



The Train 2 EN4CE Project is funded by the European Union's Justice Programme

WORKSHOP ON EUROPEAN ORDER FOR PAYMENT PROCEDURE AND EUROPEAN SMALL CLAIMS PROCEDURE

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EUROPEAN ORDER FOR PAYMENT PROCEDURE



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FACTS

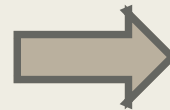


City: Viana do Castelo (PT)
Price: €3500
In August: €2000
In December: €1.500 €

María & Manuel



But: In December Manuel



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.



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Which Court has JURISDICTION to decide the case?



PLACE and METHOD OF SERVICE



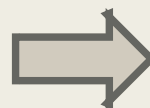
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FACTS

1. International Association "Amigos de lo Ajeno" (AdA) with registered address in A Coruña (Spain).
2. AdA decides to renovate an office in Dortmund (Germany).
3. "Amigos de lo Ajeno" decided to award the contract for the work to Demolombe, SARL (a French company).
4. The contract for the work did not include the flooring materials required, which were obtained directly from 'Cavi di Titanus, SRL' (an Italian company).



Now that the work is finished, the association has outstanding invoices for payments to both companies in the amount of €5000 each.



DEMOLOMBE & CAVI DI TITANIUS: European payment order procedure?



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Interaction of the legal concept of “consumer” and jurisdiction



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EUROPEAN SMALL CLAIMS PROCEDURE



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FACTS



Loreto & Jorge:

1. Live in Lleida (SP)
2. Purchase online a



from Girona to Palma de Mallorca

But:



THEY MAKE A CLAIM FOR:

1. The cost of the flights (€124).
2. The expenses of the trip:
 - ✓ €84 for two return train tickets, Lleida-Girona;
 - ✓ €230 for the prepaid nights in the hotel that they were unable to use;
 - ✓ €68 for living expenses.



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■ Requirements

- Civil or commercial matters
- Value of the claim



5.000 €, excluding all interest, expenses and disbursements

- Cross border cases



Art. 3 Regulation n° 861/2007



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■ **Claim options**





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■ Spanish Law

- Ordinary Oral Proceedings (arts. 437 ff. SCPA)
- Payment Order Procedure (arts. 812 ff. SCPA)

■ European Law

- European Small Claims Procedure
- European Order for Payment Procedure



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➤ European Small Claims Procedure

- Art. 19 ESCP → [Subject to the provisions of this Regulation], the ESCP shall be governed by the **procedural law of the Member State** in which the procedure is conducted.
- FD 24 SCPA →
 - Jurisdiction: Court of First Instance / Commercial Court
 - Territorial jurisdiction: EC 44/2001 of 22 December 2000
 - Procedural issues not covered by ESCP Regulation: Oral proceedings
 - Opposition by the defendant based on the claim amount





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- Appeal
- Enforcement procedure

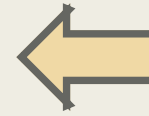
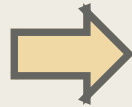


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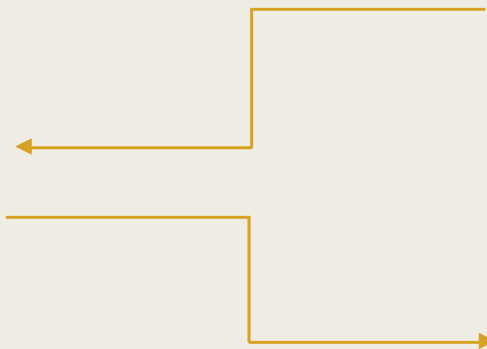
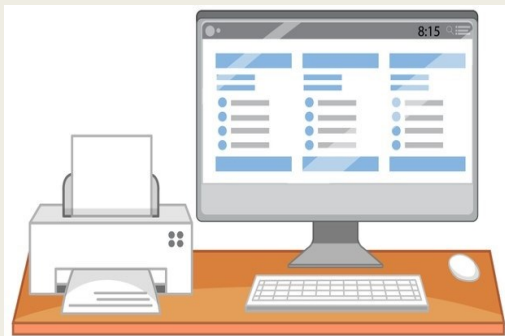
FACTS



ANDRÉS (Spain)



AMAZONIA.DE



1. A PERSONAL COMPUTER: €2499.
2. A PRINTER: €899.
3. A HIGH RESOLUTION SCREEN: €995.



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SCENARIO 1



1. He decides to return the items, cancel the agreed payment and request that the cost of return be borne by the seller.
2. The company considers that the reason for return stated by the customer is not covered by the terms of sale accepted by Andrés when he bought the items.
3. The company intends to sue him for the agreed sale price or, alternatively, for return of the products and compensation in the amount of 30% of the total retail price, in accordance with the contractual terms accepted by Andrés, which included this penalty for unjustified refusal of goods delivered.



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Can AMAZONIA.DE use the ESCP to make a claim against Andrés?



In which Member State should AMAZONIA.DE present its claim?



Does the court have the power to examine ex officio the possible unfairness of the terms of the contract at issue?



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SCENARIO 2



AMAZONIA.DE decides to adopt the usual course of action at the company of assigning the credit claim to the debt collection management company, WERECOVER Inc., headquartered in Spain.



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Can the debt collection management company apply for an ESCP to enforce the debt?



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NAJLEPŠA HVALA!