



## Regulation (EC) No 1896/2006 and Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing an Order for payment procedures and a small claims procedure

# Agenda

1. EOPP
  - Theory and case studies
  
2. ESCP
  - Theory and case studies
  
3. Legal Terminology
  
4. Discussion



## Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

# Outline

1. General Aspects of the Regulation
  - a. Subject Matter (Art. 1 EOPP)
  - b. **Scope (Art. 2 EOPP)**
  - c. Cross-border Cases (Art. 3 EOPP)
  - d. **European Order for Payment Procedure (Art. 4 EOPP)**
  - e. Definitions (Art. 5 EOPP)
  - f. **Jurisdiction (Art. 6 EOPP)**
  
2. Application
  - a. **Application for a European Order for Payment (Art. 7 EOPP; Form A)**
  - b. Completion and rectification (Art. 9 EOPP; Form B)

# Outline

3. Acts of the Court
  - a. Examination of the Application (Art. 8 EOPP)
  - b. Modification of the Application (Art. 10 EOPP; Form C)
  - c. Rejection of the Application (Art. 11 EOPP; Form D)
  - d. Issue of a European Order for Payment (Art. 12 EOPP; Form E)
  - e. Service of the Order (Art. 13–15 EOPP)
  
4. Opposition
  - a. Opposition to the European Order for Payment (Art. 16 EOPP; Form F)
  - b. Effects of the Lodging of a Statement of Opposition (Art. 17 EOPP)

# Outline

5. Enforcement
  - a. Enforceability (Art. 18 EOPP; Form G)
  - b. Abolition of Exequatur (Art. 19 EOPP)
  - c. Review in Exceptional Cases (Art. 20 EOPP)
  - d. Enforcement (Art. 21–23 EOPP)
  
6. Other Aspects
  - a. Legal Representation (Art. 24 EOPP)
  - b. Court Fees (Art. 25 EOPP)
  - c. Relationship with National Procedural Law (Art. 26 EOPP)

# Case Studies

- In the course of the project, the participating universities drafted case studies on the individual articles of the EOPP
- These are intended to illustrate or pick up on possible constellations of facts which should facilitate the practical implementation of the Regulation
- For this seminar, some of these studies were altered or shortened in order to contribute to a better understanding
- These case studies have been added to the presentation at the appropriate points to make the link to the theory clear

# 1. General Aspects of the Regulation

## a. Subject Matter (Art. 1 EOPP)

Regulation (EC) No. 1869/2006 creating a European Order on Payment Procedures

EOPP: European Order on Payment Procedures



# 1. General Aspects of the Regulation

## a. Subject Matter (Art. 1 EOPP)

### Article 1 – Subject matter

1. The purpose of this Regulation is:
  - (a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure; and
  - (b) to permit the free circulation of European orders for payment throughout the Member States by laying down minimum standards, compliance with which renders unnecessary any intermediate proceedings in the Member State of enforcement prior to recognition and enforcement.
2. This Regulation shall not prevent a claimant from pursuing a claim within the meaning of Article 4 by making use of another procedure available under the law of a Member State or under Community law.

# 1. General Aspects of the Regulation

## a. Subject Matter (Art. 1 EOPP)

- Objective of the Regulation (RG) = to recover claims that the debtor is unlikely to dispute in a **simple, quick and inexpensive** manner

- RG governs the

Recognition and enforcement of European orders for  
payment in another Member State

≠ Recognition and enforcement of orders for payment issued in the national order for payment procedure

**one-step procedure!**

→ the only legal remedy is the **opposition**

# 1. General Aspects of the Regulation

- Optional alongside existing national order for payment procedures, as well as alongside the other special procedures in European civil procedure law for the cross-border enforcement of claims
  - Creditor has choice, but no two parallel proceedings for lack of need for legal protection

Tactical litigation consideration: is enforcement in another member state likely?  
→ Then application of EOPP is faster

# 1. General Aspects of the Regulation

## b. Scope (Art. 2 EOPP)

### Article 2 – Scope

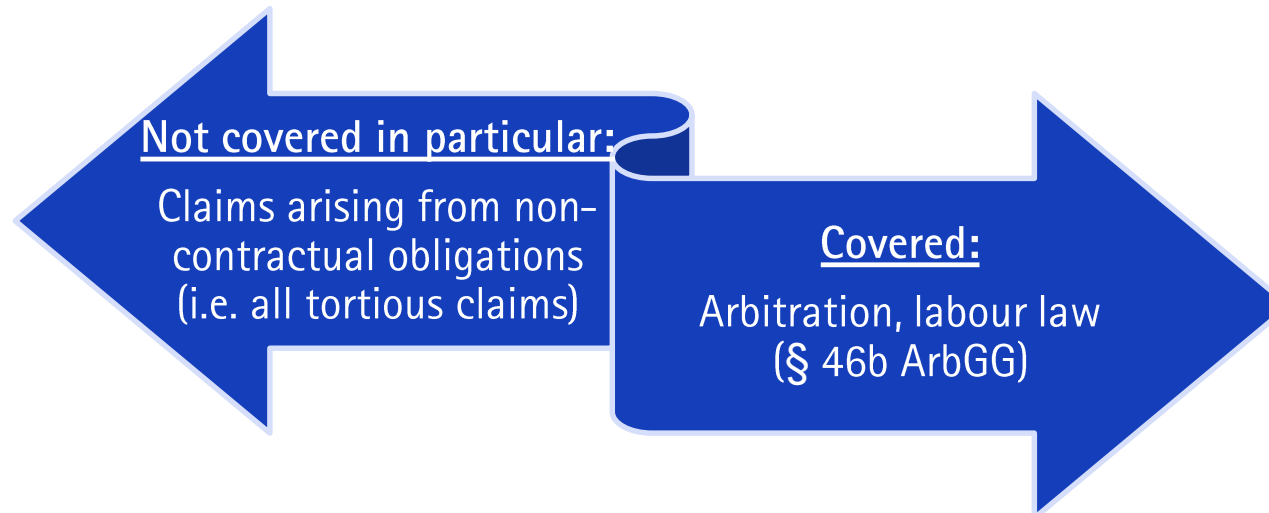
1. This Regulation shall apply to civil and commercial matters in cross-border cases, whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or the liability of the State for acts and omissions in the exercise of State authority ('acta iure imperii').
2. This Regulation shall not apply to:
  - (a) rights in property arising out of a matrimonial relationship, wills and succession;
  - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (c) social security;
  - (d) claims arising from non-contractual obligations, unless:
    - (i) they have been the subject of an agreement between the parties or there has been an admission of debt, or
    - (ii) they relate to liquidated debts arising from joint ownership of property.
3. In this Regulation, the term 'Member State' shall mean Member States with the exception of Denmark.

# 1. General Aspects of the Regulation

## b. Scope (Art. 2 EOPP)

### Material scope of application:

- Limited to monetary claims
- Only for civil and commercial matters (the type of jurisdiction is irrelevant)
- Otherwise, the material scope of application of the Brussels Ia RG, though the exceptions (Art. 2(2) EOPP) differ



# 1. General Aspects of the Regulation

## Geographic Scope of Application:

Limited to cross-border cases

- Definition in Art. 3 EOPP

Special role of Denmark: does not participate in EOPP

- EOPP not binding for Denmark and not applicable
- Thus, titles issued in other Member States under the European order for payment procedure are **not enforceable in Denmark** under Art. 18 et seq. EOPP. Enforcement is exclusively governed by the provisions of the Brussels Ia RG.
- Special role results from Art. 1, 2 Denmark-Prot.  
→ Article 2(3) EOPP has therefore purely declaratory purpose

UK + Ireland: EOPP applicable until the end of the transitional period

# 1. General Aspects of the Regulation

## c. Cross-border Cases (Art. 3 EOPP)

- Regulation only governs cross-border cases:

### Article 3 – Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court seised.
2. Domicile shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
3. The relevant moment for determining whether there is a cross-border case shall be the time when the application for a European order for payment is submitted in accordance with this Regulation.

- Parties = claimant and defendant
- Residence is determined according to Art. 62, 63 Brussels Ia RG
- Habitual residence is to be defined autonomously under European law

# 1. General Aspects of the Regulation

- The relevant moment is the **date of filing of the application for a European order for payment**  
≠ examination of international jurisdiction pursuant to Art. 6 EOPP
- Only „real“ cross-border cases covered:
  - Accordingly, the EOPP does not apply if only the possible object of enforcement is located in another Member State
  - Special constellation with connection to domicile/habitual residence
  - Can be established by assignment of the claim to a foreign (group) company



# 1. General Aspects of the Regulation

## d. European Order for Payment Procedure (Art. 4 EOPP)

### Article 4 – European order for payment procedure

The European order for payment procedure shall be established for the collection of pecuniary claims for a specific amount that have fallen due at the time when the application for a European order for payment is submitted.


- Provision = a kind of definition and (supplementary) determination of the material scope of application
- **Restricts the scope** of application opened by Art. 2 **to quantified pecuniary claims that are due** at the time of filing the application
- Only suit for performance possible

# 1. General Aspects of the Regulation

## Quantification

- Total value of the principal claim (excluding interest and costs) must be entered under No. 6 in the application for a EOPP (Form A)
  - **No upper limiting amount**
  - Quantification in **any currency** (including that of a non-EU member state); conversion left to the executing member state
- **(P)** Compensation for pain and suffering
  - Placing the amount of the claim for damages for pain and suffering in the equitable discretion of the court (as is usual in German law), unlawful because it is not quantified.
  - If the claimant quantifies the amount of his non-material damage, the scope of application of the EOPP is in principle opened.
- Legal consequence in the absence of quantification:
  - Application to be rejected as unfounded pursuant to Art. 11(1)(a) EOPP

# 1. General Aspects of the Regulation



## Maturity

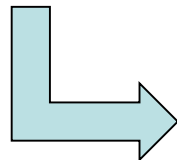
- **Relevant time:** filing of application
- Due to the unambiguous wording of Art. 4 EOPP, the application remains unfounded if a claim that was not due when the application was filed has become due by the time of the court's decision
- The term is to be interpreted autonomously at European level: according to prevailing opinion, it includes the **freedom of defence**
- Simultaneous ("Zug um Zug") performance for which the consideration has not yet been paid is therefore not due
- Legal consequence in the absence of due date:
  - Application form (Form A) does not contain an option to enter the due date or the non-existence of a simultaneous ("Zug um Zug") defense
  - The creditor cannot be required to provide information on this himself
  - The court has to examine whether the application for a EOPP shows that the claim is not due → If this is the case, the application has to be rejected as unfounded according to Art. 11(1)(a) EOPP

# 1. General Aspects of the Regulation

## f. Jurisdiction (Art. 6 EOPP)

### Article 6 – Jurisdiction

1. For the purposes of applying this Regulation, jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001.
2. However, if the claim relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, and if the defendant is the consumer, only the courts in the Member State in which the defendant is domiciled, within the meaning of Article 59 of Regulation (EC) No 44/2001, shall have jurisdiction.



RG 44/2001 due to Art. 80 Brussels Ia RG out of force and reference to Brussels Ia RG

# 1. General Aspects of the Regulation

## f. Jurisdiction (Art. 6 EOPP)

- Regulates international jurisdiction
- Applies the Brussels Ia RG:

Tenet: Art. 4 et seq. Brussels Ia RG

Exception: Art. 6(2) EOPP unilateral exclusive jurisdiction for claims against consumers in the consumer's Member State of residence

- Local and subject-matter jurisdiction, on the other hand, is determined by national law
  - In Germany, the local court (Amtsgericht) Berlin-Wedding has central jurisdiction for all EOPPs, § 1087 ZPO
- Functionally, the judicial officer is primarily responsible

# Case Study 1: Art. 6 EOPP – Jurisdiction

## Facts:

Mr Huber, German citizen domiciled in Munich, concluded a contract with Ms Müller, also a German citizen domiciled in Graz (Austria), who owns a law firm there. According to the contract, Ms Müller is obliged to pay € 150,000 for a modern designer kitchen for her law firm, which Mr Huber is obliged to deliver to her. He delivers the kitchen to Graz, but Ms Müller does not pay.

Therefore, Mr Huber wants to apply for a European order for payment against Ms Müller.

# Case Study 1: Art. 6 EOPP – Jurisdiction

*Which court has the international jurisdiction?*

- **Art. 6(1) EOPP:** jurisdiction shall be determined in accordance with the relevant rules of Community law, in particular Regulation (EC) No 44/2001 (now Regulation 1215/2012)
- Therefore, Art 7(1) No 1(a) and (b) Brussels Ia RG are relevant: A person domiciled in a Member State may, in other Member States, be sued in matters relating to a contract, in the courts for the **place of performance of the obligation** in question.
- Since the performance of the obligation took place in Graz (Austria), **the Austrian courts have international jurisdiction.**

## 2. Application for a EOPP

### a. Application for a EOPP (Art. 7 EOPP; Form A)

#### Article 7 – Application for a European order for payment

1. An application for a European order for payment shall be made using standard form A as set out in Annex I.
2. The application shall state:
  - (a) the names and addresses of the parties, and, where applicable, their representatives, and of the court to which the application is made;
  - (b) the amount of the claim, including the principal and, where applicable, interest, contractual penalties and costs;
  - (c) if interest on the claim is demanded, the interest rate and the period of time for which that interest is demanded unless statutory interest is automatically added to the principal under the law of the Member State of origin;
  - (d) the cause of the action, including a description of the circumstances invoked as the basis of the claim and, where applicable, of the interest demanded;
  - (e) a description of evidence supporting the claim;
  - (f) the grounds for jurisdiction; and
  - (g) the cross border nature of the case within the meaning of Article 3.



## 2. Application for a EOPP

### a. Application for a EOPP (Art. 7 EOPP; Form A)

#### Article 7 – Application for a European order for payment

3. In the application, the claimant shall declare that the information provided is true to the best of his knowledge and belief and shall acknowledge that any deliberate false statement could lead to appropriate penalties under the law of the Member State of origin.
4. In an Appendix to the application the claimant may indicate to the court that he opposes a transfer to ordinary civil proceedings within the meaning of Article 17 in the event of opposition by the defendant. This does not prevent the claimant from informing the court thereof subsequently, but in any event before the order is issued.
5. The application shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.
6. The application shall be signed by the claimant or, where applicable, by his representative. Where the application is submitted in electronic form in accordance with paragraph 5, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. Member States shall inform the Commission of such communications systems.

## 2. Application for a EOPP

### a. Application for a EOPP (Art. 7 EOPP; Form A)

- Requirements for the effective filing of an application
- Creditor must use "Form A" for the application for a EOPP

**Compulsory use of forms!**

- Should allow for automated processing of the procedure
- **Evidence** must be named but not submitted

# 2. Application for a EOPP

## a. Application for a EOPP (Art. 7 EOPP; Form A)

ANHANG I

<b>Antrag auf Erlass eines Europäischen Zahlungsbefehls</b>	
<b>Formblatt A</b>	Artikel 7 Absatz 1 der Verordnung (EG) Nr. 1896/2006 des Europäischen Parlaments und des Rates zur Einführung eines Europäischen Mahnverfahrens

Bitte lesen Sie zum besseren Verständnis dieses Formblatts zuerst die Leitlinien auf der letzten Seite!  
Dieses Formblatt ist in der Sprache oder in einer der Sprachen auszufüllen, die das zu befassende Gericht anerkennt. Das Formblatt ist in allen Amtssprachen der Europäischen Union erhältlich, so dass Sie es in der verlangten Sprache ausfüllen können.

<b>1. Gericht</b> Gericht Straße, Hausnummer oder Postfach  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; border-bottom: 1px solid black;">PLZ</td> <td style="width: 40%; border-bottom: 1px solid black;">Ort</td> <td style="width: 30%; border-bottom: 1px solid black;">Land</td> </tr> </table>	PLZ	Ort	Land	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #FFD700; padding: 2px;">Aktenzeichen (vom Gericht auszufüllen)</td> <td style="width: 50px;"></td> </tr> <tr> <td colspan="2" style="padding: 2px;">Eingang beim Gericht:</td> </tr> </table>	Aktenzeichen (vom Gericht auszufüllen)		Eingang beim Gericht:	
PLZ	Ort	Land						
Aktenzeichen (vom Gericht auszufüllen)								
Eingang beim Gericht:								

2. Parteien und ihre Vertreter				
Codes:	01 Antragsteller 02 Antragsgegner	03 Vertreter * des Antragstellers 04 Vertreter * des Antragsgegners	05 Gesetzlicher Vertreter des Antragstellers ** 06 Gesetzlicher Vertreter des Antragsgegners **	
Code	Name, Vorname/Name der Firma oder Organisation		(ggf.) Identifikationsnummer	
	Anschrift	PLZ	Ort	Land
	Telefon ***	Fax ***	E-Mail ***	
	Beruf ***		Sonstige Angaben ***	
Code	Name, Vorname/Name der Firma oder Organisation		(ggf.) Identifikationsnummer	
	Anschrift	PLZ	Ort	Land
	Telefon ***	Fax ***	E-Mail ***	
	Beruf ***		Sonstige Angaben ***	
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	Anschrift	PLZ	Ort	Land
	Telefon ***	Fax ***	E-Mail ***	
	Beruf ***		Sonstige Angaben ***	

\* z.B. Rechtsanwalt      \*\* z.B. Elternteil, Vormund, Geschäftsführer      \*\*\* fakultativ

## Case Study 2: Art. 6 and 7 EOPP – Consumer

### Facts:

María, a Spanish national domiciled in Zamora, agrees to sell her Audi A4 to Manuel, a Portuguese national domiciled in Porto. They agree on a price (€ 3,500) and sign a purchase agreement for the car in August 2018 in Lisbon, where Manuel's parents live, whereupon María delivers the vehicle to Manuel and Manuel pays an initial instalment of the agreed purchase price (€ 2,000), with a commitment to pay the remainder (€ 1,500) in December of the same year. Manuel does not pay the remainder.

Following several payment requests for the outstanding amount, María decides to apply for a European payment order in the court of first instance in Zamora, including in her application Manuel's parents' address in Viana de Castelo, where she knows Manuel to be living at the time. The court issues a payment order in Manuel's name without acknowledgement of receipt.

## Case Study 2: Art. 6 and 7 EOPP – Consumer

*Which court has jurisdiction to decide the case?*

- The **exclusive jurisdiction** in Art. 6(2) EOPP protects the consumer-defendant by assigning jurisdiction to the courts in their place of residence
- However, since María is a **private individual**, not a merchant, and the agreement between her and Manuel is a civil purchase agreement, **not a consumer contract** and Art. 6(2) EOPP is not applicable
- According to **Art. 7(1)(a) Brussels Ia RG** in civil and commercial matters, local jurisdiction lies at the place of delivery, i.e. Lisbon

## 3. Acts of the Court

### a. Examination of the Application (Art. 8 EOPP)

#### Article 8 – Examination of the application

The court seised of an application for a European order for payment shall examine, as soon as possible and on the basis of the application form, whether the requirements set out in Articles 2, 3, 4, 6 and 7 are met and whether the claim appears to be founded. This examination may take the form of an automated procedure.

### b. Modification of the Application (Art. 10 EOPP; Form C)

#### Article 10 – Modification of the application

1. If the requirements referred to in Article 8 are met for only part of the claim, the court shall inform the claimant to that effect, using standard form C as set out in Annex III. The claimant shall be invited to accept or refuse a proposal for a European order for payment for the amount specified by the court and shall be informed of the consequences of his decision. The claimant shall reply by returning standard form C sent by the court within a time limit specified by the court in accordance with Article 9(2).
2. If the claimant accepts the court's proposal, the court shall issue a European order for payment, in accordance with Article 12, for that part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim shall be governed by national law.
3. If the claimant fails to send his reply within the time limit specified by the court or refuses the court's proposal, the court shall reject the application for a European order for payment in its entirety.

## 3. Acts of the Court

### a. Examination of the Application (Art. 8 EOPP)

- Court checks whether formal requirements (information in the application) are met
- Individual conclusiveness check does not take place

### b. Modification of the Application (Art. 10 EOPP; Form C)

**Starting point:** Conditions for remission are only met for part of the claim



Court informs claimant of this with Form C and sets a deadline



Claimant can accept or reject court's proposal within deadline



**Claimant accepts:** Order for payment of part  
of the claim

**Claimant rejects:**  
Court rejects application in its entirety

# 3. Acts of the Court

## c. Rejection of the Application (Art. 11 EOPP; Form D)

- Court uses Form D for rejection
  - Court must state reasons
- Decision is final, but has no legal effect

ANHANG IV

**Entscheidung über die Zurückweisung eines Antrags auf Erlass eines Europäischen Zahlungsbefehls**

**Formblatt D** Artikel 11 Absatz 1 der Verordnung (EG) Nr. 1898/2006 des Europäischen Parlaments und des Rates zur Einführung eines Europäischen Mahnverfahrens

<b>1. Gericht</b>			Aktenzeichen	
Gericht			Datum (Tag/Monat/Jahr)	
Anschrift				
PLZ	Ort	Land	Unterschrift und/oder Stempel	

<b>2. Parteien und ihre Vertreter</b>				
Codes: 01 Antragsteller		03 Vertreter des Antragstellers *		05 Gesetzlicher Vertreter des Antragstellers **
02 Antragsgegner		04 Vertreter des Antragsgegners *		06 Gesetzlicher Vertreter des Antragsgegners **
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer
Anschrift		PLZ	Ort	Land
Telefon ***		Fax ***		E-Mail ***
Beruf ***		Sonstige Angaben ***		
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer
Anschrift		PLZ	Ort	Land
Telefon ***		Fax ***		E-Mail ***
Beruf ***		Sonstige Angaben ***		
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Anschrift		PLZ	Ort	Land
Telefon ***		Fax ***		E-Mail ***
Beruf ***		Sonstige Angaben ***		
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer
Anschrift		PLZ	Ort	Land
Telefon ***		Fax ***		E-Mail ***
Beruf ***		Sonstige Angaben ***		

\* z.B. Rechtsanwalt      \*\* z.B. Elternteil, Vormund, Geschäftsführer      \*\*\* fakultativ



# 3. Acts of the Court

## d. Issue of a EOPP (Art. 12 EOPP; Form E)

- If the legal requirements are fulfilled, an order for payment is issued
- Court uses Form E: contains information on the court, parties and claim (in the official language of the Member State of origin)

ANHANG V

<b>Europäischer Zahlungsbefehl</b>	
<b>Formblatt E</b> Artikel 12 Absatz 1 der Verordnung (EG) Nr. 1896/2006 des Europäischen Parlaments und des Rates zur Einführung eines Europäischen Mahnverfahrens	

<b>1. Gericht</b>			Aktenzeichen	
Gericht				
Anschrift			Ort	
PLZ	Ort	Land	Datum (Tag/Monat/Jahr)	
Unterschrift und/oder Stempel				

<b>2. Parteien und ihre Vertreter</b>				
Codes: 01 Antragsteller		03 Vertreter des Antragstellers *		05 Gesetzlicher Vertreter des Antragstellers **
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	Anschrift			PLZ Ort Land
	Telefon ***	Fax ***	E-Mail ***	
	Beruf ***			Sonstige Angaben ***
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	Anschrift			PLZ Ort Land
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	Beruf ***			Sonstige Angaben ***
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	Telefon ***	Fax ***	E-Mail ***	
	Beruf ***			Sonstige Angaben ***
* z.B. Rechtsanwalt      ** z.B. Elternteil, Vormund, Geschäftsführer      *** fakultativ				

## 3. Acts of the Court

- Contains **information on legal remedies for defendants** (Art. 12(3) and (4) EOPP): Possibility to lodge an objection
- **Service of documents**: according to national rules (Art. 12(5) EOPP)
  - § 1089 I ZPO
  - But: minimum requirements in Art. 13–15 EOPP
- Legal consequence:
  - Service of the European order for payment has the effect of suspending the limitation period according to **§ 204 I no. 3 BGB**
  - **§ 167 ZPO** shifts the commencement of the suspension of the statute of limitations to the time of filing the application
    - This prevents the applicant from being burdened with the risks of the service proceedings for which he is not responsible
  - Lis pendens, § 1090 III ZPO
    - Lis pendens in other Member States is determined according to national provisions

## 3. Acts of the Court

### e. Service (Art. 13–15 EOPP)

- Link to Art. 12(5) EOPP
- **Minimum requirements** of service
  - Art. 13: Service with proof of receipt
  - Art. 14: Service without proof of receipt
  - Art. 15: Service on a representative

Domestic service	International Service
Pursuant to § 1089 I the §§ 166 ff. ZPO apply with exemption of §§ 185–188 ZPO	Cross-border service according to European Regulation on the Service of Documents, compare § 183 ZPO

# 3. Acts of the Court

- To be served:
  - Order for payment
  - Copy of the claim form, Art. 2(2) EOPP
  - Copy of form F
  
- Forms of service:
  - In person
  - By post
  - Electronically

ANHANG VI

**Einspruch gegen einen Europäischen Zahlungsbefehl**

**Formblatt F** Artikel 16 Absatz 1 der Verordnung (EG) Nr. 1896/2006 des Europäischen Parlaments und des Rates zur Einführung eines Europäischen Mahnverfahrens

<b>1. Gericht</b>			Aktenzeichen (vom Gericht auszufüllen)		
Gericht			Eingang beim Gericht		
Anschrift:					
PLZ	Ort	Land			

2. Parteien und ihre Vertreter					
Codes:	01 Antragsteller	03 Vertreter * des Antragstellers	05 Gesetzlicher Vertreter des Antragstellers **		
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	Telefon ***	Fax ***		E-Mail ***	
	Beruf ***		Sonstige Angaben ***		
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer	
	Anschrift	PLZ	Ort	Land	
	Telefon ***	Fax ***		E-Mail ***	
	Beruf ***		Sonstige Angaben ***		
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer	
	Anschrift	PLZ	Ort	Land	
	Telefon ***	Fax ***		E-Mail ***	
	Beruf ***		Sonstige Angaben ***		
Code	Name, Vorname/Name der Firma oder Organisation			(ggf.) Identifikationsnummer	
	Anschrift	PLZ	Ort	Land	
	Telefon ***	Fax ***		E-Mail ***	
	Beruf ***		Sonstige Angaben ***		

\* z.B. Rechtsanwalt      \*\* z.B. Elternteil, Vormund, Geschäftsführer      \*\*\* fakultativ

## 3. Acts of the Court

- Despite compliance with the European minimum requirements, deficiencies in service under national law may affect the effectiveness of the order for payment
- Ineffective service does not trigger the time limit for opposition and thus precludes the declaration of enforceability of the order for payment pursuant to Art. 18(1) EOPP
- **(P)** If defective service is not apparent until after the declaration of enforceability: Appeal (resulting in invalidity of the declaration of enforceability)?
  - EOPP does not contain a provision
  - Art. 26 EOPP: to be determined according to national rules
  - **§ 1092 a ZPO**: Legal remedy in case of non-delivery or improper service of the European order for service

# Case Study 3: Art. 15 EOPP – Service on a Representative

## Facts:

Using Form A of the EOPP, A, who is domiciled in Italy, applies to an Italian court for a European order for payment against B, who is domiciled/established in France. The competent Italian court grants the European order for payment against B by means of form E.

Since in Italy it is the responsibility of the requesting party to serve judicial documents on the other party, A serves Forms A and E on B. The requesting party then serves the European order for payment on B.

# Case Study 3: Art. 15 EOPP – Service on a Representative

**Scenario 1:** B is an individual. The documents are served personally on B's partner at the place where B resides.

*Is the service effective?*

- Yes
- Provided that the requirements of Art. 14(3) EOPP are met: see Art. 14(1)(b) and 14(3) EOPP

# Case Study 3: Art. 15 EOPP – Service on a Representative

**Scenario 2:** B is a legal entity. Documents are sent by standard mail to B's address at its official seat.

*Is the service effective?*

- No
- See Art. 14(1)(e) EOPP: without proof documents can only be validly served if the address is in the Member State of origin



# Case Study 3: Art. 15 EOPP – Service on a Representative

**Scenario 3:** B is a legal entity. The documents are served personally on B's CEO, but the CEO refuses service.

*Is the service effective?*

- No
- See **Recital No 21 EOPP**: personal service only fulfils the requirements „if those persons actually accepted/received the European order for payment.“

# 4. Opposition

## a. Opposition to the EOPP (Art. 16 EOPP; Form F)

### Article 16 – Opposition to the European order for payment

1. The defendant may lodge a statement of opposition to the European order for payment with the court of origin using standard form F as set out in Annex VI, which shall be supplied to him together with the European order for payment.
2. The statement of opposition shall be sent within 30 days of service of the order on the defendant.
3. The defendant shall indicate in the statement of opposition that he contests the claim, without having to specify the reasons for this.
4. The statement of opposition shall be submitted in paper form or by any other means of communication, including electronic, accepted by the Member State of origin and available to the court of origin.
5. The statement of opposition shall be signed by the defendant or, where applicable, by his representative. Where the statement of opposition is submitted in electronic form in accordance with paragraph 4, it shall be signed in accordance with Article 2(2) of Directive 1999/93/EC. The signature shall be recognised in the Member State of origin and may not be made subject to additional requirements.

However, such electronic signature shall not be required if and to the extent that an alternative electronic communications system exists in the courts of the Member State of origin which is available to a certain group of pre-registered authenticated users and which permits the identification of those users in a secure manner. Member States shall inform the Commission of such communications systems.

## 4. Opposition

### a. Opposition to the EOPP (Art. 16 EOPP; Form F)

- Debtor may file within 30 days with the court of origin
  - By using Form F or electronically
  - Written objection filed by other means: (+)
  - Decisive for compliance with the time limit is: date of dispatch
  - Restitutio in integrum excluded if time limit missed without fault, § 1092 IV ZPO
  
- No further regular legal remedy apart from opposition → as **single-stage procedure!**  
≠ in Germany: two-stage procedure (first opposition, § 694 ZPO, then objection, §§ 699 et seq. ZPO).

# Case Study 4: Art. 16 EOPP – Opposition

## Facts:

Z, who has his domicile/its seat in France applied before the competent German court for the issuance of a European order for payment in the sum of EUR 10,000 against Y, residing in Hannover, Germany. The court in Germany granted the European order for payment against Y, issuing Form E.

The court served Y Forms A and E as the order for payment together with Form F, the opposition form to the European order for payment.

## Case Study 4: Art. 16 EOPP – Opposition

**Scenario 1:** Y rejected the European order for payment without using form F but instead with an informal letter addressed to the court.

*Is this an effective opposition against the European order for payment?*

- Yes
- in accordance with **Recital No. 23 EOPP**, the defendant may use another written form to submit the opposition if it is specific enough.

## Case Study 4: Art. 16 EOPP – Opposition

**Scenario 2:** Y sent his opposition within 30 days of service of the court order and addressed it only to Z.

*Is this an effective opposition against the European order for payment?*

- No
- German law requires you to send your opposition to the court that distributes it to the claimant
- The competent court is the local court ("Amtsgericht") Berlin Wedding, § 1087 ZPO
- In other countries this may be different, see Article 16(2) EOPP.

## 4. Opposition

### b. Effects of the Lodging of a Statement of Opposition (Art. 17 EOPP)

#### Article 17 – Effects of the lodging of a statement of opposition

1. If a statement of opposition is entered within the time limit laid down in Article 16(2), the proceedings shall continue before the competent courts of the Member State of origin in accordance with the rules of ordinary civil procedure unless the claimant has explicitly requested that the proceedings be terminated in that event. Where the claimant has pursued his claim through the European order for payment procedure, nothing under national law shall prejudice his position in subsequent ordinary civil proceedings.
2. The transfer to ordinary civil proceedings within the meaning of paragraph 1 shall be governed by the law of the Member State of origin.
3. The claimant shall be informed whether the defendant has lodged a statement of opposition and of any transfer to ordinary civil proceedings.

## 4. Opposition

### b. Effects of the Lodging of a Statement of Opposition (Art. 17 EOPP)

If debtor files the  
opposition timely

Transfer procedure to:

- European Small Claims Procedure (ESCP) or
- National civil procedure
  - The continuation of the proceedings is governed by the law of the Member State of origin
  - §§ 1090 f. ZPO



## 4. Opposition

- The EOPP court sets a deadline for the applicant to name the court responsible for the contentious proceedings
  - The EOPP court then remits the case to the court in dispute
- **Lis pendens**, § 1090 III ZPO: with service of EOPP if it is lodged as soon as possible after the summons has been sent and having regard to the time limit set for the claimant to designate the court with jurisdiction
- Objection gives rise to full procedural fee for defendant's legal representative

## 4. Opposition

### Termination of the proceedings:

- After timely filing of opposition by defendant, EOPP ends according to Art. 17(1)(1) EOPP only if the claimant expressly requests this
- Pursuant to § 1090 I s. 5 ZPO, if the claimant fails to designate the court in dispute to the court issuing the order for payment in due time

No final decision on the claim is issued in this case, so that the claimant can assert the claim again

- **Costs:** not regulated, it is in the applicant's interest to bear the costs because he initiated the proceedings and ended them after filing an objection

## 4. Opposition

### c. Effects of filing the opposition (Art. 17 EOPP)

If not lodged within  
the time limit

- European order for payment is enforceable throughout Europe without exequatur procedure, Art. 18 et seq. EOPP

# Case Study 5: Art. 17 – Effects of the Lodging of a Statement of Opposition

**Facts:** (just like Art. 16 EOPP)

Z, who has his domicile/its seat in France applied before the competent German court for the issuance of a European order for payment in the sum of EUR 10,000 against Y, residing in Hannover, Germany. The court in Germany granted the European order for payment against Y, issuing Form E.

The court served Y Forms A and E as the order for payment together with Form F, the opposition form to the European order for payment.

Y effectively lodged an objection.

# Case Study 5: Art. 17 – Effects of the Lodging of a Statement of Opposition

**Scenario 1:** Z, the claimant, explicitly requested that that he wishes the proceedings to continue and informs the court of this by a simple written letter.

*Will this letter be taken into account in the assessment of the application?*

- Yes
- The European Order for Payment Procedures does not require a specific form for this

## Case Study 5: Art. 17 – Effects of the Lodging of a Statement of Opposition

**Scenario 2:** Z has designated the district court ("Landgericht") Berlin as the one competent for the adversary proceedings.

*Do the adversary proceedings start at the district court Berlin?*

- Yes
- According to Art. 17(2) EOPP, German law governs the transfer to ordinary civil proceedings
- **Local jurisdiction** may be established if Y enters into discussions about the merits of the case without objection and there is no exclusive jurisdiction, §§ 39, 40 II No. 2 ZPO
- Additionally, according to § 78 I ZPO, legal representation is required in front of the district court, therefore Y and Z need to be **represented by a lawyer**

# Case Study 5: Art. 17 – Effects of the Lodging of a Statement of Opposition

**Scenario 3:** Z has designated the local court ("Amtsgericht") Hannover as the one competent for the adversary proceedings.

*Do the adversary proceedings start at the local court in Hannover?*

- **No**
- According to Art. 17(2) EOPP, German law governs the transfer to ordinary civil proceedings
- Competent court is the district court ("Landgericht") Hannover, § 13 ZPO, § 71 GVG
- **Substantive jurisdiction** cannot be established by entering into discussions about the merits of the case
- The local court Hannover would refer the matter ex officio to the district court ("Landgericht") Hannover
- Additionally, Y and Z are required to be **represented by a lawyer** in front of a district court, § 78 I ZPO

## Case Study 5: Art. 17 – Effects of the Lodging of a Statement of Opposition

**Szenario 4:** Z has designated the competent court for the EOPP in Germany (local court ("Amtsgericht") Berlin Wedding) as the one competent for the adversary proceedings.

*Do the adversary proceedings start at the local court Berlin Wedding?*

- **No**
- According to Art. 17(2) EOPP, German law governs the transfer to ordinary civil proceedings
- As Z **wrongly identified not only the local** (Berlin instead of Hannover) **but also the substantive** (local court instead of district court) **jurisdiction**, the local court Berlin Wedding would refer the matter ex officio to the district court Hannover
- Additionally, Y and Z are required to be **represented by a lawyer** in front of a district court, § 78 I ZPO.



# 5. Enforcement

## a. Enforceability (Art. 18 EOPP; Form G)

### Article 18 – Enforceability

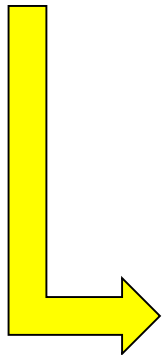
1. If within the time limit laid down in Article 16(2), taking into account an appropriate period of time to allow a statement to arrive, no statement of opposition has been lodged with the court of origin, the court of origin shall without delay declare the European order for payment enforceable using standard form G as set out in Annex VII. The court shall verify the date of service.
2. Without prejudice to paragraph 1, the formal requirements for enforceability shall be governed by the law of the Member State of origin.
3. The court shall send the enforceable European order for payment to the claimant.

# 5. Enforcement

## a. Enforceability (Art. 18 EOPP; Form G)

Insofar as:

- Debtor fails to lodge an objection in due time
- Court has checked date of service and lawfulness of service
- Further formal requirements of the lex fori are met
  - § 1093 ZPO: No enforcement clause required in Germany



European Order for Payment  
= enforceable copy, § 724 ZPO

Must declare order for payment enforceable without delay by the court  
of origin (competent court is judicial officer), using form G

## 5. Enforcement

- § 727 et seq. ZPO shall apply mutatis mutandis to declarations of enforceability for and against legal successors of the defendant

After declaration of  
enforceability

- European order for payment = enforceable throughout the EU
- Recognised in all Member States, Art. 19 EOPP
- Has **legal force**, the extent of which is determined by national procedural law
  - Material: § 700 I ZPO
  - Formal: no ordinary legal remedy

Declaration of enforceability is final!

## 5. Enforcement

### b. Abolishing of Exequatur (Art. 19 EOPP)

- European order for payment is recognised and enforced in all Member States
- Its recognition is not contestable

This does not require a declaration of enforceability in the  
Member State of enforcement (exequatur)!

## 5. Enforcement

### c. Review in Exceptional Cases (Art. 20 EOPP)

- After expiry of opposition period
- **Review remedy** to protect defendant from serious **violations of fundamental procedural rights**, § 1092 ZPO
  - § 1092 ZPO for orders for payment issued within the Member State
- Examples: untimely service (Art. 20(1)(a) EOPP) or existence of special circumstances/force majeure (Art. 20(1)(b) EOPP)
- Transfer to regular civil proceedings as after a timely objection (Art 17 EOPP) does not take place
  - Violations of the right to be heard within the meaning of Art. 20(1) EOPP are not cured, but lead to the nullity of the European order for payment and thus to the termination of the proceedings according to Art. 20(3) s. 2 EOPP

## 5. Enforcement

### Article 21 – Enforcement

1. Without prejudice to the provisions of this Regulation, enforcement procedures shall be governed by the law of the Member State of enforcement.  
A European order for payment which has become enforceable shall be enforced under the same conditions as an enforceable decision issued in the Member State of enforcement.
2. For enforcement in another Member State, the claimant shall provide the competent enforcement authorities of that Member State with:
  - (a) a copy of the European order for payment, as declared enforceable by the court of origin, which satisfies the conditions necessary to establish its authenticity;
  - and
  - (b) where necessary, a translation of the European order for payment into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court proceedings of the place where enforcement is sought, in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept. Each Member State may indicate the official language or languages of the institutions of the European Union other than its own which it can accept for the European order for payment. The translation shall be certified by a person qualified to do so in one of the Member States.
3. No security, bond or deposit, however described, shall be required of a claimant who in one Member State applies for enforcement of a European order for payment issued in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

# 5. Enforcement

## d. Enforcement (Art. 21–23 EOPP)

### Art. 21 EOPP

- The enforcement procedure is governed by national law unless Art. 21–23 EOPP provide for more specific rules
- § 1093 ZPO: In Germany there is no need for an enforcement clause
  - otherwise the requirements of § 750 ZPO apply
- Applicant has to submit a copy of the European order for payment as well as the declaration of enforceability and, if applicable, a translation (§ 1094 ZPO)
- No security or deposit with regard to Art. 21(3) EOPP

## 5. Enforcement

### Article 22 – Refusal of enforcement

1. Enforcement shall, upon application by the defendant, be refused by the competent court in the Member State of enforcement if the European order for payment is irreconcilable with an earlier decision or order previously given in any Member State or in a third country, provided that:
  - (a) the earlier decision or order involved the same cause of action between the same parties;  
and
  - (b) the earlier decision or order fulfils the conditions necessary for its recognition in the Member State of enforcement;  
and
  - (c) the irreconcilability could not have been raised as an objection in the court proceedings in the Member State of origin.
2. Enforcement shall, upon application, also be refused if and to the extent that the defendant has paid the claimant the amount awarded in the European order for payment.
3. Under no circumstances may the European order for payment be reviewed as to its substance in the Member State of enforcement.



## 5. Enforcement

### Art. 22 EOPP

- Autonomous remedy against the enforcement of a European order for payment in the Member State of enforcement
  - Jurisdiction and procedure under § 1096 ZPO
- No review on the merits
- Art. 22(1) EOPP: Incompatibility of the order for payment with an earlier decision or order for payment
  - Earlier judgment must be capable of recognition in the Member State of enforcement and the assertion of the conflict must have been impossible in the original proceedings
- Art. 22(2) EOPP: Objection of compliance (payment)
  - § 767 ZPO not admissible, cf. Art. 26 EOPP

## 5. Enforcement

### Conditions for refusal of enforcement under Art. 22(1) EOPP

- **Same subject-matter** of the dispute and same persons
  - Probably similar interpretation as in Brussels Ia RG: same factual circumstances, same rights asserted
- Earlier judgment fulfils **conditions for recognition** in Member State of enforcement
- **Irreconcilability could not be invoked** in court proceedings in the Member State of origin
  - Arguably to be interpreted objectively

# Case Study 6: Art. 22 EOPP – Refusal of Enforcement

## Facts:

Mr. Grönlund, a Swedish national, domiciled in the picturesque Stockholm, is a legal consultant with his own firm (hereinafter: Grönlund). He orders some exclusive office furniture for his firm from the German manufacturer Schmittil from Düsseldorf, North-Rhine-Westphalia. The grand total is € 24,000 to be payed after delivery. The furniture is duly delivered. However, Mr. Grönlund forgets all about the German invoice.

After two months, the German company submits an application for a European order for payment with the competent court in Berlin Wedding. The court issues a European order for payment.

# Case Study 6: Art. 22 EOPP – Refusal of Enforcement

**Scenario 1:** At the time when the European order for payment is served on Grönlund the invoice is already paid.

*Shall the European order for payment still be enforced in Sweden against Grönlund?*

- A European order for payment which has been declared enforceable can be refused enforcement in the Member State of enforcement under limited circumstances, Art. 22 EOPP
- **Art. 22(2) EOPP:** enforcement may be refused by the competent court upon application by the defendant
- The defendant must proceed in accordance with national law in this respect (whereby the competent court can also be an enforcement authority under Art. 5(3) EOPP)

# Case Study 6: Art. 22 EOPP – Refusal of Enforcement

**Scenario 2:** Grönlund has initiated proceedings against the German company in Denmark to secure assets located there. A Danish court has issued a declaratory judgment before the German company files the application for a European order for payment. According to the Danish judgment, Grönlund is not obliged to pay the invoice to the German company.

*Can the European order for payment still be enforced against Grönlund in Sweden?*

- **Art. 22(1) EOPP:** enforcement may be refused by the competent court upon application by the defendant
- This is only possible if the European order for payment is irreconcilable with a previous judgment (or order for payment) issued in a Member State or third country (Denmark)

# 5. Enforcement

## Art. 23 EOPP

- Interim stay or limitation of enforcement of a foreign European order for payment in the Member State of enforcement during the review procedure under Art. 20 EOPP
- Court conducts summaryreview

Stay of enforcement

### Article 23 – Stay or limitation of enforcement

Where the defendant has applied for a review in accordance with Article 20, the competent court in the Member State of enforcement may, upon application by the defendant:

- (a) limit the enforcement proceedings to protective measures; or
- (b) make enforcement conditional on the provision of such security as it shall determine; or
- (c) under exceptional circumstances, stay the enforcement proceedings.

### - Requirements:

- European order for payment declared enforceable
- Application for stay/restriction
- Jurisdiction:
  - Locally: Amtsgericht (local court) as enforcement court pursuant to Art. 23(1) EOPP in conjunction with § 1084 I ZPO; §§ 802, 828 II ZPO
  - Functionally: judge, § 20 Nr. 7 RPfIG
- Other aspects: § 1096 I 2 ZPO

## 6. Other Aspects

### a. Legal Representation (Art. 24 EOPP)

Until the completed submission of the proceedings to the court in dispute	After submission of proceedings to the court in dispute
Representation by lawyer not mandatory	§ 78 I ZPO applicable

### b. Court Fees (Art. 25 EOPP)

- Amount of court fees determined by national court
- Principle of cost neutrality
- Graduated prohibition of less favourable treatment of the European order for payment procedure compared to national procedures

## 6. Other Aspects

### c. Relationship with National Procedural Law (Art. 26 EOPP)

- Standard rules for regulatory gaps in the EOPP
- Insofar as the EOPP does not contain any final regulation, the national regulations on the EOPP as well as on the enforcement procedure (e.g. court order system) apply accordingly or are to be closed by the national legislator
- In each case, the **procedural rules of the member state** whose courts have to decide apply: The procedural law of the Member State of origin thus applies to the order, the opposition, the declaration of enforceability and the review procedure (Art. 20); the procedural law of the Member State of enforcement applies to the enforcement remedies of Art. 22, 23 EOPP.





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

# Agenda: ESCP

## 1. General Aspects of the Regulation

- a. Subject Matter (Art. 1 ESCP)
- b. Scope (Art. 2 ESCP)
- c. Cross-border Cases (Art. 3 ESCP)
- d. International Jurisdiction

## 2. Filing of a Small Claim Procedure

- a. Commencement of the Procedure (Art. 4 ESCP)
- b. Conduct of the Procedure (Art. 5 ESCP)

# Agenda: ESCP

## 3. Defenses and Judgment

- a. Defense and Counterclaim (Art. 5 ESCP)
- b. Conclusion of the Procedure (Art. 7 ESCP)
- c. Appeal (Art. 17 ESCP)
- d. Minimum Standards for Review of the Judgment (Art. 18 ESCP)

## 4. Recognition and Enforcement in another Member State (Art. 15, 20 et seq. ESCP)

## 5. Other Aspects

- a. Language (Art. 6 ESCP)
- b. Costs (Art. 16 ESCP)

## 6. Practice and Application Examples

# 1. General Aspects of the Regulation

## a. Subject Matter (Art. 1 ESCP)

Regulation (EC) No 861/2007 establishing a European Small Claims Procedure

=

ESCP: European Small Claims Procedure

# 1. General Aspects of the Regulation

## Article 1 – Subject matter

This Regulation establishes a European procedure for small claims (hereinafter referred to as the European Small Claims Procedure), intended to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs. The European Small Claims Procedure shall be available to litigants as an alternative to the procedures existing under the laws of the Member States.

This Regulation also eliminates the intermediate proceedings necessary to enable recognition and enforcement, in other Member States, of judgments given in one Member State in the European Small Claims Procedure.

# 1. General Aspects of the Regulation

## a. Subject Matter (Art. 1 ESCP)

- Objective of the Regulation = cross-border enforcement of (disputed) claims with a low amount in dispute is to become **simpler, faster and cheaper**
  - Creation of a title that can be recognised and enforced in all Member States (except Denmark)
  - Facilitate access to justice, especially for consumers
- Art. 1(2) ESCP: Elimination of the need for intermediate proceedings for the recognition and enforcement of judgments given in other Member States in the Small Claims Procedure.
  - Art. 20 ESCP expressly provides that a declaration of enforceability is not required and that recognition cannot be challenged, so that Art. 1(2) ESCP has no independent regulatory content.

For undisputed claims → EOPP

# 1. General Aspects of the Regulation

Relationship to national proceedings, Art. 1(1) s. 2 ESCP:

ALTERNATIVE

- Applicable alongside national procedures
- Creditor has choice, but no two parallel proceedings for lack of need for legal protection

Procedural consideration: Enforcement abroad (in  
another Member State) possible?

# 1. General Aspects of the Regulation

– Options for creditors:

<p>Ordinary civil procedures according to the ZPO – § 495a ZPO? (up to 600€, equitable discretion of the court: § 279 ZPO?)</p>	<p>Title would have to be recognised under Brussels Ia RG or under EC No 805/2004 (European Enforcement Order for uncontested claims)</p>	<p>Speed (-)</p>
<p>European Small Claims Procedure</p>	<p>EU-wide enforcement without exequatur</p>	<p>Fast and standardised procedure for amounts in dispute below € 5,000</p>
<p>European Order for Payment Procedures</p>	<p>EU-wide enforcement without exequatur</p>	<p>Especially recommended for undisputed claims over € 5,000</p>

Current discussion on ZPO modernisation: "Accelerated online proceedings" up to €5,000?



# 1. General Aspects of the Regulation

## General Aspects and Advantages of the ESCP

1. Written procedure using forms
2. Deadlines for speed
3. Use of IT recommended, especially for service of process
4. No obligation to be represented by a lawyer (Art. 10 ESCP)
5. Limited reimbursement of costs
6. EU-wide enforceability of judgment without intermediate measures

Article 10 – Representation of Parties  
Representation by a lawyer or another legal professional shall not be mandatory.

# 1. General Aspects of the Regulation

## Article 2 – Scope

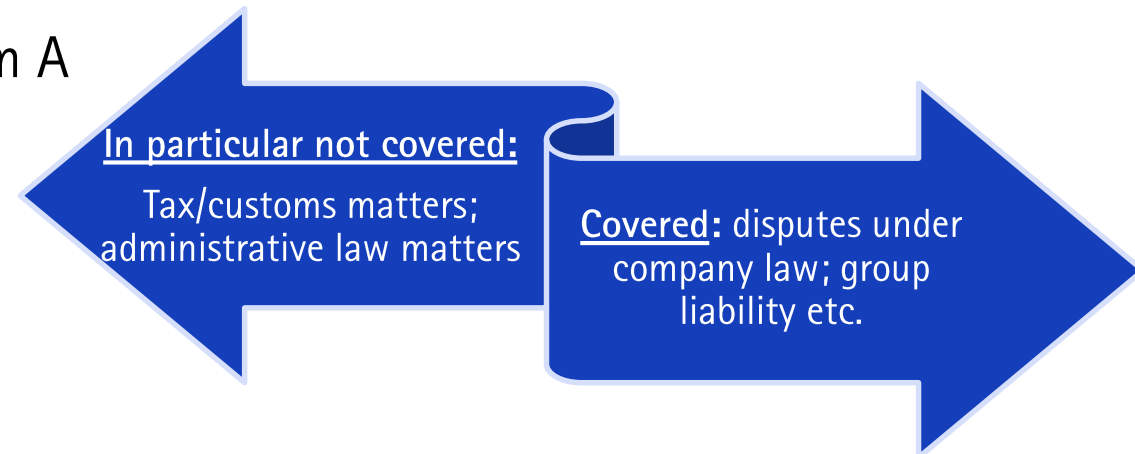
1. This Regulation shall apply, in cross-border cases as defined in Article 3, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 5 000 at the time when the claim form is received by the court or tribunal with jurisdiction, excluding all interest, expenses and disbursements. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta jure imperii*).
2. This Regulation shall not apply to matters concerning:
  - (a) the status or legal capacity of natural persons;
  - (b) rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
  - (c) maintenance obligations arising from a family relationship, parentage, marriage or affinity;
  - (d) wills and succession, including maintenance obligations arising by reason of death;
  - (e) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
  - (f) social security;
  - (g) arbitration;
  - (h) employment law;
  - (i) tenancies of immovable property, with the exception of actions on monetary claims; or
  - (j) violations of privacy and of rights relating to personality, including defamation.

# 1. General Aspects of the Regulation

## b. Scope (Art. 2 ESCP)

### Material Scope of Application:

- Limit of the amount in dispute 5,000 €
- Only for civil and commercial matters (the type of jurisdiction is irrelevant)
- Otherwise, material scope of application of the Brussels Ia RG, with area exceptions (Art. 2(2) ESCP) added
- Not limited to pecuniary claims
- The type of claim must be specifically named on form A and its value estimated
- Suit for performance, declaratory judgment (+)



# 1. General Aspects of the Regulation

## Calculation of the amount in dispute

- Interest, costs and expenses are not included
  - Costs = court fees + extrajudicial fees of the proceedings
  - Out-of-pocket expenses = expenses incurred in the course of the proceedings in the individual case, e.g. translation of the statement of claim
- Unquantified claim (e.g. for damages for pain and suffering) = inadmissible
- Partial action = probably admissible
  
- Specifically: according to Art. 19 ESCP the §§ 3 ff. ZPO apply for calculation
  
- National currency at court seised → if (-), court converts according to opening rate on day of receipt of claim

# 1. General Aspects of the Regulation

## Relevant time

- Receipt of claim form at the competent court (pendency at court)

## Calculation of the amount in dispute for a counterclaim

- Must not exceed €5,000, otherwise proceedings under ESCP for action and counterclaim (-)
  - Consequence: Proceedings under national procedural law where action brought

## Subsequent extension of the action?

- In the case of proceedings in Germany, § 263 et seq. ZPO
  - Increase in the amount on the basis of the same facts of life is not to be regarded as an amendment of the action pursuant to section 264 no. 2 ZPO and is thus possible without restriction
- In the event of a subsequent extension of the action beyond the limit of the amount in dispute:
  - Proceedings under the ESCP as a rule (-), but consequently proceedings under national procedural law

# 1. General Aspects of the Regulation

## c. Cross-border Cases (Art. 3 ESCP)

### Article 3 – Cross-border cases

1. For the purposes of this Regulation, a cross-border case is one in which at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.
2. Domicile shall be determined in accordance with Articles 62 and 63 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council ( 1 ).
3. The relevant moment for determining whether a case is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

# 1. General Aspects of the Regulation

## Geographic Scope of Application:

limited to cross-border cases

- Definition in Art. 3 ESCP

### Special role of Denmark: does not participate in the ESCP

- ESCP not binding on Denmark and not applicable (recital No. 38 ESCP)
- Titles issued in other Member States under the Small Claims Procedure not enforceable in Denmark under Art. 20 et seq. ESCP enforceable in Denmark.
- Enforcement is governed exclusively by the provisions of the Brussels Ia Regulation.
- Special role results from Art. 1, 2 Denmark Protocol

### UK + Ireland: ESCP does not apply since withdrawal, third countries and ≠ Member States

- Enforcement pursuant to Art. 20 et seq. ESCP (-)

# 1. General Aspects of the Regulation

- Relevant = **date of receipt of the claim form** by the competent court
  - See Art. 3(1) ESCP
- Art. 3(2) ESCP: Determination of domicile according to Art. 62, 63 Brussels Ia RG
  - According to this: Court applies own law
- Habitual residence
  - Physical presence in a place where the person usually stays (focus on family + professional ties)
- Parties = claimant and defendant  $\neq$  intervener of one of the parties



# 1. General Aspects of the Regulation

- Only "genuine" cross-border litigation covered:
  - ESCP (-) if possible object of enforcement is in another Member State
  - Special constellation with connection to domicile/habitual residence
- Both parties have their habitual residence in the same Member State where the action is brought, but one of the parties is domiciled in another Member State

# 1. General Aspects of the Regulation

## d. International Jurisdiction

- "Competent court": Generally applicable: Art. 4 et seq.  
Brussels Ia RG
- **Geographic**: determination according to Brussels Ia RG + national law
  - § 1104a ZPO: concentration of procedures
    - Proceedings under ESCP can be concentrated at the state level in one court
- **Material**: local courts (Amtsgerichte)
  - **functional**: judge

# Case Study 1: Art. 1, 2 ESCP – Jurisdiction and Scope

## Facts:

ZSE Energia a.s., established in Bratislava (Slovak Republic), operates an energy supply company, and had concluded an energy supply contract with Mr R, an Italian citizen domiciled in Graz, Austria. ZSE Energia a.s. is of the opinion that R has not fulfilled his contractual obligations and intends to bring in an action concerning a claim amounting to EUR 423.74, plus late-payment interest, pursuant to the European Small Claims Procedure Regulation No. 861/2007.

# Case Study 1: Art. 1, 2 ESCP – Jurisdiction and Scope

## Question 1: Which court has international jurisdiction?

- In the absence of special provisions in the ESCP, international jurisdiction is governed by the Brussels Ia RG
- In the decision *Group Josi Reinsurance Company SA vs Universal General Insurance Company (UGIC) (C-412/98)* the ECJ stated that the ESCP (or the Brussels Ia RG) applies if the defendant is domiciled or has its seat in a Contracting State
- According to Art. 4(1) Brussels Ia RG, the general jurisdiction of the defendant is applicable. Since R is domiciled in Graz, Austrian courts have international jurisdiction

# Case Study 1: Art. 1, 2 ESCP – Jurisdiction and Scope

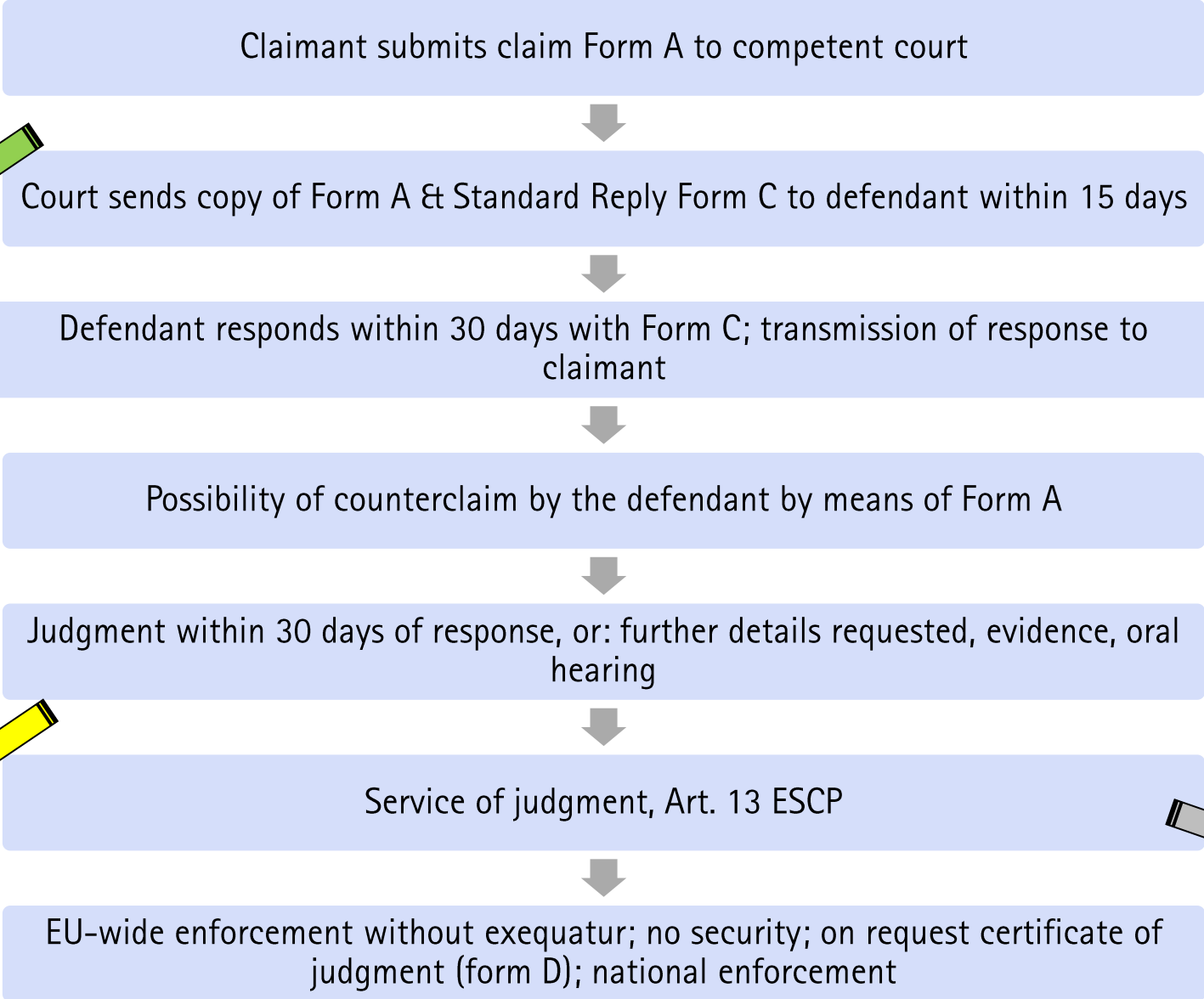
## Question 2: Does this case fall within the scope of the ESCP-Regulation?

- The case is a **civil and commercial matter** within the meaning of Art. 2(1) ESCP; the scope of the ESCP coincides with the one of the Brussels Ia RG
- A case is considered a **cross-border case** according to Art. 3(1) ESCP, if at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised.
  - In the present case, the claimant has its seat in the Slovak Republic, the court seised has its seat in Austria, therefore the case can be considered a cross-border case
- Since the amount in dispute of EUR 423.74 does not exceed the **limit of EUR 5,000.00**, the case falls within the scope of the ESCP (Art. 2(1) ESCP)

## Overview over Procedure

If necessary, correction/  
supplementation by form B,  
Art. 4(4) ESCP

Remedies depending on  
national law in Member  
State, Art. 17 ESCP



Review only in  
exceptional cases,  
Art. 18 ESCP

## 2. Filing of a Small Claims Procedure

### Article 4 – Commencement of the Procedure

1. The claimant shall commence the European Small Claims Procedure by filling in standard claim Form A, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced. The claim form shall include a description of evidence supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.
2. Member States shall inform the Commission which means of communication are acceptable to them. The Commission shall make such information publicly available.
3. Where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect. Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.
4. (...)

Claim Form A does not have to contain copies for other parties involved

Imposed form requirement

## 2. Filing of a Small Claims Procedure

### Article 4 – Commencement of the Procedure

(...)

4. Where the court or tribunal considers the information provided by the claimant to be inadequate or insufficiently clear or if the claim form is not filled in properly, it shall, unless the claim appears to be clearly unfounded or the application inadmissible, give the claimant the opportunity to complete or rectify the claim form or to supply supplementary information or documents or to withdraw the claim, within such period as it specifies. The court or tribunal shall use standard Form B, as set out in Annex II, for this purpose. Where the claim appears to be clearly unfounded or the application inadmissible or where the claimant fails to complete or rectify the claim form within the time specified, the application shall be dismissed. The court or tribunal shall inform the claimant of such dismissal and whether an appeal is available against such dismissal.
5. Member States shall ensure that the standard claim Form A is available at all courts and tribunals before which the European Small Claims Procedure can be commenced, and that it is accessible through relevant national websites.



## 2. Filing of a Small Claims Procedure

### a. Commencement of a Small Claim Procedure (Art. 4 ESCP)

#### Commencement of the Procedure, Art. 4(1) ESCP

1. Direct filing with court
2. By post
3. Pursuant to § 1097 ZPO, submission as a pleading, telecopy or, in accordance with § 130a ZPO, as an electronic document
  - § 130a III, IV Nr. 2 ZPO: Transmission by e-mail from the special electronic lawyer's mailbox pursuant to § 31a BRAO permissible
  - Cross-border electronic transmission usually not possible (depending on Member State):
    - Poland, France (-)
    - Spain, Netherlands, Italy (+)

Overview of the means of communication allowed in the member states on the homepage of the European Justice Portal:

[https://e-justice-europa-eu.ezp.sub.su.se/content\\_small\\_claims-354-de.do](https://e-justice-europa-eu.ezp.sub.su.se/content_small_claims-354-de.do)

## 2. Filing of a Small Claims Procedure

### Lis pendens

- Suspension of lis pendens with receipt of the claim form
- Suspension of limitation is governed by § 204 I no. 1 BGB – service on defendant if German law applicable

### Party Majority + Intervention, Art. 19 ESCP

- Joint litigation is governed by national law
  - Claim Form A only aligned for one defendant
    - consequence: several claim forms to be submitted

#### Article 19 – Applicable procedural law

Subject to the provisions of this Regulation, the European Small Claims Procedure shall be governed by the procedural law of the Member State in which the procedure is conducted.

## 2. Filing of a Small Claims Procedure

**BEFORE** service on the defendant: Court checks whether

1. Action falls within the scope of application of the ESCP, Art. 4(3) ESCP
2. Claim is clearly unfounded or clearly inadmissible
3. Claim form is inadequate, insufficiently clear or not filled in properly

Regarding **1. "Scope of Application"** (-) → Court informs claimant of this (no form)

- Claimant may withdraw action
- If claimant does not withdraw, continuation of proceedings in ordinary civil proceedings according to ZPO

Regarding **2. "Claim clearly unfounded or clearly inadmissible"** → action dismissed, Art. 4(4) subpara. 2 ESCP

## 2. Filing of a Small Claims Procedure

Regarding 3. „Claim form is inadequate, insufficiently clear or not filled in properly“?

- Court may request claimant to correct/complete claim form by means of Form B within a set time limit, Art. 4(4) subpara. 1 ESCP
- Failed submission by claimant: Claim is rejected or dismissed, Art. 4(4) subpara. 2 ESCP

Legal remedy against dismissal of action: Appeal and, if applicable, revision

EUROPÄISCHES VERFAHREN FÜR GERINGFÜGIGE FORDERUNGEN  
FORMBLATT B  
AUFFORDERUNG DES GERICHTS ZUR VERVOLLSTÄNDIGUNG UNDI/ODER BERICHTIGUNG DES KLAGEFORMBLATTS  
(Artikel 4 Absatz 4 der Verordnung (EG) Nr. 861/2007 des Europäischen Parlaments und des Rates zur Einführung eines europäischen Verfahrens für geringfügige Forderungen)  
Vom Gericht auszufüllen

Aktenzeichen:  
Eingang bei Gericht: \_\_\_\_\_ . \_\_\_\_ . \_\_\_\_\_

1. Gericht
  - 1.1. Name:
  - 1.2. Straße und Hausnummer/Postfach:
  - 1.3. Postleitzahl und Ort:
  - 1.4. Land:
2. Kläger
  - 2.1. Nachname, Vorname/Name des Unternehmens oder der Organisation:
  - 2.2. Persönliche Identifikationsnummer oder Passnummer/Registrierungsnummer (\*):
  - 2.3. Straße und Hausnummer/Postfach:
  - 2.4. Postleitzahl und Ort:
  - 2.5. Land:
  - 2.6. Telefon (\*):
  - 2.7. E-Mail (\*):
  - 2.8. Ggf. Vertreter des Klägers und Kontaktdaten (\*):
  - 2.9. Sonstige Angaben (\*):
3. Beklagter
  - 3.1. Nachname, Vorname/Name des Unternehmens oder der Organisation:
  - 3.2. Persönliche Identifikationsnummer oder Passnummer/Registrierungsnummer:
  - 3.3. Straße und Hausnummer/Postfach:
  - 3.4. Postleitzahl und Ort:
  - 3.5. Land:
  - 3.6. Telefon (\*):
  - 3.7. E-Mail (\*):
  - 3.8. Ggf. Vertreter des Beklagten und Kontaktdaten (\*):

## 2. Filing of a Small Claims Procedure

### Article 5 – Conduct of the Procedure

1. The European Small Claims Procedure shall be a written procedure.
  - 1a. The court or tribunal shall hold an oral hearing only if it considers that it is not possible to give the judgment on the basis of the written evidence or if a party so requests. The court or tribunal may refuse such a request if it considers that, with regard to the circumstances of the case, an oral hearing is not necessary for the fair conduct of the proceedings. The reasons for refusal shall be given in writing. The refusal may not be contested separately from a challenge to the judgment itself.
2. After receiving the properly filled in claim form, the court or tribunal shall fill in Part I of the standard answer Form C, as set out in Annex III.

A copy of the claim form, and, where applicable, of the supporting documents, together with the answer form thus filled in, shall be served on the defendant in accordance with Article 13. These documents shall be dispatched within 14 days of receiving the properly filled in claim form.
3. The defendant shall submit his response within 30 days of service of the claim form and answer form, by filling in Part II of standard answer Form C, accompanied, where appropriate, by any relevant supporting documents, and returning it to the court or tribunal, or in any other appropriate way not using the answer form.
4. Within 14 days of receipt of the response from the defendant, the court or tribunal shall dispatch a copy thereof, together with any relevant supporting documents to the claimant.

## 2. Filing of a Small Claims Procedure

### Article 5 – Conduct of the Procedure

(...)

5. If, in his response, the defendant claims that the value of a non- monetary claim exceeds the limit set out in Article 2(1), the court or tribunal shall decide within 30 days of dispatching the response to the claimant, whether the claim is within the scope of this Regulation. Such decision may not be contested separately.
  6. Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt.  
The claimant shall have 30 days from service to respond to any counterclaim.
  7. If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.
- Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, *mutatis mutandis*, to counterclaims.

## 2. Filing of a Small Claims Procedure

### b. Conduct of Procedure (Art. 5 ESCP)

#### Article 12 – Remit of the court or tribunal

1. The court or tribunal shall not require the parties to make any **legal assessment** of the claim.
2. If necessary, the court or tribunal shall inform the parties **about procedural questions**.
3. Whenever appropriate, the court or tribunal shall seek to reach a **settlement** between the parties.

Enforcement according to  
**Art. 23a ESCP**

- **≠ §139 ZPO** as there is no general obligation to refer to the substantive legal assessment of the facts of the case
- Forms already contain references
- Possible reference:
  - on limited reimbursement of costs, Art. 16 s. 2 ESCP
  - Admissibility/requirement of evidence
  - Modalities of oral proceedings
- Note, however, e.g. Art. 4 (4) or Art. 7 (1) lit. a ESCP → Request to provide further information concerning the claim or counterclaim

Complies with  
**§ 138 ZPO**

## 2. Filing of a Small Claims Procedure

Schriftlich!

### Oral Hearing?

- No party right to oral proceedings ( $\neq$  § 495a ZPO)
  - Court may order insofar as it cannot give judgment on the basis of the written evidence, Art. 5(1a) ESCP
  - Party may file motion, Art. 5(1a) ESCP
    - Court may refuse application  $\rightarrow$  reasons in writing
    - No appeal
- Early first oral hearing excluded, § 1100 II ZPO
- Oral hearing by video conference



## 2. Filing of a Small Claims Procedure

### Article 8 – Oral hearing

1. Where an oral hearing is considered necessary in accordance with Article 5(1a), it shall be held by making use of any appropriate distance communication technology, such as videoconference or teleconference, available to the court or tribunal, unless the use of such technology, on account of the particular circumstances of the case, is not appropriate for the fair conduct of the proceedings.  
Where the person to be heard is domiciled or habitually resident in a Member State other than the Member State of the court or tribunal seised, that person's attendance at an oral hearing by way of videoconference, teleconference or other appropriate distance communication technology shall be arranged by making use of the procedures provided for in Council Regulation (EC) No 1206/2001 ( 1 ).
2. A party summoned to be physically present at an oral hearing may request the use of distance communication technology, provided that such technology is available to the court or tribunal, on the grounds that the arrangements for being physically present, in particular as regards the possible costs incurred by that party, would be disproportionate to the claim.
3. A party summoned to attend an oral hearing through distance communication technology may request to be physically present at that hearing. The standard claim Form A and the standard answer Form C, established in accordance with the procedure referred to in Article 27(2), shall provide information to the parties that the recovery of any costs incurred by a party as a result of being physically present at the oral hearing, upon request of that party, is subject to the conditions laid down in Article 16.
4. The decision of the court or tribunal on a request provided for in paragraphs 2 and 3 may not be contested separately from a challenge to the judgment itself.

## 2. Filing of a Small Claims Procedure

Court completes standard response Form C

- Service of Answer Form C and copy of claim form on defendant within 14 days
- Service pursuant to Art. 13 ESCP
  - If service abroad: RG for service of documents in civil matters (No 1348/2000)

Statement of defense by the defendant:

1. within 30 days after service
  2. by means of Form C or by other appropriate means (**no form requirement**)
  3. Appropriate documents must be enclosed as evidence
- Court may extend time limit, Art. 14(2) ESCP

# Case Study 2: Art. 4 ESCP – Commencement of Procedure

## Facts (as before):

ZSE Energia a.s., established in Bratislava (Slovak Republic), operates an energy supply company, and had concluded an energy supply contract with Mr R, an Italian citizen domiciled in Graz, Austria. ZSE Energia a.s. is of the opinion that R has not fulfilled his contractual obligations and intends to bring in an action concerning a claim amounting to EUR 423.74, plus late-payment interest, pursuant to the European Small Claims Procedure Regulation No. 861/2007.

# Case Study 2: Art. 4 ESCP – Commencement of Procedure

## Question 1: Which formal requirements does the claimant have to take into account when filing its lawsuit

- The claimant shall commence the European Small Claims Procedure by filling in **standard claim Form A**, as set out in Annex I, and lodging it with the court or tribunal with jurisdiction directly, by post or by any other means of communication, such as fax or e-mail, acceptable to the Member State in which the procedure is commenced
- The claim form **shall include a description of evidence** supporting the claim and be accompanied, where appropriate, by any relevant supporting documents.
  - Electronic transmission is also possible, whereby the claimant must meet the requirements of Art 2 Z 2 Signature Directive (1999/93/EC)
- According to Art. 4(5) ESCP, the Member States shall ensure that the standard claim **Form A is available** at all courts and tribunals before which the ESCP can be commenced, and that it is accessible through relevant national websites

# Case Study 2: Art. 4 ESCP – Commencement of Procedure

## Question 2: How should the court proceed if the action does not fall within the scope of the ESCP-Regulation?

- According to Art. 4(3) ESCP, where a claim is outside the scope of this Regulation, the court or tribunal shall inform the claimant to that effect
- Unless the claimant withdraws the claim, the court or tribunal shall proceed with it in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted
- If the claimant does not withdraw his action, it has to be dealt with according to the applicable national procedural law

## 3. Defenses and Judgment

### a. Defense and Counterclaim (Art. 5 ESCP)

Defense Options of the Defendant	
<i>Counterclaim</i> Art. 5 (6) and (7) ESCP	<i>Set-off</i> Not regulated

## 3. Defenses and Judgment

### Counterclaim

#### Article 5 – Conduct of the Procedure

(...)

6. Any counterclaim, to be submitted using standard Form A, and any relevant supporting documents shall be served on the claimant in accordance with Article 13. Those documents shall be dispatched within 14 days of receipt. The claimant shall have 30 days from service to respond to any counterclaim.
7. If the counterclaim exceeds the limit set out in Article 2(1), the claim and counterclaim shall not proceed in the European Small Claims Procedure but shall be dealt with in accordance with the relevant procedural law applicable in the Member State in which the procedure is conducted.

Articles 2 and 4 as well as paragraphs 3, 4 and 5 of this Article shall apply, *mutatis mutandis*, to counterclaims.

## 3. Defenses and Judgment

### Counterclaim

- Treated like a lawsuit:

→ Mandatory use of Claim Form A!

- Claimant are subject to the same time limits for reply
  - Although the wording of the law does not oblige the court to send Answer Form C with the counterclaim to the claimant, the court should send it, especially if the 30-day deadline is not met
- Defendant should announce the filing of a counterclaim in the Answer Form C (there under II 6.)
  - However, the court may set a first deadline for filing a counterclaim, Art. 7(1)(a) ESCP



# 3. Defenses and Judgment

## Counterclaim

- Connexity requirement:
  - Counterclaim must be based on the same contract or facts as the action  
= Admissibility requirement by recital No. 16 ESCP

### Recital No. 16 ESCP

The concept of 'counterclaim' should be interpreted within the meaning of Article 6(3) of Regulation (EC) No 44/2001 as arising from the same contract or facts on which the original claim was based. Articles 2 and 4 as well as Article 5(3), (4) and (5) should apply, mutatis mutandis, to counterclaims.

→ Editorial oversight, meaning Art. 6 No. 3: corresponds to Art. 8 No. 3 Brussels Ia RG

(Corresponds to the case law of the Federal Court of Justice (BGH) on § 33 ZPO as a condition of admissibility (Zulässigkeitsvoraussetzung))

## 3. Defenses and Judgment

### Counterclaim

- May not exceed value limit of €5,000 alone, otherwise ordinary civil proceedings
  - It is up to the defendant to convert the proceedings into ordinary civil proceedings
    - Consequence: no enforcement according to ESCP, but according to Brussels Ia RG
- Inadmissible counterclaim, §1099 I ZPO, e.g. if
  - Material scope of application (-)
  - No connected counterclaim
- Claimant must respond within 30 days

## 3. Defenses and Judgment

### Set-off

#### Recital No. 17 ESCP

In cases where the defendant invokes a right of set-off during the proceedings, such claim should not constitute a counterclaim for the purposes of this Regulation. Therefore, the defendant should not be obliged to use standard Form A, as set out in Annex I, for invoking such a right.

- Defendant is not required to use **Claim Form A**
- **(P)**: also for claims that do not fall within the material scope of the ESCP?
  - (-), otherwise delay

## 3. Defenses and Judgment

### b. Conclusion of Procedure (Art. 7 ESCP)

#### Article 7 – Conclusion of the Procedure

1. Within 30 days of receipt of the response from the defendant or the claimant within the time limits laid down in Article 5(3) or (6), the court or tribunal shall give a judgment, or:
  - (a) demand further details concerning the claim from the parties within a specified period of time, not exceeding 30 days;
  - (b) take evidence in accordance with Article 9; or
  - (c) summon the parties to an oral hearing to be held within 30 days of the summons.
2. The court or tribunal shall give the judgment either within 30 days of any oral hearing or after having received all information necessary for giving the judgment. The judgment shall be served on the parties in accordance with Article 13.
3. If the court or tribunal has not received an answer from the relevant party within the time limits laid down in Article 5(3) or (6), it shall give a judgment on the claim or counterclaim.

### 3. Defenses and Judgment

No Answer from Defendant	With Answer
<p>Court issues judgment on the claim, <a href="#">Art. 7(3) ESCP</a></p> <ul style="list-style-type: none"> <li>- According to the files, § 1103 S. 1 ZPO (no default judgment)</li> <li>- § 251a ZPO not applicable</li> </ul>	<ul style="list-style-type: none"> <li>- Judgment within 30 days,</li> <li style="text-align: center;">or</li> <li>- further statements requested from parties,</li> <li>- Taking of evidence,</li> <li>- Or oral hearing within 30 days (as video conference)</li> </ul>

## 3. Defenses and Judgment

### Article 9 – Taking of evidence

1. The court or tribunal shall determine the means of taking evidence, and the extent of the evidence necessary for its judgment, under the rules applicable to the admissibility of evidence. It shall use the simplest and least burdensome method of taking evidence.
2. The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties.
3. Where the taking of evidence involves a person being heard, that hearing shall be carried out in accordance with the conditions set out in Article 8.
4. The court or tribunal may take expert evidence or oral testimony only if it is not possible to give the judgment on the basis of other evidence.

- Free evidence procedure
- Efficiency → Recital No. 20 ESCP

## 3. Defenses and Judgment

- §§ 313 et seq. ZPO apply to judgment
- Delivery of judgment in court (-), but replaced by service, Art. 7(2) s. 2 ESCP in conjunction with § 1102 ZPO
- Judgment to be declared provisionally enforceable without security payment and without power to avert, Art. 15 ESCP and § 1105 ZPO

### Article 15 Enforceability of the judgment

1. The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.
2. Article 23 shall also apply in the event that the judgment is to be enforced in the Member State where the judgment was given.

## 3. Defenses and Judgment

### c. Appeal (Art. 17 ESCP)

#### Article 17 – Appeal

1. Member States shall inform the Commission whether an appeal is available under their procedural law against a judgment given in the European Small Claims Procedure and within what time limit such appeal shall be lodged. The Commission shall make that information publicly available.
2. Articles 15a and 16 shall apply to any appeal.

In Germany, the right of appeal is governed by the ZPO

- **Appeal (Berufung)**, §§ 511 et seq. ZPO → value threshold: 600 € → § 78 I 1 ZPO (mandatory representation by a lawyer)
  - Competence: District court (Landgericht)
  - Revision against appeal judgement if allowed, § 543 I Nr. 1 ZPO
- **Immediate complaint**



## 3. Defenses and Judgment

### c. Appeal (Art. 17 ESCP)

#### Article 18 – Review of the judgment in exceptional cases

1. A defendant who did not enter an appearance shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the competent court or tribunal of the Member State in which the judgment was given, where:
  - (a) the defendant was not served with the claim form, or, in the event of an oral hearing, was not summoned to that hearing, in sufficient time and in such a way as to enable him to arrange for his defence; or
  - (b) the defendant was prevented from contesting the claim by reason of *force majeure* or due to extraordinary circumstances without any fault on his part,unless the defendant failed to challenge the judgment when it was possible for him to do so.
2. (...)

## 3. Defenses and Judgment

### c. Appeal (Art. 17 ESCP)

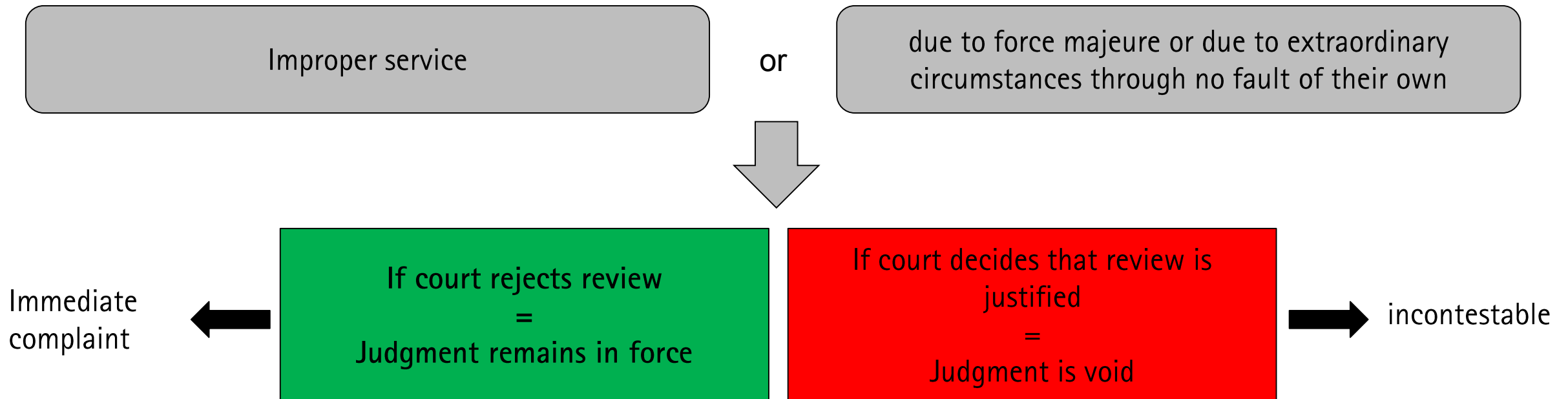
(...)

2. The time limit for applying for a review shall be 30 days. It shall run 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.
3. If the court rejects the application for a review referred to in paragraph 1 on the basis that none of the grounds for a review set out in that paragraph apply, the judgment shall remain in force. If the court decides that a review is justified on any of the grounds set out in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void. However, the claimant shall not lose the benefit of any interruption of prescription or limitation periods where such an interruption applies under national law.

# 3. Defenses and Judgment

## c. Appeal (Art. 17 ESCP)

The defendant did not enter an appearance and was unable to contest the existence of the claim:



## 3. Defenses and Judgment

### c. Appeal (Art. 17 ESCP)

- Sole autonomous remedy of the RG → subsidiary
- Entitled: Defendants and counter-defendants
- Competent: Initial court that issued judgment
  - No **devolutive effect**
- Prerequisites of the facts must be made credible, § 1104 II ZPO, § 294 ZPO
- Time limit!
- (-) Review of content
  
- No **suspensive effect**
  - Defendant can apply for suspension of enforcement under Art. 23 ESCP
- On application, court determines nullity of judgment by order, § 1104 I 2 ZPO

# Case Study 3: Art. 22 ESCP – Refusal of Enforcement

## Facts:

At the beginning of the 2021 a Slovenian consumer (A) bought a television from a German online store for a 4.000 EUR. A paid the whole amount after the delivery. However, the television was not working properly. A contacted the German online store with an attempt to secure a refund but did not get any answer from them. In order to get the refund of the paid amount A fills out Claim Form A of the European small claims procedure, set out in Annex I of the Regulation No 861/2007, and submitted it together with evidence supporting the claim to the court in Slovenia.

# Case Study 3: Art. 22 ESCP – Refusal of Enforcement

Can a judgment given in Slovenia in the European Small Claims Procedure be subject of a review as to the substance in Germany?

- **Art. 22(2) ESCP:** „Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.“
- **Review as to its substance** of a Slovenian judgment is **not allowed**. The slovenian judgment is enforceable notwithstanding any possible appeal

## 4. Recognition and Enforcement in other Member States

### Article 20 – Recognition and enforcement

1. 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.
2. At the request of one of the parties, the court or tribunal shall issue a certificate concerning a judgment given in the European Small Claims Procedure using the standard Form D, as set out in Annex IV, at no extra cost. Upon request, the court or tribunal shall provide that party with the certificate in any other official language of the institutions of the Union by making use of the multilingual dynamic standard form available on the European e-Justice Portal. Nothing in this Regulation shall oblige the court or tribunal to provide a translation and/or transliteration of the text entered in the free-text fields of that certificate.

- European title in its own right, not subject to control by the executing State → no exequatur procedure

## 4. Recognition and Enforcement in other Member States

### Article 21 – Enforcement procedure

1. Without prejudice to the provisions of this Chapter, 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.
2. The party seeking enforcement shall produce:
  - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
  - (b) the certificate referred to in Article 20(2) and, where necessary, the translation thereof into the official language of the Member State of enforcement or, if there are several official languages in that Member State, the official language or one of the official languages of court or tribunal proceedings of the place where enforcement is sought in conformity with the law of that Member State, or into another language that the Member State of enforcement has indicated it can accept.
3. (...)



## 4. Recognition and Enforcement in other Member States

2. (...)
3. The party seeking the enforcement of a judgment given in the European Small Claims Procedure in another Member State shall not be required to have:
  - (a) an authorised representative; or
  - (b) a postal addressin the Member State of enforcement, other than with agents having competence for the enforcement procedure.
4. No security, bond or deposit, however described, shall be required of a party who in one Member State applies for enforcement of a judgment given in the European Small Claims Procedure in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State of enforcement.

– Enforcement is governed by the law of the executing state

## 4. Recognition and Enforcement in other Member States

### Article 22 – Refusal of enforcement

1. 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.
2. Under no circumstances may a judgment given in the European Small Claims Procedure be reviewed as to its substance in the Member State of enforcement.

– In case of conflict of title: remedy in the executing State, § 1109, §1084 ZPO

## 4. Recognition and Enforcement in other Member States

### Article 23 – Stay or limitation of enforcement

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.

- Court may stay/restrict enforcement in favour of debtor if in the state of origin: review proceedings or ordinary appeal pending

# Case Study 4: Art. 15 ESCP – Enforceability

## Facts

X is a Swedish national and wants to sell their car. German tourist Y agrees to buy the car for the price of 1,500€. Because Y does not have as much money on them, they agree that Y pays in instalments. Y pays the first rate of 500€ but forgot to pay the second and third rate. X wishes to file a claim, using Form A ESCP, for payment of the outstanding 1.000€ plus interests and court fees.

In the corresponding small claims procedure, X is granted their claim and it is stated in the judgment that Y owes X the payment of the outstanding 1,000€.

Y wants to take legal action against this decision.

# Case Study 4: Art. 15 ESCP – Enforceability

Can X's judgment be enforced even though Y wants to take action against it?

- Yes, according to **Art. 15 ESCP**, the judgment is enforceable in small claims proceedings, irrespective of possible remedies (**no suspensive effect**)

## 5. Other Aspects

### a. Language (Art. 6 ESCP)

- German claimant wants to bring proceedings in another member state: must submit claim form in **official language of court** → usually not German
  - If claimant uses wrong language: Court draws attention to this and asks for translation before dismissing action
- Court may request **translation of documents and pleadings** if necessary for delivery of judgment and as a consequence of the right to refuse acceptance
- Art. 6(3) ESCP: **Right to refuse acceptance** (§ 1098 ZPO: Emergency period 1 week → according to § 233 ZPO reinstatement in previous status possible) of a party if document is:
  - a) Not in official language of home state
  - b) Not in language party understands
- Party may, but is not obliged to, return document

## 5. Other Aspects

### b. Costs (Art. 16 ESCP)

#### Article 16 – 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.

- §§ 91 ff. ZPO can be used
- Limited possibility of reimbursement

## 5. Other Aspects

### Court Fees

- 3,0 fee (according to KV 1210 GKG)
- In the event of premature termination reduced to 1,0 fee
- **Obligation to advance payment according to § 12 Abs. 2 Nr. 2 GKG not applicable**
  - Arises if continuation in ordinary civil proceedings after ZPO

§495a ZPO  
→ 3,0 fee

#### Article 15a – Court fees and methods of payment

1. The court fees charged in a Member State for the European Small Claims Procedure shall not be disproportionate and shall not be higher than the court fees charged for national simplified court procedures in that Member State.
2. The Member States shall ensure that the parties can pay the court fees by means of distance payment methods which allow the parties to make the payment also from a Member State other than the Member State in which the court or tribunal is situated, by offering at least one of the following methods of payment:
  - (a) bank transfer;
  - (b) credit or debit card payment; or
  - (c) direct debit from the claimant's bank account.



## 5. Other Aspects

### Lawyer Fees

- 1,3 legal fee (VV 3100 RVG)
- 1,2 appointment/hearing fee (VV 3104 RVG) only applies if an oral hearing actually takes place
  - Since oral proceedings are not prescribed, the provision in VV 3104 I no. 1 RVG, according to which the appointment fee is also due if the parties agree or if a decision is made without oral proceedings pursuant to § 307 ZPO or § 495a ZPO, does not apply

## 6. Practice and Application Examples

- Relevance to claims for reimbursement against airlines, tour operators and hotels:
  - Prominent example = enforcement of **compensation for flight delays** against airlines based in another Member State (substantive law here: Passenger Rights Regulation)
- If the contracting party (domiciled in another Member State) disputes the claim (in part), it is possible to initiate a **European Small Claims Procedure**

## 6. Practice and Application Examples

- The homepage of the European Justice Portal contains country-specific information, in particular the competent courts and authorities, as well as the forms prescribed in Annexes I-IV, which can be completed online
- Practical significance still low: efforts to establish the procedure
  - **2018: 567 cases**  
*(Statistisches Bundesamt, Rechtspflege Zivilgerichte, 2018, 18)*
  - **2019: 1.155 cases**  
*(Statistisches Bundesamt, Rechtspflege Zivilgerichte, 2019, 18)*
  - As far as can be seen, all without oral proceedings
  - Coronavirus pandemic likely to increase use and importance



Thank you very much for listening!