



European civil procedure – European small claims procedure and practical cases

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EU Instruments →

EU projects

- 1. European Enforcement Order
- 2. Simplification of debt recovery of monetary claims in the EU
- 3. Dimensions of evidence taking in European Civil Procedure
- 4. Remedies concerning the enforcement of foreign judgments according to the Brussels I recast
- 5. Train 2 EN4CE
- 6. Diversity of enforcement titles in cross-border debt recovery in the EU
- 7. **DIGI-Guard**
- <https://www.pf.um.si/acj/>

EEO
(Regulation 805/2004)

EPO
(Regulation 1896/2006)

ESCP
(Regulation 861/2007)

Brussels I Recast I bis (No. 1215/2012)

PRIMER 1: POVRAČILO STROŠKOV

Nizozemski potrošnik ali potrošnica kupi prenosni računalnik iz francoske spletne trgovine, ki pa prispe poškodovan. Po več poskusih, da bi prejel ali prejela povrnitev stroškov, se potrošnik ali potrošnica obrne na odvetnika ali odvetnico, ki mu ali ji priporoči uporabo evropskega postopka v sporih majhne vrednosti.

1. Odvetnik ali odvetnica prenese obrazec zahtevka A iz rubrike Dinamični obrazci na portalu e-pravosodje, ga izpolni in predloži sodišču na Nizozemskem skupaj s potrdilom o prejemu prenosnega računalnika, elektronsko korespondenco s trgovino in fotografijo poškodovanega blaga.
2. Sodišče v 14 dneh pošlje kopijo obrazca spletni trgovini in ji omogoči 30 dni za odgovor.
3. Trgovina odgovori z izpolnjenim obrazcem za odgovore C.
4. Sodišče odredi trgovini, naj kupcu ali kupki povrne zahtevane stroške in stroške postopka.

PRIMER 2: NEPLAČILO RAČUNA

Grafični oblikovalec ali oblikovalka iz Španije trdi, da nemška stranka ni plačala računa v višini 800 EUR.

1. Oblikovalec ali oblikovalka izpolni obrazec zahtevka A.
2. V 14 dneh sodišče pošlje kopijo obrazca nemškemu podjetju.
3. Nemško podjetje odgovori in zahteva glavno obravnavo.
4. Sodišče zasliši obe stranki po video povezavi in delno odloči v korist grafičnega oblikovalca ali oblikovalke, nemško podjetje mora plačati del računa.

The consumer from the Netherlands buys the laptop from the French online shop, but the item was delivered broken. After a few tries to get the cost paid for the laptop returned, the consumer turns to the lawyer who proposes the use of European small claims procedure.

Graphic designer from Spain claims that German company did not paid the bill in the amount of 800 EUR.

Common features of simplified procedures

„non-real disputes“

- Enabling the need for written procedures
- The need for professional and centralised system
- Authomatisation : the use of uniform dynamic forms
- Simplified procedures : costs, no legal representation,
- Simplified evaluation of prerequisites for starting the procedure

THE CURRENT FRAMEWORK OF CROSS-BORDER ENFORCEMENT IN THE EU

- so-called ‘second generation’ of EU Regulations on civil procedure
 - Optional nature
 - In MS applied in small number of cases
 - No exequatur (same for BUIa)
- central question is:
 - whether the abolition of exequatur in the Brussels *Ibis* Regulation has further decreased the appeal of the second-generation Regulations for practitioners or
 - whether recent reforms – in particular the introduction of the new EAPO Regulation and the revision of the ESCP and EOP Regulations in the year 2015 – have led or may lead to a rising demand in this regard

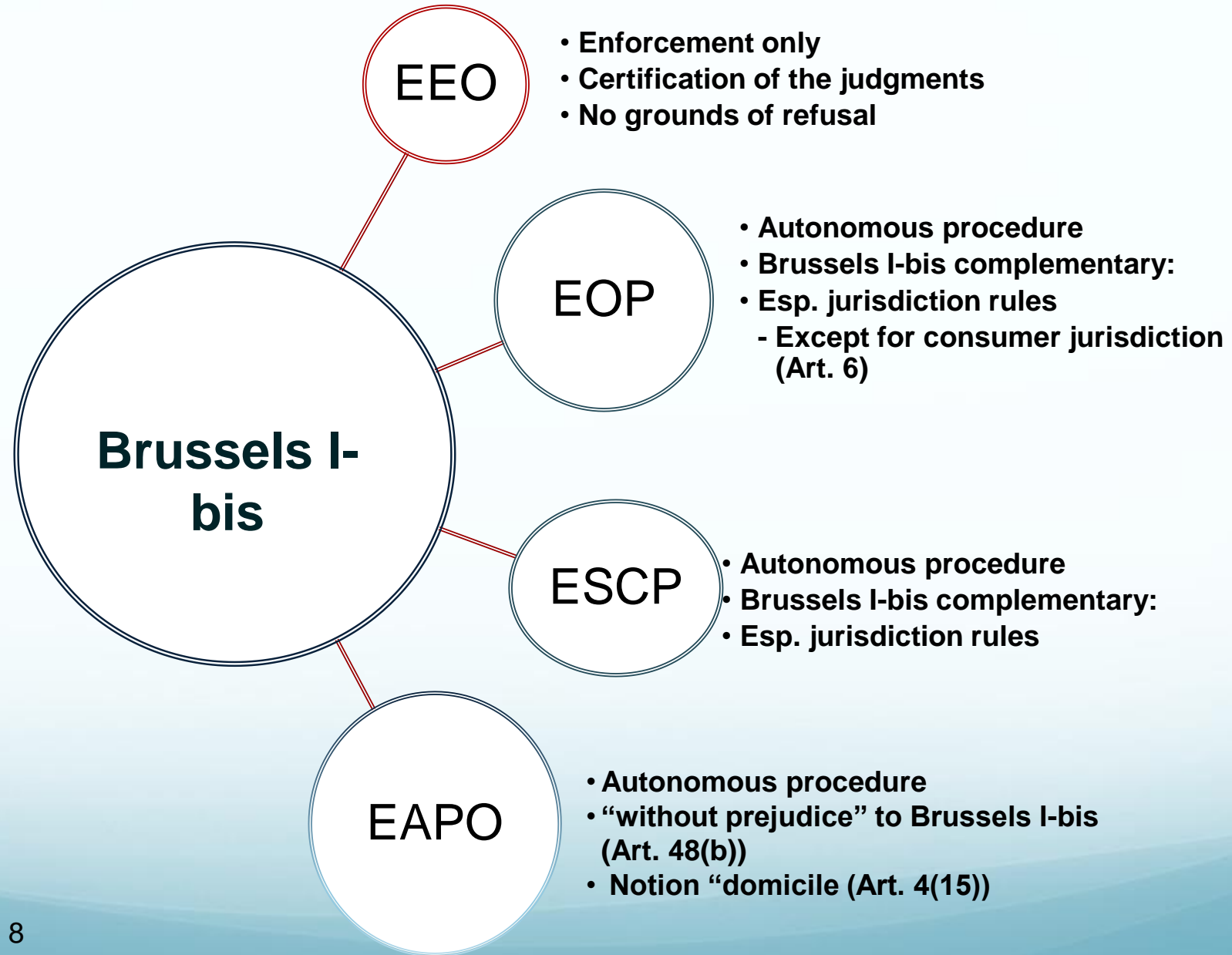
Current problems

- Lack of awareness
- Complexity of EU regulations on cross-border enforcement : no wholly autonomous procedure – gaps filled by national law MS
- Differences between regulations: surprise effect with regard to provisional measures, invoking public policy
- Different scope of the regulations : euro-autonomous interpretation
- Language, use of IT, protection of debtors (consumers), legal remedies, cost of the proceedings
- Strategic enforcement shopping

Which procedure to choose?

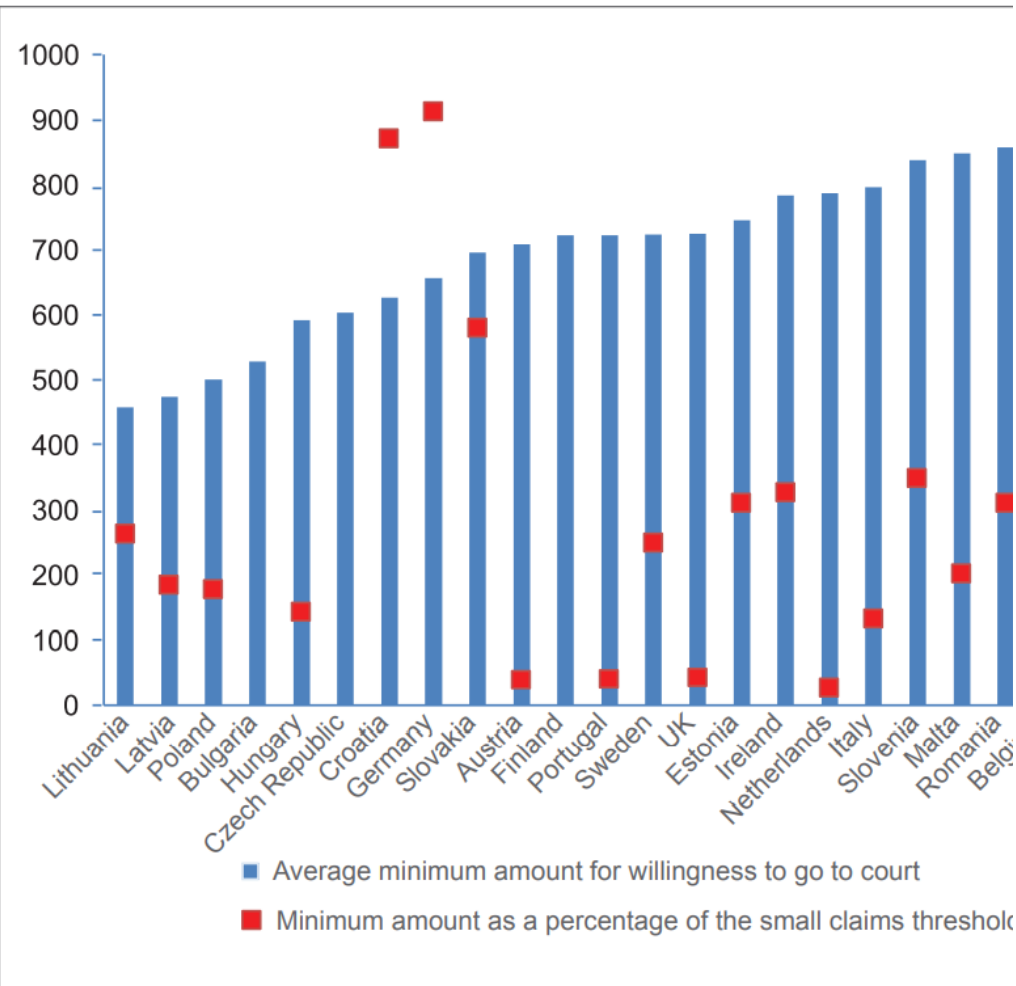


Optional procedures



Experience of the MS

FIGURE 6 Minimum amount to be willing to go to court over and its relation



Sources: Chart based on Special Eurobarometer 395 and own calculations

Annex B: Court fees for small claims

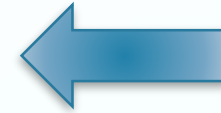
Country	Court fee for a sample of values (EUR)						
	50	200	500	1000	2000	5000	10000
Austria	22	43	61	102	102	299	707
Belgium*	35	35	35	35	35	35	35
Bulgaria*	25	25	25	40	80	200	400
Croatia	13,5	13,5	27	40	67	567	736
Cyprus*	0	0	0	0	0	0	0
Czech Republic*	40	40	40	50	100	250	500
Denmark	67	67	67	67	67	67	N/A
Estonia	75	75	125	175	225	325	N/A
Finland*	113	113	113	113	113	113	113
France	35	35	35	35	35	35	35
Germany	75	75	105	159	267	N/A	N/A
Greece	4,50	4,50	4,50	4,50	4,50	4,50	4,50
Hungary	3	12	30	60	120	216	216
Ireland	25	25	25	25	25	25	25
Italy	37	37	37	37	85	85	206
Latvia	71,14	71,14	75	150	300	N/A	N/A
Lithuania	15	15	15	30	60	150	300
Luxembourg	0	0	0	0	0	0	0
Malta	23	23	23	23	23	23	23
Netherlands	75	75	75	213	213	213	213
Poland	7	24	24	24	70	N/A	N/A
Portugal	102	102	102	102	102	102	102
Romania	4,50	17	41	79	139	308	486
Slovakia	16,50	16,50	30	60	120	200	600
Slovenia	54	54	78	126	165	N/A	N/A
Spain	0	0	0	0	0	0	0
Sweden	98	98	98	98	98	98	98
UK	41	41	66	88	102	140	287

isputes:

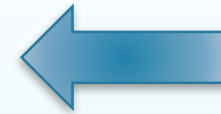
EU Regulations of the Second Generation and BUIa: distinctive features

- Abolition of the declaration of enforceability

MS OF ORIGIN	MS OF ORIGIN	MS OF ENFORCEMENT	MS OF ENFORCEMENT
Issuance of enforcement title	Certificate of enforceability	Declaration of enforceability (exequatur)	Enforcement



MS OF ORIGIN	MS OF ORIGIN	MS OF ENFORCEMENT
<p>1. Step:</p> <p>Enforceable judgment (judgment, settlement, instrument)</p> <p>judgment court authentic</p>	<p>2. Step:</p> <p>Certificate of enforceability (that the judgment is enforceable, minimum standards)</p>	<p>3. Step:</p> <p>Enforcement procedure – permission of enforcement in some MS</p> <p>Debtor may not object to recognition or enforcement of foreign title, except incompatibility of court judgments</p>



- No possibility of invoking public policy as a defence
- Service of the documents and the right to be heard should be ensured by the state of origin
- EEO: judgment issued under domestic law – certified as EEO: minimum standards of service and the right to be heard, special review procedure in exceptional cases
- EOP : European title: procedural rules on service of documents : special review procedure in exceptional cases

Different Purposes achieved

1) Purpose of the **Brussels I *bis* Regulation**

Making EU Member State judgments, **court agreements and authentic instruments** immediately enforceable across the European judicial area without the need for an intermediate exequatur proceeding in the enforcing State and without prescription of minimum procedural standards.

1) Purpose of the **Brussels I *bis*** Regulation

Therefore, the person against whom enforcement is sought shall apply for refusal of the recognition or enforcement of a judgment in the Member State of enforcement if he considers one of the grounds for refusal of recognition or enforcement to be present according to Article 45 of the Brussels I *bis* Regulation.

2) Purpose of the **EEO Regulation**

To create a European Enforcement Order for uncontested pecuniary claims in order to allow, by laying down minimum standards, the free circulation of judgments, **court settlements and authentic instruments throughout all Member States without any intermediate proceedings** to be brought in the Member State of enforcement prior to recognition and enforcement.

3) Purpose of the **EOP Regulation**

To simplify and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure and permitting the free circulation of European orders for payment throughout the Member States.

4) Purpose of the **ESCP** Regulation

To simplify and speed up litigation concerning small claims in cross-border cases, in particular cross-border consumer disputes, whilst at the same time reducing costs (for example, no legal or technical assistance is required).

General on ESCP

- Applicable since 2009 and the revision from 2017
- Consumers and SMC
- The least known

UPORABLJA SE ZA ODŠKODNINSKE ZAHTEVKE V ZVEZI Z NAKUPI,
KI SO OPRAVLJENI V DRUGI DRŽAVI EU.
Blago ali storitve



ZAHTEVKI SO LAHKO ...
denarni ali za druge vrste nadomestil



V VREDNOSTI ...
5 000 EUR ali manj



Hitrejša, lažja in cenejša pot do odškodnine

Pisni postopek | Večjezični obrazci | Pravno zastopanje ni potrebno
Sodne takse: samo obvezna pristojbina | Določeni roki za pravočasno poravnavo
Sodba je izvršljiva v 26 državah EU (razen na Danskem)

Brezplačna pomoč pri izpolnjevanju obrazcev, ki so na voljo na primer v vašem lokalnem evropskem potrošniškem centru

1. civil or trade dispute – You did not receive your online order, your flight was cancelled, etc.
2. cross-border element – You or the other party are based in a different EU member state than that of the competent court.
3. up to a maximum value of 5,000 (before 2,000) euros (excluding interest).

Aims of the ESCP

- Cost and time of the procedure – supranational procedure
- Simplification and acceleration of the cross-border dispute resolution of the small claims
- Alternative to other EU procedures or national procedure
- No exequatur procedure needed in the MS of the enforcement in order to enforce foreign judgments abroad
- Contested and uncontested claims
- Used also in case of debtors objection against the EPO zoper EPN
- **Regulation (EU) 2015/2421 on amendments of the Regulation (ES) No. 861/2007 - in use from 2017**

- **Regulation 2015/2421 on the amendments of the Regulation No. 861/2007**
 - Upper limit of the value of the claim was raised to 5.000 EUR
 - the use of ICT
 - Costs of the procedure, especially court fees – proportionality principle
 - Court settlement delivered within the European Small Claims is enforceable in the same way as the judgment
 - Enabling the proper language version of the dynamic forms, provided on the e-justice portal
 - Other amendments are that the primacy of the written procedure is underlined (Article 5), the practical assistance of parties is strengthened (Article 11) and the rule on minimum standard for review is clarified (Article 18)
 - the enforcement of court settlements (Article 23a).

- Court fees : since 2017 new requirements apply regarding the proportionality between the court fees and costs
- Forms : the certificate concerning a judgment in the European Small Claims Procedure may be issued in any EU language other than the language of the MS of origin, with no additional costs
- ICT: The courts are obliged to use the new IT technologies in order to take evidence and the use of traditional evidence taking (oral examination of the witness) is possible only if it is necessary for the judgment to be issued.
- E-service

Relationship between the ESCP and national procedure

- Lex fori:
 - means of communication (Article 4. ESCP)
 - Taking the evidence (Article 9. ESCP)
 - Legal remedies (Article 17. ESCP)
 - Enforcement procedure (Article 21. ESCP)
 - + general rule in Article 19.: 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...
- There is no implementation in Slovenia – application of CPA on small claims procedure and the regular civil procedure where there are no rules on special procedure

- Questions not governed by the Small Claims Regulation:
 - International jurisdiction according to the BUIa
 - Taking evidence according to the Evidence Regulation (Regulation 2020/1783 (recast – 2022))
- Autonomous ways of service in Small Claims Regulation + rules on service according to the EOP (if the service is not executed according to the Small Claims Regulation) / and Regulation No. 1393/2007 – Regulation (EU) 2020/1784 (recast) – regarding the right to reject the service

Ratione materiae

- For civil and commercial disputes
- 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
 - (j) violations of privacy and of rights relating to personality, including defamation.



NE

ČE VKLJUČUJE:

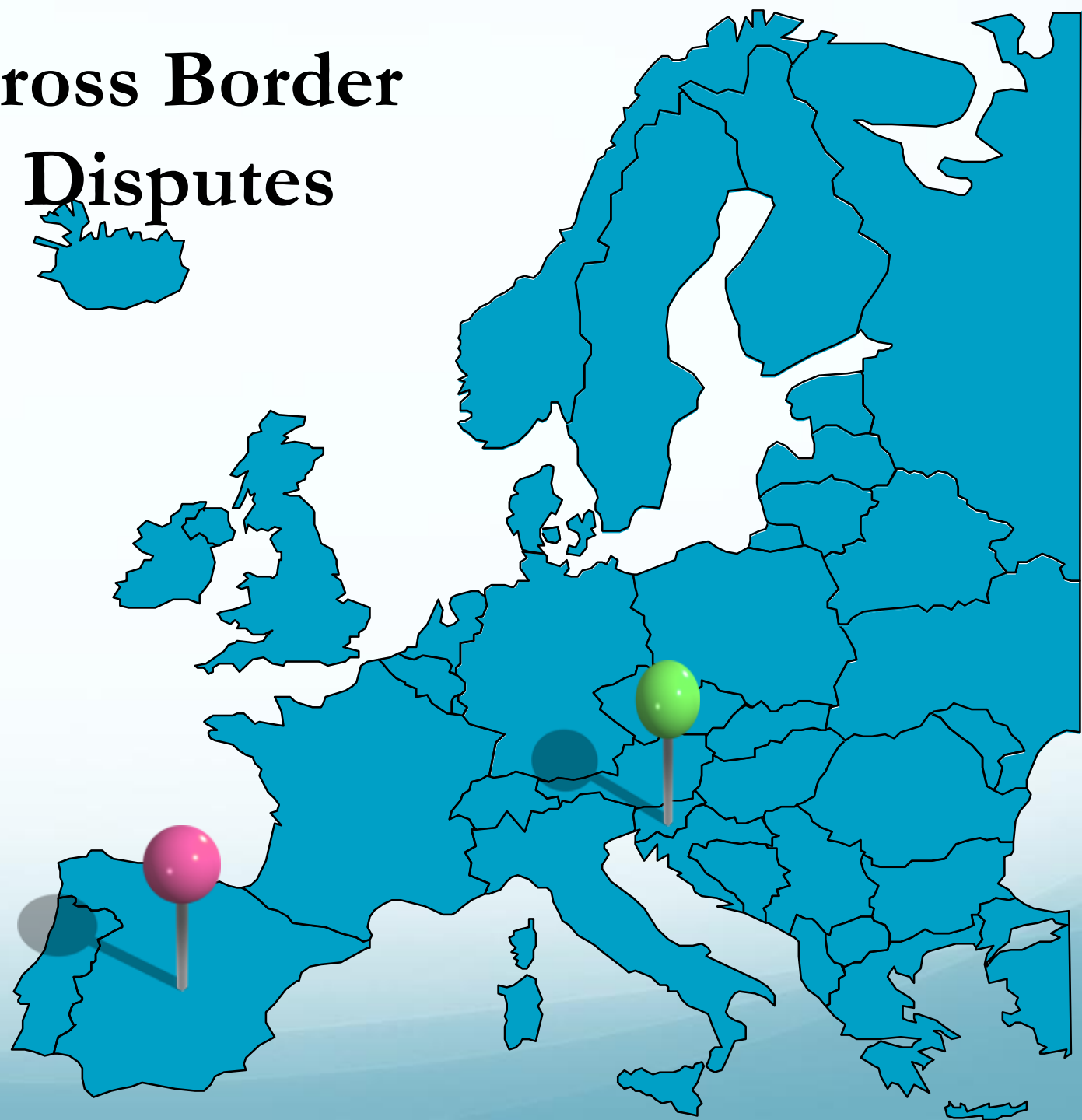
- ▶ dolgove v isti državi, v kateri je sedež vašega podjetja;
- ▶ vrednost nad 5 000 EUR;
- ▶ spor z javnim organom glede davkov, pristojbin ali socialne varnosti;
- ▶ zaposlitev, razvezo zakonske zveze, dedovanje ali družinsko pravo;
- ▶ spor zoper osebo/podjetje s sedežem na Danskem.

Postopek zajema nadomestila za blago in storitve in ne zgolj za materialne proizvode.

- Where a claim is outside the scope of the ESCP Regulation, the court or tribunal shall inform the claimant to this effect. Unless the claimant withdraws the claim, the case shall proceed in accordance with the national procedural rules of the Member State in which the procedure is conducted (Article 4(3)).

Cross Border Disputes

ESCP
Regulation can
apply solely to
cross border
disputes
WITHIN THE
EU!



- Value of the claim : excluding all interest, expenses and disbursements - 5 000 EUR (net value)
- Declaratory, condemnatory and constitutive claims (monetary and non-monetary claims – if the non-monetary claim can be expressed in money)
- Raising and lowering the value only if the rules of ESCP apply
- Cross- border case : date, when the court receives the form

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.’.

5. *Cross-border nature of the case*

In order to make use of the European Small Claims Procedure, your case must be of a cross-border nature. A case is of a cross-border nature if at least one of the parties is domiciled or habitually resident in a Member State other than the Member State of the court/tribunal.

(*) Optional.

(1) Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

5. *Cross-border nature of the case*

5.1. Country of domicile or habitual residence of claimant: _____

5.2. Country of domicile or habitual residence of defendant: _____

5.3. Member State of the court/tribunal: _____

International jurisdiction

4. Jurisdiction

Your application must be lodged with the court/tribunal that has jurisdiction to deal with it. The court/tribunal must have jurisdiction in accordance with the rules of Regulation (EU) No 1215/2012 of the European Parliament and of the Council (1).

This section includes a non-exhaustive list of possible grounds for jurisdiction.

Information on the rules of jurisdiction can be found on the website of the European Judicial Atlas at https://e-justice.europa.eu/content_brussels_i_regulation_recast-350-en.do

You can also look at http://ec.europa.eu/civiljustice/glossary/glossary_en.htm for an explanation of some of the legal terms employed.

4. On what ground do you consider the court/tribunal to have jurisdiction?

4.1. Domicile of the defendant

4.2. Domicile of the consumer

4.3. Domicile of the policyholder, the insured or the beneficiary in insurance matters

4.4. Place of performance of the obligation in question

4.5. Place of the harmful event

4.6. Place where the immovable property is situated

4.7. Choice of court/tribunal agreed by the parties

4.8. Other (please specify) _____

No special rules on jurisdiction for consumer disputes

Fundamental elements

- Simplification and speeding up
- Written procedure : The court 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.
- Forms
- No obligatory legal representation
- Special dates
- Special rules on the service of documents
- No exequatur
- Legal remedie in MS of origin only in exceptional cases

Practical information

European portal E-justice

Dynamic forms

Izpolnite obrazec na spletu	Naloži prazen obrazec	Elektronsko pošlji prazen obrazec
Obrazec A - Obrazec zahtevka		
Obrazec B - Poziv s strani sodišča k dopolnitvi in/ali popravku obrazca zahtevka		
Obrazec C - Obrazec za odgovore		
Obrazec D - Potrdilo v zvezi s sodbo, izdano v evropskem postopku v sporih majhne vrednosti, ali sodno poravnavo		

Evropski portal e-pravosodje na enem mestu ponuja dostop do storitev s področja pravosodja EU.

Portal bo z informacijami o pravosodnih sistemih v 23 jezikih in boljšim dostopom do storitev s področja pravosodja olajšal življenje evropskim državljanom.

Prijava na portal

[Prijava](#)

[Informacije o prijavi](#)



Državljeni

- ▶ Poišči odvetnika
- ▶ Poišči notarja
- ▶ Predložitev zadeve sodi...
- ▶ Pravice žrtev kaznivih d...
- ▶ Družinske zadeve
- ▶ Stroški postopka
- ▶ Pravice obdolžencev v k...



Podjetja

- ▶ Iskanje v povezanih regi...
- ▶ Poslovni registri
- ▶ Obrazci za evropski plač...
- ▶ Zemljiške knjige
- ▶ Predložitev zadeve sodi...
- ▶ Denarni zahtevki
- ▶ Pravniški poklici



Pravniki

- ▶ Pravo
- ▶ Sodna praksa
- ▶ Pravniški poklici in prav...
- ▶ Evropska pravosodna m...
- ▶ Pravosodni sistemi
- ▶ Registri
- ▶ Evropsko izobraževanje ...



Sodstvo

- ▶ Pravo
- ▶ Orodja za sodišča in pra...
- ▶ Evropska pravosodna m...
- ▶ Evropsko izobraževanje ...
- ▶ Splošne informacije
- ▶ Obrazci za izvajanje dok...

[Regulation \(EC\) No 861/2007 - consolidated text of 14 June 2017](#) (1740 Kb)

[A Guide for Users to the European Small Claims Procedure](#) (1699 Kb)

[Practice Guide for the Application of the European Small Claims Procedure](#) (2237 Kb)

[Infographic for consumers](#) (102 Kb)

[Leaflet for legal professionals](#) (553 Kb)

[Leaflet for businesses](#) (237 Kb)

[Web toolkit – information on a European Small Claims Procedure](#) (9.403 Kb)

[Small claims – notifications of the Member States and a search tool helping to identify competent court\(s\)/authority\(ies\)](#)

Prosimo, izberite državo članico, v katero želite poslati izpolnjen obrazec.

- | | | |
|---------------------|------------|-----------|
| Avstrija | Belgija | Bolgarija |
| Ciper | Češka | Danska |
| Estonija | Finska | Francija |
| Grčija | Hrvaška | Irska |
| Italija | Latvija | Litva |
| Luksemburg | Madžarska | Malta |
| Nemčija | Nizozemska | Poljska |
| Portugalska | Romunija | Slovaška |
| Slovenija | Španija | Švedska |
| Združeno kraljestvo | | |



A Guide for Users to the
European Small Claims Procedure

A short introduction to the main practical aspects of the use of the procedure based on the Regulation

Commencement of the procedure

- Form A - mandatory use :
 - Monetary or non-monetary
 - Costs of the court procedure, contract or statutory interest
 - Short description of the factual grounds and evidence
 - It is advisable to submit the documents (e.g. bills, correspondence between the parties)
 - Legal qualification of the claim is not obligatory

8. *Details of claim*

In 8.1 you should describe briefly the substance of your claim.

In 8.2 you should describe any relevant supporting evidence. This could, for example, be written evidence (e.g. contracts, receipts, etc.) or oral or written statements from witnesses. For each piece of evidence, please indicate which aspect of your claim it is intended to support.

If space is insufficient, you can add additional sheets.

8. <i>Details of claim</i>	
8.1. Please give reasons for your claim, for example what happened, where and when.	
8.2. Please describe the evidence you wish to put forward to support your claim and state which points of the claim it supports. Where appropriate, you should add relevant supporting documents.	
8.2.1. Written evidence	<input type="checkbox"/> please specify below
8.2.2. Witnesses	<input type="checkbox"/> please specify below
8.2.3. Other	<input type="checkbox"/> please specify below

- it clear that the claim can be sent by post and by any other means of communication such as fax or e-mail acceptable to the Member State in which the ESCP is commenced. Information on what means are acceptable in the Member State seised is available through the e-Justice Portal.
- There is no time limit (preclusion) for stating the facts and submitting the evidence
 - „ However, this does not prevent the claimant from submitting, where appropriate, further evidence during the procedure. The same principle should apply to the response by the defendant..“ (point 12. Preamble ESCP)

ESCP - ZSE Energia a.s. v RG, CJEU, Case C-627/17, ECLI:EU:C:2018:941 Concept of “parties” and “cross-border disputes” under the ESCP (I)

- The concept of party – does it include also the intervenier
 - Autonomous and unified interpretation
 - In the forms there is no box provided for other persons, who might be involved in the procedure
 - Article 3(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, as amended by Council Regulation (EU) No 517/2013 of 13 May 2013, must be interpreted as meaning that the concept of ‘parties’ covers solely the applicant and the defendant in the main proceedings.

ZSE Energia a.s. v RG, CJEU, Case C-627/17,(II)

- The concept of cross-border dispute
- Article 2(1) and Article 3(1) must be interpreted as meaning that a dispute such as that in the main proceedings, in which the applicant and the defendant have their **domicile or their habitual residence in the same Member State as the court or tribunal seised, does not come within the scope of that regulation.**

- The cost of lodging the claim
 - National law of the lex fori
 - court fees need to be proportionate and not higher than those charged for comparable national procedures.
 - Distance means of payment should be available by way of either (a) bank transfer; (b) credit or debit card payment; or (c) direct payment from the claimant's bank account.
- Form A in the language of the court
- Court Settlements

The amount of the court fee under the European Small Claims Procedure that the claimant must pay upon filing an application concerning the institution of proceedings with the court depends on the value of the claim:

- if the value of the claim is below EUR 300, the fee is EUR 54,
- if the value of the claim is between EUR 301 and EUR 600, the fee is EUR 78,
- if the value of the claim is between EUR 601 and EUR 900, the fee is EUR 102,
- if the value of the claim is between EUR 901 and EUR 1,200, the fee is EUR 126,
- if the value of the claim is between EUR 1,201 and EUR 1,500, the fee is EUR 150,
- if the value of the claim is between EUR 1,501 and EUR 2,000, the fee is EUR 165,
- if the value of the claim is between EUR 2,001 and EUR 2,500, the fee is EUR 180,
- if the value of the claim is between EUR 2,501 and EUR 3,000, the fee is EUR 195,
- if the value of the claim is between EUR 3,001 and EUR 3,500, the fee is EUR 210,
- if the value of the claim is between EUR 3,501 and EUR 4,000, the fee is EUR 225,
- if the value of the claim is between EUR 4,001 and EUR 4,500, the fee is EUR 240,
- if the value of the claim is between EUR 4,501 and EUR 5,000, the fee is EUR 255.

Preliminary examination of the claim by the court

- Does the claim fall under the scope of the ESCP
- Does the claim appear to be clearly unfounded or is the application manifestly inadmissible: it shall be determined in accordance with national law:
 - clearly unfounded – Slovenian CPA does not know the concept
 - Regulation on ESCP states: 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. ◀
- Whether the form has been completed correctly : the court may request the claimant to complete or rectify the form – form B

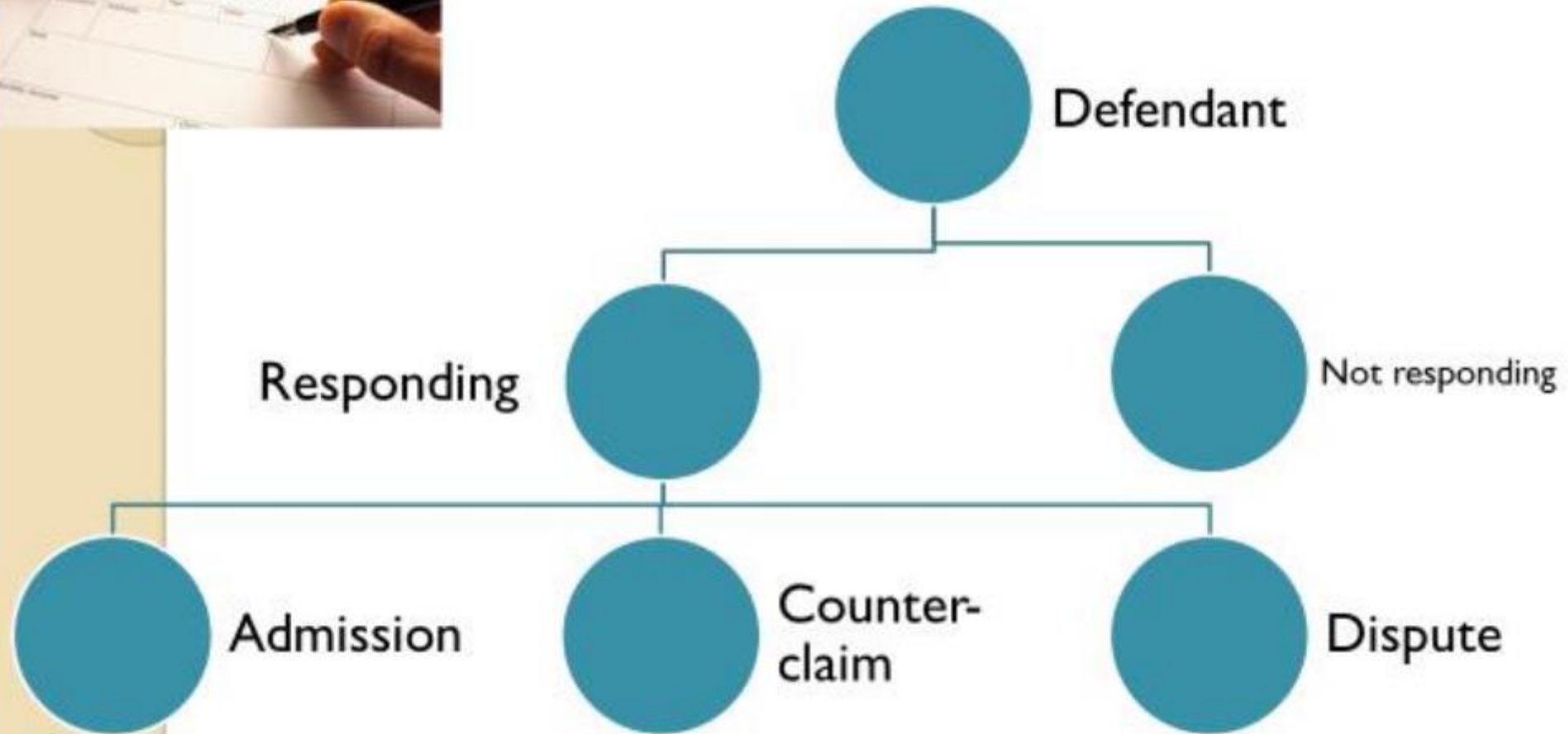
- On receipt of the Claim Form, the defendant may :
 - **respond** within 30 days of service of the Claim Form: • by completing Part II of Answer Form C and returning it to the court with any relevant supporting documents; or without using the Answer Form, in any other appropriate way;
 - **not respond**, in which case the court will give judgment on the claim after 30 days from the date of service.
- Submit the proposal for extension of the due date for filling the answer
- Reasoning of the answer is elementary
 - Language :
 - May reject the service of the claim and requests the translation
- The Form C is then delivered to the claimant in 30 days

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

- admit the claim or dispute it in whole or in part;
- challenge the ground of jurisdiction on which the claim is based;
- challenge the claim by arguing: • that it is outside the material scope of the ESCP as regards the subject matter – paragraph I of Part II of Answer Form C contains space for this purpose; or • that it is not a cross-border case within the meaning of Article 3 of the Regulation;
- contend that the value of a claim, if non-monetary, exceeds the limit set for the European Small Claims Procedure;
- dispute the claim on the substance or on the amount claimed;
- indicate, using paragraph 2 of Part II of the Answer Form, what witnesses and other evidence are to be submitted and attach any relevant supporting documents;
- ask for an oral hearing using paragraph 3 of the Answer Form; and
- state a counterclaim using Claim Form A and submit it along with any relevant supporting documents as well as the answer form



4. Strategy of the Defendant



Part II (to be filled in by the defendant)

1. Do you accept the claim?

Yes

No

Partially

If you have answered 'no' or 'partially', please indicate reasons:

The claim is outside the scope of the European Small Claims Procedure

please specify below

Other

please specify below

2. If you do not accept the claim please describe the evidence you wish to put forward to contest it. Please state which points of your answer the evidence supports. Where appropriate, you should add relevant supporting documents.

Written evidence please specify below

Witnesses please specify below

3. Do you want an oral hearing to be held?

Yes

No

If yes, please indicate reasons (*):

4. If the court decides to hold an oral hearing, do you want to be physically present?

Yes

No

Please indicate reasons (*):

5. Are you claiming the costs of proceedings?

Yes

No

If yes, please specify which costs and if possible, indicate the amount claimed or incurred so far:

6. Do you want to make a counterclaim?

Yes

No

If yes, please fill in and attach a separate Form A

7.1. Do you agree to the use of electronic means for service of the judgment?

Yes

No

7.2. Do you agree to the use of electronic means to receive written communications other than the judgment?

Yes

No

8. Other information (*)

9. Date and signature

I declare that the information provided is true to the best of my knowledge and is given in good faith.

Done at:

Date: ____/____/____

Name and signature:

The counterclaim

The concept of 'counterclaim' must be understood within the meaning of Article 8 (3) BUIa (6 (3) of Regulation 44/2001) as a counterclaim arising from the same contract or fact on which the original action was based. Articles 2, 4, 5 (3), (4) and (5) should apply mutatis mutandis to counterclaims.

- Form A
- if the value of the counterclaim is above the financial limit for the ESCP, the whole case, that is both claim and counterclaim, comes out of the ESCP and will be dealt with in accordance with the relevant procedures in the Member State of the court seised whether in that court or another court which is competent under national law.
- Compensation does not fall under the concept of counterclaim and the defendant is not obliged to use Form A

The court decides to hold a hearing

- Written procedure – paper based procedure
- the court has to respect the right to a fair trial and the adversarial process, but a hearing should be regarded the exception in view of the objectives of the ESCP to provide a speedy and low-cost procedure.
- the court shall only hold an oral hearing:
 - when it is not possible to give the decision on the basis of the written materials or
 - if a party requests so and the court agrees
 - The court may refuse the request if it considers that, having regard to the circumstances of the case, an oral hearing is not necessary for the fair conduct of the proceedings (Article 5(1)(a)).
 - If the court refuses a request for an oral hearing, it must give its reasons in writing
 - the decision on refusal cannot be the subject of a separate appeal or review.
- ESCP does not regulate the consequences of the absence from the main hearing – *lex fori*

9. Oral hearing

Please note that the European Small Claims Procedure is a written procedure. However the court may decide to have an oral hearing if it considers that it is not possible to give the judgment on the basis of written evidence. You can request, in this form or at a later stage, that an oral hearing be held. The court may refuse your request if it considers, in the light of the circumstances of the case, that an oral hearing is not necessary for the fair conduct of the proceedings. The oral hearing should be carried out through appropriate distance communication means, like videoconference **T** or teleconference, provided that they are available to the court. If the person to be heard is domiciled in a Member State other than that of the court seised, a hearing by distance communication technology shall be arranged by making use of the procedures provided for in Council Regulation (EC) No 1206/2001 ⁽¹⁾ (https://e-justice.europa.eu/content_taking_of_evidence-76-en.do).

However the court may decide that the persons summoned for the hearing must be physically present. You can indicate your preferences to the court, bearing in mind, that if you requested to be physically present at the hearing, the recovery of any costs incurred with regard to this presence is subject to the rules of Article 16 of Regulation (EC) No 861/2007 establishing a European Small Claims Procedure. This Article stipulates that the court shall not award to the successful party costs that were unnecessarily incurred or are disproportionate to the claim.

9.1. Do you want an oral hearing to be held?

Yes

No

If yes, please indicate reasons (*):

9.2. If the court decides to hold an oral hearing, do you want to be physically present?

Yes

No

Please indicate reasons (*):

Oral hearing

- An oral hearing shall be held making use of any appropriate distance communication.
 - video conference or teleconference, available to the court of tribunal, unless the use of such technology is not appropriate for the fair conduct of the proceedings on account of the particular circumstances of the case.
 - A party summoned to be physically present may request the use of distance communication on the ground that the arrangements for being physically present is – in particular in view of the costs – disproportionate to the claim, provided that the technology is available at the court (Article 8(2)).
 - A party summoned to attend an oral hearing through distance communication technology may request to be physically present

Languages

- The claim form, the response, any counterclaim, any response to a counterclaim and any description of relevant supporting documents shall be submitted in the language or one of the languages of the court or tribunal.
- If any other document received by the court or tribunal is not in the language in which the proceedings are conducted, the court or tribunal may require a translation of that document only if the translation appears to be necessary for giving the judgment.

Taking evidence

- **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.**
- The court or tribunal may admit the taking of evidence through written statements of witnesses, experts or parties. It may also admit the taking of evidence through video conference or other communication technology if the technical means are available.
- The court or tribunal may take **expert evidence or oral testimony only if it is necessary for giving the judgment.** In making its decision, the court or tribunal shall take costs into account.
- The court or tribunal shall use the simplest and least burdensome method of taking evidence.

The role of the court

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

Service of documents

one of the following ways:

- (a) by postal service, or
 - (b) by electronic means: (i) where such means are technically available and admissible in accordance with the procedural rules of the Member State in which the European Small Claims Procedure is conducted and, if the party to be served is domiciled or habitually resident in another Member State, in accordance with the procedural rules of that Member State; and (ii) where the party to be served has expressly accepted in advance that documents may be served on him or her by electronic means or is, in accordance with the procedural rules of the Member State in which that party is domiciled or habitually resident, under a legal obligation to accept that specific method of service.
- Service by post or electronic means shall be attested by an acknowledgment of receipt including the date of receipt.
 - If service by post or electronically, within the meaning of Article 13(1), is not possible, Article 13(4) prescribes the rules of Article 13 or 14 of the EOP Regulation.

Costs

- The unsuccessful party shall bear the costs of the proceedings.
 - However, the court or tribunal shall not award costs to the successful party to the extent that they were unnecessarily incurred or are disproportionate to the claim.
- The costs of the proceedings should be determined in accordance with national law.
- the court or tribunal should order that an unsuccessful party be obliged to pay only the costs of the proceedings, including for example any costs resulting from the fact that the other party was represented by a lawyer or another legal professional, or any costs arising from the service or translation of documents, which are proportionate to the value of the claim or which were necessarily incurred.

C-554/17, R. Jonsson proti Société du Journal L'Est Républicain

- Does Article 16 of [Regulation No 861/2007] constitute an obstacle to the application of a national provision under which the costs of proceedings may be set off or adjusted depending on whether the parties were successful in part and unsuccessful in part, where there are a number of claims in the proceedings or where a claim is upheld only in part?
- **Article 16 of Regulation (EC) No 861/2007 must be interpreted as not precluding national legislation under which, where a party succeeds only in part, the national court may order each of the parties to the proceedings to bear its own procedural costs or may apportion those costs between those parties. In such a situation, the national court remains, theoretically, free to apportion the amount of those costs, provided that the national procedural rules on the apportionment of procedural costs in small cross-border claims are not less favourable than the procedural rules governing similar situations subject to domestic law and that the procedural requirements relating to the apportionment of those procedural costs do not result in the persons concerned foregoing the use of that European small claims procedure by requiring an applicant, when he has been largely successful, nonetheless to bear his own procedural costs or a substantial portion of those costs.**

Issuing a judgment

- Within 30 days of receipt of the response from the defendant or the, the court or tribunal shall give a judgment
- 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
- The judgment shall be enforceable notwithstanding any possible appeal. The provision of a security shall not be required.

Legal remedies

- According to the national law (information from MS)
 - Slovenian CPA : appeal

- **Minimum standards for review of the judgment**
 - In MS of origin
 - The defendant who did not enter an appearance shall be entitled to apply for a review using the available procedure under national law – before the competent court in the Member State where the judgment was given,
 - 2 reasons: where 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
 - was prevented from contesting the claim by reason of force majeure or due to extraordinary circumstances without any fault on his part
 - provided in either case that they did not fail to challenge the judgment when it was possible to do so using the available appeal or review proceedings under national law.
 - If the review is upheld on the basis of one of the grounds set out in the Regulation, the judgment reviewed shall be null and void.

Appeal

Dependent upon the MS where judgment is given

Information available per MS in the relevant section of the Judicial Atlas

The appeal does not affect enforceability

Stay or limitation of enforcement may be requested

Review

POSSIBLE IF: Claim form or summons to an oral hearing served without proof of receipt, and not effected in time

OR IN CASE OF: Force majeure

AND: provided that the defendant acts promptly

ALSO: Stay or limitation enforcement may be requested

Recognition and Enforcement

- A judgment in a claim or counterclaim under the ESCP which is enforceable in the Member State in which it was given is equally enforceable in any other Member State.
- there is no need to obtain a declaration of enforceability
- a person who wishes to enforce a judgment given by a court under the ESCP has the option of using the procedures under the Brussels I (recast) Regulation.

- no review as to the substance is allowed in the Member State of enforcement
- person seeking enforcement shall provide:
 - an authentic copy of the judgment, and
 - the judgment certificate referred to in Article 20(2) and, where necessary, a translation in accordance with the law of the Member State of enforcement. Member States have to provide information as to which languages other than the official language(s) are acceptable (Article 21a(1)).
- The party seeking enforcement is not required to have an authorised representative or a postal address in the Member State of enforcement apart from any agent instructed by that party for the actual process of enforcement (Article 21(3))
- certificate in the language of the MS of enforcement

- the court or tribunal shall issue a judgment certificate using the standard Form D (Annex IV) at no extra cost– enforceable judgment
 - in any language

- Court settlement – recognised and enforced same as the judgment

Execution of the judgment in MS of enforcement – enforcement procedure :

- **national law of the MS of enforcement**
 - Any judgment given in the European Small Claims Procedure shall be enforced under the same conditions as a judgment given in the Member State of enforcement.
 - The 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.
- 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 address

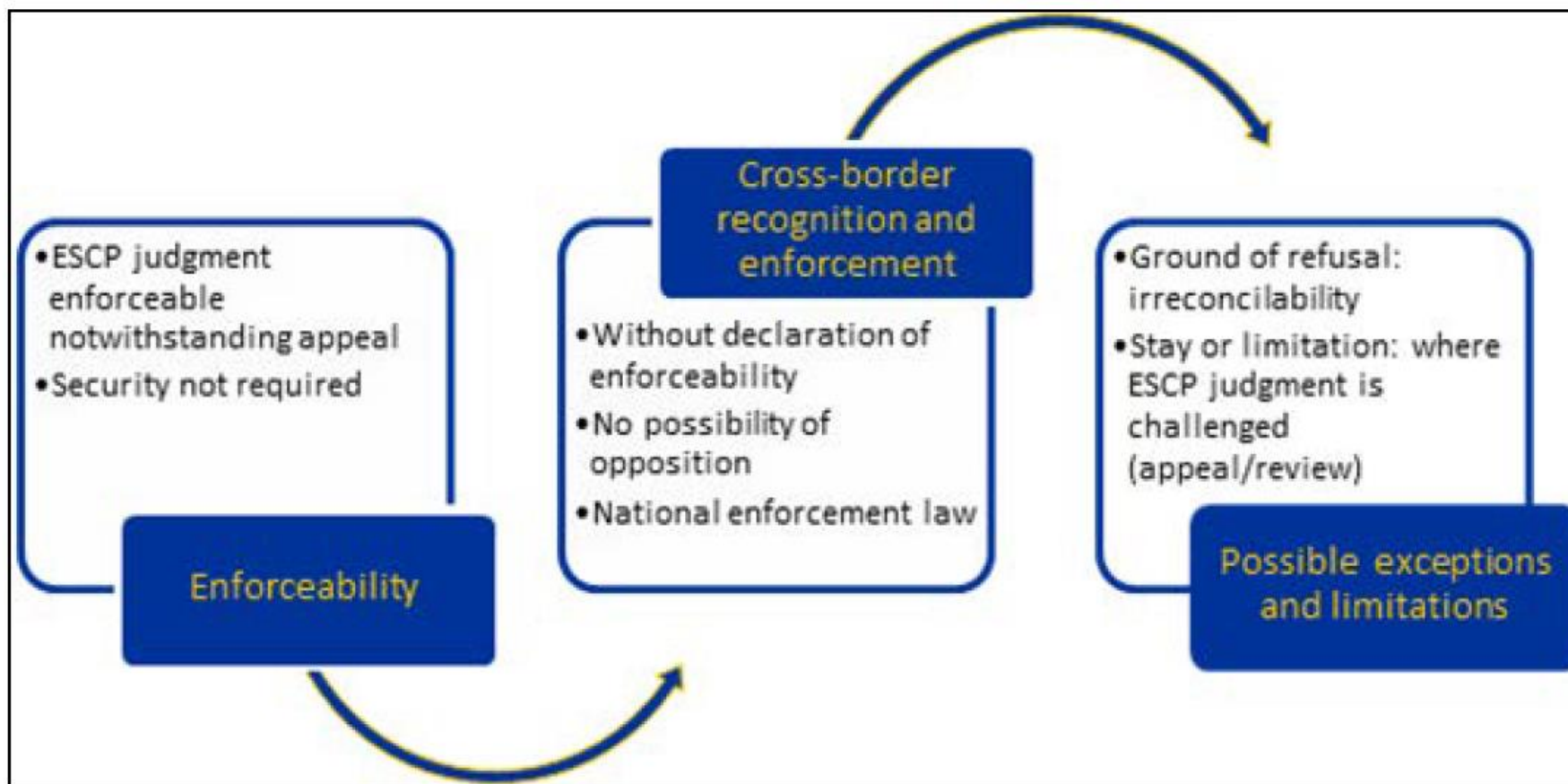
Refusal of enforcement in exceptional circumstances:

Enforcement shall, upon **application by the person** against whom enforcement is sought, be **refused by the court in the MS of enforcement** if **the judgment given in the ESCP is irreconcilable** with **an earlier judgment given** in any MS 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 MS of enforcement or fulfils** the conditions necessary for its recognition in the MS 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 MS where the judgment in the ESCP was given.
- Under no circumstances may a judgment given in the ESCP be reviewed as to its substance in the MS of enforcement.

Stay or limitation of enforcement in MS of enforcement

- party against whom enforcement of a judgment given under the ESCP **has challenged the judgment or where such a challenge is still possible** or where a party has applied for review of the judgment under the ESCP in **MS of origin**
 - Challenge means any appeal against the judgment, if such an appeal is possible under the law of the MS where the court is situated and which granted the judgment, and a challenge on the ground of irreconcilability as envisaged in Article 22 of the Regulation.
- **The court in MS of enforcement may:**
 - **limit the enforcement proceedings to protective measures**, such as the ‘freezing’ of a bank account or of wages and salaries;
 - **make enforcement conditional** on the provision **of such security** as it shall determine; or
 - under exceptional circumstances, **stay the enforcement proceedings**, that is suspend further procedure **for a specified or limited period**.





Enforcement of the Judgment

Form D: abolition of
exequatur

Refusal: earlier judgment + impossible to
object in the State of origin

Limitation after challenge or review in
origin

Stay under exceptional circumstances

Incoherence between EOP and ESCP

- The review mechanisms are different in EOP and ESCP – eco cosmetic case C-119/13 and C-120/13
- The EOP provides for a special procedure in the state of enforcement if the title debtor claims to have fulfilled the obligation after the judgment (art. 22 (2) Regulation on EOP) – no provision in ESCP
- The ESCP explicitly states: 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 address in the Member State of enforcement, other than with agents having competence for the enforcement procedure. There is no such provision in EOP

**THANK YOU FOR YOUR
ATTENTION!**

