



Project „Train 2 EN4CE“

With financial support of the European Union's Justice Programme (2014-2020)

WORKSHOP ON CROSS-BORDER DEBT COLLECTION IN THE EUROPEAN UNION

TRAIN 2 EN4CE- A CORUNA

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Case study 1: European Small Claims Procedure and International Jurisdiction

The wine tasting

Facts:

- Ms. A (domiciled in Vienna) spends her summer vacation in Torbole (Italy) and books an exquisite wine tasting with the company Vino-S.r.l. (established in Torbole, Italy). Because Ms. A comes to the conclusion at the end of the tasting that hardly any of the wines were enjoyable, she leaves the wine cellar without paying. Vino-S.r.l. now demands payment of EUR 330,00 plus late-payment interest from Ms. A and initiates the European Small Claims Procedure on the 08.10.2020 by means of Form A, which is duly sent to the competent court in Vienna.
- **Question 1:** What formal requirements does the court have to take into account after receiving the claim form?

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Filling in the forms

The ESCP is conducted through four standard forms:





























- **Form A - Claim form**
- **Form B - Request by the court or tribunal to complete and/or rectify the claim form**
- **Form C - Answer form**
- **Form D - Certificate concerning a judgment in the European small claims procedure**

In the [Dynamic forms section](#) of the e-Justice portal, these forms can be filled out online or downloaded.

[Next: Filling in the forms 2/2](#) | [Previous: User tools](#)

Form A - Claim form

Please select the Member State to which you would like to send your form after completion.

-  Austria
-  Belgium
-  Bulgaria
-  Croatia
-  Cyprus
-  Czech Republic
-  Denmark
-  Estonia
-  Finland
-  France
-  Germany
-  Greece
-  Hungary
-  Ireland
-  Italy
-  Latvia
-  Lithuania
-  Luxembourg
-  Malta
-  Netherlands
-  Poland
-  Portugal
-  Romania
-  Slovakia
-  Slovenia
-  Spain
-  Sweden
-  United Kingdom

- **Answer:** 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 Art 13 ESCP-Regulation. These documents shall be dispatched within 14 days of receiving the properly filled in claim form (Art 5 (2) ESCP-Regulation).

- **Scenario I:**
- Ms. A requests that an oral hearing be held.
- **Question 2:** Is the court obliged to schedule an oral hearing?



Using forms in multiple tabs of the same browser is not supported and can lead to data corruption.

FORM STEPS

Step 1

Step 2

Step 3

Step 4

Step 5

Step 6

Step 7

Step 8

You can save a form you are working on as a draft.
Load a saved form later to complete it.

 Load draft

IMPORTANT INFORMATION

PLEASE READ THE GUIDELINES AT THE BEGINNING OF EACH SECTION – THEY WILL HELP YOU TO FILL IN THIS FORM

Assistance in filling in the form: You may benefit from assistance in filling in this form. To find out how to obtain such assistance, you may refer to the information provided by the Member States and published on the website of the European Judicial Atlas in civil and commercial matters, available at the European e-Justice Portal https://e-justice.europa.eu/content_small_claims-354-en.do. Please note that this assistance does not include legal aid, for which appropriate application must be made under national law; nor does it include a legal assessment of your case. Language: You should reply to the claim in the language of the court/tribunal which has sent you this form.

Supporting documents

Please note that the claim form should be accompanied, where appropriate, by any relevant supporting documents. However, this does not prevent you from submitting, where appropriate, further evidence during the procedure.

A copy of the claim form and, where appropriate, of the supporting documents, will be served on the defendant. The defendant will have an opportunity to submit a response.

2. Claimant

- **Answer:** In principle, according to Art 5 (1) ESCP-Regulation, the ESCP shall be a written procedure.
- 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 the refusal shall be given in writing. The refusal may not be contested separately from a challenge to the judgment itself (Art 5 (1a) ESCP-Regulation).**
- However, the provisions of Art 6 ECHR and Art 47 of the Charter of Fundamental Rights have to be taken into consideration here: According to the case law of the European Court of Human Rights, an oral hearing can only be dispensed with in certain constellations; this has been affirmed, for example, if the parties have waived an oral hearing (ECHR 21.9.1993, Zumtobel v. Austria, No. 12235/86) or if only such questions of fact and law are raised which can also be adequately answered in a mere written procedure (ECHR 12.11.2002, Döry v. Sweden, No. 28394/95).

- **Scenario II:**
- Ms. A is served with the court's standard answer Form C on the 27.10.2020. Because she has a lot on her plate at the moment at work, she puts off answering the Answer Form C for the time being. Only on the 7.12.2020 does she fill it out and returns it to the competent court.
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- **Question 3:** How will the court proceed after the 30-day period has expired?

- **Answer:** Pursuant to Art 7 (3) ESCP-Regulation, the court shall give a judgment, if no response is received from the defendant within the time limit for responding to the claim (30 days from the date of service). The date of posting is sufficient to comply with the time limit for responding to the claim; the date of receipt by the court is not relevant.
- The details of the form in which a judgment is to be rendered due to the default of the defendant shall be governed by the national law of the respective procedural state pursuant to Art 19 ESCP-Regulation.
- In Austria, according to § 548 (4) ZPO, the court has to issue a default judgment ex officio according to § 396 ZPO, if the requirements of Art 7 (3) ESCP-Regulation are met.

- **Question 4:**

- Does the defendant have the possibility to appeal against the default judgment?

Answer:

- The question of the extent to which legal action is to be taken against legal acts that have been taken on the basis of procedural acts that have been omitted is also governed by the national law of the respective procedural state pursuant to Art 19 ESCP-Regulation.
- In Austria, pursuant to §§ 548 (4), 397a ZPO, an objection against the default judgment is admissible (14 days from service of the default judgment); also the defendant can file an appeal withing 4 weeks of service.
- **A review of the judgment in exceptional cases pursuant to Art 18 ESCP-Regulation is not possible due to Ms. A's negligent behavior.**

- **Scenario III:**
- Ms. A is served with the court's standard answer Form C on the 27.10.2020. Because she is hospitalized for two months due to an accident, she does not learn of the default judgment issued on the 24.11.2021 until the day of her discharge, the 3.1.2021.
- **Question 5:** Does the defendant have an opportunity to appeal the default judgment?

Answer

- **In this case, a review of the judgment in exceptional cases is possible pursuant to Art 18 ESCP-Regulation, because the defendant the defendant was prevented from contesting the claim due to extraordinary circumstances without any fault on its part.**

EOPP- Articles 24-33

- **Facts:**

- Last month, A who resides in Slovenia translated a document to B who resides in Hannover, Germany. The total cost of the work is estimated at 7.500 Euros. A has sent the invoice but got no answer from B.

- **Scenario I:**

- A is considering lodging a European order for payment (Form A) but is afraid as she does not speak German, has no money to pay a lawyer, nor court fees.
- **Question 1:** Does A need a lawyer or can she lodge herself Form A?

Answer: A does not need a lawyer. She can lodge herself Form A.

Article 24 of Regulation No 1896/2006 (Legal representation)

Representation by a lawyer or another legal professional shall not be mandatory:

(a) for the claimant in respect of the application for a European order for payment;

(b) for the defendant in respect of the statement of opposition to a European order for payment.

- To start the procedure, Form A must be filled in, giving all the details of the parties and the nature and amount of the claim. The Court will examine the application, and if the form is correctly filled in, the Court should issue the European Payment Order within 30 days. it is advisable to check in the European Judicial Atlas which method is accepted by a particular Member State (Article 29(1)(c) - Means of communication - of Regulation No 1896/2006).
- The application for a European order for payment may be submitted to the Court by post or by electronic means.

- Question 2: What if A cannot proceed with the Court fees? Can someone pay for her?

Answer:

- Article 25 (2) of Regulation No 1896/2006
- For the purposes of this Regulation, court fees shall comprise fees and charges to be paid to the Court, the amount of which is fixed in accordance with national law.
- In Slovenia, Court Fees are regulated in the Court Fees Act. As stipulated in Article 3 of the Court Fees Act (ZST-1), it is indeed the taxpayer who pays the court fee for proposing the initiation of proceedings or performing a single procedural act (civil case). However, this provision is not to be interpreted so narrowly that only such a taxpayer can pay the fee itself;

- Article 105.a of the Civil Procedure act (ZPP), does not explicitly stipulate that the taxpayer had to pay the fee. **There is, therefore, no obstacle that a third party would not be able to pay the court fee** for such a taxpayer and that such payment would be deemed to have paid the taxpayer a certain fee due.

- Question 3: How can A deal with the language barrier?
- Answer: The claimant may be required to provide a copy of the EOP in a different language from that used by the Court of origin. As a general rule the EOP should be provided in the official language, or one of the official languages, of the Member State of enforcement unless that Member State has indicated that it will accept orders in another official language or languages of the European Union. Any translation shall be certified by a person qualified to do so in one of the Member States (Translation Article 21(2)(b)).



Find information per region

 Belgium	 Bulgaria
 Czech Republic	 Denmark
 Germany	 Estonia
 Ireland	 Greece
 Spain	 France
 Croatia	 Italy
 Cyprus	 Latvia
 Lithuania	 Luxembourg
 Hungary	 Malta
 Netherlands	 Austria

1 Existence of an order for payment procedure

There is no specific “order for payment” procedure in Ireland but a plaintiff who is owed a specific amount of money or whose claim is easily quantifiable may receive judgment in default.

1.1 Scope of procedure

If the defendant fails to enter an appearance or a defence to the plaintiff’s claim, then the plaintiff may obtain judgment in default. Where the original claim is for a liquidated or definite sum, final judgment may be entered in the Central Office of the High Court or in the Circuit Court Office, depending on the amount of the claim (except in a small number of cases e.g. moneylending matters, in which case the plaintiff must make an application for judgment in default or obtain the leave of the court to have judgment entered in their favour). In other words, in many straightforward debt collection cases, the plaintiff/claimant can obtain judgment in default without having to go to court and can obtain the judgment from the relevant court office through an administrative procedure.

If the claim is not for a definite sum of money, then the plaintiff must apply to court for judgment and judgment may not be obtained otherwise than through going to court.

1.1.1 What types of claims are eligible (e.g. only pecuniary claims, only contractual claims etc.)?

Judgment may be obtained by default in almost any type of case. This procedure is not limited to contractual or pecuniary claims, although the system is even more straightforward for such cases. The main exceptions include moneylending matters.

- Article 29 of Regulation No 1896/2006
- All Member States shall communicate to the Commission:
- (c) the means of communication accepted for the purposes of the European order for payment procedure and available to the courts;
- (d) languages accepted pursuant to Article 21(2)(b) of Regulation No 1896/2006.

- In an objection to an enforcement order, the debtor cannot successfully challenge the correctness of the service of the European order for payment (as an enforcement title) or to invoke reasons for which he never became aware of the European order for payment before receiving the enforcement order. The procedures for issuing a European order for payment use specific standard forms, which are published on the European Union's websites in all the official languages of the Member States of the European Union. Due to the standardized format of these forms, in most cases there is no need for additional verification of the contents therein or, as a rule, there is no requirement for qualified translation of the forms.

Case 2:

Scope of application of the European Small Claims Procedure

- **Facts:**
- Mr. Martič is a Slovenian national, domiciled and habitually residence in Maribor, Slovenia. In August 2017, he came across the webpage of a company Homeostasis d.o.o. with its registered seat in Rijeka, Croatia, offering various wellness-at home products. He ordered a portable oxygen device for home use manufactured by the acclaimed manufacturer Life balance d.o.o. with its registered seat in Pula, Croatia. He paid the price of 2.340 EUR via internet banking and after 2 weeks, he received the device. However, the device did not function properly. In October 2017, Mr. Martič decides to sue before the Slovenian court.

Question 1: Considering the type of the claim, can Mr. Martič seek a replacement of the device from Homeostasis d.o.o. relying procedurally on the provisions of the Regulation on European Small Claim Procedure (ESCP)?

- **Answer:** Yes, Mr. Martič could seek replacement of the device from Homeostasis d.o.o. relying on the provisions on European Small Claims Procedure (ESCP). The material scope of application of the ESCP rules is determined by Art. 2(1) of the Regulation (EU) 2015/2421 of the European Parliament and of the Council of 16 December 2015 (hereinafter: Regulation 2015/2421) amending Regulation (EC) No 861/2007 establishing a European Small Claims Procedure (hereinafter: ESCP Regulation) and Regulation (EC) No 1896/2006 creating a European order for payment procedure (hereinafter: EOPP Regulation).

- Regulation 2015/2421, Art. 2(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*).

- Unlike the EOPP Regulation which is limited solely to uncontested monetary claims, the ESCP may be used both for monetary and non-monetary claims. Therefore, apart from the replacement, provided applicable national law allows for it, Mr. Martič may seek repair of the device, reduction of the price, rescission of the contract and/or damages from Homeostasis d.o.o. relying procedurally on the ESCP Regulation.

- **Question 2:** Would the ESCP Regulation still be applicable if the factual circumstances took place a year earlier and Mr. Martič decided to sue in October 2016?

- **Answer:** Under the ESCP, when the claim is a non-monetary one, the claimant must determine the value of the claim. According to Regulation 861/2007, the value of the claim **could not exceed 2.000 EUR** (Art. 2(1) of the Regulation 861/2007). However, after the amendments of the ESCP which entered into force with Regulation 2015/2421 on 14 July 2017 (Art. 3 of the Regulation 2015/2421), **the threshold was raised to 5.000 EUR**. It follows that in October 2016, Mr. Martič **cannot** rely on the provisions of ESCP for his claim of replacement against Homeostasis d.o.o., provided that the value of claim was determined in line with the value of the product, i.e. exceeding 2.000 EUR.

- **Question 3:** Imagine that Mr. Martič ordered the product from Homeostasis Slovenia d.o.o. with its central seat in Ljubljana, a subsidiary of the Croatian company Homeostasis d.o.o. In the proceedings instituted by Mr. Martič against Homeostasis Slovenia d.o.o., Homeostasis d.o.o. appears as an intervener. Would Mr. Martič be able to seek replacement of the device from Homeostasis d.o.o. Slovenia relying procedurally on the provisions of the ESCP Regulation?

- **Answer:** In order for a particular case to fall into the ambit of application of the ESCP Regulation, there has to be a cross-border element to the case. Unlike the majority of other instruments of European private international law, Regulation 861/2007 contains a definition of a cross-element, which is the equivalent of the one contained in Regulation 1896/2006 (Art. 3(1)).

Regulation 861/2007, Art. 3(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.

- For the rules of the ESCP Regulation to be applicable, a cross-border element has to appear on the side of one of the parties who has to have domicile or habitual residence in a Member State other than the one in which the proceedings are instituted For the purposes of determining the domicile, the ESCP Regulation 861/2007 refers to the Brussels I Regulation or Brussels I bis Regulation, as the case may be.

- Domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001.
- Since the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: the Brussels I Regulation) was replaced by the Regulation (EU) No 1215/2012 of the European

- **Question 4:** If Mr. Martič decided to sue the manufacturer of the device, the company Life Balance d.o.o. for damages, could he do so relying on the provisions of the ESCP Regulation?

- While the EOPP Regulation excludes non-contractual liability from its scope of application, with a few exceptions (Art. 2 of the EOPP Regulation), this is not the case with the ESCP Regulation. The only category of non-contractual disputes which remain outside of the ESCP Regulation's scope are violations of personality and privacy (Art. 2 of the Regulation 2015/2421). Therefore, Mr. Martič may rely on the rules of the ESCP Regulation when suing for damages the manufacturer of the device, the company Life Balance d.o.o.

- **Answer:** Whereas the relationship between Mr. Martič and Homeostasis d.o.o. is a contractual one, the relationship between Mr. Martič and Life Balance d.o.o. should be characterised as a non-contractual one. The CJEU provided for the autonomous interpretation of the notions of “matters relating to contracts” and “matter relating to torts, delict and quasi-delict” for the purposes of the Brussels I bis Regulation. **Given that both the ESCP Regulation and EOPP Regulation complement the Brussels I bis regime, the definitions of the respective terms may be borrowed therefrom.** These notions are autonomously defined in the Brussels I bis Regulation thus they are independent from any definition in a particular national law. In addition they have “inter-European definitions” entailing consistency among different legal instruments, such as the Brussels I bis Regulation, the Rome I Regulation, the Rome II Regulation

- Matter related to contracts should be understood as “an obligation freely assumed by one party towards another” (CJEU, judgment of 17 June 1992, *Handte*, C-26/91, EU:C:1992:268, para. 15; CJEU, judgment of 20 January 2005, *Engler*, C-27/02, EU:C:2005:33, para. 50). Matters related to tort, delict and quasi-delict should be understood to cover “all actions which seek to establish the liability of a defendant and which are not related to a contract”. These two notions are said to complement each other to create a system in which an obligation in “civil and commercial matters” under the Brussels I bis Regulation must fall under one or the other. Since there is no freely assumed obligation of one party towards the other in the relationship between Mr. Martič and Homeostasis d.o.o., and the claim seeks to establish liability of the defendant, the relationship should be qualified **as a matter related to tort, delict and quasi-delict.**

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Thank you

for your attention

AND

Stay away from

Virus