

# Case Study / Workshop

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Cross-Border Litigation in Practice  
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## Traditional Method

### Brussels I

- Contested & Uncontested Claims
- Contractual & Non-Contractual Claims
- National procedure in state with jurisdiction
- Enforcement only on application to foreign court (*exequatur*)

## Other Methods

EEO	EPO	ESCP
<ul style="list-style-type: none"><li>• Uncontested Claims</li></ul>	<ul style="list-style-type: none"><li>• Uncontested Claims</li></ul>	<ul style="list-style-type: none"><li>• Contested &amp; Uncontested Claims</li></ul>
<ul style="list-style-type: none"><li>• National Procedure</li></ul>	<ul style="list-style-type: none"><li>• Contractual, specific amount claims</li></ul>	<ul style="list-style-type: none"><li>• Contractual &amp; Non-Contractual Claims</li></ul>
<ul style="list-style-type: none"><li>• No upper monetary limit</li></ul>	<ul style="list-style-type: none"><li>• No upper monetary limit</li></ul>	<ul style="list-style-type: none"><li>• €2000 upper limit</li></ul>
<ul style="list-style-type: none"><li>• No <i>exequatur</i></li></ul>	<ul style="list-style-type: none"><li>• Intended for B2B cases</li></ul>	<ul style="list-style-type: none"><li>• Intended for B2C / C2B cases</li></ul>

## Purpose of Instruments

### EEO & EPO & ESCP

- Simplification of cross-border litigation
- Reduction in delay
- Reduction in cost
- Abolition of *exequatur*
- Broaden access to justice
- Strengthen the Area of Freedom Security and Justice

## Key Information to Know

- Personal details of parties involved
- Amount claimed
- Does the respondent have assets?
- Where are the assets located?
- Is the respondent likely to contest the claim?

**Franz v. BuildIt**

Franz is an Austrian citizen, living between houses in Italy and Germany, who owns a transport and logistics company, headquartered in northern Italy with an associated warehouse in southern Germany.

Franz is a car collector and decides to construct a storage premises and repair workshop, for his collection, on land beside his business in Italy.

He hires a British company, BuildIt, to design, engineer and build the structure.

BuildIt have never worked with clients outside of the United Kingdom and France and have never sought such work. BuildIt have a website in English and French which is accessible throughout the EU. Franz became aware of BuildIt from their website ([buildit.eu](http://buildit.eu)) and the portfolio of previous projects displayed on it.

Franz and BuildIt conclude an agreement for the project which contains an exclusive jurisdiction clause in favour of the United Kingdom and an applicable law clause allowing Franz to select the law of any state, at a later stage, as the applicable law.

Construction has been completed but Franz has not paid the final instalment of the project price as he feels that the structure is defective. BuildIt seeks advice as to how best recover the outstanding €50,000.

# PolKea v. ESor

A small Polish furniture business, PolKea, makes specially designed oak kitchen cupboards. A Spanish retailer, ESor, is impressed with the cupboards during a furniture fair in Cracow and seeks the manufacture and delivery of a first lot of 300 cupboards to test the market at a price of €150 per unit. Payment should be made upon delivery. PolKea obtains an advance payment of 20%.

The cupboards are delivered to Spain but ESor fails to pay the balance on delivery as agreed. When no money arrives after a month, and various attempts to reach ESor by phone and email fail, PolKea discovers that ESor has a habit of defaulting and not paying their debts. PolKea seeks advice.

# Nadine v. DEtek

A Belgian student, Nadine, needs to buy a laptop for her master's thesis and has found one in a local store for €1,199. Being unafraid of the language barriers in the European single market, Nadine finds an offer from a German online shop, DEtek, for €899 plus €25 shipping costs.

Nadine pays by credit card but never receives the computer on the date indicated in the order confirmation. DEtek contacted Nadine to state that the purchase price would be refunded to her due to unavailability of the the laptop. After a number of weeks with no refund Nadine attempts to make contact with DEtek. Nadine gets no reply from her repeated emails to DEtek and cannot contact anyone by telephone. However, it appears that DEtek's website is continuously updating and they continue to trade as normal. Nadine seeks advice.

# Specific Scenarios

## Dual Purpose Contracts

Purchase of tiles by a farmer, from Romania, for roofing a farm building used partly for private and partly for business purposes.

During a phone conversation with the seller, from Bulgaria, the farmer stated that he had a farm and wished to tile the roof of the farm building. He stated that he also owned ancillary buildings that were used principally for the farm, but did not expressly state whether the building to be tiled was used mainly for business or for private purposes.

The farmer received the tiles after paying €5000 but half of the tiles were defective. The parties could not agree on how to resolve the problem and the farmer seeks advice.

## Dual Purpose Contracts

*"In the light of the evidence which has thus been submitted to it, it is therefore for the court seized to decide whether the contract was intended, to a non-negligible extent, to meet the needs of the trade or profession of the person concerned or whether, on the contrary, the business use was merely negligible. For that purpose, the national court should take into consideration not only the content, nature and purpose of the contract, but also the objective circumstances in which it was concluded."*

C-464/01 Grüber

## Habitual Residence 1

A consumer with habitual residence in Spain enters into a contract with an Italian company which directs its activities to the Spanish, Italian, and Portuguese markets.

The consumer subsequently moves to Portugal and establishes Habitual Residence there. The consumer has built up a significant debt with the Italian company and has sought to avoid the debt by moving to Portugal, but he does not deny being in debt to the Italian company. The Italian company seeks advice.

## Habitual Residence 2

A business owner with habitual residence in Spain travels to Portugal and enters into a contract with a professional, habitually resident in the United Kingdom, for consultancy services in advance of entering the Portuguese dairy market.

The professional is not targeting his activities to the Spanish market, only to the Portuguese market.

The contract contains a jurisdiction clause in favour of Spain. The business owner successfully entered the market on foot of the advice supplied but has not yet paid the €20,000 fee. The consultant seeks advice.

Mulțumesc!