/ds-199865/>





procedural rules for small claims. The procedure is therefore mainly based on the judge's discretion, with special consideration taken to the general principle of proportionality and the right to a fair procedure. Small claims cases, hereunder cases dealt with under the ESCP, is handled by the first instance courts.

The Swedish civil procedure is based on a main hearing model. This is the same in cases under the ESCP. The process starts with the preparatory stage. It is generally conducted in writing, so it coincides with the general rule under the ESCP. It is possible to have oral hearings, but it is rarely used in small claims proceedings (Lindell B (2017) Civilprocessen: rättegång samt skiljeförfarande och medling. Iustus, Uppsala p. 354).

In Sweden, most cases have one oral main hearing. This is also the case for small claims cases. It is possible to have more than one hearing, but it is unusual in small claims cases. In the hearing the parties present their arguments and evidence. Based on what is presented during the hearing, the judge gives judgement.

The court fee for a small claims case is 84 EUR if the value of the claim is less than 2200 EUR. If it exceeds this amount the court fee rises to 262 EUR.

Appeal is a possibility, also in small claims cases, at least in theory. The second instance court must approve the appeal, and the threshold is very high, see SCJP chapter 49 Sect. 12. Parties in small claims cases, both under the ESCP and generally, will therefore rarely get approval for an appeal.

## **2. Competent court or authority and procedure involved in the enforcement of ESCP judgments**

*(cf. Art. 21 ESCP Regulation; i.e., the main enforcement rules of ESCP judgments under national law; relevant internal civil procedural rules; where to find the relevant information on these rules; where and how to submit Form D; what documents shall be appended to this Form; etc.*

The rules on enforcement are regulated in "Utsökingsbalken" (1981:774).<sup>333</sup>

The enforcement of ESCP judgments is administrated by "Kronofogden" – The Enforcement Service, see TEC 1. chapter Section 3.

As a main rule, there is no need to include the first instance courts in the enforcement procedure.

## **3. Rules on service**

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<sup>333</sup> The Enforcement Code (TEC) – official translation by the Swedish government:

<https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2002/01/ds-200245/>



*(cf. Art. 13; i.e., the standard forms; the competent service authority; the main mode of communications; specific costs; etc.)*

The enforcement procedure starts with the party seeking enforcement sending in the relevant documents to Kronofogden. In this process Form D must be handed in with the ruling in question, see TEC chapter 2 section 2. The applicant should also state the measure that he requests, see TEC chapter 2 section 2.

If it is necessary to translate documents handed in by the parties it can be done by Kronofogden, see TEC chapter 2 section 8 together with SCJP chapter 33 section 9. The state/Kronofogden will in these cases cover the costs for this translation. If the applicant is a professional party, they may have to translate the documents themselves. Kronofogden may never refuse an application on the basis that the documents are in a non-official language.

The enforcement procedure is mainly conducted in writing, but it is possible to have oral meetings/communication, see TEC chapter 2 section 10. Kronofogden will contact the debtor and ask that he acts according to the judgement, for example to pay debts. If this does not happen, Kronofogden will make an overview of the debtors properties. Thereafter, Kronofogden may seize the assets and sell them.

If the parties disagree about the validity of the grounds for enforcement there will be an oral hearing, conducted by Kronofogden.

#### **4. The status of digitalisation in enforcement of the ESCP judgments**

*(cf. Art. 25 (b); i.e., available means of electronic communications; the existence/use of any specific digitalised process or online platform for enforcement procedures; etc.*

There are not any specific digitalised processes concerning the enforcement of the ESCP judgements in Sweden. There is however possible to use a digital form for submitting the judgement to Kronofogden.<sup>334</sup>

The digital solution does demand a foreign eID from one of these countries: Belgium, Denmark, Estonia, Italy, Croatia, Latvia, Luxembourg, Portugal, Slovakia, Spain, The Czech Republic or Germany.

For parties outside of these countries, the application for enforcement must be sent by regular mail. Which Kronofogd the form/documents should be sent to, depends on where the person/business you seek the enforcement against is located.

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<sup>334</sup> <https://kronofogden.se/other-languages/english-engelska/want-to-get-paid/application-to-get-paid-execution>



## **5. Language of the Certificate (standard Form D) and other documents to be appended**

*(cf. Art. 21 & Art. 21a; i.e., the official language(s) of the courts/enforcement authorities; mandatory/non-mandatory translation of the Certificate and other documents; other languages of the institutions of the EU accepted by courts/enforcement authorities; etc.)*

The official language of the enforcement authorities is Swedish. The relevant documents, usually the judgement from another EU country and Form D, can also be translated into English.

## **6. Fees for the enforcement procedures**

*(cf. Art. 15(a) & Art. 16; i.e., the costs to be paid and the accepted methods of payments)*

Before Kronofogden starts the enforcement procedure, a yearly fee of 600 SEK, aprox. 56 must be paid, see TEC chapter 17 section 1. The amount is the same for most enforcement procedures in Sweden.

If a party seeks enforcement of a ESCP judgement, the applicant is responsible for covering the states costs related to the enforcement procedure. This is the rule concerning all enforcement procedures in Sweden, see TEC chapter 17 section 2.

## **7. Enforcement of court settlements approved or concluded by a court in the ESCP context**

*(cf. Art. 23a; i.e., the enforcement process; any specific rules for executing such court settlements; etc.)*

A court settlement is one of the legitimate grounds that an enforcement procedure can be based on. If it is legally valid, an ESCP court settlement may be used as a basis for an enforcement procedure in Sweden, see TEC Chapter 3 Section 1 nr. 2. See also TEC Chapter 3 Section 13.

## **8. Refusal, stay, or limitation of the ESCP enforcement procedures**

*(cf. Art. 23; i.e., competent authority; the procedure; and the consequences under the national procedural rules; etc.)*

Kronofogden is responsible for deciding on whether there should be given a stay, a refusal or a limitation of enforcement. This is the rule for ordinary enforcement procedures and is also applicable for the ESCP enforcement procedures.

The enforcement can be conditioned on certain terms. These are listed in TEC chapter 3 section 3-section 10. An example can be found in TEC chapter 3 section 6, where a debtor of a monetary claim can put up security to stay the enforcement procedure. The security



must cover the amount of the judgement and interest. This rule (and the rules in general) must be interpreted in light of ESCP article 15 and 23, see LESC section 7.

#### **9. Availability of any legal aid for guidance on the ESCP enforcement procedures**

There is no legal aid concerning the ESCP enforcement procedure. However, Kronofogden may be contacted, and will give guidance concerning the procedure. In theory there should be no need for additional legal counsel.

#### **10. Other specific procedural rules on enforcement of ESCP judgments**

*(if applicable)*

Not applicable. There are few special rules for enforcement of ESCP judgements. The rules are the same as in general enforcement cases.

#### **11. Critical assessment of the ESCP judgments enforcement procedures**

*(Including possible recommendations for further improvement of ESCP enforcement procedures)*

The enforcement of ESCP judgements does not seem to have caused special problems in Sweden, compared to other cross border cases. This might be because of lack of special rules concerning the ESCP judgements enforcement procedures.

Generally, it would however be positive if there was a clearer demand for digital solutions for enforcement of ESCP judgements. More similar solutions would make the process quicker, and more accessible across borders.

#### IV. Table on National Enforcement Rules for ESCP Judgments based on Country Reports

State	Institution responsible for enforcement	Means of submitting the documents for enforcement	Languages to submit document for enforcement	Fees/costs of enforcement	Availability of legal aid	Room for improvement
<b>Austria</b>	District courts. After the authorisation of the execution, the proceedings are conducted ex officio by the enforcement organs of the competent execution court.	Usually by service agents, electronic system only for lawyers.	German.	Execution fees depend on the type of execution.	If there are any questions regarding the completion of the form, one can obtain legal information free of charge at the district court responsible for granting the execution or at the district court in whose district the person is staying (Judicial Service Centres). Party seeking enforcement can also apply for legal aid.	1. Elimination of language barrier. 2. Increase awareness.
<b>Belgium</b>	Bailiffs. The land registry court (Grundbuchsgericht) is responsible for the execution on real estate (registered in the land register).	Usually by bailiff or by registered mail.	French, Dutch, or German.	Costs of enforcement are paid by the party against whom the enforcement is sought.	Legal aid available to people (both claimants and defendants) with insufficient financial resources to cover the costs of civil proceedings. The request for legal aid is lodged with the court competent to decide on the merits of the case.	1. Increase awareness among citizens and some practitioners. 2. No centralisation of the dealing with ESCP cases. 3. Increase free legal aid possibilities. 4. Increase awareness on alternative dispute resolution methods.
<b>Bulgaria</b>	Court bailiffs (public and private).	Usually by e-mail or by uniform e-Justice portal.	Bulgarian.	There are two basic types of fees: fixed fees, which are collected for a certain procedural action and "proportional" fees, which are based on performance. There are also "additional" fees that have to be paid for enforcement operations performed during holidays and outside regular business hours.	European Consumer Centre in Bulgaria, which is part of the European Consumer Centres Network (ECC-Net). Parties can also apply for legal aid in civil cases if the fulfil certain (financial) conditions.	1. Elimination of language barrier (legislation that deals with enforcement available in Bulgarian only). Enforcement proceedings is to be conducted in Bulgarian. 2. Provide more detailed information for foreigners In e-justice portal. 3. Digitalise proceedings (there is an online system, however, private individuals have to pay for using it, only registered users are able to access the system).
<b>Croatia</b>	Courts and public notaries.	Electronically or by other classical methods	Croatian.	The creditor must bear all costs of the procedure in advance. Court fee for the proposal for the enforcement is half of the court fee for the submission of the claim.	Legal aid should be given by court administration (the lack of clarity has been noted). Legal aid may be granted to an applicant who does not meet the conditions for legal aid, if applicant proves that he or she is unable to pay the costs of the procedure due to the difference in living costs between the member state in which he resides or permanently resides and living costs in Croatia .	1. Provide more detailed information. 2. Increase awareness on legal aid available. 3. Digitalise proceedings. 4. Install a single contact point regarding ESCP proceedings linked with eJustice portal.
<b>Cyprus</b>	Any district courts (where the judgment debtor resides, has or is expected to have assets), the Courts Service (bailiffs), the Land Registry, the police (collecting overdue maintenance payments).	By electronic form or by service agent.	Greek-speaking person, be in on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English. Judgment and orders shall be entered in English. If a Greek or Turkish translation of a judgment or order is required for service in Cyprus, it shall be made by the Registrar of the Court.	The costs are rather calculated by the registrar of the court based on the regulations on fees and depend on the sum awarded under the judgment or the value of the subject matter of the judgment, as well as other possible additional possible expenses.	Any natural person who cannot bear the costs of the proceedings without affecting the basic needs and obligations of himself and his family is entitled to receive legal aid. An application is to be lodged to the competent court, in case of cross-border disputes, application shall be lodged with the Ministry of Justice and Public Order.	1. Elimination of language barrier (legislation that deals with enforcement available partly in English, partly in Greek - English is not an official language; Glossary contains English terms, but Greek terms do not have such glossary). 2. Provide more detailed information for foreigners. 3. Digitalise proceedings (there is no online system, lack of internal IT infrastructure and facilities, and a general absence of online public services).
<b>Czech Republic</b>	Enforcement procedure is divided between regular civil courts and bailiffs.	Usually in electronic form.	Czech.	Proportionate costs.	Courts have a general duty to inform and thus provide participants with information on their procedural rights and obligations. Free legal aid is provided by the Czech Bar Association. There aren't any special legal provisions on legal aid in the enforcement procedure.	1. Provide more detailed information. Increase awareness.
<b>Estonia</b>	Bailiffs (enforcement agent).	Generally in electronic form.	Estonian or English.	Proportionate costs.	If the court finds that a natural person who is a participant in proceedings is unable to protect their rights on their own or that their essential interests may be insufficiently protected without the assistance of an advocate, the court will explain to that person the possibility to receive state legal aid.	1. Increase awareness and provide more information.

<b>Finland</b>	Bailiffs.	Usually in electronic form.	Finnish, Swedish, or English.	The National Enforcement Agency of Finland provides a table of expenses that may be applicable, as determined by the sum of money in question. For the ESCP, the maximum possible fee (i.e. for 5000 euros) would be 134 euros.	European Consumer Center Finland or Euroopan kuluttajakeskus Suomessa provides practical information on the ESCP. Legal aid from state resources in Finland is provided to those who due to the financial situation are unable to pay such expenses themselves. Legal aid will not be provided if the matter is of minor importance to the applicant, the process would be manifestly pointless in proportion to the potential benefits that could ensue, or the case would amount to an abuse of process.	1. Increase awareness.
<b>France</b>	Court of general jurisdiction.	By registered letter with acknowledgement of receipt.	French, English, German, Spanish and Italian.	There is no fee.	Legal aid can be provided if 4 conditions are met: 1. Subsidiarity: the party has no other means of financing its action. 2. Nationality and residence: the party must be of French nationality or must reside on French territory (with exceptions: cross-border disputes, asylum seekers, victims of domestic violence, etc.). 3. Resources: the party requesting the legal aid must have a reference tax income and a value of movable and immovable assets below certain ceilings, depending on the composition of the individual's tax household. For a single person, the full legal aid is granted if the reference tax income does not exceed 11 580 euros. Resources conditions do not apply to victims of crime in particular. 4. Seriousness of the action: the action must be serious.	1. Increase awareness. 2. Reinforce the training of the actors, especially lawyers and magistrates.
<b>Germany</b>	The bailiffs as autonomous enforcement authority carries out enforcement (insofar as the law does not assign jurisdiction to the courts). The bailiff is responsible in particular for seizure of movables, surrender claims and to obtain information on the debtor's assets. Enforcement courts are competent for the enforcement of monetary claims by garnishment order.	Electronically or by bailiff.	German.	The costs depend on the measure taken.	A party can apply for legal aid under the same conditions as during court proceedings.	1. Enhance the efficiency and quality of the enforcement process. 2. Harmonise the enforcement of ESCP judgement across all EU countries. 3. Increase awareness.
<b>Greece</b>	The bailiffs competent at the place of enforcement are responsible for the seizure of movable and immovable property. In the case of seizure, the notaries are responsible for auctioning. The lawyers are responsible for the drawing up of the garnishing order, while the bailiffs are responsible for the service of that document.	By a bailiff, criminal bailiff, by post, telephone or electronically.	Greek.	The costs of enforcement are borne by the person against whom the enforcement is directed and are paid in advance by the person who commences the enforcement proceedings. Proportionate costs.	Legal aid is granted to persons who prove their inability to pay the costs of legal proceedings without jeopardising their or their families' subsistence. Legal aid includes the costs of proceedings, notaries' and bailiffs' fees and lawyers' fees.	1. Elimination of language barrier (legislation that deals with enforcement available in Greek only). Enforcement proceedings is to be conducted in Greek. 2. Provide more detailed information for foreigners. 3. Digitalise proceedings (no procedure can be initiated online only).
<b>Hungary</b>	District courts.	By post or in electronic form.	Hungarian.	The order of judicial enforcement falls within the jurisdiction of the court, therefore a <i>court fee</i> must be paid. The amount of the court fee is 1% of the value of the subject matter, with a minimum of HUF 5,000 (about 12.5 euros).	Court office receives clients during the period specified by the president of the court or, in the case of district courts, the president of the regional court. Legal assistants provide, inter alia, legal advice to clients or prepare submissions or other documents, the fees and costs of which are paid or advanced to legal assistants by the State instead of the client (clients' income may not exceed the amounts specified in those sections, and they may not be subject to the conditions excluding eligibility for aid).	1. Creating an online platform. 2. Digitalising proceedings.
<b>Ireland</b>	County Registrars (in Cork and Dublin - Sheriff).	Usually by registered post.	English or Irish.	The fees for the execution of judgements to recover debts depend on the complexity of the case, the adopted enforcement measures, also the nature and value of the assets to seize.	There is not any official legal assistance provided to the creditors who seek to execute an ESCP judgement in Ireland.	1. Increase awareness. 2. Provide information in a clearer manner. 3. Digitalise proceedings.

<b>Italy</b>	Ordinary courts.	By postal service or through electronic means.	Italian.	Fee depends on the value of the case and the stage of the proceedings.	None	1. Provide information in a clearer manner. 2. Provide more information regarding the applicability of Art. Art. 23(a) of the ESCP Regulation.
<b>Latvia</b>	Court bailiffs.	Usually by registered mail.	Latvian.	For the submission of an enforceable document for enforcement, its submitter shall pay a state fee to the state budget. For each official activity (listed in Sections 73 and 74 of the Law on Bailiffs) performed by a sworn bailiff, as well as for the legal assistance provided (Section 75 of the Law on Bailiffs), he has the right to receive compensation regardless of the state fee. The amount of compensation for the activities of a sworn bailiff is determined according to the fee.	The persons shall be entitled to request state legal aid in cross-border disputes in civil matters. However, it is unclear whether this type of legal aid extends to the enforcement proceedings	1. Elimination of language barrier by translating relevant rules. 2. Provide more precise and clearer information online and on e-Justice portal. 3. Digitalise proceedings.
<b>Lithuania</b>	Bailiffs (judicial officers).	Electronically or by post.	Lithuanian.	All the enforcement costs shall be indicated by the judicial officer in the calculation of enforcement costs. Where a judicial officer carries out the recovery of pecuniary amounts under several enforcement instruments, a single calculation of enforcement costs shall be prepared for all enforcement proceedings of a pecuniary nature in relation to the same debtor, except in the cases when the calculation of enforcement costs is sent to the debtor together with the warning to comply with the judgment.	The practical assistance and information shall be provided to the parties by entities providing primary State-guaranteed legal aid – municipal staff or university law clinics that have contracts for the provision of primary legal aid. State-guaranteed legal aid is provided to persons who are citizens of the Republic of Lithuania or the EU, or who legally reside in the Republic of Lithuania or in another EU Member State, if the person's (his/her family's) assets and annual income do not exceed the levels of assets and income established by the Government of the Republic of Lithuania.	1. Elimination of language barrier by allowing submitting documents in other languages, e.g. English. Also adapt the e-systems of courts (EPP) and e-system of bailiffs so that it could operate in English. 2. Increase awareness.
<b>Luxembourg</b>	Bailiffs (For the purpose of Article 23 of Regulation (EC) No 861/2007 establishing a European Small Claims Procedure, the competent authority is the presiding judge of the district court).	By registered letter.	French and German.	There are no legal fees to be paid to the competent court in Luxembourg in the framework of the European Small Claims Procedure. However, after a judgment, court costs are incurred in the execution of the decision and at the request of the successful party. There are no court costs, even for the unsuccessful party.	N/A	1. Increase awareness. 2. Provide more detailed information for public and legal professionals.
<b>Malta</b>	Court of Magistrates (Malta) or the Court of Magistrates (Gozo).	In person at the Tribunal Registry, by post, by an electronic mechanism provided by the Tribunal, fax and by email.	English.	To file any warrant, the Registry fee is of €50, a fee of €7 is due to every executive officer required. There are also the Lawyer and Legal Procurator fees which amount to €11.65 and €3,88 respectively	A consumer that is filing an ESCP claim against business unit may be advised and receive practical support by ECC-Net Malta - European Consumer Centre Malta. A business unit that is filing an ESCP claim regarding another business unit can be advised and receive practical support by Malta Enterprise.	1. Digitalise proceedings, avoiding physical presence in the Court Registry.



<b>Netherlands</b>	Bailiffs (under the instructions provided by the creditor).	Usually by post.	Dutch.	In general, the bailiff fees are governed by the Decree on the rates of the official acts of bailiffs. These fees are adjusted annually.	There is not any official entity which assists the creditors to obtain specific legal information concerning the enforcement of the ESCP decisions in the Netherlands. However, the citizens can contact the Legal Service Counter to seek some general information on the national rules on execution of judgements in the Netherlands. Where ESCP claims concern consumers, the European Consumer Centre (ECC-Net) of the Netherlands can be also contacted to seek some general information on the national enforcement procedures	1. To improve the existing regulatory measures in order to ensure a more effective and simplified enforcement of court decisions for (foreign) creditors. 2. To provide and update information on the e-Justice portal. 3. Provide more detailed information in the Dutch judiciary website. 4. Digitalise proceedings.
<b>Poland</b>	District courts or regional courts (for matters which, due to their nature, are within the material competence of regional courts irrespective of the value of the claim).	The serving authorities are the postal operator, bailiffs and the court serving agency. As a rule, documents are served by the postal operator. Typically, documents are sent by registered letter with acknowledgement of receipt. Electronic service is only available to attorneys at law.	Polish.	As a general rule, in matters involving enforcement of pecuniary claims, the bailiff charges the debtor a proportional fee equivalent to 10% of the enforced claim. In matters involving enforcement of pecuniary claims resulting from the discontinuance of enforcement proceedings at the request of the creditor and on the basis of Article 824(1)(4) Code of Civil Procedure, the bailiff charges the debtor a proportional fee equivalent to 5% of the value of the outstanding claim.	A party who has been exempt by the court from paying all or part of court costs may move the court for an advocate or an attorney-at-law to be appointed.	1. Provide more detailed information on the proceedings.
<b>Portugal</b>	Enforcement courts. If there is no enforcement court, the local civil courts and the courts of general jurisdiction are competent.	Electronically or by registered mail.	Portuguese, English, French and Spanish.	Proportionate costs.	The competent body to provide practical assistance is the DGAJ – Direção-Geral da Administração da Justiça. Any clarification regarding the filling in of the forms or jurisdiction can be obtained by the applicant from the court of his domicile. It is up to the judicial authorities to assist in the questions of filling out the form, warning of deadlines and consequences of the process. Furthermore, it is up to the officials of the competent courts to clarify certain procedural aspects arising from the national application.	1. Elimination of language barrier. 2. Increase awareness.
<b>Romania</b>	Bailiffs.	Through the Romanian Post; Via courier services; By electronic mail, if requested by the parties; By fax; The parties may also file the documents in person at the court registry.	Romanian.	Stamp duty of 20 lei for the declaration of enforceability; bailiff fee; Lawyer's fee if applicable; - Other expenditure relating to the communication of documents. The enforcement costs will be paid by the party seeking enforcement and will be recovered in the enforcement proceedings.	This guidance is not free, it is a service provided by attorneys with some fees.	1. Elimination of language barrier (e.g. establishing of translation system).
<b>Slovakia</b>	The enforcement is carried out by the executor (distrainor), who is authorized by the enforcement court to carry out the enforcement.	Electronically or by registered mail.	Slovak.	In enforcement proceedings, a person shall also pay a court fee of 16.50 euros in connection with the filing of the motion for execution.	Legal aid is being provided by the Centre for Legal Aid (available for persons who cannot use legal services due to lack of money and property).	1. Make rules more specific and precise (at both national and EU levels). 2. Improve transparency for providing information for creditors (e.g. regarding using electronic means of communication, legal aid, ). 3. Install a single contact point on national level connected with e-justice portal for communication with competent national courts in cross border procedure Eliminate the need to produce written documents. 4. Digitalise proceedings.

<b>Slovenia</b>	Specific division of the local courts is dedicated to enforcements (single judge).	By post, secure email, bailiff, in the court or in another manner provided by law.	Slovenian or two minorities languages (Italian and Hungarian).	A court fee must be paid when filing an enforcement request, as well as when filing an objection to or an appeal against enforcement. The court fee is 55 EUR. Plus enforcement costs.	1. The judicial staff of the competent court provide free practical assistance in form-filling and general information on the procedure. 2. Practical assistance for consumers is also provided by the European Consumer Centre. 3. Natural persons (as well as NGOs and non-profit organisations) may also apply for free legal aid provided they meet the conditions laid down.	(Documents are to be submitted in Slovenian only). eSodstvo (eJustice) portal is in Slovenian only. 2. Provide more information for foreigners. 3. Digitalise proceedings (the proceedings can be initiated digitally, but in order to become a registered user, one must have Slovenian national identification number, a Slovenian tax number and a secure electronic mailbox.).
<b>Spain</b>	The Court of First Instance and the Commercial Court.	By ordinary mail with acknowledgement of receipt, or by electronic means provided that the recipient of the message has this mode enabled.	Spanish and English.	N/A	information on the European Small Claims Procedure and the courts before which the claim can be brought is provided at E-Justice portal; the forms can be found at the electronic headquarters of the General Council of the Judiciary. It has to be assessed whether those who are involved in the European Small Claims Procedure can apply to be granted the right to litigate free of charge and, if so, whether they are entitled to be appointed free defence and representation by a lawyer and a solicitor.	1. Increase awareness (to both consumers and legal professionals). 2. Make the regulation clearer and more precise. 3. Promote means of alternative dispute resolution. 3. Create an online platform (similar to ODR platform). 4. Reduce the costs.
<b>Sweden</b>	"Kronofogden" – The Enforcement Service.	By Kronofogden. The digital solution is possible for foreign eID owners from one of these countries: Belgium, Denmark, Estonia, Italy, Croatia, Latvia, Luxembourg, Portugal, Slovakia, Spain, The Czech Republic or Germany.	Swedish.	Before Kronofogden starts the enforcement procedure, a yearly fee of 600 SEK, aprox. 56 must be paid. The amount is the same for most enforcement procedures in Sweden.	There is no legal aid concerning the ESCP enforcement procedure. However, Kronofogden may be contacted, and will give guidance concerning the procedure.	1. Digitalise proceedings.