



**Training module on the
European Small Claims Procedure**

Guide to the training module

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GUIDE TO THE TRAINING MODULE ON THE EUROPEAN SMALL CLAIMS PROCEDURE

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I. Introduction

This self-standing training module on the European Small Claims Procedure ('ESCP') developed by ERA on behalf of the European Commission is addressed to training institutes, networks of legal practitioners, trainers and end users of European Union member states wishing to organise training sessions on this EU law instrument. These sessions could be part of a training workshop on European law or included in training programmes organised at domestic level in order to provide a comprehensive overview of the applicable legal framework on civil procedure.

Regulation (EC) No 861/2007 establishing a European Small Claims Procedure is applied in the European Union (except in Denmark) since 1 January 2007. Its objective is to simplify and speed up litigation concerning small claims in cross-border cases, and to reduce costs by offering an optional tool in addition to the existing possibilities under national laws. The procedure is available for cross-border claims not exceeding 2000 Euros, and the judgments given do not require a declaration of enforceability in other Member states.

The European Small Claims Procedure provides for a legal remedy for both individuals and legal persons doing cross-border transactions. In light of the increasing number of cross-border cases, the obligation of member states' authorities to provide citizens with assistance in making use of the standard forms and the reported lack of awareness among judges and other legal professionals of the procedure, the provision of training on the Small Claims Regulation becomes particularly relevant.

The training module is structured as a 'training package' and includes information on the programme and methodology to be employed and the training material necessary for setting up a workshop on the European Small Claims Procedure. It covers the EU acquis in this area of law and illustrates how this has been applied in the member states.

1. Scope of the training module

More concretely, the training material of the training module covers the [EU acquis](#) in the following thematic units:

- [EU legal framework on small claims](#): scope of Regulation 861/2007, EU legal instruments and procedures with which it interacts and definition of international jurisdiction and applicable law in cross-border small claims
- [The ESCP: launching the claim](#): detailed presentation of the various steps of the procedure introduced by the Regulation
- [The ESCP: defence and judgment](#): detailed presentation of the possible follow-up to a claim within the ESCP, namely defence and counterclaim, judgment, recognition, enforcement, appeal and review
- [Consolidating case study](#): recapitulation of the procedure with a focus on the application in practice

The varying training methods that can be used in future workshops based on this material will also be presented in the module, together with recommendations on how and in which part of the training they may be best employed. Face-to-face presentations can be combined with practical exercises requiring the active contribution of participants, IT-supported learning, allowing participants to familiarise themselves with available e-justice tools and interactive sessions promoting the exchange of good practice and experience.

2. Content of the training module

The training module includes training material to be further disseminated to the participants of an implementing workshop through the following means:

- **An E-learning course**, providing an overview of the key elements of the Regulation is included. This could be made available to end users before the implementation of a workshop, in order to allow them to prepare for it.
- **Background material**, including the EU legislation and jurisprudence related to the European Small Claims Procedure, as well as international instruments or other documents that may be helpful in its application.
- **Links to online tools and legal databases** facilitating cross-border cooperation in civil matters.
- **Workshop exercises** on the basis of case studies, which should be carried out during the workshop by participants, following the analysis in each thematic unit.
- **Examples of trainers' contributions**, supporting the preparation of presentations in future implementing workshops in the form of outlines, notes, written versions of their lecture, PowerPoint presentations etc.
(Material to be submitted in the framework of test implementing workshops)
- **A general bibliography**, including some of the most representative articles, books and publications on the European Small Claims Procedure, as well as references to national jurisprudence from the 27 EU member states (with the exception of Denmark).

Further to this, a **trainer's manual** providing advice on the preparation of a workshop implementing the training module is included. The above mentioned materials are presented in detail, so that their function and possible integration in future training programmes is effectively explained and trainers are assisted in using their full potential. Input on how to structure the programme of the workshop and which methodology to employ when dealing with each specific topic is offered, as well as organisational advice on how to identify the trainers and evaluate the event.

3. Implementing the training module

A workshop implementing this training module will provide judges, legal practitioners or other professionals attending with a detailed presentation of the European Small Claims Procedure and enable them to acquire some practical experience with its application and its standardised forms. Workshop participants will be able to identify which court has

jurisdiction, which law is applicable, what are the rules for recognition and enforcement of a judgment in a cross-border claim and familiarise themselves with the various stages of the procedure and the online tools and databases available to assist its application.

A workshop implementing the training module would:

- raise awareness of the European Small Claims Procedure in a way as close as possible to real-life court cases,
- provide expert training on the Small Claims Regulation and its interaction with other EU instruments in the area of civil justice,
- ensure that end users familiarise with the standardised forms introduced by the Regulation,
- provide participants with a practical introduction to e-justice tools.

II. User's pack: function of the different elements of the training module

The user's pack consists of all the material that will be made available to the implementing workshop participants. This will comprise mostly training material (the e-learning course, related legal documents, links to online sources, trainers' contributions and case studies), as well as supporting documents, such as the workshop programme, the list of participants, workshop evaluation forms etc.

It is of course at the discretion of the workshop organisers and trainers to use the material provided as they see fit and to also include additional documents. Details of all key EU legal instruments necessary for the provision of training on the European Small Claims Procedure are already part of the user's pack, but as implementing workshops may be structured with a specific focus, further material could be of use. Emphasis could for example be given to the interaction of the ESCP with the national legislation or trainers may wish to include articles going into greater detail on the application of European procedures, additional EU legislation providing a more comprehensive overview of cross-border cooperation in the area of civil justice etc.

The user's pack will be provided mainly electronically on a USB stick or by making the contents available online and giving access to it to all workshop participants. Where material needs to be regularly referred to during the workshop or is necessary to follow the programme better (the texts of the Regulations to be analysed, the case studies that need to be prepared etc.), this should also be provided in hardcopy during the event.

➤ When presenting the material that should accompany each session, a distinction between 'necessary material' to be provided in hardcopy and 'additional material' that should be included in the electronic documentation is made.

More concretely, the user's pack will include:

1. The E-learning course

The training module has been structured to promote 'blended learning' as key methodological approach, combining the interactivity of face-to-face training during the workshop with the flexibility provided by an e-learning course. As the e-learning course has various functions and can be of use to the workshop participants at several stages of their learning process, it is important that they have access to it at different times: before the implementation of the workshop, in order to prepare for the meeting, while it takes place in order to further explore its possible use with the help of the trainers, after the workshop, as a point of reference for finding information on the European Small Claims Procedure.

The key function of the module's e-learning course is to introduce the ESCP and the provisions of the Regulation to end users. Parallel to this, working on the e-learning course would enable participants to familiarise themselves with the key terminology used in the framework of the ESCP. End users planning to attend an workshop in their second or third language could particularly profit from this possibility, as it would enable them to better follow the discussions during the event.

For this reason, access to the e-learning course should be provided to workshop participants well before the implementation of the event, ensuring that they have sufficient time to visit it and go through its main elements. As soon as the workshop participants are selected, they should be provided with information on how to access the course and encouraged to go through its contents. 10 - 15 days before the implementation of the workshop they could be reminded again, in order to ensure a minimum level knowledge of all attendees when the workshop begins.

The e-learning course has been developed round Regulation 861/2007 that constitutes the core of the training module. The first part is dedicated to the main provisions of the Regulation, whereas the tools for the application of the ESCP in practice is the focus of the second part of the course. Links to further related legal texts, sources of information on the subject matter and other websites containing online tools and databases have also been integrated. The contents of the e-learning course have been developed by Professor Xandra Kramer from the Erasmus University of Rotterdam.

Raising end users' interest and motivating them to invest time and effort into learning more on the ESCP and its application during the workshop is the next objective of the e-learning course. For this reason, the material has been structured in a concise, user-friendly and interactive way, exploiting the specific potential of new technologies. The course includes not just texts presenting the law, but examples from real practice, tables, charts and other visual elements.

Further to the analysis of the subject matter, a number of quiz questions have also been developed in the framework of the e-learning course. These have a dual function: they can be a starting point for end users who visit the course for the first time and want to assess whether they should go through it or have already sufficient background knowledge or they can be used upon completion of the course for users to confirm that they have correctly understood key concepts and the main features of the ESCP. Furthermore, as they will also

have access to the e-learning course after the workshop, the possibility to evaluate their progress after completing the training is also provided.

When relevant to the workshop programme, references to material included in the e-learning course could be made. Some of the inherent tables, schemes or other visual elements could be helpful for clarifying a technical point, links to certain online sources could be used, the quiz questions asked at the end of a session to ensuring that the main information has been transmitted effectively etc.

➤ It will be noted while analysing the specific sessions of the workshop (part V) when references to the e-learning course would be particularly opportune.

The e-learning course has been developed in HTML format, in order to be usable for blind or visually impaired persons. The course, available on the European E-Justice portal, has been encapsulated in a ZIP File as a package¹. This file includes not only the academic contents, but also all the files including the metadata, workflow and structure, to allow for full transfer to other e-learning platforms.

2. Background material

The main contents of the training material will consist of legal texts: treaty articles, Regulations, Directives, case law of the Court of Justice of the European Union, international treaties etc. that constitute the background to the analysis that will be carried out in the workshop.

Links to the key materials are contained in the e-learning course; it would however be useful to also provide them independently to end users. A comprehensive collection of all background documents, enabling references to them also after the workshop, should be included in an electronic documentation list. Participants are likely to come back to these texts in order to refresh their memory, find a specific provision or judgment or seek guidance if confronted with a cross-border small claim at a later stage. This format could also support easy further dissemination of this material, as workshop participants will be able to forward it to colleagues and thus achieve a multiplier effect.

All European legal instruments related to the issues that will be discussed during the workshop should be included in this collection of material, as well as international or – if a workshop is organised at national level – possibly also related national provisions. Jurisprudence of the Court of Justice of the European Union shedding light to the interpretation of the Regulation or on further issues that arise during the implementation of the procedure should also be included.

Moreover, links to online databases, tools and sources, such as the European E-Justice portal, the European Judicial Atlas, the website of the EJN for civil and commercial matters, Eur-Lex,

¹After the finalisation, the training module including the e-learning course will be published and available for download on the E-Justice portal.

Curia and other similar websites should as well be included as background material in the electronic documentation.

- *Proposals on which specific material to include in this part of the user's pack are included in Part V on the analysis of each session of the workshop.*

The material should be provided in the language of the workshop. When international workshops are organised, links to the EU databases (e.g. www.eur-lex.europa.eu or www.curia.europa.eu) could be included, so that end users can access EU legal texts in the language of their choice.

In addition to including them in the electronic documentation, providing the few documents that are absolutely essential during the workshop in hardcopy is recommended. The text of the Regulation with the annexed standardised forms that constitute the focal point of the analysis, Regulations Brussels I, Rome I, Rome II and other key documents should e.g. also be available for consultation during the different workshops sessions and during the preparation of the exercises. Being able to locate a provision quickly, see the structure of a legal instrument, take notes etc. could help end users to better follow the training and better familiarise themselves with the legal instruments.

- *The legal texts that are considered particularly useful in each specific session are indicated in Part V of this guide.*

The background material necessary for the implementation of the training module on the European Small Claims Procedure is available in Annex 2.

3. Workshop exercises material

Four workshop exercises are included in the training module on the "European Small Claims Procedure" – all of which are structured on the basis of case studies. Preparatory material supporting the workshop exercises, such as the facts of the different cases that will be discussed should be provided in hardcopy during the workshop.

- *The case studies, as well as the solutions suggested, currently available in Annex 3, could also be included in the electronic documentation.*
- *Concrete suggestions on how to best integrate the various exercises in the course of an implementing workshop are included in Part V of the guide.*

4. Trainers' contributions

In addition to the e-learning course and the background documents, every time an implementing workshop is organised the trainers involved should be asked to prepare their own supporting material, in the form of PowerPoint presentations, outlines, notes or full texts of their lectures.

Trainers should be free to structure the material supporting their presentations in their own way. The main objective is to help end users to better follow the presentation and for this reason emphasis should be given to the provision of a clear structure. The trainers' contributions could also be used as reference documents after the end of the workshop for identifying the main points of the subject matter.

Examples of what would be expected in this context and some guidance for the trainers may be provided by reference to the PowerPoint presentations and outlines that were used in previous implementing workshops.

➤ The contributions of the trainers engaged in the two first implementing workshops, realised in March and April 2014 may be found in Annex 5.

The engaged trainers' contributions should also be included in the user's pack – in the electronic documentation and if possible also in hardcopy. The decision on whether to provide the presentation during the lecture will depend on the structure of the supporting material (an outline or PowerPoint presentation would be useful during the lecture, whereas a long text less so) and should be taken by the trainer responsible for the session.

➤ Providing some kind of written support of the lectures is always recommended and for this reason always included under the 'necessary documents' of each session. In particular, an outline or PowerPoint presentation reflecting the structure of the session allows participants to better understand the structure and follow the lecture.

5. General bibliography

With the aim of complementing the material provided to trainers and end users, a bibliography has been compiled, including the most representative articles, books and publications on the European Small Claims Procedure from across the EU, as well as references to domestic case law on the European Small Claims Procedure.

Bibliographical references from 26 member states (Denmark is exempted and there are no submissions yet from Croatia) are included here and material may be found in almost all European languages (with the exception of Danish, Gaelic and Croatian). In this way, end users wishing to find additional information or acquire more comprehensive knowledge on a specific jurisdiction will have access to some key bibliographical references. When confronted with a cross-border claim falling within the scope of the Regulation, they will thus be able to look into some publications from the member state that interests them and identify basic information and the relevant legal sources.

The general bibliography is included in the electronic documentation that end users will receive when attending an implementing workshop, access however is also provided as part of the e-learning course, allowing them to use this material also on future occasions.

➤ The general bibliography may be found in Annex 4.

6. Additional documents

In addition to the training material, a number of documents relating to the organisation of the workshop must be made available to participants. These would be of immediate use during the workshop and should therefore be provided in hardcopy.

The finalised workshop programme should be available at the start of training, allowing participants to better organise themselves and follow the training structure. A list of all workshop participants should also be provided, facilitating interaction among them and – by including contact details – also allowing them to stay in contact after the workshop. Lastly, in order to obtain an immediate evaluation of the workshop, a questionnaire asking participants for feedback on the workshop’s content, organisation and overall effectiveness should be distributed.

III. Methodology

1. Time frame

The workshop is designed to last approximately one and a half days. The exact structure and length will of course be decided by the training providers, taking into account the number of participants, their specific training needs, training priorities etc. If longer workshops of e.g. 2 days can be organised, the additional time could be allocated to discussions and exchange of experiences among the workshop participants. Workshop exercise IV could also be included in the programme in such cases. If however less time is available, emphasis should be given in the second and third thematic units, in the framework of which the different elements of the ESCP are analysed.

The need to effectively cover all main elements of the subject matter, while ensuring sufficient time for participants to ask questions and interact with the trainers and each other should be considered when finalising the workshop programme. The fact that long sessions have proven to be less effective in adult education could as well be borne in mind and frequent breaks or changes of teaching style therefore included.

➤ An indicative time allocation by session will be provided in Part V of the guide to the training module.

2. Trainers’ profiles

Crucial for the success of the training workshop is the selection of trainers. It has been proven that trainers sharing a common professional background with the participants tend to have a better understanding of their training needs and be more effective in addressing them. The characteristics of the target group would thus have to be taken into when selecting the trainers for a particular workshop.

That said, identifying the right trainer for each session is most crucial for a successful workshop: in sessions where emphasis is given to practical issues (e.g. the application of the

ESCP), the involvement of a practitioner, lawyer or judge with their own experience in this area would be ideal. When the focus of a presentation is the transmission of information or the introduction to concepts or an area of law, an academic or public official having followed the legislative procedure could also be a good option.

➤ *More concrete input on the trainer's profile seemingly best fitting to each session will be provided when presenting the workshop's breakdown in Part V.*

In addition to professional qualifications, the quality of an implementing workshop depends on trainers' didactic competence and pedagogical skills. Selected trainers should not only be knowledgeable, but also able to effectively transmit information, assist end users in developing new skills and motivate them to engage and actively contribute to the discussions. Trainers should provide the necessary information in a clear and structured manner, highlight the links between participants' daily work and the issues being discussed, retain some flexibility in order to adapt to the specific needs and interests of the particular group and be open in discussing and exchanging views with them in the course of the session.

Further potentially relevant skills to consider would be trainers' linguistic capacity in case of international workshops, their IT literacy, as the use of technology would be required in at least parts of the training (IT-training sessions, online tools, PowerPoints or other audiovisual material, the e-learning course, etc.).

Diversity among trainers should be sought when planning a workshop, as it would enable to better address participants' potentially different training needs and training style preferences. Variety between speakers' professional backgrounds, gender and – in the context of cross-border training – nationality would enrich the event, offering several perspectives on the discussed issues, employing different teaching methods and ensuring a more comprehensive presentation of the ESCP.

Last, and although not always easy to assess, potential trainers' motivation could also be a factor to consider. For the implementation of a workshop on the basis of the training module, significant flexibility and commitment, as well as the willingness to interact with end users is expected from the trainers. Using experts who have an interest in the project and are prepared to make the effort required for a successful outcome would bring an added value to the workshop, while further motivating the participants.

Criteria for selecting the workshop's trainers:

- Subject and objectives of each session
- Didactic competence and pedagogical skills
- Linguistic and IT skills
- Professional background similar to that of the workshop's participants
- Diversity in the group of trainers
- Motivation

3. Teaching methods

➤ Front (face-to-face) presentation

A significant part of the training will rely on the provision of information on different legal instruments and their application, as prior knowledge of EU civil procedures can not always be safely assumed. The optimal method for the provision of a large amount of information in a limited period of time is face-to-face presentation, providing the trainer with the necessary time and flexibility to structure and present the content of the session as he or she sees fit.

Supporting material such as outlines and PowerPoint or other presentation tools could also be employed during the lecture. This would not only help participants to follow the presentation better, but also constitute a reference document for the future, should end users wish to review the main issues of the session.

One of the objectives of the workshop is to familiarise participants with existing legislation. In this context, reference to the material included in the user's pack should be made throughout the lecture and participants should be encouraged to go through the legal texts, identify the provisions, work with the standardised forms and acquire a better understanding of their structure and possible use.

Enriching the lecture with practical examples could also be a means of emphasising the link between theory and practice and better illustrating the application of the various legal instruments. Brief exercises or questions could also be formulated by the trainers, requiring participants to reflect and discuss them before presenting the answer. Trainers would thus not only create an atmosphere of dialogue within the group, but also assess whether the concepts have been properly explained.

Time for discussion or Q&A sessions should in all cases be ensured for end users wishing to ask for clarification or further information. Depending on the content and structure of each lecture, questions may be raised during the presentation or in a subsequent discussion session moderated by the trainer or the workshop leader.

Crucial for the successful implementation of a workshop consisting of several frontal presentations is the good coordination among the trainers. When different trainers are engaged for presenting topics that are connected or follow each other, it is important to ensure that they have a good understanding of each presentation's specific scope, access to the each other's notes or slides in advance and ideally attend each others session. This way, a good transition from one presentation to the next will be ensured and any overlaps between the different interventions avoided.

Although the key role in front presentations is played by the trainer, end users should also be encouraged to actively contribute to the different sessions. Participants learn not only through the provision of training per se, but also from hearing questions and problems they have not yet found themselves confronted with. It is thus important that all end users attending the workshop are encouraged and feel comfortable enough to share thoughts and ideas and contribute with their own experiences. This becomes even more crucial in international workshops, where participants have the possibility to expand their knowledge

with information on the application of European procedures in other member states, learning from each other.

➤ **Workshop exercises**

In addition to information on the EU legal framework, however, the training also aims at providing participants with some practical experience on the application of the ESCP, the forms to be completed and the online tools that are available.

In order to further highlight issues requiring special attention and allow participants to develop specific skills, it is important to ensure their involvement in this part of the training. For this reason, specially designed workshop exercises on the basis of case studies will complement each thematic unit. Another advantage of this method is that the preparation of an exercise constitutes an interactive way of learning. After having listened to face-to-face presentations or read background material, participants would appreciate a change of presentation technique.

The methodology to follow in each exercise will depend on the content and training objectives of the various thematic units: for the workshop exercise on the applicability of the Regulation, participants will be asked to assess whether they can employ the ESCP in a number of brief scenarios, for the analysis of the procedure, a case study discussed in an IT-supported learning context is proposed.

➤ **The 4 workshop exercises of the training module are available in Annex 3.1 - 3.4.**

During the workshop exercises, participants will be given the opportunity to use their skills and knowledge to solve case studies involving cross-border small claims. The exercises could start with a brief session in plenary, during which the trainer or the workshop leader briefly present the organisational aspects of the exercise. A brief introduction to the case studies and the main issues end users should deal with could also be included.

Participants should subsequently be divided into smaller working groups and working space provided for each of them. Working in smaller groups has significant advantages for participants: the possibility to focus on case studies will enable them to deepen their recently acquired knowledge by applying it to concrete cases. This approximates a real-life scenario and can constitute valuable experience for the future. The working group format would allow participants to be actively involved in the debate and improve their communication skills.

As one of the key objectives of the exercise is the exchange of opinions between end users, it is important that the workshop leader allocates participants to the working groups to support this interaction: in international implementing workshops and as long as participants' working languages allow it, end users from different member states or from jurisdictions with different legal traditions should be brought together in the working groups. If a workshop is organised as national judicial training, judges from different courts could be asked to work together; in workshops addressed to both lawyers and judges, the working groups should not be composed of only one of the professional groups etc. Further to solving the case, this diversity would allow participants to obtain better insights on how

the questions would be dealt with and how the Regulation is applied in another country, by a different legal profession, in a different city or court.

➤ *As a number of exercises are recommended for the workshops implementing this training module, altering the composition of the working groups in each exercise would be a way to further increase participant interactivity.*

Depending on the time available, the trainer coordinating each exercise will have to decide whether all working groups should deal with all case studies or if specific case studies should be allocated to different groups in order to ensure that end users are able to thoroughly examine all issues.

Once the working groups have been set up, they should organise themselves, develop a working method and identify which member(s) of the group will be responsible for reporting the conclusions of their discussion to the other end users. The trainer leading the exercise should be present, following the interaction in the groups, offering advice on time management, providing clarification, answering questions and assisting participants if they face major difficulties or their discussion is derailed.

When the groups have completed their work, all participants should come together again to discuss their conclusions. This will allow them to compare their solutions, get further ideas from their colleagues in the other groups and broaden their understanding of the subject matter.

To achieve the objectives of this closing discussion, all groups should take the floor and present the results of their work. It would be most effective to discuss one question at a time, invite the rapporteur of one of the groups to present their conclusions and the main elements of their discussion and then ask the end users of the other groups for additional comments, different opinions etc. In conclusion, the trainer should summarise the main points raised in the discussion and give his own feedback – informed by the suggested solution of the expert devising the case study, so that participants can confirm whether they successfully dealt with the case or whether there could be further improvement.

A slightly different approach could be adopted regarding Exercise 2, as this is planned as an inherent part of the presentation of the ESCP and thus be discussed over a greater part of the training. Instead of asking participants to form smaller teams and independently deal with the entire case study, the trainer could use the facts of the case as background in order to present the ESCP. Each question could thus be addressed separately, end users invited to reflect on it using the documentation and online tools available – individually or indeed in groups – and the conclusions discussed parallel to the analysis of the Regulation's provisions in an interactive way.

➤ **IT-supported learning**

IT-supported learning can enhance the efficiency of the training and give end users the opportunity to gain practical experience by making use of the possibilities the internet offers on cross-border cooperation in civil matters. Workshop participants will thus be offered the opportunity to familiarise themselves with the various EU websites and online tools (such as

the E-Justice Portal, the EJM website, Eur-Lex, the Curia Website and the Judicial Atlas), where they can acquire further information and advice on how to make use of the ESCP in practice. By efficiently using these websites, participants will be assisted when considering the applicability of the Regulation, when they seek to identify the court having international jurisdiction, the law applicable to the claim, information on domestic provisions and procedures.

This method is recommended for the workshop exercises on the applicability of the ESCP, as well as for the presentation of the various stages of the procedure in light of Exercise 2. Assessing whether the claim at hand falls within the scope of the Regulation with the help of the 'wizard' available on the E-justice portal, identifying the court having international jurisdiction to deal with the claim and the law applicable with the help of the Judicial Atlas, the EJM website, the use of the dynamic forms available on the E-Justice Portal and the search for information on domestic provisions and procedures should be part of the training, as it can significantly assist participants in making use of the procedure.

IT-supported training could be realised by making sure that all participants or the smaller groups that they form when dealing with a case study or question are equipped with a computer in order to realise online research. If this is for practical reasons not possible, the trainer of the session should showcase the different online tools, explain how to find them, their function and how they may be used in the case at hand.

- *Additional subject-specific ideas and tips on how to improve a session, better support end users' active participation and stimulate their interest will be included in Part V.*
- *Further discussion points that could be relevant if there is sufficient time during the workshop will also be proposed.*

IV. Organising an implementing workshop: practical aspects

1. Bringing together a group of participants

One of the first elements to consider when organising an implementing workshop is defining the target group. A course on the European Small Claims Procedure may be structured in many different ways, as it can have a purely national perspective, be open to end users from a specific region in Europe, e.g. from neighbouring countries, or be open to participants from the whole Union. Different options are also available in relation to end users' professional backgrounds, as workshops may be organised for a specific legal profession or to promote exchanges between judges, lawyers, officials etc. Lastly, a workshop may be addressed to participants without any prior knowledge on the subject matter, to legal professionals familiar with civil procedures but no experience on cross-border cases or to more experienced judges or lawyers who are primarily interested in updating or completing their knowledge and in discussing and sharing experience with their colleagues.

- The specific focus of each implementing workshop will depend on the nature, function, mission and objectives of the training provider.
- Information on how to adapt the workshop programme to the target group's specific training needs has been incorporated in the analysis of the different sessions in Part V of the present guide.

Once established, information on the organisation of the event should be disseminated to the target group and this circle of persons should be invited to attend. Depending on the interest expressed, the resources available and the training priorities, the workshop organiser should decide on the number of participants. For an intensive, interactive workshop a fairly small and flexible group of 20 to 30 participants is recommended. In these circumstances, the practical sessions will run more smoothly, participants will more easily ask questions, raise additional issues of interest and interact with each other and the trainers will be able to better assess and adapt to the group's rhythm and training needs.

- It is crucial to provide information on the organisation of a training course several months in advance, in order to allow potentially interested professionals to organise their schedule in order to attend it. Particularly for seminars addressed to members of the judiciary, having a strict plan of their hearings, the announcement of workshops should take place months before their implementation.

As the coherence of the group of participants is a factor influencing the success of a training programme, it would be useful for the workshop organisers to have some information on end users' backgrounds and training priorities. An initial assessment questionnaire covering some key issues could be included in the registration form to that end. End users of the designated target group could be asked to provide some information on their experience with civil procedures, European law in general, the ESCP Regulation; they could also indicate why they are interested in attending this training and what they primarily expect from the workshop. By evaluating this information, the workshop organisers will be able to assess which end users are within the designated target group, whose training priorities best match the objectives of the programme and how to more efficiently address them.

This same questionnaire could also be of use if the interest expressed in attending the workshop exceeds the number of places available. In such cases, certain registrations will have to be given priority over others and the information contained in the initial assessment questionnaire could constitute a basis for selection. Elements to consider in this context would be the creation of a representative group of end users: if the event is open to more than one nationality, region or professional background or is to be held in more than one working language, ensuring some balance between nationalities, areas, professions, participants' gender and working languages should be sought. A further criterion that should be considered in such a selection would be potential participants' ability to further disseminate the information they receive. If the number of places is limited and more persons working together want to attend for example, one could join the course and transmit the knowledge gained to his or her colleagues. Similarly, participants prepared to actively further disseminate the information acquired during the training – through networks, further

lectures, newsletters, etc, - could be given priority, as this would increase the output of the workshop and make training accessible to an even greater number of legal professionals. Lastly, an assessment of which participants have similar training needs in order to bring together a homogeneous group in this regard could also be realised on the basis of the information contained in this questionnaire. Trainers would thus be able to better address their specific needs and priorities and increase the effectiveness of the training.

➤ A template of the initial assessment questionnaire is available in Annex 6.

After the completion of this procedure, a list of all workshop participants should be drawn up. Information on their professional background, their national or regional origin and their contact details could be included. The list of participants should be part of the users' pack and possibly also provided before the beginning of the event.

➤ A template list of participants is available in Annex 7.

2. Venue and necessary equipment

In order to effectively set up a workshop implementing the training module, it will be necessary to find a venue providing premises and equipment that are required for the success of the course.

The option to use conference and working rooms of variable sizes could be explored, in order to allow some variation in participants' working space. A larger room could be used for front presentations in plenary and smaller areas, where participants could work in groups, for the preparation of the exercises.

Further to this, it is particularly important for the effective implementation of the course that media technology is available. Trainers should be able to use PowerPoint presentations, videos and other audiovisual material. In workshops implemented in more than one language, interpreting equipment will also be needed.

As in a number of sessions IT-supported learning is the recommended working method, it will be necessary to find a venue that provides work stations with computer and internet access for trainers and participants.

➤ End users' support could also be sought here: participants could be encouraged to bring their own computer and use it during the event.

An area for coffee and lunch breaks should also be allocated, as they play a significant role in encouraging participants' interaction and familiarisation with each other. End users will be able to talk to each other in a less formal way during that time, which would most probably also impact on the working atmosphere, allow a more effective exchange of experience and opinions and increase their commitment to the course.

It is also important to ensure that the selected venue is easily accessible, e.g. by public transport in local workshops or well connected to airports in international ones. A further element to consider is whether participants travelling to the workshop can easily arrange for accommodation in the area.

3. Preliminary information for end users

After setting up the workshop and taking a decision on the composition of the group of participants, the workshop organisers should ensure that all information necessary for the effective implementation of the workshop is made available to the end users.

As already mentioned, it is important for the success of the workshop to ensure a level playing field for end users at the beginning of the event. For this reason, some background information on the subject matter should be made available to them in advance and considered as a prerequisite at the beginning of the course. The ESCP Regulation could thus be sent to all participants in advance and access to the e-learning course provided. End users should be encouraged to take some time to look at this material, particularly the e-learning course and the self assessment exercises (quiz questions) contained therein. As a result, all end users will have an initial acquaintance with the main stages of the ESCP, they will be in a position to identify which aspects they are particularly interested in and expect to see analysed during the course and they may even develop concrete questions to discuss during the meeting.

Sending one or more of the workshop exercises to participants before the beginning of the workshop could also be considered. The facts of the case studies together with the questions would encourage participants to start reflecting on the application of the Regulation and think of possible solutions. Workshop exercise 2, playing a key role in the workshop structure would be the most suitable to circulate in advance.

➤ *In addition to increasing end users' interest in the e-learning course and the workshop in general, sending the exercise in advance would reduce the time needed for absorbing the facts of the case study during the workshop.*

In addition, participants should also be aware of the organisational details of the workshop. The finalised workshop programme together with some basic information on the trainers' profiles and – provided that they have agreed to this – on the other participants should be given. Practical information concerning the venue, the services available during the course and, when participants need to travel, their accommodation and travel arrangements could also be provided.

Crucial in this context is the time for sending preliminary information to participants. Particularly as far as the e-learning course is concerned, it would be important to ensure that end users have sufficient time to go through the material it contains. Similarly, organisational information related to the workshop would be interesting and useful quite some time in advance, so that participants can take it into account for making their arrangements.

- It is recommended to give end users access to the e-learning course approximately one month before the workshop.
- A further possibility for ensuring that participants have all necessary information before the beginning of the workshop is the organisation of a first meeting of the entire group already before the beginning of the course. This way, participants will be able to meet each other, clarify any question they have with the organiser and familiarise themselves with each other. On the day of the workshop they would, as a result, be able to focus on the discussions and feel more comfortable in taking the floor and raising questions among their colleagues. This event could take the form of a social meeting (dinner, reception, wine tasting etc.) or of a different activity, such as a site visit, or leisure sports (e.g. table tennis, bowling etc.).

4. Evaluation of an implementing workshop

In addition to the information received during the closing session and the informal interaction throughout the event from trainers and participants on what they appreciated most in the workshop and where they still see room for improvement, feedback could be sought in a more systematic way.

A two-stage evaluation system is recommended, as this would allow not only immediate feedback but also an assessment of the results and impact of the workshop in the longer term.

All participants will be asked to complete a detailed questionnaire at the end of workshop, focusing on the quality of the workshop itself. End users could be asked:

- to give a general evaluation of the seminar content and methodology;
- to comment on trainers, giving their opinion on expert knowledge, contents of lectures, lecturing style, presentation and the discussion of each lecture;
- to give their opinion on whether the subject matter was dealt with according to their expectations, whether they gained new insights into the subject matter and finally whether they received useful advice on the application and implementation of the ESCP;
- to comment on the suitability, usefulness and quality of the e-learning course;
- to assess the organisation, the preliminary information and the training material provided;
- to give their opinion on activities, topics and priorities they would like to see further developed.

- A small incentive, e.g. a souvenir, could be offered in order to increase the number of assessment forms returned.
- A template of the immediate evaluation form is available in Annex 8.

Participants will also be sent an additional evaluation questionnaire at a later stage (e.g. one month after the workshop), focusing on the impact of the training. End users could be asked:

- to assess the impact of the training on their professional life and identify the elements of the workshop that were particularly useful in that regard;
- to provide information on whether they had an opportunity to apply the ESCP as part of their work;
- to comment on the usefulness of the material provided during the training for their work;
- to indicate whether they had been able to further disseminate the information and material they received in the workshop;
- to give input on how the workshop could be further improved and which other topics should be covered by training.

➤ A template of the mid-term evaluation form is available in Annex 9.

V. Organising an implementing workshop: structure, content and methodology

1. The breakdown of the training module into thematic units and sessions

For the training module on the 'European Small Claims Procedure' and the workshops implementing it, a structure on the basis of thematic units, combining practical and more theoretical sessions is recommended.

Each thematic unit will focus on a specific aspect of the ESCP and its application – this division would constitute the basis for structuring any future workshop implementing the training module. More concretely, the following four thematic units are proposed: i) EU legal framework on small claims, ii) The ESCP: launching the claim, iii) The ESCP: defence and judgment and iv) Consolidating case study.

In order to ensure a thorough understanding of the contents of the training module, each thematic unit should be split into sessions, focusing on specific aspects of the subject matter. This way, each workshop will consist of several sessions, alternating theoretical and more practical parts; its final structure however will always be determined taking into consideration end users' existing knowledge and training priorities. With the addition of opening and closing sessions, serving both pedagogical and organisational purposes, a one and a half day workshop could be set up as detailed below:

Indicative programme for an implementing workshop

A. Opening session

First thematic unit: EU legal framework on small claims

- B. Overview of the legal framework on European procedures
- C. Scope of the ESCP Regulation
- D. International jurisdiction and applicable law in cross-border claims
- E. Exercise I: Case study on the applicability of the ESCP Regulation

Second thematic unit: The ESCP: launching the claim – on the basis of [Exercise II](#)

- F. Commencement of the procedure
- G. Conduct of the procedure and the role of the judge

Third thematic unit: The ESCP: defence and judgment – on the basis of [Exercise II](#)

- H. Defence and counterclaim
- I. Conclusion of the procedure, recognition and enforcement
- J. Appeal and review mechanisms

Fourth thematic unit: Consolidating case study

- K. [Exercise III](#) - Consolidating case study on the ESCP

- L. Closing session

➤ A template of an indicative workshop programme is available in Annex 1

The proposed structure currently consists of eleven different sessions. The organiser of an implementing workshop could, however, always rearrange the thematic units, decide to go into greater detail in some of them, merge certain sessions or decide to reallocate the time between exercises and more theoretical presentations.

The different sessions could all be dealt with by different trainers or by fewer people covering more than one topic. For a training of 1,5-day, three to four trainers would probably be ideal, as this option offers sufficient time for end users to adjust to the different trainers' teaching style and for the latter to better perceive the group's training needs and how to best address them, while ensuring some variety between sessions. The decision on how the different sessions should be concretely allocated, belongs to the workshop organiser, elements such as their expertise and professional background should however be factored in. An academic could e.g. take over the somewhat more theoretical presentations (such as 'Overview of the legal framework on European procedures', 'Scope of the ESCP Regulation', etc.), whereas a judge could deal with topics more closely linked to judicial practice (e.g. the session of the second and third thematic units).

➤ More concrete input on the trainer's profile seemingly best fitting to each session will be provided when presenting the workshop's breakdown in Part V.

2. Detailed content of each session: scope and objectives, training material, methodology

A. Opening session

The main objective of this first session is to welcome trainers and participants to the workshop, to set the scene by reminding them of the framework of the training and to encourage their interaction and active participation in the course.

1. Introduction of participants and trainers

The opening session should also be used to allow participants to introduce themselves, present their national and professional background and explain their expectations from the workshop. This way, end users will familiarise themselves with addressing the group, which should facilitate their active participation in the following sessions, and they will get to know a little more of their colleagues' backgrounds. Making trainers and participants aware of which nationalities and professional groups are represented in the workshop can be of great relevance in the discussion and an asset in ensuring an effective exchange of information. The opportunity of hearing from participants what experience they already have in this area and what they are primarily seeking from the training could help the workshop leader to better adapt the programme to participants' specific needs, by emphasising certain aspects, making adjustments to the time allocated to the different sessions, etc.

➤ This may be achieved by inviting participants to put a key question they expect to see addressed during the workshop or to indicate which element made them register to the course.

2. Presentation of the workshop's programme

The workshop should begin with a presentation of its programme, scope and objectives. The four thematic units should be outlined as well as their structure into sessions. The focus of each session will be indicated and the contribution expected from participants in each part of the programme emphasised. It is important that end users appreciate the goal of each session and the flow of the workshop programme, in order to follow the discussions better and to make sure they do not miss the opportunity to raise questions or clarify any ambiguity.

3. Presentation of the training material

The opening session would also be the occasion to present the material contained in the user's pack and its function, so that end users may use it throughout the workshop. The e-learning course could be mentioned and its role as a reference tool following the workshop illustrated. The content of the electronic documentation should be outlined (all related legal texts, links to online sources, suggested solutions to the case studies, the general bibliography, etc.) and explanations provided on the documents that will be made available to the participants in hardcopy during the workshop (e.g. trainers' presentations and outlines, key legal texts, the case studies for the workshop exercises, documents such as the list of participants, the workshop assessment tools etc.)

4. Presentation of the workshop's organisational aspects

Further to this, all logistical aspects of the workshop should be presented. Details will be given of the locations that will be used during the workshop for the different sessions, the exercises and the breaks, the possibility to use computers, Wi-Fi, a library, a business station etc. and information on the lunches, dinners or other social activities provided. It is important to ensure that end users are reminded of and able to profit from all measures taken to optimise their participation in the workshop and of the importance of the joint activities in allowing a less formal interaction between trainers and fellow participants.

Objectives of the session:

- Introduction of trainers and participants
- Guaranteeing end users' awareness of the workshop programme, scope and objectives
- Ensuring the proper and effective use of the training material (user's pack)
- Provision of practical information necessary for the implementation of the workshop

Training material

Necessary material

(to be made available in hardcopy during the session)

a.	The final version of the workshop programme
b.	The list of trainers and the list of participants

In this session, the workshop leader should demonstrate the entire user's pack, including the e-learning course and the electronic documentation, in order to inform participants of all the different features of the user's pack.

Methodology

1. Timeframe

The time allocated to the opening session will depend on the number of participants attending the workshop. Given that ideally the workshop will be attended by 20 to 30 participants, the opening session should last approximately 45 minutes, to ensure sufficient time for all trainers and participants to present themselves and to provide all the necessary information.

2. Trainers' profiles

The opening session will be held in plenary and coordinated by the workshop leader, the person responsible for ensuring the coherent management of the workshop. There would be an added value in assigning the role of the 'workshop leader' to the person responsible for the organisation of the workshop. He or she would be the most suitable person to present the programme's structure and main objectives, having made all decisions and given priority to specific features of the training over others.

3. Teaching method

This session should be held in plenary with the active cooperation of all participants and as far as possible also of the trainers.

The session will consist of two parts: the first will be interactive with all participants taking the floor and briefly introducing themselves and the second will focus on the provision of

information on the workshop. The order in which the different items will be covered during the session will be decided by the workshop leader.

The more interactive part on introducing participants and trainers to each other, could be structured in different ways. Participants could take the floor consecutively introducing themselves or more creative options could be considered. If the training organiser opts for inquiring on participants' training priorities in this session, the group could for example be asked to put forward a concrete question they would like to see answered during the course. By taking note of these questions, the last session of the workshop could be used for assessing whether all of them have been answered or whether the group is now in a position of answering each other's question. Another option for starting the event would be to ask every participant to share their professional or even private experiences with e.g. cross-border claims or small claims. In workshops starting with a social event the day before, participants could be asked to prepare the introduction of one of their colleagues (e.g. the person sitting next to them, a member of their team, etc.).

➤ End users' involvement being crucial for the successful implementation of the workshop, the opening session could serve as a good opportunity for fostering discussion between trainers and participants from the start, making sure that everyone feels comfortable to take the floor and raise any issue.

B. Overview of the legal framework on European procedures

The first session should stress the relevance of the workshop's subject matter and illustrate the importance and potential advantage of the effective function of the European Small Claims Procedure. In order to achieve this, why and how the Regulation was adopted should be explained, as well as the position it holds in the wider legal framework. An illustration of the links between the ESCP Regulation and other EU legal instruments and procedures would complete the picture.

1. Development and aim of the EU civil justice area

The analysis could start with the evolution and key aims of judicial cooperation in civil matters in the European Union. The change of the legal basis, the key concepts of mutual recognition and direct judicial cooperation and the main legislative choices that were made (e.g. Regulations versus other legal instruments) could be of relevance here. The principal objectives of this legislation, namely legal certainty and equal, easy and effective access to justice could also be analysed. From a practical point of view, it would be useful to highlight the specific phenomena that this EU legislation aims at impeding, such as parallel proceedings in different member states, forum shopping, impediments in access to justice, etc.

To complete the picture, the various Regulations, Directives and policy programmes constituting today's EU civil justice could be referenced. Any potentially interesting legislative initiative in this area should also be addressed, in order to allow end users to follow up on them in the future.

2. Objectives of the ESCP and interrelation with other EU procedures (Regulation Brussels I, European Enforcement Order, European Payment Order)

The main objective of the ESCP Regulation to allow for settling cross-border conflicts of small value in a fast, simple and cost-effective way could then be illustrated. The wider aims of this legal instrument should also be presented, such as ensuring that the parties are not deterred from pursuing the settlement of a claim merely because it arose in cross-border context and thus the effective functioning of the internal market compromised, as well as the harmonisation of the judicial remedies available to citizens across the EU creating level playing field for companies.

- The principle of the simplest and least burdensome method as cornerstone of the Regulation, in light of which the various provisions should be interpreted could be highlighted already at the beginning of the analysis.
- A first reflection on possible disadvantages of this principle could also take place in this part of the training.

Article 1 of the Regulation will constitute the background of this analysis. Emphasis must be given to the fact that this instrument only provides an alternative to already existing national procedures. The fact that the ESCP has neither an impact on already existing domestic mechanisms nor requires the existence of such could be underlined here.

- In international workshops: exchange of information on the availability of a national small claims procedure could take place in the course of this session, allowing participants to acquire a better understanding of the various European systems.

Furthermore, the ESCP Regulation could be juxtaposed to the other EU legal instruments regulating procedural aspects of cross-border civil and commercial cases, namely Regulation Brussels I, the European Payment Order Regulation and the Regulation for a European Enforcement Order. Here as well, the ESCP co-exists as it has a different scope and function than the other Regulations. A brief illustration of these Regulations' objectives, main characteristics and complementary to the ESCP function could be addressed. The two Regulations simplifying enforcement – Regulation Brussels I requiring an exequatur and the European Enforcement Order providing for a certification in uncontested claims could be compared to the two standardised procedures for acquiring an EU-wide applicable judgment: the European Order for Payment for uncontested claims and the ESCP for claims up to a certain value.

- Examples on when one procedure may be more appropriate for dissolving a cross-border dispute that the others could be included in this session.
- A first reference to the recast of the Brussels I Regulation could also be made.

Last, reference should be made to the legal basis of the ESCP Regulation, namely Art. 67 V, 65 TEC requiring co-decision of the Parliament and the Council (today's 81 II TFEU).

- Awareness could be raised at this stage of the ongoing review of the ESCP Regulation, in light of Article 28 of the Regulation.
- The report on the application of the Regulation could be presented here and the proposed amendments mentioned.
- Information on the state of play of the review at the time of the workshop would also be of use, as well as explaining participants how to find information on its follow-up after the event.

3. The possible use of the preliminary reference procedure

When applying an EU legal instrument and particularly a relatively new Regulation such as the one on small claims, judges and lawyers may find themselves confronted with challenges regarding the interpretation of certain provisions, their interaction with national law etc. The possibility to address such difficulties by referring a preliminary question to the CJEU could be discussed at this point. Depending on the target group of the workshop, emphasis could be given to the role of the national judge or the counsel in the preliminary reference procedure and practical advice should be provided on the steps to follow. Information on the legal basis and the key documents regulating the procedure could also be provided.

- For workshops addressed to judges, a session exchanging experiences on whether they have made use of the preliminary ruling procedure could follow.
- In international workshops, the integration of the preliminary ruling procedure in the national judicial systems could also be discussed, as some differences may be found among domestic legal frameworks or the judicial practice of the member states.

In the context of the ESCP, it would be particularly interesting to highlight when national courts have an obligation to make a preliminary reference to the CJEU. Since the decisive criterion for assessing whether a judge is obliged or has the discretion to use the preliminary ruling procedure is whether the judgment that will be issued can be appealed or not, judges in first instance courts may find themselves obliged to refer in the context of a small claims procedure.

- Especially in workshops addressed to judges, a discussion could be organised on which judges would be obliged to refer a preliminary question to the CJEU according to the domestic judicial system(s) if the interpretation of European law is not clear in the context of a small claim.

4. Alternative dispute resolution mechanisms and mediation

Further to seizing a court, cross-border claims and particularly so, claims of small value, may be resolved by using other dispute resolution mechanisms. The available ADR mechanisms at EU level could complete the picture, providing participants with a comprehensive overview of the options available to them in such cases. Reference could be made here to complaint bodies or ombudsmen set up to assist on certain types to disputes, to the possibility to revert

to arbitration, as well as to the current proposals on ADR and ODR mechanisms in the area of consumer law. Mediation as an alternative to litigation procedure would also have to be part of this analysis; its main characteristics and the key provisions of the Mediation Directive could thus be set out in this session.

- A comparison of advantages and disadvantages of the various ADR procedures and litigation for different types of cases could also be organised, if time allows it.
- A discussion on participants' experiences with ADR mechanisms could follow this analysis.
- The Legal Aid Directive could also be referenced, in order to provide a comprehensive overview of the means facilitating cross-border dispute resolution in the EU.

Objectives of the session:

- Inform end users about the broader context of European civil procedure
- Illustrate current EU activity in the area of civil justice
- Describe the complementary functions of the different EU procedures
- Remind the possible use of the preliminary reference procedure
- Explain the potential of mediation in the context of cross-border small claims

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Article 267 of the Treaty on the Functioning of the European Union (consolidated version)
b.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
c.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Articles 3 and 6 of the TEU (consolidated version)
b.	Articles 26, 67, 81 Treaty on the Functioning of the European Union (consolidated version)
c.	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR)
d.	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

e.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
f.	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
g.	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
h.	Council Directive 2002/8/EC of January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
i.	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, COM(2013)794
j.	Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EC) No 861/2007 of the European Parliament and of the Council, COM(2013)795
k.	MEMO/13/1007: Frequently Asked Questions: the European Small Claims Procedure 2.0 (19/11/2013)
l.	Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation, Final Report, Deloitte, July 2013
m.	MEMO/13/193: A step forward for EU consumers: Questions & answers on Alternative Dispute Resolution and Online Dispute Resolution (12/03/2013)
n.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities
o.	Notices from European Union Institution and Bodies - Court of Justice: Information note on references from national courts for a preliminary ruling (2009/C 297/01)
p.	Small claims minisite
q.	European E-Justice Portal
r.	European Judicial Atlas
s.	European Judicial Network for civil and commercial matters website

Methodology

1. Timeframe

The time allocated to this session in a 1,5-day workshop could be approximately 45 minutes and should include some time for discussion with participants.

The challenge in this presentation would be the efficient allocation of time. The trainer will have to strike a balance between the number of issues that need to be discussed and the depth of the analysis. As the aim of the session is to provide an overview of the area of civil justice, a brief introduction of the different instruments and an illustration of how they may become relevant in applying the ESCP would suffice. Should there not be enough time to cover all the suggested topics, priority should be given to refreshing participants' knowledge of the preliminary reference procedure, as a related question will come up during one of the workshop exercises.

If however, a workshop of longer duration (of e.g. 2 days) is organised, more time could be allocated to this session. Participants would this way have the possibility to acquire a sound background knowledge of EU civil justice and to familiarise themselves with the various legal instruments applicable in this area of EU law. Furthermore, in workshops lasting more than 1,5-day more time could be dedicated in the exchange of ideas and experiences among the participants.

2. Trainers' profiles

An academic or a representative of the public sector dealing with EU civil justice could be addressed for taking over this first item of the workshop programme. Given the session's objective, priority does not lie on the practical experience of the expert leading the session, but rather on his or her sound knowledge on the development of this area of law. Given the time constraints, it would be important to engage an expert with a proven ability to effectively transmit knowledge and draw the link between the ESCP Regulation and other legal instruments and procedures in EU civil justice.

➤ Crucial for the trainer giving this presentation is to ensure that he or she is up to date and provides information corresponding to the state of play at the time of the workshop. Since Regulation 861/2007 is currently under review, care must be given to not disseminating any invalid information.

3. Teaching method

This session should be held as a face-to-face presentation in plenary. The final order of presenting the different points of this session could be defined by the trainer.

Given the diversity of the items to be discussed, making regular references to the legal texts and encouraging end users to go through them and familiarise themselves with their structure could be useful. Moreover, demonstrating the various websites on which further information on the instruments discussed are available would raise participants awareness of the available online tools and allow them to follow-up and go more in-depth into the elements that are more interesting to them.

➤ Engaging the participants by asking questions on their level of familiarisation with the different procedures and instruments discussed could be a way to foster discussion and increase the interactivity of this session.

C. Scope of the ESCP Regulation

Getting into the subject matter, it would be important to start by defining the scope of application of the ESCP Regulation. End users would this way be able to assess whether the procedure can be used if they find themselves confronted with a small claim.

1. Temporal and geographical and personal scope

Basic information on the geographical, personal and temporal scope of the Regulation could be given before entering into a more detailed discussion on material scope.

The special relationship of the EU with Denmark would be important to remind in this context, as the Regulation is applicable at the 27 member states, but not in Denmark. As far as the personal scope is concerned, no direct reference is made in the text of the Regulation, this however is not only restricted to EU citizens, but also applies to third country nationals as long as there is competence of an EU court and the other party is habitually resident in a different member state.

In terms of time, the European Small Claims Procedure became available on the 1st of January 2009, with the exception of few provisions that were applicable already before, proceedings could though only be initiated since that date.

2. Material scope: civil and commercial matters

The material scope of the Regulation is limited to 'civil and commercial matters', following the approach adopted under Regulation Brussels I. For this reason, reference should be made to Article 1 of this Regulation. The fact that the nature of the court or tribunal seized is not of relevance, but that instead whether a case falls within the Regulation's scope or not is defined by the subject matter of the dispute and the nature of the action, the parties involved and the nature of their relationship could be discussed. The explicit exclusion of acts including the exercise of public authority or related to customs, revenue and administrative matters should also be mentioned.

➤ The jurisprudence of the Court of Justice autonomously interpreting 'civil and commercial matters' should also be presented here. More concretely, the classic Cases 29/76, 814/79, C-292/05 referring to the provision of the Brussels Convention could be mentioned or the more recent C-420/07, C-406/09 referenced.

Further to this, the more concrete exceptions of Article 2 paragraph 2 should be enumerated and the fact that in disputes related to the status or legal capacity natural persons, property rights out of matrimonial relationships, wills and succession, bankruptcy, social security, employment, tenancies of immovable property and claims on the violation of privacy rights or on defamation this procedure can not be of use, underlined. Stressing that - unlike other EU instruments - the Regulation does not distinguish between monetary and non-monetary claims could also be interesting.

3. Material scope: cross-border claims

Further to the alternative nature of the procedure, the fact that it is only applicable in cross-border claims, as there is no EU competence in setting up a procedure for purely national disputes, should also be mentioned. Article 3 defining cross-border claims on the basis of the parties domicile or habitual residence would have to be discussed here as well.

The autonomous concept of habitual residence is of particular importance in this context. The partial definitions in Regulations Rome I and Rome II, as well as the related analysis of the Court of Justice in its jurisprudence in the context of matrimonial matters could be mentioned (Cases C-68/07, C-523/07 and C-497/10). Similarly, the juxtaposed concept of 'domicile' should be explained in light of Article 59 of Regulation Brussels I.

- Possible implications in case one of the parties resides in more than one member states could be discussed in this context.

4. Material scope: value of the claim

Article 2, according to which the ESCP only applies to claims with value that does not exceed 2000 Euros, should complement the presentation of the scope of the Regulation. The way of calculating this value, excluding interests, expenses or other disbursements should be explained. The moment in which the value of the claim is defined, as well as the fact that the court seized verifies the value of the claim, could also be mentioned. The fact that the ESCP can not be used if a counterclaim with a value exceeding 2000 Euros is submitted should be added.

A further point that would be interesting to raise is the parties' possibility to only pursue part of the claim, in order to stay under the 2000 Euros threshold and profit from the simplified procedure established by the Regulation.

- Particularly in the context of international workshops or workshops implemented on countries not in the Eurozone, the calculation of this amount in different currencies could be of interest.
- It would also be interesting to compare the definition of small claims in the national systems that include special small claims procedures.

The fact that some domestic systems provide for a lower threshold, below which a claim cannot be brought to court, should also be pointed out here.

- Participants should be asked to reflect on the compatibility of such national provisions with the ESCP Regulation. In order to link the ESCP with the preliminary ruling procedure discussed in the previous session, the possibility to refer a question on this point to the CJEU should be suggested in the context of this discussion.

- Participants in international workshops could be asked for information on whether such lower limit exists in their domestic system.

5. The E-Justice portal 'wizard'

When completing the analysis of the scope of the ESCP Regulation and having already made reference to other European procedures and the European Order for Payment more concretely, it would be useful to draw participants' attention to the online tool that has been developed in order to assist in identifying the appropriate procedure.

The so called 'wizard' has been developed in order to facilitate users when assessing whether the European Small Claims Procedure or the European Order for Payment should apply. Through a series of questions on the nature and value of the claim, users can acquire advice on whether one of the two EU Regulations is applicable in their case.

Objectives of the session:

- Familiarise participants with Articles 1-3 of the ESCP Regulation
- Ensure that participants can assess the applicability of the ESCP
- Raise awareness of key notions' autonomous interpretation in defining the scope of the Regulation
- Inform of the existence of the E-justice Portal 'wizard'

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
b.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
c.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	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 (recast)
b.	Judgment of the Court of 18 October 2011, Case C-406/09, Realchemie Nederland BV v Bayer CropScience AG
c.	Judgment of the Court of 22 December 2010, Case C-497/10 PPU, Barbara Mercredi v Richard Chaffe

d.	Judgment of the Court of 28 April 2009, Case C-420/07, Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams
e.	Judgment of the Court of 2 April 2009, Case C-523/07, proceedings brought by A
f.	Judgment of the Court of 29 November 2007, Case C-68/07, Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo
g.	Judgment of the Court of 15 February 2007, Case C-292/05, Irini Lechouritou and Others v Dimosio tis Omospondiakis Dimokratias tis Germanias
h.	Judgment of the Court of 16 December 1980, Case C-814/79, Netherlands State v Reinhold Rüffer
i.	Judgment of the Court, 14 October 1976, Cases 29/76, LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol
j.	European E-Justice Portal
k.	European Judicial Atlas
l.	European Judicial Network for civil and commercial matters website

Methodology

1. Time frame

The duration of this session could be approximately 30 minutes, including some time for questions from the group. Once again, if a workshop lasts more than the proposed 1,5 day, more time could be allocated to this session.

2. Trainer's profile

This topic could be dealt with by either an academic or a practitioner, as the most crucial element in identifying the right trainer is a sound knowledge of the subject matter.

The trainer's analytical skills, necessary for effectively interpreting key notions and illustrating the most relevant elements of the related case law, should be combined with a more practical approach in describing the method of calculating the value of the claim and demonstrating the function of the 'wizard'.

3. Teaching method

This part of the workshop also requires the provision of a significant amount of information from the trainer, so using a lecturing style is recommended. The last part however and the presentation of the wizard will have to be set up as IT-supported training.

The use of practical examples, illustrating when the Regulation may be used would be particularly helpful here, as it would enable participants to reflect on the practical application of the discussed provisions. Alternatively, brief exercises on the applicability of the ESCP in a factual situation could be given to the group by the trainer, also increasing the

interactivity of the session. The 'wizard' could also be used to create some dialogue among the trainer and the end users, making its display more interesting and better underlining its function and possible use.

D. International jurisdiction and applicable law in cross-border claims

Since one of the first questions that arise when setting the ESCP in motion is before which court to bring the claim, an overview of the provisions defining international jurisdiction should be the next item on the agenda.

- Before getting into the concrete provisions, a brief reminder of the basic international private law key concepts, structures and considerations could be helpful. The possible connecting factors, the role of the parties in establishing international jurisdiction, the need to consider legal and factual proximity or protect the weaker party in identifying the competent court or the applicable law, the interaction between conflict of laws rules and the procedural and mandatory provisions of the lex fori, phenomena like forum shopping etc. could be touched upon in this context.

1. Identifying the "court with jurisdiction"

The analysis could start from Article 4 par. 1 and Recital 11 of the ESCP Regulation, which state that the claim should be submitted to the 'court with jurisdiction' without defining how this shall be designated. It thus derives that the general EU rules on the matter would apply, namely Regulation 44/2001 (Regulation Brussels I).

- The direct reference to Regulation Brussels I in part 4 of Form A, annexed to the Regulation could also be mentioned here.

A brief presentation of Regulation Brussels I and its main elements could thus take place here, while emphasising the provisions defining jurisdiction in cross-border cases on civil and commercial matters. The general jurisdiction ground of Article 2, the special ones of Articles 5 and 6, as well as the grounds aiming at the protection of policyholders and consumers (Articles 8-14 and 15-17 respectively) and the exclusive jurisdiction of Article 22, should be mentioned in this context. Reference should also be made to the possibility of prorogation of these grounds on the basis of parties' agreement (Art 23) and to the tacit acceptance of jurisdiction provided in Art 24.

- Related jurisprudence of the CJEU could also be referenced in this context to better illustrate the application of Regulation Brussels I.

Of particular relevance in the context of the ESCP would be a more detailed discussion on jurisdiction over consumer contracts. The fact that Regulation 861/2007 does not provide for exclusive jurisdiction in these cases could be mentioned and the special grounds of Articles 15-17 of Regulation Brussels I discussed in more detail. Key notions that have been

autonomously interpreted by the CJEU ('consumer', 'sale of goods on installment credit terms', 'directs commercial activities') should also be discussed, in order to ensure that end users are in the position of correctly defining the courts having jurisdiction in such cases. A reflection on the way of applying these provisions in the context of online sales could complement this analysis.

- Greater focus on the interpretation of Articles 15-17 of Regulation Brussels I could be given in workshops addressed to lawyers specialising on consumer issues.
- The different approach adopted by the EU legislator in the ESCP Regulation in comparison to the EPO and the EEO Regulations regarding exclusive jurisdiction in case of claims brought against consumers could be illustrated.

It should also be pointed out that a cross-border claim may sometimes not fall within the scope of Regulation Brussels I, in which case jurisdiction will be defined according to the *lex fori*, as provided by Art 19 of the ESCP Regulation. This would in principle occur when the defendant is not domiciled or habitually resident in an EU member state, in which case the law of the defendant's domicile or habitual residence would apply.

- Reference could be made to international conventions, such as e.g. the Lugano Convention, which may also be applicable in such cases.
- The difference among Regulation Brussels I and the ESCP Regulation, in that the latter refers not only to the parties' domicile, but also habitual residence should also be pointed out.

2. Local, material and functional jurisdiction

Further to the international jurisdiction, Regulation Brussels I also defines to a certain extent the local jurisdiction. Its Articles 5-7 and 9 and 16, which include direct references to "the courts for the place", should be mentioned in this context. If however the general rule or any other Brussels I provision defining international jurisdiction is applicable, the competent court will be designated on the basis of the *lex fori*.

- A more detailed look into the definition of the 'place of performance of the obligation' of Article 5 par. 1 of Regulation Brussels I could be of relevance in this context.

Similarly, the designation of the court having material and functional jurisdiction to hear the case will also depend on the domestic provisions of the member state the courts of which are seized. It would be interesting to also mention Recital 27 of the ESCP Regulation, according to which the claim can only be brought before courts or tribunals where at least one person qualified as a judge under national law is employed in this context.

To close this session, reference should be made to Article 25 of the ESCP Regulation requiring that the member states provide information on which courts or tribunals have jurisdiction to give a judgment under this procedure. Reference to the consolidated version of this information, available online, should also be made.

➤ For implementing workshops addressed to members of the judiciary, emphasis should be given to the role of the national judge in *ex officio* controlling whether the seized court has jurisdiction.

3. Lis pendens

In order to complete this analysis, the fact that several courts may have jurisdiction to hear a claim should be underlined. It is for the claimant to decide in such cases before which court to bring the claim.

As soon as a claim is submitted, the *lis pendens* rule is activated and any further proceedings between the same parties and for the same cause have to be interrupted until the court first seized assesses its jurisdiction. Article 27 of Regulation Brussels I providing for the *lis pendens* rule should be presented in the context of this analysis.

➤ The objectives of this provision, namely the avoidance of parallel proceedings and the limitation of forum shopping phenomena, could be discussed in this context.

4. Applicable law

Complementing the analysis on the designation of the competent court competent, some information on how the law governing the case will be defined could be included in this session. As the ESCP is available for claims arising in the context of both contractual relationships and torts the two Regulations applicable in this area of law should be mentioned.

➤ Whether the two Regulations may become applicable within a single dispute could be an issue for further discussion.

The basic characteristics of Regulations Rome I and Rome II could thus be mentioned, such as their scope of application, the ability for the parties to select the applicable law and the restrictions to this rule, the connecting factors prioritised by the two instruments. Emphasis could be given to the most relevant in the context of the ESCP grounds.

5. Using online tools in cross-border conflicts

In order to further assist end users in applying the three EU Regulations discussed in this session, information on the websites and online tools a specially designed to facilitate their application could be provided.

More concretely, the E-Justice portal and the website of the European Judicial Network in civil and commercial matters could be demonstrated, as they contain information on how to identify the competent court according to domestic provisions on jurisdiction. The European Judicial Atlas should also be presented, as it contains a dynamic tool allowing users to find the contact details of the competent EU court, on the basis of the information provided by the member states under Article 25 of the ESCP Regulation.

Similarly, information on the law applicable in cross-border cases may be found on the E-Justice Portal via the EJM website.

- Depending on the available time and equipment, participants could be encouraged to navigate and experiment with the various webpages.
- A discussion on whether similar tools exist on national level could be conducted in the context of international workshops.

Reference should be made before closing this session to the recast of Regulation 44/2001, which from 2015 on it will be replaced by Regulation 1215/2012. A brief illustration of the main changes could be included if time allows it.

Objectives of the session:

- Present the provisions of Regulation Brussels I that define the court having jurisdiction in cross-border small claims
- Familiarise end users with the legal instruments designating the law applicable in cross-border disputes
- Allow participants to profit from the assistance provided by online tools developed to facilitate the EU conflict of laws instruments

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
b.	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
c.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
d.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
e.	Information communicated by Member states in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
f.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	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 (recast)
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b.	Judgement of the Court of 17 October 2013, Case C-218/12, Lokman Emrek v Vlado Sabranovic
c.	Judgment of the Court of 7 December 2010, in Joined Cases C-585/08 and C-144/09, Peter Pammer v Reederei Karl Schlüter GmbH & Co KG and Hotel Alpenhof GesmbH, Oliver Heller
d.	Judgment of the Court of 20 January 2005, Case C-464/01, Johann Gruber v Bay Wa AG
e.	Judgment of the Court of 3 July 1997, Case C-269/95, Francesco Benincasa v Dentalkit Srl.
f.	Judgment of the Court of 19 January 1993, Case C-89/91, Shearson Lehman Hutton Inc. and TVB Treuhandgesellschaft für Vermögensverwaltung und Beteiligungen mbH
g.	European E-Justice Portal
h.	European Judicial Atlas
i.	European Judicial Network for civil and commercial matters website

Methodology

1. Time frame

The duration of this session will be 80 minutes. The main challenge here would be to effectively present the topic in a rather limited amount of time.

If due to time restrictions a trainer prefers to not cover all the above mentioned issues but prioritise the most important ones, emphasis should be given to the analysis of the rules of Regulation Brussels I in identifying the court having jurisdiction, as this is required for the effective application of the ESCP.

A more detailed presentation of the applicable provisions and the related jurisprudence could take place in longer implementing workshops. More time for participants to work with the online tools could also be provided in such case.

2. Trainer's profile

The trainer taking over this session should ideally have some practical experience in order to effectively explain how the EU legal framework on international jurisdiction and conflict of laws can be applied and to which elements particular attention should be paid.

Strong didactic abilities and the talent to clearly transmit information and explain complex concepts are among the skills that would significantly support the successful implementation of this session.

3. Teaching method

As the focus of this session lies in the provision of information and several EU legal instruments need to be covered, the best option would be to organise it as IT-supported face-to-face training.

The scope of this session is rather large and a great amount of information that is key for effective participation in the rest of the programme needs to be provided. For this reason it is essential that this session is effectively structured. The most important information on applying Regulation Brussels I should be clearly presented to ensure that participants acquire knowledge and skills allowing them to identify the court with jurisdiction in cross-border small claims. In order to achieve this, the trainer will have to ensure sufficient time for participants to raise questions or discuss any unclear points in relation to this analysis.

Understanding the different grounds for jurisdiction could be significantly facilitated by practical examples or brief exercises. The trainer could incorporate such elements in the lecture and encourage end users to reflect on the application of the Regulation on the basis of brief case scenarios.

E. Exercise I: Case study on the applicability of the European Small Claims Procedure

After presenting the legal framework and discussing its application, it would be good to consolidate the knowledge acquired by applying it to specific cases. This first workshop exercise will give participants the possibility to reflect on whether the European Small Claims Procedure is applicable in a fictitious case and to employ in practice what they learned on identifying the competent court in a cross-border small claim.

This session will also enable trainers to assess whether some of the already discussed issues have not been sufficiently explained and allow them to remedy that during the case study. Similarly, end users will also have the opportunity to evaluate what they have learnt and raise any remaining questions or further issues they would want to discuss.

The first workshop exercise was devised by Aude Fiorini, Senior Lecturer at the Dundee University Law School. Aude Fiorini has developed a scenario in the context of which a cross-border claim arises. After assessing the applicability of Regulation 861/2007 in this case, participants will be asked to consider whether minor changes in the case scenario would lead to a different result. Further to the illustration of the facts and the different questions, an indicative solution of each of them has been added by the expert.

Seven questions have been developed in the context of the first case study. More concretely:

Question 1, in the context of which a more analytical approach on the basis of sub-questions is adopted, aims at better illustrating how to assess the applicability of the ESCP.

Question 2 includes a variation on the facts leading to a different assessment on the court having jurisdiction.

Question 3 focuses on the calculation of the value of the claim.

Question 4 includes a variation on the facts and examines the applicability of the Regulation in claims arising in non-contractual relationships.

Question 5 builds on question 4 dealing with a further delictual claim.

Question 6 touches upon the territorial scope of the Regulation.

Question 7 deals with exercising a claim against a defendant with unknown address.

➤ Both the questions and the suggested solutions are available in Annex 3.1. of the guide to the training module.

Objectives of the session:

- Consolidate the knowledge acquired during the previous three sessions
- Allow participants to assess the applicability of the small claims Regulation in a number of different situations
- Identify any unclear point and address end users' remaining questions
- Offer participants the possibility to interact more freely and engage in an exchange of professional experience

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
b.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
c.	Workshop exercise I on the applicability of Regulation 861/2007

2. Additional material

(to be included in the electronic documentation)

a.	Judgment of the Court, 15 March 2012, Case C-292/10, G v Cornelius de Visser
b.	Judgment of the Court of 17 November 2011, Case C-327/10, Hypoteční banka a.s. v Udo Mike Lindner
c.	Judgment of the Court of 28 April 2009, Case C-420/07, Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams

d.	Judgment of the Court of 13 July 2000, Case C-412/98, Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC)
e.	European E-Justice Portal
f.	European Judicial Atlas
g.	European Judicial Network for civil and commercial matters website

Methodology

1. Time frame

Approximately 80 minutes could be allocated for the first workshop exercise. A few minutes could be dedicated to explaining the organisational aspects of the exercise, participants would then have 50-60 minutes to discuss and answer the questions and a discussion of 20-30 on the conclusions could close the session.

In case of lack of time, participants could be asked to leave Question 7 aside. As reference to the jurisprudence of the CJEU is required for identifying the answer, participants would probably require more assistance to reach a conclusion. For this reason, the raised issue could be dealt with in the plenary discussion that will close the session, which will anyway be moderated by the trainer.

2. Trainer's profile

For the implementation of this session, a trainer with professional background similar to that of the participants should be identified. The allocation of the workshop exercise to an expert with experience in dealing with cross-border cases would also be beneficial, as he or she would be able to provide additional input from his own experience on the steps and procedures to follow.

Pedagogical skills would also be required for the successful implementation of the exercise, as the trainer should be able to clarify issues and guide end users without however hindering them from looking for the solutions themselves. Being open to discussing further ideas and alternative solutions would also be a requirement as certain flexibility from the side of the trainer is expected. Last, the trainer should also be responsive and prepared to deal with questions and issues raised by participants while effectively coordinating the session.

3. Teaching method

As this part of the training is based on a case study, it would be best to ask the participants to work on it in smaller groups, enabling them to better exchange ideas and more efficiently address the raised issues.

The session could start in plenary with a brief introduction on the organisational aspects of the exercise and the allocation of the participants to working groups of 5-6 members by the trainer or the workshop leader.

If the workshop premises allow it, participants would subsequently move to the working

space allocated to their group, designate one or more rapporteurs and go through the facts of the case. Any questions or unclear points should be discussed with the trainer and all members of the working groups should be encouraged to participate and present their ideas on how to solve the case.

Once discussion time is over, the groups should gather again in plenary, in order to discuss the conclusions. To more effectively lead the discussion, the answers of all groups to the first question could be presented, subsequently proceeding to those of the second question etc. The trainer should encourage end users to present their thoughts and be open to opinions, even if these are not shared by all members of a group. Before closing the exercise, the trainer could summarise the discussion and provide some final conclusions along the lines of the expert's suggested solutions. This would allow participants to recapitulate the steps to follow for deciding if the ESCP applies in a case and confirm the solutions of the different questions.

The possibility to again employ online tools and make use of the related EU websites in this area should be considered, if there is sufficient time and technological support allowing to equip all groups with computers. Alternatively the use of the wizard or the European Judicial Atlas during the last plenary session in order to verify some of the answers could be considered.

➤ *If during the discussion the trainer or the workshop leader realise that some of the issues covered earlier are not clear to the participants, they should take some time to explain them again in a more understandable manner - especially since this session completes the thematic unit on the EU legal framework within which the ESCP applies.*

F. Commencement of the procedure

This session, as well as the subsequent ones, will focus on the various steps of the European Small Claims Procedure. Given the practical relevance of the subject matter, it is recommended to structure it in an interactive way, presenting the main features of Regulation 861/2007 against the factual background of a case study. This approach would enable participants to better contextualise the various stages of the procedure and to better link theory and practice. A comprehensive case study on a contract for the sale of goods between two small companies has been developed by Aude Fiorini (Workshop exercise II) and can be the basis for structuring this part of the training.

Participants should be encouraged to read the various provisions of the Regulation and discuss their application in the course of these sessions. Furthermore, they should look for the various standardised forms annexed to the Regulation and take the time to complete them, in order to acquire some hands-on experience with the implementation of the procedure. The use of computers during these sessions should be foreseen, as it would enable participants to work directly with the various online tools or at least ensure that the trainer can demonstrate their potential use in the various stages of the procedure.

1. Question 1 of the case study – applicability of the ESCP

Question 1 aims to set the scene and consolidate the issues discussed in the previous sessions. Participants should be invited to read the facts of the case and to then assess if the ESCP can be used in its circumstances.

Attention should be paid at the beginning of the session at ensuring that the facts of the case are clear. In the context of the first question and by referring to Articles 2 and 3 of the ESCP Regulation in light of the analysis provided earlier, end users should conclude that bringing a claim under Regulation 861/2007 is the way of proceeding in the case at hand.

2. Question 2 of the case study – legal representation, information and assistance

The second question refers to legal representation and examines whether it is compulsory in the context of the ESCP. Article 10 of the Regulation should be analysed in this context. The fact that Article 10 may not be circumvented on the basis of different requirements under domestic law could be pointed out here.

- This provision could be juxtaposed with other articles of the ESCP Regulation, in which direct reference is made to the *lex fori* and the possibility to apply national law (e.g. Article 19 on assessing the parties' legal capacity or Article 17 on the possibility to appeal a judgment issued in the context of the ESCP).

Further to the general rule on the non-mandatory legal representation, this question presents the opportunity to more broadly discuss on the provision of assistance to the parties and on the role of the court of tribunal in providing information in light of Articles 11 and 12 of the ESCP Regulation respectively. Recitals 21 and 22 should also be read in conjunction with these Articles. The limits of this obligation for the court could be illustrated, in emphasising that assistance should only be offered for the completion of the claim form, does not extend to offering translation and covers procedural aspects of the case and not its substance. The fact that the type of assistance to be provided is not exactly defined could also be addressed. Recital 22 indicates that judicial staff could be allocated to this task, but – especially in view of the assistance in filling the forms – documentation or other written advice on the topic could be provided.

- Important to stress would be the complementarity of these two provisions: the risk that the non-mandatory legal representation entails for the less informed or poorer party should be mitigated by the assistance and information provided by the court.
- The significance of the role of the courts in this regard should be particularly emphasised in workshops addressed to judges and judicial staff members.

3. Question 3 of the case study – bringing the claim

In light of the third question of the case study, the commencement of the ESCP will be analysed. By making reference to Article 4, end users will have to once again start by identifying the court before which the claim shall be brought.

Once this is done, the analysis could focus on Form A. Finding the form in the Annex of the Regulation would be the starting point. The fact that the use of the form is mandatory could be reminded, as well as the member states' and courts' obligation to provide assistance to the claimant in filling it in.

- The use of IT-support should in principle be ensured for this session, allowing participants to find the form online and use the European Judicial Atlas to identify the competent court.
- For workshops addressed to lawyers, attention should be paid to the correct completion of the form, as it will be most probably in this context that they would be approached in the context of the ESCP.

The next element to consider would be language, particularly relevant in a cross-border context. Article 6 should be presented and the general rule of submitting the claim in the language of the court explained. The fact that additional documents supporting the claim do not have to be translated unless so requested by the court could also be addressed in light of the Regulation's objectives for speed and cost effectiveness. Paragraph 3, providing the conditions under which the other party may refuse a document would also have to be raised, as well as practical issues, such as how this refusal is done in practice, how the parties' linguistic capacities are established, within which timeframe may this refusal take place, who covers translation costs etc.

- Reference could be made here as well to Article 25 and its requirement towards member states to indicate which languages are accepted by their courts. Participants could be encouraged to go through the consolidated version of these replies if time allows for it.
- In international workshops, the languages that are accepted by participants' domestic courts could also constitute a topic for discussion.

The session could continue by inviting participants to directly work on the form and fill in the required information within the context of the case study.

- Following the suggested solution of Aude Fiorini on this question, the European Judicial Atlas could be employed in order to find the court having jurisdiction.

Upon reaching point 8.2 of Form A, Article 9 on taking of evidence could be addressed in greater detail. The fact that ESCP is a written procedure and that the court hearing the case determines the means and extent of evidence that are required in light of the principle of the 'simplest and least burdensome method' should constitute the background of this discussion.

- The role of the court in ensuring the effective application of the ESCP should be stressed here. The fact that the parties often come from different member states, speak different languages and are not necessarily supported by a lawyer should be considered by the court when assessing the information submitted by the parties and Article 9 applied so that clarity as to the facts of the case and legal certainty are provided.

Reference should also be made to other rules that may be applied in relation to evidence in a cross-border claim, such as the *lex fori* – if evidence has to be collected in the member state in which the court is situated –, Regulation 1206/2001 – in case of evidence in other member states – and the Hague Convention of 1970 on the taking of evidence abroad – for countries outside the EU and Denmark. The possibility to use communication technologies as e.g. videoconferencing for witness testimonies could be mentioned.

- Articles 12 and 16 of the ESCP Regulation could be cross-referenced, as they deal with the courts' obligation to provide information on evidence requirements and the cost of collecting evidence respectively.
- Article 7.b, further illustrating the role of the court in the collection of evidence, could also be mentioned here.

Lastly, once participants have successfully completed Form A with the support of the trainer, its submission to the competent court, should be addressed. Article 4 par. 1 indicates the possible means of submission, participants could however be encouraged to also look into the information provided by the member states according to Article 4 par. 2 or use the online tool created on its basis and included in the European Judicial Atlas.

- In workshops addressed to end users from different member states, an exchange of experiences on the means of communications accepted by the courts of their respective countries could also be organised.

Objectives of the session:

- Explain the launching of the ESCP in a practice-oriented way
- Familiarise participants with Form A
- Discuss the issues of language, supporting evidence and process of the submission of the claim
- Integrate the use of online tools in the application of the ESCP

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
b.	Commission Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member states in the taking of evidence in civil and commercial matters
c.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

d.	Information communicated by Member states in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
e.	The European Small Claims Procedure step by step
f.	Workshop exercise II
g.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Convention on the taking of evidence abroad in civil or commercial matters 18 March 1970
b.	European E-Justice Portal
c.	European Judicial Atlas
d.	European Judicial Network for civil and commercial matters website
e.	E-learning course

Methodology

1. Time frame

An indicative duration for this session could be 75 minutes – for workshops lasting more than 1,5-day it could however be further extended. Since this case study will constitute the background of the following sessions as well, time could be allocated in a more flexible way, depending on the stage in which the trainer wishes to present the various elements of the procedure.

➤ For events targeted to judges, allocating less time to filling in the forms could be considered. Although judges should be familiar with Form A, they will not be required to fill it in themselves, thus the session could be structured in a more concise way. Moreover, this option would allow for more time in judges' workshops for the following session, in which the role of the court is emphasised.

2. Trainer's profile

The possibility to engage a trainer with practical experience on the ESCP should be explored in the context of this session. Similarly, it would bring significant added value, if the trainer had similar background to that of the participants, as he or she could thus better identify the stages of the procedure that are most relevant for the group and analyse them from the same point of view.

Experience with cases with an international element could be a further asset, as well as a good knowledge of the available online tools and their function.

- The possibility to engage participants and encourage them to actively participate by reflecting on the various questions is a further important quality for the trainer taking over this session.

3. Teaching method

Several methodological elements could be combined in this session. Participants could be asked to once again form smaller groups in order to discuss the questions of the case study and exchange ideas and experiences. It would however be recommended to do so within a single room, so that the trainer can provide immediate feedback and present the applicable framework between the various questions of the case study.

Alternatively, the trainer could simply present the case study and direct the various questions to all participants, thus creating dialogue with the entire group.

A further possibility would be to structure the analysis of this case study as a role play, in which participants take the role of the two parties and the court – this may however require some finetuning of the materials in order to ensure that all participants or groups of participants can work in parallel and do not need to wait for each other.

- The second option would probably be more efficient in terms of timing, whereas forming smaller groups, would enable direct exchange of ideas and experiences.
- If the smaller groups option is selected, the re-allocation of participants in different groups would be recommended to enable interaction with as many colleagues as possible.

This session could be further restructured, upon the trainer's discretion. Some trainers may choose to provide an introduction to the applicable provisions and then raise the different questions of the exercise, whereas others may invite the group to reflect on possible answers and try to apply the Regulation, adding to their answers and clarifying any complex point during the discussion session.

Another choice to be made would be whether participants will work with electronic or paper forms also depending on the available time and infrastructure.

- If possible, providing participants with the option or alternating between these two options would be preferable.

For participants to profit as much as possible from the second thematic unit, having access to computers and the internet is crucial. Even if it is not possible to provide as many work stations as the attendees, all participants should have the possibility to follow the demonstration of the different websites and – ideally – to also individually explore them.

Particularly useful in the context of this presentation could be references to the related section of the E-learning course. The material, devised by Xandra Kramer, contains tables and schemes which illustrate the legal framework in a very comprehensive way that could support the analysis during the workshop.

G. Conduct of the procedure and the role of the court

1. Question 4 of the case study – the role of the court if the claim is unfounded, inadmissible, incomplete, unclear or not in the scope of the Regulation

Upon submission of the claim, a first assessment follows by the seized court. Paragraphs 3 and 4 of the Regulation should be presented here and the obligation of the court to get back to the claimant for addressing mistakes or omissions analysed in light of questions 4a-4d of the case study. Participants should be asked to find and complete Form B of the Regulation in this part of the session.

- As participants would most probably have been invited to complete Form A in the previous session, they could now be asked to review and correct with the help of the trainer any mistakes or omissions in the completed forms.
- Participants could be asked to review the forms completed by their colleagues and not their own, in order to make the exercise more interesting and increase its interactivity.

Recital 13 assisting in the interpretation of the terms 'inadmissible' and 'clearly unfounded' could also be referenced in order to initiate a discussion on the definition of the two terms.

- Since the dismissal of a claim at such early stage of the procedure is not always foreseen in domestic procedural systems, it would be interesting to take more time and discuss in greater detail the application of this provision in workshops addressed to the judiciary.

The particular difficulties arising by the fact that the ESCP applies to cross-border claims, such as the potentially different understanding of some key terms, elements of domestic regulation that may influence the information submitted by the parties and the often lower degree of familiarisation of the parties with cross-border proceedings, could be pointed out here. The significance of the role of the court in taking into account these implications and trying to ensure the correct application of the procedure would also have to be stressed and the possibility to use Form B in order to clarify complex issues and increase legal certainty highlighted.

- A discussion on the organisation of the courts in the various member states and on whether judges, clerks or other judicial staff members follow-up on the submitted claim could also take place here.
- This session offers itself for a more detailed illustration on the role of the judge in the efficient implementation of the procedure, particularly relevant in the context of workshops addressed to members of the judiciary.

The possibility of the court to request additional evidence should also be dealt with here. Since the ESCP refers to cross-border cases, it'd be interesting to illustrate the potential use of IT technology in the gathering of evidence. For a comprehensive analysis, Articles 6 and 9 of

the Regulation should be read in conjunction, as linguistic issues may arise. It is for the court in such cases to assess whether translation will be necessary, always in light of the Regulation's objectives. Translation may thus be requested if some of the submitted supporting documents are not understandable although crucial for the court's assessment.

- Greater emphasis on the use of video-conferencing could be given in workshops addressed to members of the judiciary. The information provided on the European E-Justice Portal on how it works in practice could be demonstrated and discussed if time allows for it.

2. Seeking settlement

A further task the Regulation entrusts the courts with is the attempt to settle the case, when appropriate. In light of Article 12 par. 3, reference could be made to the possible use of alternative dispute resolution methods, such as mediation. Elements to point out in this context are the voluntary nature of mediation, its flexible and self-determined approach and that it is a cost-efficient, speedy and confidential procedure that does not preclude the parties from recurring to the judicial procedure if mediation fails.

- In-court mediation could be of particular relevance if the workshop is aimed at judges or other judicial staff members, whereas a more general discussion on ADR mechanisms could take place in events for other legal practitioners.
- Reference could also be made here to the potential use of online dispute resolution, as this as well could be of significant assistance in the context of cross-border claims.

3. Question 4 of the case study – the role of the court in the continuation of the procedure

The steps following the correct submission of the claim should be discussed next in the context of question 4.f of the case study. Article 5 paragraph 2 of the Regulation should be presented here and participants asked to complete the first part of Form C.

- Participants could be asked to take over the role of the court at this stage by making use of the already filled in Form A included in the materials. The information contained in this form raises certain issues for discussion and may lead to a need for further clarification. This exercise would be particularly relevant in workshops addressed to members of the judiciary.
- Once again the possibility to complete the form as annexed to the Regulation or online should be reminded.

How the service of documents to the defendant shall be organised could be addressed next. Article 5 paragraph 2 refers to the autonomous system of service of documents provided by the Regulation. Article 13, regulating this issue in the context of the ESCP, does not provide for minimum standards but sets out the acceptable methods of serving documents related to the claim. The basic choice of the legislator, namely serving the documents through postal

service with acknowledgement of receipt, could be addressed in light of the Regulation's objectives for a simple, accessible and cost efficient procedure.

Furthermore, the interrelation between Article 13 of the Regulation and other rules on the service of documents could be explored. Article 13 is a special provision compared to the general EU rules of Regulation 1393/2007 on the service of documents, the latter may however have a complementary function, together with the domestic provisions on service of documents.

- *It would also be interesting to juxtapose Article 13 of the ESCP Regulation with the provisions of Regulation 805/2004 on a European Enforcement Order, which only set minimum standards.*

An overview of the documents that have to be served to the defendant would also be useful in this context, as well a discussion on how and when the reception of the documents is considered acknowledged. Other available options, in case postal service is not possible or allowed under national law, could also be considered. Last, the consequences of not properly serving the documents could also be discussed in this session.

- *References to the CJEU jurisprudence on the service of documents in languages other than that of the member state of service (e.g. C-443/04, C-14-07) could also be made.*

The fact that the ESCP is a procedure providing strict deadlines for its various steps could also be stressed here, in view of the time limit for serving the case documents to the defendant. Recital 24 indicates that the calculation should be done on the basis of Regulation 1182/1971, the key provisions of which could be touched upon.

- *An exchange of experiences on the implementation and the possibility to respect the indicated time limits could follow at this stage, especially in the context of workshops addressed to the judiciary.*

Objectives of the session:

- Present in a practice-oriented way the next steps of the ESCP
- Illustrate the role of the court and the various members of the court in the framework of the procedure
- Clarifying the notion of 'clearly unfounded'
- Familiarise participants with Forms B and C
- Raise awareness of the acceptable methods for serving the documents related to the claim
- Discuss the calculation of the time limits provided by the Regulation

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member states of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
b.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
c.	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
d.	Workshop exercise II
e.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
b.	Judgment of the Court of 8 May 2008, Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin
c.	Judgment of the Court of 8 November 2005, Case C-443/03, Götz Leffler v Berlin Chemie AG
d.	Request for a preliminary ruling from the Amtsgericht Wedding (Germany) lodged on 14 March 2013 - eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy, Case C-119/13
e.	Request for a preliminary ruling from the Amtsgericht Wedding (Deutschland) lodged on 14 March 2013 - Raiffeisenbank St. Georgen reg. Gen. m.b.H. v Tetyana Bonchyk, Case C-120/13
f.	Booklet: Videoconferencing as part of the European E-Justice
g.	European E-Justice Portal
h.	European Judicial Atlas
i.	European Judicial Network for civil and commercial matters website
j.	E-learning course

Methodology

1. Time frame

60 minutes would be an indicative time allocation for this session. As mentioned in relation to the previous part of the case study, some flexibility for better following the rhythm of the group would be necessary in this part of the workshop.

➤ For workshops addressed to members of the judiciary, a different allocation of time providing more time for discussion and analysis on the role of the judge would be recommended. An option would be to shorten the previous session on the completion of Form A and give more time to this part focussing on the role of the court in the ESCP.

2. Trainer's profile

Given the focus of this session on the part of the ESCP that is coordinated by the court, it would be preferable to engage a judge or other judicial staff member responsible for receiving and examining claims under Regulation 861/2007.

➤ If this is indeed the last part of the day's programme, the trainer should take some time for revisiting potentially problematic issues in case he or she detects problems in end users' understanding of the subject matter. If time doesn't allow for it, an alternative option would be to do so at the beginning of the next thematic unit the next morning.

3. Teaching method

This session would follow a structure similar to the previous one, combining interactive elements in dealing with a case study, transmission of information when analysing the provisions of the Regulation and possibly also IT-supported learning in completing the Form.

➤ For workshops addressed to members of the judiciary or judicial staff, greater emphasis could be given in the interactivity of this session, in order to ensure an effective exchange of views and experiences.

H. Defence and counterclaim

1. Question 5a of the case study – response to a claim

The first session of the second workshop day will focus on the defendant, covering the response to the claim and the possibility to bring a counterclaim.

Question 5a addresses the various possible reactions of the defendant, so that, in light of the circumstances of the case, an analysis of the related provisions of the Regulation can follow. End users should first be asked to complete the second part of Form C to which the answer of the defendant to the claim should be inserted. Whether related evidence should be submitted according to Article 5 par. 3 of the Regulation would also have to be considered. Paragraph 4 on the reaction of the court after the submission of the response would also have to be referenced here, as well as the timeframe available for the completion of the various steps of the procedure.

A further issue to be addressed in the context of Question 5a is the parties' possibility to request an oral hearing. Articles 5 par. 1 and Article 8 provide the regulatory framework and entrust to the court the assessment of whether such procedure is necessary in the case at

hand in light of the Regulation's objectives. Interesting to highlight would be the fact that the court decides independently on the need to organise an oral hearing. The parties may as well request it, but this is neither a prerequisite not binding to the decision of the court.

- For workshops addressed to judges or other judicial staff members, greater emphasis could again be given to the role of the court in the conduct of the procedure and to the elements to be taken into account when assessing the necessity of an oral hearing. A more detailed discussion on arguments in favour (greater clarity, legal certainty, possibility to mitigate the incorrect completion of Form A, etc.) and against (increased costs, more time-consuming process, parties' possible need to travel, etc.) the organisation of an oral hearing could be included.
- A discussion on the interrelation between Article 8 and Articles 6 ECHR and 47 of the Charter of Fundamental Rights of the European Union on the right to a fair trial could also take place here.

2. Question 5a of the case study – bringing a counterclaim

The application of Article 5 paragraph 6 and the possibility for the respondent to bring a counterclaim should be addressed next according to the structure of the case study. Recital 16 explaining the concept of the counterclaim could be the starting point of this analysis. The need to consider the value of the counterclaim in order to confirm that the ESCP would continue to apply would have to be stressed next and an illustration of the possible reaction of the other party described.

- Articles 12 and 14, applicable also in the context of counterclaims could be reminded here.
- Article 4 paragraph 4 could also be referenced as applicable in case the counterclaim exceeds the 2000 Euros threshold.

Objectives of the session:

- Raise awareness of the options available to the defendant upon reception of the claim
- Analyse Articles 5 and 8 of the ESCP Regulation, also in light of the Charter of Fundamental Rights of the European Union
- Discuss the possibility of holding an oral hearing in the framework of an ESCP
- Explain the procedure of bringing a counterclaim

Training material

1. Necessary material

(to be made available in hardcopy during the session)

a.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
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b.	Workshop exercise II
c.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Articles 8 and 47 of the Charter of Fundamental Rights of the European Union
b.	Article 6 of the European Convention for Human Rights
c.	European E-Justice Portal
d.	European Judicial Atlas
e.	European Judicial Network for civil and commercial matters website
f.	E-learning course

Methodology

1. Time frame

Another 30 minutes could be allocated to this session, as some time will be required for participants to fill-in the form.

2. Trainer's profile

A practitioner could take over this session, as it is once again focused on the implementation of the ESCP. Here as well, IT-skills would be important, as the trainer should be in a position to assist end users to make use of the different online sources and good interpersonal skills would be a further asset, allowing the trainer to motivate participants in participating to the discussions.

3. Teaching method

Following up to the approach adopted during the first workshop day with regard to the implementation of Exercise II, this session could once again continue either as a group exercise, a role play or a Q&A session with the help of the trainer. The possibility to alternate between various training methods can also be considered, to avoid repetition and stimulate participants' interest.

In case the trainer opts for providing a more theoretical introduction further to the discussion of the exercise question, the part of this analysis dealing with the counterclaim could start this session.

A quick reminder of the facts of the case and the point in which the discussion of the exercise finished the day before could be useful, if this session starts the second workshop day as proposed in the annexed programme.

➤ A quick reminder of the facts of the case and the point in which the discussion of the exercise finished the day before could be useful, if this session starts the second workshop day as proposed in the annexed programme.

I. Conclusion of the procedure, appeal and review

1. Questions 5.1.b and 6.a of the case study - the ESCP judgment

These two questions deal with the conclusion of the ESCP and offer a background for discussing Article 7 of the Regulation in greater detail. The time within which the court has to issue a decision, the possibility to require additional information or evidence or hold an oral hearing could be reminded.

➤ The lack of concrete consequences in the Regulation in case the court does not render its judgment within 30 days and the fact that the judicial practice indeed often differs to the indicated timeframe could be discussed here as well, in light of Recital 23.

The fact that the judgment does not have to be publicly delivered, but should be served to the parties according to Article 13 should be highlighted.

Lastly, question 5.1.b of the case study deals with the situation described in Article 7 paragraph 3, namely the lack of reaction from one of the parties within the indicated timeframe. According to this provision, the consequence for the party in such a situation shall be the issuing of the judgment.

The fact that this judgment will automatically be enforceable without any further requirement, as e.g. the provision of a security, even if an appeal is still possible should be pointed out. Paragraph 2 of Article 15 providing for the protection of the debtor would also have to be mentioned here.

2. Question 6.b of the case study - the costs of the procedure

The next point to address would be the cost of the ESCP, as upon issuance of the judgment, the unsuccessful party is required to cover the costs of the procedure. The fact that there is a need to respect the principle of proportionality should be underlined, as unnecessary costs incurred contrary to the Regulation's objective for a fast and low cost procedure would not have to be reimbursed.

A more detailed analysis on what could be covered under costs of the procedure would be interesting here - recital 29 provides some insights in this regard. Lawyers' costs, as well as the expenses for translations or the submission of evidence are not excluded, as long as they are not disproportionate to the value of the claim and to what must be proven by the parties. Any cost for seizing the court would also have to be included here.

- The application of this principle and the way the court assesses which costs were beyond necessary could be discussed in more detail. Especially for workshops addressed to judges, an exchange of ideas and experiences on this issue could take place.
- It should be reminded at this point that the proportionality principle should be interpreted autonomously and not on the basis of the *lex fori*.
- A discussion on the interrelation between Article 8 and Articles 6 ECHR and 47 of the Charter of Fundamental Rights of the European Union on the right to a fair trial could also take place here

3. Question 6.c of the case study – review mechanisms

The next issue addressed by the case study refers to the possibility of the defendant to ask for a review of a judgment issued under the ESCP. The conditions set by Article 18 in applying this special to the Regulation remedy should be presented. The fact that this review has neither suspensive nor devolutive effect and aims at protecting the defendant in case he or she did not have the opportunity to contest the claim should be underlined.

- There is no explicit obligation to inform the defendant of the possibility of a review; this however may derive from Article 12.

Particular attention could be paid to the fact that only the defendant or the claimant in his role as defendant to a counterclaim could ask for a review of the judgment. Moreover review may only be sought before the court having jurisdiction in the member state in which the judgment was issued. The consequence of a successful review, rendering the judgment null and void would also need to be addressed.

4. Questions 6.c and 6.d of the case study – appealing the judgment

Further to the remedy foreseen directly in the text of the Regulation, Article 17 and Recital 26 refer to the domestic systems in order to assess whether the parties have any further possibility to challenge the decision. Awareness of the information provided by the member states regarding the available remedies in their jurisdiction should also be raised in this context, enabling end users to easily identify the related information.

- Reference to the European Judicial Atlas including a dynamic tool that displays this information in a more accessible way should be made.
- If the workshop has an international audience, a discussion including exchange of experience and information could also be organised on this topic.
- A reflection on whether remedies other than appeal may be admissible in the context of the ESCP in light of Article 17 could also take place.

Another element of interest that would also come up in the context of question 6d relates to the results of making an appeal. Articles 15 and 23 regulate this issue and although the judgment is enforceable even after the submission of an appeal, the party seeking it could apply for a stay or limitation of the judgment's enforcement.

Objectives of the session:

- Present the conclusion of the procedure and the role of the court in issuing the judgment.
- Discuss the allocation of the procedure's costs
- Analyse the provisions on appeal and review

Training material

1. Necessary material

(to be made available in hardcopy during the session)

	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
b.	Information communicated by Member states in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
c.	Workshop exercise II
d.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Articles 8 and 47 of the Charter of Fundamental Rights of the European Union
b.	Judgment of the Court of 13 December 2012, Case C-215/11, Iwona Szyrocka v SiGer Technologie GmbH
c.	European E-justice portal
d.	European Judicial Atlas in civil and commercial matters
e.	European Judicial Network for civil and commercial matters website
f.	E-learning course

Methodology

1. Time frame

The duration of this session could be of approximately 45 minutes.

2. Trainer's profile

Engaging a member of the judiciary would perhaps be the best option for this presentation, as it deals with the conclusion of the procedure and the role of the courts. If this is not possible, a judicial trainer with professional experience similar to that of the audience could be approached.

3. Teaching method

Following an approach similar to the one followed during the first part of this case study, this session could also combine interactive elements with the more theoretical analysis of the key provisions. Time should be given to participants to reflect on the possible solutions of the case, but an exchange of ideas and opinions on the possible replies should also follow, coordinated by the trainer.

Here as well, references could be made to the e-learning course, containing an illustrative overview of the ESCP's conclusion and subsequent steps.

J. Recognition and enforcement of the judgment

1. The abolition of exequatur

The basic provision of Article 20 on the abolition of exequatur would be the cornerstone of this analysis.

- A brief reminder of the concept of exequatur and its role in the application of the principle of mutual recognition could be introduced here.
- Reference to the other two Regulations, the EPO and the EEO Regulation, in which the exequatur has also been abolished, could be referenced.

In light of Question 7 of the case study, the possibility of the – according to the judgment - creditor to request a standardised certificate on the basis of Form D from the court in order to further simplify recognition and enforcement should be presented. The mandatory use of the standardised form and the prohibition to charge the parties for its completion could be reminded. It would also be interesting to point out that even though the certificate aims at facilitating cross-border recognition and enforcement, it could in principle also serve as enforcement order within the member state of the court issuing the judgment in light of the Regulation's objective for a quick and cost efficient procedure.

- Participants should be asked to fill in Form D based on the facts of the case study and their conclusions in the previous questions.
- A juxtaposition could be made here with Regulation Brussels I, according to which the declaration of enforceability is sought in the state of enforcement, while in the ESCP the issuing court provides the certificate.

To complete the picture, the fact that the certificate can not be repealed would have to be added and that consequently, formal service is also not required.

- A discussion on whether the other party has any possibility to contest the issuing of the certificate and how this fits within the Regulation's teleology could take place in international workshops, as member states have adopted varying systems in this regard.

2. Enforcement procedure

The procedure to follow for enforcing a judgment issued under the Regulation as described in Article 21 shall be the next item to discuss. The requirements set out in paragraph 2 of this Article will have to be fulfilled in order for the national competent authorities to take over the enforcement of the decision, which will follow domestic enforcement rules. Similarly, paragraphs 3 and 4 will have to be discussed, ensuring that no disproportionate requirements are imposed to the party seeking enforcement.

The information provided by the member states on their domestic enforcement systems could also be mentioned here and the possibility to quickly acquire access to it through the European Judicial Atlas reminded.

- Additional information on enforcement in the different member states can be contributed by the participants in international workshops.
- A comparison with the enforcement systems provided in the other EU procedures (EPO, EEO) could take place, in there is sufficient time.

3. Opposing, delaying or limiting enforcement

In light of the last question raised in the context of this case study, the possibility of the debtor to refuse the enforcement of the decision or to stay the procedure or restrict its scope could close this session. Articles 22 and 23 of the Regulation provide a single ground for opposing enforcement, namely the existence of a prior irreconcilable judgment. The exact conditions under which this provision becomes applicable as well as the prohibition for it to result in a substantive review of the judgment would have to be stressed. Furthermore, the conditions under which the debtor may request the stay or limitation of enforcement should be presented and the different ways in which the court may react to such application discussed.

- Here as well, a comparative approach between the ESCP Regulation and the EPO and EEO Regulations could be adopted.

Objectives of the session:

- Complete the presentation of the ESCP
- Discuss the abolition of exequatur in the context of the Regulation
- Explain the necessary steps for enforcing a judgment under the ESCP
- Consider the possibilities to refuse, stay or limit enforcement

Training material

1. Necessary material

(to be made available in hardcopy during the session)

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| a. | Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure |
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b.	Information communicated by Member states in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
c.	Workshop Exercise II
d.	PowerPoint presentation or outline provided by the trainer

2. Additional material

(to be included in the electronic documentation)

a.	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
b.	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
c.	European E-justice portal
d.	European Judicial Atlas in civil and commercial matters
e.	European Judicial Network for civil and commercial matters website
f.	E-learning course

Methodology

1. Time frame

Approximately 45 minutes could be allocated to this session. Further to the presentation of the topic and the conclusion of the case study, any last question or additional clarification on the ESCP could be discussed at this part of the workshop.

2. Trainer's profile

A representative of the judiciary or a judicial staff member could take over this session. Alternatively, a judicial trainer with experience on the subject matter could illustrate the main elements of the enforcement procedure.

3. Teaching method

This session is once again following the same basic methodological approach of combining theory with a practical case, while using the possibilities offered by technology to facilitate the application of the Regulation. Depending on the choices made by the previous trainers, an alteration to maintain participants' engagement is recommended.

- The inclusion of additional practical examples would make the training more effective, as it would enable participants to better understand the interaction of EU and domestic law in the context of enforcement.

In this session as well, participants should be able to use computers and the internet in order to profit from the training. Also depending on the available resources, a group structure could thus be considered.

K. Workshop exercise III: Consolidating case study on the ESCP

Before closing the workshop, participants could be asked to deal with a further case, this time however in a more comprehensive and independent way. This last case study brings together elements discussed throughout the workshop and deals in greater detail with some of the issues, thus allowing end users to consolidate their already acquired knowledge, practically identify where implications may arise and observe the interaction of the various EU legal instruments in the area of civil justice. Being the last item on the agenda, this case study shall also offer the opportunity to further clarify complex issues and identify any shortcomings in the explanations provided in the previous sessions.

The case study, devised by Peter Beaton, consultant in European Civil and private international law, includes questions of international jurisdiction, applicable law, addresses the possibility to bring a counterclaim, touches upon issues such as the service of documents, fact finding and collecting evidence, as well as the possible use of ADR, appeal and enforcement.

On the basis of a B2C contractual relationship, a total of 13 questions have been identified and can be discussed during the exercise.

More concretely, the following issues are touched upon in the context of the case study:

1. The **scope of application** of the ESCP
2. The identification of the court having **international jurisdiction**. Further issues touched upon here:
 2. a. The interpretation of Article 15.1.c of Regulation Brussels I in the context of e-commerce.
 2. b. The notion of a consumer and how it has been interpreted autonomously by the CJEU.
 2. c. The definition of the place of delivery and the significance of standardised contract terms.
 2. d. The application of the lis pendens rule.
 2. e. The possibility of referring a question to the CJEU in order to seek further clarification on the interpretation of Regulation Brussels I.

Dealing with **other aspects of the ESCP**, the issues raised encompass:

3. The law applicable to the dispute.
4. The possibility to bring a counterclaim.
5. The service of documents in the context of the ESCP.
6. Fact finding from the side of the court.
7. Fact finding by the court.
8. The possibility to settle a cross-border small claim upon initiative of the court.
9. Appeal and review mechanisms.
10. Enforcing a judgment under the ESCP.

Workshop exercise IV

Further to this consolidating case study, Peter Beaton provided a second exercise, which could be used in longer workshops, given to participants as follow-up exercise or in order to discuss certain issues in greater detail.

This second scenario, developed on the basis again of a B2C cross-border sale includes also elements of tort. More concretely, six issues have been identified as particularly interesting to look into:

1. The identification of the court having jurisdiction in such case if a dispute is based on two separate legal grounds.
2. The role of advertising and the use of websites in defining the court having jurisdiction.
3. The applicability of the procedure and whether a claim can be based on two different legal grounds in the context of the ESCP.
4. The possibility to bring a counterclaim.
5. Parallel application of Regulations Rome I and Rome II. Applying the same scenario in a B2B situation - comparison of the results.

Peter Beaton provided an outline of the issues that would be most interesting to address in light of the above questions, concrete answers will however have to be devised by trainers and participants.

- In longer workshops, an additional session could be dedicated to this exercise.
- Both the questions and the suggested solutions of the two case studies are available in Annexes 3.3. and 3.4. of the present guide.

Objectives of the session:

- Consolidate the information provided on the ESCP Regulation in the previous sessions.
- Provide end users with some experience of the application of the procedure in practice
- Identify any remaining unclear points and address them during the session.

Training material

1. Necessary material
(to be made available in hardcopy during the session)

a.	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
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b.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member states of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
c.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
d.	Regulation (EC) No 805/2004 of the European Parliament and of the council of 21 April 2004 creating a European Enforcement Order for uncontested claims
e.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member states in the taking of evidence in civil or commercial matters
f.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
h.	Workshop exercise III

2. Additional material
(to be included in the electronic documentation)

a.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
b.	The INCOTERMS Rules
c.	Practice guide for the application of the European Small Claims Procedure
d.	Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States, I. Kacevska, B. Rudevskā, V. Mizaras, A. Brazdeikis, M. Torga, Riga, Vilnius, Tallinn, 2012
e.	Judgement of the Court of 17 October 2013, Case C-218/12, Lokman Emrek v Vlado Sabranovic
f.	Judgment of the Court of 7 December 2010, in Joined Cases C-585/08 and C-144/09, Peter Pammer v Reederei Karl Schlüter GmbH & Co KG and Hotel Alpenhof GesmbH, Oliver Heller
g.	Judgment of the Court of 20 January 2005, Case C-464/01, Johann Gruber v Bay Wa AG
h.	European E-justice portal
i.	European Judicial Atlas in civil and commercial matters
j.	European Judicial Network for civil and commercial matters website
k.	E-learning course

Methodology

1. Time frame

For this last workshop exercise, approximately 2 hours should be allocated. Participants should be given some time to go through the facts of the case and then asked to work together in smaller teams.

➤ Here as well, creating new working groups with participants who did not work with each other in the previous exercises is recommended.

The groups would then have approximately 75 minutes to address the different questions and 40 minutes should be dedicated to the de-briefing session.

2. Trainer's profile

Communication skills, a good knowledge of the subject matter and the possibility to interact well with participants would be the most important skills for the right trainer for this workshop. A judicial trainer, a judge or a lawyer with experience on the ESCP would be ideal. The possibility to interact well with the group and engage them in actively participating would bring further added value to the exercise.

3. Teaching method

In this interactive session again and in order to offer participants the possibility to effectively interact and discuss the various aspects of the ESCP, working in smaller groups would be the method suggested. Identifying a person to report back on the group's conclusions is recommended and if available, a different room should ideally be used for the preparation of the case.

➤ IT-support could be provided during this session as well, enabling participants to make use of the European E-Justice Portal and the European Judicial Atlas.

Any questions arising or clarifications requested should be ideally raised and dealt with by the trainer during the discussion time in the groups. In this way, participants will be able to resolve any unclear issue and move forward to the next aspects of the case.

In the debriefing session, all groups should present their conclusions and any differences in the approaches they followed or their proposed solution to the case could be identified and discussed. The trainer should use the opportunity to establish whether any aspects of the ESCP and its interaction with other EU legal instruments and procedures remain unclear and revisit them, providing additional information.

A general overview of how to address the different issues raised by the exercise could be provided by the trainer, consolidating the discussions. The solution to the case study suggested by Mr Peter Beaton could constitute a basis for this.

- As this case study is more extensive and contains several questions, the possibility to distribute it in advance to workshop participants, allowing them to go through the facts and perhaps reflect on possible solutions could be considered - especially in the context of shorter workshops. Including the case study in material provided before the workshop or simply making it available a day earlier would be an option.
- Alternatively, allocating some of the questions to each of the working groups would be a way to ensure that all questions will be discussed within the available time: end users having discussed the questions on jurisdiction for example would have the possibility to hear the analysis of their colleagues regarding the other provisions of the ESCP and thus acquire a comprehensive overview of the procedure.

L. Closing session

The closing session aims at summarising the conclusions of the event and attempting an immediate evaluation of its flow and impact. It can also be an opportunity to refer again to the possible use of the training material in future occasions.

1. Conclusions of the workshop

The workshop leader will be responsible for recalling the main elements that were covered during the programme and for identifying some of the most interesting features of the discussions and the exchange of experience between end users. Participants' input on what they found most interesting during the workshop and what they will retain from the discussions with their colleagues and the trainers could also be sought.

2. Evaluation of the workshop

A first discussion as to whether the workshop met end users' training needs could also take place here. Participants should in any case be asked to provide their feedback in writing by completing the initial assessment questionnaire, engaging however in a dialogue with their colleagues and the trainers could be a further means to present their impressions in a more informal way.

- Depending on the structure of the opening session, this part of the workshop could mirror some of the discussions which took place then. If, for example, participants were invited to raise specific questions to be addressed during the workshop, it would be interesting to see if this did indeed take place.

During this de-briefing session, attempts could be made to identify what participants appreciated most during the seminar, which working methods they found more efficient and which of the discussed topics were most and least relevant for their work. It would also be useful to address whether they consider that further elements could have been included for the training to be more comprehensive or better adjusted to their learning priorities and interests. Feedback on the training material provided and its usefulness and accessibility could also be sought.

In addition to the discussion, the workshop leader should use the opportunity to refer to the evaluation of the workshop and measures to ensure the quality control of the work. Reference to the initial assessment and mid-term evaluation procedure could be made, in order to raise participants' awareness, explain the objectives of this procedure and encourage them to contribute by providing their genuine input on how future workshops could be improved.

- Some time during this session could be dedicated to presenting the initial assessment questionnaires and indicating which concrete elements the workshop organisers wish to evaluate in each question.

3. End of the workshop

Before closing the workshop, a reminder could be given of how the material provided during the workshop (background material, electronic documentation, e-learning course) may also be used in the future. Information on any follow-up training programmes could also be provided and the event should close with the workshop leader thanking and saying a few farewell words to participants and trainers.

Objectives of the session:

- Revisiting the key points of the workshop discussions.
- An initial evaluation of the course.
- Ensure effective use of the training material (user's pack).
- End the workshop.

Training material

Necessary material

(to be made available in hardcopy during the session)

- | | |
|----|---------------------------|
| a. | Immediate evaluation form |
|----|---------------------------|

Methodology

1. Timeframe

20 to 30 minutes should suffice for a brief summary of the workshop's main conclusions and an initial discussion on participants' feedback.

2. Trainers' profiles

The closing session should in principle be coordinated by the workshop leader. A further added value would be provided if this role is assigned to the workshop organiser, as he or she would then have the possibility to acquire direct feedback on the various choices made when structuring the course.

3. Teaching method

This session should be held in plenary with the contribution of all participants and, as far as possible, of the trainers.

After the launch of the discussion by the workshop leader, the floor should be given to participants and trainers who should be encouraged to openly share their thoughts and ideas on the training.

- Drawing end users' attention to the importance of evaluation is crucial for its success. Involving them and ensuring that they provide genuine and constructive feedback not only immediately after the seminar but also later, in the framework of the mid-term evaluation, is necessary for an effective assessment of the workshop's impact.

Annex 1 – Workshop programme template

Day I – morning session

- 08:45 Arrival and registration of participants
- 09:00 **Opening session**
- I. EU LEGAL FRAMEWORK ON SMALL CLAIMS**
- 09:15 **Overview of the legal framework on European procedures**
- 10:30 **Scope of the ESCP Regulation**
- 11:10 Coffee break
- 11:30 **International jurisdiction and applicable law in cross-border claims**
- 12:30 **Exercise I: Case study on the applicability of the ESCP Regulation**
- 13:30 Lunch

Day I – afternoon session

- II. THE ESCP: LAUNCHING THE CLAIM – ON THE BASIS OF EXERCISE II**
- 15:00 **Commencement of the procedure**
- 16:30 Coffee break
- 17:00 **Conduct of the procedure and the role of the judge**
- 18:00 End of the first workshop day
- 20:00 Workshop dinner

Day II – morning session

- III. THE ESCP: DEFENCE AND JUDGEMENT – ON THE BASIS OF EXERCISE II**
- 09:00 **Defence and counterclaim**
- 09:30 **Conclusion of the procedure, recognition and enforcement**
- 10:15 **Appeal and review mechanisms**
- 11:00 Coffee break
- IV. CONSOLIDATING CASE STUDY ON THE ESCP**
- 11:20 **Exercise III – consolidating the ESCP**
- 13:30 **Closing session**
- 13:45 Lunch and end of the workshop

Annex 2.1.

Background material - User's pack

To be provided electronically

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. E-learning course

E-learning course on the European small claims procedure

3. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

4. Workshop exercises with suggested solutions

1.	Workshop exercise I on the applicability of the ESCP Regulation and suggested solution by Aude Fiorini
2.	Workshop exercise II on the ESCP and suggested solution by Aude Fiorini
3.	Workshop exercise III: consolidating case study and suggested solution by Peter Beaton

5. Legislation

	Primary legislation
1.	Consolidated version of the treaty on European Union
2.	Consolidated version of the Treaty on the Functioning of the European Union
3.	The Charter of Fundamental Rights of the European Union

	International Convention
4.	European Convention for Human Rights
	Secondary legislation
5.	Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
6.	Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
7.	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 (recast)
8.	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
9.	Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters
10.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
11.	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
12.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
13.	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure
14.	Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims
15.	Council Directive 2002/8/EC of January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
16.	Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters
17.	Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

	Documents from the European Commission
18.	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, COM(2013)794 (19/11/2013)
19.	Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EC) No 861/2007 of the European Parliament and of the Council, COM(2013)795 (19/11/2013)
20.	Practice guide for the application of the European Small Claims Procedure
21.	The European Small Claims Procedure step by step
22.	Information communicated by Member States in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
23.	MEMO/13/1007: Frequently Asked Questions: the European Small Claims Procedure 2.0 (19/11/2013)
24.	MEMO/13/193: A step forward for EU consumers: Questions & answers on Alternative Dispute Resolution and Online Dispute Resolution (12/03/2013)

6. CJEU case law

1.	Judgment of the Court of 17 October 2013, Case C-218/12, Lokman Emrek v Vlado Sabranovic <i>(Jurisdiction over consumer contracts – Causal link between the commercial or professional activity directed to the Member State of the consumer’s domicile via an Internet site and the conclusion of the contract)</i>
2.	Judgment of the Court of 13 December 2012, Case C-215/11, Iwona Szyrocka v SiGer Technologie GmbH <i>(European order for payment procedure – Application for an order which does not comply with the formal requirements laid down by national law– Whether it is possible to claim the interest accrued up to the date of payment of the principal)</i>
3.	Judgment of the Court, 15 March 2012, Case C-292/10, G v Cornelius de Visser <i>(Lack of known domicile or place of abode of the defendant in the territory of a Member State – Jurisdiction ‘in matters relating to tort, delict or quasi-delict’ – Place where the harmful event occurred or may occur)</i>
4.	Judgment of the Court of 17 November 2011, Case C-327/10, Hypoteční banka a.s. v Udo Mike Lindner <i>(Legislation of a Member State making it possible, in the case where the exact domicile of the consumer is unknown, to bring an action against the latter before a court of that State)</i>

5.	<p>Judgment of the Court of 18 October 2011, Case C-406/09, Realchemie Nederland BV v Bayer CropScience AG</p> <p><i>(Definition of 'civil and commercial matters' – Recognition and enforcement of an order imposing a fine – Exequatur procedure – Related legal costs)</i></p>
6.	<p>Judgment of the Court of 22 December 2010, Case C-497/10 PPU, Barbara Mercredi v Richard Chaffe</p> <p><i>(Jurisdiction, recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility – Concept of 'habitual residence' of an infant)</i></p>
7.	<p>Judgment of the Court of 7 December 2010, in Joined Cases C-585/08 and C-144/09, Peter Pammer v Reederei Karl Schlüter GmbH & Co KG and Hotel Alpenhof GesmbH, Oliver Heller</p> <p><i>(Jurisdiction over consumer contracts – Presentation of the voyage and the hotel on a website – Concept of activity 'directed to' the Member State of the consumer's domicile – Criteria – Accessibility of the website)</i></p>
8.	<p>Judgment of the Court of 28 April 2009, Case C-420/07, Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams</p> <p><i>(Judgment given by a Cypriot court sitting in the area effectively controlled by the Cypriot Government and concerning immovable property situated outside that area – Articles 22(1), 34(1) and (2), 35(1) and 38(1) of Regulation (EC) No 44/2001)</i></p>
9.	<p>Judgment of the Court of 2 April 2009, Case C-523/07, proceedings brought by A</p> <p><i>(Jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility – Definition of 'civil matters' – Child's habitual residence)</i></p>
10.	<p>Judgment of the Court of 8 May 2008, Case C-14/07, Ingenieurbüro Michael Weiss und Partner GbR v Industrie- und Handelskammer Berlin</p> <p><i>(Regulation (EC) No 1348/2000 – Service of judicial and extrajudicial documents – Annexes to the document not translated – Consequences)</i></p>
11.	<p>Judgment of the Court of 29 November 2007, Case C-68/07, Kerstin Sundelind Lopez v Miguel Enrique Lopez Lizazo</p> <p><i>(Jurisdiction – Recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility – Respondent not a national or a resident of a Member State – National rules providing for exorbitant jurisdiction)</i></p>
12.	<p>Judgment of the Court of 15 February 2007, Case C-292/05, Irimi Lechouritou and Others v Dimosio tis Omospondiakis Dimokratias tis Germanias</p> <p><i>(Brussels Convention – Scope – Civil and commercial matters – Action for compensation brought in a Contracting State, by the successors of the victims of war massacres, against another Contracting State on account of acts perpetrated by its armed forces)</i></p>
13.	<p>Judgment of the Court of 8 November 2005, Case C-443/03, Götz Leffler v Berlin Chemie AG</p> <p><i>(Judicial cooperation in civil matters – Service of judicial and extrajudicial documents – No translation of the document – Consequences)</i></p>

14.	<p>Judgment of the Court of 20 January 2005, Case C-464/01, Johann Gruber v Bay Wa AG</p> <p><i>(Brussels Convention — Definition of 'consumer contract' — Purchase of tiles by a farmer for roofing a building used partly for private and partly for business purposes)</i></p>
15.	<p>Judgment of the Court of 13 July 2000, Case C-412/98, Group Josi Reinsurance Company SA v Universal General Insurance Company (UGIC)</p> <p><i>(Brussels Convention - Personal scope - Plaintiff domiciled in a non-Contracting State - Material scope - Rules of jurisdiction in matters relating to insurance - Dispute concerning a reinsurance contract)</i></p>
16.	<p>Judgment of the Court of 3 July 1997, Case C-269/95, Francesco Benincasa v Dentalkit Srl.</p> <p><i>(Brussels Convention—Concept of consumer—Agreement conferring jurisdiction)</i></p>
17.	<p>Judgment of the Court of 19 January 1993, Case C-89/91, Shearson Lehman Hutton Inc. and TVB Treuhandgesellschaft für Vermögensverwaltung und Beteiligungen mbH</p> <p><i>(Brussels Convention — Jurisdiction in proceedings concerning contracts concluded by consumers— Concept of consumer— Proceedings brought by a company, as assignee of the claims of a private individual)</i></p>
18.	<p>Judgment of the Court of 16 December 1980, Case C-814/79, Netherlands State v Reinhold Rüffer</p> <p><i>(Brussels Convention – Civil and commercial matters – Concept – Independent interpretation – Criteria – Actions brought by a public authority against a private person on the basis of its public authority powers)</i></p>
19.	<p>Judgment of the Court, 14 October 1976, Cases 29/76, LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol</p> <p><i>(Brussels Convention - Civil and commercial matters – Interpretation – Action between a public authority and a person governed by private law – Exercise of the powers of the public authority)</i></p>
20.	<p>Request for a preliminary ruling from the Amtsgericht Wedding (Germany) lodged on 14 March 2013 - eco cosmetics GmbH & Co. KG v Virginie Laetitia Barbara Dupuy, Case C-119/13</p> <p><i>(European Order for payment – Service of documents – Application for review)</i></p>
21.	<p>Request for a preliminary ruling from the Amtsgericht Wedding (Deutschland) lodged on 14 March 2013 - Raiffeisenbank St. Georgen reg. Gen. m.b.H. v Tetyana Bonchuk, Case C-120/13</p> <p><i>(European Order for payment – Service of documents – Application for review)</i></p>

7. Other documents

1.	Convention on the taking of evidence abroad in civil or commercial matters 18. March 1970
2.	Notes for the guidance of Counsel in written and oral proceedings before the Court of Justice of the European Communities
3.	Notices from European Union Institution and Bodies - Court of Justice: Information note on references from national courts for a preliminary ruling (2009/C 297/01)
4.	ECC-Net Report on the European Small Claims Procedure, September 2012
5.	Practical Application of European Union Regulations Relating to European Union Level Procedure in Civil Cases: the Experience in Baltic States, I. Kacevska, B. Rudevskas, V. Mizaras, A. Brazdeikis, M. Torga, Riga, Vilnius, Tallinn, 2012
6.	Assessment of the socio-economic impacts of the policy options for the future of the European Small Claims Regulation, Final Report, Deloitte, July 2013

8. Useful links

1.	European E-Justice Portal
2.	European Judicial Atlas
3.	European Judicial Network for civil and commercial matters website
4.	EUR-Lex (European Union Law)
5.	Curia (the website of the CJEU)
6.	Small claims minisite
7.	Booklet: Videoconferencing as part of the European E-Justice
8.	The Incoterms Rules

9. General bibliography

Compiled general bibliography
(on the basis of the information provided by national experts)

Annex 2.2.

Background material

Necessary material to be made available in hardcopy during the workshop

1. General information

1.	Final version of the workshop programme
2.	List of trainers
3.	List of participants
4.	Immediate evaluation form

2. Trainers' contributions

Notes, outlines, PowerPoint presentations and written texts provided by the trainers

3. EU Legislation

	Primary legislation
1.	Article 267 of the Treaty on the Functioning of the European Union (consolidated version)
	Secondary legislation
2.	Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)
3.	Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000
4.	Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)
5.	Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure
5.a	Information communicated by Member States in accordance with Article 25 of Regulation (EC) No 861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure.
6.	Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure

7.	<u>Regulation (EC) No 805/2004 of the European Parliament and of the council of 21 April 2004 creating a European Enforcement Order for uncontested claims</u>
8.	<u>Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters</u>
9.	<u>Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters</u>

4. Workshop exercises

1.	Workshop exercise I on the applicability of the ESCP Regulation
2.	Workshop exercise II on the ESCP
3.	Workshop exercise III: consolidating case study

Annex 3.1 – Workshop Exercise I

Case study on the applicability of the European Small Claims Procedure¹

Paul has lived all his life in Thionville (France). When he was across the nearby border in Luxembourg for business, he came across local newspaper ads for private car sales. He noticed one drafted by Julia for the sale of her BMW car. Julia is a University lecturer born and permanently resident in Luxembourg.

Last year Paul went to Julia's address in Luxembourg, tested the car in her presence and agreed to buy it for €5000. It was further agreed that he should pay €2000 deposit straight away by bank transfer and that the sale would be completed once Julia delivered the car to his home in Thionville 3 weeks later, at which stage he would pay the rest of the purchase price in cash.

On the agreed date, as she was driving to Thionville, Julia crashed into a lorry. Luckily she was only lightly injured, but the BMW car was a write off.

Paul now wants his €2000 back, but Julia has, for several months, ignored his phone calls, emails, texts and letters and still has not refunded the deposit.

Question 1: Assess whether Regulation (EC) 861/2007 is applicable to this claim:

1.1. Which court would have jurisdiction to hear Paul's claim against Julia?

Recital 11 provides that "the claim form should be submitted only to a court or tribunal that has jurisdiction" and Art 4 states that the procedure is commenced when the claim form is lodged "with the court or tribunal with jurisdiction". Other than that, the Small Claims Regulation does not contain any provisions regarding jurisdiction. So the general EU rules on jurisdiction in civil and commercial matters need to be consulted. These rules are currently found in the Brussels I Regulation (Regulation (EC) 44/2001).

As the matter falls within the material, territorial and temporal scope of the Brussels I Regulation (it is a civil and commercial matter - see below - the defendant appears to be domiciled in an EU MS - see below - and the Brussels I Regulation has been in force between France and Luxembourg since 2002), the jurisdiction chapter of this instrument applies. Arts 22, 24, 8-21 and 23 do not apply so jurisdiction would be governed either by Art 2 (domicile of the defendant) or 5(1)(b) (place of delivery of the goods in a Member State).

Paul could thus choose to bring proceedings either in Luxembourg (where Julia is domiciled - see discussion below) or in France (where the car should have been delivered).

¹ Developed by Aude Fiorini, Senior Lecturer, Dundee University Law School

According to information supplied by each Member State, the court with jurisdiction *ratione materiae* in France would be the district courts or the commercial courts of Thionville, while the matter should be brought in Luxembourg before the Justice of the Peace of the city of Luxembourg. For further detail, see the European Judicial Atlas.

1.2. Is the case a cross-border case?

According to Art 3(1) of Regulation (EC) 861/2007, “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”. We have established which courts may be competently seised under the Brussels I Regulation.

Let’s assume that Paul would start proceedings under Art 5(1) of the Brussels I Regulation before a French court, the case would be considered to be a cross-border case if Julia were found to be habitually resident in Luxembourg or domiciled there at the date the claim form is received (Art 3(3)).

Domicile is defined by reference to the definition provided in the Brussels I Regulation (Art 59 – domicile of natural persons) – to find out if Julia is domiciled in Luxembourg, the Luxembourg definition of domicile would need to be applied. A domicile in Luxembourg presupposes that a person has registered on the population register of a city.

Habitual residence is a concept which is considered as being flexible and largely factual, and thus not usually defined. While the Regulations Rome I and II (which also apply to civil and commercial matters) partly define habitual residence (see respectively Arts 19 and 23), this notion is not defined at all in Regulation 861/2007. The CJEU has not yet provided any definition of HR in the context of the present Regulation, but its case law on habitual residence, albeit in the context of different Regulations, is vast. It may be loosely defined as the permanent or habitual centre of a person’s interests. Given the stability of Julia’s life in Luxembourg there is little doubt that she would be considered as having her habitual residence in this country too.

If Paul had chosen to start proceedings in Luxembourg under Art 2, the applicability of the Small Claims Regulation would depend on whether he has a French domicile under French law or indeed is habitually resident there.

Under French law, domicile is defined under Arts 102/103 of the civil code. Domicile is equated to a person’s principal establishment and is changed when a person establishes residence elsewhere with the intention of residing there permanently. Given the stability of Paul’s life in France, there is no doubt that he can be considered domiciled there.

1.3. Is it a civil and commercial matter?

Neither Art 2(1) nor any other provisions of Regulation (EC) 861/2007 define the notion of civil and commercial matters. The nature of the court or tribunal seised is of no relevance and it is understood that this notion is to be interpreted autonomously, in line with the Brussels I, EEO and EPO Regulations, and independently from the diverse meaning that 'civil and commercial matter' may have in the different legal systems. The ECJ/CJEU has issued a large number of judgments on the definition of 'civil and commercial matters' in the context of the Brussels I regime (Convention or Regulation) and has generally considered that there are two relevant elements: the subject matter of the dispute and the nature of the action and the parties involved and the nature of their relationship.

Guidance can for example be found in paragraphs 58-59 of Case C-420/07 *Apostolides* [2009] ECR I-3571 and the judgments referred to therein:

58 Attention should first be drawn in this connection to the settled case law that "civil and commercial matter" is an independent concept to be interpreted by referring, first, to the objectives and scheme of Regulation No 44/2001 or of the Brussels Convention, and second, to the general legal principles which stem from the corpus of the national legal systems: see *LTU Lufttransportunternehmen GmbH & Co KG v Eurocontrol* (Case 29/76) [1976] ECR 1541; *Netherlands State v Rüffer* (Case 814/79) [1980] ECR 3807, para 7; *Gemeente Steenbergen v Baten* (Case C-271/00) [2003] 1 WLR 1996, para 28; *Préservatrice foncière TIARD SA v Staat der Nederlanden* (Case C-266/01) [2003] ECR I-4867, para 20; *Land Oberösterreich v CEZ as* (Case C-343/04) [2006] ECR I-4557, para 22 and *Lechouritou v Dimosio tis Omospondiakis Dimokratias tis Germanias* (Case C-292/05) [2007] ECR I-1519, para 29.

59 Only actions between a public authority and a person governed by private law fall outside the scope of the Brussels Convention, and only in so far as that authority is acting in the exercise of public powers: see, with regard to the Brussels Convention, *Verein für Konsumenteninformation v Henkel* (Case C-167/00) [2002] ECR I-8111, para 26'.

In light of the above, it derives that the case at hand can be considered as dealing with a "civil and commercial matter" since the dispute arose in the context of a sales contract between two individuals.

1.4. Paul is concerned that the Regulation would not apply as the price of the car, as agreed in the contract drawn up between him and Julia, is 5000 Euros, thus over the 2000 Euros threshold established by the Regulation. Is this concern serious?

The overall contractually agreed price of the car is of no relevance, all that matters is the value of the claim (Art 2(1)).

1.5. Paul asked his friend Peter, who studied law, to advise him on his situation. According to Peter, it is really not clear at all that Regulation (EC) 861/2007 should apply to Paul's case as Julia's prolonged silence shows that she contests the claim. Is this correct?

The issue of whether Julia contests the claim or not can remain undecided as Regulation (EC) 861/2007 applies to both uncontested and contested claims (unlike the EPO Regulation – Regulation (EC) 1896/2006, which only applies to uncontested claims).

However it may be noted that a defendant who has been prevented from objecting only by reason of force majeure or extraordinary circumstances without any fault may apply for a review under Art 18.

1.6. Paul's friend Peter also told him that even if his claim fell within the scope of Regulation (EC) 861/2007, he could only rely on the European procedure if he could establish that there was no other simplified domestic procedure applicable to his claim. Is this correct?

No. The European, harmonised, procedure established by Regulation (EC) 861/2007 is entirely optional. It is offered to litigants as an alternative to the procedures existing under the law of the Member States (Art 1(1)).

Question 2: Would the Regulation apply to Paul's claim if Julia was not living permanently in Luxembourg but working one semester a year at the University of Luxembourg and the other semester at the University of Metz (France) thus splitting her time equally between Luxembourg and France?

As a matter of EU law, there is no basis for any dual habitual residence. Under EU law she would be habitually resident in what was her home state (Luxembourg) even if she spends 6 months of each year living and working abroad. There is less uncertainty as regards the issue of her domicile, a more legalistic notion. So even if Paul chose to bring proceedings in France, the matter would be regarded as cross-border if Julia has her name on the population register of Luxembourg and the Regulation thus applicable.

Question 3: Assuming that the Regulation applies to Paul's claim, could Paul use this procedure to recover more than the 2000 Euros that he paid to Julia? In particular, Paul has incurred expenses as he travelled to Julia's address twice to try and speak with her; has sent her 15 letters, and eventually contacted a lawyer for advice, who charged him for it.

Art 2(1) provides that that only claims not exceeding 2000 EUR *at the time the court is seised* fall within the scope of Regulation (EC) 861/2007.

The calculation of this threshold however excludes “all interest, expenses and disbursements” which might be added to the claim and may thus appear in the operative part of the judgment. See also recital 10.

These additional expenses would thus not exclude Paul from making use of the European small claims procedure to recover the deposit he paid.

Question 4: Imagine that Julia had not been involved in a road traffic accident on her way to Thionville, and everything had gone according to plan with the sale, but she had taken her pit-bull Hector with her to Thionville to deliver the car. Hector, over excited following the car journey, had repeatedly bitten into and scratched a leather armchair in Paul’s living room – leading Paul to spend 1100 Euro in repairs. Could Paul use Regulation (EC) 861/2007 to recover the 1100 Euros?

Exactly the same reasoning would apply as before to questions relating to the nature of the claim (civil and commercial); its threshold (less than 2000 Euros) and its cross-border character.

Paul’s claim would be delictual in nature but the same principles apply as above regarding its characterisation as a civil and commercial matter.

As regards the question whether this case would be a cross-border case, the discussion of the respective domicile and habitual residence of each party would be unchanged but, the court with jurisdiction under Regulation (EC) 44/2001 would be either the court of the domicile of the defendant (Luxembourg) or, under Art 5(3), the court of the place where the harmful event occurred (France).

Question 5: Imagine that Julia had not been involved in a road traffic accident on her way to Thionville, and everything had gone according to plan with the sale, but Julia, who is in her spare time the author of a successful blog which has followers in several countries, including France, wrote in a post immediately after the completion of the sale and exchange of money and car. In that post she mentioned that had just sold her BMW to ‘a weirdo’ named ‘Paul ** from Thionville’, who ‘clearly deals in illicit substances’, ‘was impossible to keep at arms length’ and ‘groped’ her body ‘each time’ she ‘came to his vicinity’. In addition she posted a picture of the two of them in front of the car. Quid juris?**

Same reasoning and discussion as Question 5.1. However, although civil and commercial in nature, this particular claim would be excluded from the scope of Regulation (EC) 861/2007, as Art 2(2) provides the Regulation does not apply to claims relating to a breach of personality rights, including defamation.

Question 6: Would any of your answers on the applicability of the European small claims procedure be different if Paul was domiciled and habitually resident in Denmark and Julia had her domicile and habitual residence in Germany?

Yes and No.

Denmark is bound by the Brussels I Regulation but not by the European Small Claims Regulation. If Paul wants to bring proceedings against Julia, then Regulation (EC) 44/2001 applies, and he could choose to bring proceedings either in Germany under Art 2 or in Denmark under Art 5(1)(b).

- If he chose to bring proceedings in Denmark, he could not rely on Regulation (EC) 861/2007 (see recital 38) so would need to rely on Danish rules of procedure.
- If however he chose to bring proceedings in Germany, the fact that he is domiciled/habitually in Denmark would be of no relevance – see ECJ Case C-412/98 *Group Josi*, ECR [2000] I-5925 – and the harmonised rules on European Small Claims would apply.

Question 7: Would the Regulation apply to Paul's claim if Julia, who had been living in Luxembourg for years prior to drawing up the contract with Paul, and had at that stage also given him her Luxembourg passport number, had 'disappeared' by the time Paul wanted to start proceedings and her habitual residence or domicile could not be established?

If Julia's whereabouts are unclear, this would of course have an impact both on the determination of her domicile and that of her habitual residence.

This would have implications both on the applicability of Regulation (EC) 44/2001 and of that of Regulation (EC) 861/2007.

There is no case law on this issue in the context of Regulation (EC) 861/2007; however the CJEU has dealt with it in the context of the Brussels I Regulation. Two cases are of particular relevance in that the uncertainty regarding the domicile of the defendant and its impact on the applicability of Brussels I, and of the EEO Regulation (Regulation (EC) 805/2004) were discussed in CJEU Cases C-327/10 *Hipotecni banka* and C-292/10 *G v Cornelius de Visser*. In both cases, the absence of firm evidence that the defendant was in fact domiciled outside the EU and the fact that all investigations required by the principle of diligence and good faith had been unsuccessfully undertaken, were taken into account in deciding whether jurisdiction existed under Brussels I.

Case C-327/10 sought to answer the question whether Regulation No 44/2001 must be interpreted as precluding a provision of national law of a Member State which enables proceedings to be brought against persons whose domicile is unknown.

- 37 “In order to answer that question, it must be noted at the outset that the purpose of Regulation No 44/2001, like the Brussels Convention, is not to unify the procedural rules of the Member States, but to determine which court has jurisdiction in disputes concerning civil and commercial matters in relations between Member States and to facilitate the enforcement of judgments (see, to that effect, Case C-18/02 *DFDS Torline* [2004] ECR I-1417, paragraph 23).
- 38 In the absence of an express provision in Regulation No 44/2001 which defines jurisdiction in a case such as that in the main proceedings, where the exact domicile of the defendant is unknown, the first matter to be determined is whether, and, if so, in accordance with which provision that regulation may none the less be held to be applicable and whether it is possible to derive from it a criterion on which to base jurisdiction.
- 39 In this regard, as the case in the main proceedings concerns an action brought against the consumer by the other party to the contract, it must be borne in mind that Article 16(2) of Regulation No 44/2001 provides that such proceedings may be brought only in the courts of the Member State in which the consumer is domiciled.
- 40 Thus, where proceedings against a consumer are brought before a national court, that court must, first of all, determine whether the defendant is domiciled in the Member State of that court by applying, in accordance with Article 59(1) of Regulation No 44/2001, that Member State’s own law.
- 41 Secondly, where, as is the case in the main proceedings, that court concludes that the defendant in the main proceedings is not domiciled in the Member State of that court, it must then examine whether he is domiciled in another Member State. To this end it applies, in accordance with Article 59(2) of Regulation No 44/2001, the national law of that other Member State.
- 42 Lastly, where the national court, on the one hand, is still unable to identify the place of domicile of the consumer and, on the other hand, also has no firm evidence to support the conclusion that the defendant is in fact domiciled outside the European Union, a situation in which Article 4 of Regulation No 44/2001 may be applicable, it is necessary to examine whether Article 16(2) of that regulation may be interpreted as meaning that, in a case such as that envisaged, the rule on jurisdiction of the courts of the Member State in which the consumer is domiciled, laid down in the latter provision, also covers the consumer’s last known domicile.
- 43 Such an approach appears to be based on the logic of that regulation and is in keeping with the system established by it.
- 44 It is, above all, in accordance with the objective, pursued by Regulation No 44/2001, of strengthening the legal protection of persons established in the European Union, by enabling the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued (see, inter alia, Joined Cases C-509/09 and C-161/10 *eDate Advertising and Others* [2011] ECR I-0000, paragraph 50).

- 45 Such a solution, while promoting the application of the uniform rules laid down by Regulation No 44/2001 as opposed to that of divergent national rules, then enables a situation to be avoided in which the fact that it is not possible to identify the current domicile of the defendant precludes determination of the court having jurisdiction, thereby depriving the applicant of his right to bring proceedings. Such a situation may arise, inter alia, in a case such as that in the main proceedings, in which a consumer who, pursuant to Article 16(2) of that regulation, ought to be sued in the courts of the Member State in which he is domiciled, renounced his domicile before the proceedings against him were brought.
- 46 Lastly, for the purpose of applying Article 16(2) of Regulation No 44/2001, the criterion of the consumer's last known domicile ensures a fair balance between the rights of the applicant and those of the defendant precisely in a case such as that in the main proceedings, in which the defendant was under an obligation to inform the other party to the contract of any change of address occurring after the long-term mortgage loan contract had been signed.

In Case C-292/10 the Court had to deal with the additional question whether European Union law must be interpreted as precluding certification as a European Enforcement Order within the meaning of Regulation No 805/2004 of a judgment by default issued against a defendant whose address was unknown.

- 62 'A judgment by default is indeed one of the enforcement titles within the meaning of Article 3 of that regulation which may be certified as a European Enforcement Order. As recital 6 in the preamble to Regulation No 805/2004 states, the absence of objections from the debtor as stipulated in Article 3(1)(b) of that regulation can take the shape of default of appearance at a court hearing or of failure to comply with an invitation by the court to give written notice of an intention to defend the case.
- 63 Nevertheless, under Article 14(2) of that regulation, 'for the purposes of this Regulation, service under paragraph 1 is not admissible if the debtor's address is not known with certainty'.
- 64 It is therefore apparent from the very wording of Regulation No 805/2004 that a judgment by default issued in circumstances where it is impossible to ascertain the domicile of the defendant cannot be certified as a European Enforcement Order. That conclusion also follows from an analysis of the objectives and scheme of that regulation. The regulation institutes a derogation from the common system of recognition of judgments, the conditions of which are, as a matter of principle, to be interpreted strictly.
- 65 Thus, recital 10 in the preamble to Regulation No 805/2004 states that where a court in a Member State has given judgment on an uncontested claim in the absence of participation of the debtor in the proceedings, the abolition of any checks in the Member State of enforcement is inextricably linked to and dependent upon the existence of a sufficient guarantee of observance of the rights of the defence.

- 66 As is clear from paragraph 57 of the present judgment, the defendant, by opposing, in accordance with Article 34(2) of Regulation No 44/2001, recognition of the judgment issued against him, will have the opportunity to ensure respect for his rights of defense. That guarantee would, however, be lacking if, in circumstances such as those of the main proceedings, a judgment by default issued against a defendant who was unaware of the proceedings was certified as a European Enforcement Order.
- 67 It should therefore be held that a judgment by default issued against a defendant whose address is unknown must not be certified as a European Enforcement Order within the meaning of Regulation No 805/2004.'

With both of these cases in mind it would appear that, even if it could be admitted that the Brussels I rules on jurisdiction (eg. based the place of delivery of the goods under Art 5(1)(b) or the last known domicile of the defendant) might be applied to this case, it does not mean that Regulation (EC) 861/2007 would be applicable.

First, it may be difficult to establish the cross-border nature of the claim in situations such as the present instance where the place of delivery happens to be in the country where the claimant is both habitually residence and domiciled.

However, should this hurdle be overcome the question remains open on the principle as to whether a Regulation, such as Regulation (EC) 861/2007, which abolishes exequatur may be used against a defendant whose domicile and habitual residence are unknown.

Reference may be made to:

- Recital 9 (which states that the Regulation “seeks to promote fundamental rights (...). The court or tribunal should respect the right to a fair trial and the principle of adversarial process”);
- Arts 18 and 22;
- the fact that the indication of the defendant’s address is compulsory on the claim form and
- the reasoning of the CJEU in the *Cornelius de Visser* case (the defendant’s right of the defence would not be guaranteed if the ESCP were to be allowed and thus lead to an enforceable judgment against a defendant that would be unaware of the proceedings);

to conclude that Regulation (EC) 861/2007 would not apply to this case.

Annex 3.2. - Workshop exercise II

Case study on the European Small Claims Procedure¹

Caroline, the manager of a small independent shop called Beauté Nature Boutique (BNB) - a business registered in France and whose premises are in the French Alps - purchased 10 handmade handbags and cushions from Tartanic Ltd, a family business based, and exclusively operating, in Plockton, in the Highlands of Scotland. According to Caroline's agent, the agreed price was GBP 1,250 (GBP 1000 for the handbags and 250 for the cushions).

A collaborator of Caroline picked up the order in Glasgow at an international fair devoted to natural, fairtrade and handmade products in June 2012. She paid GBP 1,000 as she usually does (most of her previous orders were for that sum), through international bank transfer on 24 August 2012.

Caroline displayed the bags and cushions around her shop and shop window, often hanging the bags from the ceiling or walls in late June. After a few weeks, she noticed that the bag's handles were looking damaged and torn. Given the relatively high price tag (BNB's exacting customers would certainly not pay EUR 200 for a damaged looking handbag), Caroline decided to return the whole batch to Plockton for replacement.

She was angry and upset that, a few weeks later, on 1 October 2012, she received the same bags back, with no explanation from Tartanic. She called them several times and eventually confronted Jamie, the founder of Tartanic, over the phone. He claimed that there was nothing wrong with the bags, whose handles had been clearly damaged because of the way they had been hung and the fact they were not protected from the Alpine sun in the shop window and shop.

Caroline demanded reimbursement but Jamie refused. She nonetheless sent the bags all back and demanded full reimbursement in writing. She heard nothing back. Jamie is no longer taking her phone calls.

1. Does this claim fall within the scope of Regulation (EC) 861/2007?

By reference to Articles 2 and 3 of the Regulation, the following elements would have to be considered:

Article 2 - Scope

1. This Regulation shall apply, in cross-border cases, to civil and commercial matters, whatever the nature of the court or tribunal, where the value of a claim does not exceed EUR 2000 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, maintenance obligations, wills and succession;

¹ Developed by Aude Fiorini, Senior Lecturer, Dundee University Law School

- (c) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- (d) social security;
- (e) arbitration;
- (f) employment law;
- (g) tenancies of immovable property, with the exception of actions on monetary claims; or
- (h) violations of privacy and of rights relating to personality, including defamation.

3. In this Regulation, the term "Member State" shall mean Member States with the exception of Denmark.

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 59 and 60 of Regulation (EC) No 44/2001.
3. The relevant moment for determining whether there is a cross-border case is the date on which the claim form is received by the court or tribunal with jurisdiction.

- **civil and commercial matter** : No difficulty in this case – the case would be considered a 'civil and commercial matter' as it refers to a contractual relationship between . As already discussed in the context of Exercise 1, this notion has to be interpreted autonomously and in light of the CJEU jurisprudence, but the elements to concentrated upon are the subject matter of the dispute, the nature of the action, the parties involved and their relationship.
- **cross-border case:** depends on which court has jurisdiction and on the respective domiciles and habitual residences of the parties.
 - o BNB is domiciled in France under Art 60 of the Brussels I Regulation; Tartanic Ltd in Scotland.
 - o As regards the jurisdiction of the court, reference will have to be made to Regulation Brussels I. In the present case, the courts with jurisdiction both under Art 2 and Art 5(1)(b) would be Scottish courts.
 - o Thus the cross-border condition is met.
- **claim under EUR 2000?**
 - o According to the conversion rate applicable at the time, BNB paid EUR 1263.60 for the order (payment took place on 24.8.2012). However BNB's French bank in addition imposed a flat fee of EUR 18 fee for international transfer outside the Eurozone. Total: EUR 1281.60.
 - o BNB would also like to claim for the postage and telephone costs incurred, an additional EUR 38.
 - o The total (EUR 1339.60) would still be below the EUR 2000 threshold.
- **Geographical and temporal scope:** the Regulation does not apply in Denmark (recital 38) and applies since 1.1.2009 (Art 29).

2. Caroline/BNB wants to start the procedure against Tartanic under Regulation (EC) 861/2007. Does BNB need a lawyer?

No. Legal representation is not compulsory, according to Art 10.

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

Caroline may find it helpful to seek advice from a legal professional but information and practical support (though not legal advice) can in principle be provided through other channels. See Articles 11, 12, 24 & 25.

Article 11 - Assistance for the parties
The Member States shall ensure that the parties can receive practical assistance in filling in the forms.

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.

Article 24 - Information
The Member States shall cooperate to provide the general public and professional circles with information on the European Small Claims Procedure, including costs, in particular by way of the European Judicial Network in Civil and Commercial Matters established in accordance with Decision 2001/470/EC.

Article 25 - Information relating to jurisdiction, means of communication and appeals

1. By 1 January 2008 the Member States shall communicate to the Commission:
 - (a) which courts or tribunals have jurisdiction to give a judgment in the European Small Claims Procedure;
 - (b) which means of communication are accepted for the purposes of the European Small Claims Procedure and available to the courts or tribunals in accordance with Article 4(1);
 - (c) whether an appeal is available under their procedural law in accordance with Article 17 and with which court or tribunal this may be lodged;
 - (d) which languages are accepted pursuant to Article 21(2)(b); and
 - (e) which authorities have competence with respect to enforcement and which authorities have competence for the purposes of the application of Article 23.Member States shall apprise the Commission of any subsequent changes to this information.
2. The Commission shall make the information notified in accordance with paragraph 1 publicly available through publication in the Official Journal of the European Union and through any other appropriate means.

Sources of information include the European Judicial Atlas and the e-justice Portal.

3. Caroline/BNB wants to start the procedure against Tartanic under Regulation (EC) 861/2007. How should she proceed?

Refer to Article 4:

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.
- (...)

Refer to Article 6:

Article 6 - Languages

1. 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.
2. 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.
3. Where a party has refused to accept a document because it is not in either of the following languages:
 - (a) the official language of the Member State addressed, or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected or to where the document is to be dispatched; or
 - (b) a language which the addressee understands,the court or tribunal shall so inform the other party with a view to that party providing a translation of the document.

The following steps will have to be followed by Caroline:

a. Find the relevant form and fill it in.

- Go to the e-justice portal:
https://e-justice.europa.eu/content_small_claims_forms-177-en.do
- It may be useful to download a blank form to see the information required
- Once Caroline has clicked on the form that she wants to complete (form A), she would be prompted to a page asking her to choose which country the form will be sent to: https://e-justice.europa.eu/dynform_intro_form_action.do?idTaxonomy=177&formSelectiondynform_sc_a_1_action

- Having chosen the UK, she would then be given the following information:
 - o Selected country: **United Kingdom**
 - o For this country, you can send your form by:
 1. England and Wales The means of communication acceptable by courts in England and Wales for the purposes of commencing the European Small Claims Procedure is by post (due to the necessity to take a court fee to issue the process – Courts in England and Wales cannot at the moment accept payment of court fees by credit or debit cards). However, subsequent documents will be allowed to be sent to the court by post, facsimile or by e-mail in accordance with Part 5.5 of the Civil Procedure Rules and Practice Directions which contains rules for filing and sending documents to court.
 2. Scotland The means of communication acceptable by courts in Scotland for the purposes of commencing the European Small Claims Procedure will be similar to that followed in the domestic small claim which is by first class recorded delivery post.
 3. Northern Ireland The means of communication acceptable by courts in Northern Ireland for the purposes of commencing the European Small Claims Procedure will be similar to that followed in the domestic small claims procedure, which is by first class recorded delivery post.
 4. Gibraltar The means of communication that will be acceptable by the Courts in Gibraltar will be by post alone (due to the necessity to take a court fee to issue the process).
 - o For this country, you can send the form in these languages: English (en)
- Then it would be preferable to fill in the form on-line: Although no information is provided before Caroline fills in the form, she can download the completed form in the correct language of the court at the end of the process – however of course she will or may have filled it in in French.

b. Find the competent court

- Go to the European judicial Atlas http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_information_en.htm
- Click on court with jurisdiction in the left hand menu: http://ec.europa.eu/justice_home/judicialatlascivil/html/sc_courtsjurisd_en.jsp#statePage0
- Choose the relevant country and enter the information:

The screenshot shows the 'Courts with jurisdiction' section of the European Small Claims Procedure website. The selected country is the United Kingdom. The page is divided into two main sections: '1. COMMUNICATIONS' and '1. COURTS WITH JURISDICTION'.

1. COMMUNICATIONS

1. England and Wales

The court(s) that have jurisdiction to give judgment in the European Small Claims Procedure in England and Wales are the county court and the High Court of Justice. In most cases the procedure will be before a District Judge in a county court.

The jurisdiction of the county courts is entirely statutory and covers almost the whole field of civil law. The general jurisdiction in civil law is mostly concurrent with that of the High Court, save that personal injury claims for less than £50,000 and money claims for less than £15,000 must be started in the county court. Further detail is to be found in the [High Court and County Courts Jurisdiction Order 1991](#) (as amended). A number of statutes confer exclusive jurisdiction on the county courts - for example, virtually all cases under the Consumer Credit Act 1974, and most actions by mortgage lenders and landlords.

A claim can be issued in any county court in England and Wales. The Court Service website has the addresses of all the [county courts](#) and [details of the High Court](#).

2. Scotland

The court that has jurisdiction to give judgment in the European Small Claims Procedure in Scotland is the [sheriff court](#) and in all cases the procedure will be before a sheriff.

3. Northern Ireland

The court that has jurisdiction to give judgment in the European Small Claims Procedure in Northern Ireland is the [small claims court](#) and in all cases the procedure will be before a district judge.

4. Gibraltar

The Court which will have jurisdiction to give judgment in the European Small Claims Procedure in Gibraltar is the Supreme Court of Gibraltar. The procedure will be before the Master of the Supreme Court who is the designated Judge for Small Claims.

1. COURTS WITH JURISDICTION

Postal Code:

Municipality:

(Rockton)

Upon clicking, the address and contact details of the relevant court will appear.

The screenshot shows a search interface with three main sections:

- COURTS WITH JURISDICTION:** Includes input fields for 'Postal Code' and 'Municipality' (with 'Plockton' entered).
- MUNICIPALITY (SEARCH RESULTS):** A list box containing 'Plockton'.
- TERRITORIALLY COMPETENT COURTS FOR Plockton:** A table with the following details:

Dingwall Sheriff Court Administrative Address: Sheriff Court House Ferry Road; IV15 9QX Dingwall Tel.: 01349-863153 E-Mail: Dingwall@scotcourts.gov.uk Fax: 01349-863153

c. How should the form be sent to the court? Are there additional documents Caroline should supply?

Caroline would need to send claim form A and all necessary supporting documents to the competent court, using the correct method of communication.

The correct method of communication in this case is first class recorded delivery post

- this is clear from the information provided above, point a,
- but also from the document containing the consolidated version Art 25 declarations, which is available from the European Judicial Atlas:

Go to the Small Claims pages of the Atlas:

The screenshot shows the 'EUROPEAN JUDICIAL ATLAS IN CIVIL MATTERS' website. The navigation bar includes 'Member States' Courts', 'Legal Aid', 'Mediation', 'Serving Documents', 'European Cross-border Procedures', 'Taking Evidence', 'Recognizing and Enforcing Judgements', 'Family law', and 'Competent authorities'. The main content area is titled 'Small Claims >>> Information' and contains the following text:

INFORMATION

Council Regulation 861/2007 of 11 July 2007 establishing a European Small Claims Procedure seeks to improve and simplify procedures in civil and commercial matters where the value does not exceed 2000 €. The Regulation applies between all Member States of the European Union with the exception of Denmark. The Small Claims procedure operates on the basis of standard forms. It is a written procedure unless an oral hearing is considered necessary by the court. The Regulation also establishes time limits for the parties and for the court in order to speed up litigation. The Regulation provides for four standard forms. The ATLAS provides you with information concerning the application of the Regulations and a user-friendly tool for filling in the forms. The forms are only available on the [European e-Justice Portal](#).

SUMMARY: REGULATION (EC) NO. 861/2007

- [Scadplus](#)
- [European Judicial network in civil and commercial matters](#)

Click on "Documents" in the left hand menu

Member States' Courts Legal Aid Mediation Serving Documents **European Cross-border Procedures** Taking Evidence

Small Claims >>> Documents

Information
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DOCUMENTS

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- Communication of the Member States

REGULATION

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

COMMUNICATION OF THE MEMBER STATES

[Consolidated Version](#) (PDF File 282 KB) (Updated 17.12.2010)

Click on the link entitled "Consolidated Version".

4. What will the court do upon receipt of the claim form?

a. What if the court considers that parts of form A are not appropriately completed?

See Art 4(4)

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.
(...)

The court will use form B to require the claimant to complete the necessary fields or rectify them.

b. What if BNB had sent the form to the court in French rather than English as imposed by the Scottish Legal System? Please proceed as the competent court would proceed in this case.

The court will use form B to require the claimant to submit the form in the correct language. This can be emailed to the claimant (in this case, an automated covering email is sent in the language understood by the claimant).

c. What will be the consequences if the claimant (BNB) does not provide the rectifications/clarifications asked in the time specified by the court?

See Art 4

Article 4 - Commencement of the Procedure

(...)

4. (...)

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 will dismiss the application– this is also clearly stated on form B.

d. What if the court considers that the claim is manifestly unfounded?

The application will be dismissed (Art 4(4)).

e. What should the court do if it does not understand the witness statement provided by Caroline?

The Regulation does not require the claimant to provide supporting documents in the language of the Court.

The position in case the Court does not understand the witness statement will depend on whether the translation of that statement (or part of it) appears to be necessary to the Court for giving its judgments.

See Art 6(1) & (2)

Article 6 - Languages

1. 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.

2. 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.

(...)

f. What should the Court do if it has all the relevant elements and wishes for the procedure to continue? Please proceed as the Court would.

See Art 5(2)

Article 5 - Conduct of the Procedure

(...)

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.

It should fill in part I of Form C and send it to the defendant; a copy of form A, where applicable form B and the supporting documents will be sent to the defendant (Art 5(2)) within 14 days, in accordance with Art 13, i.e. "by post attested by an acknowledgment of receipt".

Find and complete Form C on the e-justice portal.

5. What will the defendant (Tartanic) need to do at that stage?

5.1. What if Tartanic wishes to respond to the claim?

a. Tartanic simply wants to:

- defend its position (eg considers the claim to be entirely unfounded and even if it was founded, Tartanic considers they should not pay back the EUR 18 fees imposed by the bank and there is no issue with the cushions anyway)
- request an oral hearing

What should Jamie do to defend Tartanic's position?

Refer to Art 5(3) & (4)

Article 5 - Conduct of the Procedure

(...)

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.

(...)

- Fill in Part II of form C that the Court sent to him;
- Attach any appropriate supporting documents
- Return all to the same court within 30 days.

The Court would then dispatch a copy of these to the claimant (within 14 days).

Will the court definitely hold an oral hearing? Would Caroline need to go to Scotland in this case?

Not necessarily: the court may refuse to hold an oral hearing or hold one via videoconference:

Refer to Arts 5(1) & 8 and discuss the arguments in favour and against organising such meeting that should be examined by the court.

Article 5 - Conduct of the Procedure

1. The European Small Claims Procedure shall be a written procedure. The court or tribunal shall hold an oral hearing if it considers this to be necessary 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 obviously 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.

Article 8 - Oral hearing

The court or tribunal may hold an oral hearing through video conference or other communication technology if the technical means are available.

b. Tartanic disagrees with BNB's claim and in addition wants to claim that, in any case, BNB has failed to pay the agreed contractual price in full. What if Tartanic considers that BNB failed to pay GBP 250?

Is this a counterclaim? See Recital 16.

Tartanic would need to do the same as above under aa.

In addition, Tartanic would have to fill in standard form A for its counterclaim, and submit it with all supporting documents: proceed as explained above, point 2.a.

Refer to Art 5(6)

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.

What if BNB does not respond to the counterclaim within 30 days of being served?

Refer to Art 12(2) and 14(1).

Article 12 - Remit of the court or tribunal

(...)

2. If necessary, the court or tribunal shall inform the parties about procedural questions.

(...)

Article 14 - Time limits

1. Where the court or tribunal sets a time limit, the party concerned shall be informed of the consequences of not complying with it.

(...)

If BNB does not say anything within 30 days and time limits have not been extended, the court will issue a judgment : see Art 7(3):

Article 7 - Conclusion of the Procedure

(...)

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.

What if Tartanic considers that the overall contract price was GBP 3,250; therefore claims BNB should pay Tartanic GBP 2,250?

See above under a and b.

Note that in this case however, the European Small Claims procedure will not be available:

Refer to Art 5(7)

Article 5 - Conduct of the Procedure

(...)

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.

The Court will inform the parties that the claim/counterclaim will be dealt with in accordance with the normal procedural rules (cf Art 4(4)).

5.2. What if Tartanic does nothing at all?

If Tartanic does not say anything within 30 days, the court will issue a judgment: see Art 7(3):

Article 7 - Conclusion of the Procedure

(...)

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.

This judgment will be enforceable, Art 15(1). However:

- if Tartanic has ignored the proceedings willingly, it will not be able to oppose the judgment at all (the fact that a judgment has been issued by default is not a ground of non-enforceability, see Art 22)
- if Tartanic was not aware of it (service was not made to him personally and not in sufficient time to arrange for his defence), then Tartanic may apply for a review (Art 18)

6. Caroline (BNB) wants to know how and when the whole procedure will conclude

a. How quickly will the Court then make a judgment?

It depends on whether the Court considers it has all the information necessary to make a decision.

If it does, the decision is within 30 days of receipt of the response to the claim and possibly counterclaim.

If not, the decision could be within approximately 60 days thereof: within 30 days the parties would need to provide information, or an oral hearing be held – no such clear deadline though if the court wants to take evidence – and then a further 30 days for the Court to issue its judgement.

Refer to Art 7

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.

(...)

b. Will Caroline / BNB be able to recover the translation and expert costs (the total amounts to EUR 350). If so, what should she do?

To recover these costs, Caroline should have ticked the relevant box on claim form A when she applied.

It does not matter if these lead to an award which is over EUR 2000.

7.3. Are you claiming the costs of proceedings?

7.3.1. Yes

Generated by the European e-Justice Portal

7.3.2. No

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

However:

1. This will depend on whether Caroline/BNB's claim is successful
2. In any case, costs are not awarded if they were unnecessarily incurred or disproportionate (see Art 16).

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.

c. Will the parties be able to have any remedy against the European Small Claims judgment? How should they proceed?

The Regulation provides for one form of remedy, the Art 18 Review.

Otherwise Member States decide if other remedies are available, see Art 17. In both cases this takes place in the Member State of origin of the ESC judgment.

Review:

Article 18 - Minimum standards for review of the judgment

1. The defendant shall be entitled to apply for a review of the judgment given in the European Small Claims Procedure before the court or tribunal with jurisdiction of the Member State where the judgment was given where:
 - (a) (i) the claim form or the summons to an oral hearing were served by a method without proof of receipt by him personally, as provided for in Article 14 of Regulation (EC) No 805/2004; and
 - (ii) service was not effected in sufficient time to enable him to arrange for his defence without any fault on his part,or
 - (b) the defendant was prevented from objecting to the claim by reason of force majeure, or due to extraordinary circumstances without any fault on his part,provided in either case that he acts promptly.
2. If the court or tribunal rejects the review on the basis that none of the grounds referred to in paragraph 1 apply, the judgment shall remain in force. If the court or tribunal decides that the review is justified for one of the reasons laid down in paragraph 1, the judgment given in the European Small Claims Procedure shall be null and void.

Other domestic Remedy:

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. Article 16 shall apply to any appeal.

To find out what is the position in Scotland, the parties should consult the Art 25 document (available on the European Judicial Atlas, see above, point 3.c.):

“As in the domestic small claim procedure an appeal will be available against a judgment given by the sheriff in the European Small Claims Procedure. The appeal will be to the Sheriff Principal and can only be taken on a point of law. The decision of the Sheriff Principal will be final and not subject to any further review. Rule 23.1(1) of the Small Claim Rules 2002 specifies the time limit for the lodgement of an appeal in a domestic small claim (14 days) and this will also apply to the European Small Claim.”

d. Assume that BNB’s claim is successful and Tartanic has appealed. Could Caroline / BNB still proceed with the enforcement of the judgment in her favour?

Yes but this would be within certain limits:
Refer to Arts 15 and 23.

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.

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.

7. Caroline has heard that Tartanic has assets in France. What should she do to obtain the execution of the Scottish small claims judgment against the French assets of the judgment debtor? Would she need to apply for the exequatur of the ESC judgment?

No need for exequatur. Caroline will just need to obtain a certificate from the Court and present it to the enforcement authorities in France along with a copy of the judgment.

Refer to Art 20.

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 in the European Small Claims Procedure using standard Form D, as set out in Annex IV, at no extra cost.

Please find and fill in form D

With this form and a copy of the judgment, Caroline would then contact an appropriate bailiff – information is available on the European Judicial Atlas – click on Small Claims and 'Competent authorities' in the left hand menu:



8. Assuming that BNB's claim is successful, is there any hope for Tartanic to oppose enforcement?

The ESC judgment is enforceable and the Regulation provides for only one ground that can lead to the refusal of enforcement.

Tartanic would need to apply for this refusal to the competent authority in Member State of enforcement.

Refer to Art 22:

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.

The Regulation does not otherwise deal with any aspect of the enforcement.

French rules on enforcement would apply. To find out what they are, Tartanic could try to rely on the European Judicial Network (to which the new e-justice portal refers) but pages have not been updated for a while:

http://ec.europa.eu/civiljustice/enforce_judgement/enforce_judgement_fra_en.htm

EUROPEAN SMALL CLAIMS PROCEDURE

FORM A

CLAIM FORM

(Article 4(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

Case number (*):

Received by the court/tribunal on: __/__/____ (*)

(*) To be filled in by the court/tribunal.

IMPORTANT INFORMATION

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

Language

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

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.

1. Court/tribunal

In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. Before which court/tribunal are you making your claim?

1.1. Name:

1.2. Street and number/PO box:

1.3. City and postal code:

1.4. Country:

2. Claimant

This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a PO Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify you, for example, your date of birth, occupation, position in the company, personal ID code and the company registry code in certain Member States.

Where there is more than one claimant, please use additional sheets.

2. The claimant's details

2.1. Surname, first name/name of company or organisation:

2.2. Street and number/PO box:

2.3. City and postal code:

2.4. Country:

2.5. Telephone (*):

2.6. E-mail (*):

2.7. Claimant's representative, if any, and contact details (*):

2.8. Other details (*):

3. Defendant

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify the person, for example the date of birth, occupation, position in the company, personal ID code and company registry code in certain Member States. If there is more than one defendant, please use additional sheets.

3. The defendant's details

3.1. Surname, first name/name of company or organisation:

3.2. Street and number/PO box:

3.3. City and postal code:

3.4. Country:

3.5. Telephone (*):

3.6. E-mail (*):

3.7. Defendant's representative, if known, and contact details (*):

3.8. Other details (*):

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 Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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 http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

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

(*) Optional.

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):

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.

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:

6. *Bank details (optional)*

In field 6.1. you may inform the court/tribunal by which means you intend to pay the application fee. Please note that not all methods are necessarily available at the court/tribunal to which you are sending your application. You should verify which methods of payment will be accepted by the court/tribunal. You can do this by contacting the court/tribunal concerned or by consulting the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you choose to pay by credit card or to allow the court/tribunal to collect the fee from your bank account, you should give the necessary credit card or bank account details in the Appendix to this form. The Appendix will be for the information of the court/tribunal only and will not be forwarded to the defendant.

In field 6.2. you are given the possibility of indicating by which means you wish to receive payment from the defendant, for example if the defendant wishes to pay immediately even before the judgment is given. If you wish to be paid by bank transfer, please give the necessary bank details.

6. *Bank details (*)*

6.1. How will you pay the application fee?

- 6.1.1. By bank transfer
- 6.1.2. By credit card (please fill in the Appendix)
- 6.1.3. Direct debit from your bank account (please fill in the Appendix)
- 6.1.4. Other (please specify):

6.2. To which account do you wish the defendant to pay any amount claimed or awarded?

6.2.1. Account holder:

6.2.2. Bank name, BIC or other relevant bank code:

6.2.3. Account number/IBAN:

7. Claim

Scope: Please note that the European Small Claims Procedure has a limited scope. No claims of a value higher than EUR 2000 or which are listed in Article 2 of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure can be dealt with under this procedure. If your claim does not relate to an action within the scope of that Regulation in accordance with Article 2, proceedings will continue before the courts/tribunals with jurisdiction in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should withdraw your application.

Monetary or other claim: You should indicate whether you are claiming money and/or something else (non-monetary claim), for example, delivery of goods, and then fill in respectively either 7.1. and/or 7.2. If your claim is not for money, please indicate the estimated value of your claim. In the case of a non-monetary claim, you should indicate whether you have a secondary claim for compensation if it is not possible to satisfy the original claim.

If you wish to claim the costs of the proceedings (e.g. translation costs, lawyers' fees, costs relating to the service of documents etc.), then you should indicate this in 7.3. Please note that rules regarding the costs which courts/tribunals can award vary between different Member States. Details of categories of costs in the Member States can be found on the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you wish to claim any contractual interest, for example on a loan, you should indicate the rate and from what date it runs. The court/tribunal may award statutory interest on your claim, if you are successful. If you wish to claim interest, please indicate this and the date from which the interest should run.

7. About your claim

7.1. Claim for money

7.1.1. Amount of principal (excluding interest and costs):

7.1.2. Currency

Euro (EUR)

Bulgarian lev (BGN)

Cypriot pound (CYP)

Czech koruna (CZK)

Estonian kroon (EEK)

Pound Sterling (GBP)

Hungarian forint (HUF)

Latvian lats (LVL)

Lithuanian litas (LTL)

Maltese lira (MTL)

Polish zloty (PLN)

Romanian leu (RON)

Swedish kronor (SEK)

Slovak koruna (SKK)

Other (please specify):

7.2. Other claim:

7.2.1. Please specify what you are claiming:

7.2.2. Estimated value of the claim:

Currency:

Euro (EUR)

Bulgarian lev (BGN)

Cypriot pound (CYP)

Czech koruna (CZK)

Estonian kroon (EEK)

Pound Sterling (GBP)

Hungarian forint (HUF)

Latvian lats (LVL)

Lithuanian litas (LTL)

Maltese lira (MTL)

Polish zloty (PLN)

Romanian leu (RON)

Swedish kronor (SEK)

Slovak koruna (SKK)

Other (please specify):

7.3. Are you claiming the costs of proceedings?

7.3.1. Yes

7.3.2. No

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

7.4. Are you claiming interest?

Yes

No

If yes, is the interest:

Contractual? If so, go to 7.4.1

Statutory? If so, go to 7.4.2

7.4.1. If contractual

(1) the rate is:

%

% above the base rate of the ECB

other:

(2) the interest should run from:

/ / (date)

7.4.2. If statutory the interest should run from

/ / (date)

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. *Details of claim*

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 please specify below

8.2.2. Witnesses please specify below

8.2.3. Other please specify below

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

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

Yes

No

If yes, please indicate reasons (*)

9. *Certificate*

A judgment given in a Member State in the European Small Claims Procedure can be recognised and enforced in another Member State. If you intend to ask for recognition and enforcement in a Member State other than that of the court/tribunal, you can request in this form that the court/tribunal, after having made a decision in your favour, issue a certificate concerning that judgment.

9. *Certificate*

I ask the court/tribunal to issue a certificate concerning the judgment

Yes

No

10. *Date and signature*

Please make sure that you write your name clearly and sign and date your application at the end.

10. *Date and signature*

I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim.

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:

Bank details (*) for the purposes of payment of the application fee

Account holder/credit card holder:

Bank name, BIC or other relevant bank code/credit card company:

Account number or IBAN/credit card number, expiry date and security number of the credit card:

EUROPEAN SMALL CLAIMS PROCEDURE

FORM A

CLAIM FORM

(Article 4(1) of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure)

Case number (*):

Received by the court/tribunal on: __/__/____ (*)

(*) To be filled in by the court/tribunal.

IMPORTANT INFORMATION

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

Language

Fill in this form in the language of the court/tribunal to which you are sending your application. Please note that the form is available in all official languages of the institutions of the European Union on the website of the European Judicial Atlas at http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm. This may help you in filling in the form in the required language.

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.

1. Court/tribunal

In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. Before which court/tribunal are you making your claim?

1.1. Name:

1.2. Street and number/PO box::

1.3. City and postal code:

1.4. Country:

2. Claimant

This field must identify you as the claimant and your representative, if any. Please note that it is not mandatory to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a PO Box as the address and you should therefore include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify you, for example, your date of birth, occupation, position in the company, personal ID code and the company registry code in certain Member States.

Where there is more than one claimant, please use additional sheets.

2. The claimant's details

2.1. Surname, first name/name of company or organisation:

2.2. Street and number/PO box:

2.3. City and postal code:

2.4. Country:

2.5. Telephone (*):

2.6. E-mail (*):

2.7. Claimant's representative, if any, and contact details (*):

2.8. Other details (*):

3. Defendant

In this field you should identify the defendant and, if known, his representative. Please note that it is not mandatory for the defendant to be represented by a lawyer or another legal professional.

It may not be sufficient in some countries to give only a P.O. Box as the address and therefore you should include the street name and number with a postcode. Failure to do so may result in the document not being served.

'Other details' may contain information that helps to identify the person, for example the date of birth, occupation, position in the company, personal ID code and company registry code in certain Member States. If there is more than one defendant, please use additional sheets.

3. The defendant's details

3.1. Surname, first name/name of company or organisation:

3.2. Street and number/PO box:

3.3. City and postal code:

3.4. Country:

3.5. Telephone (*):

3.6. E-mail (*):

3.7. Defendant's representative, if known, and contact details (*):

3.8. Other details (*):

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 Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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 http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

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

(*) Optional.

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):

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.

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:

6. *Bank details (optional)*

In field 6.1. you may inform the court/tribunal by which means you intend to pay the application fee. Please note that not all methods are necessarily available at the court/tribunal to which you are sending your application. You should verify which methods of payment will be accepted by the court/tribunal. You can do this by contacting the court/tribunal concerned or by consulting the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you choose to pay by credit card or to allow the court/tribunal to collect the fee from your bank account, you should give the necessary credit card or bank account details in the Appendix to this form. The Appendix will be for the information of the court/tribunal only and will not be forwarded to the defendant.

In field 6.2. you are given the possibility of indicating by which means you wish to receive payment from the defendant, for example if the defendant wishes to pay immediately even before the judgment is given. If you wish to be paid by bank transfer, please give the necessary bank details.

6. *Bank details (*)*

6.1. How will you pay the application fee?

- 6.1.1. By bank transfer
- 6.1.2. By credit card (please fill in the Appendix)
- 6.1.3. Direct debit from your bank account (please fill in the Appendix)
- 6.1.4. Other (please specify):

6.2. To which account do you wish the defendant to pay any amount claimed or awarded?

6.2.1. Account holder:

6.2.2. Bank name, BIC or other relevant bank code:

6.2.3. Account number/IBAN:

7. Claim

Scope: Please note that the European Small Claims Procedure has a limited scope. No claims of a value higher than EUR 2000 or which are listed in Article 2 of Regulation (EC) No 861/2007 of the European Parliament and of the Council establishing a European Small Claims Procedure can be dealt with under this procedure. If your claim does not relate to an action within the scope of that Regulation in accordance with Article 2, proceedings will continue before the courts/tribunals with jurisdiction in accordance with the rules of ordinary civil procedure. If you do not wish to continue proceedings in that event, you should withdraw your application.

Monetary or other claim: You should indicate whether you are claiming money and/or something else (non-monetary claim), for example, delivery of goods, and then fill in respectively either 7.1. and/or 7.2. If your claim is not for money, please indicate the estimated value of your claim. In the case of a non-monetary claim, you should indicate whether you have a secondary claim for compensation if it is not possible to satisfy the original claim.

If you wish to claim the costs of the proceedings (e.g. translation costs, lawyers' fees, costs relating to the service of documents etc.), then you should indicate this in 7.3. Please note that rules regarding the costs which courts/tribunals can award vary between different Member States. Details of categories of costs in the Member States can be found on the website of the European Judicial Network in Civil and Commercial Matters at <http://ec.europa.eu/civiljustice>.

If you wish to claim any contractual interest, for example on a loan, you should indicate the rate and from what date it runs. The court/tribunal may award statutory interest on your claim, if you are successful. If you wish to claim interest, please indicate this and the date from which the interest should run.

7. About your claim

7.1. Claim for money

7.1.1. Amount of principal (excluding interest and costs):

7.1.2. Currency

- | | | |
|--|---|---|
| <input type="checkbox"/> Euro (EUR) | <input type="checkbox"/> Bulgarian lev (BGN) | <input type="checkbox"/> Cypriot pound (CYP) |
| <input type="checkbox"/> Czech koruna (CZK) | <input type="checkbox"/> Estonian kroon (EEK) | <input type="checkbox"/> Pound Sterling (GBP) |
| <input type="checkbox"/> Croatian kuna (HRK) | <input type="checkbox"/> Hungarian forint (HUF) | <input type="checkbox"/> Latvian lats (LVL) |
| <input type="checkbox"/> Lithuanian litas (LTL) | <input type="checkbox"/> Maltese lira (MTL) | <input type="checkbox"/> Polish zloty (PLN) |
| <input type="checkbox"/> Romanian leu (RON) | <input type="checkbox"/> Swedish krona (SEK) | <input type="checkbox"/> Slovak koruna (SKK) |
| <input type="checkbox"/> Other (please specify): | | |

7.2. Other claim:

7.2.1. Please specify what you are claiming:

7.2.2. Estimated value of the claim:

Currency:

- | | | |
|--|---|---|
| <input type="checkbox"/> Euro (EUR) | <input type="checkbox"/> Bulgarian lev (BGN) | <input type="checkbox"/> Cypriot pound (CYP) |
| <input type="checkbox"/> Czech koruna (CZK) | <input type="checkbox"/> Estonian kroon (EEK) | <input type="checkbox"/> Pound Sterling (GBP) |
| <input type="checkbox"/> Croatian kuna (HRK) | <input type="checkbox"/> Hungarian forint (HUF) | <input type="checkbox"/> Latvian lats (LVL) |
| <input type="checkbox"/> Lithuanian litas (LTL) | <input type="checkbox"/> Maltese lira (MTL) | <input type="checkbox"/> Polish zloty (PLN) |
| <input type="checkbox"/> Romanian leu (RON) | <input type="checkbox"/> Swedish krona (SEK) | <input type="checkbox"/> Slovak koruna (SKK) |
| <input type="checkbox"/> Other (please specify): | | |

7.3. Are you claiming the costs of proceedings?

7.3.1. Yes

7.3.2. No

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

7.4. Are you claiming interest?

Yes

No

If yes, is the interest:

Contractual? If so, go to 7.4.1

Statutory? If so, go to 7.4.2

7.4.1. If contractual

(1) the rate is:

%

% above the base rate of the ECB

other:

(2) the interest should run from:

/ / (date)

7.4.2. If statutory the interest should run from

/ / (date)

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. *Details of claim*

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 please specify below

8.2.2. Witnesses please specify below

8.2.3. Other please specify below

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

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

Yes

No

If yes, please indicate reasons (*)

9. *Certificate*

A judgment given in a Member State in the European Small Claims Procedure can be recognised and enforced in another Member State. If you intend to ask for recognition and enforcement in a Member State other than that of the court/tribunal, you can request in this form that the court/tribunal, after having made a decision in your favour, issue a certificate concerning that judgment.

9. *Certificate*

I ask the court/tribunal to issue a certificate concerning the judgment

Yes

No

10. *Date and signature*

Please make sure that you write your name clearly and sign and date your application at the end.

10. *Date and signature*

I hereby request that the court/tribunal give a judgment against the defendant on the basis of my claim.

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:

Bank details (*) for the purposes of payment of the application fee

Account holder/credit card holder:

Bank name, BIC or other relevant bank code/credit card company:

Account number or IBAN/credit card number, expiry date and security number of the credit card:

Annex 3.3. – Workshop exercise III

Consolidating case study on the application of the European Small Claims Procedure¹

Roddie Black is an architect based at Glenfarg, just South of Perth in Scotland. Roddie owns a yacht and in the autumn of 2013 sails with his wife and a group of their friends to the harbour of Centuri Port at Corsica. Roddie goes ashore and sees a sign for the winery of Pasquale Paoli. He orders a dozen cases, each of twelve bottles and costing €120.00 per case. Roddie cannot take the wine to Scotland himself. He asks Pasquale if he would be prepared to arrange transport for him. Pasquale says that he does not normally do this but as a special favour will try and do so. This however will probably mean waiting for a return load possibility which may mean delivery later in the year.

Roddie is happy to trust Pasquale. They agree that Roddie will pay for the first six cases then and there and the balance of €720.00 on delivery. Pasquale gives Roddie an invoice vouching the sale and the receipt of half the price. This invoice is in French and on the reverse are some standard terms. Roddie and Pasquale sign the top copy and Roddie receives the pink copy; the yellow copy is to accompany the wine. For the transport of the wine to Roddie's house Pasquale asks Roddie to give him €350.00 in cash and says that he thinks that this will be enough. No receipt changes hands for this transaction which Pasquale considers as a separate agreement. To cement the deal Pasquale says that he will give Roddie an extra case with six bottles of his best Cap Corse wine and six bottles of olive oil. In the next few days Roddie is meeting a prospective client and buys an extra case of wine in anticipation that he might want to entertain the client on board or at least for himself and his friends to enjoy.

Roddie returns to Scotland and time passes without the wine arriving. Roddie wants it for his Christmas party to which he invites clients as well as friends. By the beginning of December he sends an e-mail to Pasquale. A week later he receives a reply: *'Hello Roddi – wine consigned yesterday with local carrier to Marseille for onward transmission separately to Scotland. Should be there in 4 days – Pasquale'*.

Several days later, a rather battered transit van arrives at Roddie's house and Shug McKenna, a scruffy individual wearing an overall with the legend 'Superspeed Logistics' on it, announces "Hello, here is your wine; I need an autograph and €600.00 for the carriage costs". He also informs Roddie that at some point in transit the consignment was damaged when a number of cases fell off a pallet. "It wasn't our fault", says Shug, who is of the opinion that the accident happened in Marseille. He is not sure how much damage there is but all the cases are there and Roddie is free to inspect them once he hands over the €600.00. Shug does not ask for the balance of the cost of the wine.

He produces the yellow invoice and a delivery note which reads in English 'Consignment 12 +1 cases ex Centuri Port, Cap Corse, Corsica to Pert, Scotland – delivery price €350.00 paid - carriage costs ex Marseille, payable on delivery at destination.' Roddie says that he had never agreed this and has never seen the delivery note before. Roddie pays very reluctantly and receives a receipt on Superspeed Logistics paper - he is fully intending to claim this back from Pasquale.

¹ Prepared by Peter Beaton, Consultant in European Civil and private international law

The cases are taken off the van and before Roddie has time to look at them Shug has disappeared. On inspection it appears that five cases are damaged including that with the special wine and olive oil of which all twelve bottles are destroyed. Of the other four damaged cases only four bottles remain intact; Roddie has therefore effectively lost fifty bottles of wine and six bottles of olive oil.

He e-mails to Pasquale: *'Pasquale, consignment delivered but damaged en route. Fifty bottles wine + six bottles olive oil broken – estimate value €820.00 (€750.00 for wine + €70.00 for olive oil), so contract not fulfilled; I had to pay €600.00 extra for carriage – you have to now pay this. €1420.00 – €720.00 (not yet paid) = €700.00. Please send me this amount by electronic transfer today'*. Pasquale answers: *'Hello Roddi – sorry to hear about the accident but I'll not pay you as the transport/carriage was for your account - see conditions on invoice; if you like I can re-send bottles to replace the broken ones against payment of price and the cost of carriage upfront. I'll do it for €950.00. Let me know.'*

Roddie asks his lawyer to have a look at the invoice. He says that without a translation he cannot make much of it except that there is one condition in English which reads 'Incoterms FCA applies'. This means, he advises, that Roddie carried all the risk and that the goods were to be delivered only to the first carrier in Marseille; he adds that in his view the contract of sale and the contract of carriage have to be considered separately. Roddie agrees that the transport is separate and says Pasquale undertook to arrange it so it's his risk. He replies to Pasquale: *'You undertook the transport against the estimated cost for which I paid you €350.00. If you don't transfer €700 today I will raise a claim in Perth Sheriff Court under the European Small Claims Procedure.'* Pasquale answers – *'Very sorry that you take this attitude Roddi – I'm afraid you'll lose if you go ahead and raise action in Perth. I'll be wanting payment of the balance of the price - €720; you'd better take my offer or I'll go to court in Bastia.'*

There the matter rests and various questions arise.

General remark:

In approaching the analysis of cases under the ESCP it is necessary to consider a hierarchy of issues. The first of these is as to whether the case falls within the scope of the procedure then comes the question of jurisdiction. For this case exercise the other issues raised involve applicable law, service of documents, taking of evidence and ADR.

Question 1

Can Roddie and Pasquale make use of the European small claims procedure?

Issue to be considered: SCOPE of the ESCP

Broadly scope covers two main areas – geographical scope and material or subject matter scope. These should be considered in sequence and in that order. The questions to be considered are as to whether the case, on the facts, is one within the geographical and material scope of the Regulation

Geographical scope: the first point to look at is whether the Regulation is in force as between the States involved. There are three possibilities:

- a) The Regulation is not applicable because the case is not able to be heard in the EU. This would occur, if the facts do not disclose that it is a case in which at least one of the parties is domiciled or habitually resident in a EU Member State.

- b) The case involves at least two EU Member States but the procedure does not apply because the Regulation was not in force as between these States at the material time (e.g. because one of them was not yet a Member state, because the Regulation does not apply in one of the Member States etc.). See in this regard Article 3(3) of the Regulation.
- c) The case is a cross-border case involving two or more EU Member States, that is it must not relate only to a situation within one Member State. The definition of a 'cross-border case' is to be found in Article 3 which should be consulted.

Suggested solution

The case involves two Member States both bound by the Regulation at the material time – France, as Corsica is part of its territory and the UK of which Scotland is a part. The case fulfils the criteria of Article 3 as a cross border case as, irrespective of which court has jurisdiction, the parties are domiciled/habitually resident in different Member States.

Issue to be considered: SCOPE of the ESCP

Material Scope: as regards material scope there are two main questions – subject matter and the value of the claim.

- a) As regards subject matter the Regulation provides that it applies generally to civil and commercial matters; see Article 2(1). These are not defined but case law of the CJEU makes it clear that an autonomous meaning is to be given for the purposes of EU law. This case law is reviewed at paragraph 2.1.5 of the EJM Practice Guide.

In addition the Regulation sets out a number of subject matters which are excluded from its scope. The first step in the analysis on this point is to establish whether the subject matter of the case indicates that this is excluded from the material scope. Articles 1 and 2(2) of the Regulation deal with that.

- b) If the subject matter is not excluded the next consideration is whether the value of the claim is or is not above the threshold set by the Regulation. At present that is set at €2000 under Article 2(1) and this is exclusive of interest or any costs and expenses which might be claimed.

This limit also applies to any counterclaim; however if there is a counterclaim the value of the claim and counterclaim are not aggregated to determine if the case is within the threshold.

Suggested solution

The case concerns a civil and commercial matter and the subject matter is not excluded by Article 2(2). The value of the claim, on either side, will also be within the threshold set put in Article 2(1) so it fulfils both criteria.

Question 2

Which court has jurisdiction;

Issue to be considered: JURISDICTION

To establish which court has jurisdiction it is necessary first to find out which court has international jurisdiction and then to find out which court within the relevant Member State is competent.

First step then is look at the relevant rules in the appropriate EU instruments and any relevant case law. As regards the ESCP there are no specific rules on jurisdiction in the ESCP Regulation (unlike the situation in the EOP Regulation Article 6). This means that jurisdiction will be determined by the rules of the Brussels I Regulation.

For this case, attention should be paid to the rules in the following Articles (numbered as in the text currently in force with the Article numbers for the re-cast in brackets):

- General Jurisdiction –Article 2 (Recast Art. 4)
- Special Jurisdiction Article 5(1)(a) (Recast Art 7(1)(a)) and
- Consumer Jurisdiction – Articles 15 to 17 (Recast Arts. 17 to 19)

(a) Pasquale has a web site in English which is readily accessible; Roddie claims to have seen it before he visited Pasquale’s winery; what effect, if any, does this have on the jurisdiction situation?

Issue to be considered: JURISDICTION

There are two CJEU cases dealing with the meaning of Article 15(1)(c) of Regulation 44/2001 (Brussels I); consideration should focus on that provision and those cases which are listed below.

Suggested solution

The question whether Roddie knew about the website and was otherwise attracted to visit the winery is relevant because of Article 15 (1)(c) of Brussels I, which provides for the circumstances in which a consumer may have jurisdiction before the courts of the Member State of his domicile. If Roddie establishes that he visited the winery as a result of the web site and that Pasquale directs activities to Scotland then he might be able to claim that the Scottish court should have jurisdiction.

However the criteria for ‘directing activities’ set out in the cases of Pammer and Hotel Alpenhof suggest that Roddie will not be successful on this count. Also, on the basis of facts given, Roddie’s visit to the winery was caused by his seeing a sign in Centruri Port and not by the web-site, so there is a question of credibility if he seeks to use this argument.

Roddie would in any event have to do more than just show that Marko’s site is in English. According to the facts of the case, there is no evidence that Pasquale pursues his commercial activities in Scotland, where Roddie is domiciled/habitually resident.

(b) Pasquale claims that Roddie is not acting outside his profession in the purchase of the wine whilst Roddie claims that he was in fact acting for individual purposes and had never indicated to Pasquale that he was buying any of the wine for his business; for the purposes of this exercise is Roddie a consumer and what factors will indicate whether or not he was? What effect will this have on the question of jurisdiction?

Issue to be considered: JURISDICTION

Here the issue is the interpretation of Article 15(1) of Brussels I and Article 6 of Regulation 593/2008 (Rome I); the first question for consideration is whether or not Roddie is acting within a trade or profession in entering into the contract with Marko.

Suggested solution

This again is a question of fact. Gruber v Bay Wa, the available case law on the subject, indicates that the exception set out in Article 15 of Brussels I, whereby a consumer as

defined there can raise an action in the courts of his domicile, has to be construed narrowly. It also follows from that judgement that a person who concludes a contract both for his own personal use and for a business purpose cannot take advantage of the 'consumer' jurisdiction rules.

In any event Article 15(3) provides that the consumer jurisdiction rules do not apply in the case of contracts of transport.

(c) Roddie claims that the contract with Pasquale required Pasquale to arrange delivery to Perth. So, in any event, the Sheriff court at Perth has jurisdiction. Pasquale argues that the standard terms on the invoice indicate that the wine is purchased and delivered at his winery and that the delivery note is of no consequence as regards jurisdiction; Roddie says that the invoice is irrelevant to the delivery issue. Is this right and if so what are the consequences for jurisdiction?

Issue to be considered: JURISDICTION

The discussion here deals with what the jurisdiction situation will be, if the consumer rules do not apply. The discussion would focus on Article 5(1)(a) of Brussels I and the key issue is whether it can be seen from the contract what the place of delivery is, given that the parties are at odds on this. The significance of the INCOTERMS rules needs to be considered in this regard.

Suggested solution

The answer to this question depends on the construction of the contract/s. If the contracts are considered separate, Pasquale is right and delivery for the purpose of article 5(1)(a) takes place at the winery. In this case, the court in Corsica is the competent court. If Roddie is right, the contracts have to be seen as a unum quid and delivery is in Scotland. In this case, the Scottish courts will have international jurisdiction. On balance it would seem that Pasquale's argument is the stronger but either outcome is possible under Brussels I. Incidentally the contract/s will be construed under the law applicable following the rules in Rome I – see Question 3.

(d) Supposing both Pasquale and Roddie go into their respective courts in Scotland and Corsica. What happens as regards the two actions and which rules apply in this regard to determine the precedence of the two actions?

Issue to be considered: JURISDICTION

This is about the application of the lis pendens rule in Article 27 of Brussels I.

Suggested solution

Under Article 27 of Brussels I two courts cannot both deal with a case between the same parties and with the same cause of action. Whichever court is seised second will have to stay the proceedings till the jurisdiction question of the other court is sorted out. If that court establishes that it is competent, then the other court (the court second seised) has to decline the claim in its favour (Art 27(2)).

(e) Consider whether this case should go to the CJEU if the jurisdiction situation is unclear and if so on what basis.

Issue to be considered: JURISDICTION

The issues which might go to the CJEU are related to the consumer jurisdiction. Given that the web site directs English speakers to visit the winery, does that bring the case within the rule in Art 15(1)(c) of Brussels

1? Also, is Roddie to be seen as acting within his profession given that the circumstances indicate that he placed the order for the wine as an individual, even though he might use it for business purposes? Were there two contracts or only one? In other words, to what extent can and should the court look behind the contract to the reality?

Suggested solution

There is no simple answer to this but the case could be referred to the CJEU with questions on jurisdiction depending on what is found on the facts. If so, the preliminary reference procedure under Article 267 TFEU would be used. The answer may conclude by formulating the questions to be asked by the court depending on what is established on the facts.

Conclusion on jurisdiction

If the facts suggest that Roddie was indeed acting in the capacity of a consumer and that Art 15(1)(c) of Brussels I applies, then the Scottish Courts will have jurisdiction. If the facts suggest that Roddie was acting wholly or partly for his business, then the consumer jurisdiction rules do not apply and Articles 2 and 5(1)(a) of Brussels I will be applied.

Roddie would then have to establish that the contract was for the goods to be delivered to him in Scotland and that subsequently under Art 5(1)(a) the Scottish Courts are competent. If the contract is so construed that the goods were delivered in Centuri Port at the winery, as Pasquale argues, then the courts in Corsica will have jurisdiction under that provision.

Either Roddie or Pasquale can raise an action in the courts of the other's country under Art 2.

As regards domestic jurisdiction this is determined by the internal procedural law of the two Member States. This can be accessed on the E-Justice Portal or the European Judicial Network websites. It is worth bearing in mind that Scotland is a separate jurisdiction within the UK.

Question 3

How can it be established which law applies to the contract(s) and which law will apply.

Issue to be considered:

This will involve a similar discussion as for jurisdiction regarding Roddie's status as a consumer. A look at the relevant rules in Rome I will then have to follow. Last, consideration will need to be given to the position, if any, disclosed by the standard conditions on the invoice.

Suggested solution

It is necessary to consider the capacity in which Roddie is acting, so the same considerations arise as with jurisdiction. Article 6 of Rome I provides the rules for this on similar lines to those in Article 15 of Brussels I. However there is a choice of law possibility for the parties, provided that this would not have the effect of depriving the consumer of protection. No evidence of a choice exists here, so it is very likely that the consumer rules will not apply and therefore Article 4 of Rome I will apply.

Under Art 4(a) the applicable law for a contract of sale of goods is that of the seller's habitual residence, so the law of France will apply.

Question 4

Can either Roddie or Pasquale counterclaim? If so what would their counterclaims be? If they do counterclaim does the case continue to be dealt with under the European Small Claims Procedure and if so on what basis?

Issue to be considered:

Two aspects have to be examined here. Firstly, what would the counterclaims be and which is their legal basis. Secondly, how should the value of the counterclaims be calculated? Should they be aggregated in order to determine if the case remains within the financial limit of the ESCP?

Suggested solution

Either party may counterclaim under Article 5(6) of the ESCP Regulation. If Roddie sues, Pasquale can counterclaim for the balance of the price. If Pasquale sues, Roddie can counterclaim for the delivery of the damaged goods or repetition of the price paid for the carriage.

The Regulation makes it clear that the counterclaim cannot be higher than the threshold of €2000, but in this case, neither of them would be. Also it is not necessary to aggregate the claim and counterclaim for the purposes of establishing the value. The answer is then that either Roddie or Pasquale could counterclaim as well as claim under the ESCP.

Question 5

What rules will apply for the service of documents, particularly if documents other than the Claim Form have to be served?

Issue to be considered:

There are rules in the ESCP Regulation as well as in Regulation 1393/2007 to be looked at regarding the service of documents. Particular attention should be paid to the rules applicable for documents in a language other than that of the country where they are to be served. The related CJEU case law on this issue could also be referenced here.

Suggested solution

There are rules in Article 13 of the ESCP Regulation regarding service of documents, which indicate postal service as being an acceptable method. If this is not possible, the rules in Articles 13-14 of the European Enforcement Order Regulation will apply.

It is also necessary to bear in mind the general service rules in the Service Regulation, particularly in view of the right of refusal of a party to accept documents not in a language which is either the official language of the Member State concerned or a language which that party can understand - see Art 8 of Regulation 1393/2007.

In this case there is no special issue as regards service but it can be useful to go through the various options and situations in which the different rules will apply.

Question 6

The court can ask both Roddie and Pasquale for additional information. How does the court do that according to the ESCP Regulation? What do you think that the court might want to know in the circumstances of this case?

Issue to be considered:

This exercise is designed to put the participants into the position of a court examining the case and to invite them to use the various mechanisms in the Regulation to identify and seek additional information about the circumstances. Courts are expected to take the initiative in this and so will the participants.

Suggested solution

There are various provisions in the Regulation for the court to take the initiative at different stages:

- Article 4(4) at the outset, when the claim is received
- Article 4(4) applied by Art 5(7), when the response is received and reciprocally, when the parties make counterclaims
- Art 7(1)(a), when the court is closer to decision

In this case, participants should themselves consider what they would need to know to enable the claim to be formulated and the decision to be taken. Clearly the court will need all the information about the contract, because of the jurisdiction issues and in order to acquire evidence allowing them to support or refute the claims of the parties about the contract.

Question 7

Irrespective as to which court has jurisdiction, the court hearing the case may agree to a hearing on the evidence. Indicate on the basis of the provisions in the Regulation and other EU instruments what the procedures might be for taking evidence and what evidence the court might wish to hear.

Issue to be considered:

Given that there are issues of credibility in this case, the court may well agree to a hearing of evidence. This exercise will thus deal with the mechanisms available under the ESCP Regulation and Regulation 1206/2001 (the Evidence Regulation) as regards the choosing of the evidence to be heard and the taking of that evidence. The use of IT applications as well as the methods of directly taking evidence as provided in the Evidence Regulation should be considered as well as questions on facts which may need to be established and for which evidence may have to be heard.

Suggested solution

Reference has to be made here to the provisions in Article 9 of the ESCP Regulation and to the Evidence Regulation especially its provisions on the direct taking of evidence.

In the answer participants should list the evidence which should be required and the witnesses who should be heard, as well as the various possible methods of hearing it paying especial attention to the terms of Art 9(2) and (3) as to economy and simplicity. It would be expected that the witnesses will include the parties as well as those present at the wine tasting, Shug McKenna and possibly an expert on the law applicable.

Question 8

Consider the options that the court and the parties have as regards settling the case, on the basis of provisions of the Regulation and other EU instruments.

Issue to be considered:

This is an invitation to discuss ADR. There is a relevant provision in Article 12.3 of the ESCP Regulation. The provision should be considered along with the Mediation Directive (2008/52/EC) and the provisions in Brussels I dealing with recognition and enforcement of authentic instruments and court settlements.

This looks like a good case for mediation and if the courts of Perth have jurisdiction, the Scottish in-court mediation scheme, which was established with support from the European Commission, could be appropriate.

Suggested solution

The expectation here is for participants to make reference to Article 12(3) of the ESCP Regulation and discuss how the court may seek to broker a settlement.

If the parties are prepared to do so, they could try mediation and in that respect the EU Mediation Directive would be relevant, it being a cross border case. In particular Article 6 of the Directive requires any agreement resulting from mediation to be enforceable, which could be done using the provisions of art 57 of Brussels I.

According to the facts of the case, it would seem that it is a very good candidate for settlement.

Question 9

If a settlement is not reached and the court issues an order, consider what recourse might be open to the parties to challenge the order under the ESCP Regulation or the national law of either possible jurisdiction.

Issue to be considered:

The discussion here should be about the review procedure provided by the ESCP Regulation (Article 18). Also, whether an appeal under national law in Scotland or France is possible will have to be considered.

Suggested solution

Under Article 18 of the ESCP Regulation, a party may apply for a review but only in case the procedural steps required to inform of the submission of the claim form were not properly followed – (Art 18(1)). No review is possible on the merits of the case under this procedure nor is it possible for a party to seek a review in the Member State where the order is to be enforced.

Otherwise it is up to each Member State to decide whether an appeal is competent. Participants should carry out some research using the E-Justice Portal or the European Civil Judicial Atlas as to what provisions apply as regards appeals in Scotland and France.

Question 10

Indicate how the order of the court might be made enforceable under the ESCP Regulation and what other possibilities might exist to enforce the order in either jurisdiction. How would the parties obtain information about enforcement?

Issue to be considered:

This question refers to the certificate that may be issued under the ESCP Regulation (Articles 20 et seq.) as well as to the legal basis of its issuance

and the opposition to it. Participants should thus concentrate to the effect of the abolition of exequatur (Article 20.1) and the procedure for issuing the certificate. The discussion should then focus on how an order would be enforced in Scotland or France and for this, participants would be expected to have recourse to the European Civil Judicial Atlas/the E-Justice Portal to see which enforcement agents might be available to enforce an order in either Perth or Bastia.

Suggested solution

The Regulation makes it clear in Article 20 that there is no need to apply for a declaration of enforceability of a judgment issued under the ESCP.

The procedure set out in Article 21 is followed whereby the judgment and a certificate in the form set out in Form D are sent directly to the relevant enforcement authorities at the Member State of enforcement. Details of those authorities can be found on the websites of the European Judicial Atlas and E-Justice portal.

It is nonetheless still possible to use the procedure set out in the Brussels I Regulation, which however exposes the judgment to the risk of non recognition and is therefore perhaps better avoided, if one of the grounds set out in Art 34 of the ESCP Regulation can be established.

In any event one of the major advantages of the ESCP is the ease of enforcement across borders and therefore the parties can use the ESCP procedure even regarding the claim related to the delivery of goods, which in Roddie's case is what he wants.

Annex 3.4. – Workshop exercise IV

Consolidating case study on the application of the European Small Claims Procedure¹

Mr Delvaux lives in the town of Arlon in the South of Belgium. He reads an advertisement in the local paper, placed by Messrs Convoie et Cie, a motor dealer company trading in the city of Metz in France, for the sale of a second hand BMW car.

Mr Delvaux goes to Metz and agrees to buy the car for the price of €5000, of which he pays €1500 on taking delivery of the car with the remainder to be paid at €500 per week over seven weeks.

Mr Delvaux takes delivery of the BMW and, while returning in it to Arlon and driving through Luxembourg, has an accident as a result of which he is injured and the car is damaged. Mr Delvaux sustains such injuries that he has to have hospital treatment; as a result he is off work for some weeks and the car is a write-off. It turns out as a result of investigation into the accident that the steering of the car was faulty and that this caused the accident.

Mr Delvaux, understandably, decides not to pay the remainder of the price for the car and wishes to sue Convoie & Cie for his losses; the following questions are raised by him on which he seeks your advice.

1. Where can Mr Delvaux raise an action against Messrs Convoie et Cie for the loss, injury and damage sustained by him? What would be the basis of his claim?

This is about the jurisdiction rules in Regulation Brussels I in the first place and especially the consumer rules in Articles 15 and 16. There could also be discussion about Article 2 and Article 5.1.b. The key questions here are simply about the status of Mr Delvaux and the use of the advertisement placed by Convoie et Cie.

However Article 5.3 will also have to be considered, given the situation and relevant case law of the CJEU. Mr Delvaux has the choice of raising the action in Belgium or in Luxembourg as regards the accident and the damage arising therefrom, following Article 5.3 of Regulation Brussels I and the case of *Bier v Mines de Potasse d'Alsace* (21/76).

He can also raise the action in France regarding this aspect of the claim, using Article 2 of Brussels I (defender's domicile).

Mr Delvaux can raise a claim based on the contract in France under Art 5.3.

Under article 15.1 of Brussels I he can raise an action in Belgium based on the contract with Convoie because they had advertised in a newspaper circulating in Arlon and so were directing commercial activities into Belgium within the meaning of Art 15(1)(c). See Question 2 below as regards further possibilities of so doing.

¹ Prepared by Peter Beaton, Consultant in European Civil and private international law

2. Would the venue be different if Mr Delvaux , instead of seeing an advertisement for the BMW, had visited the web-site of Messrs. Convoie and Cie. preparatory to going to Metz?

This question invites comparison between advertising and the use of web sites for the purposes of the application of article 15.1.c of the Brussels I Regulation. The case law of the CJEU is relevant for this purpose.

Here the issue is what is required for the setting up of a web-site to be seen as constituting the 'direction of activities from one Member State to another'. Art 15 provides that such direction by a professional which leads to a contract with a consumer can allow the latter to raise any action arising out of the contract in either the Member State of the domicile of the consumer or that of the professional.

The case law of the CJEU indicates that it is not enough to set up a web-site, but there must be evidence of an intention to direct the site specifically to customers in the other State for Art 15 to apply. The elements which are relevant are set out in the conjoined cases of Pammer v Rederei Karl Schluter (C-585/08) and Hotel Alpenhof GesmbH v Oliver Heller (C-144/09). These include the language used being other than that of the domicile of the business, whether directions are given for access to the business from the other State, the currency which can be used for transactions being other than that of the Member State of the business, telephone numbers with an international code, use of a top level domain name and other such evidence all tending to show that the professional intended to attract custom from the other State.

This is a question of fact to be ascertained by the court.

3. Can Mr Delvaux use the European Small Claim Procedure and if so under what conditions?

This is an open question which invites consideration of the basis of the claim, its value, the possibility to use the ESCP and other questions, notably as to whether it is possible under the Regulation to bring claims based on two separate legal grounds.

4. If he were to do so what would be the position if Convoie &Co, having denied liability, were to counter-claim against him for the balance of the price of the car?

The discussion about counterclaim should be about procedure and value.

5. What is the position as regards applicable law and which EU instruments and rules thereof are relevant?

Here the participants are invited to consider how the relevant EU instruments should be applied as regards the two heads of Mr Delvaux' claim under contract and delict. Both Regulation Rome I and Rome II will have to be applied - the former with the consumer rules particularly in focus raising a number of questions similar to those in Question 1 above.

6. Would the position of Mr Delvaux be different notably as regards jurisdiction and applicable law if he was buying the car to use it part time as a taxi?

Here the participants will have to revisit their conclusions as regards jurisdiction and applicable law, since the consumer rules in Brussels I and Rome I will no longer apply and they should evaluate the position in that light.

Annex 4 – General Bibliography

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The European Small Claims Procedure

An introduction to the purpose and content of the Regulation

ERA Workshop on ESCP

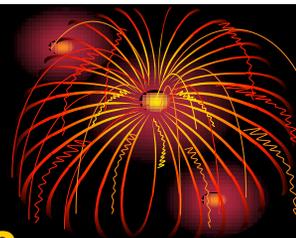
Brussels – 21st March 2014

petermurdochbeaton@yahoo.co.uk

The Origins

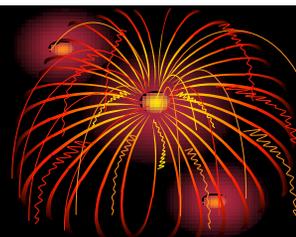
- **Conference under UK Presidency (May 1998)**
- **Tampere Conclusions (1999)**
- **Commission Green Paper (2002)**
- **Commission proposal (2004)**
- **Hague Programme (2004) – ‘..work to be Actively pursued..’**

Policy Objectives



- **Simplify and accelerate procedures for small consumer and business claims (Tampere)**
- **Facilitation of access to justice**
- **Reduction of cost**
- **Rectify distortions in functioning of the internal market**

Regulation



- **Adopted in co-decision with the European Parliament – 11 July 2007**
- **Applies as from 1st January 2009**
- **Alternative to national procedures**
- **Restricted to cross-border cases**
- **Review by 1st January 2014**

Seven principles

- **Essentially a written procedure**
- **Time limits for speed**
- **IT use encouraged**
- **No need for a lawyer**
- **Restriction on awards of costs**
- **Court empowered to direct**
- **No intermediate measures**

Provisions – scope

Article 2

- **Cross-border cases – see Art 3**
- **Civil and commercial matters whatever the nature of court or tribunal**
- **Claim not to exceed EUR 2000 excluding interest, expenses and outlays**

Exclusions from scope

Article 2

- **Revenue, Customs**
- **Status and legal capacity**
- **Matrimonial property**
- **Insolvency, social security, employment law, arbitration**
- **Tenancies except monetary claims**
- **Privacy and defamation**

Procedure – I

Article 4

- **Commencement in standard claim form – Art 4.1**
- **Documents to be attached – Art 4.1**
- **Sent to court by any means of communication including electronic – Art 4.1**
- **Opportunity to clarify if the claim is not clear**
- **If claim clearly unfounded it is dismissed**

Procedure – 2

Article 5

- **Written procedure**
- **Hearing only if court thinks it necessary – Art. 5.1**
- **Copy to defender – within 14 days of receipt by the court**
- **Response within 30 days**
- **Copy to claimant within 14 days**
- **Decision on value within 30 days**



Procedure – 3

Article 5

- **Counter-claim is competent – Art 5.6**
- **Served on claimant within 14 days of receipt by court – Art 5.6**
- **Claimant to respond within 30 days**
- **If counter-claim exceeds EUR 2000 the case continues under relevant domestic procedure law – Art 5.7**



Example – valuing claim and counterclaim



A living in Arlon in Belgium buys a second hand BMW across the border in France from B. Whilst he is driving the car back to Arlon the steering fails and the car crashes.

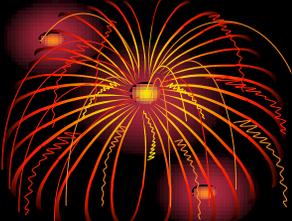
A has paid Eur 6000 of the price of Eur 8000, the balance being due within two weeks from the sale. He does not pay and B raises a European Small Claim for Eur 2000 plus interest and expenses. A defends the claim and submits a counterclaim for Eur 4000 plus interest and expenses for damages including the cost of repairing the car.

The claim is within the limit. The counter-claim is above the limit so the whole case falls into the relevant national procedure.

If B is an individual the competent court is that of the place of delivery of the car – that is in France since A took delivery there.

If B is a company which had been advertising in Belgium the competent court will be in Belgium since A is a consumer under the Regulation Brussels I.

Procedure – 4 Article 6



- **Claim form to be in the language of the court – Art 6.1**
- **Court may require a translation of any document only if necessary for judgment – Art 6.2**
- **If service refused translation may be provided – Art 6.3**

Procedure – 5

Article 7

- **Court to decide within 30 days of defender's response – or**
- **Demand further details from parties within 30 days – or**
- **Take evidence – or**
- **Summon parties to an oral hearing within 30 days – Art 7.1**
- **Judgment within 30 days – Art 7.2**



Procedure – 6

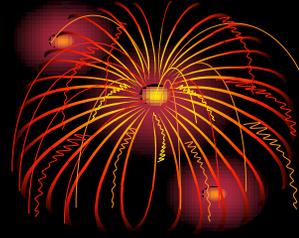
Articles 8 and 9

- **Hearing can be through video conference or other means –Art 8**
- **Court determines means of taking evidence –Art 9.1**
- **Court may take expert evidence – 9.2**
- **Court to use 'simplest and least burdensome method of taking evidence' – Art 9.3**



Procedure – 7

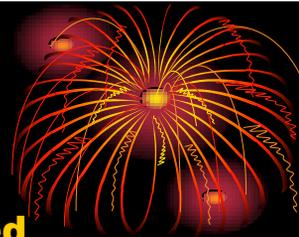
Articles 10 to 13



- **Lawyers not needed – Art 10**
- **Practical assistance to parties – Art 11**
- **Court – to seek settlement, inform parties about procedure – Art 12**
- **Court not to require parties to make a legal assessment of the claim – Art 12**
- **Service of documents by post with receipt – or by any method under Arts 13/14 of EEO**

Procedure – 8

Articles 14 and 16



- **Time limits to be respected**
- **If not met consequences to be made clear to the party – Art 14.1**
- **Certain time limits may be extended only in exceptional circumstances – Art 14.2**
- **Costs not to be awarded if unnecessary or disproportionate – Art 16**

Enforcement

Articles 15 and 20 to 22

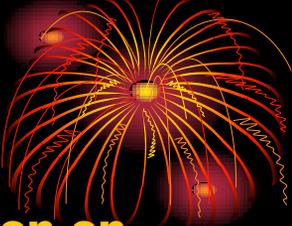
- **Enforcement notwithstanding a possible appeal – Art 15.1**
- **No need for a declaration of enforceability – Art 20.1**
- **Certificate is basis for enforcement – Art 20.2**
- **No grounds for refusing enforcement except irreconcilability – Art 22.1**
- **Absolutely no review on the merits – Art 22.2**

Appeal/Review

Articles 17, 18 and 23

- **Appeal may be provided under national law – Art 17**
- **Review only if the defender could not act promptly in defending the claim – Art 18**
- **Limit to enforcement if a judgment is challenged – Art 23**

Final Provisions



- **MS to provide information on the Procedure to public – Art 24**
- **Information to be given to and published by the Commission – Art 25**
- **Claim and other forms as prescribed by the Regulation – Annexes to the Regulation**

Abolition of ‘Exequatur’



The Small claims procedure abolishes the intermediate measures necessary for enforcement – Art 20

Brussels I jurisdiction rules apply for the Small Claim procedure.

The three instruments – EEO, EPO and Small Claims are to be seen in relation to Brussels I as regards simplification of procedures for enforcement .

A view to the Future - 1



- **Commission Proposal for amendment to the ESCP issues on 19th November 2013 - Key proposals –**
- **Extension of scope to cross-border claims up to €10,000;**
- **Extension of the definition of cross-border cases;**
- **Improving the use of electronic communication, including for service of certain documents;**
- **Courts to use videoconferencing, teleconferencing and other means of distance communication for the conduct of oral hearings and taking of evidence;**

A view to the Future - 2



- **Maximum limit on court fees charged for the procedure;**
- **Member States to put in place distance means of payment of court fees;**
- **Limiting the requirement to translate Form D, containing the Certificate of enforcement, to only the substance of the judgment;**
- **Imposing information obligations on the Member States in respect of court fees, methods of payment of court fees and the availability of assistance in filling forms**

ESCP interaction with other instruments

Dr. John Ahern

Train the Trainers Workshop on the European Small Claims Procedure
Brussels, April 2014

ESCP Reg. 861 /2007

Brussels I Reg. 44/2001

Rome I Reg. 593/2008

Rome II Reg. 864/2007

Concepts to Remember

Purpose of the ESCP

- Simplification of cross-border litigation
- Reduction in delay
- Reduction in cost
- Abolition of *exequatur*
- Alternative to, **but not intended to replace**, national procedures

Concepts to Remember

Interaction with EU private international law regime

- The "court with jurisdiction"
- The applicable law
- Role of the forum – incl. Art 19 ESCP
- Certainty and predictability for parties involved
C-412/10 Homawoo, C-281/02 Owusu, C-185/07 West Tankers
- Mutual Trust between legal and judicial systems
C-116/02 Gasser, C-159/02 Turner

“The court with jurisdiction”

ESCP Recital 11

...The claim form should be submitted only to a court or tribunal that has jurisdiction.

ESCP Article 4

...lodging it with the court or tribunal with jurisdiction directly...

ESCP Form A

...The court/tribunal must have jurisdiction in accordance with the rules of Council Regulation (EC) No 44/2001...

Brussels I applies to determine “the court with jurisdiction”!

Brussels I – Reg. 44/2001

Key rules to determine jurisdiction

- Exclusive jurisdiction – Article 22
- Appearance – Article 24
- Agreement – Article 23
- Insurance – Articles 8 – 14, Consumers – Articles 15 – 17
- Special jurisdiction – Articles 5 – 7
Tort/Delict, Contract
- General rule – Article 2

Exclusive Jurisdiction

Article 22

- Rights in rem or tenancies in immoveable property
- Constitution, validity or nullity of company
- Entries in a public register
- Patents / IPRs / Trademark
- Enforcement of a judgment

Appearance & Agreement

Articles 23 & 24

- Appearance – Article 24

...the court of a Member State before which a defendant enters an appearance shall have jurisdiction. ...

C-150/80 Schuh v. Jacqmain

- Agreement – Article 23

If the parties, one or more of whom is domiciles in a Member State, have agree ... that court or those courts shall have jurisdiction.

C-312/85 Iveco Fiat v. Van Hool

Insurance & Consumers

Articles 8 – 17

- Insurance – Articles 8 – 14
 - Insurer can be sued where he is domiciled, or where the policy holder, insured or beneficiary is domiciled
- Consumers – Articles 15 – 17
 - Consumer can sue where he is domiciled or where the other party is domiciled
 - Consumer can be sued only where he is domiciled

Consumer Contracts

Consumer Contracts contd.

- Who is a consumer?
 - “Private final consumer”
 - “For the purpose of satisfying an individual's own need in terms of private consumption”
 - C-269/95 Benincasa, C-96/00 Gabriel, C-464/01 Grüber*
- Dual purpose contracts?
 - Not consumer contracts where a non-negligible part of the contract serves the professional need
 - C-464/01 Grüber*

Consumer Contracts

Consumer Contracts contd.

- Error by the professional?

Where the consumer has misled the professional about his nature then it will not be a consumer contract

"...for a purpose which can be regarded as being..."

C-464/01 Grüber

Consumer Contracts

Consumer Contracts – Territorial Aspect.

- Passive Consumers v. Active Consumers
- Targeted Activity + HR of Consumer = Consumer Contract
- Causal Link
- Active Consumers not afforded equal protections

Consumer Contracts

Article 15(1)(c)

- Pursuing Activity
 - Physical presence such as an establishment, branch etc.
- Directing Activity
 - Where there is no branch
 - Very broad
 - Any kind of advertisement, publicity, offers
 - Any kind of medium: newspaper, tv, radio, internet etc.
 - C-585/08 & C-144/09 *Pammer & Alpenhof*

Special Jurisdiction

Contract – Art 5(1)

- The courts for the place of performance of the obligation in question
 - Obligation in question = the principal obligation
 - C-14/76 *De Bloos*, C-266/85 *Shenavai*
 - Place of performance for goods = place of delivery
 - Place of performance for services = place of provision of services

Special Jurisdiction

Tort / Delict – Art 5(3)

- The courts for the place where the harmful event occurred

C-21/76 *Bier*, C-68/93 *Shevill*

- “The courts for the place”

Note the reference to the internal jurisdiction rules of the forum. *i.e.* the *lex fori* has a partial role

ESCP Art 25 – Obligation to inform CION of national information

General Rule & Lis Pendens

General Rule - Article 2

- If domiciled in a Member State = must be sued there
- If not domiciled in a Member State = *lex fori*
- Domicile & Habitual Residence – Brussels I v. ESCP

Lis Pendens - Article 27

- First court seised retains jurisdiction until it declines / rules
- The Italian Torpedo!
- N.B. Brussels I Recast Reg 1215/2013 disarms the torpedo

Applicable Law

Non-Contractual Obligations – Rome II Reg. 864/2007

Contractual Obligations – Rome I Reg. 593/2008

- Important to remember that ESCP is the procedure by which the civil and commercial action takes place
- Separate regime for applicable law
- Governed by EU Regulation i.e. harmonised across EU and should result in same law being applied irrespective of forum

Rome II – Reg. 864/2007

Key Elements

- Article 2(2) – applies to likely future events
- Article 3 – universality of law designated by the Regulation
- Article 23 – habitual residence is partially defined
- Scope of application similar to Brussels I – except privacy / defamation
- Article 4(1) – General Rule – *lex loci damni*
C-21/76 *Bier*, C-68/93 *Shevill*, C-161/10 *eDate*

Key Elements

- Article 4(2) – Common habitual residence exception
- Article 4(3) – Manifestly closer connection exception
 - Should examine “all the circumstance of the case”
 - No defined connecting factors
- Article 5 – Products Liability
 - habitual residence of person sustaining damage
 - country of product acquisition
 - country in which damage occurred
- Article 28(1) – Traffic Accidents

Key Elements

Article 14 – Choice of Law

- By agreement after the event giving rise to the damage
- If pursuing commercial activities, then also by agreement before the event
- Choice shall be expressed or demonstrated with reasonable certainty by the circumstances of the case

Article 15 – Scope of the Applicable Law

- Extent and limitation of liability
- Extent, nature and assessment of damages

Rome I – Reg. 593/2008

Key Elements

- Article 1(2)(i) – dealing prior to contract are excluded
- Article 2 – universality of law designated by the Regulation
- Article 19 – habitual residence is partially defined
- Article 3 – General Rule – party autonomy
- Article 9 – Overriding Mandatory Provisions
- Article 21 – Public Policy
- Mandatory Rules

Key Elements

Article 12 & 18 – Scope of the Applicable Law

- Interpretation, Performance
- Consequences of breach / partial breach

Article 6 – Consumer Contracts

- See above for identification of consumer
- Choice → Consumer's HR → Default Articles 3 & 4

Merci!

Workshop

Dr. John Ahern

Train the Trainers Workshop on the European Small Claims Procedure
Brussels, April 2014

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

- Uncontested Claims
- National Procedure
- No upper monetary limit
- No *exequatur*
- Intended for all cases

EPO

- Uncontested Claims
- Contractual, specific amount claims
- No upper monetary limit
- No *exequatur*
- Intended for B2B cases

ESCP

- Contested & Uncontested Claims
- Contractual & Non-Contractual Claims
- €2000 upper limit
- No *exequatur*
- Intended for B2C / C2B cases

Concepts to Remember

Purpose of the ESCP

- Simplification of cross-border litigation
- Reduction in delay
- Reduction in cost
- Abolition of *exequatur*
- Alternative to, **but not intended to replace**, national procedures

Paul & Julia

Key Facts

- Paul is from France, Julia is from Luxembourg
- Paul travelled to Luxembourg on business
- Paul agreed to buy a BMW for €5000
- €2000 initial deposit, €3000 balance on delivery of car to France 3 weeks later
- Car was written off during delivery and Paul is seeking his deposit back
- Julia has not responded to Paul for a number of months

Question 1

Which court has ordinary jurisdiction?

- Is this a cross-border claim?
- Is it within material scope of Brussels I?
- Is the defendant domiciled in a MS?
- Which provisions of Brussels I are available?
 - Article 2 – General Rule – LUX
 - Article 5(1)(b) – Place of delivery of goods - FR

Question 1

Is this an ESCP case?

- Is one party domiciled / HR in a MS other than the seised court?
- Consider domicile and habitual residence in the context of Brussels I and national law
- Is this a “civil and commercial matter”?
C-29/76 LTU, C-814/79 Ruffer
- Does the full purchase price affect the availability of the ESCP?
- Does Julia’s silence affect the availability of the ESCP?
- Does the ESCP replace FR / LUX national procedures?

Questions 2, 3 & 4

Q2 - Defendant unstable domicile / HR

- What if Julia split her time equally between FR & LUX?

Q3 – Expenses incurred

- Are consequential expenses / interest part of the €2000?

Q4 – Other damage during primary event

- What if the sale occurred but Julia's pet damaged Paul's furniture while the car was being delivered?

Questions 5,6 & 7

Q5 – Potential defamation

- What if Julia posted a highly derogatory blog post / tweet about Paul?

Q6 – One party domiciled / HR in DK

- What if Paul was habitually resident in DK and Julia in DE?

Q7 – Defendant disappears

- What if Julia disappears?
C-292/10 Cornelius de Visser, C-327/10 Hipotecni banka

Merci!



Workshop European Small Claims Procedure

PART I:

Introduction:

Background, scope and key features of the ESCP

Key elements amendment proposal

Brussels, 28-29 April 2014
Prof. dr. Xandra Kramer
kramer@law.eur.nl
www.xandrakramer.eu



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Background European procedures I

Problems cross-border litigation

- Disproportionate costs, esp. ***small claims and uncontested claims***
 - ✓ Lawyer costs (esp. abroad)
 - ✓ Costs service of documents
 - ✓ Translation costs, etc.
- Long duration of proceedings
 - ✓ Extra hurdles litigation abroad (jurisdiction, service, translations, formalities etc.)
- Complexity and diversity procedural law in MS
- Other Regulations (esp. Brussels I and Service Regulation) merely coordinate cross-border litigation



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2

Background European procedures II

- **Green Paper** 2002 European order for payment and **small claims** (COM(2002)746)
- **Proposal ESCP 2005**
 - Following the EOP proposal of 2004
- EOP Reg. 1896/2006, applicable 12 Dec. 2008 => *amended annexes* Reg. 936/2012
- **ESCP Reg. 861/2007**, applicable since 1 Jan. 2009
- **Amendment proposal** 19 Nov. 2013, [COM\(2013\)794 final](#)

3



Purpose of the ESCP

Art. 1 ESCP

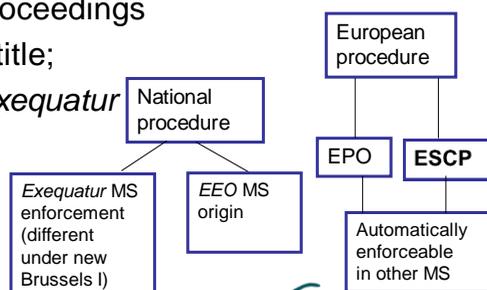
- Simplify, speed up and reduce costs litigation
- Free circulation of judgments
 - abolition *exequatur*
- ESCP does not replace national procedures
 - optional, claimant has choice

4



National or European procedure?

- ✓ Availability adequate national procedures
- ✓ ESCP low threshold, standard forms
- ✓ (no) Need for (foreign) lawyer
- ✓ Language issues
- ✓ Costs and duration proceedings
- ✓ ESCP is a European title;
national procedure: *exequatur*



Scope of the ESCP Regulation (I)

Substantive scope (art. 2)

- **Civil and commercial matters**
 - ✓ Whatever nature of court or tribunal
 - ✓ Not *inter alia* revenue, customs, administrative matters, *acta jure imperii* => see also Art. 1 Brussels I plus case law
 - ✓ Exclusions: status and capacity natural persons, matrimonial property, maintenance, wills, succession, bankruptcy, social security (see *Brussels I*); employment law, tenancies immovable property (non monetary claims), privacy rights/defamation
- **Financial limit : € 2000** ('does not exceed')
 - excluding interest, expenses and disbursement
 - *counterclaim* > € 2000 ≠ ESCP → national procedure (Art. 5(7) ESCP)

Scope of the ESCP Regulation (II)

- **Cross-border cases (art. 3)**
 - ✓ *At least one of parties must be domiciled or habitually resident in MS other than MS of court seized (Art. 3)*
 - ✓ At moment claim form is received
 - ✓ Domicile in accordance with Art. 59, 60 Brussels I
 - ✓ May involve party not domiciled/resident in EU MS
- **Geographical scope (art. 2)**
 - ✓ Regulation does not apply in Denmark



Key features

- ✓ **Simplicity**, while respecting rights of defendant/fair trial
- ✓ **Written** procedure (only hearing when necessary, Art. 5 ESCP)
- ✓ **Standard forms** (A: claim; B: correction; C: answer; D: judgment/enforcement)
- ✓ **No legal representation** (Art. 10 ESCP) – assistance (Art. 11)
- ✓ **Time limits** various steps procedure (14 days; 30 days)
- ✓ Special rules **service** (Art. 13 ESCP)
- ✓ **Review** in exceptional cases (Art. 18 ESCP)

- ❖ Additional role of national civil procedure (Art. 19 ESCP)
- ❖ See also implementation and information requirements Arts. 24 and 25 => [e-Justice Portal](#) and [European Judicial Atlas](#) (see [Documents](#) for all Art. 25 information, except Croatia)



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Practical information

Regulation, standard forms, information per MS

- [e-Justice Portal](#)
- [European Judicial Atlas in Civil Matters](#) (*older*)
- Standard forms offer short explanations
- Practice guide under guidance of European Judicial Network for Civil and Commercial Matters ([EJN](#))-> currently migrating to E-justice portal [ESCP practice guide](#)





9

European Judicial Atlas ...



The Small Claims Section

EUROPEAN JUDICIAL ATLAS
IN CIVIL MATTERS

Important legal notice
English (en)

European Commission > Judicial Atlas > Small Claims

Home Filing in Forms | Links | What's new? | Atlas mailbox | Contact | Search on EURL

Member States Courts Legal Aid Mediation Serving Documents European Cross-border Procedures Taking Evidence Recognising and Enforcing Judgements Family law Compensation to Crime Victim

Small Claims >>> Information

Information

Courts & bodies
Courts with jurisdiction
Courts for appeal
Competent authorities
Communications of Member States
Forms (1 to 4)
documents

INFORMATION

Council Regulation 861/2007 of 11 July 2007 establishing a European Small Claims Procedure seeks to improve and simplify procedures in civil and commercial matters where the value of a claim does not exceed 2000 €.

The Regulation applies between all Member States of the European Union with the exception of Denmark.

The Small Claims procedure operates on the basis of standard forms. It is a written procedure unless an oral hearing is considered necessary by the court. The Regulation also establishes time limits for the parties and for the court in order to speed up litigation.

The Regulation provides for four standard forms.

The ATLAS provides you with information concerning the application of the Regulations and a user-friendly tool for filling in the forms. The forms are only available on the [European e-Justice Portal](#).

Information provided by Croatia on judicial cooperation in civil matters is available on the [European e-Justice Portal](#).

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11

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Rights of defendants in criminal proceedings

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Glossaries and terminology

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The European e-Justice Portal is conceived as a future electronic one-stop-shop in the area of justice.

As a first step it strives to make your life easier by providing information on justice systems and improving access to justice throughout the EU, in 22 languages.

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- Rights of victims of cri...
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- European Payment Ord...
- Land registers
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Judiciary

- Law
- Tools for courts and pra...
- EJN in civil and comme...
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- European Judicial Atlas...
- Vide Conferencing
- Taking of evidence forms

Latest news

- New layout of the European e-Justice Portal! / Nouvelle mise en page du Portail européen e-Justice! / Neues Erscheinungsbild des Europäischen Justizportals!
- The 2013 calls for proposals of the Civil and Criminal Justice financial programmes are published
- A new call for proposals under the Horizon 4 Programme - Partner Training

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Example 1: Dynamic forms - Start the wizard

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Dynamic forms

Some legal instruments provide standard forms that citizens and courts can use for judicial cooperation in civil matters and commercial matters. These forms are now available in the European e-Justice Portal and can be accessed via the links below.

If you have already started to complete a form and saved a draft, you can upload it using the "Load draft" button.

Please make a selection:

- ▶ **European Payment Order forms**
- ▶ **Small claims forms**
- ▶ Legal aid forms
- ▶ Taking of evidence forms

You do not know whether the European payment order or the European small claims procedure can be used for your claim? Use the wizard to help you decide.

Start the wizard

If you already have a form saved, please use the "Load draft" button

Load draft

In case of problems use the [basic uploader](#)

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The wizard starts...

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Dynamic forms wizard

Do you have a legal case which could be decided by a court in a Member State other than your own or that of the other party?

Yes
 No
 Skip wizard

Next step >

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Dynamic forms wizard

Do you expect the other party to contest your claim?

Yes
 No
 Skip wizard

< Previous step
Next step >

... the procedure and form you should use is:

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Glossaries and terminology

Dynamic forms wizard

The form you should use is:

Small claims forms > Form A - Claim form

< Previous step
Continue

Example 2: Starting a small claim in Germany:

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- Mediation
- Successions
- Wills
- Victims of crime
- Rights of defendants in criminal proceedings

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

For this country, you can send your form by: In all cases, the following means of communication may be used: postal services, including private delivery services, fax.

For this country, you can send the form in these languages: German (de)

The average time to complete this form is 30 minutes

Please note that if you exceed 30 minutes of inactivity, all of your input will be lost unless you save a draft!

- BE
- BG
- CZ
- DK
- DE
- EE
- IE
- EL
- ES
- FR
- IT
- CY
- LV
- SI
- SK
- FI
- SE
- UK

Filling in the form...

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Step 1
Step 2
Step 3
Step 4
Step 5
Step 6
Step 7
Step 8

IMPORTANT INFORMATION

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

1. Court/tribunal

In this field you should identify the court/tribunal before which you are making your claim. When deciding which court/tribunal to choose, you need to consider the grounds for the court's/tribunal's jurisdiction. A non-exhaustive list of possible grounds of jurisdiction is included in section 4.

1. Before which court/tribunal are you making your claim?

Need help with the court address? Please follow this [link](#).

1.1. Name: ★

1.2. Street and number/PO box: ★

1.3. City and postal code: ★

1.4. Country: ★

Save draft
Load draft
Reset form
Next >

European procedures in context I

- National procedural law is complementary (art. 19)
- In practice national procedural framework of great importance
 - EOP ruling [Szyrocka v SiGer](#) => requirements Regulation exhaustive; respect objectives Regulation
- 'Implementing' legislation/acts in MS; ad hoc information provided to Commission
- See also implementation and information requirements Arts. 24 and 25 ESCP => [e-Justice Portal](#) and [European Judicial Atlas](#) (see [Documents](#) for all Art. 25 information, except Croatia)

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European procedures in context II

- ESCP interacts with other EU-instruments; applicable unless provided otherwise
 - ✓ Jurisdiction rules (primarily) Brussels I
 - ✓ Has its own cross-border enforcement rules
 - ✓ Has special service rules (art. 13 ESCP), but Service Regulation still relevant, and see service rules EEO Regulation
 - ✓ Evidence Regulation could come into play (but see Art. 9 ESCP)
 - ✓ Applicable law: Rome I, Rome II

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Commission proposal 2013 – Key elements

- ESCP Regulation not used to its full potential
 - Efficiency of justice supporting economic activity
 - Specific problems in application
- ✓ Threshold raised to 10,000 EUR;
 - ✓ Extension of definition of cross-border cases;
 - ✓ Improving use of electronic communication;
 - ✓ Obligation to use videoconferencing, teleconferencing, etc.
 - ✓ Maximum limitation on court fees;
 - ✓ Obligation distance means of payment of court fees;
 - ✓ Limiting translation requirement Form D (enforcement);
 - ✓ Information obligations court fees, methods of payment of court fees and assistance in filling in the forms.



Workshop European Small Claims Procedure



PART II:

Commencement and Conduct
Role of the Judge
Defense and counterclaim
Conclusion of the procedure
Recognition and enforcement,
appeal and review mechanisms

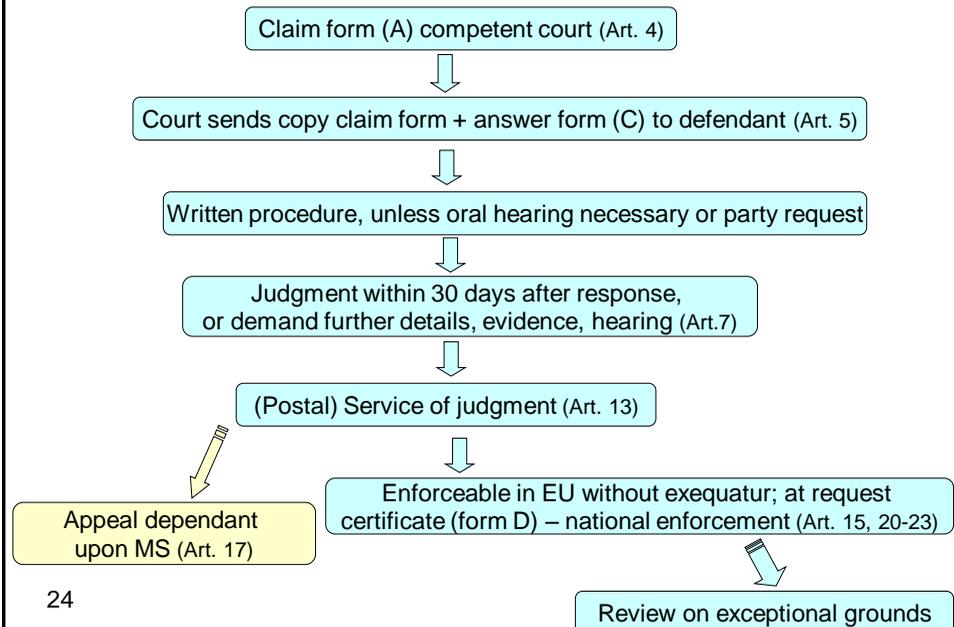
Scope of ESCP Regulation (rep.)

Substantive scope (art. 2)

- **Civil and commercial matters**
- **Financial limit : € 2000** ('does not exceed')
 - excluding interest, expenses and disbursement
 - *counterclaim* > € 2000 ≠ ESCP → national procedure (Art. 5(7) ESCP)
- **Cross-border cases (art. 3)**
 - ✓ *At least one of parties must be domiciled or habitually resident in MS other than MS of court seized* (Art. 3)
 - ✓ *At moment claim form is received*



Overview of the procedure



Commencement ESCP



- Submitting claim form A to competent court (Art. 4):
 - Directly, by mail, or other means of communication, such as fax or e-mail, acceptable to that MS
 - **Description** of evidence (question 8.2), where appropriate by any relevant supporting documents => see next slide
- Claim outside scope -> claimant may withdraw claim; otherwise continue as **national** procedure
- Court may request supplementary information, form B
- Application dismissed if claim *appears to be clearly unfounded*, application *inadmissible*, or *no rectification* within time

ESCP - Part 8 Claim form (A)

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. Details of claim

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 please specify below

8.2.2. Witnesses please specify below

8.2.3. Other please specify below

Oral hearing: Please note that the European Small Claims Procedure is a written procedure. However, you can request, in this form or at a later stage, that an oral hearing be held. The court/tribunal may decide to hold an oral hearing if it considers it necessary for the fair conduct of the proceedings or it may refuse it, having regard to all the circumstances of the case.

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

Yes

No

If yes, please indicate reasons *

ESCP – Jurisdiction: Brussels regime

❑ Brussels I applies - Claim form A, question 4

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 Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

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 http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm.

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 rule for consumers => art. 15 requirements, plus case law (e.g. [Case 585/08](#), Pammer/Hotel Alpenhof)
- *Flight delays*: [Case C-204/08](#) (Rehder)



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Conduct of the Procedure

❑ Written procedure (Art. 5)

- Oral hearing if court considers this necessary, or where party so requests
- Court may refuse if *obviously not necessary* for fair hearing (written decision)
- ✓ Video conference or other communication technology (Art. 8)

❑ Receipt claim form by court

- Court fills in Part I of answer form C
- Within 14 days served on defendant in accordance with Art. 13

❑ Defendant response **within 30 days**, by filling in Part II form C, or in any other appropriate way – [see next slide](#)

❑ Counterclaim (recital 16) => use Form A



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ESCP - Part of Form C, Part II

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.

2.1. Written evidence
please specify below

2.2. Witnesses
please specify below

2.3. Other
please specify below

3. Do you want an oral hearing to be held?
 Yes
 No
 If yes, please indicate reasons *:

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Language requirements

- Forms and responses in language court (Art. 6)
- Court may require translation of any other document (evidence) only if translation **appears to be necessary for giving judgment**
- Party may refuse to accept document because it is not in:
 - ✓ Official language of the MS where service is to be effected or where document is to be dispatched, or
 - ✓ A language which the addressee understands
 - ✓ Party may provide translation where it has been refused
 - Cf. Art. 8 Service Regulation

Service of Documents

- ❑ Service of documents in ESCP (Art. 13)
 - ✓ **Postal service** attested by an *acknowledgment of receipt including date of receipt* (Art. 13)
 - Cf. Art. 14 Service Regulation
 - ✓ Not possible: methods Art. 13 and 14 EEO



Specific role of the court

- ✓ Decide on applicability of Regulation (art. 1-3)
- ✓ Establish jurisdiction where necessary (Art. 4 and Brussels I)
- ✓ Ask for completion or rectification (Art. 4 and Form B)
- ✓ Timely filling out part I form C and dispatching of forms (Art. 5)
- ✓ Decide on (request) oral hearing and evidence taking (Art. 5, 8)
- ✓ Provide for information or procedural questions, [try settlement] (Art. 12, paras 2 and 3)
- ✓ Generally observe time limits (Art. 14)
- ✓ Take account of language issues (Art. 6) and observe proper service (Art. 13)



Conclusion and giving judgment

- ❑ Art. 7: judgment within **30 days** of receipt response from defendant/claimant within time limits, or:
 - ✓ Demand further details concerning claims (within 30 days max.)
 - ✓ Take evidence in accordance with Art. 9
 - ✓ Summon oral hearing within 30 days of summons (Art. 8)

⇒ Court shall give judgment within 30 days after having received all relevant information or after hearing

- ❑ **Default judgment:** where court has not received timely response, it shall give judgment on the (counter)claim (Art. 7, para 3)

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Cost rules

- ❑ Costs (Art. 16)
 - ✓ Unsuccessful party shall bear costs
 - ✓ Court shall not award costs unnecessarily incurred or disproportionate to the claim

- Cost indications by parties in forms

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Appeal and Review

- ❑ **Appeal:** national law (Art. 17) => see [E-justice Portal](#) and [European Judicial Atlas](#) (see [Documents](#) for all Art. 25 information)
- ❑ **Minimum standards review** (Art. 18):
 - (a) (i) Service pursuant to Art. 14 Reg. No 805/2004 (EEO), and (ii) service not effected in sufficient time *without fault* defendant, or
 - (b) Defendant prevented from objecting claim by reasons of *force majeure* or *due to extraordinary circumstances without any fault on his part*
 - Provided he acts promptly
- Judgment will be null and void if review justified



Recognition and Enforcement

- ❑ Enforceable notwithstanding appeal (Art. 15)
- ❑ Enforcement according to *national* law (Art. 21)
- ❑ Recognised and enforced in other MS without declaration of enforceability and without opposing recognition - form D (Art. 20)

- ✓ No grounds of refusal, except (limited) irreconcilability (Art. 22)
- ✓ Before judgment becomes final: limitation or stay (Art. 23)

4. Judgment

4.1. Date:	<input type="text"/>
4.2. Case number:	<input type="text"/>
4.3. The substance of the judgment:	<input type="text"/>
4.3.1. The court/tribunal has ordered <input type="text"/> to pay to <input type="text"/>	
(1) Principal:	<input type="text"/>
(2) Interest:	<input type="text"/>
(3) Costs:	<input type="text"/>
4.3.2. The court/tribunal has made an order against <input type="text"/> to <input type="text"/>	
(If the judgment was given by an appeal court or in the case of a review of a judgment.)	
This judgment supersedes the judgment given on <input type="text"/> , case number <input type="text"/> , and any certificate relative thereto.	

The judgment will be recognised and enforced in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.



INITIAL NEEDS ASSESSMENT QUESTIONNAIRE

The purpose of this questionnaire is to assess your existing knowledge of European civil procedures in order to ensure that the workshop corresponds to your training needs.

About you

Your profession:

- Judge Judicial staff Lawyer in private practice
 Other (please specify): _____

- What is your age group? Under 30 30-39 40-49
 50-60 Over 60

- What is your gender? Female Male

From which EU member state / region do you come from? _____

Which is your preferred workshop language? _____

About your knowledge of the law of European civil procedures

- | | Yes | No |
|--|-----------------------|-----------------------|
| Do you apply European law in your present function? | <input type="radio"/> | <input type="radio"/> |
| Do you work on civil procedure in your present function? | <input type="radio"/> | <input type="radio"/> |
| Do you apply European civil procedures in your present function? | <input type="radio"/> | <input type="radio"/> |

What is your knowledge of the law of European civil procedures?

Very good
 Some knowledge
 Little knowledge
 No knowledge

- | | | | | |
|--|-------------------------|-------------------------|-------------------------|-------------------------|
| I have heard of Regulation Brussels I | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have good knowledge of Regulation Brussels I | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have practical experience with the application of Reg. Brussels I | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have heard of the European Small Claims Procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have good knowledge of the European Small Claims Procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have practical experience with the European Small Claims Procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have heard of the preliminary ruling procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have good knowledge of the preliminary ruling procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |
| I have made use of the preliminary ruling procedure | <input type="radio"/> 1 | <input type="radio"/> 2 | <input type="radio"/> 3 | <input type="radio"/> 4 |

Annex 6

Do you have experience with the use of European Union's websites? If yes, with which?

- curia E-justice Portal eur-lex
 European Judicial Network website European Judicial Atlas

What is most important for you when choosing a conference or training programme?

- Need for training Networking opportunity Practical applicability
 High-level speakers Location International exchange

Why did you register to this programme?

Are you looking for a more general introduction to the subject or a deeper analysis?

- General introduction Mid-level Deeper analysis

On which other matters would you like more training?

Which possibilities do you have to disseminate the information received during this workshop to other members of your profession?

Thank you for your input

Workshop organiser

**Workshop on the application of the
European Small Claims Procedure**

List of participants

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
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«Country»
«E-mail address»**

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«Street»
«Postcode» «City»
«Country»
«E-mail address»**

**«Title Name Surname»
«Professional position»
«Institution»
«Street»
«Postcode» «City»
«Country»
«E-mail address»**

PARTICIPANT EVALUATION (INITIAL)

Your opinion matters to us: for the benefit of future participants, we should be grateful if you would reply briefly to the following questions about the workshop you have just followed. We will re-contact you in a few weeks to evaluate the impact of the training on your daily work.

About you

Your profession:

- Judge Judicial staff Lawyer in private practice
 Other (please specify): _____

About this workshop

How did you hear about this workshop?

- E-Mailing Postal mailing of the programme
 EU E-Justice portal From my Ministry of Justice
 From my bar association From my national judicial training institution
 Word-of-mouth Other _____

What particularly met with your approval?

What did not meet with your approval?

What is your assessment of ...?

Very good
 Good Satisfactory
 Adequate Poor

the training content:

- Was the subject matter dealt with as you expected? (1) (2) (3) (4) (5)
 Did you gain new insights into the subject matter? (1) (2) (3) (4) (5)
 Did you receive useful advice on application and implementation? (1) (2) (3) (4) (5)

the workshop structure:

- Was information transmitted in a clear and understandable way? (1) (2) (3) (4) (5)
 Was the content of the workshop analysed effectively? (1) (2) (3) (4) (5)
 Was the duration of the workshop satisfactory? (1) (2) (3) (4) (5)

Annex 8

the training methodology:

- Did the training methods employed support the training? 1 2 3 4 5
Which in particular? _____
- Was there sufficient alteration of training methodologies? 1 2 3 4 5
If not, why (too many, too few)? _____
- Was the balance between theory and practice effective? 1 2 3 4 5
If not, why (too theoretical, too many exercises)? _____
- Was the workshop Interactive enough? 1 2 3 4 5
If not, why (too much discussion, too little)? _____

the E-learning course:

- Did you find the E-learning course useful? 1 2 3 4 5
- Did the E-learning course help you better follow the workshop? 1 2 3 4 5
- Was the content of the course explained in a clear manner? 1 2 3 4 5
- Was the E-learning course easy to use? 1 2 3 4 5
- Did the quizz help you test your knowledge? 1 2 3 4 5

the user's pack:

- Was the documentation received during the workshop of help? 1 2 3 4 5
- Was the electronic documentation of help? 1 2 3 4 5

the online tools:

- Did you gain new information on available online tools? 1 2 3 4 5
- Were the online tools effectively presented? 1 2 3 4 5
- Will you be using them in the future (Yes, No, Why)? _____

the organisational aspects:

- Preliminary practical information 1 2 3 4 5
- Execution of the programme 1 2 3 4 5
- Assistance during the seminar 1 2 3 4 5
- Training venue 1 2 3 4 5

- Would you recommend this workshop to colleagues? Yes No
Why?
-

Annex 8

About the sessions' structure and trainers					Comment	
	Very good	Good	Satisfactory	Adequate	Poor	
EU legal framework on small claims	①	②	③	④	⑤	_____
Trainer 1	①	②	③	④	⑤	_____
Trainer 2	①	②	③	④	⑤	_____
The ESCP – Exercise II:	①	②	③	④	⑤	_____
Trainer 3	①	②	③	④	⑤	_____
Trainer 4	①	②	③	④	⑤	_____
The ESCP judgement – Exercise II	①	②	③	④	⑤	_____
Trainer 5	①	②	③	④	⑤	_____
Consolidating exercise	①	②	③	④	⑤	_____
Trainer 6	①	②	③	④	⑤	_____

Thank you for your feedback

PARTICIPANT EVALUATION (MID-TERM)

You recently participated in a training module on European instruments for judicial cooperation in civil matters. We should be grateful if you would reply briefly to the following questions about the impact of that training on your daily work.

About you

Your profession:

Judge Judicial staff Lawyer in private practice

Other (please specify): _____

About the workshop: To what extent ...?

Very
To some extent
Only to a minor extent
Not at all

has the knowledge acquired during the workshop helped you to better understand the problems you encounter in practice?

1 2 3 4

was the training on European civil procedures useful?

1 2 3 4

was the training on the European Small Claims Procedure useful?

1 2 3 4

were the case studies useful?

1 2 3 4

have you applied the European Small Claims Procedure since you attended the training module?

Yes No

have you used the user's pack in your work?

have you used the e-learning course in your work?

have you trained other colleagues on the European Small Claims Procedure since attending the training?

have you maintained contact with the other workshop participants?

Comments:

Annex 9

Have you made use of European Union's websites since the workshop? If yes, which one?

- curia
- E-justice Portal
- eur-lex
- European Judicial Network website
- European Judicial Atlas

Future training workshops

On which topics should such future training workshops be organised?

- Jurisdiction and recognition & enforcement of judgments in civil and commercial matters ("Brussels I"), service of documents, evidence, European payment order, small claims procedure and other civil justice instruments
- Family law: jurisdiction and the recognition & enforcement in matrimonial and parental responsibility matters ("Brussels II bis") and other family law matters
- Regulations on the law applicable in contractual ("Rome I") and non-contractual ("Rome II") obligations
- Preliminary reference procedure
- Other: _____

Thank you for your feedback